

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

HASSAN ALMREI

Appellant (Respondent)

-and-

**MINISTER OF CITIZENSHIP AND IMMIGRATION and MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondents (Appellants)

-and-

**UNIVERSITY OF TORONTO, FACULTY OF LAW – INTERNATIONAL HUMAN RIGHTS
CLINIC AND HUMAN RIGHTS WATCH
CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)
CANADIAN COUNCIL ON AMERICAN-ISLAMIC RELATIONS AND CANADIAN MUSLIM
CIVIL LIBERTIES ASSOCIATION
CANADIAN BAR ASSOCIATION
CANADIAN CIVIL LIBERTIES ASSOCIATION
CANADIAN COUNCIL FOR REFUGEES, AFRICAN-CANADIAN LEGAL CLINIC,
INTERNATIONAL CIVIL LIBERTIES MONITORING GROUP AND NATIONAL ANTI-RACISM
COUNCIL OF CANADA
AMNESTY INTERNATIONAL CANADA
FEDERATION OF LAW SOCIETIES OF CANADA
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
ATTORNEY GENERAL OF ONTARIO**

Interveners

**FACTUM OF THE INTERVENERS
CANADIAN COUNCIL ON AMERICAN-ISLAMIC RELATIONS (CAIR-CAN) and
CANADIAN MUSLIM CIVIL LIBERTIES ASSOCIATION (CMCLA)**

Pursuant to Rules 37 & 42 of the Rules of the Supreme Court of Canada

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N :

MOHAMED HARKAT

Appellant (Respondent)

-and-

**MINISTER OF CITIZENSHIP AND IMMIGRATION and MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS and ATTORNEY GENERAL OF CANADA**

Respondents (Appellants)

-and-

**UNIVERSITY OF TORONTO, FACULTY OF LAW – INTERNATIONAL HUMAN RIGHTS
CLINIC AND HUMAN RIGHTS WATCH
CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)
CANADIAN COUNCIL ON AMERICAN-ISLAMIC RELATIONS AND CANADIAN MUSLIM
CIVIL LIBERTIES ASSOCIATION
CANADIAN BAR ASSOCIATION
CANADIAN CIVIL LIBERTIES ASSOCIATION
CANADIAN COUNCIL FOR REFUGEES, AFRICAN-CANADIAN LEGAL CLINIC,
INTERNATIONAL CIVIL LIBERTIES MONITORING GROUP AND NATIONAL ANTI-RACISM
COUNCIL OF CANADA
AMNESTY INTERNATIONAL CANADA
FEDERATION OF LAW SOCIETIES OF CANADA
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

**FACTUM OF THE INTERVENERS
CANADIAN COUNCIL ON AMERICAN-ISLAMIC RELATIONS (CAIR-CAN) and
CANADIAN MUSLIM CIVIL LIBERTIES ASSOCIATION (CMCLA)**

Pursuant to Rules 37 & 42 of the Rules of the Supreme Court of Canada

BAKERLAW
Barristers & Solicitors
672 Dupont Street, Suite 400
Toronto, ON M6G 1Z6

David Baker
Faisal Bhabha

Tel.: (416) 533 0040 ext. 226
Fax: (416) 533 0050
Email: fbhabha@bakerlaw.ca

Solicitors for the Interveners CAIR-CAN and
CMCLA

SACK GOLDBLATT MITCHELL LLP
Barristers & Solicitors
30 Metcalfe Street, Suite 500
Ottawa, ON K1P 5L4

Michelle Flaherty

Tel: (613) 235 5327
Fax: (613) 235 3041
Email: michelleflaherty@sgmlaw.com

Ottawa agent for the Interveners CAIR-CAN
and CMCLA

TO: REGISTRAR OF THE SUPREME COURT OF CANADA
Supreme Court Building
301 Wellington Street
Ottawa, ON K1A 0J1

COPIES TO:

DOYON MORIN
6337, rue Saint-Denis
Montréal, Québec H2S 2R8

Johanne Doyon

Tel. (514) 277 4077 ext. 1896
Fax (514) 277 2019

Solicitors for the Appellant Adil Charkaoui

YAVAR HAMEED
43 Florence Street
Ottawa, Ontario K2P 0W6

Tel. (613) 232 2688 ext. 0003
Fax (613) 232 2680

Ottawa agent for the Appellant Adil Charkaoui

JACKMAN & ASSOCIATES
Barristers & Solicitors
596 St. Clair Avenue West, Unit 3
Toronto, Ontario M6C 1A6

Barbara Jackman

Tel.: (416) 653 9964
Fax: (416) 653 1036
Email: barb@bjackman.com

and

RUBY, EDWARDH
11 Prince Arthur Avenue
Toronto, Ontario M5R 1B2

John Norris

Tel.: (416) 964 9664
Fax: (416) 964 8305
Email: john@ruby-edwardh.com

Solicitors for the Appellant Hassan Almrei

LANG MICHENER LLP
Lawyers – Patent & Trade Mark Agents
50 O'Connor Street, Suite 300
Ottawa, Ontario K1 P 6L2

Marie-France Major

Tel.: (613) 232 7171
Fax: (613) 231 3191
Email: mmajor@langmichener.ca

Ottawa Agent for the Appellant Hassan Almrei

**ATTORNEY GENERAL OF CANADA –
DEPARTMENT OF JUSTICE**
130 King Street West
Toronto, Ontario

**ATTORNEY GENERAL OF CANADA –
DEPARTMENT OF JUSTICE**
East Memorial Building
2199-284 Wellington Street

M5X 1K6

Urszula Kaczmarczyk

Tel.: (416) 973 3688
Fax: (416) 954 8982

Solicitors for the Respondent Minister of
Citizenship and Immigration

COPELAND, DUNCAN
Barristers & Solicitors
31 Prince Arthur Avenue
Toronto, Ontario M5R 1B2

Paul D. Copeland

Tel.: (416) 964 8126
Fax: (416) 960 5456
Email: paulcope9@yahoo.com

Solicitors for the Appellant Mohamed Harkat

**ATTORNEY GENERAL OF CANADA –
DEPARTMENT OF JUSTICE**
130 King Street West
Toronto, Ontario
M5X 1K6

Donald MacIntosh

Tel.: (416) 973 0066
Fax: (416) 954 8982
Email: Donald.macintosh@justice.gc.ca

Solicitors for the Respondents

**PALIARE, ROLAND, ROSENBERG,
ROTHSTEIN, LLP**
250 University Avenue, Suite 501
Toronto, Ontario M5H 3E5

Robert A. Centa

Tel.: (416) 646 4314
Fax: (416) 646 4301

Solicitors for the Interveners University of

Ottawa, Ontario K1A 0H8

Christopher M. Rupar

Tel.: (613) 957 4842
Fax: (613) 954 1920

Ottawa Agent for the Respondent Minister of
Citizenship and Immigration

WEBBER SCHROEDER
Barristers & Solicitors
220 Elgin Street, 2nd Floor
Ottawa, Ontario K2P 1L7

Matthew C. Webber

Tel.: (613) 860 1449
Fax: (613) 860 1549
Email: webber@webberschroeder.com

Ottawa Agent for the Appellant Mohamed
Harkat

**ATTORNEY GENERAL OF CANADA –
DEPARTMENT OF JUSTICE**
East Memorial Building
234 Wellington Street. Room 1212
Ottawa, Ontario K1A 0H8

Christopher M. Rupar

Tel.: (613) 941 2351
Fax: (613) 954 1920
Email: Christopher.rupar@justice.gc.ca

Ottawa Agent for the Respondents

GOWLING LAFLEUR HENDERSON LLP
2600-160 Elgin Street
P.O. Box 466, Str. "D"
Ottawa, Ontario K1P 1C3

Henry S. Brown, Q.C.

Tel.: (613) 233 1781
Fax: (613) 563 9869
Henry.brown@gowlings.com

Toronto, Faculty of Law – International Human Rights Clinic and Human Rights Watch

SACK GOLDBLATT MITCHELL LLP

1130-20 Dundas Street West
Toronto, Ontario M5G 2G8

Michael Code

Tel.: (416) 977 6070

Fax: (416) 591 7333

Solicitors for the Intervener Criminal Lawyers' Association (Ontario)

WALDMAN & ASSOCIATES

281 Eglinton Avenue East
Toronto, Ontario M4P 1L3

Lorne Waldman

Tel.: (416) 482 6501

Fax: (416) 489 9618

info@lornewaldman.ca

Solicitors for the Intervener Canadian Bar Association

GREGORY P. DELBIGIO

1720-355 Burrard Street
Vancouver, British Columbia V6C 2G8

Tel.: (604) 687 9831

Fax: (604) 687 7089

Greg_delbigio@telus.net

Solicitors for the Intervener British Columbia Civil Liberties Association

BLAKE, CASSELS & GRAYDON LLP

199 Bay Street
P.O. Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Neil Finkelstein

Ottawa agent for the Interveners University of Toronto, Faculty of Law – International Human Rights Clinic and Human Rights Watch

GOWLING LAFLEUR HENDERSON LLP

2600-160 Elgin Street
P.O. Box 466, Stn. "D"
Ottawa, Ontario K1P 1C3

Brian A. Crane, Q.C.

Tel.: (613) 786 0107

Fax: (613) 788 3500

Brian.crane@gowlings.com

Ottawa agent for the Intervener Criminal Lawyers' Association (Ontario)

GOWLING LAFLEUR HENDERSON LLP

2600-160 Elgin Street
P.O. Box 466, Stn. "D"
Ottawa, Ontario K1P 1C3

Henry S. Brown, Q.C.

Tel.: (613) 233 1781

Fax: (613) 563 9869

Henry.brown@gowlings.com

Ottawa agent for the Intervener Canadian Bar Association

GOWLING LAFLEUR HENDERSON LLP

2600-160 Elgin Street
P.O. Box 466, Stn. "D"
Ottawa, Ontario K1P 1C3

Henry S. Brown, Q.C.

Tel.: (613) 233 1781

Fax: (613) 563 9869

Henry.brown@gowlings.com

Ottawa agent for the Intervener British Columbia Civil Liberties Association

GOWLING LAFLEUR HENDERSON LLP

2600-160 Elgin Street
P.O. Box 466, Stn. "D"
Ottawa, Ontario K1P 1C3

Brian A. Crane, Q.C.

Tel.: (416) 863 2400
Fax: (416) 863 2653
Neil.finkelstein@blakes.com

Solicitors for the Intervener Federation of Law Societies of Canada

ROY ELLIOTT KIM O'CONNOR LLP
10 Bay Street, Suite 1400
Toronto, Ontario M5J 2R8

R. Douglas Elliott
Gabriel Fahel

Tel.: (416) 362 1989
Fax: (416) 362 6204

Solicitors for the Intervener Canadian Arab Federation

GREENSPAN, WHITE
144 King Street East
Toronto, Ontario M5C 1G8

Edward L. Greenspan, Q.C.

Tel.: (416) 366 3961
Fax: (416) 366 7994
egreenspan@144king.com

Solicitors for the Intervener Canadian Civil Liberties Association

AFRICAN CANADIAN LEGAL CLINIC
111 Richmond Street West, Suite 503
Toronto, Ontario M5H 2G4

Marie Chen
Sharryn Aiken

Tel.: (416) 214 4747
Fax: (416) 214 4748

and

LAW OFFICE OF MARY EBERTS
P.O. Box 19047, Station Walmer
Toronto, Ontario M5S 1X1

Tel.: (613) 786 0107
Fax: (613) 788 3500
Brian.crane@gowlings.com

Ottawa agent for the Intervener Federation of Law Societies of Canada

LANG MICHENER LLP
50 O'Connor Street, Suite 300
Ottawa, Ontario K1P 6L2

Marie-France Major

Tel.: (613) 232 7171
Fax: (613) 231 3191
Email: mmajor@langmichener.ca

Ottawa agent for the Intervener Canadian Arab Federation

AUGER, HOLLINGSWORTH
200 Elgin Street, Suite 600
Ottawa, Ontario K2P 1L5

Richard W. Auger

Tel.: (613) 233 4529
Fax: (613) 237 0071

Ottawa agent for the Intervener Canadian Civil Liberties Association

**COMMUNITY LEGAL SERVICES – OTTAWA
CARLETON**
1 Nicholas Street, Suite 422
Ottawa, Ontario K1N 7B7

Michael Bossin

Tel.: (613) 241 7008
Fax: (613) 241 8680

Ottawa agent for the Interveners Canadian Council for Refugees, African Canadian Legal Clinic, International Civil Liberties Monitoring Group and National Anti-Racism Council of Canada

Tel.: (416) 966 0404
Fax: (416) 966 2999
maryeberts@bellnet.ca

Solicitors for the Interveners Canadian Council
for Refugees, African Canadian Legal Clinic,
International Civil Liberties Monitoring Group
and National Anti-Racism Council of Canada

**COMMUNITY LEGAL SERVICES – OTTAWA
CARLETON**

1 Nicholas Street, Suite 422
Ottawa, Ontario K1N 7B7

Michael Bossin

Tel.: (613) 241 7008
Fax: (613) 241 8680

Solicitors for the Intervener Amnesty
International Canada

ATTORNEY GENERAL OF ONTARIO

Constitutional Law Branch

720 Bay Street, 4th Floor
Toronto, Ontario M5G 2K1

Shaun Nakatsuru

Tel. (416) 326 4473
Fax (416) 326 4015

Solicitors for the Intervener Attorney General of
Ontario

**BURKE-ROBERTSON
Barristers & Solicitors LLP**

70 Gloucester Street
Ottawa, Ontario K2P 0A2

Robert E. Houston, Q.C.

Tel.: (613) 236 9665
Fax: (613) 235 4430

Ottawa agent for the Intervener Attorney
General of Ontario

TABLE OF CONTENTS

PART I - THE FACTS	1
A. Background	1
B. The Interveners	1
PART II - THE ISSUES	2
PART III - ARGUMENT	2
A. The Broader Social and Political Context Must be Considered	2
(i) <i>The government's response to terrorism</i>	2
(ii) <i>The historical legacy of racism in national security law and policy</i>	3
(iii) <i>The current reality of Islamophobia</i>	4
B. The Charter Guarantees Substantive Equality	5
C. Security Certificates Breach Section 15	6
(i) <i>Discriminatory application of the law amounts to religious profiling</i>	6
(ii) <i>Profiling adversely affects the equality rights of Muslims</i>	8
(iii) <i>There is a chill on religious freedom and expression within the Muslim community</i>	9
D. Equality is an "Interpretive Lens" For All Other Charter Rights	11
(i) <i>The IRPA expressly incorporates the promotion of equality</i>	11
(ii) <i>Multiculturalism is a constitutional value that shapes the interpretation of equality</i>	12
(iii) <i>Unwritten constitutional principles mandate an equality-positive analysis</i>	12
(a) Protecting minorities	13
(b) The rule of law	13
(c) Respect for human rights and freedoms	13
E. Equality Lens Applied to Section 7	14
(i) <i>Arbitrary detention contravenes principles of fundamental justice</i>	14
(ii) <i>Discriminatory detention is necessarily arbitrary</i>	15
(iii) <i>Reliance on biased and untested security intelligence violates principles of fundamental justice</i>	16
F. Security Certificates are Not a Reasonable Limit Under Section 1	17
(i) <i>There is no rational connection</i>	18
(a) Security certificate regime is over-inclusive	18
(b) Security certificate regime is under-inclusive	19
(c) Exporting terrorism does not protect Canada's national security	19
(ii) <i>Availability of less restrictive alternatives</i>	19
(iii) <i>Security certificates cannot survive section 1 analysis</i>	20
PART IV - COSTS	20
PART V - ORDER SOUGHT	20
PART VI - TABLE OF AUTHORITIES	22
PART VII - TABLE OF STATUTES, REGULATIONS AND RULES	24

PART I – THE FACTS

A. Background

1. Terrorism is a reality in the world today. Innocent civilians in major European and North American cities such as New York, Washington, Istanbul, Madrid and London have been murdered by individuals claiming to act in the name of Islam but whose sinister aim is simply to destroy human life. Such acts have nothing to do with the religion of the overwhelming majority of Canada's 600,000 Muslims.

2. Terrorism targets civilians indiscriminately. In every major terrorist attack, including those on the United States in 2001, Muslims were among the victims. Canadian Muslims are equally at risk of being victimized by terrorism as any other Canadian, and are just as fearful of its implications. Canadian Muslims, like all Canadians, rely on the government to protect them from such risks and to secure Canada's borders and ensure public safety.

3. Canadian Muslims are loyal to Canada and would do nothing to harm the security of their fellow Canadians or the peace and tranquillity of this country. Muslims in Canada do not seek to defend or justify terrorism in any form, and in fact are resoundingly opposed to it.

B. The Interveners

4. The Canadian Council on American-Islamic Relations (CAIR-CAN) and the Canadian Muslim Civil Liberties Association (CMCLA) [the "Interveners"] are national advocacy organizations committed to anti-discrimination and the advancement of equality for Canadian Muslims.

5. The Interveners have long supported the government in discharging its duty to protect Canadians from threats of terrorism or other dangers, both external and internal. On July 21, 2005, CAIR-CAN organized an unprecedented statement by 120 Canadian imams (religious leaders) denouncing terrorism and discouraging extremism in the Canadian Muslim community.

6. Notwithstanding the Interveners' public role advocating for cultural sensitivity towards Muslims and responsible citizenship by Muslims, CAIR-CAN has been the subject of defamatory remarks by high-profile media and political figures. It has been forced to publicly defend itself against spurious allegations, not one of which has ever been substantiated or sustained. The damage inflicted by unfounded allegations of "terrorism" or "extremism" is severe; retractions and apologies do not erase the pain or the stigma suffered.

7. CAIR-CAN's experience as an organization is no different from the personal experiences of many of Canada's Muslims. As one of Canada's fastest growing minority communities and the largest non-Christian religion, Canadian Muslims have recounted numerous experiences of unfounded allegations and assumptions being made about them since the terror attacks of September 11, 2001. The Interveners, as broad-based community organizations, have supported many Canadian Muslims through these difficult years, and have documented their experiences, as they have continued to advocate for the need to strike an appropriate balance between security and rights, in the interest of building a Canada that is both safe and tolerant.

8. CAIR-CAN and CMCLA accept the facts as stated in the Appellants' facts.

PART II – THE ISSUES

9. These appeals concern whether sections 33 and 77-85 of the *Immigration and Refugee Protection Act*¹ infringe the *Charter of Rights and Freedoms*, and whether said breach is demonstrably justified in a free and democratic society.²

PART III – ARGUMENT

A. The Broader Social and Political Context Must be Considered

10. *Charter* claims must be analyzed in the larger social, historical and political context in which they arise.³ The issues in this case must therefore be examined in the context of the Canadian social reality, in which selected minority communities have historically been targets of discrimination in times of public fear over real or perceived threats to national security. In the current context, the Muslim community is the target group.

(i) *The government's response to terrorism*

11. Immediately following September 11, 2001, Canada joined the United States in its "War on Terror" and unveiled the government's new anti-terrorism legislation.⁴ The *ATA* provides wide

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, entered into force June 20, 2002 ("IRPA").

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 ("Charter").

³ *UFCW Local 1518 v. K Mart Canada*, [1999] 2 S.C.R. 1083 at para. 24, Interveners' Book of Authorities, Tab 19.

⁴ Bill C-36, *An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism* 1st Sess., 37th Parl., 2001 (assented to 18 December 2001), S.C. 2001, c. 41 ("Anti-terrorism Act" or "ATA").

investigatory powers where "terrorist activity" is suspected, whether directly or indirectly, through fundraising, facilitating, instructing or harbouring.⁵ Law enforcement agencies are endowed with the power to pre-emptively arrest and detain persons when there are "reasonable grounds to suspect" that they are involved in planning an imminent act of terror. Groups for which there are "reasonable grounds to believe" that they are involved in terrorism are listed as "terrorist entities", on the basis of secret and often unchallenged intelligence information. Persons can be convicted of collateral crimes, such as facilitation,⁶ without proof of criminal intent or knowledge of a terrorist act. Investigative hearings and secret evidence are also incorporated into the criminal process where terrorism is alleged.

12. The *ATA* came into force on December 24, 2001. The *IRPA* came into force on June 20, 2002. The *ATA* applies against both citizens and non-citizens. In recognition of its limited emergency function, the *ATA* includes a clause mandating its review by a parliamentary committee within three years of coming into force, and its two most intrusive procedures – preventive arrest and investigative hearings – are subject to a five-year sunset clause.⁷

13. Rather than using the *ATA*, the *IRPA* has been the government's principal tool for identifying and detaining suspected terrorists.⁸ This creates a highly unreliable method of tracking potential threats and necessarily results in casting the net far too wide, while failing to provide any real protection.

14. In the absence of a declaration of war or an emergency, the use of permanent, non-emergency provisions that severely impair individual liberties poses a serious challenge to the values of the *Charter* and the rule of law.

(ii) The historical legacy of racism in national security law and policy

15. In 1914, Canada adopted the *War Measures Act*.⁹ This legislation authorized the use of extraordinary powers in times deemed by the Cabinet to be an emergency. These emergency

⁵ See *Criminal Code*, R.S.C. 1985, c. C-46, s. 83.18 ("Code").
⁶ *Code*, s. 83.19 provides: "Every one who knowingly facilitates a terrorist activity is guilty of an indictable offence" regardless of whether the "facilitator knows that a particular terrorist activity is facilitated".
⁷ Sarah Armstrong, "Does Bill C-36 Need a Sunset Clause?" (2002) 60 U. Toronto Fac. L. Rev. 73 at 74, *Interveners' Book of Authorities*, Tab 20.
⁸ Kent Roach, "Must We Trade Rights for Security? The Choice Between Smart, Harsh, or Proportionate Security Strategies in Canada and Britain" (2006) 27 *Cardozo L. Rev.* 2151 at 2186, *Interveners' Book of Authorities*, Tab 32 ("Trading Rights for Security").
⁹ *War Measures Act*, S.C. 1914, c. 2.

powers included the power to arrest, detain, exclude, deport and appropriate property.

16. The *War Measures Act* was used in three notable instances: (1) during the First World War principally against people of Ukrainian heritage; (2) during the Second World War against those of Japanese origin; and (3) during the October Crisis against Québécois.¹⁰ The *War Measures Act* was repealed in 1988.

17. With respect to the wartime uses of the *Act*, persons were deemed “enemy aliens” on the basis of presumed loyalty to enemy states for reasons of ethnic heritage alone. It profoundly impacted individuals, families and communities:

Not only were property and time lost, but the degradation of dignity and humanity was immeasurable. Under the guise of war and national security concerns many people were quickly demonized and stripped of their basic human rights and dignity.¹¹

18. Decades later, the government of Canada apologized to both Japanese-Canadians and Ukrainian-Canadians. Muslims are concerned that a generation from now, they will be seeking apologies and redress from the Canadian government for the manner in which their community has been targeted and demonized in the War on Terror.

(iii) *The current reality of Islamophobia*

19. Since the launch of the War on Terror, Muslims have witnessed increased incidences of discrimination against members of their community, both by private actors and by the state. Although Muslims are victims of historical discrimination and stereotyping,¹² the political climate has, since September 2001, reached troubling levels of Islamophobia.¹³

20. The 2003 UN Report on contemporary forms of racism and discrimination notes that in the aftermath of September 11, 2001, a climate of widespread and systematic suspicion was created

¹⁰ Ziyaad E. Mia, “The End of Law: Canada’s National Security Legislation and the Principle of Shared Humanity” (2005) [unpublished] LL.M. Thesis, University of Toronto, Graduate Department of Law at 16, *Interveners’ Book of Authorities*, Tab 29.

¹¹ *Ibid* at 21.

¹² Reem Bahdi, “No Exit: Racial Profiling and Canada’s War Against Terrorism”(2003) 41 *Osgoode Hall L.J.* 293, *Interveners’ Book of Authorities*, Tab 21 (“Bahdi”).

¹³ David Tanovich, *The Colour of Justice: Policing Race in Canada* (Toronto: Irwin Law, 2006) at 110, *Interveners’ Book of Authorities*, Tab 34.

in which Muslims and Arab minorities around the world have been victims of malicious acts of violence for reasons of their religious beliefs and/or ethnic origin.¹⁴

21. In its 2005 *Policy and Guidelines on Racism and Racial Discrimination*, the Ontario Human Rights Commission highlights Islamophobia as a “contemporary and emerging form of racism against Muslims in Canada.”¹⁵

22. In its “2001 Hate Bias Statistical Report”,¹⁶ the Toronto Police Service recorded a 66% increase in reported hate crimes in Toronto from 204 in 2000 to 338 in 2001. The report noted that 90% of the total increase in hate crimes was directly related to the terrorist attacks. Hate crimes based on religion increased from 35 incidents in 2000 to 118 in 2001, and hate crimes motivated by nationality increased from 9 to 35. The Report noted that 57 of the hate and bias incidents were aimed specifically at Muslims. These included: 1 arson, 13 assaults, 2 bomb threats, 5 criminal harassments, 20 mischief, 1 robbery and 15 threat incidents. Comparable increases in hate-motivated incidents were reported in cities across Canada. These statistics are especially stark in light of the characteristic underreporting of hate crimes.

B. The Charter Guarantees Substantive Equality

23. It is settled law that the *Charter* guarantees substantive equality as opposed to mere formal equality. This Court has consistently recognized that grave inequalities can sometimes be created by apparently neutral policies and actions.¹⁷ Promoting equality therefore requires proactive steps to remedy systemic factors which perpetuate inequality.¹⁸

24. This Court has emphasized that section 15 does more than provide a remedy for those who have suffered past discrimination. Its purpose is also preventive and ameliorative in terms of improving the “position of groups within Canadian society who have suffered disadvantage by

¹⁴ Commission on Human Rights, *Racism, Racial Discrimination, Xenophobia and all forms of Discrimination: Situation of Muslim and Arab peoples in various parts of the world in the aftermath of the events of 11 September 2001*, UN ESCOR 59th Sess. UN Doc. E/CN.4/2003/23 (2003) (“UN Report”) at para. 4, Interveners’ Book of Authorities, Tab 25.

¹⁵ Ontario Human Rights Commission, *Policy and Guidelines on Racism and Racial Discrimination* (Toronto: Ontario Human Rights Commission, June 2005), Interveners’ Book of Authorities, Tab 31.

¹⁶ Toronto Police Service, “2001 Hate Bias Crime Statistical Report” (2001), Interveners’ Book of Authorities, Tab 36.

¹⁷ *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 at paras. 25-26, Interveners’ Book of Authorities, Tab 3 (“Andrews”).

¹⁸ *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 at para. 40, Interveners’ Book of Authorities, Tab 7.

exclusion from mainstream society."¹⁹

25. In the War on Terror, the government proceeded with an anti-terrorism strategy that unavoidably targets Muslims and undermines their human dignity. Rather than being guided by *Charter* values to promote and ensure equality, the government stopped short of including an express ban on racial profiling in the *ATA* or in the amendments to *IRPA*, implicitly acknowledging that it did not wish to be constrained by equality considerations when tracking suspected terrorists.

26. Reputable national groups and community representatives raised concerns about the discriminatory impact on Muslims and Arabs in Canada, citing evidence of increased insecurity and fear within affected communities.²⁰ In submissions to the Special Senate Committee on the *Anti-terrorism Act*, CAIR-CAN highlighted the adverse impact on the Muslim community of both the *ATA* and the use of security certificates.²¹ The concerns of the Muslim community have largely gone unheeded, even as fears became reality for Canadian Muslims.

C. Security Certificates Breach Section 15

27. The lower courts concluded in *Charkaoui* that there is no proof that the security certificate process discriminates within the meaning of section 15 of the *Charter*. The Interveners submit that this finding is incorrect, and support Mr. Charkaoui's assertion that his right not to be discriminated against on the basis of his religion, ethnicity and citizenship status has been violated.

28. It is submitted that the impugned provisions breach section 15 in two principal ways: (i) they are applied in a discriminatory manner by specifically targeting members of an identifiable group; and (ii) they create a chilling effect among members of a disadvantaged group.

(i) *Discriminatory application of the law amounts to religious profiling*

29. Profiling is defined by the Ontario Human Rights Commission as:

...any action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of

¹⁹ *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241 at para. 66, Interveners' Book of Authorities, Tab 4.

²⁰ Justice Canada and Public Safety and Emergency Preparedness Canada, *Summary Report: Public Consultation with Ethnocultural and Religious Communities on the Impact of the Anti-terrorism Act* (November 29, 2004), Interveners' Book of Authorities, Tab 28.

²¹ CAIR-CAN, "Brief on the Review of the Anti-terrorism Act", submitted to the Special Senate Committee on the Anti-terrorism Act (June 2005) at 6-8, Interveners' Book of Authorities, Tab 22.

origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment.²²

30. Much of the discrimination and profiling evidence is anecdotal, reported in the media or gathered by community organizations. Legal scholars have noted that “there have been numerous reports of the targeting of members of the Muslim and Arab communities in Canada”²³ that amount to a sufficient public record for this Court to take notice of this fact.²⁴

31. In a detailed report on the “Situation of Muslim and Arab peoples in various parts of the world in the aftermath of the events of 11 September 2001”, including Canada, the United Nations Commission on Human Rights found that:

In a crisis, history shows that measures dictated by public security considerations are often adopted at the expense of individual freedoms. In a number of countries, the months following the attacks of 11 September 2001 were marked by a legitimate and understandable strengthening of anti-terrorist legislation and regulations. However, these measures, which were hastily adopted in a climate of indignation and fear, may jeopardize the fundamental rights of citizens and, *a fortiori*, foreigners living in the country. There is no escaping the fact that they systematically single out persons of Arab or Muslim origin and that the use of racial profiling for operational purposes is everyday practice.²⁵

32. In *Presumption of Guilt: A National Survey on Security Visitations of Canadian Muslims* (2004), CAIR-CAN documents the results of its national survey on the increased scrutiny of the Canadian Muslim community by the RCMP, CSIS and the police. Eight percent of respondents indicated that they had been personally questioned by security officials, while 43 percent indicated they knew of at least one other Canadian Muslim who had been questioned. Meanwhile, 62 percent of respondents who had been questioned by security officials indicated that they never before reported the incident to any organization.²⁶

33. Criminal law scholar David Tanovich has noted that profiling of Muslims in the War on Terror is consistent with the pattern of racial profiling in law enforcement generally:

²² Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling: Inquiry Report* (Toronto: Ontario Human Rights Commission, 2003) at 6 (“*Paying the Price*”), Interveners’ Book of Authorities, Tab 30.

²³ Tanovich, *supra* at 108, Interveners’ Book of Authorities, Tab 34.

²⁴ See eg. Bahdi, *supra*, Interveners’ Book of Authorities, Tab 21; and Sujit Choudhry and Kent Roach, “Racial and Ethnic Profiling: Statutory Discretion, Constitutional Remedies, and Democratic Accountability” (2003) 41 Osgoode Hall L.J. 1, Interveners’ Book of Authorities, Tab 23 (“Choudhry and Roach”).

²⁵ UN Report, *supra* at para. 44, Interveners’ Book of Authorities, Tab 25 [emphasis added].

²⁶ Tanovich, *supra* at 109-110, Interveners’ Book of Authorities, Tab 34.

The colour of justice in Canada is largely driven by stereotypical assumptions about crime and those who commit it. These assumptions, which are perpetuated in police intelligence materials, popular culture, and in the media, have served to place the burden of suspicion almost entirely on racialized communities.²⁷

(ii) Profiling adversely affects the equality rights of Muslims

34. LaForest J. outlined the meaning of adverse effects discrimination in this Court's judgment in *Eldridge*, explaining that:

A legal distinction need not be motivated by a desire to disadvantage an individual or group in order to violate section 15(1). It is sufficient if the effect of the legislation is to deny someone the equal protection or benefit of the law.²⁸

35. In the case of security certificates, the discriminatory effect is occasioned by the application of the legislation rather than the legislation itself. Although the legislation is neutral on its face, discriminatory enforcement is inevitable. Unlike in the past, when profiled communities were directly targeted by expressly discriminatory measures, as in the case of Japanese and Ukrainian Canadians, the contemporary manifestation of state profiling of suspected minorities is the targeted use of facially neutral legislation.

36. Since the adoption of the *IRPA* in 2002, the impugned sections have been used specifically to target Muslims. While terrorism is known to exist globally and to be carried out by individuals of all religions and ethnicities, security certificates under the *IRPA* – with the sole exception of the notorious German hate-monger Ernst Zundel (who is not an accused terrorist) – have been applied exclusively against Muslim men from Arab countries.

37. The Respondents' witness, J.P., a CSIS officer, acknowledged under cross-examination by Mr. Almrei's counsel that Muslims perceive CSIS to be specifically targeting members of their community:

Yes, I am aware that there is a problem and I am aware that some are complaining about harassment and an atmosphere of intimidation... I am aware of a number of bodies representing the Sunni and Shi'ite communities complaining about this atmosphere.²⁹

²⁷ *Ibid* at 2.

²⁸ *Eldridge v. British Columbia*, [1997] 3 S.C.R. 624 at para. 62 (emphasis in original), Interveners' Book of Authorities, Tab 5.

²⁹ Appellant's Record (*Almrei*) at 1099.

Sunni
-TAMIL

38. Yet, the Respondents rely on J.P.'s unsubstantiated claim that "CSIS does not target Islamic Canadians or members of the Islamic communities".³⁰ This bald assertion flies in the face of evidence from coast to coast of which this Court is entitled to take judicial notice. Given the overwhelming documentation of the pattern of profiling of Muslims by CSIS and the RCMP at least since 2001, this Court should not make the finding being urged upon it by the Respondents. Such a finding would be inconsistent with widely available and incontrovertible evidence to the contrary. The fact that such evidence may not be on the record in these particular cases does not support or mandate a finding by this Court that discrimination is not occurring against Canadian Muslims.

39. In *Little Sisters*, this Court found that, although the legislation at issue was facially neutral, its implementation amounted to differential treatment since the government had wide discretion. In the case of security certificates, the risk of discriminatory application of the law is likewise occasioned by administrative discretion, coupled with a lack of procedural protections and the institutionalized deference to unreliable and untested information.

40. It is submitted that Justice Iacobucci's dissent in *Little Sisters* calling for the striking down of the legislative scheme pursuant to section 52(1) is the correct approach to adopt in the present case.³¹ Striking down is the appropriate result where the statute fails to take adequate measures to ensure *Charter* rights are protected in its implementation, and where an adequate process deemed sufficient for citizens exists under the *Criminal Code*. Security certificates are so prone to discriminatory application in the exercise of administrative discretion that the legislative scheme cannot stand.³²

(iii) There is a chill on religious freedom and expression within the Muslim community

41. Fear is the second principal manner in which the equality rights of Canadian Muslims are adversely affected. Fear has sent a chill through the community, as Muslims are feeling unprotected, vulnerable and abandoned by a system that does not place sufficient value on their freedom, the security of their persons, or their lives. The indiscriminate labelling of members of the Muslim community as terrorists without a fair opportunity to prove the falsehood of the accusation is the source of the feeling that the interests of Canadian Muslims are not held in equal regard with other Canadians.

³⁰ Respondents' Factum (*Almrei*) at para. 62, referencing Appellant's Record at 1098.

³¹ *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120 at paras. 167, & 203-213, Interveners' Book of Authorities, Tab 8.

³² See Choudhry and Roach, *supra* at 18-21 in original, 9-11 as in Book of Authorities, Interveners' Book of Authorities, Tab 23.

42. The fear felt by Muslims has manifested itself in closed schools, cautionary tips on websites, a wallet-sized card advising them of their rights, children and youth carrying cell phones with a pre-programmed emergency number, suggestions that Muslims not speak about the terrorist attacks in public, and advisories that women should not wear the *hijab* (traditional head covering).

43. The threat of criminal suspicion or sanction for engaging in activities most Canadians take for granted, such as attending religious services, giving to charity, or engaging in community activism, has left members of the Muslim community feeling that they are being targeted for discriminatory treatment by the police, CSIS and the RCMP.

44. Muslims have reported intrusions by police and security officials into their private lives. Muslims have been subjected to visits at work, intrusive and irrelevant questioning (for example about their level of religiosity), improper identification by officials, informant solicitation, interrogation of minors, threats of arrest pursuant to anti-terrorism and/or immigration legislation, and discouragement from obtaining legal representation or seeking the assistance of community advocacy organizations including CAIR-CAN.³³ There appears to be a direct linkage between outward religious appearance (i.e., men with beards, women who cover their hair) and security scrutiny. Such tactics have the effect of undermining dignity and reinforcing stereotypes. Very few if any of those subjected to surveillance and interrogation are actually ever charged with an offence.

45. Increased state targeting of Muslim places of worship, charities and community organizations, combined with public suspicion of Muslim cultural and religious institutions, has had a chilling effect on individual and collective expressions of religious and cultural identity.³⁴

46. Restrictions on charities following the passage of the *Charities Registration (Security Information) Act* (C-16) led many Canadian Muslims to stop their charitable donations or remittances to "impoverished relatives overseas for fear of being investigated by police."³⁵

³³ Tanovich, *supra* at 110, Interveners' Book of Authorities, Tab 34.

³⁴ *Paying the Price*, *supra* at 36 Interveners' Book of Authorities, Tab 30.

³⁵ Janice Tibbetts, "Anti-terror bill making Muslims 'afraid' to donate" *Ottawa Citizen* (December 6, 2001) at A4, Interveners' Book of Authorities, Tab 35.

money to
relatives
children case
+ Tamil cases

47. This has led to a growing tendency among Muslims to “closet” themselves and to suppress visible manifestations of their religious identity out of fear of discrimination and/or criminal suspicion. This form of discrimination, which is difficult to prove and is rarely reported, is known to social scientists as “veiled, usual, or voluntary discrimination”.³⁶

48. The chill has not only affected individuals and families, but also non-governmental organizations. The fear of social stigma and/or detention, prosecution and potentially deportation undermines the ability of members of the Muslim community to fully participate in public life and discourse.

D. Equality is an “Interpretive Lens” For All Other Charter Rights

49. This Court has long held that all *Charter* rights strengthen and support each other, and that section 15 is the “broadest of all guarantees”.³⁷ Equality therefore plays an especially important role in framing and informing other *Charter* rights.³⁸ In the words of Dickson J. (as he then was), the purpose of the equality guarantee is to be sought:

...by reference to the character and the larger objects of the *Charter* itself, to the language chosen to articulate the specific right or freedom, to the historical origins of the concepts enshrined, and ... to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the *Charter*.³⁹

50. The interpretive lens of equality can render the protections offered by section 7 more meaningful, as well as ensure an equality-centred interpretation of “fundamental justice”.⁴⁰

51. The equality lens in this case is also informed by the interpretive clause within the *IRPA* itself, as well as the interpretive principles of multiculturalism enshrined in section 27 of the *Charter*, and the unwritten constitutional principles of the protection of minorities, the rule of law, and respect for human rights and freedoms.

(i) *The IRPA expressly incorporates the promotion of equality*

52. The interpretation clause in the *IRPA* requires that the Act be interpreted in accordance with the principles of equality and anti-discrimination:

³⁶ Denise Helly, “Are Muslims discriminated against in Canada since September 2001?” (2004) 36(1) *Canadian Ethnic Studies* 24, Interveners’ Book of Authorities, Tab 27.

³⁷ *Andrews*, *supra* at para. 52, Interveners’ Book of Authorities, Tab 3.

³⁸ *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 S.C.R. 46 at para. 112, Interveners’ Book of Authorities, Tab 10 (“G.(J.)”).

³⁹ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at para. 117, Interveners’ Book of Authorities, Tab 15.

⁴⁰ *G.(J.)*, *supra* at para. 112, Interveners’ Book of Authorities, Tab 10.

3 (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 and of the equality of English and French as the official languages of Canada;

(ii) *Multiculturalism is a constitutional value that shapes the interpretation of equality*

53. Section 27 of the *Charter* provides:

This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

54. Section 27 provides clear guidance for interpreting the scope of *Charter* rights in accordance with the goal of promoting multiculturalism. This Court has recognized the interconnectedness of sections 15 and 27 in promoting a pluralistic society.⁴¹

55. Multiculturalism should be interpreted to circumscribe excessive government action which threatens the multicultural fabric of Canadian society. In this Court's recent judgment in *Multani*, multiculturalism was referred to when disposing of the government's attempt to justify the limitation on freedom of religion under section 1.⁴² A similar interpretive approach should be applied in the present case, both at the breach stage and when assessing the government's section 1 argument.

(iii) *Unwritten constitutional principles mandate an equality-positive analysis*

56. This Court has articulated fundamental principles that underlie the Canadian constitutional structure. These principles are "not merely descriptive, but are also invested with a powerful normative force, and are binding upon both courts and governments".⁴³

57. In the present case, the unwritten principles of protecting minorities, the rule of law and the newly articulated respect for human rights and freedoms should be applied to the equality lens used by the Court to assess the constitutionality of security certificates. Just as all *Charter* rights inform and strengthen one another, underlying constitutional principles provide a foundation on which the rights and freedoms enshrined in the *Charter* are built.

⁴¹ *R. v. Keegstra*, [1990] 3 S.C.R. 697 at para. 74, Interveners' Book of Authorities, Tab 17 ("*Keegstra*").

⁴² *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] SCJ No. 6 at para. 71, , Interveners' Book of Authorities, Tab 9.

⁴³ *Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217 at para. 54, Interveners' Book of Authorities, Tab 14 ("*Secession Reference*").

(a) Protecting minorities

58. The protection of minorities has been characterized by this Court as a constitutional imperative that is entrenched in the *Charter*, but which long precedes the *Charter*, dating back to the foundations of Confederation. The Court has recognized that:

Although Canada's record of upholding the rights of minorities is not a spotless one, that goal is one towards which Canadians have been striving since Confederation, and the process has not been without successes. The principle of protecting minority rights continues to exercise influence in the operation and interpretation of our Constitution.⁴⁴

59. The principle of protecting minorities is reinforced by sections 15 and 27 and is therefore one of the most important values of Canadian constitutional democracy. It is submitted that, while the Respondents rely on protection of national security as one of the most significant functions of government, the protection of national security must always be balanced against the equally important principle of protecting minorities.

(b) The rule of law

60. The rule of law has been described by this Court as "a fundamental postulate of our constitutional structure".⁴⁵ It is the basic constitutional and democratic protection and, to the extent that it ensures no one is above the law, it embodies the principle of equality:

At its most basic level, the rule of law vouchsafes to the citizens and residents of the country a stable, predictable and ordered society in which to conduct their affairs. It provides a shield for individuals from arbitrary state action.⁴⁶

61. The rule of law imperative requires that the powers of government not be permitted to be so broad as to undermine the stability, predictability and order of Canadian society. The security certificate process promotes none of these objectives and in fact gives rise to the opposite: arbitrariness and discrimination. This process removes the "shield" of the rule of law from members of disadvantaged groups, who require its protection most from arbitrary state action.

(c) Respect for human rights and freedoms

62. In a concurring judgment in *R. v. Demers*, Justice LeBel of this Court added the additional underlying principle of "respect for human rights and freedoms" to the four articulated in the

⁴⁴ *Ibid* at paras. 80-81.

⁴⁵ *Ibid* at para. 70, citing *Roncarelli v. Duplessis*, [1959] S.C.R. 121 at 142.

⁴⁶ *Ibid* at para. 70.

Secession Reference.⁴⁷ It is submitted that this Court should endorse Justice LeBel's finding and apply this additional principle to its analysis in the present case.

63. The Respondents invoke national security and protection from terrorism as a justification for undermining basic *Charter* protections. Human rights and freedoms should not be restricted easily and, at a minimum, the government should be required to offer a cogent justification under the section 1 test, which they have failed to do in this case. Fundamental constitutional principles of anti-discrimination and minority rights should not be sacrificed on the basis of an ill-founded and imprecise national security rationale.

E. Equality Lens Applied to Section 7

64. The security certificate process violates section 7 in numerous ways. The Interveners are focusing on the following two respects in which principles of fundamental justice are offended: (1) detention is arbitrary and/or discriminatory; and (2) reliance on biased and untested intelligence.

(i) *Arbitrary detention contravenes principles of fundamental justice*

65. Pursuant to section 82(2) of the *IRPA*, a mere allegation by the government that a foreign national is possibly a threat to national security translates into an automatic and mandatory detention. The detention of permanent residents is a discretionary decision. In practice, this is an irrelevant distinction, as exemplified by Mr. Charkaoui's case.⁴⁸

66. Mandatory detention on the basis of an allegation of a possible threat is arbitrary to the extent that it fails to take into account an individual's actual circumstances, and is based on unreliable and/or discriminatory allegations. Absent a demonstrable need to detain, detention is arbitrary.⁴⁹

67. It is submitted that the Federal Court of Appeal in *Charkaoui* erred in adopting the reasons of the Federal Court in *Ahani* that the detention is not arbitrary since the detainees are "somehow associated with terrorism", who can "put an end to the detention at any time by agreeing to leave the country."⁵⁰ Such reasoning is absurd and was completely rejected by the House of Lords in

⁴⁷ *R. v. Demers*, [2004] 2 S.C.R. 489 at para. 79, Interveners' Book of Authorities, Tab 16.

⁴⁸ Four days after the security certificate was issued against Mr. Charkaoui, an arrest warrant was executed and he remained in detention for close to two years.

⁴⁹ *R. v. Swain*, [1991] 1 S.C.R. 933 at paras. 128-131, Interveners' Book of Authorities, Tab 18.

⁵⁰ *Re Charkaoui* (2004), 247 D.L.R. (4th) 405 (F.C.A.) at para. 138, Interveners' Book of Authorities, Tab 12.

A(FC).⁵¹ Choosing to leave the country is not a choice at all for many subjects of security certificates, who came to Canada to escape persecution in their own countries and face risk of torture and/or death on returning.

(ii) Discriminatory detention is necessarily arbitrary

68. In determining the arbitrariness of a detention, the Court must pay special attention to the marginalized and vulnerable position of detainees.⁵² The vulnerability of detainees in the current security certificate context is compounded by two factors: (1) They are non-citizens, a group whose lack of political power and very real danger of their demonization have been recognized by this Court and continues to occur today;⁵³ and (2) they are Muslims, a community that has been profiled and targeted, and is particularly vulnerable in the current social context of increasing Islamophobia in Canada and around the world.⁵⁴

69. The United Nations Working Group on Arbitrary Detention has recognized that detentions are arbitrary and therefore contrary to principles of fundamental justice when they are discriminatory or are grounded in a person's religion, beliefs or opinions.⁵⁵

70. It is submitted that detention pursuant to security certificates is arbitrary because it is discriminatory in two respects:

- (i) Canadian citizens, potentially posing the same threat to Canada's security or the safety of persons, are not indeterminately detained without a hearing. Canadian citizens believed to be a security threat are either subject to criminal prosecution or judicial controls through recognizance for a twelve-month period, where not facing criminal charges;⁵⁶
- (ii) Muslim Arab males are most at risk of being suspected by CSIS as terrorists and having their fundamental rights violated and arbitrarily detained.

⁵¹ *A (FC) v. Secretary of State for the Home Department*, [2004] UKHL 56 at para. 81, Interveners' Book of Authorities, Tab 1 ("A (FC)").

⁵² *G.(J.)*, *supra* at para. 115, Interveners' Book of Authorities, Tab 10.

⁵³ *Andrews*, *supra* at paras. 48-49, Interveners' Book of Authorities, Tab 3; *Lavoie v. Canada*, [2002] 1 S.C.R. 769 at para. 45, Interveners' Book of Authorities, Tab 6.

⁵⁴ See discussion above at paras. 19-22.

⁵⁵ Commission on Human Rights, *Civil and Political Rights, Including the Question of Torture and Detention: Report of the UN Working Group on Arbitrary Detention - Visit to Canada*, UN ESCOR, 62nd Sess., UN Doc. E/CN.4/2006/7/Add.2 (2005) at paras. 84-86, 91, 92(d), Interveners' Book of Authorities, Tab 24.

⁵⁶ *Code*, *supra* at s. 83.3.

(iii) Reliance on biased and untested security intelligence violates principles of fundamental justice

71. The Respondents argue that security certificates are based on sound evidence that the person poses an imminent danger to national security.⁵⁷ This explanation fails to account for the inherent flaws in security intelligence, including discriminatory biases and misinformation that give rise to and exacerbate the profiling of Muslims.

72. In *Re Baroud*, an expert in the area of security intelligence apparatus, Dr. Reg Whitaker, testified that the intelligence reports relied upon in that case were a classic example of "disinformation", whereby facts are selectively presented in a manner designed to mislead.⁵⁸ He stated that information relied upon by CSIS is questionable because the Agency is barred under Canadian law from information gathering in foreign countries and is therefore entirely dependent on intelligence reports provided by foreign sources. Such intelligence, often obtained through duress or torture, is necessarily unreliable in the absence of proper testing.⁵⁹

73. Because of the lack of any meaningful testing of evidence in the security certificate process, there is little way of responding to government allegations, however unfounded they may be.

74. A procedurally flawed system, when coupled with the targeted application of the law against a particular community, gives rise to arbitrariness. The dangers of factual error and/or malicious reporting are substantial. Therefore, even Muslims with "nothing to hide" are at risk of being deemed potential terrorists on the basis of allegations about which they have no knowledge and to which they are not afforded a meaningful opportunity to respond.

75. A well-known case of religious profiling based on erroneous security intelligence is that of Maher Arar. Mr. Arar, a Canadian citizen born in Syria, was detained and deported to his country of birth from the United States while *en route* to Ottawa from a family vacation in Tunisia in September 2002. He was imprisoned in Syria, where he was tortured for 16 months. While initially, Canadian officials claimed not to have been informed of Mr. Arar's detention and deportation from the United States, information disclosed in the course of a public inquiry

⁵⁷ Factum of the Respondents in *Charkaoui* at para. 105.

⁵⁸ *Re Baroud*, [1995] F.C.J. No. 829 (T.D.) at para. 21, Interveners' Book of Authorities, Tab 11.

⁵⁹ Kent Roach and Gary Trotter, "Miscarriages of Justice in the War Against Terrorism" (2005) 109 Penn. State L. Rev. 967 at 981-982, 1030, Interveners' Book of Authorities, Tab 33 ("Miscarriages of Justice").

suggests some degree of coordination between American and Canadian officials.⁶⁰ To date, Mr. Arar has not been charged with any terrorism-related offence.

76. While Maher Arar's case does not directly implicate the security certificate process, it demonstrates the tragic consequences of unreliable intelligence coupled with discriminatory law enforcement, under the direction of the United States.

F. Security Certificates Are Not a Reasonable Limit Under Section 1

77. This Court has held that violations of section 7 are not easily saved under section 1. They will only be saved "in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics and the like"⁶¹ because rights protected by section 7 are so significant that they "cannot ordinarily be overridden by competing social interests" and "rarely will a violation of fundamental justice, specifically the right to a fair hearing, be upheld as a reasonable limit demonstrably justified in a free and democratic society."⁶²

78. Members of this Court have also held that violations of section 15 should rarely, if ever, be upheld at section 1. In *Andrews*, Justice Wilson stated: "Given that section 15 is designed to protect those groups who suffer social, political and legal disadvantage in our society, the burden resting on the government to justify the type of discrimination against such groups is appropriately an onerous one."⁶³ Similarly, in *Adler*, Justice L'Heureux-Dubé stated: "Indeed, cases will be rare where it is found reasonable in a free and democratic society to discriminate."⁶⁴

79. It is submitted that there are no exceptional circumstances that would warrant justifying the violations of section 7 and 15. Accepting that the threat of terrorism exists, the question is whether the threat to Canada is such that mere reference to it can serve as a blanket justification for all derogations from fundamental rights in all cases.

80. Unlike Canada, the United Kingdom has had much experience contending with terrorism on

⁶⁰ Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, "Summary of Information Received at *In Camera* Hearings" (September 2004) at 4-7, Interveners' Book of Authorities, Tab 26.

⁶¹ *Reference Re s. 94(2) of the Motor Vehicle Act (B.C.)*, [1985] 2 S.C.R. 486 at para. 83, Interveners' Book of Authorities, Tab 13.

⁶² *G. (J.)*, *supra* at para. 99, Interveners' Book of Authorities, Tab 10.

⁶³ *Andrews*, *supra* at 10, Interveners' Book of Authorities, Tab 3.

⁶⁴ *Adler v. Ontario*, [1996] 3 S.C.R. 609 at para. 95, Interveners' Book of Authorities, Tab 2.

its own territory.⁶⁵ Yet the House of Lords rejected that the possibility of any future threat can justify the kind of extreme derogations at issue in the present case. As stated by Lord Hoffman in the *A* case:

...the government has a duty to protect the lives and property of its citizens. But that is a duty which it owes all the time and which it must discharge without destroying our constitutional freedoms. There may be some nations too fragile or fissiparous to withstand a serious act of violence. But that is not the case in the United Kingdom ... Whether we would survive Hitler hung in the balance, but there is no doubt that we shall survive Al-Qaeda ... Terrorist violence, serious as it is, does not threaten our institutions of government or our existence as a civil community ... The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these. That is the true measure of what terrorism may achieve."⁶⁶

81. The same is true for Canada. Any existing threat to national security does not qualify as an exceptional condition that would justify overriding constitutional rights guaranteed by sections 7 and 15.

82. The impugned provisions fail the *Oakes* test to the extent that: (a) there is no rational connection between the objective being pursued and the measures adopted; and (b) the impairment of rights is far from minimal.

(i) There is no rational connection

83. Targeting people on the basis of their religion is not rationally connected to tracking terrorists.⁶⁷ The security certificate process is not rationally connected to the objective of protecting Canada's national security for three reasons: (a) the scheme is over-inclusive; (b) the scheme is under-inclusive; and (c) exporting terrorism does not protect Canada's national security.

(a) Security certificate regime is over-inclusive

84. The current scheme permits the certification, detention and deportation of non-terrorists not presenting any threat to Canada's national security. Over-inclusiveness arises due to the fact that the procedure does not require conclusive evidence that the subjects of security certificates are actually terrorists and/or engaged in terrorist activity.⁶⁸ Moreover, there are no safeguards in place

⁶⁵ See "Trading Rights for Security", *supra* at 2155, Interveners' Book of Authorities, Tab 32.

⁶⁶ *A(FC)*, *supra* at paras. 95-97 (emphasis added), Interveners' Book of Authorities, Tab 1.

⁶⁷ "Trading Rights for Security", *supra* at 2185-2186, Interveners' Book of Authorities, Tab 32.

⁶⁸ "Miscarriages of Justice", *supra*, Interveners' Book of Authorities, Tab 33.

to ensure that the fate of those who sufficiently match the profile of terrorist suspects – namely Muslim Arab males – and yet are not terrorists, will be distinguished from an actual terrorist. The system simply casts the net far too wide.

(b) Security certificate regime is under-inclusive

85. The current scheme fails to address the threat posed to Canada's national security by Canadian citizens. There is no basis to assume that any potential national security threat comes exclusively from non-citizens.⁶⁹ If the threat posed by citizens can be adequately addressed by means other than the extreme derogations contemplated by the security certificate regime, there is no basis for curtailing the fundamental rights of non-citizens in such a draconian manner.

86. Moreover, the use of profiling to identify terrorists is under-inclusive because it fails to apprehend those who may be terrorists but do not fit the stereotyped profile.

(c) Exporting terrorism does not protect Canada's national security

87. Even where the process succeeds through the detention of a genuine terrorist and deportation without the risk of torture, the process undermines Canada's national security. By allowing such terrorists to leave Canada and live elsewhere, the threat of terrorism is not eliminated.⁷⁰ Rather, the process simply allows terrorists to plan and pursue their criminal designs from elsewhere in the world.

(ii) Availability of less restrictive alternatives

88. The security certificate process does not employ the least restrictive means to achieve the objective of protecting national security. It is therefore impossible for the government to characterize the infringement of sections 7 and 15 as a minimal impairment.

89. Security certificates are presently being used as a substitute for the criminal law. If the state has reason to believe someone has committed or is conspiring to commit a terrorist act, the full force of Canada's criminal justice system should be employed to investigate and prosecute such a person. The *Criminal Code* contains ample authority to deal with real threats to national security, both in terms of punishment for past criminal activity and to prevent the commission of criminal acts.

⁶⁹ *A(FC)*, *supra* at para. 32, Interveners' Book of Authorities, Tab 1.

⁷⁰ *Ibid* at para. 33.

90. Even if security certificates are to exist in some form, there are numerous ways in which the legislative scheme can achieve the same purported objectives with less impairment of *Charter* rights. Among the less intrusive alternatives are:

- (a) security-cleared special advocates, as under the former Security Intelligence Review Committee (SIRC) process or the *amicus curiae* in the Arar Inquiry, who have a meaningful relationship with the detainee;
- (b) availability of making an application for bail on least restrictive means to anyone subject to a certificate, not only permanent residents;
- (c) use of individually-tailored control orders imposing minimal obligations proportional to any demonstrable risk to national security.

(iii) Security certificates cannot survive section 1 analysis

91. The existence of a range of less intrusive alternatives discussed above, among others, leads to the conclusion that there is no justification for upholding the security certificate procedure as a reasonable limit in a just and democratic society.

92. It is further submitted that a case-by-case proportionality analysis must be undertaken in order to strike the right balance between restraints on individual rights and protection of national security without frustrating the constitutional guarantees in the *Charter* and the rule of law. Such analysis must be informed by the equality values under section 15. The current reality experienced by Canadian Muslims of profiling and discrimination is a real issue that deserves special attention, in order to ensure that this vulnerable community does not continue to bear the disproportionate burden of the War on Terror.

IV – COSTS

93. The Interveners do not seek an award of costs.

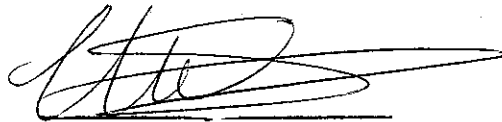
V – ORDER SOUGHT

94. The Interveners request that the appeals be allowed and that sections 33 and 77-85 of the *IRPA* be found to infringe the *Charter of Rights and Freedoms*, and that said breaches are not demonstrably justified in a free and democratic society.

All of which is respectfully submitted this 26th day of May 2006.



for David Baker



for Faisal Bhabha

PART VI – TABLE OF AUTHORITIES

Cases

Authority	Paragraphs in Factum
<i>A (FC) v. Secretary of State for the Home Department</i> , [2004] UKHL 56	67, 80, 85, & 87
<i>Adler v. Ontario</i> , [1996] 3 S.C.R. 609	78
<i>Andrews v. Law Society of British Columbia</i> , [1989] 1 S.C.R. 143	23, 49, 68, & 78
<i>Eaton v. Brant County Board of Education</i> , [1997] 1 S.C.R. 241	24
<i>Eldridge v. British Columbia</i> , [1997] 3 S.C.R. 624	34
<i>Lavoie v. Canada</i> , [2002] 1 S.C.R. 769	68
<i>Law v. Canada (Minister of Employment and Immigration)</i> , [1999] 1 S.C.R. 624	23
<i>Little Sisters Book and Art Emporium v. Canada (Minister of Justice)</i> , [2000] S.C.R. 1120	40
<i>Multani v. Commission scolaire Marguerite-Bourgeoys</i> , [2006] S.C.J. No. 6	55
<i>New Brunswick (Minister of Health and Community Services) v. G.(J.)</i> , [1999] 3 S.C.R. 46	49, 50, 68, & 77
<i>Re Baroud</i> , [1995] F.C.J. No. 829 (T.D.)	72
<i>Re Charkaoui</i> (2004), 247 D.L.R. (4 th) 405 (F.C.A.)	67
<i>Reference Re s. 94(2) of the Motor Vehicle Act (B.C.)</i> , [1985] 2 S.C.R. 486	77
<i>Reference Re Secession of Quebec</i> , [1998] 2 S.C.R. 217	56, 58, & 60
<i>R. v. Big M Drug Mart Ltd.</i> , [1985] 1 S.C.R. 295	49
<i>R. v. Demers</i> , [2004] 2 S.C.R. 489	62
<i>R. v. Keegstra</i> , [1990] 3 S.C.R. 697	54
<i>R. v. Swain</i> , [1991] 1 S.C.R. 933	66
<i>UFCW Local 1518 v. K Mart Canada</i> , [1999] 2 S.C.R. 1083	10

Secondary Sources Cited

Authority	Paragraphs in Factum
Armstrong, Sarah, "Does Bill C-36 Need a Sunset Clause?" (2002) 60 U. Toronto Fac. L. Rev. 73	12
Bahdí, Reem, "No Exit: Racial Profiling and Canada's War Against Terrorism" (2003) 31 Osgoode Hall L.J. 293	19 & 30

CAIR-CAN, "Brief on the Review of the Anti-terrorism Act", submitted to the Special Senate Committee on the Anti-terrorism Act (June 2005)	26
Choudhry, Sujit and Roach, Ken, "Racial and Ethnic Profiling: Statutory Discretion, Constitutional Remedies, and Democratic Accountability" (2003) 41 Osgoode Hall L.J. 1	30 & 40
Commission on Human Rights, <i>Civil and Political Rights, Including the Question of Torture and Detention: Report of the UN Working Group on Arbitrary Detention Visit to Canada</i> , UN ESCOR, 62 nd Sess., UN Doc. E/CN.4/2006/7/Add.2 (2005)	69
Commission on Human Rights, Racism, <i>Racial Discrimination, Xenophobia and all forms of Discrimination: Situation of Muslim and Arab peoples in various parts of the world in the aftermath of the events of 11 September 2001</i> , UN ESCOR, 59 th Sess. UN Doc. E/CN.4/2003/23 (2003)	20 & 31
Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, "Summary of Information Received at <i>In Camera</i> Hearings" (September 2004)	75
Helly, Denise, "Are Muslims discriminated against in Canada since September 2001?" (2004) 36(1) Canadian Ethnic Studies 24	47
Justice Canada and Public Safety and Emergency Preparedness Canada, "Summary Report: Public Consultation with Ethnocultural and Religious Communities on the Impact of the Anti-Terrorism Act" (November 29, 2004)	26
Mia, Ziyaad E., "The End of Law: Canada's National Security Legislation and the Principle of Shared Humanity" (2005) [unpublished] LL.M. Thesis, University of Toronto, Graduate Department	16 & 17
Ontario Human Rights Commission, <i>Paying the Price: The Human Cost of Racial Profiling: Inquiry Report</i> (Toronto: Ontario Human Rights Commission, 2003)	29 & 45
Ontario Human Rights Commission, <i>Policy and Guidelines on Racism and Racial Discrimination</i> (Toronto: Ontario Human Rights Commission, June 2005)	21
Roach, Kent, "Must we Trade Rights for Security? The Choice Between Smart, Harsh, or Proportionate Security Strategies in Canada and Britain" (2006) 27 Cardozo L. Rev. 2151	13, 80, & 83
Roach, Kent and Trotter, Gary, "Miscarriages of Justice in the War Against Terrorism" (2005) 109 Penn. State L. Rev. 967	72 & 84
Tanovich, David, "The Colour of Justice: Policing Race in Canada" (Toronto: Irwin Law, 2006)	19, 30, 32, 33, & 44
Tibbetts, Janice, "Anti-terror bill making Muslims 'afraid' to donate" <i>Ottawa Citizen</i> (December 6, 2001) at A4	46
Toronto Police Service, "2001 Hate Bias Crime Statistical Report" (2001)	22

PART VII – TABLE OF STATUTES, REGULATIONS AND RULES

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Rights and freedoms in Canada	1. The <i>Canadian Charter of Rights and Freedoms</i> guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
Life, liberty and security of person	7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
Equality before and under law and equal protection and benefit of law	15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
Affirmative action programs	(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
Multicultural heritage	27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Charte canadienne des droits et libertés, Partie I de la Loi constitutionnelle, 1982, l'annexe B de la Loi de 1982 sur le Canada, ch. 11 (R.U.), 1982, c. 11

Droits et libertés au Canada	1. La <i>Charte canadienne des droits et libertés</i> garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
Vie, liberté et sécurité	7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.
Égalité devant la loi, égalité de bénéfice et protection égale de la loi	15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.
Programmes de promotion sociale	(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences

mentales ou physiques.

Maintien du
patrimoine
culturel

27. Toute interprétation de la présente charte doit concorder avec l'objectif de promouvoir le maintien et la valorisation du patrimoine multiculturel des Canadiens.

Criminal Code, R.S.C. 1985, c. C-46

Definitions

83.01 (1) The following definitions apply in this Part.

"Canadian"
« Canadien »

"Canadian" means a Canadian citizen, a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* or a body corporate incorporated and continued under the laws of Canada or a province.

"entity"
« entité »

"entity" means a person, group, trust, partnership or fund or an unincorporated association or organization.

"listed entity"
« entité inscrite »

"listed entity" means an entity on a list established by the Governor in Council under section 83.05.

"terrorist activity"
« activité terroriste »

"terrorist activity" means

(a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:

(i) the offences referred to in subsection 7(2) that implement the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on December 16, 1970,

(ii) the offences referred to in subsection 7(2) that implement the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on September 23, 1971,

(iii) the offences referred to in subsection 7(3) that implement the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, adopted by the General Assembly of the United Nations on December 14, 1973,

(iv) the offences referred to in subsection 7(3.1) that implement the *International Convention against the Taking of Hostages*, adopted by the General Assembly of the United Nations on December 17, 1979,

(v) the offences referred to in subsection 7(3.4) or (3.6) that implement the *Convention on the Physical Protection of Nuclear Material*, done at Vienna and New York on March 3, 1980,

(vi) the offences referred to in subsection 7(2) that implement the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, supplementary to the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*,

signed at Montreal on February 24, 1988,

(vii) the offences referred to in subsection 7(2.1) that implement the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, done at Rome on March 10, 1988,

(viii) the offences referred to in subsection 7(2.1) or (2.2) that implement the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, done at Rome on March 10, 1988,

(ix) the offences referred to in subsection 7(3.72) that implement the *International Convention for the Suppression of Terrorist Bombings*, adopted by the General Assembly of the United Nations on December 15, 1997, and

(x) the offences referred to in subsection 7(3.73) that implement the *International Convention for the Suppression of the Financing of Terrorism*, adopted by the General Assembly of the United Nations on December 9, 1999, or

(b) an act or omission, in or outside Canada,

(i) that is committed

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and

(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and

(ii) that intentionally

(A) causes death or serious bodily harm to a person by the use of violence,

(B) endangers a person's life,

(C) causes a serious risk to the health or safety of the public or any segment of the public,

(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or

(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act

or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.

"terrorist group"
« groupe terroriste »

"terrorist group" means

- (a) an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity, or
- (b) a listed entity,

and includes an association of such entities

For greater certainty

(1.1) For greater certainty, the expression of a political, religious or ideological thought, belief or opinion does not come within paragraph (b) of the definition "terrorist activity" in subsection (1) unless it constitutes an act or omission that satisfies the criteria of that paragraph.

Facilitation

(2) For the purposes of this Part, facilitation shall be construed in accordance with subsection 83.19(2).

Providing or collecting property for certain activities

83.02 Every one who, directly or indirectly, wilfully and without lawful justification or excuse, provides or collects property intending that it be used or knowing that it will be used, in whole or in part, in order to carry out

- (a) an act or omission that constitutes an offence referred to in subparagraphs (a)(i) to (ix) of the definition of "terrorist activity" in subsection 83.01(1), or
- (b) any other act or omission intended to cause death or serious bodily harm to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of that act or omission, by its nature or context, is to intimidate the public, or to compel a government or an international organization to do or refrain from doing any act,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

Providing, making available, etc., property or services for terrorist purposes

83.03 Every one who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services

- (a) intending that they be used, or knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity, or
- (b) knowing that, in whole or part, they will be used by or will benefit a terrorist group,

is guilty of an indictable offence and is liable to imprisonment for a term of

not more than 10 years.

Using or
possessing
property for
terrorist purposes

83.04 Every one who

(a) uses property, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity, or

(b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

Establishment of
list

83.05 (1) The Governor in Council may, by regulation, establish a list on which the Governor in Council may place any entity if, on the recommendation of the Minister of Public Safety and Emergency Preparedness, the Governor in Council is satisfied that there are reasonable grounds to believe that

(a) the entity has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or

(b) the entity is knowingly acting on behalf of, at the direction of or in association with an entity referred to in paragraph (a).

Recommendation

(1.1) The Minister may make a recommendation referred to in subsection (1) only if he or she has reasonable grounds to believe that the entity to which the recommendation relates is an entity referred to in paragraph (1)(a) or (b).

Application to
Minister

(2) On application in writing by a listed entity, the Minister shall decide whether there are reasonable grounds to recommend to the Governor in Council that the applicant no longer be a listed entity.

Deeming

(3) If the Minister does not make a decision on the application referred to in subsection (2) within 60 days after receipt of the application, he or she is deemed to have decided to recommend that the applicant remain a listed entity.

Notice of the
decision to the
applicant

(4) The Minister shall give notice without delay to the applicant of any decision taken or deemed to have been taken respecting the application referred to in subsection (2).

Judicial review

(5) Within 60 days after the receipt of the notice of the decision referred to in subsection (4), the applicant may apply to a judge for judicial review of the decision.

Reference

(6) When an application is made under subsection (5), the judge shall, without delay

(a) examine, in private, any security or criminal intelligence reports considered in listing the applicant and hear any other evidence or information that may be presented by or on behalf of the Minister and

may, at his or her request, hear all or part of that evidence or information in the absence of the applicant and any counsel representing the applicant, if the judge is of the opinion that the disclosure of the information would injure national security or endanger the safety of any person;

(b) provide the applicant with a statement summarizing the information available to the judge so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information the disclosure of which would, in the judge's opinion, injure national security or endanger the safety of any person;

(c) provide the applicant with a reasonable opportunity to be heard; and

(d) determine whether the decision is reasonable on the basis of the information available to the judge and, if found not to be reasonable, order that the applicant no longer be a listed entity.

Evidence

(6.1) The judge may receive into evidence anything that, in the opinion of the judge, is reliable and appropriate, even if it would not otherwise be admissible under Canadian law, and may base his or her decision on that evidence.

Publication

(7) The Minister shall cause to be published, without delay, in the *Canada Gazette* notice of a final order of a court that the applicant no longer be a listed entity.

New application

(8) A listed entity may not make another application under subsection (2), except if there has been a material change in its circumstances since the time when the entity made its last application or if the Minister has completed the review under subsection (9).

Review of list

(9) Two years after the establishment of the list referred to in subsection (1), and every two years after that, the Minister shall review the list to determine whether there are still reasonable grounds, as set out in subsection (1), for an entity to be a listed entity and make a recommendation to the Governor in Council as to whether the entity should remain a listed entity. The review does not affect the validity of the list.

Completion of review

(10) The Minister shall complete the review as soon as possible and in any event, no later than 120 days after its commencement. After completing the review, he or she shall cause to be published, without delay, in the *Canada Gazette* notice that the review has been completed.

Definition of "judge"

(11) In this section, "judge" means the Chief Justice of the Federal Court or a judge of that Court designated by the Chief Justice.

Admission of foreign information obtained in confidence

83.06 (1) For the purposes of subsection 83.05(6), in private and in the absence of the applicant or any counsel representing it,

(a) the Minister of Public Safety and Emergency Preparedness may make an application to the judge for the admission of information obtained in

confidence from a government, an institution or an agency of a foreign state, from an international organization of states or from an institution or an agency of an international organization of states; and

(b) the judge shall examine the information and provide counsel representing the Minister with a reasonable opportunity to be heard as to whether the information is relevant but should not be disclosed to the applicant or any counsel representing it because the disclosure would injure national security or endanger the safety of any person.

Return of information

(2) The information shall be returned to counsel representing the Minister and shall not be considered by the judge in making the determination under paragraph 83.05(6)(d), if

(a) the judge determines that the information is not relevant;

(b) the judge determines that the information is relevant but should be summarized in the statement to be provided under paragraph 83.05(6)(b); or

(c) the Minister withdraws the application.

Use of information

(3) If the judge decides that the information is relevant but that its disclosure would injure national security or endanger the safety of persons, the information shall not be disclosed in the statement mentioned in paragraph 83.05(6)(b), but the judge may base the determination under paragraph 83.05(6)(d) on it.

Mistaken identity

83.07 (1) An entity claiming not to be a listed entity may apply to the Minister of Public Safety and Emergency Preparedness for a certificate stating that it is not a listed entity.

Issuance of certificate

(2) The Minister shall, within 15 days after receiving the application, issue a certificate if he or she is satisfied that the applicant is not a listed entity.

Freezing of property

83.08 (1) No person in Canada and no Canadian outside Canada shall knowingly

(a) deal directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist group;

(b) enter into or facilitate, directly or indirectly, any transaction in respect of property referred to in paragraph (a); or

(c) provide any financial or other related services in respect of property referred to in paragraph (a) to, for the benefit of or at the direction of a terrorist group.

No civil liability

(2) A person who acts reasonably in taking, or omitting to take, measures to comply with subsection (1) shall not be liable in any civil action arising from having taken or omitted to take the measures, if the person took all reasonable steps to satisfy themselves that the relevant property was owned or

controlled by or on behalf of a terrorist group.

Exemptions

83.09 (1) The Minister of Public Safety and Emergency Preparedness, or a person designated by him or her, may authorize any person in Canada or any Canadian outside Canada to carry out a specified activity or transaction that is prohibited by section 83.08, or a class of such activities or transactions.

Ministerial authorization

(2) The Minister, or a person designated by him or her, may make the authorization subject to any terms and conditions that are required in their opinion and may amend, suspend, revoke or reinstate it.

Existing equities maintained

(3) All secured and unsecured rights and interests in the frozen property that are held by persons, other than terrorist groups or their agents, are entitled to the same ranking that they would have been entitled to had the property not been frozen.

Third party involvement

(4) If a person has obtained an authorization under subsection (1), any other person involved in carrying out the activity or transaction, or class of activities or transactions, to which the authorization relates is not subject to sections 83.08, 83.1 and 83.11 if the terms or conditions of the authorization that are imposed under subsection (2), if any, are met.

Disclosure

83.1 (1) Every person in Canada and every Canadian outside Canada shall disclose forthwith to the Commissioner of the Royal Canadian Mounted Police and to the Director of the Canadian Security Intelligence Service

(a) the existence of property in their possession or control that they know is owned or controlled by or on behalf of a terrorist group; and

(b) information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

Immunity

(2) No criminal or civil proceedings lie against a person for disclosure made in good faith under subsection (1).

Audit

83.11 (1) The following entities must determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a listed entity:

(a) authorized foreign banks within the meaning of section 2 of the *Bank Act* in respect of their business in Canada, or banks to which that Act applies;

(b) cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*;

(c) foreign companies within the meaning of subsection 2(1) of the *Insurance Companies Act* in respect of their insurance business in Canada;

(c.1) companies, provincial companies and societies within the meaning of

subsection 2(1) of the *Insurance Companies Act*;

(c.2) fraternal benefit societies regulated by a provincial Act in respect of their insurance activities, and insurance companies and other entities engaged in the business of insuring risks that are regulated by a provincial Act;

(d) companies to which the *Trust and Loan Companies Act* applies;

(e) trust companies regulated by a provincial Act;

(f) loan companies regulated by a provincial Act; and

(g) entities authorized under provincial legislation to engage in the business of dealing in securities, or to provide portfolio management or investment counselling services.

Monthly report

(2) Subject to the regulations, every entity referred to in paragraphs (1)(a) to (g) must report, within the period specified by regulation or, if no period is specified, monthly, to the principal agency or body that supervises or regulates it under federal or provincial law either

(a) that it is not in possession or control of any property referred to in subsection (1), or

(b) that it is in possession or control of such property, in which case it must also report the number of persons, contracts or accounts involved and the total value of the property.

Immunity

(3) No criminal or civil proceedings lie against a person for making a report in good faith under subsection (2).

Regulations

(4) The Governor in Council may make regulations

(a) excluding any entity or class of entities from the requirement to make a report referred to in subsection (2), and specifying the conditions of exclusion; and

(b) specifying a period for the purposes of subsection (2).

Offences —
freezing of
property,
disclosure or audit

83.12 (1) Every one who contravenes any of sections 83.08, 83.1 and 83.11 is guilty of an offence and liable

(a) on summary conviction, to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or to both; or

(b) on conviction on indictment, to imprisonment for a term of not more than 10 years.

No contravention

(2) No person contravenes section 83.1 if they make the disclosure referred to in that section only to the Commissioner of the Royal Canadian Mounted Police or the Director of the Canadian Security Intelligence Service.

Seizure and
restraint of assets

83.13 (1) Where a judge of the Federal Court, on an *ex parte* application by the Attorney General, after examining the application in private, is satisfied that there are reasonable grounds to believe that there is in any building,

receptacle or place any property in respect of which an order of forfeiture may be made under subsection 83.14(5), the judge may issue

(a) if the property is situated in Canada, a warrant authorizing a person named therein or a peace officer to search the building, receptacle or place for that property and to seize that property and any other property in respect of which that person or peace officer believes, on reasonable grounds, that an order of forfeiture may be made under that subsection; or

(b) if the property is situated in or outside Canada, a restraint order prohibiting any person from disposing of, or otherwise dealing with any interest in, that property other than as may be specified in the order.

Contents of application

(1.1) An affidavit in support of an application under subsection (1) may be sworn on information and belief, and, notwithstanding the *Federal Court Rules, 1998*, no adverse inference shall be drawn from a failure to provide evidence of persons having personal knowledge of material facts.

Appointment of manager

(2) On an application under subsection (1), at the request of the Attorney General, if a judge is of the opinion that the circumstances so require, the judge may

(a) appoint a person to take control of, and to manage or otherwise deal with, all or part of the property in accordance with the directions of the judge; and

(b) require any person having possession of that property to give possession of the property to the person appointed under paragraph (a).

Appointment of Minister of Public Works and Government Services

(3) When the Attorney General of Canada so requests, a judge appointing a person under subsection (2) shall appoint the Minister of Public Works and Government Services.

Power to manage

(4) The power to manage or otherwise deal with property under subsection (2) includes

(a) in the case of perishable or rapidly depreciating property, the power to sell that property; and

(b) in the case of property that has little or no value, the power to destroy that property.

Application for destruction order

(5) Before a person appointed under subsection (2) destroys property referred to in paragraph (4)(b), he or she shall apply to a judge of the Federal Court for a destruction order.

Notice

(6) Before making a destruction order in relation to any property, a judge shall require notice in accordance with subsection (7) to be given to, and may hear, any person who, in the opinion of the judge, appears to have a valid interest in the property.

Manner of giving

(7) A notice under subsection (6) shall be given in the manner that the judge

<u>notice</u>	directs or as provided in the rules of the Federal Court.
<u>Order</u>	(8) A judge may order that property be destroyed if he or she is satisfied that the property has little or no financial or other value.
<u>When management order ceases to have effect</u>	(9) A management order ceases to have effect when the property that is the subject of the management order is returned to an applicant in accordance with the law or forfeited to Her Majesty.
<u>Application to vary</u>	(10) The Attorney General may at any time apply to a judge of the Federal Court to cancel or vary an order or warrant made under this section, other than an appointment made under subsection (3).
<u>Procedure</u>	(11) Subsections 462.32(4) and (6), sections 462.34 to 462.35 and 462.4, subsections 487(3) and (4) and section 488 apply, with such modifications as the circumstances require, to a warrant issued under paragraph (1)(a).
<u>Procedure</u>	(12) Subsections 462.33(4) and (6) to (11) and sections 462.34 to 462.35 and 462.4 apply, with such modifications as the circumstances require, to an order issued under paragraph (1)(b).
<u>Application for order of forfeiture</u>	83.14 (1) The Attorney General may make an application to a judge of the Federal Court for an order of forfeiture in respect of <ul style="list-style-type: none"> (a) property owned or controlled by or on behalf of a terrorist group; or (b) property that has been or will be used, in whole or in part, to facilitate or carry out a terrorist activity.
<u>Contents of application</u>	(2) An affidavit in support of an application by the Attorney General under subsection (1) may be sworn on information and belief, and, notwithstanding the <i>Federal Court Rules, 1998</i> , no adverse inference shall be drawn from a failure to provide evidence of persons having personal knowledge of material facts.
<u>Respondents</u>	(3) The Attorney General is required to name as a respondent to an application under subsection (1) only those persons who are known to own or control the property that is the subject of the application.
<u>Notice</u>	(4) The Attorney General shall give notice of an application under subsection (1) to named respondents in such a manner as the judge directs or as provided in the rules of the Federal Court.
<u>Granting of forfeiture order</u>	(5) If a judge is satisfied on a balance of probabilities that property is property referred to in paragraph (1)(a) or (b), the judge shall order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.
<u>Use of proceeds</u>	(5.1) Any proceeds that arise from the disposal of property under subsection (5) may be used to compensate victims of terrorist activities and to fund anti-

terrorist initiatives in accordance with any regulations made by the Governor in Council under subsection (5.2).

Regulations

(5.2) The Governor in Council may make regulations for the purposes of specifying how the proceeds referred to in subsection (5.1) are to be distributed.

Order refusing forfeiture

(6) Where a judge refuses an application under subsection (1) in respect of any property, the judge shall make an order that describes the property and declares that it is not property referred to in that subsection.

Notice

(7) On an application under subsection (1), a judge may require notice to be given to any person who, in the opinion of the Court, appears to have an interest in the property, and any such person shall be entitled to be added as a respondent to the application.

Third party interests

(8) If a judge is satisfied that a person referred to in subsection (7) has an interest in property that is subject to an application, has exercised reasonable care to ensure that the property would not be used to facilitate or carry out a terrorist activity, and is not a member of a terrorist group, the judge shall order that the interest is not affected by the forfeiture. Such an order shall declare the nature and extent of the interest in question.

Dwelling-house

(9) Where all or part of property that is the subject of an application under subsection (1) is a dwelling-house, the judge shall also consider

(a) the impact of an order of forfeiture on any member of the immediate family of the person who owns or controls the dwelling-house, if the dwelling-house was the member's principal residence at the time the dwelling-house was ordered restrained or at the time the forfeiture application was made and continues to be the member's principal residence; and

(b) whether the member appears innocent of any complicity or collusion in the terrorist activity.

Motion to vary or set aside

(10) A person who claims an interest in property that was forfeited and who did not receive notice under subsection (7) may bring a motion to the Federal Court to vary or set aside an order made under subsection (5) not later than 60 days after the day on which the forfeiture order was made.

No extension of time

(11) The Court may not extend the period set out in subsection (10).

Disposition of property

83.15 Subsection 462.42(6) and sections 462.43 and 462.46 apply, with such modifications as the circumstances require, to property subject to a warrant or restraint order issued under subsection 83.13(1) or ordered forfeited under subsection 83.14(5).

Interim preservation rights

83.16 (1) Pending any appeal of an order made under section 83.14, property restrained under an order issued under section 83.13 shall continue to be restrained, property seized under a warrant issued under that section

shall continue to be detained, and any person appointed to manage, control or otherwise deal with that property under that section shall continue in that capacity.

Appeal of refusal to grant order

(2) Section 462.34 applies, with such modifications as the circumstances require, to an appeal taken in respect of a refusal to grant an order under subsection 83.14(5).

Other forfeiture provisions unaffected

83.17 (1) This Part does not affect the operation of any other provision of this or any other Act of Parliament respecting the forfeiture of property.

Priority for restitution to victims of crime

(2) Property is subject to forfeiture under subsection 83.14(5) only to the extent that it is not required to satisfy the operation of any other provision of this or any other Act of Parliament respecting restitution to, or compensation of, persons affected by the commission of offences.

Participation in activity of terrorist group

83.18 (1) Every one who knowingly participates in or contributes to, directly or indirectly, any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Prosecution

(2) An offence may be committed under subsection (1) whether or not

- (a) a terrorist group actually facilitates or carries out a terrorist activity;
- (b) the participation or contribution of the accused actually enhances the ability of a terrorist group to facilitate or carry out a terrorist activity; or
- (c) the accused knows the specific nature of any terrorist activity that may be facilitated or carried out by a terrorist group.

Meaning of participating or contributing

(3) Participating in or contributing to an activity of a terrorist group includes

- (a) providing, receiving or recruiting a person to receive training;
- (b) providing or offering to provide a skill or an expertise for the benefit of, at the direction of or in association with a terrorist group;
- (c) recruiting a person in order to facilitate or commit
 - (i) a terrorism offence, or
 - (ii) an act or omission outside Canada that, if committed in Canada, would be a terrorism offence;
- (d) entering or remaining in any country for the benefit of, at the direction of or in association with a terrorist group; and
- (e) making oneself, in response to instructions from any of the persons who constitute a terrorist group, available to facilitate or commit
 - (i) a terrorism offence, or
 - (ii) an act or omission outside Canada that, if committed in Canada,

would be a terrorism offence.

Factors

(4) In determining whether an accused participates in or contributes to any activity of a terrorist group, the court may consider, among other factors, whether the accused

(a) uses a name, word, symbol or other representation that identifies, or is associated with, the terrorist group;

(b) frequently associates with any of the persons who constitute the terrorist group;

(c) receives any benefit from the terrorist group; or

(d) repeatedly engages in activities at the instruction of any of the persons who constitute the terrorist group.

Facilitating terrorist activity

83.19 (1) Every one who knowingly facilitates a terrorist activity is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Facilitation

(2) For the purposes of this Part, a terrorist activity is facilitated whether or not

(a) the facilitator knows that a particular terrorist activity is facilitated;

(b) any particular terrorist activity was foreseen or planned at the time it was facilitated; or

(c) any terrorist activity was actually carried out.

Commission of offence for terrorist group

83.2 Every one who commits an indictable offence under this or any other Act of Parliament for the benefit of, at the direction of or in association with a terrorist group is guilty of an indictable offence and liable to imprisonment for life.

Instructing to carry out activity for terrorist group

83.21 (1) Every person who knowingly instructs, directly or indirectly, any person to carry out any activity for the benefit of, at the direction of or in association with a terrorist group, for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity, is guilty of an indictable offence and liable to imprisonment for life.

Prosecution

(2) An offence may be committed under subsection (1) whether or not

(a) the activity that the accused instructs to be carried out is actually carried out;

(b) the accused instructs a particular person to carry out the activity referred to in paragraph (a);

(c) the accused knows the identity of the person whom the accused instructs to carry out the activity referred to in paragraph (a);

(d) the person whom the accused instructs to carry out the activity referred to in paragraph (a) knows that it is to be carried out for the benefit of, at

the direction of or in association with a terrorist group;

(e) a terrorist group actually facilitates or carries out a terrorist activity;

(f) the activity referred to in paragraph (a) actually enhances the ability of a terrorist group to facilitate or carry out a terrorist activity; or

(g) the accused knows the specific nature of any terrorist activity that may be facilitated or carried out by a terrorist group.

Instructing to carry out terrorist activity

83.22 (1) Every person who knowingly instructs, directly or indirectly, any person to carry out a terrorist activity is guilty of an indictable offence and liable to imprisonment for life.

Prosecution

(2) An offence may be committed under subsection (1) whether or not

(a) the terrorist activity is actually carried out;

(b) the accused instructs a particular person to carry out the terrorist activity;

(c) the accused knows the identity of the person whom the accused instructs to carry out the terrorist activity; or

(d) the person whom the accused instructs to carry out the terrorist activity knows that it is a terrorist activity.

Harbouring or concealing

83.23 Every one who knowingly harbours or conceals any person whom he or she knows to be a person who has carried out or is likely to carry out a terrorist activity, for the purpose of enabling the person to facilitate or carry out any terrorist activity, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Hoax — terrorist activity

83.231 (1) Every one commits an offence who, without lawful excuse and with intent to cause any person to fear death, bodily harm, substantial damage to property or serious interference with the lawful use or operation of property,

(a) conveys or causes or procures to be conveyed information that, in all the circumstances, is likely to cause a reasonable apprehension that terrorist activity is occurring or will occur, without believing the information to be true; or

(b) commits an act that, in all the circumstances, is likely to cause a reasonable apprehension that terrorist activity is occurring or will occur, without believing that such activity is occurring or will occur.

Punishment

(2) Every one who commits an offence under subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction.

Causing bodily harm

(3) Every one who commits an offence under subsection (1) and thereby causes bodily harm to any other person is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Causing death

(4) Every one who commits an offence under subsection (1) and thereby causes the death of any other person is guilty of an indictable offence and liable to imprisonment for life.

Attorney General's consent

83.24 Proceedings in respect of a terrorism offence or an offence under section 83.12 shall not be commenced without the consent of the Attorney General.

Jurisdiction

83.25 (1) Where a person is alleged to have committed a terrorism offence or an offence under section 83.12, proceedings in respect of that offence may, whether or not that person is in Canada, be commenced at the instance of the Government of Canada and conducted by the Attorney General of Canada or counsel acting on his or her behalf in any territorial division in Canada, if the offence is alleged to have occurred outside the province in which the proceedings are commenced, whether or not proceedings have previously been commenced elsewhere in Canada.

Trial and punishment

(2) An accused may be tried and punished in respect of an offence referred to in subsection (1) in the same manner as if the offence had been committed in the territorial division where the proceeding is conducted.

Sentences to be served consecutively

83.26 A sentence, other than one of life imprisonment, imposed on a person for an offence under any of sections 83.02 to 83.04 and 83.18 to 83.23 shall be served consecutively to

(a) any other punishment imposed on the person, other than a sentence of life imprisonment, for an offence arising out of the same event or series of events; and

(b) any other sentence, other than one of life imprisonment, to which the person is subject at the time the sentence is imposed on the person for an offence under any of those sections.

Punishment for terrorist activity

83.27 (1) Notwithstanding anything in this Act, a person convicted of an indictable offence, other than an offence for which a sentence of imprisonment for life is imposed as a minimum punishment, where the act or omission constituting the offence also constitutes a terrorist activity, is liable to imprisonment for life.

Offender must be notified

(2) Subsection (1) does not apply unless the prosecutor satisfies the court that the offender, before making a plea, was notified that the application of that subsection would be sought.

Definition of "judge"

83.28 (1) In this section and section 83.29, "judge" means a provincial court judge or a judge of a superior court of criminal jurisdiction.

Order for gathering evidence (2) Subject to subsection (3), a peace officer may, for the purposes of an investigation of a terrorism offence, apply *ex parte* to a judge for an order for the gathering of information.

Attorney General's consent (3) A peace officer may make an application under subsection (2) only if the prior consent of the Attorney General was obtained.

Making of order (4) A judge to whom an application is made under subsection (2) may make an order for the gathering of information if the judge is satisfied that the consent of the Attorney General was obtained as required by subsection (3) and

(a) that there are reasonable grounds to believe that

(i) a terrorism offence has been committed, and

(ii) information concerning the offence, or information that may reveal the whereabouts of a person suspected by the peace officer of having committed the offence, is likely to be obtained as a result of the order; or

(b) that

(i) there are reasonable grounds to believe that a terrorism offence will be committed,

(ii) there are reasonable grounds to believe that a person has direct and material information that relates to a terrorism offence referred to in subparagraph (i), or that may reveal the whereabouts of an individual who the peace officer suspects may commit a terrorism offence referred to in that subparagraph, and

(iii) reasonable attempts have been made to obtain the information referred to in subparagraph (ii) from the person referred to in that subparagraph.

Contents of order (5) An order made under subsection (4) may

(a) order the examination, on oath or not, of a person named in the order;

(b) order the person to attend at the place fixed by the judge, or by the judge designated under paragraph (d), as the case may be, for the examination and to remain in attendance until excused by the presiding judge;

(c) order the person to bring to the examination any thing in their possession or control, and produce it to the presiding judge;

(d) designate another judge as the judge before whom the examination is to take place; and

(e) include any other terms or conditions that the judge considers desirable, including terms or conditions for the protection of the interests of the person named in the order and of third parties or for the protection

- of any ongoing investigation.
- Execution of order (6) An order made under subsection (4) may be executed anywhere in Canada.
- Variation of order (7) The judge who made the order under subsection (4), or another judge of the same court, may vary its terms and conditions.
- Obligation to answer questions and produce things (8) A person named in an order made under subsection (4) shall answer questions put to the person by the Attorney General or the Attorney General's agent, and shall produce to the presiding judge things that the person was ordered to bring, but may refuse if answering a question or producing a thing would disclose information that is protected by any law relating to non-disclosure of information or to privilege.
- Judge to rule (9) The presiding judge shall rule on any objection or other issue relating to a refusal to answer a question or to produce a thing.
- No person excused from complying with subsection (8) (10) No person shall be excused from answering a question or producing a thing under subsection (8) on the ground that the answer or thing may tend to incriminate the person or subject the person to any proceeding or penalty, but
- (a) no answer given or thing produced under subsection (8) shall be used or received against the person in any criminal proceedings against that person, other than a prosecution under section 132 or 136; and
- (b) no evidence derived from the evidence obtained from the person shall be used or received against the person in any criminal proceedings against that person, other than a prosecution under section 132 or 136.
- Right to counsel (11) A person has the right to retain and instruct counsel at any stage of the proceedings.
- Order for custody of thing (12) The presiding judge, if satisfied that any thing produced during the course of the examination will likely be relevant to the investigation of any terrorism offence, shall order that the thing be given into the custody of the peace officer or someone acting on the peace officer's behalf.
- Arrest warrant 83.29 (1) The judge who made the order under subsection 83.28(4), or another judge of the same court, may issue a warrant for the arrest of the person named in the order if the judge is satisfied, on an information in writing and under oath, that the person
- (a) is evading service of the order;
- (b) is about to abscond; or
- (c) did not attend the examination, or did not remain in attendance, as required by the order.
- Execution of (2) A warrant issued under subsection (1) may be executed at any place in

- warrant Canada by any peace officer having jurisdiction in that place.
- Person to be brought before judge (3) A peace officer who arrests a person in the execution of a warrant issued under subsection (1) shall, without delay, bring the person, or cause the person to be brought, before the judge who issued the warrant or another judge of the same court. The judge in question may, to ensure compliance with the order, order that the person be detained in custody or released on recognizance, with or without sureties.
- Attorney General's consent required to lay information 83.3 (1) The consent of the Attorney General is required before a peace officer may lay an information under subsection (2).
- Terrorist activity (2) Subject to subsection (1), a peace officer may lay an information before a provincial court judge if the peace officer
- (a) believes on reasonable grounds that a terrorist activity will be carried out; and
 - (b) suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is necessary to prevent the carrying out of the terrorist activity.
- Appearance (3) A provincial court judge who receives an information under subsection (2) may cause the person to appear before the provincial court judge.
- Arrest without warrant (4) Notwithstanding subsections (2) and (3), if
- (a) either
 - (i) the grounds for laying an information referred to in paragraphs (2)(a) and (b) exist but, by reason of exigent circumstances, it would be impracticable to lay an information under subsection (2), or
 - (ii) an information has been laid under subsection (2) and a summons has been issued, and
 - (b) the peace officer suspects on reasonable grounds that the detention of the person in custody is necessary in order to prevent a terrorist activity,
- the peace officer may arrest the person without warrant and cause the person to be detained in custody, to be taken before a provincial court judge in accordance with subsection (6).
- Duty of peace officer (5) If a peace officer arrests a person without warrant in the circumstance described in subparagraph (4)(a)(i), the peace officer shall, within the time prescribed by paragraph (6)(a) or (b),
- (a) lay an information in accordance with subsection (2); or
 - (b) release the person.
- When person to be taken before judge (6) A person detained in custody shall be taken before a provincial court

judge in accordance with the following rules:

(a) if a provincial court judge is available within a period of twenty-four hours after the person has been arrested, the person shall be taken before a provincial court judge without unreasonable delay and in any event within that period, and

(b) if a provincial court judge is not available within a period of twenty-four hours after the person has been arrested, the person shall be taken before a provincial court judge as soon as possible,

unless, at any time before the expiry of the time prescribed in paragraph (a) or (b) for taking the person before a provincial court judge, the peace officer, or an officer in charge within the meaning of Part XV, is satisfied that the person should be released from custody unconditionally, and so releases the person.

How person dealt with

(7) When a person is taken before a provincial court judge under subsection (6),

(a) if an information has not been laid under subsection (2), the judge shall order that the person be released; or

(b) if an information has been laid under subsection (2),

(i) the judge shall order that the person be released unless the peace officer who laid the information shows cause why the detention of the person in custody is justified on one or more of the following grounds:

(A) the detention is necessary to ensure the person's appearance before a provincial court judge in order to be dealt with in accordance with subsection (8),

(B) the detention is necessary for the protection or safety of the public, including any witness, having regard to all the circumstances including

(I) the likelihood that, if the person is released from custody, a terrorist activity will be carried out, and

(II) any substantial likelihood that the person will, if released from custody, interfere with the administration of justice, and

(C) any other just cause and, without limiting the generality of the foregoing, that the detention is necessary in order to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the peace officer's grounds under subsection (2), and the gravity of any terrorist activity that may be carried out, and

(ii) the judge may adjourn the matter for a hearing under subsection (8) but, if the person is not released under subparagraph (i), the adjournment may not exceed forty-eight hours.

Hearing before judge

(8) The provincial court judge before whom the person appears pursuant to subsection (3)

(a) may, if satisfied by the evidence adduced that the peace officer has reasonable grounds for the suspicion, order that the person enter into a recognizance to keep the peace and be of good behaviour for any period that does not exceed twelve months and to comply with any other reasonable conditions prescribed in the recognizance, including the conditions set out in subsection (10), that the provincial court judge considers desirable for preventing the carrying out of a terrorist activity; and

(b) if the person was not released under subparagraph (7)(b)(i), shall order that the person be released, subject to the recognizance, if any, ordered under paragraph (a).

Refusal to enter into recognizance

(9) The provincial court judge may commit the person to prison for a term not exceeding twelve months if the person fails or refuses to enter into the recognizance.

Conditions — firearms

(10) Before making an order under paragraph (8)(a), the provincial court judge shall consider whether it is desirable, in the interests of the safety of the person or of any other person, to include as a condition of the recognizance that the person be prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all of those things, for any period specified in the recognizance, and where the provincial court judge decides that it is so desirable, the provincial court judge shall add such a condition to the recognizance.

Surrender, etc.

(11) If the provincial court judge adds a condition described in subsection (10) to a recognizance, the provincial court judge shall specify in the recognizance the manner and method by which

(a) the things referred to in that subsection that are in the possession of the person shall be surrendered, disposed of, detained, stored or dealt with; and

(b) the authorizations, licences and registration certificates held by the person shall be surrendered.

Reasons

(12) If the provincial court judge does not add a condition described in subsection (10) to a recognizance, the provincial court judge shall include in the record a statement of the reasons for not adding the condition.

Variance of conditions

(13) The provincial court judge may, on application of the peace officer, the Attorney General or the person, vary the conditions fixed in the recognizance.

Other provisions to apply

(14) Subsections 810(4) and (5) apply, with any modifications that the circumstances require, to proceedings under this section.

Annual report

83.31 (1) The Attorney General of Canada shall prepare and cause to be laid

(sections 83.28
and 83.29)

before Parliament and the Attorney General of every province shall publish or otherwise make available to the public an annual report for the previous year on the operation of sections 83.28 and 83.29 that includes

- (a) the number of consents to make an application that were sought, and the number that were obtained, by virtue of subsections 83.28(2) and (3);
- (b) the number of orders for the gathering of information that were made under subsection 83.28(4); and
- (c) the number of arrests that were made with a warrant issued under section 83.29.

Annual report
(section 83.3)

(2) The Attorney General of Canada shall prepare and cause to be laid before Parliament and the Attorney General of every province shall publish or otherwise make available to the public an annual report for the previous year on the operation of section 83.3 that includes

- (a) the number of consents to lay an information that were sought, and the number that were obtained, by virtue of subsections 83.3(1) and (2);
- (b) the number of cases in which a summons or a warrant of arrest was issued for the purposes of subsection 83.3(3);
- (c) the number of cases where a person was not released under subsection 83.3(7) pending a hearing;
- (d) the number of cases in which an order to enter into a recognizance was made under paragraph 83.3(8)(a), and the types of conditions that were imposed;
- (e) the number of times that a person failed or refused to enter into a recognizance, and the term of imprisonment imposed under subsection 83.3(9) in each case; and
- (f) the number of cases in which the conditions fixed in a recognizance were varied under subsection 83.3(13).

Annual report
(section 83.3)

(3) The Minister of Public Safety and Emergency Preparedness shall prepare and cause to be laid before Parliament and the Minister responsible for policing in every province shall publish or otherwise make available to the public an annual report for the previous year on the operation of section 83.3 that includes

- (a) the number of arrests without warrant that were made under subsection 83.3(4) and the period of the arrested person's detention in custody in each case; and
- (b) the number of cases in which a person was arrested without warrant under subsection 83.3(4) and was released
 - (i) by a peace officer under paragraph 83.3(5)(b), or
 - (ii) by a judge under paragraph 83.3(7)(a).

Limitation

(4) The annual report shall not contain any information the disclosure of which would

(a) compromise or hinder an ongoing investigation of an offence under an Act of Parliament;

(b) endanger the life or safety of any person;

(c) prejudice a legal proceeding; or

(d) otherwise be contrary to the public interest.

Sunset provision

83.32 (1) Sections 83.28, 83.29 and 83.3 cease to apply at the end of the fifteenth sitting day of Parliament after December 31, 2006 unless, before the end of that day, the application of those sections is extended by a resolution — the text of which is established under subsection (2) — passed by both Houses of Parliament in accordance with the rules set out in subsection (3).

Order in Council

(2) The Governor General in Council may, by order, establish the text of a resolution providing for the extension of the application of sections 83.28, 83.29 and 83.3 and specifying the period of the extension, which may not exceed five years from the first day on which the resolution has been passed by both Houses of Parliament.

Rules

(3) A motion for the adoption of the resolution may be debated in both Houses of Parliament but may not be amended. At the conclusion of the debate, the Speaker of the House of Parliament shall immediately put every question necessary to determine whether or not the motion is concurred in.

Subsequent extensions

(4) The application of sections 83.28, 83.29 and 83.3 may be further extended in accordance with the procedure set out in this section, with the words "December 31, 2006" in subsection (1) read as "the expiration of the most recent extension under this section".

Definition of "sitting day of Parliament"

(5) In subsection (1), "sitting day of Parliament" means a day on which both Houses of Parliament sit.

Transitional provision

83.33 (1) In the event that sections 83.28 and 83.29 cease to apply pursuant to section 83.32, proceedings commenced under those sections shall be completed if the hearing before the judge of the application made under subsection 83.28(2) began before those sections ceased to apply.

Transitional provision

(2) In the event that section 83.3 ceases to apply pursuant to section 83.32, a person detained in custody under section 83.3 shall be released when that section ceases to apply, except that subsections 83.3(7) to (14) continue to apply to a person who was taken before a judge under subsection 83.3(6) before section 83.3 ceased to apply.

Code criminal, R.S.C. 1985, c. C-46

Fait de se livrer à un combat

83. (1) Est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire quiconque, selon le cas :

concerté

- a) se livre, comme adversaire, à un combat concerté;
- b) recommande ou encourage un combat concerté, ou en est promoteur;
- c) assiste à un combat concerté en qualité d'aide, second, médecin, arbitre, soutien ou reporter.

Définition de
« combat
concerté »

(2) Au présent article, « combat concerté » s'entend d'un match ou combat, avec les poings ou les mains, entre deux personnes qui se sont rencontrées à cette fin par arrangement préalable conclu par elles, ou pour elles; cependant, n'est pas réputé combat concerté un match de boxe entre des sportifs amateurs, lorsque les adversaires portent des gants de boxe d'une masse minimale de cent quarante grammes chacun, ou un match de boxe tenu avec la permission ou sous l'autorité d'une commission athlétique ou d'un corps semblable établi par la législature d'une province, ou sous son autorité, pour la régie du sport dans la province.

Définitions

83.01 (1) Les définitions qui suivent s'appliquent à la présente partie.

« activité
terroriste »

« activité terroriste »

" terrorist activity "

a) Soit un acte — action ou omission, commise au Canada ou à l'étranger — qui, au Canada, constitue une des infractions suivantes :

(i) les infractions visées au paragraphe 7(2) et mettant en oeuvre la *Convention pour la répression de la capture illicite d'aéronefs*, signée à La Haye le 16 décembre 1970,

(ii) les infractions visées au paragraphe 7(2) et mettant en oeuvre la *Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile*, signée à Montréal le 23 septembre 1971,

(iii) les infractions visées au paragraphe 7(3) et mettant en oeuvre la *Convention sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques*, adoptée par l'Assemblée générale des Nations Unies le 14 décembre 1973,

(iv) les infractions visées au paragraphe 7(3.1) et mettant en oeuvre la *Convention internationale contre la prise d'otages*, adoptée par l'Assemblée générale des Nations Unies le 17 décembre 1979,

(v) les infractions visées aux paragraphes 7(3.4) ou (3.6) et mettant en oeuvre la *Convention sur la protection physique des matières nucléaires*, conclue à New York et Vienne le 3 mars 1980,

(vi) les infractions visées au paragraphe 7(2) et mettant en oeuvre le *Protocole pour la répression des actes illicites de violence dans les aéroports servant à l'aviation civile internationale, complémentaire à la Convention pour la répression d'actes illicites dirigés contre la sécurité*

de l'aviation civile, signé à Montréal le 24 février 1988,

(vii) les infractions visées au paragraphe 7(2.1) et mettant en oeuvre la *Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime*, conclue à Rome le 10 mars 1988,

(viii) les infractions visées aux paragraphes 7(2.1) ou (2.2) et mettant en oeuvre le *Protocole pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental*, conclu à Rome le 10 mars 1988,

(ix) les infractions visées au paragraphe 7(3.72) et mettant en oeuvre la *Convention internationale pour la répression des attentats terroristes à l'explosif*, adoptée par l'Assemblée générale des Nations Unies le 15 décembre 1997,

(x) les infractions visées au paragraphe 7(3.73) et mettant en oeuvre la *Convention internationale pour la répression du financement du terrorisme*, adoptée par l'Assemblée générale des Nations Unies le 9 décembre 1999;

b) soit un acte — action ou omission, commise au Canada ou à l'étranger :

(i) d'une part, commis à la fois :

(A) au nom — exclusivement ou non — d'un but, d'un objectif ou d'une cause de nature politique, religieuse ou idéologique,

(B) en vue — exclusivement ou non — d'intimider tout ou partie de la population quant à sa sécurité, entre autres sur le plan économique, ou de contraindre une personne, un gouvernement ou une organisation nationale ou internationale à accomplir un acte ou à s'en abstenir, que la personne, la population, le gouvernement ou l'organisation soit ou non au Canada,

(ii) d'autre part, qui intentionnellement, selon le cas :

(A) cause des blessures graves à une personne ou la mort de celle-ci, par l'usage de la violence,

(B) met en danger la vie d'une personne,

(C) compromet gravement la santé ou la sécurité de tout ou partie de la population,

(D) cause des dommages matériels considérables, que les biens visés soient publics ou privés, dans des circonstances telles qu'il est probable que l'une des situations mentionnées aux divisions

(A) à (C) en résultera,

(E) perturbe gravement ou paralyse des services, installations ou systèmes essentiels, publics ou privés, sauf dans le cadre de revendications, de protestations ou de manifestations d'un désaccord ou d'un arrêt de travail qui n'ont pas pour but de provoquer l'une des situations mentionnées aux divisions (A) à (C).

Sont visés par la présente définition, relativement à un tel acte, le complot, la tentative, la menace, la complicité après le fait et l'encouragement à la perpétration; il est entendu que sont exclus de la présente définition l'acte — action ou omission — commis au cours d'un conflit armé et conforme, au moment et au lieu de la perpétration, au droit international coutumier ou au droit international conventionnel applicable au conflit ainsi que les activités menées par les forces armées d'un État dans l'exercice de leurs fonctions officielles, dans la mesure où ces activités sont régies par d'autres règles de droit international.

« Canadien »

“ Canadian ”

« Canadien » Citoyen canadien, résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* ou personne morale constituée ou prorogée sous le régime d'une loi fédérale ou provinciale.

« entité »

“ entity ”

« entité » Personne, groupe, fiducie, société de personnes ou fonds, ou organisation ou association non dotée de la personnalité morale.

« entité inscrite »

“ listed entity ”

« entité inscrite » Entité inscrite sur la liste établie par le gouverneur en conseil en vertu de l'article 83.05.

« groupe terroriste »

“ terrorist group ”

« groupe terroriste »

a) Soit une entité dont l'un des objets ou l'une des activités est de se livrer à des activités terroristes ou de les faciliter;

b) soit une entité inscrite.

Est assimilé à un groupe terroriste un groupe ou une association formé de groupes terroristes au sens de la présente définition.

Interprétation

(1.1) Il est entendu que l'expression d'une pensée, d'une croyance ou d'une opinion de nature politique, religieuse ou idéologique n'est visée à l'alinéa b) de la définition de « activité terroriste » au paragraphe (1) que si elle constitue un acte — action ou omission — répondant aux critères de cet

alinéa.

Facilitation

(2) Pour l'application de la présente partie, faciliter s'interprète en conformité avec le paragraphe 83.19(2).

Fournir ou réunir des biens en vue de certains actes

83.02 Est coupable d'un acte criminel passible d'un emprisonnement maximal de dix ans quiconque, directement ou non, fournit ou réunit, délibérément et sans justification ou excuse légitime, des biens dans l'intention de les voir utiliser — ou en sachant qu'ils seront utilisés — en tout ou en partie, en vue :

a) d'un acte — action ou omission — qui constitue l'une des infractions prévues aux sous-alinéas a)(i) à (ix) de la définition de « activité terroriste » au paragraphe 83.01(1);

b) de tout autre acte — action ou omission — destiné à causer la mort ou des dommages corporels graves à une personne qui ne participe pas directement aux hostilités dans une situation de conflit armé, notamment un civil, si, par sa nature ou son contexte, cet acte est destiné à intimider la population ou à contraindre un gouvernement ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte quelconque.

Fournir, rendre disponibles, etc. des biens ou services à des fins terroristes

83.03 Est coupable d'un acte criminel passible d'un emprisonnement maximal de dix ans quiconque, directement ou non, réunit des biens ou fournit — ou invite une autre personne à le faire — ou rend disponibles des biens ou des services financiers ou connexes :

a) soit dans l'intention de les voir utiliser — ou en sachant qu'ils seront utilisés — , en tout ou en partie, pour une activité terroriste, pour faciliter une telle activité ou pour en faire bénéficier une personne qui se livre à une telle activité ou la facilite;

b) soit en sachant qu'ils seront utilisés, en tout ou en partie, par un groupe terroriste ou qu'ils bénéficieront, en tout ou en partie, à celui-ci.

Utiliser ou avoir en sa possession des biens à des fins terroristes

83.04 Est coupable d'un acte criminel passible d'un emprisonnement maximal de dix ans quiconque, selon le cas :

a) utilise directement ou non, en tout ou en partie, des biens pour une activité terroriste ou pour la faciliter;

b) a en sa possession des biens dans l'intention de les voir utiliser — ou en sachant qu'ils seront utilisés — directement ou non, en tout ou en partie, pour une activité terroriste ou pour la faciliter.

Établissement de la liste

83.05 (1) Le gouverneur en conseil peut, par règlement, établir une liste sur laquelle il inscrit toute entité dont il est convaincu, sur la recommandation du ministre de la Sécurité publique et de la Protection civile, qu'il existe des

motifs raisonnables de croire :

a) que, sciemment, elle s'est livrée ou a tenté de se livrer à une activité terroriste, y a participé ou l'a facilitée;

b) que, sciemment, elle agit au nom d'une entité visée à l'alinéa a), sous sa direction ou en collaboration avec elle.

- Recommandation (1.1) Le ministre ne fait la recommandation visée au paragraphe (1) que s'il a des motifs raisonnables de croire que l'entité en cause est visée aux alinéas (1)a) ou b).
- Radiation (2) Le ministre, saisi d'une demande écrite présentée par une entité inscrite, décide s'il a des motifs raisonnables de recommander ou non au gouverneur en conseil de radier celle-ci de la liste.
- Présomption (3) S'il ne rend pas sa décision dans les soixante jours suivant la réception de la demande, le ministre est réputé avoir décidé de ne pas recommander la radiation.
- Avis de la décision au demandeur (4) Le ministre donne sans délai au demandeur un avis de la décision qu'il a rendue ou qu'il est réputé avoir rendue relativement à la demande.
- Contrôle judiciaire (5) Dans les soixante jours suivant la réception de l'avis, le demandeur peut présenter au juge une demande de révision de la décision.
- Examen judiciaire (6) Dès qu'il est saisi de la demande, le juge procède de la façon suivante :
- a) il examine à huis clos les renseignements en matière de sécurité ou de criminalité qui ont été pris en considération pour l'inscription du demandeur sur la liste et recueille les autres éléments de preuve ou d'information présentés par le ministre ou en son nom; il peut, à la demande de celui-ci, recueillir tout ou partie de ces éléments en l'absence du demandeur ou de son avocat, s'il estime que leur divulgation porterait atteinte à la sécurité nationale ou à la sécurité d'autrui;
- b) il fournit au demandeur un résumé de l'information dont il dispose — sauf celle dont la divulgation pourrait, à son avis, porter atteinte à la sécurité nationale ou à la sécurité d'autrui — afin de lui permettre d'être suffisamment informé des motifs de la décision;
- c) il donne au demandeur la possibilité d'être entendu;
- d) il décide si la décision est raisonnable compte tenu de l'information dont il dispose et, dans le cas où il décide que la décision n'est pas

raisonnable, il ordonne la radiation.

- Preuve (6.1) Le juge peut recevoir et admettre en preuve tout élément qu'il estime digne de foi et approprié — même si le droit canadien ne prévoit pas par ailleurs son admissibilité — et peut fonder sa décision sur cet élément.
- Publication (7) Une fois la décision ordonnant la radiation passée en force de chose jugée, le ministre en fait publier avis sans délai dans la *Gazette du Canada*.
- Nouvelle demande de radiation (8) L'entité inscrite ne peut présenter une nouvelle demande de radiation en vertu du paragraphe (2) que si sa situation a évolué d'une manière importante depuis la présentation de sa dernière demande ou que si le ministre a terminé l'examen mentionné au paragraphe (9).
- Examen périodique de la liste (9) Deux ans après l'établissement de la liste et tous les deux ans par la suite, le ministre examine celle-ci pour savoir si les motifs visés au paragraphe (1) justifiant l'inscription d'une entité sur la liste existent toujours et recommande au gouverneur en conseil de radier ou non cette entité de la liste. L'examen est sans effet sur la validité de la liste.
- Fin de l'examen (10) Le ministre termine son examen dans les meilleurs délais mais au plus tard cent vingt jours après l'avoir commencé. Une fois l'examen terminé, il fait publier sans délai un avis à cet effet dans la *Gazette du Canada*.
- Définition de « juge » (11) Au présent article, « juge » s'entend du juge en chef de la Cour fédérale ou du juge de cette juridiction désigné par celui-ci.
- Renseignements secrets obtenus de gouvernements étrangers 83.06 (1) Pour l'application du paragraphe 83.05(6), procédant à huis clos et en l'absence du demandeur ou de son avocat :
- a) le ministre de la Sécurité publique et de la Protection civile peut présenter au juge une demande en vue de faire admettre en preuve des renseignements obtenus sous le sceau du secret du gouvernement d'un État étranger ou d'une organisation internationale d'États, ou de l'un de leurs organismes;
 - b) le juge examine les renseignements et accorde à l'avocat du ministre la possibilité de lui présenter ses arguments sur la pertinence des renseignements et le fait qu'ils ne devraient pas être communiqués au demandeur ou à son avocat parce que la communication porterait atteinte à la sécurité nationale ou à la sécurité d'autrui.
- Renvoi des renseignements (2) Ces renseignements sont renvoyés à l'avocat du ministre et ne peuvent servir de fondement à la décision rendue au titre de l'alinéa 83.05(6)d) dans les cas suivants :
- a) le juge décide qu'ils ne sont pas pertinents;

b) le juge décide qu'ils sont pertinents, mais qu'ils devraient faire partie du résumé à fournir au titre de l'alinéa 83.05(6)b);

c) le ministre retire la demande.

Utilisation des renseignements

(3) Si le juge décide que ces renseignements sont pertinents, mais que leur communication au titre de l'alinéa 83.05(6)b) porterait atteinte à la sécurité nationale ou à la sécurité d'autrui, il les exclut du résumé, mais peut s'en servir comme fondement de la décision qu'il rend au titre de l'alinéa 83.05(6)d).

Erreur sur la personne

83.07 (1) L'entité qui prétend ne pas être une entité inscrite peut demander au ministre de la Sécurité publique et de la Protection civile de lui délivrer un certificat à cet effet.

Délivrance du certificat

(2) S'il est convaincu que le demandeur n'est pas une entité inscrite, le ministre délivre le certificat dans les quinze jours suivant la réception de la demande.

Blocage des biens

83.08 (1) Il est interdit à toute personne au Canada et à tout Canadien à l'étranger :

a) d'effectuer sciemment, directement ou non, une opération portant sur des biens qui appartiennent à un groupe terroriste, ou qui sont à sa disposition, directement ou non;

b) de conclure sciemment, directement ou non, une opération relativement à des biens visés à l'alinéa a) ou d'en faciliter sciemment, directement ou non, la conclusion;

c) de fournir sciemment toute forme de services financiers ou connexes liés à des biens visés à l'alinéa a) à un groupe terroriste, pour son profit ou sur son ordre.

Immunité

(2) Nul ne peut être poursuivi au civil pour avoir fait ou omis de faire quoi que ce soit dans le but de se conformer au paragraphe (1), s'il a agi raisonnablement et pris toutes les dispositions voulues pour se convaincre que le bien en cause appartient à un groupe terroriste ou est à sa disposition, directement ou non.

Exemptions

83.09 (1) Le ministre de la Sécurité publique et de la Protection civile — ou toute personne qu'il désigne — peut autoriser toute personne au Canada ou tout Canadien à l'étranger à se livrer à toute opération ou activité — ou catégorie d'opérations ou d'activités — qu'interdit l'article 83.08.

Autorisation

(2) Le ministre peut assortir l'autorisation des conditions qu'il estime nécessaires; il peut également la modifier, la suspendre, la révoquer ou la rétablir.

- Rang (3) Le blocage ne porte pas atteinte au rang des droits et intérêts — garantis ou non — détenus sur les biens qui en font l'objet par des personnes qui ne sont pas des groupes terroristes ou des mandataires de ceux-ci.
- Tiers participant (4) Dans le cas où une personne a obtenu une autorisation en vertu du paragraphe (1), toute autre personne qui participe à l'opération ou à l'activité — ou à la catégorie d'opérations ou d'activités — visée par l'autorisation est soustraite à l'application des articles 83.08, 83.1 et 83.11 si les conditions dont l'autorisation est assortie, le cas échéant, sont respectées.
- Communication 83.1 (1) Toute personne au Canada et tout Canadien à l'étranger est tenu de communiquer sans délai au directeur du Service canadien du renseignement de sécurité et au commissaire de la Gendarmerie royale du Canada :
- a) l'existence de biens qui sont en sa possession ou à sa disposition et qui, à sa connaissance, appartiennent à un groupe terroriste, ou qui sont à sa disposition, directement ou non;
 - b) tout renseignement portant sur une opération, réelle ou projetée, mettant en cause des biens visés à l'alinéa a).
- Immunité (2) Nul ne peut être poursuivi pour avoir fait de bonne foi une communication au titre du paragraphe (1).
- Obligation de vérification 83.11 (1) Il incombe aux entités ci-après de vérifier de façon continue l'existence de biens qui sont en leur possession ou à leur disposition et qui appartiennent à une entité inscrite ou sont à sa disposition, directement ou non :
- a) les banques régies par la *Loi sur les banques* et les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*, dans le cadre des activités que ces dernières exercent au Canada;
 - b) les coopératives de crédit, caisses d'épargne et de crédit et caisses populaires régies par une loi provinciale et les associations régies par la *Loi sur les associations coopératives de crédit*;
 - c) les sociétés étrangères, au sens du paragraphe 2(1) de la *Loi sur les sociétés d'assurances*, dans le cadre des activités d'assurance qu'elles exercent au Canada;
 - c.1) les sociétés, les sociétés de secours et les sociétés provinciales au sens du paragraphe 2(1) de la *Loi sur les sociétés d'assurances*;
 - c.2) les sociétés de secours mutuel régies par une loi provinciale, dans le cadre de leurs activités d'assurance, et les sociétés d'assurances et autres entités régies par une loi provinciale qui exercent le commerce de l'assurance;

d) les sociétés régies par la *Loi sur les sociétés de fiducie et de prêt*;

e) les sociétés de fiducie régies par une loi provinciale;

f) les sociétés de prêt régies par une loi provinciale;

g) les entités autorisées en vertu de la législation provinciale à se livrer au commerce des valeurs mobilières, ou à la fourniture de services de gestion de portefeuille ou de conseils en placement.

Rapport

(2) Sous réserve des règlements, il incombe aux entités visées aux alinéas (1)a) à g) de rendre compte, selon la périodicité précisée dans le règlement ou, à défaut, chaque mois, à l'autorité ou à l'organisme principal de surveillance ou de réglementation dont elles relèvent sous le régime d'une loi fédérale ou provinciale :

a) soit du fait qu'elles n'ont pas en leur possession ni à leur disposition des biens visés au paragraphe (1);

b) soit du fait qu'elles en ont, auquel cas elles sont tenues d'indiquer le nombre de personnes, de comptes ou de contrats en cause et la valeur totale des biens.

Immunité

(3) Nul ne peut être poursuivi pour avoir fait rapport de bonne foi au titre du paragraphe (2).

Règlements

(4) Le gouverneur en conseil peut, par règlement :

a) soustraire, aux conditions qui y sont précisées, toute entité ou catégorie d'entités à l'obligation de rendre compte prévue au paragraphe (2);

b) préciser la périodicité du rapport.

Infraction —
blocage des biens,
communication ou
vérification

83.12 (1) Quiconque contrevient aux articles 83.08, 83.1 ou 83.11 commet une infraction et encourt, sur déclaration de culpabilité :

a) par procédure sommaire, une amende maximale de 100 000 \$ et un emprisonnement maximal de un an, ou l'une de ces peines;

b) par mise en accusation, un emprisonnement maximal de dix ans.

Aucune
contravention

(2) Ne contrevient pas à l'article 83.1 la personne qui ne communique l'information en cause qu'au directeur du Service canadien du renseignement ou qu'au commissaire de la Gendarmerie royale du Canada.

Mandat spécial

83.13 (1) Sur demande du procureur général présentée *ex parte* et entendue à huis clos, le juge de la Cour fédérale qui est convaincu qu'il

existe des motifs raisonnables de croire qu'il se trouve dans un bâtiment, contenant ou lieu des biens qui pourraient faire l'objet d'une ordonnance de confiscation en vertu du paragraphe 83.14(5) peut :

a) dans le cas où les biens sont situés au Canada, délivrer un mandat autorisant la personne qui y est nommée ou un agent de la paix à perquisitionner dans ce bâtiment, contenant ou lieu et à saisir les biens en cause ainsi que tout autre bien dont cette personne ou l'agent de la paix a des motifs raisonnables de croire qu'il pourrait faire l'objet d'une telle ordonnance;

b) dans le cas où les biens sont situés au Canada ou à l'étranger, rendre une ordonnance de blocage interdisant à toute personne de se départir des biens précisés dans l'ordonnance ou d'effectuer des opérations sur les droits qu'elle détient sur ceux-ci, sauf dans la mesure prévue.

Teneur de la demande

(1.1) L'affidavit qui accompagne la demande peut contenir des déclarations fondées sur ce que sait et croit le déclarant, mais, par dérogation aux *Règles de la Cour fédérale (1998)*, le fait de ne pas offrir le témoignage de personnes ayant une connaissance personnelle des faits importants ne peut donner lieu à des conclusions défavorables.

Nomination d'un administrateur

(2) Saisi d'une demande en vertu du paragraphe (1), le juge peut, à la demande du procureur général, s'il l'estime indiqué dans les circonstances :

a) nommer un administrateur et lui ordonner de prendre en charge ces biens en tout ou en partie, de les administrer ou d'effectuer toute autre opération à leur égard conformément à ses directives;

b) ordonner à toute personne qui a la possession des biens, à l'égard desquels un administrateur est nommé, de les remettre à celui-ci.

Ministre des Travaux publics et des Services gouvernementaux

(3) À la demande du procureur général du Canada, le juge nomme le ministre des Travaux publics et des Services gouvernementaux à titre d'administrateur visé au paragraphe (2).

Administration

(4) La charge d'administrer des biens ou d'effectuer toute autre opération à leur égard comprend notamment :

a) dans le cas de biens périssables ou qui se déprécient rapidement, le pouvoir de les vendre;

b) dans le cas de biens qui n'ont que peu ou pas de valeur, le pouvoir de les détruire.

Demande d'ordonnance de destruction

(5) Avant de détruire des biens visés à l'alinéa (4)b), la personne qui en a la charge est tenue de demander à un juge de la Cour fédérale de rendre une ordonnance de destruction.

- Préavis (6) Avant de rendre une ordonnance de destruction, le juge exige que soit donné un préavis conformément au paragraphe (7) à quiconque, à son avis, semble avoir un droit sur les biens; le juge peut aussi entendre une telle personne.
- Modalités du préavis (7) Le préavis est donné selon les modalités précisées par le juge ou prévues par les règles de la Cour fédérale.
- Ordonnance (8) Le juge ordonne la destruction des biens s'il est convaincu que ceux-ci n'ont que peu ou pas de valeur, financière ou autre.
- Cessation d'effet de l'ordonnance de prise en charge (9) L'ordonnance de prise en charge cesse d'avoir effet lorsque les biens qu'elle vise sont remis, conformément à la loi, à celui qui présente une demande en ce sens ou sont confisqués au profit de Sa Majesté.
- Demande de modification (10) Le procureur général peut demander à un juge de la Cour fédérale d'annuler ou de modifier un mandat délivré ou une ordonnance rendue en vertu du présent article, à l'exclusion de la nomination effectuée en vertu du paragraphe (3).
- Dispositions applicables (11) Les paragraphes 462.32 (4) et (6), les articles 462.34 à 462.35 et 462.4, les paragraphes 487(3) et (4) et l'article 488 s'appliquent, avec les adaptations nécessaires, au mandat délivré en vertu de l'alinéa (1)a).
- Dispositions applicables (12) Les paragraphes 462.33(4) et (6) à (11) et les articles 462.34 à 462.35 et 462.4 s'appliquent, avec les adaptations nécessaires, à l'ordonnance rendue en vertu de l'alinéa (1)b).
- Demande d'ordonnance 83.14 (1) Le procureur général peut demander à un juge de la Cour fédérale une ordonnance de confiscation à l'égard :
- a) de biens qui appartiennent à un groupe terroriste, ou qui sont à sa disposition, directement ou non;
 - b) de biens qui ont été ou seront utilisés — en tout ou en partie — par quiconque pour se livrer à une activité terroriste ou pour la faciliter.
- Teneur de la demande (2) L'affidavit qui accompagne la demande peut contenir des déclarations fondées sur ce que sait et croit le déclarant, mais, par dérogation aux *Règles de la Cour fédérale (1998)*, le fait de ne pas offrir le témoignage de personnes ayant une connaissance personnelle des faits importants ne peut donner lieu à des conclusions défavorables.
- Défendeurs (3) Le procureur général est tenu de ne nommer à titre de défendeur à l'égard de la demande visée au paragraphe (1) que les personnes connues

comme des personnes à qui appartiennent les biens visés par la demande ou qui ont ces biens à leur disposition.

Avis

(4) Le procureur général est tenu de donner un avis de la demande visée au paragraphe (1) aux défendeurs nommés de la façon que le juge ordonne ou tel qu'il est prévu par les règles de la Cour fédérale.

Confiscation

(5) S'il est convaincu, selon la prépondérance des probabilités, que les biens sont visés par les alinéas (1)a) ou b), le juge ordonne la confiscation des biens au profit de Sa Majesté; l'ordonnance prévoit qu'il est disposé de ces biens selon les instructions du procureur général ou autrement en conformité avec la loi.

Utilisation du produit de la disposition

(5.1) Le produit de la disposition de biens visée au paragraphe (5) peut être utilisé pour dédommager les victimes d'activités terroristes et financer les mesures antiterroristes, conformément aux règlements pris par le gouverneur en conseil en vertu du paragraphe (5.2).

Règlement

(5.2) Le gouverneur en conseil peut, par règlement, prévoir le mode de distribution du produit mentionné au paragraphe (5.1).

Ordonnance de non-confiscation

(6) Dans le cas où le juge refuse la demande visée au paragraphe (1) à l'égard de biens, il est tenu de rendre une ordonnance décrivant ces biens et les déclarant non visés par ce paragraphe.

Avis

(7) Saisi d'une demande en vertu du paragraphe (1), le juge peut exiger qu'en soit avisée toute personne qui, à son avis, semble avoir un droit sur les biens en cause. Celle-ci a le droit d'être nommée à titre de défendeur à l'égard de cette demande.

Droits des tiers

(8) Le juge, s'il est convaincu que la personne visée au paragraphe (7) a un droit sur les biens, a pris des précautions suffisantes pour que ces biens ne risquent pas d'être utilisés par quiconque pour se livrer à une activité terroriste ou la faciliter et n'est pas membre d'un groupe terroriste, déclare la nature et l'étendue de ce droit et rend une ordonnance selon laquelle l'ordonnance de confiscation ne porte pas atteinte à celui-ci.

Facteurs : maison d'habitation

(9) Dans le cas où les biens qui font l'objet d'une demande visée au paragraphe (1) sont constitués, en tout ou en partie, d'une maison d'habitation, le juge prend aussi en compte les facteurs suivants :

a) l'effet qu'aurait la confiscation à l'égard des membres de la famille immédiate de la personne à qui appartient la maison d'habitation ou qui l'a à sa disposition, s'il s'agissait de la résidence principale de l'intéressé avant qu'elle ne soit bloquée par ordonnance ou visée par la demande de confiscation, et qu'elle continue de l'être par la suite;

b) le fait que l'intéressé semble innocent ou non de toute complicité ou

collusion à l'égard de l'activité terroriste.

Requête pour
modifier ou annuler
l'ordonnance

(10) Dans les soixante jours suivant la date où une ordonnance est rendue en vertu du paragraphe (5), la personne qui prétend avoir un droit sur les biens confisqués et qui n'a pas reçu l'avis prévu au paragraphe (7) peut demander par requête à la Cour fédérale de modifier ou annuler l'ordonnance.

Nulle prorogation
de délai

(11) La Cour ne peut proroger le délai visé au paragraphe (10).

Disposition des
biens saisis

83.15 Le paragraphe 462.42(6) et les articles 462.43 et 462.46 s'appliquent, avec les adaptations nécessaires, aux biens visés par le mandat délivré ou l'ordonnance de blocage rendue en vertu du paragraphe 83.13(1) ou confisqués en vertu du paragraphe 83.14(5).

Sauvegarde des
droits

83.16 (1) Le blocage ou la saisie de biens sous le régime de l'article 83.13 restent tenants, et la personne nommée pour la prise en charge de ces biens en vertu du même article continue d'agir à ce titre, jusqu'à ce qu'il soit statué sur l'appel formé contre une ordonnance rendue en vertu de l'article 83.14.

Appel du refus
d'accorder
l'ordonnance

(2) L'article 462.34 s'applique, avec les adaptations nécessaires, aux appels interjetés à l'égard du refus d'accorder une ordonnance en vertu du paragraphe 83.14(5).

Maintien de
dispositions
spécifiques

83.17 (1) La présente partie ne porte pas atteinte aux autres dispositions de la présente loi ou de toute autre loi fédérale qui visent la confiscation de biens.

Priorité aux
victimes

(2) Un bien ne peut être confisqué en vertu du paragraphe 83.14(5) que dans la mesure où il n'est pas requis pour l'application d'une autre disposition de la présente loi ou d'une autre loi fédérale en matière de restitution ou de dédommagement en faveur des victimes d'infractions criminelles.

Participation à une
activité d'un groupe
terroriste

83.18 (1) Est coupable d'un acte criminel passible d'un emprisonnement maximal de dix ans quiconque, sciemment, participe à une activité d'un groupe terroriste, ou y contribue, directement ou non, dans le but d'accroître la capacité de tout groupe terroriste de se livrer à une activité terroriste ou de la faciliter.

Poursuite

(2) Pour que l'infraction visée au paragraphe (1) soit commise, il n'est pas nécessaire :

a) qu'une activité terroriste soit effectivement menée ou facilitée par un groupe terroriste;

b) que la participation ou la contribution de l'accusé accroisse effectivement la capacité d'un groupe terroriste de se livrer à une activité

terroriste ou de la faciliter;

c) que l'accusé connaisse la nature exacte de toute activité terroriste susceptible d'être menée ou facilitée par un groupe terroriste.

Participation ou contribution

(3) La participation ou la contribution à une activité d'un groupe terroriste s'entend notamment :

a) du fait de donner ou d'acquérir de la formation ou de recruter une personne à une telle fin;

b) du fait de mettre des compétences ou une expertise à la disposition d'un groupe terroriste, à son profit ou sous sa direction, ou en association avec lui, ou d'offrir de le faire;

c) du fait de recruter une personne en vue de faciliter ou de commettre une infraction de terrorisme ou un acte à l'étranger qui, s'il était commis au Canada, constituerait une telle infraction;

d) du fait d'entrer ou de demeurer dans un pays au profit ou sous la direction d'un groupe terroriste, ou en association avec lui;

e) du fait d'être disponible, sous les instructions de quiconque fait partie d'un groupe terroriste, pour faciliter ou commettre une infraction de terrorisme ou un acte à l'étranger qui, s'il était commis au Canada, constituerait une telle infraction.

Facteurs

(4) Pour déterminer si l'accusé participe ou contribue à une activité d'un groupe terroriste, le tribunal peut notamment prendre en compte les faits suivants :

a) l'accusé utilise un nom, un mot, un symbole ou un autre signe qui identifie le groupe ou y est associé;

b) il fréquente quiconque fait partie du groupe terroriste;

c) il reçoit un avantage du groupe terroriste;

d) il se livre régulièrement à des activités selon les instructions d'une personne faisant partie du groupe terroriste.

Facilitation d'une activité terroriste

83.19 (1) Est coupable d'un acte criminel passible d'un emprisonnement maximal de quatorze ans quiconque sciemment facilite une activité terroriste.

Facilitation

(2) Pour l'application de la présente partie, il n'est pas nécessaire pour faciliter une activité terroriste :

a) que l'intéressé sache qu'il se trouve à faciliter une activité terroriste en

particulier;

b) qu'une activité terroriste en particulier ait été envisagée au moment où elle est facilitée;

c) qu'une activité terroriste soit effectivement mise à exécution.

Infraction au profit d'un groupe terroriste

83.2 Est coupable d'un acte criminel passible d'un emprisonnement à perpétuité quiconque commet un acte criminel prévu par la présente loi ou par une autre loi fédérale au profit ou sous la direction d'un groupe terroriste, ou en association avec lui.

Charger une personne de se livrer à une activité pour un groupe terroriste

83.21 (1) Est coupable d'un acte criminel passible d'un emprisonnement à perpétuité quiconque, sciemment, charge directement ou indirectement une personne de se livrer à une activité au profit ou sous la direction d'un groupe terroriste, ou en association avec lui, dans le but d'accroître la capacité de tout groupe terroriste de se livrer à une activité terroriste ou de la faciliter.

Poursuite

(2) Pour que l'infraction visée au paragraphe (1) soit commise, il n'est pas nécessaire :

a) que l'activité à laquelle l'accusé charge quiconque de se livrer soit effectivement mise à exécution;

b) que l'accusé charge une personne en particulier de se livrer à l'activité;

c) que l'accusé connaisse l'identité de la personne qu'il charge de se livrer à l'activité;

d) que la personne chargée par l'accusé de se livrer à l'activité sache que celle-ci est censée être menée au profit ou sous la direction d'un groupe terroriste, ou en association avec lui;

e) qu'une activité terroriste soit effectivement menée ou facilitée par un groupe terroriste;

f) que l'activité visée à l'alinéa a) accroisse effectivement la capacité d'un groupe terroriste de se livrer à une activité terroriste ou de la faciliter;

g) que l'accusé connaisse la nature exacte de toute activité terroriste susceptible d'être menée ou facilitée par un groupe terroriste.

Charger une personne de se livrer à une activité terroriste

83.22 (1) Est coupable d'un acte criminel passible d'un emprisonnement à perpétuité quiconque, sciemment, charge, directement ou non, une personne de se livrer à une activité terroriste.

Poursuite

(2) Pour que l'infraction visée au paragraphe (1) soit commise, il n'est pas nécessaire :

- a) que l'activité terroriste soit effectivement mise à exécution;
- b) que l'accusé charge une personne en particulier de se livrer à l'activité terroriste;
- c) que l'accusé connaisse l'identité de la personne qu'il charge de se livrer à l'activité terroriste;
- d) que la personne chargée par l'accusé de se livrer à l'activité terroriste sache qu'il s'agit d'une activité terroriste.

Héberger ou cacher

83.23 Est coupable d'un acte criminel passible d'un emprisonnement maximal de dix ans quiconque héberge ou cache sciemment une personne dont il sait qu'elle s'est livrée à une activité terroriste ou est susceptible de le faire, afin de lui permettre de se livrer à une activité terroriste ou de la faciliter.

Incitation à craindre des activités terroristes

83.231 (1) Commet une infraction quiconque, sans excuse légitime et avec l'intention de faire craindre à quelqu'un soit la mort ou des blessures corporelles, soit des dommages matériels considérables à des biens ou une entrave sérieuse à l'emploi ou l'exploitation légitime de ceux-ci :

- a) transmet ou fait en sorte que soient transmis des renseignements qui, compte tenu du contexte, sont susceptibles de faire raisonnablement craindre que des activités terroristes sont ou seront menées, sans être convaincu de leur véracité;
- b) commet un acte qui, compte tenu du contexte, est susceptible de faire raisonnablement craindre que des activités terroristes sont ou seront menées, sans être convaincu qu'il en est ainsi.

Peine

(2) Quiconque commet l'infraction prévue au paragraphe (1) est coupable :

- a) soit d'un acte criminel passible d'un emprisonnement maximal de cinq ans;
- b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

Fait de causer des blessures corporelles

(3) Quiconque, en commettant l'infraction prévue au paragraphe (1), cause des blessures corporelles à une autre personne est coupable :

- a) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans;
- b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire passible d'un emprisonnement maximal de dix-huit

mois.

Fait de causer la mort

(4) Quiconque, en commettant l'infraction prévue au paragraphe (1), cause la mort d'une autre personne est coupable d'un acte criminel passible de l'emprisonnement à perpétuité.

Consentement du procureur général

83.24 Il ne peut être engagé de poursuite à l'égard d'une infraction de terrorisme ou de l'infraction prévue à l'article 83.12 sans le consentement du procureur général.

Compétence

83.25 (1) Les poursuites relatives à une infraction de terrorisme ou à une infraction prévue à l'article 83.12, peuvent, que l'accusé soit présent au Canada ou non, être engagées dans toute circonscription territoriale au Canada par le gouvernement du Canada et menées par le procureur général du Canada ou l'avocat agissant en son nom, dans le cas où l'infraction est censée avoir été commise à l'extérieur de la province dans laquelle les poursuites sont engagées, que des poursuites aient été engagées antérieurement ou non ailleurs au Canada.

Procès et peine

(2) L'accusé peut être jugé et puni à l'égard de l'infraction visée au paragraphe (1) comme si celle-ci avait été commise dans la circonscription territoriale où les poursuites sont menées.

Peines consécutives

83.26 La peine — sauf une peine d'emprisonnement à perpétuité — infligée à une personne pour une infraction prévue à l'un des articles 83.02 à 83.04 et 83.18 à 83.23 est purgée consécutivement :

a) à toute autre peine — sauf une peine d'emprisonnement à perpétuité — sanctionnant une autre infraction basée sur les mêmes faits;

b) à toute autre peine — sauf une peine d'emprisonnement à perpétuité — en cours d'exécution infligée à une personne pour une infraction prévue à l'un de ces articles.

Aggravation de peine

83.27 (1) Malgré toute autre disposition de la présente loi, quiconque est déclaré coupable d'un acte criminel, à l'exception d'une infraction pour laquelle l'emprisonnement à perpétuité constitue la peine minimale, est passible de l'emprisonnement à perpétuité dans le cas où l'acte — acte ou omission — constituant l'infraction constitue également une activité terroriste.

Notification du délinquant

(2) Le paragraphe (1) ne s'applique que si le poursuivant convainc le tribunal que le délinquant, avant de faire son plaidoyer, a été avisé que l'application de ce paragraphe serait demandée.

Définition de « juge »

83.28 (1) Au présent article et à l'article 83.29, « juge » s'entend d'un juge de la cour provinciale ou d'un juge d'une cour supérieure de juridiction criminelle.

Demande de
collecte de
renseignements

(2) Sous réserve du paragraphe (3), l'agent de la paix peut, pour la conduite d'une enquête relative à une infraction de terrorisme, demander à un juge, en l'absence de toute autre partie, de rendre une ordonnance autorisant la recherche de renseignements.

Consentement du
procureur général

(3) L'agent de la paix ne peut présenter la demande que s'il a obtenu le consentement préalable du procureur général.

Ordonnance
d'obtention
d'éléments de
preuve

(4) Saisi de la demande, le juge peut rendre l'ordonnance s'il est convaincu que le consentement du procureur général a été obtenu en conformité avec le paragraphe (3) et :

a) ou bien il existe des motifs raisonnables de croire, à la fois :

(i) qu'une infraction de terrorisme a été commise,

(ii) que des renseignements relatifs à l'infraction ou susceptibles de révéler le lieu où se trouve un individu que l'agent de la paix soupçonne de l'avoir commise sont susceptibles d'être obtenus en vertu de l'ordonnance;

b) ou bien sont réunis les éléments suivants :

(i) il existe des motifs raisonnables de croire qu'une infraction de terrorisme sera commise,

(ii) il existe des motifs raisonnables de croire qu'une personne a des renseignements directs et pertinents relatifs à une infraction de terrorisme visée au sous-alinéa (i) ou de nature à révéler le lieu où se trouve l'individu que l'agent de la paix soupçonne d'être susceptible de commettre une telle infraction de terrorisme,

(iii) des efforts raisonnables ont été déployés pour obtenir les renseignements visés au sous-alinéa (ii) de la personne qui y est visée.

Modalités de
l'ordonnance

(5) L'ordonnance peut contenir les dispositions suivantes :

a) l'ordre de procéder à l'interrogatoire, sous serment ou non, d'une personne désignée;

b) l'ordre à cette personne de se présenter au lieu que le juge ou le juge désigné au titre de l'alinéa d) fixe pour l'interrogatoire et de demeurer présente jusqu'à ce qu'elle soit libérée par le juge qui préside;

c) l'ordre à cette personne d'apporter avec elle toute chose qu'elle a en sa possession ou à sa disposition afin de la remettre au juge qui préside;

d) la désignation d'un autre juge pour présider l'interrogatoire;

e) les modalités que le juge estime indiquées, notamment quant à la protection des droits de la personne que l'ordonnance vise ou de ceux des tiers, ou quant à la protection de toute investigation en cours.

Exécution

(6) L'ordonnance peut être exécutée en tout lieu au Canada.

Modifications

(7) Le juge qui a rendu l'ordonnance ou un autre juge du même tribunal peut modifier les conditions de celle-ci.

Refus
d'obtempérer

(8) La personne visée par l'ordonnance répond aux questions qui lui sont posées par le procureur général ou son représentant, et remet au juge qui préside les choses exigées par l'ordonnance, mais peut refuser de le faire dans la mesure où la réponse aux questions ou la remise de choses révélerait des renseignements protégés par le droit applicable en matière de divulgation ou de privilèges.

Effet non suspensif

(9) Le juge qui préside statue sur toute objection ou question concernant le refus de répondre à une question ou de lui remettre une chose.

Nul n'est dispensé
de se conformer à
l'ordonnance

(10) Nul n'est dispensé de répondre aux questions ou de produire une chose aux termes du paragraphe (8) pour la raison que la réponse ou la chose remise peut tendre à l'incriminer ou à l'exposer à quelque procédure ou pénalité, mais :

a) la réponse donnée ou la chose remise aux termes du paragraphe (8) ne peut être utilisée ou admise contre lui dans le cadre de poursuites criminelles, sauf en ce qui concerne les poursuites prévues aux articles 132 ou 136;

b) aucune preuve provenant de la preuve obtenue de la personne ne peut être utilisée ou admise contre elle dans le cadre de poursuites criminelles, sauf en ce qui concerne les poursuites prévues aux articles 132 ou 136.

Droit à un avocat

(11) Toute personne a le droit d'engager un avocat et de lui donner des instructions en tout état de cause.

Garde des choses
remises

(12) Si le juge qui préside est convaincu qu'une chose remise pendant l'interrogatoire est susceptible d'être utile à l'enquête relative à une infraction de terrorisme, il peut ordonner que cette chose soit confiée à la garde de l'agent de la paix ou à une personne qui agit pour son compte.

Mandat
d'arrestation

83.29 (1) Le juge qui a rendu l'ordonnance au titre du paragraphe 83:28(4) ou un autre juge du même tribunal peut délivrer un mandat autorisant l'arrestation de la personne visée par l'ordonnance à la suite d'une dénonciation écrite faite sous serment, s'il est convaincu :

- a) soit qu'elle se soustrait à la signification de l'ordonnance;
- b) soit qu'elle est sur le point de s'esquiver;
- c) soit qu'elle ne s'est pas présentée ou n'est pas demeurée présente en conformité avec l'ordonnance.

Exécution

(2) Le mandat d'arrestation peut être exécuté en tout lieu au Canada par tout agent de la paix qui a compétence en ce lieu.

Ordonnance

(3) L'agent de la paix qui arrête une personne en exécution du mandat la conduit ou la fait conduire immédiatement devant le juge qui a délivré le mandat ou un autre juge du même tribunal; le juge peut alors, afin de faciliter l'exécution de l'ordonnance, ordonner que cette personne soit mise sous garde ou libérée sur engagement, avec ou sans caution.

Consentement du procureur général

83.3 (1) Le dépôt d'une dénonciation au titre du paragraphe (2) est subordonné au consentement préalable du procureur général.

Activité terroriste

(2) Sous réserve du paragraphe (1), l'agent de la paix peut déposer une dénonciation devant un juge de la cour provinciale si, à la fois :

- a) il a des motifs raisonnables de croire qu'une activité terroriste sera mise à exécution;
- b) il a des motifs raisonnables de soupçonner que l'imposition, à une personne, d'un engagement assorti de conditions ou son arrestation est nécessaire pour éviter la mise à exécution de l'activité terroriste.

Comparution

(3) Le juge qui reçoit la dénonciation peut faire comparaître la personne devant lui.

Arrestation sans mandat

(4) Par dérogation aux paragraphes (2) et (3), l'agent de la paix, s'il a des motifs raisonnables de soupçonner que la mise sous garde de la personne est nécessaire afin de l'empêcher de mettre à exécution une activité terroriste, peut, sans mandat, arrêter la personne et la faire mettre sous garde en vue de la conduire devant un juge de la cour provinciale en conformité avec le paragraphe (6) dans l'un ou l'autre des cas suivants :

- a) l'urgence de la situation rend difficilement réalisable le dépôt d'une dénonciation au titre du paragraphe (2) et les motifs visés aux alinéas (2)a) et b) sont réunis;
- b) une dénonciation a été déposée au titre du paragraphe (2) et une sommation décernée.

Obligation de l'agent de la paix

(5) Si, dans le cas visé à l'alinéa (4)a), l'agent de la paix arrête une personne sans mandat, il dépose une dénonciation au titre du paragraphe (2) au plus tard dans le délai prévu aux alinéas (6)a) ou b), ou met la

personne en liberté.

Règles de la construction

(6) La personne mise sous garde est conduite devant un juge de la cour provinciale selon les règles ci-après, à moins que, à un moment quelconque avant l'expiration du délai prévu aux alinéas a) ou b), l'agent de la paix ou le fonctionnaire responsable, au sens de la partie XV, étant convaincu qu'elle devrait être mise en liberté inconditionnellement, ne la mette ainsi en liberté :

a) si un juge de la cour provinciale est disponible dans un délai de vingt-quatre heures après l'arrestation, elle est conduite devant un juge de ce tribunal sans retard injustifié et, à tout le moins, dans ce délai;

b) si un juge de la cour provinciale n'est pas disponible dans un délai de vingt-quatre heures après l'arrestation, elle est conduite devant un juge de ce tribunal le plus tôt possible.

Traitement de la personne

(7) Dans le cas où la personne est conduite devant le juge au titre du paragraphe (6) :

a) si aucune dénonciation n'a été déposée au titre du paragraphe (2), le juge ordonne qu'elle soit mise en liberté;

b) si une dénonciation a été déposée au titre du paragraphe (2):

(i) le juge ordonne que la personne soit mise en liberté, sauf si l'agent de la paix qui a déposé la dénonciation fait valoir que sa mise sous garde est justifiée pour un des motifs suivants :

(A) sa détention est nécessaire pour assurer sa comparution devant un juge de la cour provinciale conformément au paragraphe (8),

(B) sa détention est nécessaire pour la protection ou la sécurité du public, notamment celle d'un témoin, eu égard aux circonstances, y compris :

(I) la probabilité que, si la personne est mise en liberté, une activité terroriste sera mise à exécution,

(II) toute probabilité marquée que la personne, si elle est mise en liberté, nuira à l'administration de la justice,

(C) il est démontré une autre juste cause et, sans préjudice de ce qui précède, que sa détention est nécessaire pour ne pas miner la confiance du public envers l'administration de la justice, compte tenu de toutes les circonstances, notamment le fait que les motifs de l'agent de la paix au titre du paragraphe (2) paraissent fondés, et la gravité de toute activité terroriste qui peut être mise à exécution,

(ii) le juge peut ajourner la comparution prévue au paragraphe (8) mais,

si la personne n'est pas mise en liberté, l'ajournement ne peut excéder quarante-huit heures.

Comparution
devant le juge

(8) Le juge devant lequel la personne comparaît au titre du paragraphe (3) :

a) peut, s'il est convaincu par la preuve apportée que les soupçons de l'agent de la paix sont fondés sur des motifs raisonnables, ordonner que la personne contracte l'engagement de ne pas troubler l'ordre public et d'observer une bonne conduite pour une période maximale de douze mois, ainsi que de se conformer aux autres conditions raisonnables énoncées dans l'engagement, y compris celle visée au paragraphe (10), que le juge estime souhaitables pour prévenir la mise à exécution d'une activité terroriste;

b) si la personne n'a pas été mise en liberté au titre du sous-alinéa (7)b)(i), ordonne qu'elle soit mise en liberté, sous réserve, le cas échéant, de l'engagement imposé conformément à l'alinéa a).

Refus de contracter
un engagement

(9) Le juge peut infliger à la personne qui omet ou refuse de contracter l'engagement une peine de prison maximale de douze mois.

Conditions : armes
à feu

(10) Le juge qui, en vertu de l'alinéa (8)a), rend une ordonnance doit, s'il estime qu'il est souhaitable pour la sécurité de la personne, ou pour celle d'autrui, de lui interdire d'avoir en sa possession une arme à feu, une arbalète, une arme prohibée, une arme à autorisation restreinte, un dispositif prohibé, des munitions, des munitions prohibées ou des substances explosives, ordonner que la personne contracte l'engagement de n'avoir aucun des objets visés en sa possession pour la période indiquée dans l'engagement.

Remise

(11) Le cas échéant, l'ordonnance prévoit la façon de remettre, de détenir ou d'entreposer les objets visés au paragraphe (10) qui sont en la possession de la personne, ou d'en disposer, et de remettre les autorisations, permis et certificats d'enregistrement dont la personne est titulaire.

Motifs

(12) Le juge, s'il n'assortit pas l'ordonnance d'une condition prévue au paragraphe (10), est tenu de donner ses motifs, qui sont consignés au dossier de l'instance.

Modification des
conditions

(13) Le juge peut, sur demande de l'agent de la paix, du procureur général ou de la personne, modifier les conditions fixées dans l'engagement.

Autres dispositions
applicables

(14) Les paragraphes 810(4) et (5) s'appliquent, avec les adaptations nécessaires, aux procédures engagées en vertu du présent article.

Rapport annuel :
articles 83.28 et
83.29

83.31 (1) Chaque année, le procureur général du Canada établit et fait déposer devant le Parlement, et le procureur général de chaque province publie — ou met à la disposition du public de toute autre façon —, un rapport sur l'application des articles 83.28 et 83.29, qui contient notamment

les renseignements ci-après à l'égard de l'année précédente :

- a) le nombre de consentements à la présentation d'une demande demandés et obtenus au titre des paragraphes 83.28(2) et (3);
- b) le nombre d'ordonnances de recherche de renseignements rendues au titre du paragraphe 83.28(4);
- c) le nombre d'arrestations effectuées avec un mandat délivré au titre de l'article 83.29.

Rapport annuel :
article 83.3

(2) Chaque année, le procureur général du Canada établit et fait déposer devant le Parlement, et le procureur général de chaque province publie — ou met à la disposition du public de toute autre façon — , un rapport sur l'application de l'article 83.3, qui contient notamment les renseignements ci-après à l'égard de l'année précédente :

- a) le nombre de consentements au dépôt d'une dénonciation demandés et obtenus au titre des paragraphes 83.3(1) et (2);
- b) le nombre de sommations ou de mandat d'arrestation délivrés pour l'application du paragraphe 83.3(3);
- c) le nombre de cas où la personne n'a pas été en liberté au titre du paragraphe 83.3(7) en attendant sa comparution;
- d) le nombre de cas où une ordonnance de contracter un engagement a été rendue au titre de l'alinéa 83.3(8)a) et la nature des conditions afférentes qui ont été imposées;
- e) le nombre de refus de contracter un engagement et la durée de la peine d'emprisonnement infligée au titre du paragraphe 83.3(9) dans chacun des cas;
- f) le nombre de cas où les conditions d'un engagement ont été modifiées au titre du paragraphe 83.3(13).

Rapport annuel :
article 83.3

(3) Chaque année, le ministre de la Sécurité publique et de la Protection civile établit et fait déposer devant le Parlement, et le ministre responsable de la sécurité publique dans chaque province publie — ou met à la disposition du public de toute autre façon — , un rapport sur l'application de l'article 83.3, qui contient notamment les renseignements ci-après à l'égard de l'année précédente :

- a) le nombre d'arrestations effectuées sans mandat au titre du paragraphe 83.3(4) et la durée de la détention de la personne dans chacun des cas;
- b) le nombre de cas d'arrestation sans mandat au titre du paragraphe

83.3(4) et de mise en liberté :

- (i) par l'agent de la paix au titre de l'alinéa 83.3(5)b),
- (ii) par un juge au titre de l'alinéa 83.3(7)a).

Réserve

(4) Sont exclus du rapport annuel les renseignements dont la divulgation, selon le cas :

- a) compromettrait une enquête en cours relativement à une infraction à une loi fédérale ou nuirait à une telle enquête;
- b) mettrait en danger la vie ou la sécurité d'une personne;
- c) porterait atteinte à une procédure judiciaire;
- d) serait contraire à l'intérêt public.

Temporisation

83.32 (1) Les articles 83.28, 83.29 et 83.3 cessent de s'appliquer à la fin du quinzième jour de séance postérieur au 31 décembre 2006, sauf si, avant la fin de ce jour, ces articles sont prorogés par résolution — dont le texte est établi au titre du paragraphe (2) — adoptée par les deux chambres du Parlement conformément aux règles prévues au paragraphe (3).

Décret

(2) Le gouverneur en conseil peut, par décret, établir le texte de la résolution prévoyant la prorogation des articles 83.28, 83.29 et 83.3 et précisant la durée de la prorogation, à concurrence d'un maximum de cinq ans à compter de la date à laquelle la deuxième chambre a adopté la résolution.

Règles

(3) La motion visant l'adoption de la résolution peut faire l'objet d'un débat dans les deux chambres du Parlement mais ne peut être amendée. Au terme du débat, le président de la chambre du Parlement met immédiatement aux voix toute question nécessaire pour décider de son agrément.

Prorogations
subséquentes

(4) L'application des articles 83.28, 83.29 et 83.3 peut être prorogée par la suite en conformité avec le présent article, la mention « au 31 décembre 2006 », au paragraphe (1), étant alors remplacée par « à la dernière prorogation adoptée conformément au présent article ».

Définition de « jour
de séance »

(5) Au paragraphe (1), « jour de séance » s'entend de tout jour où les deux chambres du Parlement siègent.

Disposition
transitoire : articles
83.28 et 83.29

83.33 (1) Dans le cas où, conformément à l'article 83.32, les articles 83.28 et 83.29 cessent de s'appliquer, les procédures engagées au titre de ces articles sont menées à terme si l'audition de la demande présentée au titre du paragraphe 83.28(2) a commencé avant la cessation d'effet de ces articles.

Disposition transitoire : article 83.3 (2) Dans le cas où, conformément à l'article 83.32, l'article 83.3 cesse de s'appliquer, la personne mise sous garde au titre de cet article est mise en liberté à la date de cessation d'effet de cet article, sauf que les paragraphes 83.3(7) à (14) continuent de s'appliquer à la personne qui a été conduite devant le juge au titre du paragraphe 83.3(6) avant cette date.

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Application 3(3) This Act is to be construed and applied in a manner that

- (a) furthers the domestic and international interests of Canada;
- (b) promotes accountability and transparency by enhancing public awareness of immigration and refugee programs;
- (c) facilitates cooperation between the Government of Canada, provincial governments, foreign states, international organizations and non-governmental organizations;
- (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 and of the equality of English and French as the official languages of Canada;
- (e) supports the commitment of the Government of Canada to enhance the vitality of the English and French linguistic minority communities in Canada; and
- (f) complies with international human rights instruments to which Canada is signatory.

Rules of Interpretation 33. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

Effect of referral (2) When the certificate is referred, a proceeding under this Act respecting the person named in the certificate, other than an application under subsection 112(1), may not be commenced and, if commenced, must be adjourned, until the judge makes the determination.

Referral of certificate 77. (1) The Minister and the Minister of Public Safety and Emergency Preparedness shall sign a certificate stating that a permanent resident or a foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality and refer it to

the Federal Court, which shall make a determination under section 80.

Effect of
referral

(2) When the certificate is referred, a proceeding under this Act respecting the person named in the certificate, other than an application under subsection 112(1), may not be commenced and, if commenced, must be adjourned, until the judge makes the determination.

Judicial
consideration

78. The following provisions govern the determination:

(a) the judge shall hear the matter;

(b) the judge shall ensure the confidentiality of the information on which the certificate is based and of any other evidence that may be provided to the judge if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person;

(c) the judge shall deal with all matters as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit;

(d) the judge shall examine the information and any other evidence in private within seven days after the referral of the certificate for determination;

(e) on each request of the Minister or the Minister of Public Safety and Emergency Preparedness made at any time during the proceedings, the judge shall hear all or part of the information or evidence in the absence of the permanent resident or the foreign national named in the certificate and their counsel if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person;

(f) the information or evidence described in paragraph (e) shall be returned to the Minister and the Minister of Public Safety and Emergency Preparedness and shall not be considered by the judge in deciding whether the certificate is reasonable if either the matter is withdrawn or if the judge determines that the information or evidence is not relevant or, if it is relevant, that it should be part of the summary;

(g) the information or evidence described in paragraph (e) shall not be included in the summary but may be considered by the judge in deciding whether the certificate is reasonable if the judge determines that the information or evidence is relevant but that its disclosure would be injurious to national security or to the safety of any person;

(h) the judge shall provide the permanent resident or the foreign national with a summary of the information or evidence that enables them to be reasonably informed of the circumstances giving rise to the certificate, but that does not include anything that in the opinion of the judge would be injurious to national security or to the safety of any person if disclosed;

(i) the judge shall provide the permanent resident or the foreign national with an opportunity to be heard regarding their inadmissibility; and

(j) the judge may receive into evidence anything that, in the opinion of the judge, is appropriate, even if it is inadmissible in a court of law, and may base the decision on that evidence.

Proceedings
suspended

79. (1) On the request of the Minister, the permanent resident or the foreign national, a judge shall suspend a proceeding with respect to a certificate in order for the Minister to decide an application for protection made under subsection 112(1).

Proceedings
resumed

(2) If a proceeding is suspended under subsection (1) and the application for protection is decided, the Minister shall give notice of the decision to the permanent resident or the foreign national and to the judge, the judge shall resume the proceeding and the judge shall review the lawfulness of the decision of the Minister, taking into account the grounds referred to in subsection 18.1(4) of the *Federal Courts Act*.

Determination
that certificate
is reasonable

80. (1) The judge shall, on the basis of the information and evidence available, determine whether the certificate is reasonable and whether the decision on the application for protection, if any, is lawfully made.

Determination
that certificate
is not
reasonable

(2) The judge shall quash a certificate if the judge is of the opinion that it is not reasonable. If the judge does not quash the certificate but determines that the decision on the application for protection is not lawfully made, the judge shall quash the decision and suspend the proceeding to allow the Minister to make a decision on the application for protection.

Determination
not reviewable

(3) The determination of the judge is final and may not be appealed or judicially reviewed.

Effect of
determination
— removal
order

81. If a certificate is determined to be reasonable under subsection 80(1),

(a) it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible;

(b) it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and

(c) the person named in it may not apply for protection under subsection 112(1).

Detention of
permanent
resident

82. (1) The Minister and the Minister of Public Safety and Emergency Preparedness may issue a warrant for the arrest and detention of a permanent resident who is named in a certificate described in subsection 77(1) if they have reasonable grounds to believe that the permanent resident is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.

Mandatory
detention

(2) A foreign national who is named in a certificate described in subsection 77(1) shall be detained without the issue of a warrant.

Review of
decision for
detention

83. (1) Not later than 48 hours after the beginning of detention of a permanent resident under section 82, a judge shall commence a review of the reasons for the continued detention. Section 78 applies with respect to the review, with any modifications that the circumstances require.

Further

(2) The permanent resident must, until a determination is made under subsection 80(1), be brought back before a judge at least once in the six-

<u>reviews</u>	month period following each preceding review and at any other times that the judge may authorize.
<u>Order for continuation</u>	(3) A judge shall order the detention to be continued if satisfied that the permanent resident continues to be a danger to national security or to the safety of any person, or is unlikely to appear at a proceeding or for removal.
<u>Release</u>	84. (1) The Minister may, on application by a permanent resident or a foreign national, order their release from detention to permit their departure from Canada.
<u>Judicial release</u>	(2) A judge may, on application by a foreign national who has not been removed from Canada within 120 days after the Federal Court determines a certificate to be reasonable, order the foreign national's release from detention, under terms and conditions that the judge considers appropriate, if satisfied that the foreign national will not be removed from Canada within a reasonable time and that the release will not pose a danger to national security or to the safety of any person.
<u>Inconsistency</u>	85. In the case of an inconsistency between sections 82 to 84 and the provisions of Division 6, sections 82 to 84 prevail to the extent of the inconsistency.

Immigration et la protection des réfugiés, S.C. 2001, c. 27

<u>Interprétation et mise en oeuvre</u>	<p>3.(3) L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet :</p> <ul style="list-style-type: none"> a) de promouvoir les intérêts du Canada sur les plans intérieur et international; b) d'encourager la responsabilisation et la transparence par une meilleure connaissance des programmes d'immigration et de ceux pour les réfugiés; c) de faciliter la coopération entre le gouvernement fédéral, les gouvernements provinciaux, les États étrangers, les organisations internationales et les organismes non gouvernementaux; d) d'assurer que les décisions prises en vertu de la présente loi sont conformes à la <i>Charte canadienne des droits et libertés</i>, notamment en ce qui touche les principes, d'une part, d'égalité et de protection contre la discrimination et, d'autre part, d'égalité du français et de l'anglais à titre de langues officielles du Canada; e) de soutenir l'engagement du gouvernement du Canada à favoriser l'épanouissement des minorités francophones et anglophones du Canada; f) de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire.
<u>Interprétation</u>	33. Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de

croire qu'ils sont survenus, surviennent ou peuvent survenir.

Dépôt du
certificat

77. (1) Le ministre et le ministre de la Sécurité publique et de la Protection civile déposent à la Cour fédérale le certificat attestant qu'un résident permanent ou qu'un étranger est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée pour qu'il en soit disposé au titre de l'article 80.

Effet du dépôt

(2) Il ne peut être procédé à aucune instance visant le résident permanent ou l'étranger au titre de la présente loi tant qu'il n'a pas été statué sur le certificat; n'est pas visée la demande de protection prévue au paragraphe 112(1).

Examen
judiciaire

78. Les règles suivantes s'appliquent à l'affaire :

- a) le juge entend l'affaire;
- b) le juge est tenu de garantir la confidentialité des renseignements justifiant le certificat et des autres éléments de preuve qui pourraient lui être communiqués et dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;
- c) il procède, dans la mesure où les circonstances et les considérations d'équité et de justice naturelle le permettent, sans formalisme et selon la procédure expéditive;
- d) il examine, dans les sept jours suivant le dépôt du certificat et à huis clos, les renseignements et autres éléments de preuve;
- e) à chaque demande d'un ministre, il examine, en l'absence du résident permanent ou de l'étranger et de son conseil, tout ou partie des renseignements ou autres éléments de preuve dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;
- f) ces renseignements ou éléments de preuve doivent être remis aux ministres et ne peuvent servir de fondement à l'affaire soit si le juge décide qu'ils ne sont pas pertinents ou, l'étant, devraient faire partie du résumé, soit en cas de retrait de la demande;
- g) si le juge décide qu'ils sont pertinents, mais que leur divulgation porterait atteinte à la sécurité nationale ou à celle d'autrui, ils ne peuvent faire partie du résumé, mais peuvent servir de fondement à l'affaire;
- h) le juge fournit au résident permanent ou à l'étranger, afin de lui permettre d'être suffisamment informé des circonstances ayant donné lieu au certificat, un résumé de la preuve ne comportant aucun élément dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;
- i) il donne au résident permanent ou à l'étranger la possibilité d'être entendu sur l'interdiction de territoire le visant;
- j) il peut recevoir et admettre en preuve tout élément qu'il estime utile — même inadmissible en justice — et peut fonder sa décision sur celui-ci.

Suspension de
l'affaire

79. (1) Le juge suspend l'affaire, à la demande du résident permanent, de l'étranger ou du ministre, pour permettre à ce dernier de disposer d'une demande de protection visée au paragraphe 112(1).

<u>Reprise de l'affaire</u>	(2) Le ministre notifie sa décision sur la demande de protection au résident permanent ou à l'étranger et au juge, lequel reprend l'affaire et contrôle la légalité de la décision, compte tenu des motifs visés au paragraphe 18.1(4) de la <i>Loi sur les Cours fédérales</i> .
<u>Décision</u>	80. (1) Le juge décide du caractère raisonnable du certificat et, le cas échéant, de la légalité de la décision du ministre, compte tenu des renseignements et autres éléments de preuve dont il dispose.
<u>Annulation du certificat</u>	(2) Il annule le certificat dont il ne peut conclure qu'il est raisonnable; si l'annulation ne vise que la décision du ministre il suspend l'affaire pour permettre au ministre de statuer sur celle-ci.
<u>Caractère définitif de la décision</u>	(3) La décision du juge est définitive et n'est pas susceptible d'appel ou de contrôle judiciaire.
<u>Effet du certificat</u>	81. Le certificat jugé raisonnable fait foi de l'interdiction de territoire et constitue une mesure de renvoi en vigueur et sans appel, sans qu'il soit nécessaire de procéder au contrôle ou à l'enquête; la personne visée ne peut dès lors demander la protection au titre du paragraphe 112(1).
<u>Arrestation et détention facultatives</u>	82. (1) Le ministre et le ministre de la Sécurité publique et de la Protection civile peuvent lancer un mandat pour l'arrestation et la mise en détention du résident permanent visé au certificat dont ils ont des motifs raisonnables de croire qu'il constitue un danger pour la sécurité nationale ou la sécurité d'autrui ou qu'il se soustraira vraisemblablement à la procédure ou au renvoi.
<u>Détention obligatoire</u>	(2) L'étranger nommé au certificat est mis en détention sans nécessité de mandat.
<u>Contrôle des motifs de la détention</u>	83. (1) Dans les quarante-huit heures suivant le début de la détention du résident permanent, le juge entreprend le contrôle des motifs justifiant le maintien en détention, l'article 78 s'appliquant, avec les adaptations nécessaires, au contrôle.
<u>Comparutions supplémentaires</u>	(2) Tant qu'il n'est pas statué sur le certificat, l'intéressé comparaît au moins une fois dans les six mois suivant chaque contrôle, ou sur autorisation du juge.
<u>Maintien en détention</u>	(3) L'intéressé est maintenu en détention sur preuve qu'il constitue toujours un danger pour la sécurité nationale ou la sécurité d'autrui ou qu'il se soustraira vraisemblablement à la procédure ou au renvoi.
<u>Mise en liberté</u>	84. (1) Le ministre peut, sur demande, mettre le résident permanent ou l'étranger en liberté s'il veut quitter le Canada.
<u>Mise en liberté judiciaire</u>	(2) Sur demande de l'étranger dont la mesure de renvoi n'a pas été exécutée dans les cent vingt jours suivant la décision sur le certificat, le juge peut, aux conditions qu'il estime indiquées, le mettre en liberté sur preuve que la mesure ne sera pas exécutée dans un délai raisonnable et que la mise en liberté ne constituera pas un danger pour la sécurité nationale ou la sécurité d'autrui.
<u>Incompatibilité</u>	85. Les articles 82 à 84 l'emportent sur les dispositions incompatibles de la section 6.



CHAPTER W-2

An Act to confer certain powers on the Governor in Council in the event of war, invasion or insurrection

SHORT TITLE

Short title

1. This Act may be cited as the *War Measures Act*. R.S., c. W-2, s. 1.

EVIDENCE OF WAR

Evidence of war, etc.

2. The issue of a proclamation by Her Majesty or under the authority of the Governor in Council shall be conclusive evidence that war, invasion or insurrection, real or apprehended, exists and has existed for any period of time therein stated, and of its continuance, until by the issue of a further proclamation it is declared that the war, invasion or insurrection no longer exists. R.S., c. W-2, s. 2.

POWERS OF THE GOVERNOR IN COUNCIL

Special powers of Governor in Council

3. (1) The Governor in Council may do and authorize such acts and things, and make such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada, and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor in Council extend to all matters coming within the classes of subjects hereinafter enumerated, namely,

- (a) censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;
- (b) arrest, detention, exclusion and deportation;

CHAPITRE W-2

Loi ayant pour objet de conférer certains pouvoirs au gouverneur en conseil dans le cas de guerre, d'invasion ou d'insurrection

TITRE ABRÉGÉ

1. *Loi sur les mesures de guerre*. S.R., ch. W-2, art. 1. Titre abrégé

PREUVE DE GUERRE

2. La prise d'une proclamation par Sa Majesté, ou sous l'autorité du gouverneur en conseil, est une preuve concluante que l'état de guerre, d'invasion ou d'insurrection, réelle ou appréhendée, existe et a existé pendant toute la période de temps qui y est énoncée et que cet état continue jusqu'à ce que, par une proclamation ultérieure, il soit déclaré qu'il a pris fin. S.R., ch. W-2, art. 2. Preuve de guerre, etc.

POUVOIRS DU GOUVERNEUR EN CONSEIL

3. (1) Le gouverneur en conseil a le pouvoir de faire et d'autoriser tels actes et choses et de prendre les décrets et règlements qu'il peut, en raison de l'existence réelle ou appréhendée de l'état de guerre, d'invasion ou d'insurrection, juger nécessaires ou opportuns pour la sécurité et la défense du Canada ainsi que pour la paix et l'ordre au Canada et son bien-être; et il est déclaré, pour plus de certitude, mais sans préjudice de la portée générale de ce qui précède que les pouvoirs du gouverneur en conseil s'étendent à toutes les matières comprises dans les domaines suivants :

- a) la censure, le contrôle et la suppression de publications, écrits, cartes, plans, photographies, communications et moyens de communication;
- b) l'arrestation, la détention, l'exclusion et l'expulsion;

(c) control of the harbours, ports and territorial waters of Canada and the movements of vessels;

(d) transportation by land, air or water and the control of the transport of persons and things;

(e) trading, exportation, importation, production and manufacture; and

(f) appropriation, control, forfeiture and disposition of property and of the use thereof.

c) le contrôle des havres, ports et eaux territoriales du Canada et des mouvements des navires;

d) les transports par terre, par air ou par eau et le contrôle du transport des personnes et des choses;

e) le commerce, l'exportation, l'importation, la production et la fabrication;

f) la prise de possession, le contrôle, la confiscation et la disposition de biens et de leur usage.

Force of law

(2) All orders and regulations made under this section have the force of law and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe, and may be varied, extended or revoked by any subsequent order or regulation, but if any order or regulation is varied, extended or revoked, neither the previous operation thereof nor anything duly done thereunder is affected thereby, nor is any right, privilege, obligation or liability acquired, accrued, accruing or incurred thereunder affected by the variation, extension or revocation. R.S., c. W-2, s. 3.

(2) Tous les décrets et règlements pris sous le régime du présent article ont force de loi et sont exécutoires de la manière et par les tribunaux, fonctionnaires et autorités que le gouverneur en conseil peut prescrire, et peuvent être changés, étendus ou abrogés par tout décret ou règlement subséquent; mais si un décret ou règlement est changé, étendu ou abrogé, ce fait n'affecte en rien son exécution antérieure ni quoi que ce soit qui a été accompli sous son régime, et nul droit ou privilège acquis, nulle obligation échue ou à échoir, ou nul engagement pris n'est atteint par ce changement, cette extension ou cette abrogation. S.R., ch. W-2, art. 3.

Les décrets ont force de loi

Imposing punishment

4. The Governor in Council may prescribe the punishment that may be imposed for contraventions of orders and regulations made under this Act, and may also prescribe whether the punishment shall be imposed on summary conviction or on conviction on indictment, but no such punishment shall exceed a fine of five thousand dollars or a term of imprisonment for five years or both. R.S., c. W-2, s. 4.

4. Le gouverneur en conseil peut prescrire les peines qui peuvent être imposées pour infractions aux décrets et règlements pris en vertu de la présente loi, et peut aussi décréter si ces peines doivent être imposées sur déclaration de culpabilité par procédure sommaire ou sur déclaration de culpabilité par mise en accusation, mais nulle pareille peine ne peut dépasser une amende de cinq mille dollars et un emprisonnement de cinq ans, ou l'une de ces peines. S.R., ch. W-2, art. 4.

Imposition de peines

No release of arrested alien

5. No person who is held for deportation under this Act or under any regulation made thereunder, or is under arrest or detention as an alien enemy or on suspicion that he is an alien enemy, or to prevent his departure from Canada, shall be released on bail or otherwise discharged or tried without the consent of the Minister of Justice. R.S., c. W-2, s. 5.

5. Une personne détenue en vue de l'expulsion sous le régime de la présente loi ou de tout règlement pris sous son autorité, ou sous arrêt ou détention à titre d'étranger ennemi, ou parce que soupçonnée d'être un étranger ennemi, ou pour empêcher son départ du Canada, ne peut être élargie sous caution ni autrement libérée, ni ne peut subir un procès sans le consentement du ministre de la Justice. S.R., ch. W-2, art. 5.

Défense de libérer un étranger arrêté

Coming into force by proclamation

6. (1) Sections 3, 4 and 5 come into force only on the issue of a proclamation of the Governor in Council declaring that war, invasion or insurrection, real or apprehended, exists.

6. (1) Les articles 3, 4 et 5 n'entrent en vigueur que sur la prise d'une proclamation du gouverneur en conseil, déclarant qu'il existe une guerre, invasion ou insurrection, réelle ou appréhendée.

Entrée en vigueur par proclamation

Proclamation to be submitted to Parliament

(2) A proclamation declaring that war, invasion or insurrection, real or apprehended, exists shall be laid before Parliament forthwith after its issue or, if Parliament is then not sitting, within the first fifteen days next thereafter that either House of Parliament is sitting.

(2) Une proclamation déclarant qu'il existe une guerre, invasion ou insurrection, réelle ou appréhendée, doit être présentée au Parlement immédiatement après sa publication ou, s'il ne siège pas, dans les quinze premiers jours de séance ultérieurs de l'une ou l'autre chambre.

Proclamation à soumettre au Parlement

Opportunity for debate

(3) Where a proclamation has been laid before Parliament pursuant to subsection (2), a notice of motion in either House signed by ten members thereof and made in accordance with the rules of that House within ten days of the day the proclamation was laid before Parliament, praying that the proclamation be revoked, shall be debated in that House at the first convenient opportunity within the four sitting days next after the day the motion in that House was made.

(3) Lorsqu'une proclamation a été présentée au Parlement selon le paragraphe (2), un avis de motion dans l'une ou l'autre chambre, signé par dix de ses membres et effectué en conformité avec les règles de cette chambre dans un délai de dix jours à compter de la date de présentation de la proclamation, demandant l'annulation de celle-ci, doit être débattu par la chambre qui en est saisie aussitôt que possible dans les quatre jours de séance qui suivent la date du dépôt de la motion.

Occasion de débat

Revocation of proclamation by resolution

(4) If both Houses of Parliament resolve that the proclamation be revoked, it ceases to have effect, and sections 3, 4 and 5 cease to be in force until those sections are again brought into force by a further proclamation but without prejudice to the previous operation of those sections or anything duly done or suffered thereunder or any offence committed or any penalty or forfeiture or punishment incurred. R.S., c. W-2, s. 6.

(4) Si les deux chambres du Parlement adoptent une résolution annulant la proclamation, elle cesse d'avoir effet, et les articles 3, 4 et 5 cessent d'avoir effet jusqu'à ce qu'ils soient remis en vigueur par une nouvelle proclamation, mais sans préjudice de l'application antérieure de ces articles ou d'une chose régulièrement accomplie ou subie sous leur régime, d'une infraction commise ou de quelque pénalité, confiscation ou peine encourue. S.R., ch. W-2, art. 6.

Annulation de la proclamation par résolution

Canadian Bill of Rights

7. Any act or thing done or authorized or any order or regulation made under the authority of this Act shall be deemed not to be an abrogation, abridgement or infringement of any right or freedom recognized by the *Canadian Bill of Rights*. R.S., c. W-2, s. 6.

7. Un acte ou une chose accompli ou autorisé, ou un décret, arrêté, ordonnance ou règlement pris, sous le régime de la présente loi, est réputé ne pas constituer une suppression, une diminution ou une transgression d'une liberté ou d'un droit quelconque reconnu par la *Déclaration canadienne des droits*. S.R., ch. W-2, art. 6.

Déclaration canadienne des droits

PROCEDURE

Fixing compensation

8. Whenever any property or the use thereof has been appropriated by Her Majesty under this Act, or any order in council, order or regulation made thereunder, and compensation is to be made therefor and has not been agreed on, the claim shall be referred by the Minister of Justice to the Federal Court, or to a superior or county court of the province within which the claim arises, or to a judge of any such court. R.S., c. W-2, s. 7; R.S., c. 10(2nd Supp.), s. 64.

8. Chaque fois que Sa Majesté prend possession de biens ou de leur usage aux termes de la présente loi ou d'un décret, ou en vertu d'un arrêté, d'une ordonnance ou d'un règlement pris sous leur régime, et qu'une indemnité doit être payée en retour et que le montant n'en a pas été arrêté, la réclamation doit être renvoyée par le ministre de la Justice à la Cour fédérale ou à une cour supérieure ou de comté de la province où la réclamation a pris naissance ou à un juge de ce tribunal. S.R., ch. W-2, art. 7; S.R., ch. 10(2^e suppl.), art. 64.

Détermination de la compétence

Forfeitures

9. Any ship or vessel used or moved, or any goods, wares or merchandise dealt with, con-

9. Tout navire ou vaisseau employé ou mis en mouvement, ou tous effets, articles ou mar-

Confiscation

Chap. W-2*War Measures*

trary to any order or regulation made under this Act, may be seized and detained and are liable to forfeiture, at the instance of the Minister of Justice, on proceedings in the Federal Court or in any superior court. R.S., c. W-2, s. 8; R.S., c. 10(2nd Suppl.), s. 64.

chandises dont il est fait quelque emploi contrairement à un décret ou règlement pris sous le régime de la présente loi, peuvent être saisis et détenus et sont passibles de confiscation à l'instance du ministre de la Justice sur procédures devant la Cour fédérale ou devant toute cour supérieure. S.R., ch. W-2, art. 8; S.R., ch. 10(2^e suppl.), art. 64.

Rules

10. Every court mentioned in sections 8 and 9 may make rules governing the procedure on any reference made to, or proceedings taken before, that court or a judge thereof under those sections. R.S., c. W-2, s. 9.

10. Tout tribunal mentionné aux articles 8 et 9 a le pouvoir d'établir des règles régissant la procédure concernant tout renvoi à ce tribunal ou un de ses juges, ou les poursuites intentées devant ce tribunal ou un de ses juges sous le régime de ces articles. S.R., ch. W-2, art. 9.

Règles

Court File No. 30762, 30929, and 31178

Adil Charakaoui and Hassan Almrrei and Mohamed Harkat
Appellants

v. Minister of Citizenship and Immigration et al.
Respondents

FACTUM OF THE INTERVENERS

**IN THE SUPREME COURT
OF CANADA**

BAKERLAW
672 Dupont Street
Suite 400
Toronto, Ontario
M6G 1Z6

David Baker LSUC# 17674M
Faisal Bhabha LSUC# 48232B

Tel.: (416) 533 0040 ext. 226
Fax: (416) 533 0050

Solicitors for the Interveners,
Canadian Council on American-Islamic
Relations (CAIR-CAN) and the Canadian
Muslim Civil Liberties Association (CMCLA)