



C-3 submission Summary

The Canadian Council for Refugees believes that:

- Canada's response to potential security threats should be founded on full commitment to human rights and should not rely on distinctions between citizens and non-citizens.
- The use of secret evidence is a grave threat to the principles of fundamental justice. Given this, any use of secret evidence must be kept to the absolute minimum and maximum safeguards must be provided to any person whose rights are at stake. If the safeguards are insufficient to allow the person to know and meet the case against them, the secret evidence must not be used.
- The security certificate process should be eliminated.
- The potential for the use of secret evidence in other immigration proceedings (through s. 86) is much broader than in security certificates and the rights safeguards are minimal. This aspect of Bill C-3 has not received the attention it deserves.
- Canada must take seriously its obligations to protect non-citizens from removal to persecution or torture. The law needs to be amended in this regard to conform with international human rights instruments to which Canada is signatory.

A. OVERALL CONCERNS

1. Need for a strategy of criminal prosecutions

Through Bill C-3, the Canadian government is pursuing a strategy of removal under immigration legislation, rather than a strategy of criminal prosecutions. This is a mistake.

2. Concern over expanding use of secret evidence

The use of secret evidence runs directly counter to the vital principles that courts must be open and that individuals have the right to know and meet the case against them. These principles are particularly important when fundamental rights, including the right to life, liberty and security of the person, are at stake.

3. IRPA s. 86 proceedings

The concerns outlined above with respect to secret evidence in security certificate cases apply equally and indeed with even more force to s. 86 proceedings, which allow for secret evidence before the Immigration and Refugee Board (IRB).

4. Use of information obtained under torture

Parliament must adopt unambiguous legal prohibitions against the use of evidence that may reasonably be suspected of having been obtained under torture.

5. Need for effective review

Whatever process is adopted by Parliament as an alternative to the current unconstitutional security certificate regime, it is critical that Justice O'Connor's recommendations, in the Arar Commission, for effective review, including for immigration-related activities, be implemented as soon as possible.

B. SPECIFIC CONCERNS WITH C-3

Bill C-3 is fundamentally problematic because it proposes the continuation of the use of immigration procedures, rather than criminal prosecutions, and of secret evidence, denying thereby to those affected the right to know and meet the case against them.

The following are the chief ways in which Bill C-3 broadens the violation of rights beyond the initial decision to deny some non-citizens their right to a fair hearing.

1. Broad scope of use of secret evidence

Bill C-3 allows security certificates to be issued, and secret evidence relied on, in cases where there is no allegation that the person represents any kind of security threat.

S. 86 is even broader, since it allows the Minister to apply for the use of secret evidence during any admissibility hearing, detention review or appeal before the Immigration Appeal Division.

If the government believes that some non-citizens' fundamental rights need to be violated because they represent a threat to security, why is the use of secret evidence not limited to cases where the persons affected are alleged to represent a threat to security?

2. No balancing of interests in determining whether to use secret evidence

3. The test of "injurious to national security" is too broad

4. No explicit prohibition on use of evidence obtained under torture

5. The standard of proof is extremely low

6. No flexibility to deal in different ways with different types of sensitive information

7. No provisions to end the proceedings if justice requires it

8. Minimalist special advocate model

- a) The special advocate does not have access to the whole file
- b) The special advocate is not able to communicate with the person after seeing the secret evidence
- c) The special advocate is not protected by a solicitor/client relationship
- d) There is no guarantee that special advocates will have the qualifications and resources necessary
- e) It appears that the special advocates may be hired by the government
- f) The person affected has no right to choose his/her special advocate
- g) The powers of the special advocates in the hearing are very limited

9. Protection issues

Bill C-3 introduces a number of changes that affect access to protection for refugees and others who, if removed from Canada, face a risk of persecution, torture or cruel and unusual treatment or punishment, or a threat to their life.

The provisions relating to protection lack clarity and are in fact highly confusing. If they are allowed to stand, they will almost inevitably lead to further litigation.

The provisions also fail to provide the guarantees of principle and of procedure that are necessary to ensure that Canada respects the protection rights of the persons' affected.

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This is a summary of the full CCR submission on Bill C-3, available at <http://www.ccrweb.ca/documents/C-3submission.pdf>.