



House of Commons  
CANADA

# Standing Committee on Citizenship and Immigration

---

CIMM • NUMBER 024 • 1st SESSION • 39th PARLIAMENT

---

EVIDENCE

**Thursday, November 9, 2006**

—  
**Chair**

**Mr. Norman Doyle**

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

**<http://www.parl.gc.ca>**

## Standing Committee on Citizenship and Immigration

Thursday, November 9, 2006

• (0900)

[English]

**The Chair (Mr. Norman Doyle (St. John's East, CPC)):** We'll bring our meeting to order.

As you recall, of course, at our last meeting we were considering the minister's supplementary estimates of 2006-2007. As you recall as well, we had already dealt with vote 1a, which had carried. Now we will go to votes 2a, 5a, and 10a.

### CITIZENSHIP AND IMMIGRATION

#### Department

Vote 2a—Citizenship and Immigration – Pursuant to section 25(2) of the Financial Administration Act, to write-off from the Accounts of Canada 3,164 debts due to Her Majesty in Right of Canada amounting to \$986,871 related to immigration loans issued pursuant to section 88 of the Immigration and Refugee Protection Act – To authorize the transfer of \$41,349 from Citizenship and Immigration Vote 1, Appropriation Act No. 1, 2006-2007 for the purposes of this Vote and to provide a further amount of.....\$945,522

(Vote 2a agreed to)

Vote 5a—The grants listed in the Estimates.....\$3,000,000

(Vote 5a agreed to)

Vote 10a—Program expenditures.....\$3,820,070

(Vote 10a agreed to)

Shall I report the estimates to the House?

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** Agreed.

**The Chair:** We can do that today.

**Some hon. members:** Agreed.

**The Chair:** That was fast. Now we can proceed with our study on detention centres and security certificates.

I would call the witnesses who are present here today to the table.

**Mr. Ed Komarnicki (Souris—Moose Mountain, CPC):** Mr. Chair, were you hoping for discussion on the estimates?

**The Chair:** I'm calling the witnesses to the table for the study on detention centres and security certificates.

We welcome this morning witnesses from Amnesty International Canada, the Coalition for Justice for Adil Charkaoui, the Justice for Mohamed Harkat Committee, and the Campaign to Stop Secret Trials in Canada.

I don't believe we have all our witnesses present yet, but I do believe all of them have been contacted and will be here shortly.

Maybe we require a few minutes' recess until witnesses arrive.

**An hon. member:** Mr. Chair, maybe we should check with security to make sure they're not delayed there.

**The Chair:** Yes, that might be a good idea. Maybe somebody could check with security.

In the meantime, it's only a minute or two after nine, so maybe we can suspend for five minutes to allow witnesses the opportunity to get here. Thank you.

• (0900)

\_\_\_\_\_ (Pause) \_\_\_\_\_

• (0905)

**The Chair:** Welcome back again, and welcome to our witnesses who are here this morning for our study on detention centres. As I said a moment ago, we welcome people from Amnesty International, the Coalition for Justice for Adil Charkaoui, the Justice for Mohamed Harkat Committee, and the Campaign to Stop Secret Trials in Canada.

For the witnesses' benefit, you probably know how our committee operates. You're given a five- or ten-minute period, or whatever you require, to make an opening statement, and then our committee members will ask questions, make comments, and what have you. I think we have from nine to eleven this morning, so feel free to begin whenever you want and to introduce the various people you have.

Welcome.

Whoever is the spokesperson for the group, you can begin. We're all ears.

**Mr. Alex Neve (Secretary General, English Speaking Section, Amnesty International Canada):** Thank you very much, Mr. Chair.

Good morning, committee members.

My name is Alex Neve. I'm the Secretary General of Amnesty International Canada's English branch, and it's a pleasure to be with you this morning.

For many years, and this goes back before the events of September 11 and the aftermath of September 11, which drew much needed attention to the issue of security certificates, Amnesty International has gone on record with the government expressing our very serious concerns about this particular aspect of Canada's immigration laws. We've highlighted that we think there are a number of very serious shortcomings in the process that fall far short of Canada's international human rights legal obligations. That's our particular focus: standards dealing with fair trials, arbitrary detention, discrimination, and protection from torture.

There are many human rights concerns, absolutely, as I mentioned. But we very much welcome your particular focus on detention, because in many respects it is one of the very serious aspects to this human rights tragedy, which doesn't get the attention it requires and is in some ways the aspect of the security certificate process that has the most debilitating human cost and human toll.

Over the past several years, more and more voices have joined in to highlight the serious human rights shortcomings and pressing for much needed human rights reforms. That's been led by the current detainees themselves, their families, lawyers, and support groups.

Notably, I want to draw to your attention as well that there has been concern about this at the international level. A growing number of United Nations human rights experts—and the committee is likely aware of this—have looked at this issue over the past several years and have called on Canada to change the system, including the United Nations Human Rights Committee and the United Nations Working Group on Arbitrary Detention, with very important reports from both late last year.

It is, then, a human rights concern that has been taken up at the global level, increasing the importance, I would say, of Canada's taking action to right the wrongs. Canadian failure to comply with UN-level human rights recommendations, on this or on any other issue, fails not only to remedy the particular concern at issue, but more broadly undermines the integrity and effectiveness of the UN human rights system, a system that Canada has helped to build and champion.

There is much at stake here: much at stake for the individuals whose human rights are on the line, and for their families, who of course have great concern and feel the effect as well, but more broadly with respect to the integrity of important human rights standards that Canada stands for nationally and internationally.

We all now have our eyes on the Supreme Court of Canada, with hope and expectation that the court's upcoming judgment in three of these cases will finally compel the government to act.

There are any number of detention-related issues that I'd like to be able to spend time going through with you today. I'm going to focus briefly on four particular aspects: issues regarding the treatment of detainees; some concerns around programming; some broader issues of discrimination; then I'm going to end very importantly with our concerns about the length of detention.

Let me begin with treatment. Since immigration detention is neither a prison nor a correctional sentence, the treatment of detainees should be as favourable as possible, and certainly not any less favourable than that of detainees who have been charged or are convicted prisoners.

I just highlight for the committee's information that this comes from international standards. There are a number of important international legal standards that govern detention. There are broad standards setting out the ban on arbitrary detention in international treaties, such as the International Covenant on Civil and Political Rights. But the UN has gone further and in a number of documents over the last 20 to 30 years has laid out detailed rules in a number of important instruments that give the specifics around treatment and conditions of detention. These include the Standard Minimum Rules

for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

● (0910)

We can certainly make sure that committee members get copies of those documents, if members are interested.

As well, like all detainees, those held in immigration detention are to be treated in a humane manner that respects the inherent dignity of the human person.

All of that comes from international standards.

Due to the non-criminal nature that's related to detention of this sort, the services, facilities, activities, and programs should seek to minimize the differences between life in detention and life at liberty. They must meet the individual needs of each detainee, taking into account their history, their age, their gender, and their cultural, religious, and linguistic identity. Of course, discrimination among detainees based on such grounds as race, colour, sex, language, religion, or political or other opinion is absolutely prohibited.

International legal standards also make it clear that is very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his or her relationships with family and close friends. The guiding principle should be the promotion of contact with the outside world. Any limitations upon such contact should be based exclusively and very strictly on security concerns of an appreciable nature. A minimum of weekly contact with family, friends, and the community should be facilitated through visits, through correspondence, and through telephone access for each detainee. Communication with the outside world should not be denied at any point for more than a few days at a time.

Despite these standards, the reality for security certificate detainees has been much different. For example, Hassan Almrei has no relatives in Canada. For the first two years of his detention at Metro Toronto West Detention Centre, he was not allowed to phone his family in Saudi Arabia. He was only allowed to make collect calls—he was not allowed to receive them—to people in Canada. About two years into his detention, an arrangement was made with a friend whereby he was finally able to do some three-way calling, using a phone card, to speak to family in Saudi Arabia. Since then he has been moved to the Kingston immigration holding centre, and three-way phone calls are not allowed. He is not allowed to phone his parents directly at all. It's our understanding that for the past six months now he has had no contact with his family.

While Hassan Almrei was at Metro West, he received visits almost every week, beginning in July of 2003, although they were limited to a maximum of 40 minutes. In the last six months, since moving to the Kingston immigration holding centre, he has been visited only three times.

Of course, this is an issue for all of the detainees. Visits to Kingston now take a full day and far more money than family and friends can afford, largely because of the distance. For many of the detainees' families, it's about two and a half hours each way.

I want to underscore that access to family visits is not just something nice but a fundamental right that is clearly enshrined in the international standards. It is not enough to say that visits can happen; for the right to be real, it must be effective. Authorities should take steps to address concerns about access to phone calls and the cost and distance of making family visits.

Let me move on to say a couple of words about programming. Security certificate detention is assumed—of course, the reality is different—to be a temporary status meant to facilitate the speedy removal of those designated by the government to pose serious security threats. However, the intention is far removed from reality. Several of the men in detention have been held for years as they wait for their removal. During that time, they have spent time in provincial correctional facilities before being moved to Kingston, more recently.

Serious concerns have been brought to the government's attention on numerous occasions about the lack of access to programming for these detainees. They had no programming at Metro West for over five years, in some instances. Immigration officials promised at various times to provide them with a library of books that they requested, but that didn't materialize.

Unlike Metro West, which at least allowed mail-order books to come in to the men, the Kingston immigration holding centre has been deducting the value of books that are sent in from the \$1,500 yearly value of goods they are allowed to receive in total. There have been reports that they have held back many books and articles that were sent in, claiming that they needed to be checked as security threats.

• (0915)

Again, I'd draw to the committee's attention that there are international standards here that govern, for instance, the importance of having access to education and cultural materials from public sources, reasonable quantities of it, and subject only to reasonable and absolutely necessary conditions that are put in place to ensure security.

I'm worried about discrimination. In April 2006 the UN Human Rights Committee, in reviewing Canada's implementation of the International Covenant on Civil and Political Rights, voiced particular concern over the use of security certificates under the Immigration and Refugee Protection Act, and, in particular, the mandatory detention of foreign nationals who are not permanent residents.

The Human Rights Committee report calls into question the automatic detention of all non-permanent-resident aliens under the security certificate process and the seeming hesitance of the Federal Court to grant bail, despite extraordinary guarantees being given. This raises serious issues of discrimination. It is a concern that Amnesty International has highlighted in our intervention before the Supreme Court.

The Human Rights Committee has previously affirmed that foreigners cannot be held merely on the basis of their status as non-nationals. They can't be treated differently only because of the kind of immigrant or nationality status they bear. This would be a clear violation of Canada's obligations under the International Covenant on Civil and Political Rights. There can be no place for discrimination when decisions about detention, about denying someone's liberty rights, are being made.

Last, I want to turn to the question of the length of detention. One essential principle governing detention is that it can never be indefinite. Indefinite detention without end is not only unjust and arbitrary, in that it doesn't stem from a clear decision imposing an appropriate term of detention, but it is also of concern because of the very serious impact on the mental health of detainees. To not know when or if you will be liberated is agonizing, and as it extends can become so debilitating as to constitute torture or ill treatment. Amnesty International, UN human rights experts, the Red Cross, and other organizations have documented that concern in prisons all over the world. That is why indefinite detention is clearly prohibited under international law.

The men who are held under security certificates have often languished in detention for many, many years. This is where human rights concerns begin to overlap. International law is absolutely clear: no one can be deported to a situation where they face torture. Despite that clarity, Canada continues to insist that it is okay to deport certain individuals to situations of torture if they do pose security risks. That position has been frequently and roundly condemned, including last year by both the UN Human Rights Committee and the UN Committee Against Torture.

Canada's position is a setback in the crucial global struggle to eradicate torture, a concern that has become of increasing concern, I would say, to Canadians in the wake of cases such as that of Maher Arar.

Last month there was an important ruling from the Federal Court in the case of Mahmoud Jaballah, in which the judge very importantly affirmed and recognized the importance of the absolute ban on torture and took a decision that, given that there is a serious risk that he would face torture if returned to Egypt, his deportation cannot go ahead.

That is what sharply brings the human rights concerns into focus: no deportation to torture. So what is to happen? Detention without charge or trial simply still cannot be an option.

It is time now for Canada to realize that something has to be done about this, that immigration remedies are often not the road to pursue in these cases. Torture is often a likelihood in cases of this sort, but deportations don't further justice. If there were a case with serious concerns about active involvement in terrorism that came up in Canada, we would want—

• (0920)

**The Chair:** May I interrupt for a moment? I'm wondering if any of the other witnesses will have opening statements as well, because you've gone into 15 minutes.

**Mr. Alex Neve:** I'm over my ten minutes?

**A voice:** Mine will be very short.

**The Chair:** Which is quite all right. We don't mean to interrupt you, but I'm wondering. If everyone were to take 15 minutes, we'll be into a full hour. The other witnesses may probably only have short statements. Okay.

**Mr. Alex Neve:** I only have about 30 seconds more.

**The Chair:** Okay. Thank you, sir.

**Mr. Alex Neve:** I think the other point to recognize here, though, is that not only does deportation contribute to human rights abuses like torture, but it doesn't further justice. If there truly are serious security concerns with respect to an individual, deportation will almost inevitably mean that they simply walk away scot-free at the other end of a plane ride.

A different approach is needed. If there is evidence, Canada should be pursuing criminal prosecutions. Our laws allow it. Our laws should be used. If there is not and deportation is not possible, then release is what should be pursued.

This issue of length has been highlighted by the UN Commission on Human Rights, and this is where I'll end by bringing this to your attention. Last year probably the most specific recommendation they made to Canada in looking at security certificates was that it is necessary to legally set a maximum length for such detention. That's a glaring omission in Canada's laws at this point, and certainly advice and recommendations from this committee to the government on that point would be much appreciated.

**The Chair:** Thank you, Mr. Neve.

Ms. Foster.

**Ms. Mary Foster (Member, Coalition for Justice for Adil Charkaoui):** Good morning.

I'm a member of the Coalition for Justice for Adil Charkaoui. We're a group that formed a few days after the arrest of Mr. Charkaoui in Montreal, in May 2003. Since that time we've struggled to inform ourselves about the situation and the process he is being subjected to. We have engaged in a wide range of activities to bring to public attention the injustice that has been done to him and his family.

Most of the community members we have spoken to—very broadly, the community members of Montreal and other centres where we've spoken and done some of this public education work—have responded very openly to the concerns we raise. It's a fact that many members of the public are not aware of what's going on, and once they are aware of what's going on with Mr. Charkaoui and the others they are very supportive. We've enjoyed a great amount of community support, and I would characterize our group and the network surrounding it as the community response to the security certificate process.

The core of the question that we believe needs to be addressed is the issue of equality. The security certificate process is being applied only to people without legal status and full citizenship in Canada—permanent residents, refugees, and people who are applying for refugee status. This constitutes a situation of discrimination where people, on the basis of their legal status, are being subject to violations of their fundamental human rights to life, liberty, and security of the person.

We have not yet heard a satisfactory answer to why or how that discrimination can be justified—we do not believe it can be justified—and we think that is the core question that needs to be addressed in any solution to this problem that's put forward. Solutions and reforms that do not ensure that the equal treatment of non-citizens is guaranteed on issues of fundamental human rights simply do not go to the heart of the matter.

I hope you are acquainted with some of the ways in which the security certificate review process fails to meet international standards for a fair trial. I have put together a brief and some background information, which I would like to make available to members of the committee afterwards. It gives a short summary of six of the key ways in which security certificates do not meet the standards of a fair trial. I'll highlight three of them very briefly.

The standard of proof that's used in the security certificate process is “reasonable grounds to believe”. That is far lower than the criminal law standard of “beyond reasonable doubt”. It's certainly very low relative to what is at stake for the individual.

I would also like to highlight the fact that the information is famously withheld from the detainee and their lawyer. The secrecy of the evidence makes it impossible for people to respond to precise allegations in any meaningful way to defend themselves and clear their names.

As you know, if the judge upholds the certificate there is no appeal for that process, so judicial error cannot be remedied through an appeal process.

The failure of the legislation to provide adequate safeguards allows far too much room for error and abuse on the part of the Canadian intelligence services. We have no reason to believe that these agencies have made use of the discretion they enjoy in security certificate cases in a more responsible way than they have in the cases of Maher Arar, Abdullah Almalki, Ahmad El Maati, or Muayye Nureddin. There's no reason to believe that the discretionary power given to them by virtue of this flawed process is used in a more responsible way in the security certificate cases than in the cases that have undergone some form of public review.

● (0925)

Tolerating abuse and error on the part of intelligence agencies under this security certificate process serves the security of no one—on the contrary.

Without a fair trial, the imprisonment and detention we're talking about today is arbitrary. The same can be said of the conditions under which Mr. Charkaoui and Mr. Harkat have been released. If there is no fair trial, the loss of liberty they are subjected to is an arbitrary one. Mr. Charkaoui was released in February 2005 under conditions that Amnesty International has described as among the most restrictive ever imposed in Canada—and Mr. Harkat more so.

I believe that the committee will be given an opportunity to meet with Mr. Charkaoui on November 23 in Montreal. He will be able to describe in more detail the ways in which these conditions have impeded his and his family's right to work, enjoy leisure time, and freely practise their religion.

Detention under a security certificate is arbitrary and indefinite. It's being done under threat of being sent to a place where people risk torture or death. In the case of Mr. Charkaoui, in August 2003 it was assessed that if he were deported he would be at risk of torture, threat to life, and cruel and unusual punishment. This creates a situation that I can personally tell you is torture for him and his family every day.

• (0930)

**The Chair:** Maybe witnesses can be a little more brief. There will be quite a lot of questioning, and some of your points can be made in response to questions.

Could I ask you to wind up in the next 30 seconds?

[*Translation*]

**Ms. Raymonde Folco (Laval—Les Îles, Lib.):** Please excuse me Mr. Chair.

[*English*]

We have two cameras here. Could we find out who these people are and who they work for?

**The Chair:** Maybe the clerk can inform us.

**The Procedural Clerk (Mr. Chad Mariage):** They are from CTV and Carleton University.

On the notice that was sent around, it was amended that it was going to be videotaped.

**The Chair:** Mr. Legeais.

[*Translation*]

**Mr. Christian Legeais (Campaign Manager, Justice for Mohamed Harkat Committee):** Good morning, Mr. Chair, members of the Committee on Citizenship and Immigration.

Our committee agrees with your committee's decision to examine the security certificate and conditions of detention. The objective of the Justice for Mohamed Harkat Committee is to obtain justice for Mohamed Harkat, a Convention refugee imprisoned under a security certificate for more than 41 months at the Ottawa-Carleton Detention Centre, known for having the worst conditions in Ontario, and at Millhaven. He has been under house arrest in Ottawa since June 2006.

Since December 2002, the Justice for Mohamed Harkat Committee has been calling on the Canadian government to abolish security certificates, which are an anti-democratic instrument contrary to fundamental human rights that do nothing to guarantee the security of Canadians for the simple reason that they do not protect rights. And without the protection of rights there can be no security.

I will not expand any further on the security certificate process, which has been explained at length by my colleagues, but I do wish to underscore, in the name of national security, that security certificates violate every principle of justice. They are contrary to the limited rights contained in the Canadian Charter of Rights and Freedoms and the United Nation's Universal Declaration of Human Rights, the Convention Relating to the Status of Refugees, the International Covenant on Civil and Political Rights and the Torture Convention.

As for the conditions of detention, we believe that those faced by people held under security certificates are linked to what is at the heart of security certificates: impunity, arbitrariness and the violation of rights. Everything that contributes to the horror of security certificates can also be found in the conditions of detention. Mohamed Harkat was arrested under a security certificate on December 10, 2002, which ironically is Human Rights Day. Because he is a Convention refugee, he was immediately detained, without the possibility of release until 120 days after the Federal Court ruled on the reasonableness of the certificate. This release, moreover, was left to the discretion of the court.

From December 2002 to April 2006, Mohamed Harkat was held in the Ottawa-Carleton Detention Centre under conditions in which cruelty and vengeance prevailed. Nothing can justify this type of treatment, not even the hysteria caused by the war on terrorism. His first year was spent in isolation, the first four months of which were in complete isolation without even a book, newspaper or radio. His hands were cuffed and his legs chained when he was allowed out of his cell for 20 minutes twice a month. He would be taken to the detention centre's exercise yard where he would remain chained. For the first few weeks, he was also chained when taken to his weekly visits, which he received twice a week from his wife, Sophie Harkat, and his family.

From April to June 2006, Mohamed Harkat was held at the Kingston Immigration Holding Centre. You already know about the conditions of detention at this centre. You heard them being described. In late June 2006, Mohamed Harkat was placed under house arrest in Ottawa at the residence of Sophie Harkat and her mother. This is someone who has never been found guilty or even accused of any crime and yet he is subject to 23 conditions, the strictest in Canada. Now, along with Mohamed Harkat, his whole family, particularly Sophie Harkat and her mother, are under house arrest.

The conditions that Mohamed Harkat must currently abide by include: always wearing an electronic ankle bracelet; never being alone in the residence or outside of it, in other words, he must always be accompanied by Sophie Harkat or Ms. Brunette; complying with a curfew from 8:00 a.m. to 9:00 p.m., which includes going out into the yard of the home, where he must be accompanied by his wife or her mother; not leaving the residence more than three times a week and for no longer than four hours at a time, in other words 12 hours a week; having his outings approved by the Border Services Agency in advance; in his request for permission to leave the residence, specifying the reason for the outing and the location, including which stores he will visit and who he plans to meet.

This process is repeated for every outing. He can only receive visitors that have been approved by the Border Services Agency. His friends can visit him. This permission extends to Sophie Harkat's niece, who is seven years old. It took a special request and most likely intervention by the court so Sophie's niece could spend the night in the house.

All verbal and oral communications are monitored and intercepted. No wireless devices, computers or cell phones are allowed in the residence. Other conditions regarding limitations on his movements also restrict him. The conditions surrounding his authorization to leave the residence are among the reasons that Mohamed Harkat did not appear before this committee today. For him to be able to testify, each of you would have had to receive approval from the Border Services Agency to speak to him.

House arrest is a practice will never replace justice. In March 2005, the Canadian Minister of Justice publicly announced the possibility of adopting a new system of certificates that would allow the release of detainees by replacing imprisonment with an assortment of humiliating measures including searches of the home, prohibiting or limiting access to means of communication, requiring an electronic ankle bracelet to be worn and restricting movements.

The danger is that such a system will be codified and instituted. The new security certificate system would allow the government to extricate itself from the legal fiasco it created by implementing the following measures: first, indefinite detention, without the support of any accusations or based on unfounded allegations of terrorist ties of refugees or permanent residents and, second, denying these people a fair trial.

A new certificate system cannot replace a fair and equitable trial. The new proposed system would continue being implemented without a trial, whether for refugees and immigrants who are not Canadian citizens, or for any citizen accused under the Anti-Terrorism Act. By adopting a new certificate system, the government would continue denying the principles of human rights.

In Mohamed Harkat's case, house arrest extends his detention to the members of his family. Neither he nor Sophie Harkat is able to work. Added to this is uncertainty about the future and the threat of being deported to face torture, death or disappearance. These are the anxieties faced by all those held under security certificates, whether they are detained at Millhaven or under house arrest.

I for one am particularly opposed to the bracelet being standardized for those held under a security certificate or for anyone else. I will never forget the moment during a 2005 press conference at the Parliament Buildings, when Ms. Charkaoui expressed the humiliation she felt when her son came home. She said that the bracelet he was wearing strongly resembled those worn by the slaves in her country that indicate the name of their owner. We feel this same humiliation in the case of Mohamed Harkat, as we do for anyone forced to wear a bracelet.

Finally, house arrest and Kingston are heralded as progress, but this is certainly not the case. It is not about meeting a challenge as stated by the Border Services Agency. These people are being deprived of their rights and now they are fighting for their rights. We believe that this fight includes the rights of all.

Thank you.

• (0935)

• (0940)

[English]

**The Chair:** Thank you.

We will now go to Mona El-Fouli, of the Campaign to Stop Secret Trials in Canada.

**Ms. Mona El-Fouli (Wife of Mohamed Mahjoub, Campaign to Stop Secret Trials in Canada):** Hello, everybody. I'm happy to be here among you today.

I am not an activist. I'm not a member of an organization. I'm just a caring mother and a wife. I am the wife of Mohamed Mahjoub, whom I met in 1997. We got married and now we have two lovely kids, Ibraim and Yusuf. We lived together for four years before Mohamed was picked up off the street on his way to work, not knowing the reason why he was being taken to West Detention. Since then, we've been struggling and trying to find out what the reason was for my husband to be taken.

For almost seven years now, he has been deprived of being with his lovely kids, two little ones who are growing up without a dad. Our sons are wondering what their dad did to deserve to be in West Detention. They hear every day new stories about oppression and mistreatment of their dad in West Detention, and lately in the Kingston Immigration Holding Centre. They're wondering what this is all about and how they can help him. They come up with so many different ideas of how to help their dad. Up to now, their questions have not been answered about why their dad isn't there and why he is being treated that way.

In West Detention, my husband developed chronic hepatitis-C. He had injured his knee and needed an operation urgently. He lost his sight and reading ability. He developed high blood pressure and heart problems. All his medical treatment was denied just because he's under a security certificate. My husband is going through hard medical problems that have not been met until now.

For over five years, we were asking for an operation for his knee, but the answer was they could not help him because he is under a security certificate. Until now, he has not been treated for his hepatitis-C just because he's under a security certificate. It took him eighty days on a hunger strike—and it wasn't only one time, it was a series of hunger strikes—just to try to get it heard that he needs medical treatment. He ended up getting his eyeglasses, and he ended up seeing a specialist for his hepatitis-C, but he had to go through a lot of struggle and trouble that put his life in more risk physically.

And he is not the only one who struggles. We struggle too.

When he moved to Kingston Immigration Holding Centre, he was able to see a specialist. He was able to be assigned medical treatment, but always there was something that acted as a barrier to keep him from getting his treatment.



There is a guard in Kingston Immigration Holding Centre who has accused Mohamed of threatening him. I have the report if anyone would like to see it. It is completely untrue, but at the same time it is a barrier. Mohamed fears for his life because of this, and he fears for his case in court because this is a serious allegation. He doesn't feel like leaving the unit that he lives in to go to the other building for any reason without a supervisor, just to make sure he is in a safe position.

● (0945)

The answer was a refusal. He was refused to get the supervisor to move him from the place he's in to the other building to get treatment. Before this allegation, doctors and nurses used to go where he lives to see him, but after this they refused to send a doctor or a nurse to him or to provide him with a supervisor to be able to go to the other building to receive his treatment. He feels this is a complete violation of his rights as a detainee.

In West Detention he went through a whole lot of trouble, a whole lot of abuse, physically, emotionally, mentally from all the guards. And not only him; I had to go through some of it too, just to access my rights to visit him. One time, my kids were banished from visiting their dad in West Detention, just because they went rallying to ask for their dad to be released. The guard said we were not able to visit. When I asked why he said it was because we rallied around here. I said the kids came all the way, that I'd taken them out of school to visit their dad and they were anxious to see him. I asked if they were rallying too and the guard said they couldn't go in, so they were banished from seeing their dad. The kids were very disappointed.

We believed that transferring them from West Detention to Kingston Immigration Holding Centre was to help better their conditions and situations. We used to visit them weekly, forty minutes a week, every week, unless we had trouble with guards allowing us in, but we used to see them frequently. We used to see my husband frequently. But moving to Kingston Immigration Holding Centre was a complete separation between us and him. It wasn't getting us closer.

We understood when he moved there that he would have the right to education, which we found was completely wrong, because he is denied education. We understood we were supposed to have access to a touch visit like the rest of the detainees, who are criminals. My husband is not a criminal. They have the right to touch visits three days a month or every two weeks. My husband is not allowed to do that.

We happened to be in a very small area. I am sure some of you took a look at the area where four of the detainees' families are supposed to be in if they happen to come together. It is a very, very small area. It is smaller than this area. The chairs are connected to the tables and are very close to the tables. The father cannot even put his child on his lap, which he would love to do. He can't.

If we go with Mr. Jaballah's family, which is a big family, everybody is hitting one another. It's too crowded, too noisy. No one is allowed to have some peace with their own family.

I don't drive on the highway, and there is no transportation. I struggle just to visit my husband. I wait for a ride from somebody

who is willing to give me a ride, and when I arrive there, sometimes they let me wait outside for half an hour or more than a half an hour, just because they feel they're not ready to pick me up.

● (0950)

When we go in, we're not allowed to have a cup of water or a bottle of water. They don't provide us with water. We go to the washroom to drink. One time I didn't feel like it, and I asked one of the guards—the one who made this allegation—if I could please have a glass of water because I felt dizzy. He told me I had the washroom. I said I was sorry but I don't drink from the washroom. He told me I had the machine. I said you don't put water in the machine. He said you can drink pop. I said I can't drink pop; I'm sorry, but I can't drink pop. He said if I felt I was dizzy.... He became very upset. His face was red. He started to get up. He was saying he was going to cut my visit short. He was punishing me for asking for a cup of water. He didn't even give me a chance to answer. I told the other guard I couldn't leave, as my ride was not there and the area was not safe. I can't be punished for asking for a cup of water.

Since this allegation, my husband has not come out from where he is living. It has been over two months now, and he's never been out for medication. Even though he makes requests to see the doctor, he needs a supervisor and he can't. Since the end of August we have not visited him, because they don't provide him with a supervisor. I wonder what is going to happen to him.

I believe that anyone who has done anything is entitled to a fair and open trial. Saddam Hussein had an open trial; he got to know the evidence against him. What did these people do to deserve this? They need to be with their families.

● (0955)

**The Chair:** Thank you very much for telling your story. It must be very emotional for you to do that. We thank you for coming here today.

We'll go to questioners. I'll begin with Madam Folco.

**Ms. Raymonde Folco:** Thank you very much, Chair.

I'd like to thank my colleague Andrew for allowing me to go first. I have to go after this.

First of all, I'd like to say, Madame El-Fouli, that your testimony was heard. We realize it is very difficult for you. What happens to one individual happens to the friends and family around him, particularly the wife and children, the mother, the immediate family. We have a great deal of sympathy for what you're going through.

That is the personal message I would like to send you.

[Translation]

If you don't mind, I would like to ask a question that doesn't involve a specific case.

I am opposed to secret trials and security certificates. However, I'm wondering what we can do when we believe an individual has broken a Canadian law related to security. How do we ensure that there truly is a threat or the possibility of a threat to security? This is the role of the security forces, but it is also our role as Members of Parliament. How can we protect the rights and freedoms of people like Mr. El-Fouli, whose wife is here testifying before us, and those of others who are currently being detained? It doesn't matter whether they're Canadian citizens or not, they are human beings. We already provide protection for some refugees.

I am asking each one of you this question. In my past work with NGOs, I noticed that it was these organizations that asked the questions, but that often the people responsible for these questions didn't provide all the answers, but only part of the answers. That is why I am asking you this question. I don't want you to feel attacked or that, in the end, it's up to you to solve the problem. Rather, I believe that because you have faced these questions day and night, you may have part of the solution to offer to help us find a balance that satisfies one group while respecting the rights of the other.

I direct this question to anyone who can answer it.

[English]

**The Chair:** Anyone may answer if they wish.

**Mr. Alex Neve:** Thank you very much for the question. I'll start and others may have something they want to add.

I think it's absolutely critical to begin by underlining the principle that security and human rights are inextricably linked; that it isn't one or the other; that when it comes to our national security, we best ensure, enhance, and protect security by ensuring that we are at all times fully complying with human rights obligations; that it's not a separate goal and a separate objective. I think that needs to be our starting point.

Be it here in Canada, south of the border, or anywhere in the world where laws, policies, and practices have been or are being adopted in the name of security, in the name of countering terrorism, and that give a nod to torture or turn a blind eye to arbitrary detention or facilitate discrimination, those laws and policies are of course not only causing injustice, but they're also increasing insecurity.

When it comes to a particular case, obviously if there are concerns, if there's evidence, if there are allegations, no one here is suggesting that the government shouldn't take action. The action should be through the lawful processes that we expect of governments when there is a concern that someone's involved in criminality or terrorism, and that is almost always going to be through the criminal law process—charges, a fair trial, leading to conviction. That's the best way to ensure that human rights are protected. It's also the best way to ensure security is protected.

Deportation often is just setting a person free. Be it in Canada or elsewhere around the world, we've documented for years a far too common practice that suspected terrorists or individuals suspected of committing serious human rights abuses of another description are simply being deported, and then walking away scot-free at the other end of the plane. There is no justice and the security risk continues.

● (1000)

**Ms. Raymonde Folco:** I will interrupt you, because I don't have a great deal of time. I would like to narrow this down.

Yes, I agree with everything you say. At the same time, there are documents in the possession of the RCMP or others that are not rendered public for security reasons, so they tell us. Once again, how do we manage through lawful processes, as you suggested, to get through these documents, through this so-called proof that the individual is guilty? We're all looking at the lawful process.

**Mr. Alex Neve:** Well, it is through a lawful process. If the RCMP has evidence, it may be evidence that they're not prepared to disclose to the public at large, but there are ways in which trials can be conducted that nonetheless ensure fairness for the individual concerned. It may mean that the public is not always going to have access to those proceedings, but that the individual and their legal team need access of a sufficient nature that they're able to mount an effective defence. It can, and it does, and it has happened in numerous trials around the world. Fairness and security trials can go hand in hand.

I think here in Canada there's an overstated exaggeration that we see on the part of the RCMP and CSIS—this is absolutely one of the prevailing things that came through the Maher Arar case—of secrecy, secrecy, secrecy for secrecy's sake. The cost of secrecy is justice.

**Ms. Raymonde Folco:** Thank you.

Is there any more time?

**The Chair:** Well, we're into seven minutes and ten seconds. Did you have a brief—? I realize you have to leave.

**Ms. Raymonde Folco:** No, I'd just like to hear from other witnesses, because I have to leave.

I don't want to take the time.

**The Chair:** No, we could have a brief reply, in view of the fact that you do have to leave to go to the House.

[Translation]

**Mr. Robert Vincent (Shefford, BQ):** That doesn't prevent the question being asked, even if you want to leave. We're also going to the House.

**Ms. Raymonde Folco:** No, certainly, you are asking the same question.

[English]

**The Chair:** Okay.

**Ms. Mona El-Fouli:** Actually, I'd like to add to the previous speaker, Alex. With respect to the information that you receive from countries that are really convicting people by links of communications with others, is it lawful information? We have to take that into consideration and we have to search for the right information and for the truth.

**The Chair:** Thank you.

We will now go to Mr. Vincent.

[Translation]

**Mr. Robert Vincent:** Thank you Mr. Chair.

I have several questions to ask you. First, I imagine this is not the first time you've come to Ottawa to condemn these situations.

Second, why has no government reacted until now?

**Mr. Christian Legeais:** No, this is not the first time we have come to Ottawa.

Since 2002, I believe the families have met in Ottawa at least five times for lobbying campaigns. I myself am a resident of the Gatineau area. Mohamed Harkat was a resident of Vanier in Ottawa. Most of us have appeared before the Sub-committee on National Security that was examining Bill C-36, the Anti-Terrorism Act, and decided to look into the issue of security certificates as well.

• (1005)

**Mr. Robert Vincent:** What has been done until now? What progress and advancements have you made to this point?

**Mr. Christian Legeais:** We have addressed at least two committees.

**Mr. Robert Vincent:** Yes, I understand that you've addressed the committees, but were there any results? It's all fine and good to address a committee as you are doing here today, but there has to be follow-up or some kind of action afterwards. Has anything been accomplished or is everyone still asleep at the switch?

**Mr. Christian Legeais:** Are you referring to action on the part of the Canadian government?

**Mr. Robert Vincent:** Yes.

**Mr. Christian Legeais:** Aside from the construction of the Kingston Immigration Holding Centre at the Millhaven Penitentiary, which was a way of giving in to public pressure, nothing concrete has been done to release these five people, who are victims of allegations and have been targeted by security certificates. This was one of the major themes of the last two election campaigns, during which the issue of security certificates was constantly raised. It cost Minister McLellan, among others, her position as MP.

What's really astounding is that the party in power, the opposition and the third parties could resolve this issue very easily if they met to discuss it.

**Mr. Robert Vincent:** Yes, ok.

**Mr. Christian Legeais:** Security certificates are a democratic, non-partisan issue that involves defending human rights and the rights of all. It is extremely surprising that the political parties in the House have not yet come to the conclusion that security certificates must be revoked and that none of the provisions prescribed by security certificates should be included in other legislation such as Bill C-36.

This discrimination is applied to Canadian citizens: naturalized citizens have fewer rights than Canadian citizens; refugees have fewer rights than naturalized citizens; and at the bottom of the ladder are those without status, who have absolutely nothing. This hierarchy of rights in Canada must be abolished.

**Mr. Robert Vincent:** How do you think we should proceed? Everyone here seems incensed at seeing how these people are imprisoned, but, on the one hand, when I look around, no one there seems to have done much in the past four years. On the other hand, I don't know if there is more they would like to be doing.

I imagine if someone is arrested in the street that, first of all, it is important to know why and the person involved should also know why. It's one thing if the authorities want to maintain confidentiality and not divulge some information, but at least the person's lawyer should be informed of the information in order to prepare a defence.

According to what I understand and what you've told me today, we arrest someone on the street, we think that maybe we have reason for doing so, but we don't tell anyone. This is kept secret and the files are hidden. We put the person in prison and we leave him there. Then, one day, we let him out.

Is that how it works?

**Mr. Christian Legeais:** Yes, that's a good description of how it works.

**Mr. Robert Vincent:** So what can we do? How can we help you? How can we help you direct attention and foster awareness among the people that can take concrete action on this issue?

[English]

**Ms. Mary Foster:** I think many individuals have already begun to take some steps. I think it's a matter of some of the parties following the lead of the NDP and taking clear positions as parties, and also of individuals speaking out and taking a clear position.

Three men are still in prison. Mr. Mahjoub will be asking for release on bail soon; there is no reason for members of Parliament, such as yourself and others, not to support him in those steps to give the court confidence that there's a public behind him supporting his liberation. There are many steps individuals and parties could be taking, but the first is to take a clear public position on this issue.

**The Chair:** Okay, we will now go to Mr. Siksay.

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** Thank you, Chair, and thank you to all the witnesses for being with us this morning.

I just want to put on the record that I have a motion on the order paper of the House of Commons calling for a repeal of the security certificate sections of IRPA, because I believe they're unnecessary. I do agree that the Criminal Code can deal with these, and if there are problems with the Criminal Code, then we should address those problems with the Criminal Code. That would be the appropriate way of proceeding.

I did want to ask Ms. El-Fouli a question. You talked about your sons, Ibraim and Yusuf. How do you explain it to them? They've had to deal with this situation, I guess for most of their lives, where their father's been in detention. When they ask why he's there, how do you respond to them?

• (1010)

**Ms. Mona El-Fouli:** That's very good. I just want to mention something before I answer your question.

When Mohammad was taken, Yusuf was only eight months old, and Ibraim was less than three. When he went to visit him he started to call him Uncle, until I mentioned that he's Daddy. He said, "Why he's not here?" Then I started to answer questions. Of course, Ibraim had to struggle and he had separation anxiety because of that. But I started to say to them, "You believe that you're a human being?" They said, "Yes, I am a human being. I'm entitled to make a mistake, and you're entitled to make a mistake." I said, "Well, the government are human beings. Do you agree with that?" They said yes. I said, "Well, they made a mistake, and that's why we go around to demonstrations and rallies—to tell them they have made a mistake and to please correct their mistake". And soon enough you will be out.

They felt really eager to go out and hand out flyers, to try to meet with the Prime Minister, who they'd never met, and to try to tell him, "Well, you made a mistake. Try to fix it, please. We need our Daddy out."

That's my explanation to them.

**Mr. Bill Siksay:** The graciousness of that response, given what your family's going through, just amazes me, Ms. El-Fouli.

**Ms. Mona El-Fouli:** Thank you.

**Mr. Bill Siksay:** I appreciate your explaining that to us.

Mr. Neve, you talked about the length of detention and about establishing time limits that would counter indefinite detention. Is there a specific time limit? Do we know anything about the mental health effects and when they kick in?

I can't imagine that any detention that's indefinite, when you know it's indefinite, is good for anyone's mental health for one second, let alone six or seven years. Is there any wisdom you can offer on that?

**Mr. Alex Neve:** There's no clear, absolute international standard that's been established. There is absolute consensus at the international level that standards are necessary and that detention can't be indefinite.

Certainly the impact that indefinite detention has on any particular detainee does differ depending on their personal circumstances, their mental health, the conditions of detention, how much access they are or are not getting to their family, and a whole host of other circumstances.

I think this would be a particular issue.... I wish I had a number to put on the table for you with authority. I'd hesitate to do so, because I think it's something that really merits and needs authoritative expert study and recommendations to you from psychologists in particular, from people involved in the penal system who would really be able to give some very clear recommendations to you as to where that limit should be set.

From a human rights perspective, what I can tell you is that it has to be set.

**Mr. Bill Siksay:** I wonder how any member of the panel would respond.

Last week, when I asked the Minister of Public Safety a question around the specific detention conditions at the Kingston Immigration Holding Centre he responded in a way that's been typical. I think the

previous government responded that way too; it seems always to be part of an answer around the security certificate detainees. He said they're free to leave whenever they want.

I'm just wondering what your response would be to the assertion from this minister, and from previous ministers as well, that they are free to go.

**Mr. Alex Neve:** That shows complete contempt for Canada's international human rights obligations. All of the men who are held under security certificates in Canada right now, whether they're in detention or are released on restrictions, face serious, well-documented risks of severe torture in Algeria, in Morocco, in Egypt, in Syria.

To say that there's a freedom to choose to head off to a torture chamber is an irresponsible statement from a government minister, and it flies in the face of some of the most serious human rights commitments that this nation has made.

•(1015)

**Ms. Mona El-Fouli:** My understanding is that it is very, very difficult for anyone to leave their homeland, and people do not so do for no reason. Those men left because of complete oppression. They came to live their lives in peace. For example, my husband came and married me, we had our kids and we were trying to live our life in a peaceful way, until that happened.

To be free to leave, that's a wonderful word. But what are the consequences of that? And where would they go, if we were to let them be free to go anywhere else? We care about Canada, but we should care about the rest of the world. If they are dangerous, they are dangerous. But how are they dangerous? What have they done to be dangerous? That's what we'd like to know.

**The Chair:** Thank you, Mr. Siksay.

Mr. Komarnicki, then Mr. Telegdi.

**Mr. Ed Komarnicki:** Thank you very much for attending.

We certainly had the opportunity to visit the Kingston centre. It's fair to say that one of the issues you raised regarding the family and the children is a significant one. You mentioned that there weren't touch visits or conjugal visits, or an opportunity to visit with the children. That's something the committee certainly looks upon seriously. We'll be making some recommendations in that regard. I, for one, believe that family contact ought to be cultivated wherever possible, given the circumstances.

Having said that, the Supreme Court of Canada has obviously been hearing both sides of the argument on this issue more recently. National security and personal rights are pretty well presented. Would you agree with me that before taking any precipitous action at this point, one should await the decision, which should be down, I would expect, this year or perhaps early next year, to see how the court defines both those issues?

Perhaps Mr. Neve could reply to that, a yes or no.

**Mr. Alex Neve:** It doesn't surprise me to hear that there'd be a temptation to wait for the court. Obviously we have great hope and expectation that there's going to be an important and powerful ruling from the court. Amnesty International was one of the organizations that had intervenor status in those hearings.

That being said, the fact that there is a Supreme Court ruling expected doesn't mean that the committee can't, nonetheless, start to identify what the issues of concern are for the committee and be prepared, therefore, when the court ruling comes down, with your analysis, your very clear set of recommendations, which one hopes will have some consistency and conformity with the Supreme Court's rulings—

**Mr. Ed Komarnicki:** I want you to answer my questions fairly quickly, because I have limited time.

I agree with you that the committee wants to identify the issues, look at the various alternatives and options that might be available, but in real terms, a fairly high-level court will be deciding on this issue fairly quickly, and it would be good to hear what they have to say.

The other aspect I'd like to draw to your attention is that in a previous court ruling, a judge had been dealing or struggling with these security certificates and actually found them to be valid, pending what the court will now say. What he said there was—and he was referring to some of the arguments made by the solicitors or lawyers for the detainees—that:

...national security cannot justify any derogation from the rules governing adversarial proceedings, we would be reading into the Constitution of Canada an abandonment by the community as a whole of its right to survival in the name of blind absolutism of the individual rights enshrined in that Constitution.

I guess what he was saying was that we have to sort of accept the fact that the security of the country, the security of the community, has to be a paramount right. Would you agree with that statement or that analysis? Yes or no.

**Mr. Alex Neve:** Are you asking me?

**Mr. Ed Komarnicki:** Briefly, yes.

**Mr. Alex Neve:** No, I wouldn't. I think they're inextricably bound. The security of the individual and the security of the nation go hand in hand.

No one is suggesting that governments shouldn't be taking steps to address security concerns and shouldn't be doing so through punishment, through a penal process, or through criminal proceedings. But it has to be done in complete conformity with fundamental human rights standards.

• (1020)

**Mr. Ed Komarnicki:** But there is the fact that if there are security interests that are legitimate, they must be addressed by this nation and this country. Would you agree with me on that?

**Mr. Alex Neve:** They must be addressed, but in conformity with human rights obligations.

**Mr. Ed Komarnicki:** He goes on to say that Parliament has weighed the interests at stake, those of the litigant and those of the community, and has made a choice that recognizes the right to collective security while prescribing a procedure in which a judge is endowed with the necessary independence and impartiality to decide

whether disclosures of information can be made, the type of disclosure, the evidence, and so on.

Would you not agree with me that there has to be some balancing of rights in this whole issue? Or would you say there doesn't need to be a balancing provision?

**Mr. Alex Neve:** No, it's not about balancing rights here. It's about ensuring that rights are protected in the context of ensuring security. It's not about choosing one or the other. It's about doing both at the same time.

**Mr. Ed Komarnicki:** I think the court, so far, has been saying that you need to protect national security interests with the least limitation on personal rights, but there would be, in certain circumstances, some limitations.

If you were to accept that there were some limitations, do you have a suggestion as to how that might be done better than the process we now have for security certificates, in terms of perhaps a friend of the court or an advocate to look at the evidence? Or are you saying let's just do away with the security certificate process as we now have it and deal with it in a fashion that is totally outside of that?

**Mr. Alex Neve:** There are different views among organizations. Amnesty International hasn't said necessarily to abolish the security certificate process. We have said it needs a wholesale reform to ensure that it meets international standards. We don't think a special advocate, modelled at least along the lines of the approach that has been taken in the U.K., addresses the concerns, because special advocates do not have the kind of relationship with the individual accused that's necessary to ensure effective defence. There are occasionally other models that have been used that maintain that relationship, that even once a special advocate has had access to secret evidence they do still continue to have the relationship with the individual concerned, which has to be central.

**Mr. Ed Komarnicki:** Perhaps I could just stop you there. You say you don't advocate the absolute abandonment of the security certificates, but is it correct, and am I reading this right, that the Coalition for Justice for Adil Charkaoui is actually asking that the security certificate process be abolished altogether?

**Ms. Mary Foster:** Yes, we've taken that position.

As I said, central to us is that there's an equality of treatment between citizens and non-citizens. Whatever the model it comes up with that meets that I think is left to experts who work on legal issues. But whatever that looks like, it needs to separate national security concerns specifically around non-citizens as opposed to citizens. There should be an equal treatment on the basis of fundamental human rights between citizens and non-citizens. That is our position.

**The Chair:** That completes our seven-minute rounds. Now we'll go to our five-minute rounds, and we'll go back and forth until everyone who wishes to be heard is given the opportunity to be heard.

We'll go to Mr. Telegdi.

**Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.):** Thank you very much.

“Security certificate” as such is a real misnomer, especially when we take a look at it in an historical context. You can look at the abuses that have taken place in Canada under the name of security certificates. You depend on untested information from the RCMP, CSIS, and international spooks, and we saw the result of that. We saw the result in what happened with the Arar case. Not only were there initial suspicions when Arar was sent to Syria, but when those security forces had information to clear him, they chose to cover up.

If you look at the United States, there are all sorts of examples of what has been done under the name of security. I agree with you in total when you say that you can't delink security from human rights, because essentially the greatest abusers of human security have been governments under the guise of security. When Thomas Jefferson says that those who give up freedom in the name of security deserve neither freedom nor security, that's exactly what happens. If you look at history and at countries, the greatest abuser of security has been the state apparatus of terror, and this is the really unfortunate thing. You cannot compromise the justice system, because as soon as you do, it becomes like a cancer, and if you have untested evidence going before the courts, which is happening right now under security certificates, then you really have a problem.

Madam El-Fouli, you're right; Saddam Hussein got a heck of a lot fairer trial than your husband is getting, and we really have to change this. Madam Foster, I really caution you about saying it's not happening to citizens; it's not happening to citizens because the citizenship committee has refused to pass the legislation that would have made security certificates part of the process. I think it's important for that to get out to Canadians as much as possible—the whole concept that my security as an individual is tied in to the security of my human rights, and that if you compromise human rights, you end up doing so much damage that it's really quite incredible.

Madam El-Fouli, I don't know how to respond to you in terms of what's happening to your husband, except to say there's a member of Parliament who happens to believe in human rights. I really am ashamed when I go down to those holding cells and see what's happening to those people who are not sentenced, who have not been charged, who have not been found guilty of anything. They are there on nothing more than suspicion, and the state doesn't have a case against them. If they had a case against them, they would have proceeded. As a democratic nation, we really have to make sure we fight for those values.

I have a question to the panel. What kind of education have you done as to how this whole security certificate issue has now gone into the IRPA? I voted against that, and I will certainly be supporting Mr. Siksay's motion if it ever gets through, gets drawn. It is just to show how gradualism under the name of security has really compromised our freedoms.

• (1025)

**Mr. Alex Neve:** I can speak for my own organization. Amnesty International has done a lot of work, especially in these last five years. We have been focusing on this very worrying national and global debate about security and human rights, very much trying to underscore the point that you've just highlighted as well—the fundamental connection between security and human rights. Security that is pursued in disregard for human rights will of course always be

precarious, and human rights will always be tenuous if they're not based on a firm commitment to security within national societies. It's one and the same.

We have in many materials—campaigning materials, brochures, and publications—highlighted the security certificate issue as a Canadian example of the fact that this isn't a debate playing out only with respect to Guantanamo Bay or other parts of the world, but an issue that confronts us as Canadians. We do need to take it seriously. It's a human rights issue that needs to be addressed. In addressing it, we hopefully convey a strong global sense of leadership as to what Canada thinks about the whole issue of security and human rights.

**The Chair:** Thank you, Mr. Telegdi.

We will go to Mr. Devolin, for five minutes.

**Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC):** Thank you for being here today.

As many of the good questions on my list have been asked, I'm down to some different ones. I want to thank all of you for being here today.

I think it's fair to say, on behalf of all of us who visited the detention centre last week in Kingston, it made a powerful impact on us in many ways.

I am not a lawyer, but as I listen to this discussion about the balancing out of overlapping or potentially conflicting interests in terms of personal rights versus national security, I guess what I wonder about is the threshold you have to get over to get a particular verdict in some sort of proceeding. In a criminal process, it's beyond a reasonable doubt, so it's set very high. I am not a lawyer, but I appreciate that there is the reference to what would be called the balance of probabilities, and it's my understanding that in the very famous O.J. Simpson trial, while they failed to meet the beyond a reasonable doubt standard in a criminal court, they actually did meet the balance of probabilities in a civil trial. That was how he was found not guilty criminally, but was actually sued for millions of dollars in a civil court.

Today we heard reference to “reasonable grounds to believe”, and I'm thinking that if a balance of probabilities means there's a better than fifty-fifty chance that it's true, I don't know if reasonable grounds to believe are 50%, or maybe even lower than that—maybe 20% or 30%. That's where I see this sitting, so when someone gets off an airplane in Canada and there are some reasonable grounds to believe they may pose a threat to Canadian security, the notion that a person could be detained seems reasonable to me. But the question is, for how long, and what is the actual process that needs to be put in place then? It also seems reasonable to me there can't be an indefinite holding pattern that never lands.

If Canada were to set up a situation where, once someone has been detained, and until a process were launched.... I'm not comfortable with the notion of just moving it into a normal criminal court system, where beyond a reasonable doubt is the test, because then you could easily have a situation where you're 90% sure there's a problem, but because it's not beyond a reasonable doubt, you would actually release the person and say okay, you're free to go.

Just from a practical point of view, in other countries, is that the test they use once someone is detained, such that there is a process where the evidence is brought forward—whether it's in a closed court or with a special advocate are details—with a lower threshold? Is it a possibility, theoretically, to have such a process in Canada? There would be a hearing process, and whether it's a balance of probabilities or beyond a reasonable doubt, or whether some new phrase is established.... I do think at the end of the day that if things are not entirely clear—and I suspect they're usually not—the national security of Canada, on some level, should trump the rights of a non-citizen.

• (1030)

**The Chair:** You have one minute left.

**Mr. Barry Devolin:** Could you give me a 40-second answer? Sorry, but it's such a good question, maybe the chair will give you some extra time.

**The Chair:** We're fairly tight on time, because I've made a commitment that everyone who wishes to question the witnesses is going to get in. The motion states that this is at the discretion of the chair.

Go ahead, sir.

**Mr. Alex Neve:** This is a concern right around the world. Certainly, off the top of my head, there are not other nations who, when proceeding under immigration proceedings, use the high standard of beyond a reasonable doubt necessary in criminal proceedings.

I think the reason so many organizations are saying that criminal law is really what needs to be pursued here is a combination of the fact that this isn't just any old immigration proceeding.... Number one, there are almost always very serious human rights concerns at stake, such as torture, arbitrary arrest and detention, who knows, but there are serious abuses waiting at the other end of the deportation. There is also the fact that serious allegations are being made about security concerns. Immigration remedies don't get to those either, as they just brush them off our doorstep and make them somebody else's problem, perhaps increasing the possibility the person will be able to continue with plans, and maybe even eventually mount an attack of some kind that will bounce back towards Canada.

So we need to be looking very seriously at the criminal law system, because that's the best way to deal with it.

**The Chair:** Thank you.

Ms. Deschamps.

[Translation]

**Ms. Johanne Deschamps (Laurentides—Labelle, BQ):** First of all, I would like to thank you very much for testifying today. It is touching and extremely moving. I realize that we're dealing with

many reasonable expectations, for example, Supreme Court decisions, from which will result extensive consultations and studies on possible options, etc.

The question I'm asking myself, however, is the following: are the Criminal Code and Canadian laws not sufficient in such situations? Why is Canada, with its Charter of Rights and Freedoms and the international conventions it has signed, not in a position to take action in the matter of security certificates? Are there other countries in the world that are currently taking the same measures and issuing security certificates? Does this exist elsewhere in the world?

• (1035)

**Mr. Christian Legeais:** I do believe it exists. First, contrary to what is stated in certain documents, security certificates existed before 1991. So there is a whole series of other cases that have either been forgotten or remain unknown.

But the main argument is that security certificates truly reveal the current rights crisis in Canada. Let's take the example of deportation to torture: international and humanitarian laws recognize as an absolute that people cannot be deported to torture, disappearance or death. It is an absolute. European courts recognize this, but in Canada, as the government underscored in its response to a hearing request for Mohamed Harkat's conditional release, the government does not subscribe to the notion of absolute rights. So on one hand, there is the notion of a made-in-Canada policy that recognizes that it's very wrong to deport someone to torture, but on the other there is the notion of a made in Canada policy that says it can be done in extenuating circumstances.

This notion comes from the belief that rights are not absolute, that human beings are not entitled to them by reason of their humanity, but that laws can limit them. According to one of the foundations of the Canadian Charter of Rights and Freedoms, in Canada, rights must be exercised in a reasonable manner and it is the very essence of the definition of rights that is causing this crisis.

**Ms. Johanne Deschamps:** I have another question from more of a humanitarian perspective. First, I believe that the conditions of detention faced by those under security certificates could easily be corrected or at least improved. As for the families, they are victims of the situation.

How do you live in these conditions? You're in a no-win situation. You have to deal with the family and financial responsibilities. The same is true for those being detained and for those on conditional release. What is life like for these people? How do they live?

[English]

**Ms. Mona El-Fouli:** I'm glad you asked this question, because I really wanted to answer it.

Actually, first of all, I'd like to tell you that my husband has been here for almost ten years, most of this time among people. He didn't show any threat or any danger to anyone. That's the first thing.

Secondly, there are other people who are being released under conditions in which that could happen. There are very strict conditions for Mr. Charkaoui and Mr. Harkat. It's going to be difficult for a family like mine or Mr. Jaballah's, because there are older children who need to live their lives, and they want to interact with their parents too. Those strict conditions are going to really affect the whole family, not only the detainees. They're really affecting us at the moment. They're really affecting us and affecting the children. Last time when we were here, my son had written a letter to the Prime Minister, and he said, "Mr. Prime Minister, you're not only jailing my dad, you're jailing our hearts with him".

• (1040)

**The Chair:** Go ahead.

**Ms. Mona El-Fouli:** I believe the procedures can go on when the men can be bonded with their families, but at the same time we have to understand and take into consideration that the children need to feel the interaction between parents and children. There are children who have activities outside of the house. There must be a way for the fathers to be with the kids in let's say soccer or other activities or school activities, so that the children can feel the family structures too.

**The Chair:** Okay, thank you very much.

Ms. Foster, I detected you're just dying to make a comment here. Go ahead.

**Ms. Mary Foster:** I'd like to respond to the question about the impact.

Under Mr. Charkaoui's conditions, he's not allowed to leave home without the accompaniment of his mother or father. Because he needs to work to pay for their rent and their family's livelihood, his mother has been forced to go and sit with him all day long in his work. She even wanted to volunteer, but she can't because the day care is in a different building, so she can't leave. Her life has been put on hold. The entire family's rights are being violated under these conditions. She wants to go out and find a job, but she's not able to for fear of jeopardizing his job, which pays for their rent. It's a terrible situation.

As for the children, Khawla, Adil's oldest child, was two and a half when this process started. Her aunt told me the other day that she saw a police officer on the street. They were close to home, and she ran home. She had developed a panic and a fear that her father would not be there when she got home. It's had a devastating impact on the children. It's the uncertainty of not knowing when this is going to end or how it's going to end—if they're going to get deported to torture, if he's going to be picked up and put in prison—that is devastating the families.

**The Chair:** Thank you, Ms. Foster.

Mr. Preston and then Mr. Karygiannis.

**Mr. Joe Preston (Elgin—Middlesex—London, CPC):** Thank you, Mr. Chair. I'll try to be as frugal as I can. As a guest of this committee I'll take as little time as possible, although if I have any left I'll try to share.

First of all, thank you for the strength of your answers today, and thank you for already helping to clear up some of the questions I

would have asked. I'd like to carry on just a little further from where Madame Folco was and Mr. Devolin was.

You mentioned that in an immigration sense, you don't know that the standard of criminal court is used anywhere else. Is that what your answer was?

**Mr. Alex Neve:** To my knowledge. I don't want to—

**Mr. Joe Preston:** All right. Someone asked whether there is a procedure like security certificates used anywhere else in the world. I understand the U.K. has some sort of similar system. Is that correct?

**Mr. Alex Neve:** They do. A number of countries do now.

**Mr. Joe Preston:** How are they balancing? You're looking, as I am, for a balance between the human rights and the security of the country. Do you feel they're being successful?

**Mr. Alex Neve:** No. There are very serious shortcomings there too, although in some instances they are pointed to as being a partial improvement on the Canadian system. It's a minimal improvement, if anything, and certainly doesn't address the real concerns.

**Mr. Joe Preston:** I've read of the special advocate system that they use. You've said that Amnesty International is not so much for that. Is not using the special advocate to help the detainee a way to get it towards a criminal proceeding and maybe bring it to an end?

• (1045)

**Mr. Alex Neve:** This is always pointed to as one of the ways to address the concerns about the secrecy of evidence, because the special advocate gets to see the evidence. But the minute they've seen the evidence they have to stop talking to or having any contact with the individual themselves.

**Mr. Joe Preston:** So we create another whole basketful of problems.

**Mr. Alex Neve:** It really becomes an empty improvement.

**Mr. Joe Preston:** That doesn't sound as if it's the way either. I'm trying to find a way around the determination through a criminal court. Through the immigration system we certainly don't set the criminal court standard for a lot of people we refuse citizenship to in Canada. It's not the standard that's used throughout the rest of the immigration system, and yet you're suggesting that it may be the only solution for those who are covered under a security certificate. How do you balance that? Would you see more people trying to move the standard higher from just a straight refusal for immigration to Canada?

**Mr. Alex Neve:** What's unique about these security cases is this is immigration law to a certain degree masquerading as criminal law. It's immigration law trying to accomplish what truly is a criminal law purpose. If so, if that's the case, then the facade needs to come down, and it needs to be really understood as a criminal law issue and addressed accordingly.



**Mr. Joe Preston:** If it is exactly that, I agree with you. My point was this. If we don't use that standard under other immigration rules, then would they not all want to move to that same standard?

**Mr. Alex Neve:** A lot of other immigration matters don't have that same notion of criminality. That's what's unique here. This is immigration law trying to get at a criminal law concern. Other routine immigration enforcement matters around who comes in, who doesn't get to come in to Canada, and how that all gets worked out don't necessarily involve criminality. It may well be perfectly appropriate in those instances that different standards of proof are used.

**The Chair:** Thank you, Mr. Preston.

We will now go to Mr. Karygiannis.

**Mr. Bill Siksay:** On a point of order, Mr. Chair, why are you departing from your usual speaking order? Normally we would come here and then go to other people.

**The Chair:** It's a little bit difficult this morning because so many people want to get on.

The motion is that witnesses from an organization be given ten minutes to make their opening statement, and at the discretion of the chair during the questioning of witnesses there be allocated seven minutes for the first questioner of each party and thereafter five minutes to be allocated to each subsequent questioner, alternating between government and opposition parties, until all members have been given a chance to participate, after which, if time permits, a new round will commence.

We have to ensure that all members are given the opportunity to get on.

**Mr. Bill Siksay:** However, Chair, you are departing from your normal practice. Every other meeting, the meeting on Tuesday, I would have been given an opportunity now, and then you would have gone to the other people who hadn't yet spoken.

**The Chair:** Yes.

**Mr. Bill Siksay:** What I would like to say is I would defer to Mr. Karygiannis and Mr. Wilson if you return to me after their sessions, on the recognition that it's because we went over time on our presentations this morning and that you are departing from the usual practice of the committee.

**The Chair:** Yes, it is. I'll be happy to go back to you if time permits, and I'm sure it will—hopefully.

Mr. Karygiannis.

**Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.):** Maybe we should be looking at those rules.

Let me state that this particular group that is going through the difficulties right now is not the first one in the history of Canada. We had the Ukrainians, the Italians, followed by the Greeks between 1967 and 1974. My father was an activist at that period and the RCMP was keeping secret files and so on, which I really don't want to go into at this time. I'm not going to waste my time on that.

Let me add a couple of things, if I may. What is happening to your families right now, especially the secret trials, is something that I believe not a member in this House is very supportive of. If Mr.

Siksay's motion were to come to the floor, I think you would find a lot of support.

Ms. El-Fouli, let me ask you a few questions, if I may. How are your children being treated at school? How are the teachers looking at them? How is the family coping as far as income is concerned and everyday life? If you can take a couple of minutes to describe that for us, I'd greatly appreciate it.

**Ms. Mona El-Fouli:** Again, you're asking a very good question.

My children at school, of course, when they're in the playground, are hearing children saying, "Oh, we know your daddy is in jail". My older son was very upset when he came home after hearing them say that, and he didn't know what to do. That day he just acted in a sarcastic way in the classroom, and they had to keep getting him to answer until he said, "So-and-so told me that".

I said, you have to tell him yes, my dad is in jail, but he never did anything wrong, he's not a criminal, and we're going to get him out. After that he started to feel a little relieved.

When they were small, in the neighbourhood the children played together. Then other children kept saying, "Ibrahim and Yusuf don't have a dad", and asking, "Where is your dad?" Again the children were very upset, until one day I was talking to my—

• (1050)

**Hon. Jim Karygiannis:** Were any of the children, at any time at school, or while they were playing with their friends, called "terrorists?"

**Ms. Mona El-Fouli:** No, they weren't to my knowledge, never.

**Hon. Jim Karygiannis:** For the record, who is the individual who has caused your husband trouble in the holding centre? Who is the security guard? What is his or her name please?

**Ms. Mona El-Fouli:** I can give you the report.

**Hon. Jim Karygiannis:** Read it on the record, please.

**Ms. Mona El-Fouli:** You mean, in the immigration holding centre? It wasn't only in the immigration holding centre. It was also in the detention centre, where other guards have done something.

**Hon. Jim Karygiannis:** But I mean the individual in Kingston who is fearing for your husband's life, and the individual who caused you difficulty when you visited.

**Ms. Mona El-Fouli:** Yes. His name is Mr. Van Duyse.

**Hon. Jim Karygiannis:** Do you know of his background? Do you know if he was in the Canadian military at all?

**Ms. Mona El-Fouli:** I am not aware of anything.

My husband was just asking for a cup of water. The man's face turned red. He was very angry and was talking in an aggressive way, and he just ran out of the room in a very unprofessional way.

**Hon. Jim Karygiannis:** Mr. Chair, for the record, I have received an e-mail from one of the guards, and I believe his name is the same. I will be bringing it to the attention of the committee next week.

How much time do I have, Mr. Chair?

**The Chair:** You have approximately one minute.

**Hon. Jim Karygiannis:** Mr. Neve, how would describe the situation in which the detainees are being held? Would you describe it as being as bad as Guantanamo Bay? Give us a sense of another international situation that's very similar and which we are condemning in Canada.

**Mr. Alex Neve:** There are similarities and differences, obviously, between the situation of security certificate detainees and what's happening at Guantanamo Bay. One could argue that at least the security certificate detainees have had access to some kind of legal process, as terribly flawed as it is, whereas of course many of the Guantanamo detainees have had access to nothing.

I think the similarity, though, is that both represent instances in which governments have chosen to pursue security practices that contravene a whole range of human rights obligations around detection protection, fair trial guarantees, the guarantee against torture and ill treatment, etc. That's where the similarity is.

I think it's really important to draw those connections to international examples. Where we want Canada's voice to be strong and credible in criticizing other abuses, we need to have a clean record at home.

**Hon. Jim Karygiannis:** Is there a situation similar to what we have in Kingston that the Canadian government has condemned, to your knowledge, outside our country?

**Mr. Alex Neve:** Unfortunately, Canada's voice on Guantanamo Bay has been rather mute.

I would actually draw a bit of a comparison to what's been happening to some of the Canadian citizens who have experienced torture and ill treatment abroad, people such as Maher Arar. Obviously, here we even have Canadian complicity, and Canada's condemnation of those instances has been a bit mixed at best, but it's an example of where this really comes close to home.

**The Chair:** Thank you, Mr. Neve.

Mr. Wilson, please.

**Mr. Blair Wilson (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.):** Thank you, Mr. Chair.

Thank you, witnesses. As you know, the committee has had an opportunity to visit the Guantanamo Bay of the north, the Kingston Immigration Holding Centre, recently.

The government is in a difficult situation, as has been discussed, with the security certificates and how that relates to the individuals who are being held, as I believe the minister has said, in a three-walled jail where they're free to return to their own countries at any time. But as your testimony today evidenced, they face the risk of torture in the countries they have to go back to: Algeria, Morocco, Syria, or Egypt.

So on the one hand, to keep someone in detention indefinitely, or even for an extended period of time, raises significant concerns respecting fairness and liberty, as Ms. Foster said, but on the other hand that person represents or is alleged to represent an actual danger or a potential danger and a threat to the security of Canada. So at this point in time, based on the evidence that we have, or the secret evidence that has been put forward, there is a perceived threat there,

and it would be unwise for the Canadian government to release these people into Canadian society.

If, on the one hand, removal from Canadian society is not an option, and on the other hand, there is a perceived threat to society, what options does the Government of Canada have to deal with situations like this?

If, Mr. Neve, as you said, the security certificate process needs to be reformed on a wholesale basis, what types of specific reforms would you be recommending to try to deal with the situation?

• (1055)

**Mr. Alex Neve:** I think there is a whole host of things that need to happen. Absolutely the process itself needs to be completely overhauled to ensure that it means fair trial standards, which obviously involves issues around access to evidence, effective legal representation, the standard of proof that's applied, and the kind of review that's put in place of decisions made around security certificates. I think it needs to be combined with some sort of policy that, at the very least, actively prefers criminal prosecution over the use of immigration remedies, for the reasons I've highlighted before. Immigration remedies very often will lead to human rights abuses, but they also almost always don't adequately address security concerns.

There needs to be clearly adopted in Canadian law an absolute ban on returning anyone to a situation of torture. That still doesn't exist in Canadian law, and it's long overdue. There should be a maximum length set for detention. As I was saying earlier, I'm not in a position to propose what that period of time should be. I think you'd need to hear from authoritative experts around this, but I think that needs to be part of it. There need to be, obviously, considerable improvements in the conditions around detention, and I'd highlight that this is not only of concern for security certificate detainees. There are others individuals held in immigration proceedings on security-related charges, not using security certificates, for whom detention also goes on and on and on, who are held in provincial correctional facilities without access to programming, with clear problems around family visits, etc. So there's a broader concern there.

I think I would add that there really is a need for some improvement to the kind of monitoring there is in place around immigration detention, particularly in security certificate cases in this country. We need monitoring by some sort of impartial officer or agency who on an ongoing basis stays on top of concerns around conditions and programming. Such an impartial officer or agency would be in a position to receive complaints about abuse and ill treatment, ensure that they are effectively and independently investigated, and that there are actually remedies.

**Mr. Blair Wilson:** Given that the current Conservative government seems to be in a state of paralysis and doesn't want to move ahead further in any way in discussing the options that are available, and as we heard today, they want to wait until the Supreme Court comes to some decision, I think there has to be much more of an analysis done of the current situation.

Would you recommend maybe a possibility of a public inquiry into the Guantanamo Bay of the north, similar to what was put forward with the Maher Arar affair?

**The Chair:** You have 30 seconds left in the allotted time.

**Ms. Mary Foster:** I think that would be an interesting way of looking at it, setting a clear framework in cooperation with the families of the detainees and looking into the detention at Guantanamo north and the conditions of release as well and the impact that has on the entire family.

**The Chair:** It's eleven o'clock, and normally our committee would wind up at this point. I detect that there is a question or two still to be asked. I'm in the hands of the committee. If each party would like to have one question, if witnesses have time, then the representatives from the Liberals, NDP, Bloc, and Conservatives probably would run us into about ten minutes overtime.

**Hon. Jim Karygiannis:** Mr. Chair.

**The Chair:** Mr. Siksay had his hand up.

• (1100)

**Mr. Bill Siksay:** Mr. Chair, I thought you were going to come back to me after I deferred to Mr. Karygiannis and Mr. Wilson, so I would ask you to start with me if you're going to do this.

**The Chair:** Mr. Wilson was the only one on the committee who hadn't been given an opportunity to speak, so I decided to stick within the very narrow parameters of the motion and give everyone a chance.

**Mr. Bill Siksay:** I'm giving you notice, Chair, that I haven't given up on your departure from the usual speaking order at committees, and I will want to pursue that matter.

**The Chair:** I've been deviating from the motion a little bit. We can get on to a question now from each member if we want to, but if we persist in putting up our hands on points of order, we're eating up valuable time.

Mr. Karygiannis was next.

**Hon. Jim Karygiannis:** Mr. Chair, in fairness, I think if you would seek unanimous consent, all those who want to ask one or two questions should be able to put those questions, regardless of the party. Each of us can put one or two questions—I realize that the room is not being used next—and we can give ample time to the witnesses to answer those questions.

**The Chair:** This is what I put before the committee. Does the committee wish to have a few minutes to have an additional question from each party?

**Some hon. members:** Agreed.

**The Chair:** Okay, I detect that this is the will, and I will go to the representative from the Liberal Party to begin. No, I will go to Mr. Siksay to begin, since he only had one round in the whole thing. So I'll start with him.

**Mr. Bill Siksay:** Thank you, Chair.

I just wanted to follow up on Mr. Wilson's question. The correctional investigator of Canada, Mr. Sapers, recently, in his annual report, suggested that he should be given the mandate to investigate or hear complaints from the security certificate detainees. He noted that when they were in detention in provincial facilities, especially in Ontario, they did have access to the Ontario ombudsman if they had complaints or grievances that weren't being addressed, but when they were transferred to Kingston they didn't

have access to any kind of ombudsman process. He asked that they be added to his mandate.

I'm just wondering if you folks had a response to that suggestion.

**Mr. Alex Neve:** I wholly endorse that. I can't emphasize enough how important it is around any detention issue, but there is something particular about security certificate detention. With this whole concern about its indefinite nature and the very serious sort of mental and psychological toll it takes on detainees, and so on, it is fundamentally important that there be some sort of independent mechanism in place to receive complaints, to ensure monitoring, and to bring some oversight to the whole situation.

**Mr. Bill Siksay:** Thank you.

**The Chair:** Thank you, Mr. Siksay.

I'll go to Mr. Telegdi. Is there agreement that there will be one question from each party?

**Mr. Bill Siksay:** Yes, that's what I understood, Chair.

**The Chair:** Okay, the agreement is for one question from each party.

We'll have Mr. Telegdi, Mr. Vincent, and then Mr. Komarnicki, and then we will adjourn our meeting.

**Hon. Andrew Telegdi:** Thank you, Mr. Chair.

People are asking what the balance is. And I guess what bothers me in this whole process is that people we depend on to provide us with information in turn end up abusing human rights. When they give false information, as they did in the Arar case, or they withhold information, surely to God there has to be accountability for these folks who have abused the human rights of a Canadian or an individual—a human person. Right now, there doesn't seem to be.

**Mr. Alex Neve:** If you're asking particularly about the Arar inquiry, I think it obviously is one of the continuing very worrying pieces in the aftermath of Justice O'Connor's report that we heard from Commissioner Zaccardelli himself that it's not his plan or intention to discipline, let alone consider the possibility of criminal charges against the people responsible for that wrongdoing, if appropriate.

That's obviously not the kind of response needed to a serious human rights travesty like what happened in Maher Arar's case. Things don't get better unless there's justice, accountability, and consequences. I think the pressure needs to continue to ensure that the government is going to make sure that proper investigations are conducted into what happened in that case, and that if policies were transgressed there will be appropriate discipline, and if laws were breached there will be a criminal consequence.

**The Chair:** Okay, thank you.

Mr. Vincent.

[Translation]

**Mr. Robert Vincent:** I very much liked the answer that was given in response to Mr. Komarnicki's question on how we could balance the protection of the country and individual rights. Mr. Preston spoke of balance. I think that in terms of human rights, the first concern has to be knowing why someone is arrested and put in jail. You might say the country's security may be at stake, but before knowing why it is at stake you have to know why someone is being arrested. I think that you provided a good answer.

My question is simpler. I would like to know what question you would have liked us to ask you. What is your answer?

• (1105)

[English]

Do you understand my question?

**The Chair:** I guess he's wondering if there's a question we didn't ask you this morning that you would have preferred to hear so you could expound upon it a little bit more.

[Translation]

**Mr. Robert Vincent:** It's a good question.

[English]

**Ms. Mary Foster:** Steps could be taken.

[Translation]

**Mr. Christian Legeais:** What we're really waiting for are not questions from the government or political parties, but rather an announcement on when these human rights violations will end. The problem with respect to each of these issues is that security certificates and immigration policies come from the government and the House. It is certainly not somehow the responsibility of organizations like the Justice for Mohamed Harkat Committee or other organizations in Montreal and Toronto, which defend rights as best they can without the means necessary, to explain to the government, which created this mess, how it is supposed solve the problem. Our responsibility is to protect these men and to fight for their rights and for the rights of all.

It's not up to us to come here today and tell you that your system of repression isn't working and that something different must be done, that you have to do this or that. It's not up to us to find a solution. We dedicate enough time and funds to this situation with what little money and resources we have, while the government has thousands of employees, thousands of experts, who could examine the issue of rights violations. But they haven't done it yet. That is where the problem lies. You ask us what the best question is when what we're looking for are answers. The best thing that can happen is for you to tell us that these men will be released and that you will all support defending their rights.

[English]

**The Chair:** Thank you very much.

Mr. Komarnicki.

**Mr. Ed Komarnicki:** Thank you, Mr. Chair.

Certainly, from the response of Mr. Wilson, the decision is expected in weeks, and not months or years. It's a fairly considered decision.

So as not to leave any misconceptions before this committee or the Canadian public, these security certificates are used quite infrequently. Since 1991, there have only been 27 security certificates. It wouldn't be fair to say the evidence isn't probed or tested, because we have the appeal court judges, who are trained quite well, and designated judges who look at the evidence and probe it and try it. They provide a summary of the reasons why there is a concern for national security, which the other parties are entitled to rebut. There's certainly a right to present evidence and cross-examine witnesses during the public part of the hearing. It sometimes lasts for several days.

It's not as if there's no evidence or secret evidence. A probing takes place, and of course the prime concern is a balancing of interests. In my mind, national security takes precedence where it is proved to be so.

Even the Liberal Party had its own member, Mr. Bains, introduce a private member's bill that accepts the concept of security certificates. It requested a special counsel be appointed to be present when the judge hears information or the evidence referred to for the purpose of ensuring the public interest is protected. Special counsel may present arguments before the judge relating to any matters prescribed by the regulations to say someone needs to present a fairly significant public interest.

There is a balancing. Wouldn't you agree with me that there is a provision there for someone to look at the overall security of the country in the best interests of the community at large?

• (1110)

**Mr. Alex Neve:** I think we've all clearly agreed that, yes, national security is a critical concern and it's a human rights concern. What we're trying to underscore is that the policies taken by any government, including the Canadian government, to address national security—be it immigration, security certificates, or any other practice—need to accord with the international human rights system.

This is the system that governments themselves set up. In its very terms, the system already recognizes the particular ways in which national security issues do interact with human rights. It recognizes that there are certain human rights that can never be infringed in the name of national security, and some can be infringed in only the most limited circumstances, in times of extreme national emergency.

So a whole framework within the international human rights system already addresses this.

**Mr. Ed Komarnicki:** Isn't that what the courts are attempting to do, to balance the various rights and interests?

**The Chair:** Order.

The committee was clear, one question—

**Hon. Jim Karygiannis:** Mr. Chair.

**The Chair:** Before I recognize you, Mr. Karygiannis, I want to allow a final comment to Ms. El-Fouli, who had her hand up in the last round.

Please go ahead.

**Ms. Mona El-Fouli:** Thank you.

I just want to draw everybody's attention to something that was already mentioned but that I just want to make sure is clear: we don't want security certificate terms to stand as barriers to human rights. Human rights are what elevates Canada from the rest of the world. Canada is unique with its human rights, and we don't want to lose that. It's very important to Canada and Canadians that we continue with human rights.

Mr. Karygiannis mentioned what happened to Mr. Arar and what happened to the Japanese, Italians, Ukrainians, and others before. We should take that into consideration as well, and try to review the information we have. As I and others have mentioned, which sources did it come from? Is it correct information or is it wrong information?

To take people and put them in indefinite detention is a complete violation of human rights. It violates their rights, their families' rights, and even Canada's rights.

**The Chair:** Thank you very much for coming today—

**Hon. Jim Karygiannis:** Mr. Chair, I have a point of order and a question of the chair.

**The Chair:** Yes; just one moment while I deal with the witnesses.

Thank you very much for coming. It was very interesting, what you had to tell us. Our committee members don't very often want to go overtime, so obviously what you had to say today was very effective, and I want to thank you for that.

I don't want you to be given the impression that your concerns are falling on deaf ears here. At some point we will be making recommendations or what have you to the minister, and your concerns will certainly be taken into consideration.

Again, thank you very much.

Now, Mr. Karygiannis, a point of order.

And to the witnesses, you can leave any time you wish. You don't need to hang around for our points of order.

**Hon. Jim Karygiannis:** There is a list of organizations—for instance, the LTTE, which was just listed a couple of weeks ago—that are seen to be a threat to Canada. Any Canadian who comes in contact with those organizations is automatically also a threat to Canada...or can have serious circumstances.

For all of us who have come in contact with the so-called threats to Canada when we don't know what risks we're posing to ourselves, I would ask the committee, I would ask the clerk, and I would ask you to get information on what terrorist organizations these people belong to and what kind of threat we ourselves are because we came in contact with them.

The fact that we went there as a committee certainly later on can have difficulties for us. Should these people be in a particular group on that list, and we have come in contact with them, certainly that would put us in a precarious situation.

So I ask the chair, for the security of all the committee members, to get facts and figures on what organizations these people belong to

and to come back and report to this committee on the seriousness if any laws have been broken by us.

• (1115)

**The Chair:** So what organizations are—?

**Hon. Jim Karygiannis:** What organizations are the detainees supposed to belong to? What lists are they on? There's a list in CBSA. There's a list that shows that we Canadians cannot come in contact with these organizations.

If we have come in contact with a member of those organizations and we have broken the laws of Canada, we need to know.

**The Chair:** Before I ask the researchers to comment on that, I would hear Mr. Siksay's—

**Mr. Bill Siksay:** It's a different point. Could I have one second before the committee adjourns?

**The Chair:** Okay.

Do the researchers have any comment to make on that? I certainly don't know what course of action we could take, except to ask the researchers to do some work and report back to us—or if it's a valid point of order that we should consider.

**Ms. Margaret Young (Committee Researcher):** There are various lists in Canada that organizations can be placed on. There's one under the Criminal Code, with about 40 organizations listed. There is a list under the United Nations suppression of terrorism regulations, and there is a United Nations Taliban and al-Qaeda list as well.

In terms of what penalties there are for associating with those organizations, if you contribute to helping them further their purposes or cause, there could be penalties. But in terms of listening to or hearing from those organizations, there are no associated penalties.

**Hon. Jim Karygiannis:** I beg to differ.

After the tsunami, I came in contact with the hierarchy of LTTE. I went to visit them in Sri Lanka. If I were to even to visit them again today, I could be a criminal.

I certainly beg to differ. So I want a clear answer. I want answers to what organization they belong to, what list they're on, and what ramifications it could have on committee members who visited them.

**The Chair:** I think we will allow the research people to do just that and report back to the committee at a later date.

**Hon. Jim Karygiannis:** Thank you.

**The Chair:** Mr. Siksay, please.

**Mr. Bill Siksay:** Mr. Neve mentioned a number of international agreements that pertained to detention, and he offered to get copies. But I'm wondering if the analysts could do that for us instead—let us know what those agreements are, and make them available to the committee.

**The Chair:** Okay. So ordered.

**Mr. Bill Siksay:** Thank you.

**The Chair:** The meeting is adjourned.





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

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

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

---

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

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