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Striking a balance between safety, civil rights

It will be interesting, indeed, to see what the minority Conservative government does about its controversial terrorism laws now that the Supreme Court of Canada has added its voice to those of the laws' critics.

The top court's unanimous ruling came as Parliament was preparing to vote on a proposed three-year extension of some key portions of the Anti-Terrorism Act which permit preventive arrests and special investigative hearings.

In striking down the key elements of the security certificate system used by the federal government to detain and deport foreignborn terrorist suspects, the court found that the system - long described by government officials as an essential tool for safeguarding national security - violates the Canadian Charter of Rights and Freedoms.

But the court, in a decision written by Chief Justice Beverley McLachlin, decided to give the government a full year to comply with its reasoning by amending the legislation to make it comply with constitutional imperatives.

Peter Van Loan, the Conservative House leader in the Commons, offered formal thanks to the court for its decision and signalled that the government would get to work trying to bring the legislation into accord with the Charter.

The lawyer for Algerian-born Mohamed Harkat, one of the three terrorist suspects who brought the case before the high court, said the judges delivered almost exactly what they were asked for.

"The only thing they did different from what we suggested was that they gave the government a year to redraft the legislation," Toronto lawyer Paul Copeland told CBC Newsworld.

"We had said 'do it much faster; if you're going to suspend your decision, suspend it for three months, make Parliament work quickly because our client is in a horrible situation.'"

Johanne Doyon, counsel for Moroccan native Adil Charkaoui, described the judgment as "nearly total victory" for the three challengers, and predicted the government wouldn't dare deport any of them during the one-year grace period it will take to revise the law.

John Norris, representing Syrian-born Hassan Almrei, said the court "has resoundingly struck down the legislation and found that it is fundamentally flawed."

Unlike the other two men who are cur-

rently free on bail, Almrei remains in detention. But his legal team intends to go back to court, in light of the ruling, to try to win his release pending final resolution of the case.

Critics have long denounced the certificates, which can lead to deportation of noncitizens on the basis of secret intelligence presented to a federal court judge at closed-door hearings. Those who fight the allegations can and do spend years in jail while the case works its way through the legal system. In the end they can sometimes face removal to countries with a track record of torture.

The top court concentrated on the fact that most of the evidence in such cases is commonly heard behind closed doors, with no lawyer for the accused present and with only a sketchy summary of the allegations ever made public.

In finding that process a violation of fundamental justice, Chief Justice McLachlin suggested Parliament could solve the problem in several ways - for example, by allowing special security-cleared lawyers to attend the hearings, challenge the government evidence and thereby protect the rights of the accused.

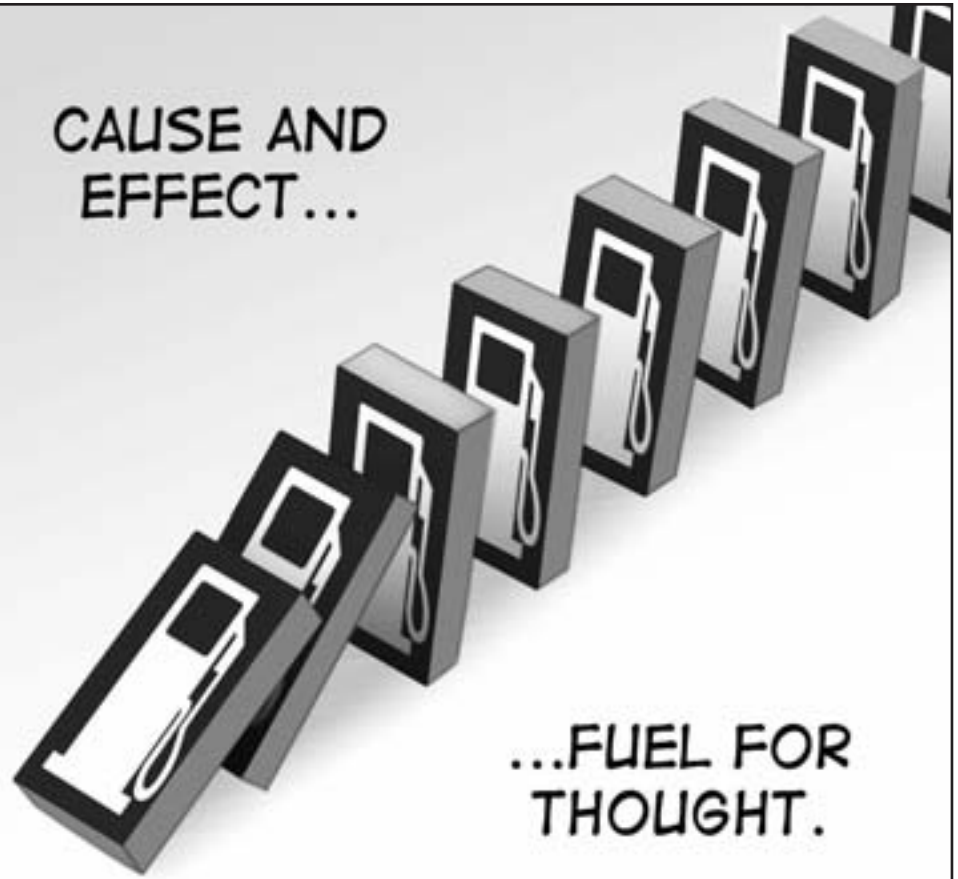
The chief justice also concluded that the present detention process for suspects is unconstitutionally arbitrary, because some people have better access to bail hearings than others, depending on their precise legal status.

All three of the men whose cases were at issue are alleged by the Canadian Security Intelligence Service to have ties to al-Qaeda and other overseas terrorist groups. However, all three deny the accusations.

In approaching the issue, the chief justice noted that ensuring the safety of its citizens is "one of the most important responsibilities of a government," adding that this may require it to act on information that cannot be disclosed and to detain some individuals as a threat to national security. "Yet in a constitutional democracy, governments must act accountably and in conformity with the Constitution and the rights and liberties it guarantees."

Perhaps the appropriate solution will be for the federal government to prepare a list of senior lawyers and retired judges from which a person targeted by a security certificate could appoint an amicus curia (friend of the court) to test the security information and ultimately assist defence counsel in ensuring that all the rules of fundamental justice are followed.

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Our Readers Write

OMB must protect citizens from quarry

We attended the Jan. 25 CBSES (Caledon Broader Scale Environmental Study) information meeting on the Environmental impact from the James Dick Construction Limited (JDCL) application to open a quarry on the Rockfort Farm site in Caledon and feel that there are some fundamental points that should be addressed.

In the 1990s the Town of Caledon was in the process of defining areas that might be suitable for mineral extraction (OPA 161), categorizing them as either "resource" (eligible for extraction in the near future) or "reserve" (held back at least 20 years). Near the end of this process, but before OPA 161 was passed JDCL applied for a rezoning of the Rockfort property from rural agricultural to commercial so that he could proceed with a permit application for extraction. Rockfort appears in the area designated 9-A, which was to be a "reserve" under OPA-161 but JDCL objected, saying that their application should be "grandfathered" and the matter was referred to the (OMB).

The OMB decided to defer the final decision on whether area 9-A should be designated "resource" or "reserve" to a new hearing scheduled to begin 2008.

Ironically, the question of need (whether the people of Ontario need the aggregate which might be extracted from the Rockfort site) at present is not taken into consideration at the OMB hearings. Provincial reports show that in fact there is more than enough present and future supply from existing quarries. Thus the great benefit of mineral extraction from the Rockfort site will not go to the people of Ontario or the residents of Caledon but to the owners of JDCL.

The Rockfort site and OPA 161 area 9-A abut the northern boundary of the Niagara Escarpment, a protected area that has earned the designation of "UNESCO World Biosphere Reserve." For decades, private

landowners within the Escarpment boundaries have been encouraged to protect the natural areas of their properties from any form of alteration through the "Conservation Land Tax Incentive Program."

Through these tax breaks to conservation landowners, the people of Ontario have made a significant financial commitment to the preservation of these natural areas. In addition, strict limitations on property severance and construction have ensured that development has been kept to a minimum. Other lands in the vicinity of Rockfort are rural and much of their heritage character has been preserved.

Thus the residents of Caledon and the people of Ontario have made conscious decisions not to cash in on the short-term financial potential of the land and have made long term commitments to ensure that the natural and rural heritage of the area is protected for future generations.

If JDCL were to be given permission to extract from the Rockfort site, the Dick family and their private company would be permitted to make huge profits by cashing in on a heritage that belongs to all Ontarians. If the OMB allows this quarry application to proceed, JDCL has a moral obligation, and should be required to fully compensate local residents for loss of property value and quality of life and to fully compensate all citizens of Caledon and Ontario for the degradation of their rural and natural heritage.

The massive excavation of the proposed mine would disturb the water table impacting on private wells, disrupting aquatic habitats and the breeding cycles of fish and amphibians. Noise, dust and shock waves from blasting and crushing would disturb wildlife, damage property, lower the quality of life for area residents and make the area less attractive to recreational users.

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