

Legal Rights in the Canadian Charter [GS Law 6640P] [6.0]

Title: Terrorism & the *Charter* after September 11, 2001

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Introduction:

After the terrorist attacks of September 11, 2001, many western states were prompted to respond to what was perceived as a new kind of threat. Laws were passed aimed at protecting national security from the terrorists. Some of these laws conflicted with constituents' long-held expectations as to their privacy and freedoms, and the limits of government power. Canada was not an exception.

The post-September 11 environment imposed unprecedented intense demands on Canadian officials. In December 2001, the federal government enacted *The Antiterrorism Act*¹ ("Bill C-36") which amended the *Criminal Code*², the *Official Secrets Act*, the *Canada Evidence Act*³, the *Proceeds of Crime (Money Laundering) Act* and other Acts. Subsequently, the federal government enacted the *Immigration and Refugee Protection Act*⁴ ("IRPA").

Undoubtedly, terrorism is international, well-financed, and extremely difficult to investigate. Nevertheless, in fighting terrorism, Parliament must not undermine the values that are fundamental to our democratic society and are also contained in international instruments that Canada has signed. In other words, terrorism must be defeated while respecting the rule of law, certain fundamental freedoms and due process. As the Supreme Court stated in *Suresh*, “In the end, it would be a Pyrrhic victory if terrorism were defeated at the cost of sacrificing our commitment to those values”.⁵

Section 7 of the *Charter of Rights and Freedoms*⁶ provides that, “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”. This right is enshrined in the Constitution, subject only to section 1 of the *Charter*—which provides that, “*The Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. No government legislation, no state action, should survive constitutional scrutiny because it seems expedient.

While most Canadians' fundamental rights, in particular their s. 7 rights, are not sacrificed at the altar of the fight against terrorism within Canada's borders, non-Canadians and Canadians outside Canada are not so lucky. In this paper, we examine the impact that some pieces of legislation, particularly in the immigration context, have had on the right to life, liberty and security of the person, in the post-September 11 environment. In particular, we will look at the leading Supreme Court of Canada decisions on the issue. We will also consider instances where the actions of Canadian officials have led indirectly to detention and mistreatments of Canadian citizens by foreign governments and the impact these actions have had on their fundamental rights protected by section 7 of the *Charter*.

The protection of the rights to life, liberty, and security of the person in the immigration context.

Suresh v. Canada (Minister of Citizenship and Immigration)

Manickavasagam Suresh was a Convention refugee from Sri Lanka who initially supported his refugee status in Canada by claiming that he would face torture at the hands of the Liberation Tigers of Tamil Eelam (the "Tamil Tigers") if sent back to Sri Lanka. In 1995, the Canadian government detained Mr. Suresh and commenced deportation proceedings on security grounds, based on the opinion of

the Canadian Security Intelligence Service (CSIS) that he was in fact a member and fundraiser of the Tamil Tigers. The Federal Court, Trial Division upheld as reasonable the deportation certificate under s. 40.1 of the *Immigration Act* and, following a deportation hearing, an adjudicator held that Mr. Suresh should be deported. An application to the Federal Court for judicial review, and a further appeal to the Federal Court of Appeal were both dismissed. Mr. Suresh appealed to the Supreme Court, presenting a *prima facie* case that he would be tortured by the Sri Lankan government if he was deported.

In *Suresh*, the Supreme Court confirmed what was laid out in *Schmidt, Kindler* and in *Burns*, that is that, having established a causal connection between a *Charter* infringement and Canadian state action, a remedy may be granted even if the infringement was committed by persons other than the Canadian government. The Court in *Suresh* stated: “[T]he governing principle [is] a general one—namely, that the guarantee of fundamental justice applies even to deprivations of life, liberty or security effected by actors other than our government, if there is a sufficient causal connection between our government’s participation and the deprivation ultimately effected”⁷.

Ultimately, the Court agreed that deportation to torture would infringe s. 7 of the *Charter*, and that s. 7 applies to torture inflicted abroad and by foreigners if, on the

facts, there is a sufficient causal connection between the infringement and the actions of Canadian officials.

After examining the fundamental principles of Canadian and international law, the Supreme Court concluded:

The Canadian rejection of torture is reflected in the international conventions to which Canada is a party. The Canadian and international perspectives in turn inform our constitutional norms. The rejection of state action leading to torture generally, and deportation to torture specifically, is virtually categorical. Indeed, both domestic and international jurisprudence suggest that torture is so abhorrent that it will almost always be disproportionate to interests on the other side of the balance, even security interests. This suggests that, barring extraordinary circumstances, deportation to torture will generally violate the principles of fundamental justice protected by s. 7 of the *Charter*.⁸

Notably, although the Supreme Court recognized that to deport a refugee to face a substantial risk of torture would generally violate s. 7 of the *Charter* and the international conventions to which Canada is a party, the Court explicitly left open the possibility of exceptions, without providing much further guidance. At para. 78, the Court stated:

We do not exclude the possibility that in exceptional circumstances, deportation to face torture might be justified, either as a consequence of the balancing process mandated by s. 7 of the *Charter* or under s. 1. (A violation of s. 7 will be saved by s. 1 “only in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics and the like”: see *Re B.C. Motor Vehicle Act*, *supra*, at p. 518; and *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46, at para. 99.) Insofar as Canada is unable to deport a person where there are substantial grounds to believe he or she would be tortured on return, this is not because Article 3 of the CAT directly constrains the actions of

the Canadian government, but because the fundamental justice balance under s. 7 of the *Charter* generally precludes deportation to torture when applied on a case-by-case basis. We may predict that it will rarely be struck in favour of expulsion where there is a serious risk of torture. However, as the matter is one of balance, precise prediction is elusive. The ambit of an exceptional discretion to deport to torture, if any, must await future cases.⁹

In this regard, I concur with Professor Kent Roach's argument that, "Torture is always legally, morally, and constitutionally wrong and the Supreme Court should have recognized this truth"¹⁰. Torture is a serious violation of international and domestically-recognized fundamental human rights, and Canada should participate in its infliction, directly nor indirectly, under any circumstances.

Charkaoui v. Canada (Citizenship and Immigration)¹¹

Mr. Charkaoui was a permanent resident, while Messrs. Harkat and Almrei were foreign nationals who had been recognized as Convention refugees. All three were living in Canada when they were arrested and detained. At the time of the Supreme Court decision, all had been detained for some time—since 2003, 2002 and 2001 respectively. All three challenged the constitutionality of the *Immigration and Refugee Protection Act ("IRPA")*'s certificate scheme and detention review process. In 2001 and 2005, respectively, judges of the Federal Court determined Mr. Almrei and Mr. Harkat's certificates to be reasonable. The

reasonableness of Mr. Charkaoui's certificate was yet to be determined at the time of the Supreme Court of Canada decision. Messrs. Charkaoui and Harkat were released on conditions in 2005 and 2006 respectively, but Mr. Almrei remained detained as he was designated for deportation to Algeria, which he contested in other proceedings. In all these cases, the certificates/detentions were based on allegations that the individuals constituted a threat to the security of Canada by reason of involvement in terrorist activities.

The *IRPA* allows the Minister of Citizenship and Immigration, and the Minister of Public Safety and Emergency Preparedness to issue a certificate of inadmissibility leading to the detention of a permanent resident or foreign national deemed to be a threat to national security. The certificate and the detention are both subject to review by a judge. The person subject to the certificate, however, may be denied knowledge of some or all of the information on which the certificate was issued or the detention ordered.

Chief Justice McLachlin, speaking for a unanimous Court, concluded that “[T]he appellants’ challenges to the fairness of the process leading to possible deportation and the loss of liberty associated with detention raise important issues of liberty and security, and that s. 7 of the *Charter* is engaged”¹². In regards to whether the

security certificate procedure infringed the *Charter*, McLachlin C.J. held that, “[T]he *IRPA* unjustifiably violates s. 7 of the *Charter* by allowing the issuance of a certificate of inadmissibility based on secret material without providing for an independent agent at the stage of judicial review to better protect the named person’s interests”¹³. The Chief Justice noted that:

..... [T]he secrecy required by the scheme denies the named person the opportunity to know the case put against him or her, and hence to challenge the government’s case. This, in turn, undermines the judge’s ability to come to a decision based on all the relevant facts and law ... [T]he *IRPA* procedure fails to assure the fair hearing that s. 7 of the *Charter* requires before the state deprives a person of life, liberty or security of the person. I therefore conclude that the *IRPA*’s procedure for determining whether a certificate is reasonable does not conform to the principles of fundamental justice as embodied in s. 7 of the *Charter*.¹⁴

McLachlin C.J. further concluded that “[T]he *IRPA* regime, which places on the judge the entire burden of protecting the person’s interest, does not minimally impair the rights of non-citizens, and hence cannot be saved under s. 1 of the *Charter*”¹⁵. The Supreme Court suggested Parliament adopt a “less intrusive alternative”, *e.g.*, the use of a special counsel, in order to better balance the need to keep confidential and intelligence information and the need to protect procedural fairness¹⁶.

Ultimately, the Court declared the *IRPA*'s procedure infringed the *Charter*, and hence, was of no force or effect¹⁷. However, this declaration was suspended for one year in order to give Parliament time to amend the legislation¹⁸.

In response, Parliament introduced Bill C-3 which amends the *IRPA*'s procedure regarding certificates and provides for the appointment of a special advocate to represent the interests of a person named in a certificate. Bill C-3 received Royal Assent on February 14, 2008.

The special advocate protects the interests of a person subject to a certificate by participating in closed court proceedings wherein the Public Safety Minister's case for the issuance of the certificate, as well as the very need for continued secrecy, are challenged.

Bill C-3 may not properly address the Supreme Court's reasons in *Charkaoui*, particularly in respect to the disclosure made to the special advocate. Under the Bill C-3 regime, the special advocate needs judicial authorization to communicate with another person (including the person named in the security certificate and his or her lawyer) any information or other evidence received¹⁹.

Considering the substantive impact of the *IRPA* regime on section 7 of the *Charter*, immigration legislation should not be used to lower legal standards to detain non-

citizens. Security certificate cases rely on a much lower standard of proof than do criminal prosecutions. A judge ruling on the case of a non-citizen subject of a security certificate only needs “reasonable grounds to believe”²⁰ that he or she represents a risk as opposed to “proof beyond a reasonable doubt” in a criminal procedure.

According to Professor Shapiro, “[T]he security certificate standard therefore deviates from the prevailing conception of the minimal constitutional requirements when liberty is at stake”²¹. Thus, “[T]he same principles of fundamental justice that apply to criminal preventive detention should apply whenever the government wishes to use preventive detention on national security grounds in immigration legislation”²².

Mr. Shapiro asserted that, “National security is an ongoing law enforcement concern of the state, just as is crime prevention. Permitting the state to infringe on substantive Charter rights on national security grounds would create a permanent exception to Charter rights and could set a dangerous precedent which could have an ongoing deleterious effect on the foundation of the legal system”²³.

Detention and mistreatment of Canadian citizens abroad with the participation of Canadian officials

Maher Arar

Maher Arar is a Canadian citizen. On September 26, 2002, while passing through John F. Kennedy International Airport in New York, Mr. Arar was arrested by American officials. After a 12-day detention, Mr. Arar was removed to Syria, the country of his birth. He was imprisoned in Syria for nearly a year. While there, Mr. Arar was interrogated, tortured and held in degrading and inhumane conditions. He returned to Canada after his release on October 5, 2003. He has never been charged with any offence in Canada, the United States or Syria.

On Jan. 28, 2004, in response to public pressure, the Government of Canada established the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar. On September 18, 2006, the Commissioner of the Inquiry, Justice Dennis O'Connor, concluded that "there was nothing to indicate that Mr. Arar committed an offence or that his activities constitute a threat to the security of Canada"²⁴.

Commissioner O'Connor further asserted that it was very likely that the American authorities relied on the information about Mr. Arar provided by the Royal Canadian Mountain Police (RCMP) in making the decisions to detain and remove Mr. Arar, and that some of this information—provided by the RCMP—was inaccurate or misleading²⁵.

Commissioner O'Connor also found that in the latter part of 2002, the RCMP and Canadian Department of Foreign Affairs and International Trade (DFAIT)'s Foreign Intelligence Division (ISI), had a number of discussions about sending questions for Abdullah Almalki, the subject of the relevant investigation and also in Syrian custody, to the Syrian Military Intelligence (SMI). These questions were sent despite the fact that ISI's agents warned of a "credible risk" that the SMI would use torture in seeking answers to any questions sent, and advised the RCMP against sending questions²⁶. The U.S. State Department and Amnesty International had publicly reported on Syria's poor human rights record in relation to prisoners.

Commissioner O'Connor further concluded that the action of sending questions for Mr. Almalki very likely sent a signal to Syrian authorities that the RCMP approved of his imprisonment and interrogation. This created a risk that the SMI would

conclude that Mr. Arar, a person who had some association with Mr. Almalki, was considered a serious terrorist threat by the RCMP²⁷.

Abdullah Almalki, Ahmad ElMaati and Muayyed Nureddin

On December 12, 2006 the federal government established an “Internal” Inquiry into the cases of Messrs. Almalki, El Maati and Nureddin, who allege they were tortured while imprisoned in Syria. Former Supreme Court Justice Frank Iacobucci was appointed Commissioner. Because of the “sensitive national security matters” expected to arise during the inquiry, “it is likely the Inquiry will be carried out largely in private”²⁸.

In October 2008, Commissioner Iacobucci concluded that the actions of Canadian officials contributed indirectly to the torture of the three Canadian citizens in Syria.

Abdullah Almalki, a Canadian citizen, travelled to Syria from Malaysia in May 2002. When he arrived at the airport, he was immediately taken into Syrian custody, where he remained for 22 months. While there, Mr. Almalki was held in degrading and inhumane conditions, interrogated and mistreated. Commissioner Iacobucci found that the “mistreatment suffered by Mr. Almalki in Syria resulted indirectly from two actions of Canadian officials: (1) in April 2002, the RCMP

shared its Supertext database, which contained a considerable amount of information regarding Mr. Almalki, with U.S. agencies; and (2) in January 2003, the RCMP sent Syrian officials questions to be posed to Mr. Almalki while in Syrian detention”²⁹.

Ahmad Elmaati, a Canadian citizen, travelled to Syria from Canada in November 2001 to be married. When he arrived at the airport in Damascus, he was immediately taken into Syrian custody and transferred to Far Falestin detention centre, where he remained for over two months. In January 2002, Mr. Elmaati was transferred from Syria to Egypt, where he spent another 24 months in detention. While in detention in Syria and Egypt, Mr. Elmaati was held in degrading and inhumane conditions, interrogated and mistreated. Commissioner Iacobucci concluded that “the combination of three instances of sharing of information by Canadian officials in the period leading up to Mr. Elmaati’s detention likely contributed to his detention, so that the detention in Syria can be said to have resulted indirectly from these actions”³⁰. Commissioner Iacobucci added that the “mistreatment resulted indirectly from several actions of Canadian officials. These actions include the failure of Canadian officials to advise DFAIT’s Consular Affairs Bureau of Mr. Elmaati’s detention and interrogation in Syria and CSIS’ sending of questions to a foreign agency to be put to Mr. Elmaati while in Syrian

detention. These actions likely contributed to mistreatment of Mr. Elmaati in Syria. CSIS' statement of concern about Mr. Elmaati and his activities if released in a communication to the Egyptian authorities, the RCMP's attempts to interview Mr. Elmaati in Egypt and the RCMP's sharing of information all likely contributed to mistreatment of Mr. Elmaati in Egypt³¹.

Muayyed Nureddin, a Canadian citizen, travelled to Syria in December 2003 on his way home to Toronto from Iraq, where he had been visiting for approximately two months. When he arrived at the border, he was taken into Syrian custody, where he remained for 33 days. While there, Mr. Nureddin was held in degrading and inhumane conditions, interrogated and mistreated. Commissioner Iacobucci concluded that CSIS and the RCMP's actions of sharing information about Mr. Nureddin's suspected involvement in terrorist activities with several foreign agencies, including U.S. agencies, and CSIS's action of sharing with a U.S. agency Mr. Nureddin's travel itinerary, which indicated that he would be returning to Canada via Damascus in mid-December 2003, likely contributed to Mr. Nureddin's detention³² and mistreatment³³.

As a common denominator, all three Canadian citizens were detained and subjected to abuse by a foreign state as an “indirect” result of the action of Canadian officials. In the post-September 11 environment, there was intense pressure on intelligence and law enforcement agencies, such as CSIS and the RCMP, to cooperate and share information with foreign agencies, particularly those of the United States. It is nevertheless deeply disturbing that Canadian intelligence agencies have shared information with countries with a questionable human rights record, and even submitted questions for Canadians detained in these countries, despite a “credible risk” that doing so will instigate their torture.

These shocking practices resemble the controversial U.S. practice of “extraordinary rendition”, where suspects are turned over to foreign intelligence services and face likely torture. Notably, under the *Convention Against Torture*³⁴, to which Canada is a party, a state party is not only bound to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, but also is precluded from expelling, returning or extraditing a person to another state where there are substantial grounds for believing that the person would be in danger of being subjected to torture.

As Professor Peter Burns, an expert on the international prohibition against torture, testified at the Arar's Inquiry, "A state may contravene the *Convention Against Torture* if it shares information with a regime known to practice torture with the knowledge that the transfer of information would be used for the purpose of torture"³⁵. This approach is consistent with the Supreme Court of Canada interpretation in *Suresh*³⁶, that section 7 applies to torture inflicted abroad if there is a sufficient causal connection with the acts of Canadian officials.

Hence, we may conclude that Canadian officials have been complicit in the abuses suffered by these Canadian citizens, and the related infringement of their s. 7 rights.

Omar Khadr

Omar Khadr is a Canadian citizen who has been detained by the U.S. Forces since 2002 at Guantanamo Bay, Cuba. Mr. Khadr faces murder and other terrorism-related charges. He was taken prisoner in Afghanistan when he was 15 years old. In 2003, Canadian officials, including CSIS agents, questioned Mr. Khadr at Guantanamo Bay with respect to matters connected to the charges he is now facing, and shared the results with U.S. authorities. After formal charges were laid against Mr. Khadr in November 2005, he sought disclosure of all documents

relevant to these charges in the possession of the Canadian Crown, including the records of the interviews. The Crown denied access in January 2006. Mr. Khadr then applied for an order of *mandamus* in the Federal Court, which application was dismissed. The Federal Court of Appeal allowed Mr. Khadr's appeal, and ordered that unredacted copies of all relevant documents in the possession of the Crown be produced before the Federal Court for review under s. 38 ff. of the *Canada Evidence Act*. The Minister of Justice appealed to the Supreme Court of Canada.

The Supreme Court held that, "The principles of international law and comity of nations, which normally require that Canadian officials operating abroad comply with local law [only], do not extend to participation in processes that violate Canada's international human rights obligations"³⁷. Given this, the Court concluded as follows:

The process in place at the time Canadian officials interviewed Mr. Khadr and passed the fruits of the interviews on to U.S. officials has been found by the United States Supreme Court to violate U.S. domestic law and international human rights obligations to which Canada is party. In light of these decisions by the United States Supreme Court that the process at Guantanamo Bay did not comply with either U.S. domestic or international law, the comity concerns that would normally justify deference to foreign law do not apply in this case. Consequently, the *Charter* applies, and Canada is under a s. 7 duty of disclosure. The content of this duty is defined by the nature of Canada's participation in the process that violated Canada's international human rights obligations. In the present circumstances, this duty requires Canada to disclose to Mr. Khadr records of the interviews conducted by Canadian officials with him, and information given to U.S. authorities as a direct

consequence of conducting the interviews, subject to claims for privilege and public interest immunity.³⁸

The Court further concluded that, “By making the product of its interviews of Mr. Khadr available to U.S. authorities, Canada participated in a process that was contrary to Canada’s international human rights obligations” and that, “[A]t the time Canada handed over the fruits of the interviews to U.S. officials, it was bound by the *Charter*, because at that point it became a participant in a process that violated Canada’s international obligations”³⁹.

A Federal Court Justice has recently ordered the federal government to request the return of Omar Kahadr “as soon as practicable”⁴⁰. On April 23, 2009, Justice James O’Reilly ruled that the *Charter’s* s. 7 guarantee that the state may not deprive a person of his life, liberty and security of the person, except in accordance with the principles of fundamental justice, obliges Canada “to protect Mr. Khadr by taking appropriate steps to ensure that his treatment at the high-security U.S military facility in Guantanamo Bay, Cuba accords with human rights norms enshrined in the *Convention on the Rights of the Child* and the *Convention against Torture*.”

Justice O’Reilly further held that in view of Mr. Khadr’s youth, and his direct interrogation by Canadian authorities in 2003 and 2004 following sleep-

deprivation abuses by U.S. authorities, Canada's refusal to request Mr. Khadr's return to Canada offends a principle of fundamental justice and violates Mr. Khadr's rights under s. 7 of the *Charter*. According to Justice O'Reilly, "Canada had the duty to protect Mr. Khadr from being subjected to any torture or other cruel, inhuman or degrading punishment, from being unlawfully detained, and from being locked up for a duration exceeding the shortest appropriate period of time"⁴¹. Moreover, "[I]n Mr. Khadr's case, while Canada did make representations regarding his possible mistreatment, it also participated directly in conduct that failed to respect Mr. Khadr's rights, and failed to take steps to remove him from an extended period of unlawful detention among adult prisoners, without contact with his family"⁴².

Justice O'Reilly emphasized that "Canadian officials were knowingly implicated in the imposition of sleep deprivation techniques on Mr. Khadr as a means of making him more willing to provide intelligence. Mr. Khadr was then a 17-year-old minor, who was being detained without legal representation, with no access to his family, and with no Canadian consular assistance"⁴³. Thereafter, Canada turned over the fruits of its interrogation of Mr. Khadr to U.S. authorities for use against him⁴⁴. Justice O'Reilly concluded that Canada had reached the necessary degree of participation so as to offend international human rights norms to which Canada had specifically committed⁴⁵.

Again, Canadian officials participated in the unlawful detention and mistreatment of a Canadian citizen, this time a minor. Moreover, Canada's refusal to request Mr. Khadr's return has been strongly criticized and involves a continuing infringement of Mr. Khadr's s. 7 rights.

The federal government has filed an appeal of Justice O'Reilly's decision. The appeal was scheduled for June 23, 2009.

Conclusions

As our representatives, government officials must respond to all threats without undermining the very foundations of our state. The difficulty of the task above is not an excuse to breach our Constitution, nor international conventions to which we have committed. Our government has no right to violate our laws, in our name.

The case histories of Messrs Arar, Almalki, ElMaati, Nureddin, and Khadr described above reveal that our government has, at least at times, taken an extremely short-sighted view to the task of protecting us. It has, in the name of our ship of state's security, decided to throw some people overboard. This happens to be against our law. Lest of course we seek to join Richard Nixon, whose view on this issue is that, "When the President does it, that means that it is not illegal".⁴⁶

The Supreme Court of Canada recognized in *Suresh* that to deport a refugee to face a substantial risk of torture would generally violate s. 7 of the *Charter* and the international conventions to which Canada is a party. However, the Court did not exclude the possibility that in exceptional circumstances, deportation to face torture might be justified, either as a consequence of the balancing process mandated by s. 7 of the *Charter* or under s. 1. The difficulty presented by this gaping door is that it risks making our government officials our masters, rather than our representatives. Who among us will be thrown overboard next? Would such a ship even be “Canada” still?

Although the *IRPA*’s security certificate regime was modified by Bill C-3, it is questionable whether the introduction of a special advocate will properly address the secrecy in the process. In addition, a lower standard of proof in the immigration context for non-citizens should not allow state action that otherwise would breach residents’ fundamental *Charter* rights.

As per the Supreme Court of Canada, the government can be found to have infringed a person’s fundamental human rights, indirectly, when there is a sufficient causal connection between our government’s participation and the

deprivation ultimately effected by others. Indeed, sufficient participation can be seen as no different, or worse, than knowing rendition of an individual to face torture.

Our government must increase the accountability of our law enforcement agencies in their interactions with countries with a questionable human rights record, particularly when a Canadian's *Charter* rights could be at risk, which will be the case whenever he or she is detained in such a country. Otherwise, we will see a recurrence of the sad events above.

Footnotes:

1. *Anti-terrorism Act*, S.C. 2001.
2. *Criminal Code*, R.S.C. 1985.
3. *Canada Evidence Act*, R.S.C. 1985
4. *Immigration and Refugee Protection Act*, S.C. 2001.
5. *Suresh v. Canada* (Minister of Citizenship and Immigration) [2002] 1 S.C.R. 3, at p. 4
6. *Canadian Charter of Rights and Freedoms*, Part I of The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 [Charter]. ss. 1, and 7.
7. *Supra* Note 5 at p. 54

8. *Ibid.* at p. 76
9. *Ibid.* at p. 78
10. *Kent Roach* “Did September 11 Change Everything? Struggling to Preserve Canadian Values in the Face of Terrorism” *McGill Law Journal/Revue de droit de McGill* (2002) 47 *McGill L.J.* 893 – 947 at p. 53
11. *Charkaoui v. Canada* (Citizenship and Immigration) [2007] 1 S.C.R. 350
12. *Ibid.* at p. 18
13. *Ibid.* at p. 3
14. *Ibid.* at p. 65
15. *Ibid.* at p. 69
16. *Ibid.* at p. 74
17. *Ibid.* at p.139
18. *Ibid.* at p. 140
19. *Supra* Note 4,ss. 85.4 (2)
20. *Ibid.* ss. 33, 34(1), and 77(1)
21. *Jonathan Shapiro* “An Ounce of Cure for a Pound of Preventive Detention: Security Certificates and the Charter” (2008), 33 *Queen's L.J.* 519 – 564, at p. 45
22. *Ibid.* at p.26
23. *Ibid.* at p. 61
24. Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar. “Report of the Events Relating to Maher Arar. Analysis and Recommendations” c. 3.3, available online: Library and Archives Canada <http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/default.htm>
25. *Ibid.* c. 4.2
26. *Ibid.* c. 4.3
27. *Ibid.*

28. Frank Iacobucci, q.c. Commissioner “Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin” available online: <<http://www.iacobucciinquiry.ca/>>
29. *Ibid.* at p. 25
30. *Ibid.* at p. 17
31. *Ibid.* at p. 19
32. *Ibid.* at p. 29
33. *Ibid.* at p. 31
34. *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, Can. T.S. 1987 No. 36, Arts. 1, 2(1), (2), 3(1), 4(1), 16(2), 17-24.
35. Professor Burns testimony (June 8, 2005), *supra* note 26 at pp. 5850 and 5957.
36. *Supra* Note 5, at p. 54
37. *Canada (Justice) v. Khadr* [2008] S.C.J. No. 28, at p. 2
38. *Ibid.* p. 3
39. *Ibid.* p.27
40. *Khadr v. Canada (Prime Minister)* [2009] F.C.J. No. 462, at p. 92
41. *Ibid.*
42. *Ibid.* p. 64
43. *Ibid.* p. 17
44. *Ibid.* p. 57
45. *Ibid.* p. 83
46. YouTube “Interview of Richard Nixon” Watergate Tapes, available online: <<http://www.youtube.com/watch?v=ejvyDn1TPr8&feature=related>>.