SUBMISSIONS TO - House of Commons Standing Committee
on
Labour, Manpower and Immigration

RE - The Federal Government's Immigration
Bill (C-24)

FROM - Canadian Civil Liberties Association

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INTRODUCTION

The Canadian Civil Liberties Association is a national organization with a cross-country membership of more than 3000 individuals, 9 affiliated chapters, and some 40 associated groups which, themselves, represent several thousand people. Our membership roster includes a wide variety of callings and interests - lawyers, writers, housewives, trade unionists, business executives, minority groups, professors, media performers,etc.

There are many facets of immigration which are beyond the terms of reference of the Canadian Civil Liberties Association. It is not our role, at this stage, for example, to comment upon how much immigration should take place, how economic and humanitarian considerations should be balanced, and how far immigration policy should be tied to foreign policy.

Of more direct bearing to our terms of reference are the potential encroachments on personal freedom which may be permitted by Bill C-24. Such encroachments include, for example, the powers to fingerprint, arrest, detain, restrict areas of residence, and ultimately to remove and deport. The CCLA concern with such matters is to promote safeguards against the unreasonable exercise of such powers over the freedom and dignity of the individual.

In addition to these issues of substance, CCLA is also concerned with issues of procedure. In the above matters and many others, Bill C-24 provides a host of opportunities for the making of decisions which could affect countless people in crucial ways. Among our primary concerns is to ensure fair procedures for the determination of people's legal rights and obligations. Such concerns include independent adjudication, fair hearings, access to counsel, and a scrupulous avoidance of racial discrimination.

Although we began some time ago to prepare our response to Bill C-24, our notice for this meeting came within the last eight days. In consequence, the ensuing brief lacks the normal revisions and additions that we usually make to initial drafts. To whatever extent vital gaps persist, we would hope to make supplementary submissions prior to the completion of the Committee's deliberations.

SAFEGUARDS

In The Impartiality of Adjudication

The Department's published "highlights" of the Bill declare "an important innovation" - the replacement of the Special Inquiry Officer by an adjudicator. This "innovation" is designed to alleviate the appearance of unfairness in the present arrangements. Under the existing law, the Special Inquiry Officer both presents the evidence and decides the case. This generates the impression that the aliens involved in these matters are being prosecuted and judged by the same official. Where such aliens are unrepresented, the Special Inquiry Officer's duty to adduce all of the facts, favourable and unfavourable, makes him appear to have yet a third function - that of defence counsel.

In an apparent effort to reduce the criticisms which have been directed at the present system, the Government plans now to split the duties of the Special Inquiry Officer. One official will be responsible for gathering and presenting the evidence and another official, the adjudicator, will evaluate the evidence and make the decision.

The key to the fairness of the proposed new arrangement depends upon the independence of the proposed new official. The Bill appears remarkably devoid of any attempt to clothe these adjudicators with the concomitants of independence. Apart from the job security enjoyed by other federal civil servants under the Public Service Employment Act, there seems to be no attempt to grant these adjudicators any special tenure. It would appear also that, like other Department officials, they will be subject to the administrative control and direction of the Minister in the exercise of their responsibilities. We fear, therefore, that the adjudicator may turn out to be little more than a Special Inquiry Officer by another name. Indeed, in some respects, this "innovation" may represent a retrograde step. At deportation hearings henceforth, the person concerned may face not one, but two Department civil servants.

In view of the Government's initiative in this matter, we believe it would be fair to recommend that the conditions of control and tenure be changed so that the adjudica will enjoy effective independence of the Immigration Department. Among such changes, the Bill might make the adjudicators subject to the administrative direction of the Immigration Appeal Board.

Not only does the Bill fail to create the conditions for the adjudicator's independence, but it appears also to reduce the conditions for the Appeal Board's independence. According to the Bill, the members of the Board will serve hereafter at the "pleasure" of the Government. It would be difficult to conceive of an amendment more likely than this one to generate the suspicion of subservience. It deserves enthusiastic rejection.

In the Access to Counsel

Although the Bill provides that the hearings be adversarial in structure, the analogy is weakened not only by the defects already noted with respect to the adjudicator, but also by the inadequacies respecting the right to counsel for affected persons. Apart from the inquiries stage of immigration proceedings, the Bill fails to provide affirmatively for a right to counsel.

It appears, for example, that counsel cannot be claimed as a matter of right at initial examinations. Yet the persons being examined are required by statute to answer the questions which Department officials ask them. There is a great risk that the statements made by untrained persons might be inadequate to protect their interests. Even if truthful, the statements might exaggerate, minimize, or fail to qualify the relevant facts so as needlessly to prejudice the person's position. An ill-advised presentation could undermine irrevocably the person's immigration status and even produce hardship for friends and family in Canada.

Another key point in the immigration process for the right to counsel is the determination of the conditions for pre-hearing detention and release. No one in a democratic society should be deprived of his personal liberty without recourse to certain minimal safeguards. This means, at the very least, an effective right to counsel.

But an expanded right to counsel will be of very little value to those persons whose income prevents them from taking advantage of it. Periodically, immigration proceedings in Canada can lead to harsh consequences elsewhere. Not long ago, a Greek Jehovah's Witness, subject to deportation for alleged mis-statements in his immigration application, faced imprisonment in Greece because of his conscientious objection to service in that country's army. Numbers of American radicals, subject to extradition and/or deportation, have faced long prison terms because of charges or convictions against them in their native country.

Experience reveals that some of these people arrive in Canada, utterly destitute. Though some provinces have sometimes helped, virtually no province requires the subsidization of legal assistance in immigration cases. Yet it would be unthinkable if the fact of poverty could effectively deny the fundamental features of Canadian justice where such dire consequences were involved.

In view of the federal responsibility for the conduct of immigration policy, the Federal Government should bear a heavy responsibility for the fairness of immigration proceedings. This means the subsidization of legal assistance for needy persons at least in those cases where the outcome of immigration proceedings could lead to a substantial deprivation of liberty. A useful measure to consider here would be the provision, at key points, of duty counsel including trained para legals.

An obvious concomitant of the right to counsel and legal aid is knowledge of their existence. We would recommend, therefore, that, at least in those parts of the process where the person could be prejudiced, the Department should be obliged to advise him of his right to counsel and available legal aid.

In the Conduct of Hearings

The Bill proposes virtually nothing on the issue of public hearings. Inquiries will still be held in camera with the proviso that any persons may attend if their attendance is "not likely to impede" the proceedings.

In view of the centrality of public scrutiny to procedural fairness, we believe in the reverse approach. The public generally should be entitled to attend all adjudicative hearings under the Immigration Act unless there are exceptional circumstances in which the attendance of some person or persons is likely to impede the proceedings. There is simply no reason why immigration hearings should be treated so differently from most other hearings in our legal system.

In the Detention of Suspects

The Government's explanatory notes on the Bill declare that, for persons detained in immigration matters, there will be "new safeguards...comparable to those in the Bail Reform Act". Unfortunately, however, the proposed provisions fall somewhat short of these declared pretensions.

Under the Bail Reform Act, if the police do not release an arrested suspect, they are required to bring him before a justice "without unreasonable delay", in any event within 24 hours, or if a justice is not available, "as soon as possible" thereafter. Under the Immigration Bill, however, a senior immigration officer may authorize the detention of a suspect for as long as 48 hours without further review. The Bill seems to impose no comparable duty to accelerate the review of pre-hearing detention and release.

If no inquiry is held within 48 hours of the arrest, the Bill requires that the suspect be brought before an adjudicator. It is the adjudicator who is then empowered to determine the conditions of the suspect's pre-hearing detention and release. So long as the adjudicator enjoys no more independence of the Department than is currently intended, this arrangement would constitute a substantial and serious departure from the Bail Reform safeguards. The key to the criminal law bail system is the role of the independent judiciary. In the criminal system, it is the independent courts which determine the pre-trial detention and release of suspects. The immigration law cannot properly wrap itself in the rhetoric of Bail Reform unless it too provides for the independent adjudication of pre-hearing liberty. This means also a right of appeal against lower level detention orders.

Another key safeguard that operates in the criminal law bail system, is the right to a public hearing. The new Immigration Bill would appear to perpetuate the present in camera arrangements. The opportunity for public scrutiny serves as an obstacle to arbitrary treatment. No system claiming to implement Bail Reform safeguards can afford to omit it.

As far as detentions before Appeal Board hearings are concerned, the Bill should set out, as it does not now, the Bail Reform test which must be satisfied i.e. likely non attendance at the hearing or dangerousness to the public. In this connection, we submit that security certificates should not impose an irrevocable barrier to pre-appeal release. The Immigration Appeal Board should be empowered, at least in camera, to scrutinize the relevant material and make its own determination whether, applying the Bail Reform criteria to all the circumstances, the impugned alien should be detained or released.

In the Procedures for Appeal

The Bill provides that removal orders not be executed until appeal rights have been exhausted or the time limits have expired without appeals being filed. In view of some of the premature executions of deportation orders in the past, this is a most welcome amendment.

Unfortunately, however, this amendment deals only with technical "appeals". Not all rights of recourse to higher tribunals are called by that name. The Federal Court Act contains, for example, the right to make an "application" to set aside removal orders on the basis of an error of law. While not technically referred to as an "appeal", this right certainly has the same effect.

At least insofar as persons who have been admitted to this country are concerned, removal before Federal Court rights can be exhausted is no less unfair or premature than removal before Immigration Appeal Board rights can be exhausted. While it appears that the Department frequently suspends its execution of such orders pending the resolution of court applications, we can see no reason for the failure to transform this customary practice into a statutory duty.

In the Loss of Domicile

At the moment, immigrants who have resided in Canada continuously for five years or more are deemed to have acquired a Canadian domicile. Essentially, this means that, unless they are convicted of the most serious offences such as treason or drug trafficking, they are immune from deportation.

The Immigration Bill proposes now to abolish the domicile protection. Despite the length of their stay in Canada, all permanent residents who have failed to obtain their citizenship will be equally subject to deportation for the commission of much less serious offences than is currently the case.

While we appreciate that the law will shorten the period from five years to three years during which immigrants must wait before they can become citizens, we are not persuaded that the domicile protection should be lost. There are many legitimate reasons which inhibit people from renouncing the citizenship of their birth. In view of their relative stakes in the community, it is not reasonable that the permanent resident of 20 days and the permanent resident of 20 years be equally subject to deportation for some of the lesser crimes they may commit. We believe that length of stay should carry with it some greater protections against compulsory removal.

In the absence of some demonstration of the need for this change, we would recommend its deletion. Alternatively, we believe that at least incumbent permanent residents ought not to lose whatever domiciliary protections they have already acquired. The retroactive repeal of people's rights represents a perilous principle and an unwise precedent.

In the Exercise of Clemency

Unfortunately, the Bill plans to perpetuate the existing impediment on the Ministerial power to grant clemency in deserving cases. Under the current law, a Ministerial permit cannot be granted to a person who has been ordered deported until the order has been executed and the person has actually left the country.

Apparently, the Government is afraid that a less fettered Ministerial power to grant clemency would precipitate an unmanageable flood of requests. Government spokesmen fear that virtually every deportation order would be followed by an appeal to the Minister. Surely, however, such reasoning is equally applicable to criminal cases. The Executive Branch of Government has retained most of the royal perogatives to grant mercy in criminal cases. Yet there has been no suggestion that the Federal Minister of Justice is in any danger of drowning in a sea of unmanageable clemency appeals.

We seek to eliminate the charade of exit and re-entry which has characterized a number of the deserving cases under the existing legislation. The duty to conform to this ritual has imposed financial and emotional hardship for many of the people involved. Needless to say, it has also made the entire country look somewhat foolish.

CATEGORIES
OF
INADMISSIBILITY and REMOVABILITY

For Breach of Conditions

The Bill is planning to make permanent residents removable for breaching the conditions upon which they were granted landed status. We are concerned about the kind of conditions which this may involve. Apparently, the Government intends to extract from certain immigrants an undertaking that, for about a 6 month period, they will live in certain communities and work at certain kinds of occupations. Presumably, such arrangements are designed to steer immigrants away from the overcrowded metropolitan areas and toward those communities which have greater need of their services.

Although the goal is acceptable, the means are not. Freedom of movement represents too precious a value for a democratic society to deny any of its law-abiding inhabitants. Such an encroachment on freedom could not be justified even by the immigrant's prior agreement to accept it. In view of how immigration to Canada is seen to provide relief from some of the sufferings in other countries, many aliens would have no effective option but to "agree" to such conditions. Moreover, the Bill fails to specify exactly how the Government would enforce these planned restrictions. How far might the immigrants concerned and citizens who look like them be subject to investigation and surveillance? There is a great risk also that such immigrants might be exploited unscrupulously by the employers to whom they are pledged. And they might even be subject to some extortion attempts in the event of a less than strict compliance with the agreed upon conditions.

It is our view, therefore, that the new immigration law should contain no provision allowing the Government to exact such conditions for the granting of landed status. To whatever extent the Government wishes to attract immigrants to some areas rather than others, it should do so by way of offering positive incentives rather than by imposing negative restrictions. In the alternative, if the Government clings to this ill-advised plan, the essence of the powers it acquires should be set out in the statute and not be left simply to regulations. If people are to suffer such infringements on their basic liberty, the measures should be adopted not in the dark of secret cabinet meetings, but in the light of open Parliamentary sessions. Moreover, no person should be forceably deported or removed for breaching such conditions unless the breach is both wilful and material.

For Criminal Conduct In General

The Bill seeks to abolish deportations from Canada for the commission, in other countries, of "crimes involving moral turpitude". In its place, there would be introduced more precise categories. If the Bill were to be enacted in its present form, permanent residents, immigrants who seek landing, and visitors who seek entry for more than 30 days would be subject to exclusion and removal for having committed elsewhere:

> "an offence that, if committed in Canada, would constitute an offence that may be punishable by way of indictment under any Act of Parliament...".

While this category of exclusion is less vague than "moral turpitude", it creates a risk of elevating relatively minor matters into issues of great gravity. Offences which may be punished by way of indictment include, for example, impaired driving. While the commission of one such offence certainly deserves disapproval, we do not believe that it warrants exclusion from Canada. Simple possession of marijuana, at the moment, is also an offence which may be punishable by indictment. In view of the obviously changing social and judicial attitudes about marijuana smoking, to render it an excludable offence is to lose all sense of proportion.

In the case of immigrants who seek landing and visitors who seek to enter for more than 30 days, the Bill would add a further barrier for their having committed elsewhere:

> "two or more offences...that, if committed in Canada, would constitute offences punishable on summary conviction under any Act of Parliament...".

In these cases, the Bill would run the risk of excluding from this country, persons who had done nothing more serious than the equivalent of parking their automobiles illegally on two or more occasions at one of our international airports. Such conduct, even if it were to occur more than twice within a short period of time, would hardly render a person so undesireable as to warrant exclusion from our borders.

It appears, therefore, that the Immigration Bill risks the substitution of trivia for vagueness as a basis for excluding people from this country.

We note elsewhere in the Bill a provision rendering permanent residents deportable for convictions here under any Act of Parliament where:

- they receive in fact more than six months of imprisonment or
- they are liable to receive five years of imprisonment or more.

At least this section involves an attempt to measure the seriousness of the circumstances surrounding the events in question. We believe that a similar test might be adopted in respect of offences committed outside Canada.

In our view, at least permanent residents and those immigrants whom we shall subsequently designate as "preferred" should not be subject to exclusion or removal for the offences they have committed elsewhere unless such offences, if committed in Canada:

- could only be prosecuted by indictment and
- could attract a sentence of five years imprisonment or more.

It might not be inappropriate also to render excludable certain less serious offenders. But, in the interests of avoiding trivia, they ought to be identified more precisely than is done in the current Bill. Perhaps the offences in question or the exceptions should be specifically identified? In any event, the inadmissibility of permanent residents and preferred immigrants for less serious matters should require a pattern of some repetition or persistent misconduct.

The adoption of such criteria would represent a more consistent attempt to evaluate the desirability of aliens according to acceptable Canadian standards. Moreover, this country should not irrevocably be bound by other countries' findings of guilt. There are many ruthless tyrannies in this world whose systems of justice do not warrant automatic homage in Canada. We believe that it would be fairer to allow the impugned immigrant to adduce evidence in rebuttal or in mitigation of foreign convictions. In the case of democratic societies with which Canada has concluded extradition treaties, there may be less propensity to look behind foreign judgments of guilt. But, in the case of those totalitarian and authoritarian societies with which we do not have such arrangements, this country should be more willing to question their judgments.

In so far as offences committed in Canada are concerned, the Bill appears to make permanent residents deportable also for any federal offence that may be punishable

by way of indictment (section 27 (1) (a) and section 19 (2) (a). Once more, this threatens to elevate potentially minor into major matters. Surely people who have been accorded the status of permanent residents should not be removable for one offence of impaired driving or possession of marijuana. Moreover, in view of the fact that the Bill elsewhere conditions the deportability of such people on their having committed an offence which could attract five years or has attracted more than six months, this provision, at best, would appear to be anomalous.

We are also concerned about rendering permanent residents and preferred immigrants excludable and deportable on the basis of 'reasonable grounds to believe (they) are likely to engage in criminal activity'. In our opinion, this country owes such persons something more precise than an exercise in prophecy. The removal of such people from this country on the basis of anticipated anti-social conduct should require, at the very least, certain proved anti-social acts.

To whatever extent other categories of aliens remain excludable and deportable on the basis only of such predictions, the standards should be defined in language more precise than the words "criminal activity". Such terminology conveys neither adequate discernibility nor adequate gravity.

The Bill contains another questionable basis for such exclusion - aliens who are "associated with an organization" that is likely to commit certain acts of violence. Apart from the problem of prediction which we have already mentioned, the concept of association is dangerously wide. It is quite possible to be innocently "associated with" an improper organization. Lawyers, accountants, and doctors, for example, in the course of rendering professional services, may become "associated with" all kinds of groups and organizations. But such associations are assailable only when they are accompanied by illegal conduct. To whatever extent such a ground of inadmissibility remains, the Bill should be amended more adequately to reflect this idea. No one should be excludable or removable for associating with improper organizations unless such association involves, at the very least, some form of unlawful assistance to the impugned act of violence.

immigrant the totality of the case against him, we cannot support the denial of independent adjudication. In such circumstances, at the very least, the contentious material ought to be subject to in camera review by the courts or the Immigration Appeal Board.

The Bill would provide also for special security certificates to be filed by the Ministers concerned against other categories of aliens in various other immigration proceedings. At the Immigration Appeal Board, such certificates would preclude the Board's exercise of compassionate relief against ordinary deportation orders. At the border points, such certificates could effectively exclude, without appeal to the Board, certain categories of aliens.

In our opinion, such power should not be exerciseable without any possibility for independent review. We believe that, in the course of hearing immigration cases within their respective jurisdictions, the Immigration Appeal Board and the Federal Court should be empowered, at least in camera, to review the validity of any security certificates which the Government has filed in such cases.

The key to our system of justice is that no one should be the umpire of his own ball game. We can see no reason to exempt from this principle, of all constituencies, the governing politicians.

For Non-Genuine Visits

The new Bill replaces the former prohibition against non-bona fide aliens with a class of inadmissibility described as "persons who are not, in the opinion of an adjudicator, genuine immigrants or visitors". This represents a change in wording without changing the reality of port of entry admission problems. The Bill provides for "visitors' security deposits' which may be "such sum of money or other security" as a senior immigration officer deems necessary to guarantee the visitor's departure. But the senior immigration officer is the one who determines whether or not a security deposit will be required or even permitted.

Of all the powers exercised under the Immigration Act, this one has been one of the most controversial. On many occasions, the mass media have carried stories about non-white people who travelled thousands of miles to visit some close relative, only to be denied entry at the border point. On some occasions, even whole plane loads of such people have been turned back without gaining entry. The Government's concern is that a number of people only pretend to be visitors; their real intention is to gain entry that way and then remain illegally within the country.

As one means of resolving the consequent dilemma, the Canadian Civil Liberties Association proposes that the Department be obliged to admit every applicant, otherwise not prohibitible, on whose behalf a Canadian citizen or permanent resident signs a surety bond guaranteeing his timely departure. No money should be required or requested in advance. But both the visitor and the surety should incur a subsequent financial debt, in the event of the visitor's failure to leave the country as promised.

As a protection against the risk of admitting non-genuine visitors, the Department might require that the surety be a property owner or a regularly employed person. Together with proof of identity (naturalization papers, immigration papers, or a Canadian birth certificate), the surety might be asked simply to swear an affidavit as to his place of residence, his place of employment, or the location of any property he owned. In view of the fact that no money could be requested in advance, the amount of the surety bond might be made substantial, say $5000 each to the visitor and the surety.

In our view, the adoption of such a system would reduce the amount of unfair treatment at the border points without increasing the flow of illegal aliens.

In addition, we think the Government ought to adopt an optional pre-clearance system so that potential visitors could effectively determine their admissibility before incurring the expense and inconvenience of the journey to this country. If the genuineness of a visit must be impugned, surely it is better for such issues to be resolved before great inconvenience is incurred.

For Loss of Employment

Regrettably, the Bill does not improve the situation of visitors who are rendered deportable for losing the employment which formed the basis of their permission to come to Canada. So long as dismissal means deportation, the visitor will be vulnerable to exploitation and mistreatment at the hands of his employer. The fear of losing his job could increase his willingness to accept a host of indignities.

In our view, the Bill should be amended so as to ensure that the loss of a designated job will not automatically mean removal from Canada. We believe that the visitor should be able to seek and accept other temporary employment which is not incompatible with the original terms of his admission to the country. There ought to be a reasonable period of grace so that the visitor has an opportunity either to acquire such employment or to arrange his affairs prior to departure.

Personal Assessment

The category "personal assessment" endows the Department with a further opportunity for arbitrary discretion. Up to 30% of the required units can be accorded now for the Immigration Officer's personal impressions of the applicant's "adaptibility, motivation, initiative, resourcefulness, and other similar qualities". In view of the units available for this category, it is possible that many borderline applicants might be rejected because of bureaucratic bias. This is not, of course, to accuse the Department or its officers of actual unfairness in the application of this category. Rather, it is to impugn the appearance of unfairness which this category makes possible.

Inevitably, however, there will be some applicants who would be desirable immigrants, despite the fact that they scored less than what was required in the objective categories. This is a judgment that a properly trained immigration officer might well be able to make. How, then, can we have helpful flexibility without harmful prejudice?

In order to solve this dilemma, we propose the removal of the 'personal assessment' category and its specific number of units. Instead, the Department should be empowered to grant landed immigrant status to any borderline applicant who satisfied it that he would be an asset to Canada, notwithstanding the fact that he was a few units short of the requisite number. In this way, the officer's personal impressions could only help an applicant; they could never hurt him. In our view, the risk of arbitrary help is much less offensive to due process than the risk of arbitrary harm.

Preferred Categories

In the interests of promoting the principle of family unification, the Bill proposes a new category of preferred immigrants called the family class which apparently will not need all of the qualifications that are generally required in the granting of landed status. For the first time, the preferred category will include the

citizen's parents of any age. Unfortunately, however, the Bill plans to abolish the existing preferred category of nominated relatives. This creates the possibility that the principle of family unification may actually suffer a net loss through these changes.

In our view, the preferred category of immigrants should not be confined to the nuclear family. Some people enjoy closer relationships with relatives outside of their immediate family circle, and, indeed, with non-relatives. A more realistic way of promoting the principle involved would be to accord preferred status to those people with whom the citizen or permanent resident has a de facto relationship which is analagous in terms of closeness and interdependence to the relationships within the nuclear family.

In response to the fears expressed by some that such a measure might multiply unreasonably the number of potentially unqualified immigrants, we would point out that such a development is avoidable. Surely it is possible to devise a system whereby such non-nuclear friends or relatives could come here instead of, rather than in addition to, the expected number of nuclear relatives.

As a complement to this measure, we would urge the extension of appeal rights to citizens and permanent residents in cases where immigrant status is denied to those persons with whom they have a nuclear or analagous relationship. This is designed to provide some relief against the situation where nameless Departmental officials in overseas offices effectively stop people from joining their loved ones in this country. At least citizens and permanent residents should be able to question the decisions in such cases. Moreover, the Immigration Appeal Board should be empowered in such cases not only to remit but also to repair the improper denials of immigrant status.

Labour Demand Statistics

The awarding of immigrant status in response to occupational demand creates a rather wide scope for unfettered Departmental discretion. Unavoidably, as economic circumstances change, so too will the relative evaluations assigned to particular occupations and to the various regions of intended settlement.

The difficulty here arises from the fact that there is no way for the public to scrutinize how the assessments are made within these broad categories. This information is contained and confined, at the moment, in a Departmental document entitled "Occupational and Area Demand Report". And the Report is an internal document "not for public release".

Governmental secrecy encourages public suspicion. In our view, the canons of democratic due process require the declassification of such material. The "Occupational and Area Demand Report" should be transformed into a public document. Information sources, assignable units, and methods of analysis should be open for all to inspect. Such information could be made available at least at intervals subsequent to the currency of any particular report. The possibility of subsequent public review would enhance both the reality and the appearance of non-discrimination and fair play.

THE POWER TO LEGISLATE

Traditionally, the legislative process has represented a vital safeguard for the rights of the individual. The individual could count on preserving whatever rights he enjoyed until and unless Parliament abrogated them. This meant that any abrogation of his rights would have to be enacted and debated in an open public session. The openness of the process created an opportunity for the individual to protect his interests; it enabled him to write, speak, advertise, organize, and demonstrate in order to influence his representatives before he faced a fait accompli.

To a very great extent, however, modern legislation delegates to secret cabinet meetings the power to make the relevant law. This development is attributable presumably to the growing complexity of modern issues and the speed with which such issues change. No piece of legislation could possibly anticipate all of the problems which might arise in the wake of its enactment. If the resolution of every issue had to undergo the full trappings of parliamentary debate, government would be unable to respond in a number of situations.

The Canadian Civil Liberties Association believes, however, that the interests of speed and efficiency do not always require so complete a surrender of the traditional legislative safeguards. In our view, the Government's Immigration Bill represents a particularly perilous and needless abdication of Parliamentary sovereignty. In a number of vital areas, the Bill would appear to delegate to Government the power to abridge fundamental civil liberties.

Among these questionable delegations of power is the one which would enable the Government to set out "the circumstances in which persons...other than Canadan citizens, may be required to be fingerprinted or photographed or otherwise identified". To what extent will this mean identity cards, police passes, or even possible restrictions on freedom of movement? Indeed, how far might such a power precipitate encroachments on Canadian citizens who are suspected of being immigrants or visitors? To whatever extent this power might lead to a requirement that non-citizens carry identity cards, citizens who look like non-citizens (i.e. non-whites) might become especially vulnerable to police harrassment.

Another questionable power which is to be reposed in the Government concerns the prescribing of certain "terms and conditions" for the admission of non-citizens into Canada. When a number of sections are read together, it would appear that the Government will acquire the power to condition the granting of landed status upon the willingness of the immigrant to live in a particular place and work at a particular job for a period of up to 6 months. Again, a number of unpleasant possibilities arise. How would such conditions be enforced? To what extent would innocent non-whites, both citizens and non-citizens, become vulnerable to impositions on their freedom of movement? And, how far would the immigrants who agreed to such conditions become vulnerable to mistreatment and exploitation by the employers in the designated jobs?

This is not necessarily to dismiss the possibility of any and all new rules regarding the treatment of immigrants and visitors. It is, however, to insist that where fundamental liberties could be jeopardized, the Canadian people should not be asked to buy a pig in a poke. To whatever extent the Government believes that such new rules are warranted, Parliament should require their inclusion in the the immigration statute. There should be no abridgement of civil liberty without, at the very least, full-scale public scrutiny.

A similar problem arises in those sections of the Bill which would empower the Government to make regulations respecting the procedures at inquiries and at the special Advisory Board. The procedures which could culminate in so drastic a measure as deportation cannot be regarded simply as administrative details. Procedural fairness is fundamental to democratic government. As such, the statute should contain the minimum safeguards for the person who faces deportation - the right to call evidence, challenge the evidence against him, representation by counsel, etc. Some procedures are too basic to be left to regulations.

Even if our criticisms thus far were granted, we appreciate that the Government would be left with a considerable power to make regulations. In order to provide an additional safeguard in the exercise of this power, we would recommend that before a new cabinet made regulation could be enacted, the substance of it would

have to be published in the mass media at least one month in advance. This would enable affected members of the public to generate a political debate before they suffered any encroachment on their rights and interests. Such a measure would restore to the law-making process some of the lost elements of public participation while simultaneously retaining some of the present executive flexibility. At a time of growing suspicions of bureaucratic discrimination, it would be wise to open and broaden the law-making process in this way.

SUMMARY OF RECOMMENDATIONS

The Canadian Civil Liberties Association requests the House of Commons Standing Committee on Labour, Manpower and Immigration to recommend the following amendments to the Federal Immigration Bill (C-24).

1. The conditions of control and tenure for the newly established "adjudicators" should be changed so that they will enjoy effective independence of the Immigration Department. Such changes might include making them subject to the administrative direction of the Immigration Appeal Board.

2. The proposal for members of the Immigration Appeal Board to serve at the "pleasure" of the Government should be changed to ensure a more secure level of tenure.

3. There should be an affirmative right to counsel at all stages of the immigration process.

4. Legal assistance should be subsidized for needy persons at least in those cases where the outcome of immigration proceedings could lead to a substantial deprivation of liberty.

5. At least in those parts of the immigration process where the person could be prejudiced, the Department should be obliged to advise him of his right to counsel and available legal aid.

6. Inquiry hearings should be open to the public.

7. All of the key Bail Reform safeguards should be applied to immigration arrests and detentions, including the following:
   a) a more severe limit on the unilateral power of immigration officers to detain immigrant suspects.
   b) independent adjudication of the conditions regarding the suspect's pre-hearing detention and release
   c) public hearings of these issues
   d) a right of appeal against detention orders and bail conditions
   e) a specific inclusion that detentions before Appeal Board hearings also be governed by the same criteria i.e. likely non-attendance at the hearing or dangerousness to the public
   f) the Immigration Appeal Board should be empowered to release a prisoner on the basis of its own analysis of the evidence, notwithstanding the Government s filing of a security certificate

8. Removal orders against persons who have been admitted to this country should be stayed until all court applications have been resolved or the time for filing them has elapsed without an application being filed.

9. The proposal to abolish the domicile protection should be deleted. Alternatively, incumbent permanent residents should not lose their existing domicile protections.

10. The Minister of Immigration should be empowered, on humanitarian grounds, to stop the execution of deportation and removal orders.

11. a) The law should not condition the granting of immigrant status on the basis of a person's willingness to live in certain communities within Canada
    b) In the alternative, the essence of the powers involved should be set out in the statute and not be left simply to regulations
    c) In any event, no person should be deported or removed for breaching such conditions unless the breach is both wilful and material.

12. a) Permanent residents and preferred immigrants should not be subject to exclusion or removal for the offences they have committed in other countries unless such offences, if committed in Canada,
        i) could only be prosecuted by indictment and
        ii) could attract a sentence of five years imprisonment.
    b) The exclusion or removal of such immigrants for less serious offences committed elsewhere should involve a more specific identification of the impugnable conduct and a pattern of repetition or persistence.

13. Where it is alleged that an immigrant's conduct elsewhere renders him excludable or deportable from Canada, he should be given an opportunity to adduce evidence in rebuttal or in mitigation of any conviction he may have sustained in a foreign country.

14. To render permanent residents excludable and deportable for the offences they commit in Canada, it should be necessary, at a minimum, that
        i) they can be prosecuted only by indictment and
        ii) there is a possible jail sentence of five years or
        iii) they receive, in fact, more than six months in jail.

15. Permanent residents and preferred immigrants should not be subject to exclusion or deportation from this country on the basis only of predictions concerning future criminal activity.

16. To the extent that other categories of aliens remain excludable and deportable on the basis only of such predictions, there should be a requirement that the contemplated criminal activity be more clearly delineated.

17. To whatever extent some categories of aliens are excludable or removable for associating with violence-prone organizations, such association should involve, at the very least, some form of unlawful assistance to the impugned act of violence.

18. Permanent residents should not be subject to exclusion or deportation from this country, even in security matters, without recourse to independent adjudication.

19. In the course of hearing immigration cases within their respective jurisdictions, the Immigration Appeal Board and Federal Court should be empowered, at least in camera, to review the validity of any security certificates which the Government has filed in such cases.

20. Except for those who are otherwise prohibitable, the Department should be required to admit to Canada every visitor on whose behalf a Canadian citizen or permanent resident signs a surety bond, without cash, guaranteeing his timely departure.

21. Canada should provide an optional overseas pre-clearance system in order to minimize border crossing problems here.

22. Temporary workers who lose their jobs should be given a reasonable period of grace in order to arrange their affairs prior to departure or to secure alternative employment which is not incompatible with the original terms of their admission here.

23. The "personal assessment" criterion should be permitted only to grant and not to deny landed immigrant status.

24. Preferred immigrants should include aliens with whom the Canadian citizen or permanent resident enjoys a relationship analagous to those within the nuclear family. Citizens and permanent residents should have a right of appeal against the denial of immigrant status to any person with whom they have a nuclear or analagous relationship. In such cases the Board should be empowered not only to remit but also to repair improper Departmental decisions.

25 The information contained in the "Occupational and Area Demand Report" should be made publicly available at least at intervals subsequent to the currency of any particular report.

26. To whatever extent the Immigration Bill will contain provisions which are likely to affect fundamental civil liberties, the scope and limits of the power should be set out in the statute and not be left simply to regulations. Without limiting its generality, the foregoing should apply at least to the following issues:
    a) the circumstances for compulsory fingerprinting, photographing, or other identification of non-citizens
    b) the requirement that immigrants live in certain places and work at certain jobs for designated periods of time
    c) the basic procedures for inquiries and the Special Advisory Board.

27. In any event, before any cabinet regulation on immigration may be enacted, there should be a requirement that the substance of it be published in the mass media at least one month in advance.