SUBMISSIONS TO: Legislative Committee on Bill C-86
(Immigration) House of Commons

RE: Amendments to Immigration Act

FROM: Canadian Civil Liberties Association

DELEGATION: A. Alan Borovoy
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Ottawa

August 11, 1992

INTRODUCTION

The Canadian Civil Liberties Association is a national organization with the paid support, across the country, of more than 7000 individuals and about 50 organizations which, themselves, represent several thousands of people. There are also 8 affiliated chapters. Our roster of supporters includes a wide variety of callings and interests - lawyers, writers, homemakers, trade unionists, business executives, minority group leaders, educators, broadcasters, etc.

Our objectives include the following:

- to promote legal protections against the unreasonable invasion by public authority of the freedom and dignity of the individual, and

- to promote fair procedures for the resolution and adjudication of conflicts and disputes.

It is not difficult to appreciate the relationship between these objectives and the governmental powers of deportation. At the very least, the power to remove people from this country represents a potentially substantial intrusion on such people's freedom and dignity. And so, of course, does the power to detain people pending the adjudication and execution of deportation orders.

THE SCOPE OF THESE SUBMISSIONS

What follows is addressed essentially to the issue of deporting permanent residents. This does not necessarily mean that the Canadian Civil Liberties Association has no interest in refugees, family reunification, the treatment of visitors, and the many other important questions covered by Bill 86.

Unfortunately, however, the bill is lengthy and complex; the time period between its introduction and these committee hearings was only a few weeks. And those few weeks occurred in the middle of the summer when many people were away on vacation. For voluntary organizations with limited resources, it would be impossible to prepare a comprehensive response during such a limited period of time. By contrast, it is hard to imagine what legitimate public interest requires the haste with which this bill is being pushed through the process.

The first and overriding recommendation we make is to call upon the committee to postpone these hearings until - at the earliest - the late fall of this year. The issue of immigration and the changes the bill proposes to make can have a significant impact on the people and institutions of this country. The bill deserves, therefore, a serious public debate. Such a debate is not possible if the government clings to its present timetable. In deference to the millions of Canadians whose interests are so deeply involved, the Canadian Civil Liberties Association requests this change in the legislative timetable.

Where immigration matters are concerned, the handling of permanent residents raises many of the civil liberties issues. In general, the country owes most to those who have uprooted themselves on the strength of being allowed to reside here indefinitely. Thus the deportation of this category of aliens warrants special attention

from our organization. Accordingly, the ensuing submissions focus on this limited area. Even at that, however, time constraints may well have rendered our remarks less comprehensive than the subject deserves.

Since certain other groups have had more experience than we have had in a number of the other areas with which the bill deals, we are obliged to leave to them the task of performing the role of critics for those problems. This does not mean that we necessarily endorse every detail of their analyses and recommendations, many of which we have not yet seen. But it does mean that we sympathize with their general approach, respect their expertise, and believe their submissions will contribute significantly to the process.

Recommendation #1

The hearings and debate on this bill should be deferred until - at the earliest - the late fall of this year.

CRITERIA FOR THE REMOVAL OF PERMANENT RESIDENTS

For Membership in Certain Organizations

By the addition of section 19(1)(c.2)*, permanent residents will be subject to deportation if "there are reasonable grounds to believe [they] are or were members of an organization that there are reasonable grounds to believe is or was engaged in the commission of any offence that may be punishable under any Act of Parliament by indictment or in the commission outside Canada of an act or omission that, if committed in Canada, would constitute such an offence".

It's one thing to deport those who have actually committed or assisted in the commission of such crimes. But there is no justification for deporting permanent residents simply because they happen to be involved in the same organization as the offenders. Quite often, such organizations include perfectly legitimate people and their activities. Indeed, some rather respectable organizations have engaged in the commission of offences. Consider, for example, the RCMP. It was once the official policy of the Mounties to open mail in circumstances prohibited by law.

While no one believes that the government would actually use any newly-created power, in this way, against an immigrant who might have worked for the RCMP, we can't be so sanguine about other cases - people who have worked, for example, in the American civil rights movement, for Greenpeace and any number of international unions. Such organizations have committed offences such as mischief arising from certain demonstrations, picket lines, and the violation of court injunctions. Some of them have committed such offences in this country and some elsewhere. This means that Canada could

* Sections refer to proposed amendments to the Immigration Act

deport the followers of Martin Luther King for some of their non-violent but illegal protests against racial segregation. But that's not all. The bill could authorize the deportation not only of the persons who actually violated the laws in question but also of many others simply because they belonged to the same organizations as the violators.

Significantly, the bill fails to define what it means by the word, "member". Does this require the actual payment of dues? What happens in the case of those organizations that do not impose regular dues? Will any financial contribution suffice? Or will membership also be inferred from other involvements such as delivering flyers, participating at rallies, stuffing envelopes, or licking stamps? Will one such example of assistance - even if no crime was involved - be sufficient evidence of membership?

Even if membership, properly defined, in such organizations were considered an appropriate basis for deportation, why should the bill include past, as well as present, "members"? Our experience tells us that all kinds of people join a wide variety of organizations for many legitimate reasons, without the remotest idea that such organizations are involved in dubious activities. Many people resign their memberships the moment they learn that the organization is associated with improprieties. According to this bill, such conscientious people would be just as subject to deportation as those who were careless about, or even complicit in, the misconduct associated with the organizations they may have joined.

Of course, a great many people who joined questionable organizations remained in them, notwithstanding their awareness of the organizations' misdeeds. Consider, for example, the communist parties of eastern Europe. At one time, those parties controlled everything in their societies, including access to desirable jobs. Thus, scores of people joined to acquire some financial security

for their families. Perhaps such association was not heroic. But, in the absence of direct involvement in the organizations' impugnable activity, it hardly represents the kind of villainy that should trigger deportation. There are probably hundreds of situations of this kind throughout the undemocratic world. People became associated with organizations that controlled the central levers of those countries' economies. The role such people played in those organizations was often minor and far removed from the behaviour that offends our democratic values.

Even if a somewhat broader standard might arguably be permissible as a basis to exclude a number of categories of aliens from this country, permanent residents should be treated with more solicitude. As far as misdeeds in Canada are concerned, permanent residents should be subject to deportation only if they have actually been found guilty of illegal acts. As far as misdeeds outside of Canada are concerned, the deportation of permanent residents should require, at the very least, reasonable grounds to believe that the permanent residents actually participated in the impugned acts. Past or even present membership or other involvement in suspect organizations should not be considered enough to trigger so serious a consequence as deportation.

Moreover, it would be unduly harsh to deport permanent residents for having committed <u>any</u> offence that could be prosecuted by indictment. As indicated, that could include some relatively less serious matters arising from certain demonstrations or picket lines. Deportation should require more serious misconduct.

<u>Recommendation #2</u>

Permanent residents should not be subject to deportation merely because they are or were members of certain organizations.

Recommendation #3

(a) As far as misdeeds in Canada are concerned, permanent residents should be subject to deportation only if they have actually been found guilty of illegal acts.

(b) As far as misdeeds outside of Canada are concerned, the deportation of permanent residents should require, at the very least, reasonable grounds to believe that the permanent residents actually participated in the impugned acts.

(c) In any event, the deportation of permanent residents should require misconduct more serious than participation in any offence that, if committed in Canada, "may be punishable by way of indictment".

For Future Misconduct

By amending section 19(1)(e), the bill proposes to authorize the deportation of permanent residents if:

> there are reasonable grounds to believe [they] (i) will engage in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada (ii) will, while in Canada, engage in or instigate the subversion by force of any government (iii) will engage in terrorism, or (iv) are members of an organization that there are reasonable grounds to believe will engage in [such behaviour].

This is effectively deportation by clairvoyance. People who have relocated themselves and their families on the basis of a grant of permanent residence in this country should be subject to deportation only for what they are doing or have done, not for what anyone's crystal ball indicates they are going to do.

Recommendation #4

Permanent residents should not be subject to deportation merely for their anticipated misconduct.

For Subversion, Terrorism, and Dangerousness

The difficulty of predictability is compounded by the ambiguity of the terminology. Under the bill (section 19(1)(e)(i)), permanent residents can be deported if they "will engage in ... subversion against democratic government". Nowhere does the bill attempt to define the elusive term "subversion". This problem is exacerbated further by the provision in section 19(1)(e)(ii) that would render permanent residents deportable if there are reasonable grounds to believe they "will ... engage in ... the subversion by force of any government" (italics added). Suppose some permanent residents in this country sent money to help foment an uprising against Saddam Hussein in Iraq at a time when the Canadian government believed that Saddam was less of a threat than his opponents? Does such conduct amount to "the subversion by force of any government"? No matter what the ultimate result, the enactment of this section would create the risk that a permanent resident could be deported for such conduct.

The power to deport for anticipated terrorism (section 19(1)(e)(iii)) is compounded by the bill's fatuous definition of terrorism. This term is defined in section 2(1) as "activities directed towards or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective". No attempt is made to distinguish unacceptable from acceptable acts of violence. On the basis of this section, permanent residents could be deported if there were reasonable grounds to believe that they were going to aid, abet, or otherwise support the armies of the United States, Great Britain, or Israel. Such is the absurd consequence of this flawed definition. A sensible definition of "terrorism" must include, at the very least, the deliberate infliction of serious violence on non-combatant civilians. During the course of military battles, non-combatant civilians are often inadvertently caught in the cross-fire. But acts of terrorism intentionally target non-combatants.

By the addition of section 19(1)(f), the bill would render permanent residents deportable if there are reasonable grounds to believe they "have engaged in" much of the behaviour described in section 19(1)(e). For all of the reasons indicated, the deportation of a permanent resident acquires greater justification when it refers to acts already committed rather than those that are merely predicted. Unfortunately, however, this represents only a marginal improvement. The section goes on to use the undefined term "subversion" and the ill-defined term "terrorism". And it also renders deportable those permanent residents who are or were merely "members" of certain organizations.

And, if all this were not enough to condemn these new provisions, the bill adds another provision (section 19(1)(k)) on the basis of which permanent residents could be deported if they "constitute a danger to the security of Canada and are not ... described" in certain previous sections. People who have uprooted themselves on the strength of permanent resident status should be deportable for their demonstrated behaviour, not merely for their anticipated proclivities. Thus far, the government materials have failed to indicate why the safety of the Canadian people and the security of their institutions requires the risk of such mistreatment to permanent residents. Unless the need is demonstrated, these sections of the bill should not be enacted.

Recommendation #5

Permanent residents should not be subject to deportation for "subversion" unless the statute contains an acceptable definition of the word.

Recommendation #6

Permanent residents should not be subject to deportation for what the bill now calls "terrorism" unless the word is re-defined in order to distinguish unacceptable from acceptable violence.

Recommendation #7

Permanent residents should not be subject to deportation merely because they are considered to be "a danger to the security of Canada".

For A Breach of Certain Conditions

The bill is planning to make permanent residents deportable for breaching certain conditions on the basis of which they are granted landed status. In particular, this will allow deportation if permanent residents fail to live or work where they said they would, at the time of, and on the basis of which, they were granted the right to settle in this country. 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 questionable. Presumptively at least, freedom of movement represents too precious a value for a democratic society to deny any of its law-abiding inhabitants. Moreover, there is a great risk that such immigrants might be exploited unscrupulously by the employers in the areas involved.

It is fair, therefore, to ask why this provision is seen as necessary. Although the government documents that accompanied the introduction of the bill explain the rationale for this provision, there is little indication of the actual experience. Nowhere is there a suggestion that a significant number of permanent residents are refusing or failing to live or work where they said they would. Indeed, the government material admits that "these changes will affect only a small number of applicants ... ". It is helpful also to note that the government attempted to enact a comparable provision in the late 1970s. At the time, however, a government

document (Bill C-24 - Regulations Outline) made the following statement about the actual experience:

> "While there has been some abuse of the arranged employment and designated occupation selection factors, in that the immigrants did not report to the supposed employer or go to the location of the designated occupation after landing at the port of entry, there is no evidence to date that the abuse is sufficiently widespread to justify the making of regulations to impose the terms and conditions which would control such abuses. .... Since the designated community factor is completely new, and may take some time to become fully operative, it is even more premature to make a regulation to impose conditions. Again the situation will be monitored and the regulation passed if widespread abuse is identified."

Accordingly, no such provision was enacted in the 1970s. Indeed, the Act expressly prohibited the imposition of residential conditions on permanent residents (section 114(4)). Unless the government can indicate evidence of significant abuse now, there is no basis even to consider adopting a comparable provision at this point. To whatever extent the government wishes to attract immigrants to some areas rather than to others, it should do so by way of offering positive incentives rather than by imposing negative restrictions. Even in the unlikely event that the government could demonstrate a situation so severe as to justify such a questionable 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, permanent residents should not be subject to deportation for breaching such conditions unless the time period is relatively short and the breach is wilful, material, and, in the circumstances, unreasonable.

Recommendation #8

Permanent residents should not be subject to deportation for the failure to live in certain communities or work at certain jobs.

The Avoidance of Deportation

In a few of the foregoing situations (eg. sections 19(1)(c.2) and (f)), the bill provides that deportation need not occur if the persons concerned can satisfy the minister that their continued residence in this country "would not be detrimental to the national interest". While it is better to have such a provision than not to have one, it is not good enough. Essentially, the bill creates a number of unacceptable grounds for deportation and then it simply trusts that the government will not abuse its newly-created powers.

No democratic community should repose such a wide level of blind trust in its government. While this country has not experienced the magnitude of government abuses that characterize other countries, there is a significant risk that such abuses will occur and increase to whatever extent Canada faces additional tensions and conflicts. In any event, the Canadian Civil Liberties Association does not seek to deny to government those powers that are demonstrably necessary to protect this country's interests. What we do claim, however, is that many of the powers the government is now seeking exceed the established need.

DETENTION REVIEW PROCEDURES FOR PERMANENT RESIDENTS

The bill plans to alter the current requirement that arrested immigrants have their detentions reviewed on a weekly basis by an adjudicator. This requirement would change to once every 30 days (section 103(6)). In our view, the change is both unacceptable and unnecessary.

Pre-hearing incarceration represents so great an intrusion on the vital values of our society that it should not be allowed without frequent assessments of its need. A 30 day pre-hearing detention without review is far too long. There is no reason why the immigration system should be so much less protective of suspects than is the criminal system.

In order to justify this change, the government has argued that circumstances beyond the department's control - such as the need to obtain proper travel documents - could well delay the removal of a detained person. Since such circumstances are rarely subject to quick changes, the government contends that "the weekly review is superfluous."

Even though quick changes in the detained person's circumstances may be rare, the government's document implies that such changes do occur. But even in all of the other situations, weekly review performs an important service. It provokes a reconsideration of the circumstances upon which the detention is being justified. A society which puts a high premium on personal liberty should require a frequent assessment of such justifications. Moreover, the reasons provided by the government do not adequately distinguish the immigration from the criminal pre-hearing detention. In the greatest number of situations, the pre-hearing circumstances of a criminal accused would also not be susceptible to quick change.

Recommendation #9

The requirement for weekly reviews by an adjudicator of an immigrant's pre-hearing detention should not be changed to 30 day reviews.

The bill also plans to change the criteria that the adjudicator uses in determining whether to prolong the detention or order the release of the incarcerated immigrant (section 103(7)). At the moment, there must be release where the adjudicator "is not satisfied that the person in detention poses a danger to the public or would not appear" for the hearing or removal. Under the bill, release would be ordered where the adjudicator "is satisfied that the person in detention is not likely to pose a danger to the public and is likely to appear" for the hearing or removal.

It is hard to explain and harder to justify this change. The bill would effectively require detained immigrants to demonstrate that they were a good risk. As a matter of logic, how can people satisfy such an onus? It is difficult to prove negative propositions. Considerations of both fairness and logic militate against making this change. Unless there is something in the evidence to make the adjudicator feel that the detained immigrant would pose an unacceptable danger or not show up for the hearing, release should be ordered. The onus should not be shifted.

Recommendation #10

The criteria on the basis of which the adjudicator must order the release of an immigrant in pre-hearing detention should not be changed.

SUMMARY OF RECOMMENDATIONS

The Canadian Civil Liberties Association calls upon this Committee to adopt the following recommendations:

Recommendation #1

The hearings and debate on this bill should be deferred until - at the earliest - the late fall of this year.

Recommendation #2

Permanent residents should not be subject to deportation merely because they are or were members of certain organizations.

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