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Security certificates overturned; court gives Ottawa year's grace

Court decision reflects current global trend of rethinking anti-terrorism measures

OTTAWA (Feb 24, 2007)

The successful constitutional attack on national security certificates is just the latest legal setback for western governments in the fight against extremism -- a trend that heartens civil libertarians and frightens those worried about the next terrorist assault.

In the last six months alone, Canadians have seen two Anti-Terrorism Act provisions struck down, a bitter battle over extending the law's most controversial elements, and an apology to Maher Arar for Ottawa's role in his deportation to a Syrian prison.

In Washington and London, leaders have run into increasing skepticism about anti-terrorism measures, from indefinite prison sentences and widespread wiretapping to scrutiny of banking records and efforts to toughen laws.

Canada may be at the forefront of this trend, in that the recent developments -- including the Supreme Court condemnation of security certificates -- have reshaped the legislative landscape of the anti-terror front.

"The courts have pulled in the reins," said Greg DelBigio, lead counsel for the British Columbia Civil Liberties Association.

"There is no doubt whatsoever that Canadians expect effective law enforcement. But Canadians also expect that effective law enforcement is not going to come at any and all cost to individual interests."

Unlike the United States and Britain, Canada has not seen threats from Osama bin Laden's al-Qaida network come to pass on home soil.

University of Toronto historian Wesley Wark believes that's a factor in creating a more moderate atmosphere of reflection about the appropriate legal tools to combat terrorism.

"We've escaped from the kind of climate that continues to grip the United States, and I think arguably the U.K. and even Australia -- a climate of concern about imminent threats and deep dangers," said Wark, who serves on a federal advisory council on security.

"Overall, I would say Canada is a little ahead of the pack in terms of what we might call rollback. I guess you could call it legal self-correction on the part of our judiciary."

The Ontario courts have already thrown out Anti-Terrorism Act provisions concerning security of information and the definition of terrorism on the basis they infringe individual liberties. Two more contentious elements of the law, which allow pre-emptive arrests of alleged terrorists and investigative hearings in which a judge can compel evidence, are set to expire as early as Thursday amid political opposition to extending them.

The O'Connor inquiry into the case of Arar, an engineer falsely accused of terrorist ties, found erroneous



information passed to the United States likely resulted in his deportation to Syria, where he was jailed and tortured.

The inquiry called for a raft of changes to ensure the proper sharing of security-related information with foreign governments.

Now the high court decision on security certificates has set the stage for a reinvention of the tool for deporting foreign nationals suspected of terrorism, taking into account constitutional guarantees of due legal process.



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