

英國及加拿大有關特別上訴程序的法例

UK and Canadian legislation on special appeal procedures

7/11/2002 at 3:19 - content provided by the Butterworths Direct Online Service

All rights reserved. No part of this text may be photocopied or otherwise reproduced without the written permission of Butterworths.



LEGISLATION DIRECT, UK Statutes, Special Immigration Appeals Commission Act 1997 (1997 c 68)

Special Immigration Appeals Commission Act 1997

1997 CHAPTER 68

An Act to establish the Special Immigration Appeals Commission; to make provision with respect to its jurisdiction; and for connected purposes.

[17th December 1997]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Establishment of the Commission

(1) There shall be a commission, known as the Special Immigration Appeals Commission, for the purpose of exercising the jurisdiction conferred by this Act.

(2) Schedule 1 to this Act shall have effect in relation to the Commission.

(3) The Commission shall be a superior court of record.

(4) A decision of the Commission shall be questioned in legal proceedings only in accordance

5 Procedure in relation to jurisdiction under sections 2 and 3

(1) The Lord Chancellor may make rules—

- (a) for regulating the exercise of the rights of appeal conferred by section 2 [or 2A] above,
- (b) for prescribing the practice and procedure to be followed on or in connection with appeals under [section 2 or 2A above], including the mode and burden of proof and admissibility of evidence on such appeals, and
- (c) for other matters preliminary or incidental to or arising out of such appeals, including proof of the decisions of the Special Immigration Appeals Commission.

(2) Rules under this section shall provide that an appellant has the right to be legally represented in any proceedings before the Commission on an appeal under section 2 [or 2A] above, subject to any power conferred on the Commission by such rules.

(3) Rules under this section may, in particular—

- (a) make provision enabling proceedings before the Commission to take place without the appellant being given full particulars of the reasons for the decision which is the subject of the appeal,
- (b) make provision enabling the Commission to hold proceedings in the absence of any person, including the appellant and any legal representative appointed by him,
- (c) make provision about the functions in proceedings before the Commission of persons appointed under section 6 below, and
- (d) make provision enabling the Commission to give the appellant a summary of any evidence taken in his absence.

(4) Rules under this section may also include provision—

- (a) enabling any functions of the Commission which relate to matters preliminary or incidental to an appeal, or which are conferred by Part II of Schedule 2 to the Immigration Act 1971, to be performed by a single member of the Commission, or
- (b) conferring on the Commission such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of its functions.

(5) The power to make rules under this section shall include power to make rules with respect to applications to the Commission under paragraphs 22 to 24 of Schedule 2 to the Immigration Act 1971 and matters arising out of such applications.

(6) In making rules under this section, the Lord Chancellor shall have regard, in particular, to—

- (a) the need to secure that decisions which are the subject of appeals are properly reviewed, and
- (b) the need to secure that information is not disclosed contrary to the public interest

(7) ...

(8) The power to make rules under this section shall be exercisable by statutory instrument.

(9) No rules shall be made under this section unless a draft of them has been laid before and approved by resolution of each House of Parliament.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 9(2).

Appointment

Appointment: 11 June 1998: see SI 1998/1336, art 2.

Amendment

Sub-s (1): in para (a) words "or 2A" in square brackets inserted by the Race Relations (Amendment) Act 2000, s 9(1), Sch 2, para 28(a).

Date in force: 2 April 2001: see SI 2001/566, art 2(1).

Sub-s (1): in para (b) words "section 2 or 2A above" in square brackets substituted by the Race Relations (Amendment) Act 2000, s 9(1), Sch 2, para 28(b).

Date in force: 2 April 2001: see SI 2001/566, art 2(1).

Sub-s (2): words "or 2A" in square brackets inserted by the Race Relations (Amendment) Act 2000, s 9(1), Sch 2, para 28(c).

Date in force: 2 April 2001: see SI 2001/566, art 2(1).

Sub-s (7): repealed by the Regulation of Investigatory Powers Act 2000, s 82(2), Sch 5.

Date in force: 2 October 2000: see SI 2000/2543, art 3.

Subordinate Legislation

Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2000, SI 2000/1849.

6 Appointment of person to represent the appellant's interests

(1) The relevant law officer may appoint a person to represent the interests of an appellant in any proceedings before the Special Immigration Appeals Commission from which the appellant and any legal representative of his are excluded.

(2) For the purposes of subsection (1) above, the relevant law officer is—

- (a) in relation to proceedings before the Commission in England and Wales, the Attorney General,
- (b) in relation to proceedings before the Commission in Scotland, the Lord Advocate, and
- (c) in relation to proceedings before the Commission in Northern Ireland, the Attorney General for Northern Ireland.

(3) A person appointed under subsection (1) above—

(a) if appointed for the purposes of proceedings in England and Wales, shall have a general qualification for the purposes of section 71 of the Courts and Legal Services Act 1990,

(b) if appointed for the purposes of proceedings in Scotland, shall be—

(i) an advocate, or

(ii) a solicitor who has by virtue of section 25A of the Solicitors (Scotland) Act 1980 rights of audience in the Court of Session and the High Court of Justiciary, and

(c) if appointed for the purposes of proceedings in Northern Ireland, shall be a member of the Bar of Northern Ireland.

(4) A person appointed under subsection (1) above shall not be responsible to the person whose interests he is appointed to represent.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 9(2).

Appointment

Appointment: 3 August 1998: see SI 1998/1892, art 2.

Transfer of Functions

By virtue of the Scotland Act 1998, s 44(1)(c), the Lord Advocate ceased, on 20 May 1999 (see SI 1998/3178), to be a Minister of the Crown and became a member of the Scottish Executive. Accordingly, certain functions of the Lord Advocate are transferred to the Secretary of State (or as the case may be the Secretary of State for Scotland), or the Advocate General for Scotland: see the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678 and the Transfer of Functions (Lord Advocate and Advocate General for Scotland) Order 1999, SI 1999/679.

7 Appeals from the Commission

(1) Where the Special Immigration Appeals Commission has made a final determination of an appeal, any party to the appeal may bring a further appeal to the appropriate appeal court on any

<http://wellington.butterworths.co.uk/wbs/NETbos.DLL?POView?sk=ANFAJKA&bk=0&bl=1538994...> 06/11/200

question of law material to that determination.

(2) An appeal under this section may be brought only with the leave of the Commission or, if such leave is refused, with the leave of the appropriate appeal court.

(3) In this section "the appropriate appeal court" means—

- (a) in relation to a determination made by the Commission in England and Wales, the Court of Appeal,
- (b) in relation to a determination made by the Commission in Scotland, the Court of Session, and
- (c) in relation to a determination made by the Commission in Northern Ireland, the Court of Appeal in Northern Ireland.

(4) ...

NOTES

Initial Commencement

To be appointed

To be appointed: see s 9(2).

Appointment

Appointment: 3 August 1998: see SI 1998/1892, art 2.

Amendment

Sub-s (4): repealed by the Immigration and Asylum Act 1999, s 169(1), (3), Sch 14, paras 118, 123, Sch 16.

Date in force: 2 October 2000: see SI 2000/2444, art 2, Sch 1.

[7A Pending appeals]

[(1) For the purposes of this Act, an appeal to the Commission is to be treated as pending during the period beginning when notice of appeal is given and ending when the appeal is finally

STATUTORY INSTRUMENTS

1998 No. 1881

IMMIGRATION

The Special Immigration Appeals Commission
(Procedure) Rules 1998*Made* - - - - - 30th July 1998*Coming into force* 31st July 1998

ARRANGEMENT OF RULES

PART I

General provisions

1. Citation and commencement
2. Interpretation
3. General duty of Commission
4. Delegated powers
5. Notices etc.

PART II

Appeals

6. Application of Part II
7. The special advocate
8. Time limit for appealing
9. Notice of appeal
10. Secretary of State's reply
11. Consideration of Secretary of State's objection
12. Amendment and supplementary grounds
13. Directions
14. Failure to comply with directions
15. Applications by Secretary of State
16. Notification of hearing
17. Parties
18. Representation of parties
19. Proceedings in private

20. Evidence
21. Summoning of witnesses
22. Notification to appellant before determination
23. Promulgation of determination

PART III

Leave to appeal from Commission

24. Application of Part III
25. Application for leave to appeal

PART IV

Bail applications

26. Application for bail: procedure
27. Release on bail

The Lord Chancellor, in exercise of the powers conferred by sections 5 and 8 of the Special Immigration Appeals Commission Act 1997(a), makes the following Rules of which a draft has, in accordance with sections 5(9) and 8(4), been laid before and approved by resolution of each House of Parliament:—

PART I

GENERAL PROVISIONS

Citation and commencement

1. These Rules may be cited as the Special Immigration Appeals Commission (Procedure) Rules 1998 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Rules—

- “the 1971 Act” means the Immigration Act 1971(b);
- “the 1997 Act” means the Special Immigration Appeals Commission Act 1997;
- “the chairman” means the chairman of the Commission;
- “the Commission” means the Special Immigration Appeals Commission; and
- “the special advocate” means a person appointed under section 6(1) of the 1997 Act to represent the interests of the appellant.

General duty of Commission

3.—(1) When exercising its functions, the Commission shall secure that information is not disclosed contrary to the interests of national security, the international relations of the United Kingdom, the detection and prevention of crime, or in any other circumstances where disclosure is likely to harm a public interest.

(2) Where the Rules require information not to be disclosed contrary to the public interest, the requirement shall be construed in accordance with paragraph (1).

(a) 1997 c.68.

(b) 1971 c.77, as modified by Schedules 2 and 3 to the Special Immigration Appeals Commission Act 1997.

(3) Subject to paragraphs (1) and (2), the Commission must satisfy itself that the material available to it enables it properly to review decisions.

Delegated powers

4.—(1) The powers of the Commission under the following provisions may be exercised by the chairman or by any other member of the Commission who falls within paragraph 5(a) or (b) of Schedule 1 to the 1997 Act:—

- (a) rule 12(1) and (3) (amendment and supplementary grounds);
- (b) rule 13 (directions);
- (c) rule 25 (application for leave to appeal);
- (d) rules 26 and 27 (bail proceedings).

(2) Instead of exercising a power under paragraph (1), the chairman or member may remit the matter to be dealt with by the Commission.

(3) Where the chairman or member exercises any power of the Commission, references to the Commission in the Rules shall as appropriate include references to him.

Notices etc.

5.—(1) Any document required or authorised to be given or sent to—

- (a) the Commission, shall be directed to the Secretary to the Commission;
- (b) the Secretary of State, shall be directed to the Appeal Support Section of the Asylum Directorate of the Home Office.

(2) The appellant must inform the Commission if an address given under rule 9(3) changes.

PART II

APPEALS

Application of Part II

6. This Part applies to appeals brought under section 2 of the 1997 Act and appeals mentioned at paragraph 5 of Schedule 2 to that Act, but the provisions of this Part shall not—

- (a) prejudice steps already taken in respect of an appeal mentioned at paragraph 5 of that Schedule, or
- (b) require any step to be taken under these Rules which is equivalent to a step which has already been taken in respect of such an appeal.

The special advocate

7.—(1) On receiving a copy of the notice of appeal, the Secretary of State shall inform the relevant law officer of the proceedings before the Commission, with a view to the law officer, if he thinks fit to do so, appointing a special advocate to represent the interests of the appellant in the proceedings.

(2) Paragraph (1) applies unless—

- (a) the Secretary of State does not intend to oppose the appeal, or
- (b) he does not intend to object to the disclosure of material to the appellant.

(3) If at any stage in proceedings before the Commission, paragraph (2)(b) ceases to apply, the Secretary of State shall immediately notify the relevant law officer as in paragraph (1).

(4) The function of the special advocate is to represent the interests of the appellant by—

- (a) making submissions to the Commission in any proceedings from which the appellant and his representative are excluded;
- (b) cross-examining witnesses at any such proceedings; and
- (c) making written submissions to the Commission.

(5) Except in accordance with paragraphs (6) to (9), the special advocate may not communicate directly or indirectly with the appellant or his representative on any matter connected with proceedings before the Commission.

(6) The special advocate may communicate with the appellant and his representative at any time before the Secretary of State makes material available to him under rule 10(3).

(7) At any time after the Secretary of State has made material available under rule 10(3), the special advocate may seek directions from the Commission authorising him to seek information in connection with the proceedings from the appellant or his representative.

(8) The Commission shall notify the Secretary of State of a request for directions under paragraph (7) and the Secretary of State must, within a period specified by the Commission, give the Commission notice of any objection which he has to the request for information being made or to the form in which it is proposed to be made.

(9) Where the Secretary of State makes an objection under paragraph (8), rule 11 shall apply as appropriate.

Time limit for appealing

8. The appellant must give notice of an appeal no later than—

- (a) 7 days after receiving notice of the decision being appealed in a case where an appellant in the United Kingdom appeals under section 2(1)(g) of the 1997 Act (claim for asylum);
- (b) 14 days after receiving notice of the decision being appealed in a case where an appellant in the United Kingdom appeals otherwise than under section 2(1)(g) of the 1997 Act;
- (c) 42 days after receiving notice of the decision being appealed where an appellant appeals from outside the United Kingdom.

Notice of appeal

9.—(1) An appeal to the Commission is made by sending to the Commission a notice of appeal.

(2) The notice of appeal must set out the grounds for the appeal.

(3) The notice of appeal must state the name and address of the appellant and the name and address of any representative of the appellant.

(4) The appellant or his representative must sign the notice of appeal.

(5) The appellant must attach to the notice of appeal a copy of the document which informed him of the decision being appealed.

(6) As soon as practicable after it receives a notice of appeal, the Commission shall send a copy to—

- (a) the Secretary of State, and
- (b) where the decision being appealed is a decision to refuse asylum, the United Kingdom Representative of the United Nations High Commissioner for Refugees.

Secretary of State's reply

10.—(1) If the Secretary of State intends to oppose the appeal, he must, no later than 42 days after receiving a copy of the notice of appeal,—

- (a) provide the Commission with a summary of the facts relating to the decision being appealed and the reasons for the decision;
- (b) inform the Commission of the grounds on which he opposes the appeal; and
- (c) provide the Commission with a statement of the evidence which he relies upon in support of those grounds.

(2) Where the Secretary of State objects to material referred to in paragraph (1) being disclosed to the appellant or his representative, he must also—

- (a) state the reasons for his objection; and
- (b) if and to the extent it is possible to do so without disclosing information contrary to the public interest, provide a statement of that material in a form which can be shown to the appellant.

(3) Where he makes an objection under paragraph (2), the Secretary of State must make available to the special advocate, as soon as it is practicable to do so, the material which he has provided to the Commission under paragraphs (1) and (2).

Consideration of Secretary of State's objection

11.—(1) Proceedings under this rule shall take place in the absence of the appellant and his representative.

(2) The Commission shall decide whether to uphold the Secretary of State's objection.

(3) Before doing so, it must invite the special advocate to make written representations.

(4) After considering representations made under paragraph (3), the Commission may—

- (a) invite the special advocate to make oral representations; or
- (b) uphold the Secretary of State's objection without requiring further representations from the special advocate.

(5) Where the Commission is minded to overrule the Secretary of State's objection, or to require him to provide material in a different form from that in which he has provided it under rule 10(2)(b), the Commission must invite the Secretary of State and the special advocate to make oral representations.

(6) Where—

- (a) the Commission overrules the Secretary of State's objection or requires him to provide material in a different form from that which he has provided under rule 10(2)(b), and

(b) the Secretary of State wishes to continue to oppose the appeal,

he shall not be required to disclose any material which was the subject of his unsuccessful objection if he chooses not to rely upon it in opposing the appeal.

Amendment and supplementary grounds

12.—(1) With the leave of the Commission, the appellant may amend his notice of appeal or deliver supplementary grounds of appeal.

(2) Rule 9(6) applies to an amended notice of appeal and to supplementary grounds of appeal provided under paragraph (1).

(3) With the leave of the Commission, the Secretary of State may amend or supplement the material which he has provided under rule 10.

(4) Where the Secretary of State provides further objections under paragraph (3), the Commission shall consider them in accordance with rule 11.

Directions

13.—(1) Subject to any decision which it makes under rule 11 and to the need to secure that information is not disclosed contrary to the public interest, the Commission may give directions for the conduct of proceedings.

(2) Directions may—

- (a) provide for a particular matter to be dealt with as a preliminary issue and for a pre-hearing review to be held;
- (b) limit the length of oral submissions and the time allowed for the examination and cross-examination of witnesses;
- (c) require any party to the appeal to give to the Commission—
 - (i) statements of facts and statements of the evidence which will be called at any hearing, including such statements provided in a modified or edited form;
 - (ii) a skeleton argument which summarises the submissions which will be made and cites all the authorities which will be relied upon, identifying any particular passages to be relied upon;
 - (iii) an estimate of the time which will be needed for any hearing;
 - (iv) a list of the witnesses who will be called to give evidence;
 - (v) a chronology of events;
 - (vi) a statement of any interpretation requirements,
 and to serve any such material on the other parties to the appeal.

(3) The Commission may, subject to any specific provisions of the Rules, specify time limits for steps to be taken in the proceedings and may extend any time limit.

(4) The power to give directions may be exercised in the absence of the parties.

Failure to comply with directions

14.—(1) Where a party fails to comply with a direction, the Commission may send him a notice which states—

- (a) the respect in which he has failed to comply with the relevant direction;
- (b) the time limit for complying with the direction; and
- (c) that the Commission may proceed to determine the appeal on the material available to it if the party fails to comply with the relevant direction within the time specified.

(2) Where the party in default fails to comply with the notice under paragraph (1), the Commission may proceed in accordance with paragraph (1)(c).

Applications by Secretary of State

15.—(1) This rule applies to the notification to the appellant by the Commission of—

- (a) any order or direction made or given in the absence of the Secretary of State,
- (b) any summary prepared under rule 22, and
- (c) its determination under rule 23.

(2) Before the Commission notifies the appellant as mentioned in paragraph (1), it must first notify the Secretary of State.

(3) If the Secretary of State considers that compliance by him with an order or direction or notification to the appellant of any matter under paragraph (1) would cause information to be disclosed contrary to the public interest, he may apply to the Commission to reconsider the order or direction or to review the proposed summary or determination.

(4) At the same time as he makes his application, or as soon as practicable afterwards, the Secretary of State must send a copy of it to the special advocate.

(5) An application by the Secretary of State must be made within 14 days of receipt of notification under paragraph (2), and the Commission shall not notify the appellant as mentioned in paragraph (1) before the time for applying has expired.

(6) Rule 11 shall apply as appropriate to the Commission's consideration of the Secretary of State's application.

Notification of hearing

16. The Secretary to the Commission must send notice of the date, time and place fixed for any hearing to the special advocate and every party entitled to attend that hearing.

Parties

17.—(1) The parties to an appeal shall be the appellant and the Secretary of State.

(2) If the United Kingdom Representative of the United Nations High Commissioner for Refugees (the "United Kingdom Representative") gives written notice that he wishes to be treated as a party to the appeal, he shall be so treated from the date of the notice.

(3) Any restriction imposed by or under these Rules in relation to the appellant as to the disclosure of material, attendance at hearings, notification of directions or decisions and communications with the special advocate, applies to the United Kingdom Representative.

Representation of parties

18.—(1) The appellant may act in person or be represented or appear by—

- (a) a person having a qualification referred to in section 6(3) of the 1997 Act,
- (b) a person appointed by any voluntary organisation for the time being in receipt of a grant under section 23 of the 1971 Act, or
- (c) with the leave of the Commission, any other person.

(2) The Secretary of State and the United Kingdom Representative may be represented by any person appointed by them respectively for that purpose.

Proceedings in private

19.—(1) Where the Commission considers it necessary for the appellant and his representative to be excluded from the proceedings or any part of them in order to secure that information is not disclosed contrary to the public interest, it must—

- (a) direct accordingly, and
- (b) hear the proceedings, or that part of it from which the appellant and his representative are excluded, in private.

(2) The Commission may hear the proceedings or part of them in private for any other good reason.

Evidence

20.—(1) In any proceedings on an appeal, the evidence of witnesses may be given either—

- (a) orally, before the Commission, or
- (b) in writing, in which case it shall be given in such a manner and at such time as the Commission has directed.

(2) The Commission may also receive evidence in documentary or any other form.

(3) The Commission may receive evidence that would not be admissible in a court of law.

(4) No person shall be compelled to give evidence or produce a document which he could not be compelled to give or produce on the trial of an action in the part of the United Kingdom in which the proceedings before the Commission are taking place.

(5) Every party shall be entitled to adduce evidence and to cross-examine witnesses during any part of the hearing of the appeal from which he and his representative are not excluded.

(6) The Commission may require a witness to give evidence on oath.

Summoning of witnesses

21.—(1) Subject to rules 3 and 20(4) and paragraph (2) of this rule, the Commission may require any person in the United Kingdom to attend as a witness at any proceedings before the Commission and to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal.

(2) No person shall be required to travel more than 16 kilometres from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.

(3) Where a party requests the attendance of a witness, that party must pay or tender those expenses.

Notification to appellant before determination

22.—(1) Where the appellant or his representative have been excluded from the hearing of the appeal or any part of it, the Commission must, before it makes a determination, give the appellant a summary of the submissions and evidence received in his absence if and to the extent it is possible to do so without disclosing information contrary to the public interest.

(2) Where the Commission provides such a summary, it shall afford the special advocate and the parties an opportunity to make representations and adduce evidence or further evidence to the Commission in respect of the material contained in it.

Promulgation of determination

23.—(1) The Commission must record its determination and, if and to the extent it is possible to do so without disclosing information contrary to the public interest, the reasons for it.

(2) The Commission shall publish its determination and send written notice of it to the special advocate and the parties.

PART III

LEAVE TO APPEAL FROM COMMISSION

Application of Part III

24. This Part applies to applications for leave to appeal, on a question of law, to the Court of Appeal, the Court of Session or the Court of Appeal in Northern Ireland, as the case may be, from a final determination of an appeal by the Commission.

Application for leave to appeal

25.—(1) An application to the Commission for leave to appeal shall be made not later than 10 days after the party seeking to appeal has received written notice of the determination.

(2) The Commission may decide an application for leave without a hearing unless it considers there are special circumstances which make a hearing necessary or desirable.

PART IV

BAIL APPLICATIONS

Application for bail: procedure

26.—(1) Subject to the provisions of this rule and rule 27, these Rules apply to—

- (a) applications for bail by a person who brings an appeal under section 2 of the 1997 Act, and
- (b) applications to the Commission under paragraphs 22 to 24 of Schedule 2 to the 1971 Act,

with appropriate modifications.

(2) References in the Rules to the appellant shall be read, in relation to bail applications, as if they were references to the applicant.

(3) Rules 8 and 9 shall not apply to bail applications.

(4) Rule 10(1) (time limit for Secretary of State to reply) shall apply as if "14 days" were substituted for "42 days".

(5) An application to the Commission to be released on bail must be made in writing and shall contain the following particulars—

- (a) the full name of the applicant;
- (b) the address of the place where, and the reason why, the applicant is detained at the time when the application is made;
- (c) the date of any notice of appeal which has been given;
- (d) the address where the applicant would reside if his application for bail were to be granted;
- (e) the amount of the recognizance in which he would agree to be bound;
- (f) the full names, addresses and occupations of two persons who might act as sureties for the applicant if his application for bail were to be granted, and the amounts of the recognizances in which those persons might agree to be bound; and
- (g) the grounds on which the application is made and, where a previous application has been refused, particulars of any change in circumstances which has occurred since that refusal.

(6) In its application to Scotland, this rule shall have effect as if, for paragraph (5)(e) and (f), there were substituted—

- "(e) the amount, if any, to be deposited if bail is granted;
- (f) the full names, addresses and occupations of such persons if any, who offer to act as cautioners if the applicant's application for bail were to be granted;"

(7) A bail application shall be signed by the applicant or by a person duly authorised by him for that purpose or, in the case of an applicant who is a minor or who is for any reason incapable of acting, by any person acting on his behalf.

(8) The application must be delivered, or sent by post, to the Commission.

Release on bail

27.—(1) Where the Commission directs the release of an applicant on bail and the taking of the recognizance is postponed under paragraph 22(3) or 29(6) of Schedule 2 to the 1971 Act, it shall certify in writing that the applicant has been granted bail and shall include in the certificate—

- (a) particulars of the conditions to be endorsed on the recognizance with a view to the recognizance being taken subsequently;
- (b) the amounts in which the applicant and any sureties are to be bound; and
- (c) the date of issue of the certificate.

(2) The person having custody of an applicant shall release him—

- (a) on receipt of a certificate signed by the Commission stating that the recognizances of any sureties required have been taken or on being otherwise satisfied that all such recognizances have been taken, and
- (b) on being satisfied that the applicant has entered into his recognizance.

(3) In its application to Scotland, this rule shall have effect as if for paragraph (2), there were substituted—

"(2) The person having custody of an appellant shall release him—

- (a) on receipt of a certified copy of the decision to grant bail, and
- (b) on being satisfied that the amount, if any, to be deposited has been so deposited."

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the practice and procedure to be followed on appeals and bail applications under the Special Immigration Appeals Commission Act 1997. They include provision for—

- (a) appeals to be heard in the absence of the appellant and his representative where necessary;
- (b) the circumstances in which a special advocate is to be appointed to represent the interests of the appellant;
- (c) the right of the appellant to be legally represented; and
- (d) applications for leave to appeal on a point of law from the Commission's determination.

First Session, Thirty-seventh Parliament,
49-50 Elizabeth II, 2001

Première session, trente-septième législature,
49-50 Elizabeth II, 2001

STATUTES OF CANADA 2001

LOIS DU CANADA (2001)

CHAPTER 41

CHAPITRE 41

An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism

Loi modifiant le Code criminel, la Loi sur les secrets officiels, la Loi sur la preuve au Canada, la Loi sur le recyclage des produits de la criminalité et d'autres lois, et édictant des mesures à l'égard de l'enregistrement des organismes de bienfaisance, en vue de combattre le terrorisme

BILL C-36

ASSENTED TO 18th DECEMBER, 2001

PROJET DE LOI C-36

SANCTIONNÉ LE 18 DÉCEMBRE 2001

*List of Entities**Inscription des entités*Establishment
of list

83.05 (1) The Governor in Council may, by regulation, establish a list on which the Governor in Council may place any entity if, on the recommendation of the Solicitor General of Canada, the Governor in Council is satisfied that there are reasonable grounds to believe that

(a) the entity has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or

(b) the entity is knowingly acting on behalf of, at the direction of or in association with an entity referred to in paragraph (a).

Recommendation

(1.1) The Solicitor General may make a recommendation referred to in subsection (1) only if the Solicitor General has reasonable grounds to believe that the entity to which the recommendation relates is an entity referred to in paragraph (1)(a) or (b).

Application to
Solicitor
General

(2) On application in writing by a listed entity, the Solicitor General shall decide whether there are reasonable grounds to recommend to the Governor in Council that the applicant no longer be a listed entity.

Deeming

(3) If the Solicitor General does not make a decision on the application referred to in subsection (2) within 60 days after receipt of the application, the Solicitor General is deemed to have decided to recommend that the applicant remain a listed entity.

Notice of the
decision to the
applicant

(4) The Solicitor General must give notice without delay to the applicant of any decision taken or deemed to have been taken respecting the application referred to in subsection (2).

Judicial
review

(5) Within 60 days after the receipt of the notice of the decision referred to in subsection (4), the applicant may apply to a judge for judicial review of the decision.

Reference

(6) When an application is made under subsection (5), the judge shall, without delay

(a) examine, in private, any security or criminal intelligence reports considered in listing the applicant and hear any other evidence or information that may be presented by or on behalf of the Solicitor General and may, at the request of the

Établissement
de la liste

83.05 (1) Le gouverneur en conseil peut, par règlement, établir une liste sur laquelle il inscrit toute entité dont il est convaincu, sur la recommandation du solliciteur général du Canada, qu'il existe des motifs raisonnables de croire :

a) que, sciemment, elle s'est livrée ou a tenté de se livrer à une activité terroriste, y a participé ou l'a facilitée;

b) que, sciemment, elle agit au nom d'une entité visée à l'alinéa a), sous sa direction ou en collaboration avec elle.

Recommandation

(1.1) Le solliciteur général ne fait la recommandation visée au paragraphe (1) que s'il a des motifs raisonnables de croire que l'entité en cause est visée aux alinéas (1)a) ou b).

Radiation

(2) Le solliciteur général, saisi d'une demande écrite présentée par une entité inscrite, décide s'il a des motifs raisonnables de recommander ou non au gouverneur en conseil de radier celle-ci de la liste.

Présomption

(3) S'il ne rend pas sa décision dans les soixante jours suivant la réception de la demande, il est réputé avoir décidé de ne pas recommander la radiation.

Avis de la
décision au
demandeur

(4) Il donne sans délai au demandeur un avis de la décision qu'il a rendue ou qu'il est réputé avoir rendue relativement à la demande.

Contrôle
judiciaire

(5) Dans les soixante jours suivant la réception de l'avis, le demandeur peut présenter au juge une demande de révision de la décision.

Examen
judiciaire

(6) Dès qu'il est saisi de la demande, le juge procède de la façon suivante :

a) il examine à huis clos les renseignements en matière de sécurité ou de criminalité qui ont été pris en considération pour l'inscription du demandeur sur la liste et recueille les autres éléments de preuve ou d'information présentés par le solliciteur général ou

Solicitor General, hear all or part of that evidence or information in the absence of the applicant and any counsel representing the applicant, if the judge is of the opinion that the disclosure of the information would injure national security or endanger the safety of any person;

(b) provide the applicant with a statement summarizing the information available to the judge so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information the disclosure of which would, in the judge's opinion, injure national security or endanger the safety of any person;

(c) provide the applicant with a reasonable opportunity to be heard; and

(d) determine whether the decision is reasonable on the basis of the information available to the judge and, if found not to be reasonable, order that the applicant no longer be a listed entity.

Evidence

(6.1) The judge may receive into evidence anything that, in the opinion of the judge, is reliable and appropriate, even if it would not otherwise be admissible under Canadian law, and may base his or her decision on that evidence.

Publication

(7) The Solicitor General shall cause to be published, without delay, in the *Canada Gazette* notice of a final order of a court that the applicant no longer be a listed entity.

New application

(8) A listed entity may not make another application under subsection (2), except if there has been a material change in its circumstances since the time when the entity made its last application or if the Solicitor General has completed the review under subsection (9).

Review of list

(9) Two years after the establishment of the list referred to in subsection (1), and every two years after that, the Solicitor General shall review the list to determine whether there are still reasonable grounds, as set out in subsection (1), for an entity to be a listed entity and make a recommendation to the Governor in Council as to whether the entity should remain a listed entity. The review does not affect the validity of the list.

en son nom; il peut, à la demande de celui-ci, recueillir tout ou partie de ces éléments en l'absence du demandeur ou de son avocat, s'il estime que leur divulgation porterait atteinte à la sécurité nationale ou à la sécurité d'autrui;

b) il fournit au demandeur un résumé de l'information dont il dispose — sauf celle dont la divulgation pourrait, à son avis, porter atteinte à la sécurité nationale ou à la sécurité d'autrui — afin de lui permettre d'être suffisamment informé des motifs de la décision;

c) il donne au demandeur la possibilité d'être entendu;

d) il décide si la décision est raisonnable compte tenu de l'information dont il dispose et, dans le cas où il décide que la décision n'est pas raisonnable, il ordonne la radiation.

Preuve

(6.1) Le juge peut recevoir et admettre en preuve tout élément qu'il estime digne de foi et approprié — même si le droit canadien ne prévoit pas par ailleurs son admissibilité — et peut fonder sa décision sur cet élément.

Publication

(7) Une fois la décision ordonnant la radiation passée en force de chose jugée, le solliciteur général en fait publier avis sans délai dans la *Gazette du Canada*.

Nouvelle demande de radiation

(8) L'entité inscrite ne peut présenter une nouvelle demande de radiation en vertu du paragraphe (2) que si sa situation a évolué d'une manière importante depuis la présentation de sa dernière demande ou que si le solliciteur général a terminé l'examen mentionné au paragraphe (9).

Examen périodique de la liste

(9) Tous les deux ans à compter du deuxième anniversaire de l'établissement de la liste, le solliciteur général examine celle-ci pour savoir si les motifs visés au paragraphe (1) justifiant l'inscription d'une telle entité sur la liste existent toujours et recommande au gouverneur en conseil, selon le cas, de radier ou non cette entité de la liste. L'examen est sans effet sur la validité de la liste.

Completion of
review

(10) The Solicitor General shall complete the review as soon as possible and in any event, no later than 120 days after its commencement. After completing the review, the Solicitor General shall cause to be published, without delay, in the *Canada Gazette* notice that the review has been completed.

(10) Il termine son examen dans les meilleurs délais mais au plus tard cent vingt jours après l'avoir commencé. Une fois l'examen terminé, il fait publier sans délai un avis à cet effet dans la *Gazette du Canada*.

Fin de
l'examen

Definition of
"judge"

(11) In this section, "judge" means the Chief Justice of the Federal Court or a judge of the Trial Division of that Court designated by the Chief Justice.

(11) Au présent article, « juge » s'entend du juge en chef de la Cour fédérale ou du juge de la Section de première instance de ce tribunal désigné par le juge en chef.

Définition de
« juge »

Admission of
foreign
information
obtained in
confidence

83.06 (1) For the purposes of subsection 83.05(6), in private and in the absence of the applicant or any counsel representing it,

83.06 (1) Pour l'application du paragraphe 83.05(6), procédant à huis clos et en l'absence du demandeur ou de son avocat :

Renseignements secrets
obtenus de
gouvernements
étrangers

(a) the Solicitor General of Canada may make an application to the judge for the admission of information obtained in confidence from a government, an institution or an agency of a foreign state, from an international organization of states or from an institution or an agency of an international organization of states; and

a) le solliciteur général du Canada peut présenter au juge une demande en vue de faire admettre en preuve des renseignements obtenus sous le sceau du secret du gouvernement d'un État étranger ou d'une organisation internationale d'États, ou de l'un de leurs organismes;

(b) the judge shall examine the information and provide counsel representing the Solicitor General with a reasonable opportunity to be heard as to whether the information is relevant but should not be disclosed to the applicant or any counsel representing it because the disclosure would injure national security or endanger the safety of any person.

b) le juge examine les renseignements et accorde à l'avocat du solliciteur général la possibilité de lui présenter ses arguments sur la pertinence des renseignements et le fait qu'ils ne devraient pas être communiqués au demandeur ou à son avocat parce que la communication porterait atteinte à la sécurité nationale ou à la sécurité d'autrui.

Return of
information

(2) The information shall be returned to counsel representing the Solicitor General and shall not be considered by the judge in making the determination under paragraph 83.05(6)(d), if

(2) Ces renseignements sont renvoyés à l'avocat du solliciteur général et ne peuvent servir de fondement à la décision rendue au titre de l'alinéa 83.05(6)d) dans les cas suivants :

Renvoi des
renseignements

(a) the judge determines that the information is not relevant;

a) le juge décide qu'ils ne sont pas pertinents;

(b) the judge determines that the information is relevant but should be summarized in the statement to be provided under paragraph 83.05(6)(b); or

b) le juge décide qu'ils sont pertinents, mais qu'ils devraient faire partie du résumé à fournir au titre de l'alinéa 83.05(6)b);

(c) the Solicitor General withdraws the application.

c) le solliciteur général retire la demande.

Use of
information

(3) If the judge decides that the information is relevant but that its disclosure would injure national security or endanger the safety of persons, the information shall not be disclosed in the statement mentioned in paragraph 83.05(6)(b), but the judge may base the determination under paragraph 83.05(6)(d) on it.

(3) Si le juge décide que ces renseignements sont pertinents, mais que leur communication au titre de l'alinéa 83.05(6)b) porterait atteinte à la sécurité nationale ou à la sécurité d'autrui, il les exclut du résumé, mais peut s'en servir comme fondement de la décision qu'il rend au titre de l'alinéa 83.05(6)d).

Utilisation
des
renseignementsMistaken
identity

83.07 (1) An entity claiming not to be a listed entity may apply to the Solicitor General of Canada for a certificate stating that it is not a listed entity.

83.07 (1) L'entité qui prétend ne pas être une entité inscrite peut demander au solliciteur général du Canada de lui délivrer un certificat à cet effet.

Erreur sur la
personneIssuance of
certificate

(2) The Solicitor General shall, within 15 days after receiving the application, issue a certificate if satisfied that the applicant is not a listed entity.

(2) S'il est convaincu que le demandeur n'est pas une entité inscrite, il délivre le certificat dans les quinze jours suivant la réception de la demande.

Délivrance
du certificat

Freezing of Property

Freezing of
property

83.08 (1) No person in Canada and no Canadian outside Canada shall knowingly

(a) deal directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist group;

(b) enter into or facilitate, directly or indirectly, any transaction in respect of property referred to in paragraph (a); or

(c) provide any financial or other related services in respect of property referred to in paragraph (a) to, for the benefit of or at the direction of a terrorist group.

Blocage des biens

83.08 (1) Il est interdit à toute personne au Canada et à tout Canadien à l'étranger :

a) d'effectuer sciemment, directement ou non, une opération portant sur des biens qui appartiennent à un groupe terroriste, ou qui sont à sa disposition, directement ou non;

b) de conclure sciemment, directement ou non, une opération relativement à des biens visés à l'alinéa a) ou d'en faciliter sciemment, directement ou non, la conclusion;

c) de fournir sciemment toute forme de services financiers ou connexes liés à des biens visés à l'alinéa a) à un groupe terroriste, pour son profit ou sur son ordre.

Blocage des
biensNo civil
liability

(2) A person who acts reasonably in taking, or omitting to take, measures to comply with subsection (1) shall not be liable in any civil action arising from having taken or omitted to take the measures, if the person took all reasonable steps to satisfy themselves that the relevant property was owned or controlled by or on behalf of a terrorist group.

(2) Nul ne peut être poursuivi au civil pour avoir fait ou omis de faire quoi que ce soit dans le but de se conformer au paragraphe (1), s'il a agi raisonnablement et pris toutes les dispositions voulues pour se convaincre que le bien en cause appartient à un groupe terroriste ou est à sa disposition, directement ou non.

Immunité

Exemptions

83.09 (1) The Solicitor General of Canada or a person designated by the Solicitor General may authorize any person in Canada or any Canadian outside Canada to carry out a specified activity or transaction that is prohibited by section 83.08, or a class of such activities or transactions.

83.09 (1) Le solliciteur général du Canada — ou toute personne qu'il désigne — peut autoriser toute personne au Canada ou tout Canadien à l'étranger à se livrer à toute opération ou activité — ou catégorie d'opérations ou d'activités — qu'interdit l'article 83.08.

Exemptions