

**BILL C-16: CHARITIES REGISTRATION
(SECURITY INFORMATION) ACT**

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LEGISLATIVE HISTORY OF BILL C-16

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 15 March 2001

Referred to Committee
before Second Reading: 1 May 2001*

Second Reading:

Report Stage:

Third Reading:

SENATE

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

- * **The order of reference to the Standing Committee on Finance was discharged and the bill was withdrawn by a motion adopted with the unanimous consent of the House of Commons: 15 October 2001.**

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL C-16: CHARITIES REGISTRATION
(SECURITY INFORMATION) ACT*

BACKGROUND

On 15 March 2001, Bill C-16, the Charities Registration (Security Information) Act, was introduced in the House of Commons by the Solicitor General of Canada, the Hon. Lawrence MacAulay. The bill is designed to preserve the integrity of Canada's registered charities system by preventing organizations that support terrorist activities from obtaining or continuing to have registered charity status under the *Income Tax Act*.

The bill implements Canada's G-8 commitments to: investigate charitable organizations where it is believed that an organization is being used by terrorists to cover for other activities; and take steps to prevent the financing of terrorist organizations indirectly through organizations that have, or claim to have, charitable goals. It also responds to a 1999 Report of the Special Senate Committee on Security and Intelligence, which observed that groups with terrorist affiliations conduct fund-raising activities in Canada, often using benevolent or philanthropic organizations as fronts.

Generally, intelligence and security information that would inform decision-makers about organizations operating in support of terrorism is classified for national security purposes. Because all information on which the Canada Customs and Revenue Agency (CCRA) currently bases its decisions to deny or revoke charitable status for purposes of the *Income Tax Act* is subject to full disclosure in open court, the CCRA cannot base its decisions on security information. Disclosure of that information would undermine national security, third-party confidentiality and source protection. The bill allows the government to use and protect relevant classified information in its decisions to deny or revoke charitable status.

* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

The bill was referred to the Standing Committee on Finance before Second Reading on 1 May 2001. On 15 October 2001, the House of Commons unanimously agreed that the order of reference to the Standing Committee for this bill be discharged and that Bill C-16 be withdrawn.

DESCRIPTION AND ANALYSIS

A. Purpose and Principles (clauses 1-2)

Bill C-16 is entitled the Charities Registration (Security Information) Act (clause 1). Its purpose, set out in clause 2(1), is to:

- demonstrate Canada's commitment to be involved in concerted international efforts to refuse support to those who engage in terrorism;
- preserve the integrity of the registration system for charities under the *Income Tax Act*; and
- retain the confidence of Canadian taxpayers that the benefits of charitable registration are made available only to organizations that operate solely for charitable purposes.

Clause 2(2) sets out the following two principles in recognition of which, and in accordance with which, the purpose of the bill is to be carried out:

- maintaining taxpayers' confidence may necessitate dependence on information that, if revealed, would impair national security or the safety of persons; and
- ensuring that the process of relying on the above information in determining eligibility to become or remain a registered charity is as fair and transparent as possible taking into consideration national security or the safety of persons.

B. Ministerial Certificate (clause 4)

Under clause 4, the Solicitor General and the Minister of National Revenue may sign a certificate stating that, in their opinion, based on security and intelligence reports, there are reasonable grounds to believe that an applicant or registered charity:

- has made available any of its resources, directly or indirectly, to an organization or person and that party was at that time, and continues to be, engaged in terrorism or activities in support of terrorism; or
- makes or will make available any of its resources, directly or indirectly, to an organization or person and that party engages or will engage in terrorism or activities in support of terrorism.

The bill contains no definition of security and intelligence reports nor does it define terrorism for purposes of the bill.

C. Judicial Consideration of Ministerial Certificate (clauses 5-6)

Under clause 5(1), as soon as the Solicitor General and the Minister of National Revenue have signed a certificate, the Solicitor General, or his or her delegate, must cause the applicant or registered charity to be served with a copy of the certificate and a notice. The notice will state that the certificate will be referred to the Federal Court not earlier than seven days after the service of the notice and that, if the certificate is determined to be reasonable, the applicant will be ineligible to become a registered charity or that the registered charity will have its registration revoked.

Clause 5(2) provides that the certificate served under clause 5(1) and any matters arising out of the certificate are not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with the bill.

Notwithstanding clause 5(2), the applicant or registered charity may apply to a Federal Court judge for an order directing: a) that the identity of the applicant or registered charity not be published except in accordance with the bill; or b) that any documents to be filed with the court in connection with the reference be treated as confidential (clause 5(3)). A decision on an application mentioned in clause 5(3) is not subject to appeal or review by any court at the instance of a party to the application (clause 5(4)).

Seven days after service of the notice under clause 5(1), or as soon thereafter as is practicable, the Solicitor General or his or her delegate must file a copy of the certificate in the Federal Court for it to make a determination under clause 6(1) as to whether the certificate is reasonable, and cause the applicant or registered charity to be served with a notice informing it of the filing of the certificate (clause 5(5)).

According to clause 6(1), when the certificate is referred to the Federal Court, the judge must, without delay:

- privately examine the security or intelligence reports considered by the Solicitor General and the Minister of National Revenue and hear any other evidence or information presented by or on behalf of those Ministers and may, on the request of either of them, hear all or a portion of the evidence or information in the absence of the applicant or the registered charity and its counsel, if the judge believes that disclosure of the information would impair national security or the safety of persons;
- furnish the applicant or the registered charity with a written summary of the information available to the judge so as to allow it to be reasonably informed of the circumstances giving rise to the certificate, without revealing any information that, if divulged, in the judge's opinion, would injure national security or the safety of persons;
- allow the applicant or registered charity a reasonable opportunity to be heard; and
- decide whether the certificate is reasonable on the basis of the information available to the judge and, if not, quash it.

A judge's determination regarding whether the certificate is reasonable is not subject to appeal or review by any court (clause 6(2)).

D. Evidence (clauses 7-9)

For purposes of clause 6(1), a judge may, subject to clause 8, admit any relevant information, regardless of whether the information is or would be admissible in a court of law, and base the determination of whether a certificate is reasonable on that information (clause 7).

As well, under clause 8(1), for the purposes of clause 6(1), in private and in the absence of the applicant or registered charity or any counsel representing it,

- the Solicitor General or the Minister of National Revenue may make an application to the judge for the admission of information obtained in confidence from a government or an agency of a foreign state, or from an international organization of states or one of its agencies; and
- the judge must examine the information and provide counsel representing the Minister with a reasonable opportunity to be heard as to whether the information is pertinent but should not be revealed to the applicant or registered charity or any counsel representing it because the disclosure would impair national security or the safety of persons.

Clause 8(2) requires that the information must be returned to the counsel representing the Minister who made the application and must not be considered by the judge making the determination under clause 6(1) as to whether the certificate is reasonable if:

- the judge determines that the information is not relevant;
- the judge determines that the information is relevant but should be summarized in the written summary to be provided under clause 6(1); or
- the Minister withdraws the application.

Clause 8(3) provides that if the judge decides that the information is relevant but that its disclosure would injure national security or the safety of persons, the information must not be disclosed in the written summary referred to in clause 6(1) but the judge may base the determination under clause 6(1) of whether the certificate is reasonable on it.

A certificate that is determined by a judge to be reasonable under clause 6(1) is conclusive proof that, in the case of the applicant, it is ineligible to become a registered charity or, in the case of a registered charity, it does not comply with the requirements to continue to be a registered charity (clause 9(1)). After a certificate has been determined to be reasonable, the Solicitor General must, without delay, cause the certificate to be published in the *Canada Gazette* (clause 9(2)).

E. Review of Ministerial Certificate (clauses 10-13)

An applicant or registered charity for which a certificate was determined by a judge to be reasonable pursuant to clause 6(1) and that believes a material change in circumstances has occurred since that determination was made may make a written application to the Solicitor General for a review of the certificate by the Solicitor General and the Minister of National Revenue (clause 10(1)). The Solicitor General must, without delay, notify the Minister of National Revenue of an application for review (clause 10(2)).

For the purpose of a review, the Ministers may consider any information submitted by the applicant or registered charity that applied for the review along with any security or criminal intelligence reports that are made available to the Ministers (clause 10(3)). The Ministers are required to make their decision on an application for review within 120 days

after receipt of the application by the Solicitor General (clause 10(4)). Clause 10(5) provides that, on a review, the Ministers may decide that in the time that has elapsed since the certificate was determined to be reasonable:

- there has not been a material change in circumstances, in which case the Ministers will deny the application (clause 10(5)(a)); or
- there has been a material change in circumstances, in which case the Ministers will either, on the grounds referred to in clause 4, continue the certificate in effect (clause 10(5)(b)(i)) or cancel the certificate as of the date of the decision (clause 10(5)(b)(ii)).

Under clause 10(6), if no decision is made within a period of 120 days after receipt of the application, the certificate is cancelled on the expiration of that period. As soon as a decision is made or the certificate is cancelled, the Solicitor General or his or her delegate must cause the applicant or registered charity that applied for the review to be served, by specified means, with notice of the decision or cancellation (clause 10(7)).

Clause 11(1) provides that an applicant or registered charity that applied for review under clause 10(1) may, after giving written notice to the Solicitor General who in turn must notify the Minister of National Revenue, apply to the Federal Court for a review of the decision made pursuant to clause 10(5)(a) or clause 10(5)(b)(i). That review is to be carried out in accordance with clause 6, with any modifications that the circumstances require. Clause 11(2) stipulates that if the court quashes a decision of the Ministers that a material change in circumstances has not occurred since the certificate was determined to be reasonable, the court will refer the application to the Ministers for a decision under clause 10(5)(b). If the court quashes a decision of the Ministers made under clause 10(5)(b)(i), the certificate is cancelled as of the date the decision is quashed (clause 11(3)). The determination of the court is final; there is no provision for an appeal or judicial review (clause 11(4)).

Clause 12 requires the Solicitor General to cause to be published in the *Canada Gazette*, in a manner that mentions the original publication of the certificate, notice of the cancellation of the certificate by reason of:

- a decision made under clause 10(5)(b)(ii);
- the operation of clause 10(6); or

- a determination of the Federal Court under clause 11 quashing a decision made under clause 10(5)(b)(i)).

Clause 13 specifies that, unless it is earlier cancelled, a certificate is effective for a period of three years beginning on the day it is first determined by a judge to be reasonable under clause 6(1).

F. Amendments to the *Income Tax Act* (clauses 15-19)

The bill provides for a number of consequential amendments to the *Income Tax Act* (clauses 15-19), including one that will result in the revocation of the registration of a charity, if it is the subject of a certificate determined by a judge to be reasonable under clause 6(1) of the bill.

G. Coordinating Amendments (clause 20)

Bill C-16 mirrors provisions contained in the current *Immigration Act* (the relevant provision of that Act is section 40.1). The Federal Court of Canada has determined that the process in the *Immigration Act* respects the principles of fundamental justice and conforms to the *Canadian Charter of Rights and Freedoms*.

A bill now before Parliament, Bill C-11, the Immigration and Refugee Protection Act (First Session, Thirty-seventh Parliament), will, if enacted into law, replace the current *Immigration Act*. Clause 76 of Bill C-11 will replace current section 40.1 of the *Immigration Act* if and when Bill C-11 receives Royal Assent and clause 76 is proclaimed in force. Although there are a number of changes in clause 76 from the current section 40.1, they are not substantive changes.

Clause 20 of Bill C-16 provides that if Bill C-11 receives Royal Assent, then on the later of the coming into force of clause 1 of Bill C-16 and clause 76 of Bill C-11, a number of coordinating amendments will be made to Bill C-16 and the *Income Tax Act*. The purpose of these amendments is to ensure that the provisions of Bill C-16 will mirror the relevant provisions of Bill C-11. Therefore, at the prescribed time, provisions of Bill C-16 will be amended to reflect the wording of clause 76 in Bill C-11. The *Income Tax Act* will also be amended to reflect the changes in relevant clause numbers in Bill C-16.

H. Regulations and Coming into Force (clauses 14 and 21)

Clause 14 provides authority for the Governor in Council to make any regulations that the Governor in Council considers necessary for carrying out the purposes and provisions of Bill C-16.

Bill C-16, with the exception of clause 20, comes into force on a day to be fixed by order of the Governor in Council (clause 21).

COMMENTARY

Certain groups and individuals are concerned that although the bill uses the term “terrorism,” it is nowhere defined in the proposed legislation. It has also been suggested that the bill creates the false impression that all Canadian funding for terrorist activities flows through charities. In addition, there are fears that the bill could harm legitimate charitable organizations. It appears that there is no need to show that a charity intended to support terrorist activity. Some organizations are also concerned that the bill might be applied against charities that have never been connected with terrorist activity, simply on the basis that there are reasonable grounds to believe that they will support terrorism in the future.

Concerns have been voiced over the fact that the bill provides no appeal from a Federal Court judge’s determination that the Ministerial certificate is reasonable, on which basis an applicant is ineligible to become a registered charity or, in the case of a registered charity, its registration is revoked.

Government officials have acknowledged that the bill does not go far enough to meet Canada’s obligations under the 1999 United Nations Convention on the Suppression of the Financing of Terrorism. That Convention requires signatories to enact domestic legislation criminalizing the collection of funds for terrorist activities. At least one organization had earlier called on the government to address the practice of financing political violence through means other than the charities registration system by introducing *Criminal Code* amendments to outlaw terrorist fund-raising altogether.