

FEDERAL COURT

BETWEEN:

**AMNESTY INTERNATIONAL CANADA and
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

Applicants

and

**CHIEF OF THE DEFENCE STAFF
FOR THE CANADIAN FORCES,
MINISTER OF NATIONAL DEFENCE
and ATTORNEY GENERAL OF CANADA**

AFFIDAVIT OF JOSEPH PAUL ANDRE DESCHAMPS

I, Joseph Paul Andre Deschamps, an officer with the Canadian Forces (CF), of the City of Ottawa, in the Province of Ontario, SWEAR THAT:

1. I hold the rank of Brigadier General and currently occupy the position of Chief of Staff Operations in Canadian Expeditionary Forces Command Headquarters (CEFCOM). CEFCOM commands all Canadian Forces international operations. In that position, I have been tasked with the responsibility for oversight and coordination of deployed operations and as such, have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief.
2. As a result of my employment and experience with the CF, I have knowledge of its mandate, methods of operation, priorities, policies and management. Due to my current position, I have knowledge of CF operations in Afghanistan and the manner in which all tasks inform and depend on each other for overall mission success. This

includes knowledge of the procedures pertaining to the capture, release and transfer of detainees in Afghanistan.

3. The purpose of my affidavit is to explain in general terms, the steps and precautions that are in place to govern the detention and processing of persons in Afghanistan who pose a potential threat to the CF or its mission, and to explain, again in general terms, how this process fits within, and influences, the overall context of the CF operations in Afghanistan.

Background

4. Current combat operations by the Canadian Forces take place in the context of an ongoing armed conflict in Afghanistan.
5. CF operations in Afghanistan advance the fulfillment of the UN-mandated mission. This mission includes supporting the Afghan National Army (ANA) in establishing security for the Afghan people throughout Afghanistan.
6. These operations, conducted whenever possible in conjunction with the ANA, include direct operations against targets, capturing insurgents, and patrolling and maintaining observation posts in areas that the insurgents seek to control. During these activities Canadian soldiers may capture individuals who intend to or have harmed Canadians, Afghans, members of ISAF, members of Non-Governmental Organizations or anyone else who does not support the insurgency.
7. Persons are captured by the CF in the course of military operations who pose a threat or are reasonably believed to pose a threat to CF members, Afghans, members of ISAF, members of Non-Governmental Organizations or anyone else who does not support the insurgency. Whether they are subsequently processed by Afghans for violations of domestic Afghan criminal law is a matter that is determined by Afghan authorities.

Detainees

The decision to detain

8. During the course of operations, a screening process is undertaken upon contact with a potential detainee. The purpose of the screening process is to determine whether CF personnel have a reasonable belief that the individual is a threat to them or to the ISAF mission. If the person is determined not to be a threat, he is released immediately without further processing.
9. In the event that there is reasonable belief, the person becomes a detainee and is subject to a standard processing regime as defined in the Theatre Standing Order (TSO 321). Following a medical examination and initial processing which includes sending notice of the detention to the ICRC and the AIHRC, the detainee undergoes questioning by a CF member qualified for this purpose. Questioning is undertaken to establish basic personal information and to further assess and qualify the threat posed by the individual detainee.
10. The detainee is then held pending a decision by the Commander of Joint Task Force Afghanistan, presently Brigadier General Laroche, as to whether the detainee is to be released. At a Commander's review meeting, all relevant and available evidence on the detainee and the military threat risk posed by him is reviewed and discussed. Where the Commander is satisfied that the individual does not pose a threat, the detainee is released.

The decision to transfer

11. If the Commander determines that the detainee cannot be released because he poses a continued military threat, a further determination must then be made as to whether the detainee should be transferred to Afghan authorities. This decision is made on a case-by-case basis, considering all the available information. From time to time this decision may be held at a higher level of authority depending on the complexity of the case.

12. Before ordering the transfer of the detainee to Afghan authorities, the decision maker must be satisfied that there are no substantial grounds for believing that there exists a real risk the detainee would be in danger of being subjected to torture or other forms of mistreatment if transferred. I refer to this as the “substantial risk test”.
13. In order to make the determination, the decision maker considers a number of factors using information from a variety of sources. These begin with knowledge of the assurances provided by the Afghan government that allow for monitoring of detainees post-transfer as provided in the supplemental Arrangement of May 3, 2007. The factors considered include the monitoring reports and reports of interviews of CF transferred detainees provided by DFAIT, and any other information, written or verbal, which may inform his decision.
14. After analyzing the facts, if the decision maker finds substantial evidence or forms a reasonable belief that there is a real risk that torture or mistreatment exists, a transfer will not be effected.
15. There are a number of alternatives available to the CF in this situation. These include release in spite of the existing threat risk, transfer to a specific institution or government entity, or suspending, on a temporary basis, further transfers pending the results of existing investigations or resolution of any issues that have caused the decision maker to believe a substantial risk exists.
16. For operational security reasons as well as maintaining international relations, I can not provide particulars with respect to individual files or transfer decisions, nor the information upon which the transfer decision is assessed.

Potential impact of an injunction against transfers

17. The CF has no capacity or ability to hold detainees other than for transfer purposes. Further, the long term indefinite detention of detainees in such circumstances would be inconsistent with the sovereignty of Afghanistan and with the Canadian and

NATO/ISAF position in relation to this issue. The inability to transfer to Afghan authorities would lead to a release of dangerous individuals who could resume their violent methods against our forces, allies and Afghans. Furthermore, the loss of this deterrent would embolden the insurgents and place our soldiers at significantly increased risk. The insurgents could attack us with impunity knowing that if they fail to win the engagement they would simply have to surrender and wait for release to resume operations. Therefore, should the court order the CF to stop transferring detainees to the Afghan authorities, the CF would not be able to effectively detain individuals who, by killing or threatening the lives of CF members, civilians and Afghan Government supporters, hope to overthrow that government.

18. If operations were to be curtailed such that CF personnel could no longer be placed in a situation where they may have contact with the insurgents, the CF would be unable to meet the mandates provided to it as part of UN mandated ISAF and by the Government of Canada and in the assistance it can provide to the Afghan government in its effort to gain full control of the province of Kandahar. It would likely have to pull back its troops and place them within a secure perimeter.
19. Therefore, CF would no longer be able to provide support to the ISAF coalition forces and the ANA in their operations, including clearing areas of insurgents, establishing observation posts and forward operating bases that assist in establishing secure areas and extending the Afghan Government's authority in the surrounding area. It would no longer be able to assist the Afghan National Police in building and manning police sub-stations in critical areas, nor would it be able to continue to mentor the ANP to assist them to increase their skills and professionalism.
20. The CF would no longer be able to conduct patrols to provide medical or other assistance, would not be able to provide security in support of other government departments to enhance rule of law, nor indeed, would the CF be able to provide security to allow other Government of Canada officials to visit individuals in Afghan prisons who were previously transferred to the Afghan authorities by the CF. Direct CF support to reconstruction efforts, both in terms of personnel and equipment would

have to cease. The CF would no longer be able to assist our allies in their operations, and would perhaps even be limited in its ability to provide assistance to our allies if they were to come under attack.

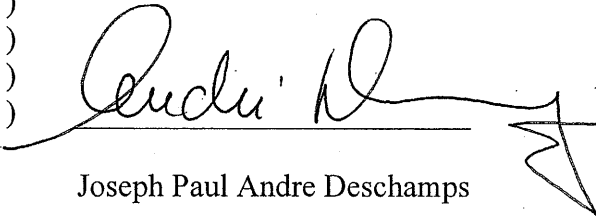
21. In short, the CF would no longer be able to fulfill the ISAF or Government of Canada mandate provided to it, as it would not be able to participate in establishing security in Kandahar province nor to assist the Afghan Government in extending its authority throughout Kandahar province.

22. If the CF were no longer able to transfer detainees, it would not be able to capture individuals who pose a threat to the CF, our allies or to the ISAF mission. Thus restrained, the CF would no longer be able to conduct operations necessary to create security and to extend the authority of the Afghan government as mandated to NATO led forces by the UN. The insurgents would therefore face limited opposition in their efforts to regain control of that province. This would also allow them, free from interference from the CF, to conduct operations from Kandahar province against the Afghan government, our allies and Canadians within Kandahar province, in other parts of country or indeed outside of Afghanistan. Further, this would put the civilian population of Kandahar province at great risk, as the insurgents would reassert themselves fully and would in all likelihood take action against any who may have or would oppose them.

Sworn before me at the City of Ottawa,
Province of Ontario,
This 14th day of December, 2007.



Michel Lapreane,
A Commissioner, etc.

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Joseph Paul Andre Deschamps