

**FEDERAL COURT**

B E T W E E N :

**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**

Respondents

APPLICATION UNDER SECTIONS 18 and 18.1 OF THE *FEDERAL COURTS ACT*

**AFFIDAVIT OF VINCENT JAMES IACOPINO, M.D., Ph.D.**

I, **Vincent James Iacopino**, of the City of Henderson, in the State of Nevada, U.S.A.,  
**make oath and state as follows:**

1. I am a medical doctor, an adjunct professor of medicine, and a specialist in internal medicine. I have extensive experience in the diagnosis and treatment of people who have survived torture and other forms of physical and psychological abuse. I was also the principal organizer of a project to develop international standards on the effective investigation and documentation of torture.
2. It is on the basis of these qualifications and experience, which are explained more fully in the paragraphs that follow, that I have knowledge of the matters deposed to in this affidavit. Where my knowledge is based on information and belief, I have stated the basis of such information and belief.

## **My Qualifications**

3. My medical training is as follows: I received a Bachelor of Science Degree from Villanova University in 1979. In 1980, I received a Master of Science Degree in Physiology from Georgetown University. In 1985, I received both a Ph.D. in physiology from Georgetown University, and my M.D. from the Georgetown University School of Medicine.
4. My medical practice is as follows: My internship and residency in internal medicine was at the University of Minnesota Hospitals and Clinics and was from July 1985 to June 1986 and April 1987 to April 1989. I was the Chief Resident at the Veterans Administration (V.A.) Medical Center in Minneapolis, Minnesota, from June 1989 to June 1990. From July 1991 to July 1993, I was a Clinical Scholar with the Robert Wood Johnson Clinical Scholars Program at Stanford University and the University of California, San Francisco, and Attending Physician at the V.A. Medical Center in Palo Alto. I am currently licensed by the State of California as an M.D. and Board Certified in internal medicine by the American Board of Internal Medicine.
5. I have taught as a clinical instructor in adult or internal medicine at the following institutions:
  - V.A. Medical Center, Palo Alto, California, Department of Medicine (July 1991 to October 1994)
  - Mendi Provincial Hospital, Papua New Guinea (July 1990 to February 1991)
  - V.A. Medical Center, Minneapolis, Minnesota (June 1989 to June 1990)
  - Site 2 South (American Refugee Committee refugee camp); Thailand (July 1986 to April 1987)

6. Since 1994, I have also taught a course on "Health and Human Rights" at the University of California, Berkeley, School of Public Health.
7. My honors and awards in the medicine and human rights fields include:
  - University of Minnesota, Department of Medicine 2005 Distinguished Alumni Award.
  - The Center for Victims of Torture 2004 Eclipse Award for extraordinary service on behalf of torture survivors.
  - Certificate of Commendation for Volunteer Efforts to Aid Refugees, State of Minnesota, Governor's Office, 1989.
  - Upjohn Achievement Award for Outstanding Research and Scholarship, 1985.
  - Joseph Collins Foundation scholarship for Academic Achievement and Proficiency in the Arts and Letters, 1984, 1985.
8. Between 1991 and July 1997, I was Medical Director of Survivors International, a non-profit organization based in San Francisco, California, that provides medical and psychological care to survivors of torture from around the world. In the course of my work with Survivors International, I have participated in the medical care of approximately 80 survivors of torture, and conducted medical evaluations of more than 100 political asylum applicants alleging torture.
9. Presently, I am the Senior Medical Consultant for Physicians for Human Rights ("PHR"), based in Cambridge, Massachusetts. PHR is a non-profit organization that brings the scientific knowledge and skills of the medical sciences to the investigation and prevention of torture and other violations international human rights and humanitarian law. During the past fifteen years, I have represented PHR and/or supervised medical fact-finding investigations to Thailand, Punjab, Kashmir, Turkey, South Africa, Afghanistan, Albania, Macedonia, Kosovo, Chechnya, Sierra Leone, Nigeria, Mexico, Botswana, Swaziland, Iraq, Sudan and the United States. In the

course of my work with PHR, I have evaluated medical evidence of torture in several hundred individuals.

10. I have qualified as a medical expert in US Immigration Courts regarding assessment of physical and psychological consequences of torture on about 100 occasions, and have testified in those matters on about 30 occasions.
  
11. I have also qualified as a medical expert in Canadian and British courts regarding the assessment of physical and psychological consequences of torture. (The Canadian case is reported as *India v. Singh*, (1996) 108 C.C.C. (3d) 274 (B.C.S.C.).)
  
12. Finally, I am the author of over 50 publications on health and human rights, including on the subject of torture. A selection of my publications related to torture, most of which are published in the peer-reviewed, academic literature, appears here:

Lustig SL, Kureshi S, Delucchi K, Iacopino V, Morse S. Asylum grant rates following medical evaluations of maltreatment among political asylum applicants in the United States. *Journal of Immigrant and Minority Health*, 2008; 10(1). In Press.

Rubenstein L, Pross C, Davidoff F, Iacopino V. Coercive US interrogation policies: a challenge to medical ethics. *JAMA*. 2005;294: 1544-1549.

Iacopino V. Medical Evaluations of Asylum Seekers. *Virtual Mentor: Ethics Journal of the American Medical Association*. September 2004, Volume 6 Number 9. Available at: <http://www.ama-assn.org/ama/pub/category/12785.html>.

Reis C, Ahmed AT, Amowitz LL, Kushner AL, Elahi M, Iacopino V. Physician participation in human rights abuses in southern Iraq. *JAMA*. 2004;291:1480-1486.

Moreno A, Heisler M, Keller A, Iacopino V. Documentation of Torture and Ill Treatment in Mexico: A Review of Medical Forensic Investigations, 2000 - 2002. *Health and Human Rights*. 2003;7(1):29-50.

Heisler M, Moreno A, DeMonner S, Keller A, Iacopino V. Assessment of Torture and Ill Treatment of Detainees in Mexico: Attitudes and Experiences of Forensic Physicians. *JAMA*. 2003;289:2135-2143.

International Dual Loyalty Working Group. Deal Loyalty & Human Rights: In Health Professional Practice: Proposed Guidelines and Institutional Mechanisms. Physicians for Human Rights. 2003.

Laws A, Iacopino V. Police torture in Punjab, India: an extended survey. *Health and Human Rights*. 2002; 6(1):195-210.

Iacopino V, Keller A, Oksenberg D. Why torture must not be sanctioned by the United States: It undermines our humanity and does not make society safer. *West J Med* 2002 176: 148-149.

Amowitz L, Iacopino V. A Survey of Human Rights Abuses Among New Internally Displaced Persons Herat, Afghanistan. *Physicians for Human Rights*, April 2002.

Poel M, Iacopino V (Editors). *The Medical Documentation of Torture*. Greenwich Medical Media Ltd., London; 2002: pp.1-227.

Amowitz LL, Reis C, Hare Lyons K, Vann B, Mansaray B, Akinsulure-Smith AM, Taylor L, Iacopino V. The Prevalence of War-Related Sexual Violence and Other Human Rights Abuses Among Internally Displaced Persons in Sierra Leone. *JAMA*. 287(4):513-521, January 23/30, 2002.

Jacobs U, Iacopino V. Torture and its consequences: a challenge to neuropsychology. *Professional Psychology: Research and Practice*. 2001;32(5): 458- 464.

Iacopino V, Frank MW, Bauer HM, Keller AS, Fink SL, Ford D, Palin DJ, Waldman R. A Population-based Assessment of Human Rights Abuses against Ethnic Albanian Refugees from Kosovo. *American Journal of Public Health*. 2001;91(12)2013-2018.

Iacopino, V, Ailken K, Keller A. *Examining Asylum Seekers: A Health Professional's Guide to Medical and Psychological Evaluations of Torture*. Physicians for Human Rights. August, 2001.

Rubenstein LS, Ford D, Mach O, Cohen A, Burkhalter H, Ahmadi R, Vassiliev M, Nawaz H, Iacopino V. Endless Brutality: War Crimes in Chechnya. *Physicians for Human Rights*. May 2001;1-143.

Iacopino V. Commentary: Health Professionals cannot be silent witnesses. *Western Journal of Medicine*. 2000;172:304-305.

Iacopino V, Ozkalipci O, Schlar C. The Istanbul Protocol: International Standards for the Effective Investigation and Documentation of Torture and Ill Treatment. *The Lancet*. September 25, 1999; pp. 1117.

Iacopino V., Ozkalipci, O., Schlar, C., Alden, K., Baykal, T., Kirschner, R. et al. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol). Office of the High Commissioner for Human Rights. New York and Geneva, United Nations Publications HR/P/PT/8. 2001. Available at: <http://www.unhchr.ch/pdf/8istprot.pdf>

Iacopino V, Frank MW, Keller AS, Fink SL, Pallin DJ, Waldman RJ, et al. War Crimes in Kosovo: A Population-Based Assessment of Human Rights Violations Against Kosovar Albanians. Boston, MA: Physicians for Human Rights; August, 1999.

Chapman AR, Rubenstein LS, Iacopino V, Geiger J, Bloche G, Hatch J, Lawrence R, Nichols B and Secundy M. Human Rights and Health: The Legacy of Apartheid. Washington, DC. American Association for the Advancement of Science; 1998: 1-217.

Iacopino V, Treatment of Survivors of Political Torture: Commentary. The Journal of Ambulatory Care Management. 1998; 21(2):5-13.

Iacopino V, Turkish Physicians Coerced to Conceal Systematic Torture. The Lancet. 348, November 30, 1996.

Weinstein, H., Dansky, L. and Iacopino V. Torture and War Trauma in Primary Care Practice. Western Journal of Medicine. 1996; 156(3):112-118.

Iacopino V, Heisler M, Pishveer S, and Kirschner RH. Physician Complicity in Misrepresentation and Omission of Medical Evidence in Post-Detention Medical Examinations in Turkey. JAMA. 1996; 276:396-402.

Iacopino V, Rosoff R, and Heisler M. Torture in Turkey and Its Unwilling Accomplices. Physicians for Human Rights. August, 1996.

Gossman P, Iacopino, V. Dead Silence: The Legacy of Human Rights Abuses in Punjab. Physicians for Human Rights and Human Rights Watch. May, 1994.

Gossman P, Iacopino V. Crackdown in Kashmir: torture of detainees and assaults on the medical community. Physicians for Human Rights and Human Rights Watch. January 1993.

13. These and other aspects of my qualifications are set out in my curriculum vitae, a copy of which is attached as Exhibit "A" of my affidavit.

## **Istanbul Protocol**

14. From 1996 to 1999, I was the principal organizer of a project to develop a manual on the effective investigation and documentation of torture and ill treatment. The *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, more commonly known as the “Istanbul Protocol”, was the result of three years of analysis, research, and drafting undertaken by more than 75 forensic doctors, physicians, psychologists, human rights monitors and lawyers who represent 40 organizations and institutions from 15 countries. I have organized and participated in Istanbul Protocol implementation projects in Mexico, Sudan, Sri Lanka, Uganda, George, Ecuador, Egypt, The Philippines and Kenya.
  
15. The Istanbul Protocol was completed in 1999 and subsequently published under the auspices of the United Nations Office of the High Commissioner for Human Rights in 2001. A revised copy published in 2004 is attached as Exhibit “B” of my Affidavit.
  
16. The Istanbul Protocol remains in force as the UN-sanctioned set of international guidelines for effectively investigating and documenting torture and other forms of ill-treatment. In its own words, the Istanbul Protocol:

... is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body. This manual includes principles for the effective investigation and documentation of torture, and other cruel, inhuman or degrading treatment or punishment. These principles outline minimum standards for States in order to ensure the effective documentation of torture. (pages 1-2)
  
17. One of the primary objectives of the protocol was to prevent torture through accountability. By establishing and promoting methods for the effective

documentation of torture, the authors believe it is more likely that perpetrators will be successfully prosecuted and that the interests of justice may be served.

18. Torturers carry out their business in secret and usually seek to conceal their actions.

For this reason, they tend to adopt torture methods which leave little or no medically-detectable traces on the body. Examples of such undetectable techniques include simulated drowning, mock execution, sexual humiliation, exposure to severe hot or cold temperatures, the use of stress positions, and even carefully applied electric shocks, suspension or beatings. Other methods, such as rape by penetrating foreign objects, can leave physical injury, but of a kind that cannot always be clinically distinguished from injury of other causes. For these reasons, it is generally accepted that investigators can assess and document allegations of torture—but no investigator, no matter how skilled or experienced, can definitively detect methods that the torturer contrives and succeeds to conceal. As the Istanbul Protocol notes (at paragraph 159):

It is important to realize that torturers may attempt to conceal their acts. To avoid physical evidence of beating, torture is often performed with wide, blunt objects, and torture victims are sometimes covered with a rug, or shoes in the case of *falanga* [i.e. beatings to the feet], to distribute the force of individual blows. Stretching, crushing injuries and asphyxiation are also forms of torture with the intention of producing maximal pain and suffering with minimal evidence. For the same reason, wet towels are used with electric shocks.

19. Though psychological trauma caused by torture may be life-long, such harm is generally difficult to detect in a detention setting. Psychological evaluation may be impossible to perform during transient visits to a detention centre, and can also be complicated by the natural mistrust or fear of the interviewee, who reasonably may suspect that the person coming to inspect his conditions or interview him or her is in league with the torturers. A person in detention may be too afraid to confide in an inspector that he or she is being tortured, for fear of retribution by the torturer.



20. Subject to these limitations, outside investigators can assess and document testimonial allegations of torture. Testimonial evidence is often the primary evidence relied on in making an assessment of torture, whether or not confirmatory physical evidence exists. As the Istanbul Protocol notes (at paragraph 161):

Witness and survivor testimony are necessary components in the documentation of torture. To the extent that physical evidence of torture exists, it provides important confirmatory evidence that a person has been tortured. However, the absence of such physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars.

21. Depending on the dialogue that the investigator is authorized to have and the mindset of the alleged torturer, sharing the allegations may in some cases improve the treatment of the detainee. However, it should not be casually assumed that visits from outside investigators are necessarily good for the detainee, and ill-considered or one-off visits can make matters worse. Persons who remain in detention following an investigator's visit are vulnerable to retribution, especially in a country such as Afghanistan where the practice of torture is consistently and credibly reported by many sources. As the Istanbul Protocol cautions (at paragraphs 127-128):

Visits to prisoners are not to be considered lightly. They can in some cases be notoriously difficult to carry out in an objective and professional way, particularly in countries where torture is still being practiced. One-off visits, without follow-up to ensure the safety of the interviewees after the visit, may be dangerous. In some cases, one visit without a repeat visit may be worse than no visit at all. Well-meaning investigators may fall into the trap of visiting a prison or police station, without knowing exactly what they are doing. They may obtain an incomplete or false picture of reality. They may inadvertently place prisoners that they may never visit again in danger. They may give an alibi to the perpetrators of torture, who may use the fact that outsiders visited their prison and found nothing.

Visits should best be left to investigators who can carry them out and follow them up in a professional way and who have certain weathered procedural safeguards for their work. The notion that some evidence is better than no evidence is not valid when working with prisoners who might be put in danger by giving testimony. Visits to detention facilities by well-meaning people representing official and non-governmental institutions can be difficult and, worse, can be counter-productive.

22. The main tenets of the protocol are summarized in Annex I, Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The U.N. General Assembly endorsed these Principles without a vote on December 4, 2000. A copy of U.N. General Assembly Resolution 55/89 is attached hereto as Exhibit "C".

### **Inspections Not A Safeguard Justifying Return**

23. It must be emphasized that the methods and principles in the Istanbul Protocol should not be construed or regarded as a safeguard against torture which justifies transferring an individual to the custody of a state with a poor human rights record. I am aware that some countries have sought to rely on post-return inspections as an adequate means to mitigate the risk of torture in a receiving state. This practice has been condemned by several organizations and officials, including the UN High Commissioner for Human Rights, the UN Special Rapporteur on Torture, the International Commission of Jurists, Human Rights Watch, and Amnesty International.

24. The UN High Commissioner for Human Rights, Louise Arbour, issued a statement on December 5, 2005, wherein she criticized the recent trend of seeking "diplomatic assurances" to address the risk of torture. As she notes, some governments, faced with the option of deporting terrorism suspects to countries where the risk of torture is well documented, have requested assurances from the receiving state that the individual will not be tortured. The purported objective of seeking such assurances is to overcome the prohibition in international law against transferring persons to a place where they would be at risk of torture or other ill-treatment (i.e. the non-*refoulement* obligation of Article 3 of the UN Convention Against Torture). In the High Commissioner's statement, a copy of which is attached hereto as Exhibit "D", she explains her opposition to this practice:

There are many reasons to be sceptical about the value of those assurances. If there is no risk of torture in a particular case, they are unnecessary and redundant. If there is a risk, how effective are those measures likely to be? Assurances that the death penalty will not be sought or imposed are easy to monitor. Not so, I suggest, in the case of torture and ill-treatment. Short of very intrusive and sophisticated monitoring measures, such as around-the-clock video surveillance of the deportee, there is little oversight that could guarantee that the risk of torture will be obliterated in any particular case.

25. The UN High Commissioner elaborated on these concerns in a speech delivered February 15, 2006 to Chatham House, a foreign policy think-tank located in London, England. A text of that speech is attached hereto as Exhibit "E". The High Commissioner further criticizes, in a more detailed and scholarly fashion, the practice of seeking diplomatic assurances as an adequate protection from torture. On the issue of monitoring detention, she says the following at pp 17-18:

Some have postulated that diplomatic assurances could work if effective post-return monitoring mechanisms were put in place. Based on the long experience of international monitoring bodies and experts, it is unlikely that a post-return monitoring mechanism set up explicitly to prevent torture and ill-treatment in a specific case would have the desired effect. These practices often occur in secret, with the perpetrators skilled at keeping such abuses from detection. The victims, fearing reprisal, often are reluctant to speak about their suffering, or are not believed if they do.

26. The UN Special Rapporteur on Torture, Professor Manfred Nowak, has also had occasion to report on the adequacy of monitoring as a safeguard against torture. The Special Rapporteur reviewed the case of Ahmed Agiza, an individual transferred from Sweden to Egypt in December 2001 on the basis of diplomatic assurances he would not be tortured. The U.N. Committee Against Torture found that, despite more than 25 visits by Swedish officials, Mr. Agiza was tortured by Egyptian authorities. In a report submitted the UN General Assembly, a copy of which is attached hereto as Exhibit "F", the Special Rapporteur made the following comments at paragraphs 45-46 on the *Agiza* case:

In this case the diplomatic assurances procured were insufficient to protect against the manifest risk of torture and were therefore unenforceable. It is the opinion of the Special Rapporteur that post-return monitoring mechanisms do little to mitigate the risk of torture and have proven ineffective in both safeguarding against torture and as a mechanism of accountability.

27. In a subsequent report to the UN Commission on Human Rights, the Special Rapporteur stated more forcefully that diplomatic assurances were an attempt to erode the absolute prohibition against torture. Further, he states that even the best post-return monitoring mechanisms, such as those employed by the International Committee of the Red Cross and the European Committee for the Prevention of Torture, could not be regarded as “water-tight” guarantees against torture. A copy of this report, dated December 23, 2005, is attached hereto as Exhibit “G”.
  
28. The points made by the Special Rapporteur and illustrated by the *Agiza* case are reinforced in the Canadian context by the case of Mr. Maher Arar. An inquiry led by Mr. Justice O’Connor found that Mr. Arar began to be tortured very soon after he was abducted and imprisoned in Syria. Syria gave a diplomatic assurance to Canada that diplomats could inspect Mr. Arar’s well-being every few days, but intervals of weeks or even several months passed during which Syria ignored Canada’s requests to visit. Mr. Justice O’Connor found that despite nine such visits from Canadian diplomats and members of Parliament, over a period of about ten months, Mr. Arar was unable to bring himself to confide that he was being tortured.
  
29. Several non-governmental organizations have come out strongly against efforts to establish “minimum standards” for diplomatic assurances that persons will not be tortured. Like the UN Special Rapporteur, these organizations view the practice of seeking diplomatic assurances as an attempt to circumvent the principle of non-*refoulement* and the absolute prohibition against torture. On December 2, 2005, Amnesty International, Human Rights Watch and the International Commission of

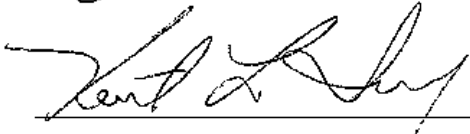
Jurists released a joint brief on this issue entitled “Reject rather than regulate”. The report, a copy of which is attached hereto as Exhibit “H”, outlines the nature of the organizations’ objections to the practice of diplomatic assurances on torture, and calls upon countries to reject the practice outright as a violation of international law. Speaking to the issue of visits by outside inspectors as a feature of such assurances, the organizations state that these mechanisms have not proved to be effective to prevent torture or ill-treatment. The report states at p. 14:

[O]fficials that engage in torture or other ill-treatment are often skilled at preventing any visible manifestations, and are typically capable of ensuring, through threats, that no complaints would be heard by visiting monitors. Even where carried out by a professional and dedicated organization, visits to places of detention, while constituting a crucial element in the prevention of torture and other ill-treatment, are from being sufficient on their own to prevent them... It should be noted that the ICRC itself has never claimed that visits by its staff to places of detention are all that is needed to safeguard against torture and ill-treatment, and have refused to take part in monitoring ‘diplomatic assurances’.

30. The above reports inform my view that a system of monitoring or inspections should not be relied upon as justification for transferring individuals to states that have a record of committing torture—even when such inspections are carried out in a manner consistent with the best practices established in the Istanbul Protocol. If torture investigations are misused in this way, then despite sincere efforts they very likely will fail to prevent torture, as in the *Agiza* and *Arar* cases. These cases accurately illustrate that periodic inspection regimes cannot, and hence should not, be counted upon to stem the substantial risk of torture existing in detention centres where one has credible advance information that torture is occurring. The development of international standards for the effective investigation and documentation of torture was not intended so that inspections could be used to ensure compliance with the non-*refoulement* obligation of Article 3 of the UN Convention Against Torture. In my opinion, to undertake inspections with that objective in mind is ineffective and inappropriate.

31. I make this affidavit in support of interlocutory and final relief in the herein application for judicial review.

SWORN BEFORE ME at Henderson )  
Nevada, USA, this 21<sup>st</sup> day of )  
August, 2007. )

  
\_\_\_\_\_)  
Judicial official authorized to receive )  
an oath or affidavit in the State of Nevada, )  
United States of America )

  
\_\_\_\_\_)  
Vincent James Iacopino