

FEDERAL COURT

BETWEEN:

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

Applicants

-and-

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

Respondents

AFFIDAVIT

I, MURRAY MOLLARD, Barrister and Executive Director of the B.C. Civil Liberties Association, of 550 – 1188 West Georgia Street, in the City of Vancouver, Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Executive Director of the B.C. Civil Liberties Association (“BCCLA” or “Association”), and accordingly have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be on information and belief, and, as to such facts, I verily believe the same to be true.

2. The BCCLA is a Society duly incorporated as such on February 27, 1963, pursuant to the *Society Act*, with its registered office at 550 - 1188 W. Georgia Street, Vancouver, British Columbia. The BCCLA’s constitution states that the object of the Association is to:

“promote, defend, sustain, and extend civil liberties and human rights. We recognize that such rights are fundamental and inalienable for the well-being of

human society. Among these liberties and rights are those which have been embodied in such documents as the *Canadian Charter of Rights and Freedoms*, the *Declaration of the Rights of Man and the Citizen*, the *American Declaration of Independence*, the British, American and Canadian *Bill of Rights*, and the *Universal Declaration of Human Rights*.”

The BCCLA's mandate includes advocacy to ensure that the Canadian government's laws, policies and practices will guarantee the lawful and humane treatment of prisoners in its custody, whether in Canada or abroad.

3. The BCCLA has at present approximately 1,000 members and contributors involved in various professions, trades or callings. The BCCLA has a Board of Directors which is directly responsible for the administration of the organization, setting policy positions of the BCCLA and undertaking advocacy with respect to civil liberties. The Board of Directors is made up of individual men and women from a variety of backgrounds and includes academics (professors of philosophy, computer science, law, criminology, ethics, political science, sciences), lawyers, doctors, business people, and teachers. BCCLA Board members, aside from directing the work of the Association, undertake a considerable amount of policy development and advocacy on behalf of the BCCLA. In addition, the BCCLA has six staff positions, including an Executive Director and Policy Director, who undertake a considerable amount of the substantive work of the organization in support of the Board of Directors.

4. The BCCLA has demonstrated a long-standing, genuine and continuing concern with the liberty and freedom not only of Canadian citizens but also of non-Canadians whose lives are affected by the actions of the Canadian government, such as immigrants and refugees. We speak out on the principles that promote individual rights and freedoms, including freedom of thought, belief, conscience, religion, opinion and expression, prisoners' rights, privacy, equality rights, and autonomy rights generally. The BCCLA recognizes that, at times, the public interest may outweigh individual claims to freedom and autonomy.

5. The BCCLA works in furtherance of its objectives in a variety of ways:
- (a) the BCCLA engages in public education, by commenting on current civil liberties and human rights issues in various news media, by participating in conferences or other public events at which civil liberties and human rights are discussed, by publishing newsletters and producing books and other forms of publications on civil liberties and human rights issues that are available to the general public, and by maintaining a web site containing many of our position papers and other public documents;
 - (b) the BCCLA prepares position papers and makes submissions to various governmental bodies at the international, federal, provincial and municipal levels, as well as private sector organizations, concerning the advancement of civil liberties and human rights and the implications for civil liberties and human rights of proposed legislative or policy initiatives;
 - (c) the BCCLA provides assistance to persons who complain to it about violations of their civil liberties or human rights, including assistance in pursuing administrative or informal remedies; and,
 - (d) the BCCLA takes action in its own right when it has perceived violations of civil liberties or human rights, either by launching complaints with an appropriate agency, or by appearing in court sometimes as plaintiff, but most often as intervenor in legal matters that raise civil liberties issues.

6. The BCCLA has particular interest in this case. Jason Gratl, President of the BCCLA, wrote to the Honourable Vic Toews, Minister of Justice, and the Honourable Gordon O'Connor, Minister of National Defence, on March 27, 2006 to urge the government to renegotiate the agreement between the Canadian government and the government of Afghanistan regarding the transfer of prisoners captured by Canadian armed forces to agents of the government of Afghanistan. A copy of this letter is attached as **Exhibit "A"**.

7. The BCCLA received a letter from the Honourable Peter G. MacKay, Minister of Foreign Affairs, dated August 17, 2006 in response to the BCCLA's letter dated March 27, 2006. A copy of this letter is attached as **Exhibit "B"**.

8. BCCLA President Jason Gratl responded to Mr. MacKay with a letter dated September 5, 2006. In his letter, Mr. Gratl requests that Mr. MacKay "provide empirical assurance that prisoners transferred to the Afghan government are being treated in accordance with the Geneva Convention." A copy of Mr. Gratl's September 5, 2006 letter is attached as **Exhibit "C"**.

9. The BCCLA has a long history of addressing prisoners' rights issues. Some examples of the BCCLA's work in this area includes:

- (a) *May v. Ferndale Institution* 2005 SCC 82: The BCCLA was an intervenor before the Supreme Court of Canada in this case that considered the availability of the remedy of *habeas corpus* in provincial superior courts.
- (b) *Sauve v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519: The BCCLA was an intervenor before the Supreme Court of Canada in this case which involved an assessment of the constitutionality of legislation that prevented prisoners in federal correctional facilities from voting in federal elections.
- (c) Jail Cell Strip Search Policies: The BCCLA made a policy complaint to the Vancouver Police Department and Vancouver Police Board in order to facilitate compliance with the law regarding strip searches as set out in *R. v. Golden*. The BCCLA continues to work on ensuring lawful strip search policies.
- (d) Prisoner Telephone Access: In 2001, the BCCLA made submissions to the government of British Columbia to ensure free telephone access by

provincial corrections inmates to facilitate important communication including solicitor/client communications.

- (e) Privileged Correspondence: In 2001, the BCCLA assisted inmates in a provincial correctional facility to oppose the routine opening and examination of privileged correspondence by corrections personnel.
- (f) Double Bunking: In 1996, the BCCLA made submissions to the government of British Columbia to end the practice of double bunking in provincial correctional facilities.
- (g) In 1992 and 1994, the BCCLA made submissions to the House of Commons Standing Committee on Justice with respect to amendments to the *Corrections and Conditional Release Act*.

10. The BCCLA also has a long history of addressing the protection of civil liberties in the context of national security. The BCCLA's advocacy contributed to the creation of the Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar (the "Arar Inquiry"). The Honourable Mr. Justice Dennis O'Connor, Commissioner of the Arar Inquiry, found Mr. Arar to have been tortured by agents of the Syrian government and found that the actions and inaction of institutions within the Canadian government contributed to and protracted his ordeal. The BCCLA has standing as an Intervenor in the Factual Inquiry and the Policy Review of the Arar Inquiry.

11. In response to the recommendations of Commissioner O'Connor's first report relating to Maher Arar, the BCCLA drafted the *Prevention of Torture Act* (the "Act"). A copy of the Act is attached to this affidavit as **Exhibit "D"**. The primary objective of this Act is to direct the Government of Canada and its agents to conduct their affairs to keep both Canadians and foreign nationals free from torture in any matter in which Canada has jurisdiction or influence. This objective is accomplished in part through a prohibition on the transfer of prisoners in Canadian custody. A copy of a summary and explanation of the Act is attached as **Exhibit "E"**.

12. The BCCLA is working with officials from the Government of Canada and other Members of Parliament, including members of the Parliamentary Committee on Public Safety and National Security, to encourage passage of the Act in Parliament. In addition, we have received considerable support for this Act from Non-Governmental Organizations (“NGOs”) including several Muslim organizations and torture-watch NGOs such as Amnesty International and the Association for the Prevention of Torture. A list of individuals and organizations supporting the Act is attached as **Exhibit “F”**.

13. In June 2006 the BCCLA intervened in three appeals heard jointly before the Supreme Court of Canada involving the constitutionality of the “security certificate” provisions of the *Immigration and Refugee Protection Act*. These provisions provide the government with the authority to deport non-Canadians to their countries of origin due to the government’s assessment that they are a threat to the security of Canada. Of particular concern to the BCCLA is the danger of deportation to countries that are known to practice torture. The Court has reserved its decision in *Charkaoui v. Minister of Citizenship and Immigration and The Solicitor General of Canada*, *Almrei v. Minister of Citizenship and Immigration and The Solicitor General of Canada*, and *Harkat v. Minister of Citizenship and Immigration and The Solicitor General of Canada*.

14. The BCCLA is bringing the present case forward because it wishes to advocate for the existence and enforcement of adequate safeguards to ensure that prisoners in the custody of Canadian armed forces are not subject to torture when transferred to Afghan government agents or other states.

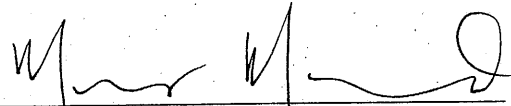
15. The BCCLA has been a regular intervenor before the Supreme Court of Canada including the following cases:

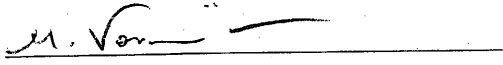
- (a) *Reference Re Same-Sex Marriage*, [2004] 3 S.C.R. 698
- (b) *R. v. Malmö-Levine*, *R. v. Caine*, [2003] 3 S.C.R. 571; *R. v. Clay* [2003] 3 S.C.R. 735 (challenge to validity of marijuana prohibition)
- (c) *Chamberlain v. Surrey School District No. 36*, [2002] 4 S.C.R. 710
(banning of books depicting same sex couples)

- (d) *Babcock v. Attorney General (Canada)*, [2002] 3 S.C.R. 3 (challenge to validity of section 39 of the *Canada Evidence Act* (Crown Privilege provision))
- (e) *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 (religious freedom in private university)
- (f) *R. v. Sharpe*, [2001] 1 S.C.R. 45 (challenge to validity of child pornography provisions of the *Criminal Code*)
- (g) *R. v. O.N.E.*, [2001] 3 S.C.R. 478 (publication bans on operational methods of the RCMP)
- (h) *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120 (Canada Customs' power to ban expressive material)
- (i) *R. v. Cuerrier*, [1998] 2 S.C.R. 371 (fraud in failing to disclose HIV status vitiating consent to sexual activity)
- (j) *R. v. Butler*, [1992] 1 S.C.R. 452 (constitutionality of obscenity provision in *Criminal Code*)

16. I swear this Affidavit in support of an application for judicial review concerning the handling and transfer of individuals detained by the Canadian Forces by Afghanistan.

SWORN BEFORE ME at the City)
of Vancouver, Province of British)
Columbia, this 22nd day)
of February, 2007.)


MURRAY MOLLARD


A Commissioner for taking Affidavits)
in the Province of British Columbia)
550-1188 WEST GEORGIA)
VANCOUVER, BC, V6E 4A2)

This Affidavit is prepared by Raven, Cameron, Ballantyne & Yazbeck LLP/s.r.l.
Barristers & Solicitors of Suite 1600 - 220 Laurier Avenue West, Ottawa, Ontario K1P 5Z9
Tel: (613) 567-2441, Fax: (613) 567-2921