

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**

Respondents

AFFIDAVIT OF NICHOLAS GOSSELIN

I, Nicholas Gosselin, of the City of Gatineau in the Province of Quebec, AFFIRM AND SAY AS FOLLOWS:

1. I am currently employed as the Human Rights Officer, Department of Foreign Affairs and International Trade ("DFAIT"), at the Canadian Provincial Reconstruction Team ("PRT") in Kandahar, Afghanistan. As a result of my position with DFAIT, I have knowledge of the matters to which I hereinafter depose. Where I have made this affidavit based upon information obtained from another, I have identified the source of the information and I believe it to be true. Attached to my affidavit as Exhibit "A" is a copy of the responsibilities of a Human Rights Officer in Kandahar.

I. Outline of Career and Experience

2. I have a Bachelor of Business Administration from the Université du Québec en Outaouais, Gatineau, and I have started a Masters in Industrial Relations and Human

Resource Management at the same university. I joined the Department of Foreign Affairs in 2006, and I have served as a Human Rights Officer in Kandahar since November 2007.

3. Prior to joining DFAIT, I worked for the Department of Social Development as a chief of strategic HR planning as well as a human resources consultant with the Department of National Defence ("DND"). I also served for six years as a reserve officer in the Canadian Armed Forces ("CF").
4. Prior to my deployment to Afghanistan, I received a number of training courses including Consular Torture Awareness Training as well as briefings in International Human Rights Law.
5. As the Human Rights Officer in the PRT, I am responsible for monitoring, coordinating and reporting on various human rights issues. I also have an ongoing dialogue with our Afghan and international partners on detainee-related matters.
6. Prior to my appointment as Human Rights Officer, my role and responsibilities in relation to the promotion of human rights in Afghanistan was carried out by other DFAIT employees in Kandahar as part of their duties. Canada has undertaken to promote human rights from the start of our mission.

II. Human Rights Situation in Afghanistan

7. Since August 2005, Canada has operated a PRT in Kandahar City. The PRT brings together elements from the Department of Foreign Affairs and International Trade ("DFAIT"), the Canadian Forces ("CF"), the Canadian International Development Agency ("CIDA"), Correctional Services Canada ("CSC"), and civilian police led by the Royal Canadian Mounted Police ("RCMP"). The PRT is an integrated Canadian initiative involving approximately 350 people based at Camp Nathan Smith in Kandahar City. As the Human Rights Officer, I am a member of this team.
8. The PRT works with the Government of Afghanistan in developing the capacity necessary to extend the authority of the government throughout Kandahar Province,

through the stabilization and development of the region. The PRT helps monitor security, promote Government of Afghanistan policies and priorities with local authorities, and facilitate security sector reforms. In these ways, the Province is being stabilized and developed.

9. Furthermore, three DFAIT and CIDA staff work at Kandahar Airfield ("KAF"), where they provide political and development advice to the Force Commanders as well as Canada's embassy in Kabul, with approximately 24 Canada-based staff.

III. Monitoring Activities

10. DFAIT personnel at KAF, PRT and Kabul are responsible for assessing the conditions of detainees transferred by the CF. DFAIT personnel also notify the International Committee of the Red Cross ("ICRC") and the Afghan Independent Human Rights Commission ("AIHRC") upon the initial taking of a detainee into Canadian custody, and once detainees are transferred to the custody of Afghan authorities or released. Attached to my affidavit as Exhibit "B" is a copy of DFAIT's "Standard Operating Procedures: Post transfer follow-up for detainees transferred by Canadian Forces in Afghanistan."
11. When a detainee is to be transferred to Afghan custody, the CF informs the Political Advisor ("POLAD") at Kandahar Airfield ("KAF") who then goes to the location to monitor the transfer. During the transfer, the POLAD is responsible for ensuring a proper hand-over process, including informing the detainees of the May 3 Arrangement and Canada's practice of continued monitoring of their condition. Each detainee is given a copy of the May 3 Arrangement in a language he understands.
12. The embassy is responsible for conducting follow-up monitoring visits of detainees held in prison facilities in Kabul, and for liaising with appropriate Afghan authorities, such as President Karzai. The PRT is responsible for conducting follow-up monitoring visits in Kandahar, and for liaising with the appropriate Afghan authorities. Furthermore, the PRT notifies the local Kandahar offices of the International Committee of the Red Cross ("ICRC") and the Afghanistan Independent Human Rights Commission ("AIHRC") of

detentions, releases, and transfers. The POLAD notifies me when someone is taken into custody by the CF and I then notify ICRC and AIHRC in Kandahar with a letter with data on the individual. The Canadian embassy in Geneva is also informed, and they in turn inform the ICRC headquarters. The data provided conforms with requests from the ICRC regarding the type of information that best facilitates their tracking of, and access to, detainees.

13. In order to facilitate monitoring of Canadian transferred detainees, it is important that we have the means of verifying their location. The documentation that Canada provides to Afghan authorities facilitates Canada's ability to trace detainees transferred to Afghan custody.
14. There have been some challenges with record management by the Afghan authorities. For example, I have had discussions with Afghan authorities during which they indicated that some detainees might have given a false name to the Canadian Forces and they have, therefore, had to clarify the identity of these individuals. Transcription of often very similar names in a largely illiterate society has also been an issue, leading to inconsistent record keeping. There have also been instances of a name being spelled by Canadian authorities using the Roman alphabet subsequently translated to Pashto. As a result, the tracking of individual detainees has been a complex process. Having said that, recent experience has shown that with our support, and insistence, the Afghan authorities have acknowledged these difficulties and have agreed to work with us in improving their record management practices. Due to these improvements, some detainees for which their status was unclear have now been found.
15. In order to minimise these problems, we have undertaken capacity building with Afghan authorities in the area of record management. Other allies, such as the United Kingdom, are also working on this issue and efforts are being coordinated to ensure that they result in a coherent system for all of Afghanistan. We have also taken steps to improve the manner in which Afghan authorities inform Canada in the event of a change of circumstances of a Canadian-transferred detainee, such as their release, charge, or transfer to another facility within the Afghan justice system. A decision has been made

that regular telephone calls will be placed to the facilities where Canadian-transferred detainees are being held to confirm their status.

16. The May 2007 supplementary Arrangement requires the Afghan government to hold detainees transferred by the CF in only a limited number of facilities, thereby facilitating ongoing access and capacity building projects by Canada. Attached to my affidavit as Exhibit "C" is a letter of December 6, 2007, from the Afghan National Security Advisor, confirming that the Afghan authorities will use only four facilities. Two of these facilities are located in Kandahar: the NDS detention facility and Sarpoza prison.
17. In my view, Afghan authorities have undertaken considerable efforts to meet their undertakings under the May 3 Arrangement and have largely succeeded with the notable exception of their failure to promptly notify Canadian authorities on any detainee change of circumstances, such as a transfer or a release. This, however, appears to be a matter of capacity rather than lack of will to comply with their undertakings. We continue to stress the importance of this notification and are working to ensure that that we are always notified when there is a change of circumstance with a Canadian-transferred detainee.

IV. Canadian Visits to Prison facilities

18. Between May 3 and December 14, 2007, there were 20 DFAIT-led visits at the NDS facilities in Kandahar and Kabul as well as Sarpoza prison in Kandahar. These visits ensure that Canada continues to monitor the treatment of Canadian transferred detainees as well as ensure ongoing cooperation with Afghan authorities in making long-term changes.
19. These site visits undertaken by Canadian officials are difficult both in terms of the logistics of ensuring adequate security and the dangers posed by insurgents operating in the area. During each visit to monitor detainees, DFAIT civilian personnel, including myself, and our CF protection must deal with the fact that insurgents may have mined the road using improvised explosive devices, or that we may be ambushed, including by suicide bombers like the one that killed the previous Political Director of the PRT.

Consequently the security conditions dictate the frequency, timing and duration of the visits.

20. In visiting Afghan prison facilities, I have generally not faced a problem of either being denied access or not being able to have a private interview with a Canadian transferred detainee. I have only faced difficulties with interviewing detainees on two occasions. On one occasion, we arrived at the NDS facility in Kandahar and learned that the detainees had been transferred to Sarpoza. Although this is a normal part of the Afghan process, we should have been notified in advance. On a second visit, we were denied access on the premise that there were an unusually high number of visitors at the facility which raised concerns for our security. I believe that this was legitimate concern on the part of the Afghan authorities, considering the circumstances.
21. I have been informed by the Director for the NDS in Kandahar that DFAIT-led visits to its facility are always welcome whether we call ahead or simply show up. He has also indicated that their doors are open 24 hours. I have seen no evidence to indicate that this is not in fact the case.
22. During my visits to Afghan facilities, I meet with prison officials and stress the importance that Canada places on the human rights of detainees. This is done both to raise awareness among local staff concerning the commitments their Government have undertaken, and the standards of treatment expected by the international community and the benefit that compliance will bring to Afghanistan itself.
23. After these discussions with prison officials, I then proceed to interview in private Canadian-transferred detainees. These interviews average about 35 minutes each. The objective of these interviews is to confirm the presence of all Canadian-transferred detainees at that location, visually assess their general condition and carry out private interviews with some of them. We try to conduct interviews with as many detainees as possible. We try to interview individuals who have not been previously interviewed. The number of interviews depends upon the security situation.

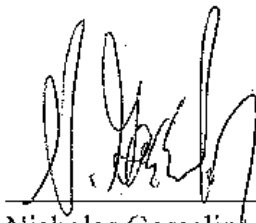
V. Follow-up activities

24. During Canada's DFAIT ongoing monitoring of Afghan prison facilities, there have been a number of allegations of ill-treatment such as physical abuse and/or threats, by Canadian-transferred detainees. These allegations are usually vague and are difficult to substantiate in the absence of detailed description of the events or of any concrete physical signs of abuse.
25. Between May 3 and December 14, 2007, there were 8 allegations of abuse by Canadian-transferred detainees. Canada informed the ICRC and the AIHRC of these allegations. We also informed Afghan authorities. Canada has had an ongoing dialogue with Afghan authorities regarding these allegations, and is pressing them to keep us informed of the outcome of their investigations in these matters.
26. We have been advised by the Government of Afghanistan that their investigation into allegations of physical abuse that came to light as a result of our monitoring visits and that occurred prior to November 5, 2007, have been completed. Afghan authorities concluded after their investigations that these allegations were either unsupported or lacked facts for a determination of whether physical abuse occurred.
27. On November 5, 2007, during a DFAIT monitoring visit to the NDS Kandahar Detention facility, a Canadian-transferred detainee made an allegation of physical abuse that appeared to have been supported by circumstantial evidence. The following day, Canada informed the ICRC and AIHRC of this allegation of abuse. The PRT was instructed to carry out additional visits to both facilities that hold Canadian-transferred detainees in Kandahar so as to interview as many detainees as possible and to visually review all remaining detainees for signs of mistreatment. The detainee who made the allegations has since been moved to Sarpoza Prison.
28. In spite of ongoing security concerns, between November 7 and December 14, PRT conducted 8 site visits in response to this incident. During each site visit I emphasised the importance Canada places on human rights and the high expectation we have of the

Afghan authorities. I visually inspected all Canadian-transferred detainees to look for signs of mistreatment and conducted private interviews with several of them.

29. Regular monitoring of prison facilities and interviews with Canadian-transferred detainees serves as a mechanism for the protection and promotion of the human rights of these detainees. Afghan authorities have expressed their willingness, if allegations of abuse are made, to take the necessary steps to rectify the situation. Moreover, Afghan authorities know that Canada places great emphasis on this issue. As a result of the commitment expressed by the Afghan government, I believe that they are moving in the right direction towards improving conditions of detainees.

SWORN before me at)
the City of Ottawa, Province)
of Ontario this 14th day of)
December, 2007.)
A Gagorska)
A Commissioner, etc.)



Nicholas Gosselin