

1 DAVID CONNOR, AFFIRMED:  
 2 CROSS-EXAMINATION BY MR. ATTARAN:  
 3 1. Q. We are here this morning in respect of Court  
 4 File No. T-234-07.

5 MR. GRAHAM: 324.

6 MR. ATTARAN:

7 2. Q. Thank you, 324-07, in the Federal Court  
 8 between Amnesty International Canada and the BC Civil  
 9 Liberties Association, the Applicants, and Chief of the  
 10 Defence Staff for the Canadian Forces, Minister of  
 11 National Defence and The Attorney General of Canada, the  
 12 Respondents. For the Applicants this morning, myself,  
 13 Professor Amir Attaran, joined by Mr. Paul Champ, and we  
 14 are here to examine the Affidavit of David Connor, sworn  
 15 on December 14th, 2007. Good morning.

16 A. Good morning.

17 3. Q. Let's begin, Mr. Connor. Did you receive a  
 18 direction to attend for this Cross-Examination today?

19 A. I did.

20 4. Q. Have you brought with you the documents that  
 21 were stipulated in that Direction to Attend?

22 A. I have not.

23 5. Q. Could you please tell me why, sir?

24 A. Some of them are already -- were already  
 25 produced in relation to the previous calls and you have

3

1 those, I think, in public version. Others have only  
 2 recently been received and are not -- have not been  
 3 reviewed.

4 6. Q. Have only recently been received by whom?

5 A. By me.

6 7. Q. By yourself? I'd just like to note for the  
 7 record that counsel has not given us advance notice that  
 8 these documents would not be produced today. Perhaps you  
 9 could tell me, Mr. Connor, when you received those  
 10 documents and when the review will be complete?

11 A. I've seen the bulk of them yesterday, late  
 12 yesterday morning. There was approximately 35 in all.  
 13 We're in the process now of reviewing them. It's  
 14 complicated in the sense that it requires a cross review,  
 15 as you know, by Foreign Affairs and National Defence. So  
 16 our participation, our review, I expect to be completed in  
 17 the coming days, certainly before the middle of the month,  
 18 but I can't speak to the balance of the process. I don't  
 19 have knowledge of that.

20 8. Q. With respect to your Affidavit itself,  
 21 Mr. Connor, do you still occupy the position of the  
 22 Director of International Relations?

23 A. I do.

24 9. Q. For CSC?

25 A. Yes.

4

1 10. Q. The position you've occupied since 2003?

2 A. Correct.

3 11. Q. And in that capacity you oversee the work of  
 4 CSC in relation to the PRT, that is the Provincial

5 Reconstruction Team in Kandahar?  
6 A. That's correct.  
7 12. Q. Have you been to Afghanistan in that function,  
8 sir?  
9 A. I have.  
10 13. Q. When was that? Which dates?  
11 A. Earlier this year. No, not this year. In  
12 early 2007 I was in Kandahar. I had other -- I had other  
13 travel planned, actually, for November and December of  
14 this past year but that was -- has been delayed as a  
15 result of these events.  
16 14. Q. In your single visit 2007 did you participate  
17 in any visits of detention facilities there?  
18 A. I did not. There was a visit planned. It  
19 needed to be cancelled for security reasons. Professor,  
20 could I just back up slightly here? Did you ask me had I  
21 been to Kandahar or to Afghanistan? Because the answer is  
22 I've been to Kandahar once but more times to Afghanistan.  
23 15. Q. I am satisfied with your answer.  
24 A. Okay.  
25 16. Q. Undoubtedly you are familiar with the

5

1 assessment that CSC has performed of Afghan detention and  
2 correctional capacity in 2006?  
3 A. I am.  
4 17. Q. That's the document attached at Exhibit A in  
5 your Affidavit?  
6 A. Yes, it is.  
7 18. Q. Now, that document, please correct me if I'm  
8 mistaken, was created, in large part, to guide the  
9 sectoral capacity building function that Canada plays in  
10 Afghanistan to build the prisons there?  
11 A. In Kandahar, actually. Specific to Kandahar.  
12 19. Q. Specific to Kandahar?  
13 A. Yes.  
14 20. Q. And one of the points made in that report, I  
15 believe, sir, is that a functioning prison system is  
16 essential to the rule of law?  
17 A. That's right.  
18 21. Q. CSC is, as I understand it, attempting to  
19 build the rule of law by building the prison system?  
20 A. Correct.  
21 22. Q. Can you please tell me under which law the  
22 various prisons -- law or laws the various prisons and  
23 detention facilities in Afghanistan operate?  
24 A. They operate now under the -- what I believe  
25 is called the Prisons and Detention Centres Act. This is

6

1 the responsibility of -- part of the responsibility of the  
2 Ministry of Justice.  
3 23. Q. Are all the detention facilities under the  
4 authority of the Ministry of Justice then?  
5 A. No. There are other ministries -- other  
6 government organizations operate detention facilities as  
7 well. For example, the Ministry of Interior operates --  
8 I'm not sure of the exact title, but police detention  
9 centres, pre-trial detention centres, basically.

10 24. Q. Who operates the National Directorate of  
11 Security detention facilities?  
12 A. They are operated by the directorate, which is  
13 an autonomous organization in the Afghan Government.  
14 25. Q. Which law is it subject to?  
15 A. I'm not familiar with their legal structure.  
16 26. Q. You are therefore not familiar whether they  
17 operate under the law that you referenced by name earlier?  
18 I believe it was --  
19 A. They do not.  
20 27. Q. They do not?  
21 A. They do not.  
22 28. Q. They are not subject to the law you named  
23 earlier?  
24 A. That's correct.  
25 29. Q. If I could please take you, Mr. Connor, to

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1 Exhibit A, which is the correctional assessment we've been  
2 discussing. On page 6 of that report --  
3 A. Page 6 of 14?  
4 30. Q. I'm sorry, if you are looking at those page  
5 numbers, then it's page 10 of 14, which corresponds to the  
6 page numbering in the production.  
7 A. Right.  
8 31. Q. But I believe it's page 6 of the report.  
9 A. Yes.  
10 32. Q. So we're literally on the same page.  
11 A. So far.  
12 33. Q. It's referred to here that there is a new  
13 maximum security unit for drug offenders funded by  
14 coalition countries, including Canada, which is under  
15 construction and expected to open in the fall and it's  
16 being constructed as described in that document. Do you  
17 see that passage, sir?  
18 A. I do.  
19 34. Q. Who are the coalition countries referred to in  
20 that passage?  
21 A. The two that I'm certain about are Britain and  
22 Canada. There may be others as well.  
23 35. Q. Is it a reference to the NATO coalition or  
24 ISAF coalition?  
25 A. Yes.

8

1 36. Q. Do you know how much funding Canada has  
2 contributed to that project?  
3 A. I do not. That funding was handled through a  
4 CIDA program and it's not something we were directly  
5 involved with.  
6 37. Q. I'm aware that in accordance with an exchange  
7 of letters that took place in December of 2007, Canada and  
8 Afghanistan have agreed that detainees shall be held in  
9 four different facilities. Are you familiar with that  
10 exchange?  
11 A. I have not seen the letters. I have been told  
12 about it, but I have not seen them.  
13 38. Q. Okay. Were you told that the four facilities  
14 where detainees shall be held post transfer by Canada are

15 the NDS facility in Kandahar...  
16 A. That is one, yes.  
17 39. Q. ...Sarpoza prison in Kandahar...  
18 A. Yes.  
19 40. Q. ...the NDS detention facility in Kabul, which  
20 I believe is referred to as Department 17...  
21 A. Yes.  
22 41. Q. ...and the Pul-e-Charki prison in Kabul?  
23 A. Yes. Pul-e-Charki is a very large facility  
24 and it has been in recent years split up to some degree  
25 and used for a variety of purposes by a variety of

9

1 ministries. But one part of Pul-e-Charki is for that  
2 purpose that you've described.  
3 42. Q. Pul-e-Charki, you say, is under various  
4 ministries. Which ministries are those, please?  
5 A. Well, I'm aware the Ministry of Justice is  
6 involved with it, obviously the National Directorate of  
7 Security. There may be others as well.  
8 43. Q. So each maintains a certain authority over  
9 Pul-e-Charki in different sections?  
10 A. That's correct.  
11 44. Q. Before being transferred to any of these four  
12 facilities that we've just named, I understand the  
13 detainees are held at a temporary detention facility in  
14 Kandahar airfield typically?  
15 A. My understanding is that they are brought from  
16 the field to Kandahar airfield for a matter of hours for  
17 reception and assessment purposes, medical assessment and  
18 so on, and then transferred to Afghanistan. We're not  
19 involved in that process at all, so I can't -- I can't  
20 give you expert testimony on that, but that's my  
21 understanding.  
22 45. Q. So in all now we've named five facilities.  
23 Has CSC visited -- CSC personnel -- visited all five of  
24 those facilities?  
25 A. To my knowledge we have not visited the NDS

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1 facility in Kabul, and I'm not aware that there has been a  
2 visit to the NDS facility at Pul-e-Charki either.  
3 46. Q. But the others?  
4 A. The others, yes.  
5 47. Q. For each of these five here, the five  
6 facilities, we've already discussed some of the  
7 jurisdictional facets of the large Pul-e-Charki facility  
8 under different ministries, depending on which section.  
9 How about for the other prisoners? Under whose  
10 jurisdiction are those for each of these five we've  
11 discussed?  
12 A. Well, the NDS facilities in Kabul and Kandahar  
13 obviously are under the jurisdiction of NDS. Sarpoza  
14 prison is a Ministry of Justice prison and the facility at  
15 Kandahar airfield, the holding facility, is a Canadian  
16 Forces operation.  
17 48. Q. Those are the respective jurisdictions for  
18 each detention facility?  
19 A. Right. Yes.

20 49. Q. Now, going back to December 2005 when Canada  
21 first signed its detainee arrangement agreement, if you  
22 will, with Afghanistan, which as we all know has been  
23 subsequently amended, but going back to that date in  
24 December 2005, are you aware of detainees at any time  
25 being transferred elsewhere, apart from the five

11

1 facilities we have discussed so far?

2 A. I had no knowledge of matters related to  
3 detainees prior to 2007. We were not -- well, with the  
4 exception of this one assessment we were not involved in  
5 that -- in those matters at all at that time.

6 50. Q. So your knowledge is limited to 2007 and later  
7 with the exception of the report at Exhibit A --

8 A. As regards to detainees, yes.

9 51. Q. At which date in 20087 -- from which date do  
10 you have knowledge?

11 A. Well, we deployed our staff to the PRT in  
12 early February 2007. I think it was the 2nd of February,  
13 if I recall. Obviously we had been working to prepare  
14 them, and train them, and so on in the months previous,  
15 but essentially the beginning of 2007 is the beginning of  
16 our knowledge about detainees, as you see from the  
17 assessment report. We were not permitted access to NDS  
18 facilities during the assessment period.

19 52. Q. Let's discuss the visits that have taken place  
20 since CSC's engagement in 2007. Am I right that the  
21 purpose of the visits that CSC undertakes, among other  
22 things, is to see that the UN minimum rules for the  
23 treatment of prisoners is being followed?

24 A. In terms of detainees?

25 53. Q. Yes.

12

1 A. No, that's not correct.

2 54. Q. So it is not a concern for CSC that the UN  
3 Standard Minimum Rules are being followed?

4 A. No, I didn't say that. You asked me if the  
5 visits were for the purpose of ensuring the standards were  
6 followed. That is not correct.

7 55. Q. Can you please then explain what is the  
8 significance to CSC of the Standard Minimum Rules?

9 A. The Standard Minimum Rules represent the only  
10 universal or widely agreed, widely held set of  
11 correctional standards. They have severe limitations to  
12 them, particularly when they are applied outside of  
13 Western European and North American context, however they  
14 are the best that exist, therefore it is the touchstone  
15 that we use when we are considering standards issues.

16 56. Q. Okay. Now, I reviewed an earlier CSC document  
17 from December of 1997 entitled "Human Rights and  
18 Corrections: A Strategic Model". I'll give you a copy of  
19 that. Are you familiar with this document, sir?

20 A. I'm not.

21 57. Q. I've handed you this excerpt from the  
22 document, sir. I do appreciate that it might have  
23 predated your tenure in your current position. This is a  
24 document, I believe you'll agree, that is about human

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rights and corrections that is published by the

13

1 Correctional Service of Canada?

2 A. As you say, I haven't seen this document  
3 before. I'm not aware of it. I presume from the printing  
4 that I'm looking at in front of me that that's correct,  
5 but I don't know that as a fact.

6 58. Q. One of the propositions in this document, sir,  
7 I'll just read it into the record, it's easiest to show  
8 you where it is --

9 A. This is page 2?

10 59. Q. Page 2 of 3 in the second numbered set.

11 MR. GRAHAM: The Witness is reading from the third  
12 paragraph that begins on that page?

13 MR. ATTARAN: Third complete paragraph.

14 MR. GRAHAM: Which begins, "The SMRs consist of a  
15 body of principles"?

16 MR. ATTARAN: Yes, that's where we're at.

17 MR. GRAHAM: Thank you. Do you want the Witness  
18 to read that section?

19 MR. ATTARAN:

20 60. Q. If you could just have a quick moment to look  
21 at it.

22 A. Sure.

23 61. Q. One of the propositions stated in this  
24 document, Mr. Connor, is that the SMRs which are the  
25 Standard Minimum Rules for the treatment of prisoners

14

1 consist of a body of principles and rules of general  
2 application which are considered absolute and fundamental  
3 and to be implemented everywhere and at all times,  
4 according to this CSC document. Do you agree with that  
5 proposition, sir?

6 A. I do not.

7 62. Q. Why is that?

8 A. Because, in fact, the SMRs state the opposite.  
9 If you print a copy of them you'll find just slightly  
10 above the page -- on the first page slightly above the  
11 quotation which we see in this paragraph you'll see the  
12 statement that in fact they are not expected to apply in  
13 all situations, in all countries, at all times, but  
14 instead they are intended to stimulate the development of  
15 good correctional practice.

16 63. Q. And when would they not apply?

17 A. The document doesn't go into that detail.

18 64. Q. And in your view they wouldn't apply when?

19 A. Well, for example, if you look further into  
20 the Rules they talk about standards of accommodation and  
21 how many persons should be accommodated in a cell and  
22 under generally speaking what circumstances. The Rules  
23 make the point that there may be temporary situations  
24 where overcrowding defined as more than one person in a  
25 cell could occur.

15

1 65. Q. We're having some copies of the Standard  
2 Minimum Rules made right now, so while that's under way we  
3 can do some other questions.

4                   You said that it is not a purpose of the CSC  
5 visits to see that the Standard Minimum Rules are being  
6 followed. What is then the purpose of the CSC visits to  
7 detention facilities in Afghanistan?  
8                   A. With respect to visits to see detainees, the  
9 purpose is for us to provide technical advice and support  
10 to the Department of Foreign Affairs in their role to  
11 monitor Canada and Canada's arrangements with Afghanistan.  
12 So in other words, the people who are doing this  
13 monitoring are not correction specialists. Our role is to  
14 advise them about correctional practice and general  
15 professional standards and so on.  
16 66.               Q. When you say that the people are not  
17 correction specialists, whose people do you mean?  
18                   A. Department of Foreign Affairs' officials.  
19 67.               Q. You write in your Affidavit that since  
20 February of 2007 CSC staff have conducted at least 42  
21 visits to Afghan prisons. Do the reports of those visits  
22 by CSC staff cross your desk?  
23                   A. They do.  
24 68.               Q. Perhaps you can just explain this to me. How  
25 are those 42 CSC visits different, if indeed they are

16

1 different, from the 20 DFAIT, that is Foreign Affairs-led  
2 visits, that have taken place since May 3rd, 2007?  
3                   A. Well, as you know from the MOU that we have  
4 with the Department of Foreign Affairs which is in the  
5 documents that you have, the purpose of our engagement in  
6 Kandahar is to support the Government of Afghanistan in  
7 its efforts to develop its correctional system. In the  
8 jargon of the business we do capacity building with the  
9 Ministry of Justice, so our engagement has been focused on  
10 Sarpoza prison because it is the main Ministry of Justice  
11 facility in Kandahar province and we are working with  
12 local management to strengthen and improve their  
13 operations. It's quite a different purpose than the  
14 rather focused monitoring of detainees.  
15 69.               Q. You do capacity building, if I understand you  
16 correctly, you've just said with the Ministry of  
17 Justice...  
18                   A. Correct.  
19 70.               Q. ...in Afghanistan. Do you do capacity  
20 building with other government departments in Afghanistan?  
21                   A. Only in a secondary way and as it relates to  
22 prisons. For example, the Ministry of Education -- I'm  
23 not sure that's the correct title -- but the Afghan  
24 Ministry of Education has certain responsibilities in  
25 relation to the education of prisoners. So we attempt to

17

1 engage with them to bring them into the prisons, as it  
2 were, and get them actively participating in programming.  
3 But it's not our -- that's not our -- that's not the  
4 focus. That's not the reason that we're there. It's  
5 ancillary to the main issue.  
6 71.               Q. Any other government units?  
7                   A. It's the same situation with the Ministry of  
8 Health. They have a responsibility to provide certain

9 health services, so we engage with them to develop prison  
10 health issues.

11 72. Q. And that's all the government units?

12 A. I'm sure there are others. There's the --  
13 well there are NGOs, of course, Afghan NGOs that we work  
14 with. We have worked with Afghan Independent Human Rights  
15 Commission, the IHRC, not to specifically to build their  
16 capacity but to assist them in fulfilling their mandate  
17 vis-~~à~~-vis the rights of prisoners.

18 73. Q. When CSC conducts a visit, and this will be  
19 one of the finer points of how CSC interacts with the  
20 Department of Foreign Affairs and the MOU I suspect, does  
21 CSC on those visits as a matter of course interview  
22 detainees transferred by Canada?

23 A. Just to be clear, if I can characterize it, on  
24 one of the 42 visits or one of the DFAIT visits?

25 74. Q. I'm asking about CSC visits specifically.

18

1 A. Okay. We do not distinguish for purposes of  
2 capacity building between or among the various categories  
3 of prisoners. We deal with the institution as a whole,  
4 the people who live there and the people who work there.

5 75. Q. So CSC is not involved in specifically  
6 interviewing the detainees who have been transferred by...

7 A. Not at all.

8 76. Q. ...the Canadian Forces?

9 A. Not at all.

10 77. Q. Not at all?

11 A. There may be some who were interviewed in the  
12 course of work, but it's simply on the basis of them being  
13 prisoners at Sarpoza.

14 78. Q. And is it also true then -- you just mentioned  
15 that these visits have a generalized nature and don't  
16 differentiate between categories of detainees. Is it also  
17 true that your capacity-building function does not  
18 differentiate between Canadian-transferred and other  
19 detainees?

20 A. It's of no interest to us, I mean, excepting  
21 the fact that possibly persons could be detained  
22 illegally, but apart from that, if we assume the detention  
23 is legal it's of no interest to us who it is that detained  
24 them. The fact that they're at Sarpoza is sufficient for  
25 us to engage with them.

19

1 79. Q. So the CSC doesn't have any particular mandate  
2 for Canada's detainees that have been transferred?

3 A. None.

4 80. Q. Perhaps you can just, for my edification,  
5 elaborate on what CSC does in a visit.

6 A. It can -- it can vary quite a lot. Sometimes  
7 they're general -- they're simply general visits. We'll  
8 do a walk-around of the facility, speak with prisoners,  
9 speak with the staff. Other times they can be quite a bit  
10 shorter and quite a lot more focused. We make it a point  
11 when we identify a problem to begin the process of solving  
12 it at that time -- excuse me -- at that same visit, but



13 then also to follow up on subsequent visits. So, for  
14 example, you've seen in the documentation for site visits  
15 mention of the situation concerning the pharmacy, the  
16 medication control in the hospital area of Sarpoza. It  
17 was identified as being problematic. It was discussed,  
18 mentored with the local management. Solutions were  
19 developed over the next visit or two, and later on there  
20 was a follow up done to ensure that there had been -- that  
21 it wasn't simply a one-time change that had been made,  
22 that there was some enduring value.

23 So the visits can range quite a bit. Sometimes,  
24 therefore, the project -- for the purpose of project  
25 development. We're also advising DFAIT on a relatively

20

1 large-scale infrastructure improvement project at Sarpoza  
2 which covers a lot of different aspects of the prison, so  
3 some of the visits are for purposes as mundane as taking  
4 measurements. You know, measuring the exact length of the  
5 wall, measuring the sizes of rooms, that sort of thing.  
6 So they can really have quite a lot of variation.

7 81. Q. You've mentioned in that last passage  
8 primarily Sarpoza but you've earlier told me that CSC  
9 staff have visited other detention facilities and we have  
10 discussed five earlier. In all of those visits to all of  
11 those detention facilities did the CSC receive at any time  
12 allegations of torture from persons who were detained or  
13 other abuse?

14 A. There were allegations made at the NDS  
15 facility during our first visit there in April, which is  
16 documented in the -- in the papers we've produced. To my  
17 knowledge, that is the only time there have been  
18 allegations made, or at least that's the only site where  
19 there have been allegations made.

20 MR. GRAHAM: When you say "the papers produced",  
21 are you referring to the documents produced in connection  
22 with the earlier Section 38 proceedings?

23 THE WITNESS: Yes.

24 MR. ATTARAN: Thank you for that, Mr. Graham.

25 82. Q. Was it on the occasion of the April visit

21

1 you've just mentioned disclosed in the course of those  
2 allegations against whom the allegations were made of  
3 torture?

4 A. Not that -- I don't recall that there were any  
5 individuals named or positions indicated, simply that  
6 there had been mistreatment.

7 83. Q. Across the detention system, do you possess  
8 general information on how long detainees wait in custody  
9 before they are charged?

10 A. I don't have specific information on that, no.  
11 I believe the waits are sometimes longer than they should  
12 be, according to NDS procedures, but I don't have detailed  
13 information about that.

14 84. Q. That has not been a subject focused on or  
15 studied by the CSC?

16 A. No, it has not, no.

17 85. Q. In your Affidavit discussing the modalities of

18 the visits to Afghan detention facilities it's mentioned  
19 that when CSC officials do visit it increases the risk of  
20 attack to prison staff and prisoners generally during the  
21 visit. Why is that?

22 A. Well, as I think is well known, Canadians are  
23 targeted in Kandahar and the simple fact that there are  
24 Canadians at the facility increases the threat of attack  
25 on that facility.

22

1 86. Q. Do you have any examples of that?

2 A. Before each trip to the facilities there is a  
3 threat assessment conducted according to the most current  
4 information up to and including that day. The decision to  
5 travel or not is made on the basis of that assessment and  
6 determinations about how any threat could be mitigated.  
7 Sometimes, as I indicated to you earlier, visits need to  
8 be cancelled because the threat assessment indicates that  
9 it is unacceptably high.

10 In other cases, visits are designed to be short or  
11 sometimes shortened in progress according to information  
12 received.

13 87. Q. What is the nature of the threats that have  
14 been identified in those threat assessments which have  
15 caused visits to be cancelled, or shortened, or otherwise  
16 affected?

17 MR. GRAHAM: I object to that question pursuant to  
18 Section 38 on the basis that discussion of those matters  
19 could well take us into privileged matters; matters  
20 affecting the security of Canadian operations.

\*O\*

21 MR. ATTARAN: But it's not your conclusion that  
22 inevitably it will lead there, so I would like to ask at  
23 very least about a specific occasion.

24 88. Q. You mentioned that towards the end of 2007 you  
25 were meant to visit a facility in Afghanistan. I believe

23

1 I have the date right.

2 A. I think so, yes.

3 89. Q. And that it cancelled. The visit did not  
4 occur. Was that due to a threat?

5 A. No. My visit to Afghanistan in the past six  
6 to eight weeks was cancelled as a result of these court  
7 proceedings and my necessity for me to be here.

8 90. Q. When the threat assessments do cause a  
9 cancellation or affect the plans for a visit otherwise,  
10 are those general threats or is it as a result of  
11 information received of specific threats on the day and at  
12 that facility?

13 A. Well, there's a -- there's always a certain  
14 general threat level. That's background to working in  
15 Kandahar. The threat assessments are done on a much more  
16 specific basis.

17 91. Q. And without disclosing -- I'm sensitive to the  
18 national security dimensions -- anything having to do with  
19 specific threats received on a specific date at a specific  
20 facility, can you describe generically the nature of the  
21 threats?

22 A. There have been assessments that there was a  
23 threat against -- or threat to the safety of Canadians at  
24 certain locations.

25 92. Q. You mention in your Affidavit that CSC staff  
24

1 have observed at Sarpoza leg irons or shackles being used.  
2 Is that correct?

3 A. That's correct, yes.

4 93. Q. We earlier discussed the UN Standard Minimum  
5 Rules. Would you agree that the prohibition on the use of  
6 shackles, irons is absolute under those Rules?

7 A. The Rules recognize that there are times when  
8 restraints are appropriate and even perhaps required,  
9 however there is a prohibition on these shackles.

10 94. Q. Why is it that leg irons, shackles are  
11 prohibited under the Standard Minimum Rules?

12 A. Well, the Standard Minimum Rules very nearly  
13 predate my birth, so my answer would have to be  
14 speculative to some degree, however shackles are generally  
15 understood to be, if I could say, home-made devices. For  
16 example, a length of chain wrapped around the prisoner's  
17 leg and padlocked. They don't necessarily have any  
18 protection for the prisoner against physical harm,  
19 chafing, rubbing, cutting of the skin, and so on. So  
20 there are some standards related to restrained equipment  
21 which would obviously not be observed if home-made  
22 instruments were used.

23 The second issue and possibly a larger issue is to  
24 attempt to regulate or indicate that prisoners should not  
25 be restrained in this way on a permanent or very long-term

25

1 basis, that there should be an appropriate level of  
2 restraint used with appropriate authority in certain  
3 situations, but that it should be limited and when those  
4 situations do not occur, there is not a need to restrain  
5 the prisoner. I think that's the overall intent of that  
6 section.

7 95. Q. That's an admirable explanation of rules that  
8 date to your early childhood years. Thanks for that. Am  
9 I to gather from that explanation that part of the  
10 rationale for the prohibition of the irons is, in essence,  
11 that they are degrading to the person wearing them, and  
12 uncomfortable, and therefore abusive?

13 A. They can be harmful, yes.

14 96. Q. The shackles worn by persons detained at  
15 Sarpoza, I understand, sometimes came with the person when  
16 they were transferred from a different facility?

17 A. That's correct.

18 97. Q. So the person arrived in Sarpoza wearing them?

19 A. Yes.

20 98. Q. And one of those facilities, I understand, is  
21 the NDS detention facility at Kandahar?

22 A. That's correct.

23 99. Q. Why is it that NDS Kandahar continues to use  
24 shackles?

25 A. They explain their use of shackles as being an

26

1 issue of institutional security for a variety of reasons.  
2 They seem to feel that it's necessary to use shackles. We  
3 are working actively with them on that matter, as we have  
4 done so with success at Sarpoza, however that engagement  
5 is relatively recent and not as advanced at Sarpoza where  
6 there has been a good deal of success, actually, in  
7 reducing the use of restraints.

8 100. Q. You say that the NDS uses the shackles for a  
9 variety of reasons. Can you give me some examples of  
10 those reasons?

11 A. They seem to feel that they're -- what I would  
12 call in my professional jargon they're static security,  
13 they're hard security. Bricks, and mortar, and bars types  
14 of security might not be sufficient to detain safely some  
15 of their prisoners. They have expressed concern about the  
16 safety of the staff and other prisoners, if those who are  
17 shackled were to be released, those kinds of issues.

18 101. Q. You've indicated that persons were found  
19 wearing shackles at all times on the CSC visits. Do you  
20 have any knowledge how long they had been wearing  
21 shackles?

22 A. That's unclear, but in the early days of  
23 Sarpoza it obviously was a long-term practice. Exactly  
24 how long, we didn't know, but there was, in the initial  
25 stages, not any plan to release these prisoners from

27

1 restraint. We conducted a fairly thorough series of  
2 mentoring engagements with the management at Sarpoza; too  
3 good effect. There's been a very substantial reduction in  
4 the use of restraint equipment, including in situations  
5 where prisoners are transferred in with the equipment  
6 applied.

7 102. Q. But that's only at Sarpoza?

8 A. Yes. Sorry, I thought those were the CSC  
9 visits you were referring to.

10 103. Q. When you say that people were in shackles for  
11 a long time, is that on the order of months?

12 A. We didn't document that. We were less  
13 concerned about how long it had been than about how long  
14 it was going to be, and since there was not any evident  
15 plan to remediate the situation, we took action.

16 104. Q. Did you inspect the prison register?

17 A. We do. It's a matter of course when we visit  
18 a prison.

19 105. Q. Including for the individuals in shackles?

20 A. For all prisoners.

21 106. Q. Including for the prisoners who arrived at  
22 Sarpoza in shackles?

23 A. For all prisoners.

24 107. Q. And are you unable, based on that information,  
25 to ascertain a date they arrived in shackles and a date

28

1 they were removed from the shackles?

2 A. We can certainly ascertain the date that the  
3 shackles were removed and we can ascertain the date that  
4 they arrived in the prison, but to my knowledge there is  
5 not any notation in the record about -- in the prison log

6 about whether or not they were restrained of admission.  
7 108. Q. Earlier you've said that certain individuals  
8 arrived wearing shackles, so presumably they were in  
9 shackles the date they were entered into the register.  
10 A. Since we have been working at Sarpoza that has  
11 occurred, yes.  
12 109. Q. How long were those individuals in shackles  
13 before the shackles were removed since we know the date  
14 they arrived wearing them?  
15 A. I don't have specific knowledge of that.  
16 110. Q. If you are unable to specify that, what is the  
17 basis of your statement and how do you sustain the  
18 statement that the use of shackles has decreased?  
19 A. We have reports from our field officers,  
20 specific reports on this matter. They also cover that  
21 topic in the course of their general reporting. They now  
22 take measures to -- I'm not sure what the term is -- to  
23 free prisoners to remove the restraints unless there is an  
24 obvious reason to use them, including in cases where  
25 prisoners arrive at the facility of restraint.

29

1 cannot determine a reason for that and they cannot find a  
2 key for the padlocks which in some cases was a problem,  
3 they will go as far as to cut the shackles off so they  
4 have, it appears to us, taken this issue to heart.  
5 111. Q. So your assertion that the use of shackles has  
6 reduced, declined at Sarpoza, is based on the reports from  
7 CSC officers who have visited?  
8 A. That's correct.  
9 112. Q. You've earlier said to me some of those  
10 reports you received yesterday.  
11 A. That's correct.  
12 113. Q. And your Affidavit was Sworn December 14,  
13 2007?  
14 A. Also correct.  
15 114. Q. So the statement in your Affidavit that the  
16 use of shackles has declined, the statement of December  
17 14th, 2007, is based on what exactly, if you've only  
18 received the reports yesterday?  
19 A. I said that I received some of the reports  
20 yesterday. We haven't been receiving regular reporting  
21 since our staff arrived in the field in February '07 and  
22 some of that we have on file.  
23 115. Q. And those reports have been in your possession  
24 since February 14th, if not sooner? Or pardon me,  
25 December 14th, if not sooner?

30

1 A. Yes.  
2 116. Q. And those have not been produced today?  
3 A. No, they have not.  
4 MR. GRAHAM: I should tell you, we have given  
5 notice to the Attorney General pursuant to Section 38 with  
6 respect to those documents. They will be reviewed and you  
7 will have a decision with respect to those matters.  
8 MR. CHAMP: When?  
9 MR. ATTARAN: When will those reviews be  
10 completed, Sandy?

11 MR. GRAHAM: I can't provide that information to  
12 you.

13 MR. CHAMP: I guess we'll raise that with Justice  
14 Mactavish tomorrow then. It's unfortunate that we're just  
15 finding this out today, although I've raised it with  
16 counsel almost every day since we've gotten the  
17 Affidavits, and in fact a week before we received the  
18 Affidavits since the motion date was set down I've been  
19 raising it with counsel. They know specifically which  
20 documents we're looking for. It's very unfortunate that  
21 we're only learning this today, January 2nd, 2008, that  
22 the documents are still being reviewed and no expectation  
23 of when we might receive them. It's unfortunate.

24 MR. GRAHAM: I can assure you, sir, that all  
25 departments have been working hard throughout the

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1 Christmas season to collect the documents you are seeking.  
2 We have made assiduous efforts to do so. Notice has been  
3 given and this matter will have to be dealt with under  
4 Section 38.

5 MR. CHAMP: On what date was notice given?

6 MR. GRAHAM: I can't provide that information to  
7 you.

8 MR. CHAMP: Why not?

9 MR. GRAHAM: I will not provide the information.

\*O\*

10 MR. CHAMP: On what basis?

11 MR. GRAHAM: It's privileged information.

12 MR. CHAMP: Is it by statute?

13 MR. GRAHAM: Notice has been given. That's what  
14 the Act contemplates.

15 MR. ATTARAN: You mean Section 38 of the Canada  
16 Evidence Act?

17 MR. GRAHAM: That's right.

18 MR. ATTARAN: In your statements you are not  
19 relying on any other statute?

20 MR. GRAHAM: Any other statute to do what?

21 MR. ATTARAN: For the non disclosure.

22 MR. GRAHAM: We're relying on Section 38.

23 MR. ATTARAN:

24 117. Q. So I'm left with the statement in your  
25 Affidavit that the use of shackles has reduced at Sarpoza

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1 prison based on reports that you had in your possession  
2 December 14th, 2007, if not sooner, and I do not have  
3 those reports available to cross-examine you; is that  
4 correct, sir?

5 A. I believe so.

6 118. Q. And you do not have any other, for example,  
7 numbers to offer me on individuals held in shackles at  
8 Sarpoza at this time, do you, sir?

9 A. I do not, no.

10 119. Q. We're almost done here. You list in paragraph  
11 32 of your Affidavit some problems existing at Sarpoza  
12 prison which have been addressed with CSC's help.

13 A. Yes.

14 120. Q. I do not understand you to say that those same

15 problems have been solved at the other three detention  
16 facilities where Canada's detainees are held in Afghan  
17 custody; is that correct?  
18 MR. GRAHAM: Well, in fairness, the Witness hasn't  
19 said anything about the existence of those problems at  
20 other facilities.  
21 MR. ATTARAN: So I take it the answer is --  
22 MR. GRAHAM: Well, no --  
23 THE WITNESS: My statement is about Sarpoza.  
24 MR. ATTARAN:  
25 121. Q. And that's all?

33

1 A. That's all.  
2 MR. ATTARAN: Subject to any questions that may  
3 arise on disclosures of documents that we have requested  
4 that have not been produced today, we're done for today,  
5 and of course reserve our rights to continue questioning  
6 on those documents when we have them. So subject to any  
7 re-direct you might have...  
8 MR. GRAHAM: If I have any re-direct I will -- I  
9 don't have any re-direct now. If we resume questioning at  
10 some future date then I will deal with re-direct at that  
11 time, but for the moment I have no re-direct questions.

12  
13 --THIS EXAMINATION ADJOURNED AT 11:06 A.M.,  
14 ON JANUARY 3, 2008.

15  
16  
17 I HEREBY CERTIFY THAT I have, to the best of  
18 my skill and ability, taken down in stenomask  
19 and transcribed the foregoing Examination.  
20  
21 .....  
22 Sheri Holt-Christensen

1 Examination No. 08-0002.1 Court File No. T-324-07

2 FEDERAL COURT

3 B E T W E E N:

4 AMNESTY INTERNATIONAL CANADA and  
5 BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION  
6 Applicants

7 - and -  
8 CHIEF OF DEFENCE STAFF FOR THE CANADIAN FORCES,  
9 MINISTER OF NATIONAL DEFENCE and  
10 THE ATTORNEY GENERAL OF CANADA  
11 Respondents

12 \*\*\*\*\*  
13 CROSS-EXAMINATION OF DAVID CONNOR, on his Affidavit, dated  
14 December 14, 2007, pursuant to an appointment made on  
15 consent of the parties, to be reported by Gillespie  
16 Reporting Services, on January 3, 2008, commencing at the  
17 hour of 10:12 in the forenoon.

18 \*\*\*\*\*

19 APPEARANCES:  
20 MR. P. CHAMP for the Applicants  
21 MR. A. ATTARAN for the Applicants  
22 MR. S. GRAHAM for the Respondents  
23 MS. A. ZAGORSKA for the Respondents  
24 MS. J. NORTHEY for the Respondents

25 This Examination was reported by Sheri Holt-Christensen at Ottawa,  
26 Ontario, having been duly sworn for the purpose.



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\*O\* . . . . . 22, 31

EXHIBITS

(NONE FILED)

DATE TRANSCRIPT ORDERED: January 3, 2008

DATE TRANSCRIPT COMPLETED: January 4, 2008

