

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

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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

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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

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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

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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

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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

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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

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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

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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?

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

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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

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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

31

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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INDEX

NAME OF WITNESS: DAVID CONNOR

EXAMINATION BY: MR. ATTARAN

NUMBER OF PAGES: 2 THROUGH 33

ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

O 22, 31

EXHIBITS

(NONE FILED)

DATE TRANSCRIPT ORDERED: January 3, 2008

DATE TRANSCRIPT COMPLETED: January 4, 2008

