

1 COLLEEN SWORDS, SWORN:

2 EXAMINATION BY MR. CHAMP:

3 1. Q. Good afternoon, Ms. Swords.

4 A. Good afternoon.

5 2. Q. Thank you for making yourself available on  
6 such short notice. My name is Paul Champ and I am counsel  
7 for the applicants in this matter, Amnesty International  
8 and the British Columbia Civil Liberties Association  
9 versus Chief of the Defence Staff for the Canadian Forces,  
10 Minister of National Defence and Attorney General of  
11 Canada, Federal Court file number T-324-07. You'll find  
12 once in a while I'll do that. It's just official things  
13 for the Record.

14 I understand that just prior to us being on the  
15 Record, you were sworn?

16 A. That's right.

17 3. Q. Ms. Swords, I have a few questions for you  
18 with respect to the affidavit that you've sworn on this  
19 motion. I understand you have a copy available for you to  
20 take a look at?

21 A. I think so. Yes.

22 MR. GRAHAM: Yes, the witness has the affidavit.

23 MR. CHAMP: Thank you.

24 BY MR. CHAMP:

25 4. Q. Tab 1 at paragraph 4 you swear to the fact

3

1 that Canada is playing a vital role in the securing and  
2 developing of Afghanistan, the role of Canada and its  
3 allies is critical to addressing security threats. You  
4 would agree with me that our role or Canada's role in  
5 Afghanistan is critical to the stability of Afghanistan?

6 A. Well, I would say that Canada's role together  
7 with all the allies that we're working together with are  
8 critical to stabilization and the security situation and  
9 ultimately to the future economic development and  
10 stability in Afghanistan, yes.

11 5. Q. Would you agree with me that it's likely that  
12 the Afghan government would fall if Canada and other NATO  
13 countries withdrew from the country?

14 A. Sorry. Would you repeat the question?

15 6. Q. Would you agree that it would be likely that  
16 the Afghanistan government may fall or be overthrown if  
17 Canada and the NATO countries withdrew from the country?

18 MR. GRAHAM: That calls for speculation. I  
19 object.

\*O\*

20 BY MR. CHAMP:

21 7. Q. You don't have to go there but in your  
22 affidavit at paragraph 33 you mention that the United  
23 States ---

24 MR. GRAHAM: Can we just adjourn for a moment?  
25 (SHORT RECESS)

4

1 BY MR. CHAMP:

2 8. Q. In paragraph 33 you indicate that the United  
3 States is the only state with a military presence in

4 Afghanistan that maintains long-term detention facilities  
5 of its own?

6 A. That's my understanding, yes.

7 9. Q. They've had long-term detention facilities  
8 there since approximately 2002?

9 A. I'm sorry. I don't know exactly when their  
10 detention facilities were built.

11 10. Q. What is your understanding of that?

12 A. I believe they started earlier with the  
13 operation Enduring Freedom so I don't know exactly the  
14 date that they started with facilities.

15 11. Q. You're not able to approximate?

16 A. No. Operation Enduring Freedom, as I recall,  
17 started in response to the September the 11th, 2001  
18 attacks ---

19 12. Q. October 2001.

20 A. --- so I presume that their facility, but I  
21 don't know this as a fact, was developed, created sometime  
22 after September 2001.

23 13. Q. You are aware that until December 2005 that  
24 Canada was handing over detainees to the US?

25 A. I don't know that as a fact. I understand

5

1 based on some newspaper articles several years ago that  
2 there were some that were handed over but I don't know  
3 whether all were.

4 14. Q. How long have you been in your position, Ms.  
5 Swords?

6 A. September 2006. That's last year.

7 15. Q. What was your previous position?

8 A. I was Canada's Ambassador to the Netherlands.

9 16. Q. What is your role in your current position  
10 with respect to the Canadian mission in Afghanistan?

11 A. I think that's covered in paragraph 1 of my  
12 affidavit.

13 17. Q. For the foreign policy aspects of Canada's  
14 defence and international security relations?

15 A. That's right.

16 18. Q. When you assumed this position, Ms. Swords,  
17 would you not have become apprised of what had occurred on  
18 those files for the previous years before you took over?

19 A. Not absolutely every piece of information, but  
20 yes, you get general briefings.

21 19. Q. Would any part of those briefings have to do  
22 with the issue of handling of detainees in Afghanistan?

23 A. Yes, some aspects did particularly with  
24 respect to our relations with the Afghan Independent Human  
25 Rights Committee.

6

1 20. Q. So as early as September '06 you were learning  
2 about the role of the Afghan Independent Human Rights  
3 Commission in connection with these detainees?

4 A. That's right.

5 21. Q. Do you recall what was your understanding at  
6 the time of their role?

7 A. I recall that we were speaking with them to  
8 arrange for them to be able to monitor detainees that

9 Canada transferred to the Afghan authorities.

10 22. Q. So as early as September '06 we were  
11 discussing with the AIHRC to fulfil that role?

12 A. Yes. They had agreed to do that but it was  
13 important to work out some of the details on  
14 confidentiality and maintaining the information that was  
15 provided in a confidential basis.

16 23. Q. I gather at that time there was also  
17 involvement of the Afghan government to come up with that  
18 agreement as well or was that just between the Human  
19 Rights Commission and Canada?

20 A. I'm not aware of the involvement of the Afghan  
21 government but the Afghan Independent Human Rights  
22 Committee does have a role that's recognised in the Afghan  
23 constitution.

24 24. Q. With respect to the Afghan Independent Human  
25 Rights Commission I understand that recently the Canadian

7

1 Forces played a vital role in obtaining access for the  
2 Commission to the National Directorate of Security Prison  
3 in Kandahar?

4 A. I'm not sure about vital role but I know that  
5 we, the Canadian government, did speak with the NDS in  
6 Kandahar to ensure that there was access for the AIHRC.

7 25. Q. It's my understanding that for whatever reason  
8 the Commission did not have access at that time.

9 A. I believe that's something that was said by  
10 them to the newspaper.

11 26. Q. It's my understanding that that's what was  
12 learned by Canada as well, that there was not access ---

13 MR. GRAHAM: Are you asking what then witness'  
14 understanding is or your understanding? You keep saying  
15 "it's my understanding."

16 MR. CHAMP: Yes, and then I can ask her a question  
17 after that if she agrees with it.

18 MR. GRAHAM: Fair enough. I thought that was the  
19 question, "Is that his understanding?"

20 MR. CHAMP: That wasn't the question. Thank you,  
21 Mr. Graham.

22 BY MR. CHAMP:

23 27. Q. Ms. Swords, what does Canada know about the  
24 access that the Commission had to the NDS Kandahar prison  
25 until last week?

8

1 A. I've only seen an indication that they were  
2 having difficulty getting access in the last couple of  
3 months and that's based partly on what we learned after  
4 the newspaper article. We had not heard previously, as  
5 far as I can recall, that they had specific problems in  
6 getting access to NDS facilities.

7 28. Q. Since that issue has arisen has the Canadian  
8 government sought to verify that information?

9 A. Since that information we have spoken with the  
10 Afghan government, particularly the head of the NDS  
11 facility in question where there's a suggestion that  
12 there's a problem of access for the AIHRC and reminded  
13 them of the important role that the AIHRC plays and the

14 importance that we place on them having access to all the  
15 detention facilities.

16 29. Q. It's my understanding from Colonel Noonan's  
17 affidavit that NDS was suggesting there was some  
18 misunderstanding over the issue of access and now they  
19 were more than willing to provide access. Do you have any  
20 information to that?

21 A. I'm not sure what you're referring to. I  
22 think you would have to ask Colonel Noonan.

23 30. Q. I'm asking you if you have any information.

24 A. About?

25 31. Q. About the NDS saying that there was a

9

1 misunderstanding and that's why access was not provided.

2 A. I haven't seen that myself that I can recall  
3 in any report, that the NDS had a misunderstanding, but  
4 I'm sorry, there's many messages and I don't recall the  
5 NDS misunderstanding.

6 32. Q. There are many messages coming from the AIHRC  
7 and NDS at this time?

8 A. No. We don't get messages directly from the  
9 NDS and the AIHRC. We get messages from Canadian  
10 government officials in the field.

11 33. Q. Who are meeting with AIHRC?

12 A. That's right.

13 34. Q. Those are the messages? Canadian government  
14 officials in the field are getting messages from them?

15 A. That's right.

16 35. Q. That's what I was referring to. From the  
17 messages that you're getting from Canadian government  
18 officials in the field, the messages are a bit  
19 conflicting?

20 A. Messages on what? Sorry.

21 36. Q. The messages that we're getting from Canadian  
22 officials in the field about whether the NDS is providing  
23 access or not providing access, that information is  
24 conflicting?

25 A. The information that I have now is that the

10

1 NDS has promised access and understands. The NDS  
2 facilities in Kandahar understands the importance of it.  
3 I really couldn't say what all has been going on in detail  
4 in the past on the basis of the information that I  
5 actually have.

6 37. Q. You can't provide the details of the  
7 information you have, I understand, because of operational  
8 security?

9 A. The information that I can provide is  
10 contained in my affidavit.

11 38. Q. I did ask in the Notice of Examination for you  
12 to produce documents regarding discussions, meetings of  
13 the AIHRC or the NDS, and it's my understanding now that  
14 the Attorney General is objecting to disclosure of that  
15 information?

16 MR. GRAHAM: You have our position on that issue  
17 which is that we have given notice to the Attorney  
18 General.

19 MR. CHAMP: So there's an objection to us having  
20 that documentation to review with you?

21 MR. GRAHAM: Yes.

\*O\*

22 BY MR. CHAMP:

23 39. Q. Ms. Swords, I understand the Canadian  
24 detainees may be at other NDS prisons in Afghanistan other  
25 than Kandahar. Is that your understanding as well?

11

1 A. I do not have information, personal  
2 information, about exactly where all the transferred  
3 detainees or detainees transferred by Canada are held in  
4 Afghanistan.

5 40. Q. I appreciate, Ms. Swords, you aren't in  
6 Afghanistan. You're not posted there, but have you  
7 received information from Canadian government officials  
8 that would lead you to believe that Canadian detainees are  
9 at different NDS prisons in Afghanistan?

10 A. We've asked the Afghan government to advise us  
11 what the location is of the Canadian transferred detainees  
12 and which ones have been released but I have not seen a  
13 reply.

14 41. Q. Other than that we have no other information  
15 about the location of the detainees?

16 A. I'm trying to think if there's absolutely any  
17 little piece. What I've seen is that -- what I do recall  
18 seeing in messages is that when Canada transfers they  
19 could be transferring to the Afghan army or the Afghan  
20 national police or the NDS so there are different  
21 organisations within Afghanistan and different detention  
22 facilities that they each maintain.

23 42. Q. In some occasions the detainees will transfer  
24 between the different agencies after they're already in  
25 Afghan custody?

12

1 A. I honestly don't know the exact answer to  
2 that. I couldn't tell you whether they get transferred  
3 further on because we have not been monitoring every  
4 detainee because we've followed an approach that that's  
5 something that we would like the Afghan Independent Human  
6 Rights Committee to be doing.

7 43. Q. Ms. Swords, I've got a report from CBC on  
8 April 29th. I'm just going to give a copy to yourself and  
9 to Counsel. It's my intention to ask you a couple  
10 questions about this report and whether you have any  
11 information about it. The key paragraphs are just 1 to 3,  
12 the first three paragraphs. The other bits are about what  
13 all those people are doing in Parliament and I don't think  
14 it's relevant to us right now.

15 Ms. Swords, had you heard about this information  
16 that the Afghan Independent Human Rights Commission had  
17 visited the prison run by the National Directorate of  
18 Security on Sunday?

19 A. I read this article. I did see this article  
20 in the newspaper. I do note that it says that they have  
21 had access two times so obviously at some point in  
22 addition to this one they had access to the NDS

23 facilities. I honestly -- I don't know whether since  
24 Monday a report has come in from the field reporting on  
25 this. In other words, I don't know whether the AIHRC has

13

1 said "By the way, we've now had access." I would have to  
2 check that. I don't know.

3 44. Q. Do you have any information about the manner  
4 in which the visits are conducted by the AIHRC generally?

5 A. I do not.

6 45. Q. Do you have any information as to whether the  
7 AIHRC is allowed to have private interviews with  
8 detainees?

9 A. I see in this -- is it in this article?

10 46. Q. Yes, it is.

11 A. Yes. They had the sense that prisoners  
12 couldn't speak freely and that two agents followed them  
13 around.

14 47. Q. I'm asking you in the capacity as Assistant  
15 Deputy Minister for Foreign Policy of Canada's Defence and  
16 International Security Relations whether you've heard that  
17 the AIHRC does or does not have private interviews  
18 detainees.

19 A. I have not seen a report to that effect other  
20 than what's here in the newspaper.

21 48. Q. Would that be something that the Canadian  
22 government would ask the Commission to have? Would the  
23 Canadian government insist that the AIHRC have private  
24 interviews with detainees?

25 MR. GRAHAM: Are you asking "Will the Canadian

14

1 government do that?" or "Has it done that"?

2 BY MR. CHAMP:

3 49. Q. I'm asking has it in the past. They've been  
4 in discussions with the AIHRC I understand since at least  
5 September 2006. I'm wondering in those discussions since  
6 September 2006 has Canada ever discussed with the  
7 Commission whether they have private interviews and  
8 whether Canada is advocating that they should have private  
9 interviews with detainees in Afghan prisons.

10 A. I haven't see a report. I'm not in the field  
11 doing the discussions. I haven't see a report indicating  
12 that they have raised this issue with us that they have a  
13 problem with private access.

14 50. Q. I'm asking if Canada has raised that we want  
15 to know or confirm that they have having private  
16 interviews.

17 A. I think that we would raise that if we've got  
18 some information that there is a difficulty with them  
19 having private access.

20 51. Q. Are you then saying that we would assume they  
21 would have private interviews and access? Is that what  
22 you're saying?

23 A. Private interviews and access are something  
24 that obviously they feel is necessary. I can see that in  
25 this report, and that they would like to have.

15

1 52. Q. In your position you're aware that that is

2 something that's regarded as important to confirm the  
3 integrity of the information that a monitor is getting  
4 from a detainee. For example the International Committee  
5 for the Red Cross insists on private visits with  
6 detainees. Are you aware of that?

7 MR. GRAHAM: Are you asking whether the witness  
8 agrees with that proposition?

9 MR. CHAMP: I'm asking if she's aware of that.

10 MR. GRAHAM: You stated a proposition and asked  
11 her whether she's aware of it. Surely the question is  
12 whether she agrees with what you've just said.

13 MR. CHAMP: Sure.

14 BY MR. CHAMP:

15 53. Q. Do you agree with that, that it is an  
16 important thing for monitors to have private interviews  
17 with detainees to ensure the integrity of the information  
18 they're receiving?

19 A. I think that it's important for monitors to be  
20 able to do quite a variety of things including meeting  
21 with the head of the particular facility. Obviously if  
22 they were able to meet privately with prisoners they might  
23 get information. That's speculative but they might get  
24 information that they wouldn't get in the presence of  
25 others but they might not so it's one aspect of many with

16

1 respect to how one might monitor.

2 54. Q. But it's a method that would improve the  
3 quality of the information they would receive from the  
4 detainee?

5 A. It might in certain circumstances. It might  
6 not. It depends.

7 55. Q. You indicated that you had heard of this story  
8 before and in particular we referred to the passage where  
9 it says "Out of 10 requests for visits, only two have been  
10 granted." Are you saying that you haven't received any  
11 other information about that?

12 A. The exact numbers, that there were 10 requests  
13 and only two granted, I had not seen before, no.

14 56. Q. Have you received any other information about  
15 that since that time?

16 A. No, I have not.

17 57. Q. Have you inquired into whether the Commission  
18 is still having difficulty getting access to prisoners?

19 A. There have been discussions. As I mentioned  
20 in my affidavit -- I forget which paragraph it is now. Do  
21 you remember, Sandy?

22 58. Q. Take your time.

23 A. It's in paragraph 38.

24 59. Q. Were it says that Gavin Buchan, the political  
25 director at the Kandahar Provincial Reconstruction Team,

17

1 received a verbal commitment from the local head of the  
2 Afghan National Directorate of Security for access to  
3 NDS's Kandahar facilities on an ongoing basis?

4 A. That's right.

5 60. Q. And that such access was in fact granted to  
6 members of the PRT on April 25th, 2007?

7 A. The next line.  
8 61. Q. "Canada brokered a verbal agreement between  
9 the AIHRC and the NDS on future cooperation in Kandahar."  
10 So you did have a bit more knowledge about that agreement?  
11 A. Which?  
12 62. Q. The verbal agreement between the AIHRC and the  
13 NDS. Canada brokered that agreement?  
14 A. I know that there were discussions between the  
15 NDS and the AIHRC that Canada ensured took place to  
16 resolve this issue about AIHRC indicating that they had  
17 difficulties getting access to the NDS facilities.  
18 63. Q. Do we know how long the AIHRC was having  
19 difficulty getting access to the facilities?  
20 A. I don't know. I haven't seen a report on how  
21 long that ---  
22 64. Q. Have we inquired into that? Do you know?  
23 A. We may have but I don't know that right now.  
24 I think the important point we were trying to ensure was  
25 access for the future rather than just looking at the

18

1 past.  
2 65. Q. I appreciate that, but of course we know that  
3 in the past there are still detainees being held, correct?  
4 There are people that the Canadian Forces have captured  
5 and have handed over to Afghan authorities and are still  
6 being held in detention? That's our understanding?  
7 A. As I indicated, we've asked the Afghan  
8 government to let us know which ones have been released  
9 and which ones may still be in, so I don't know the answer  
10 to whether or not there are any specifically still in  
11 detention.  
12 66. Q. Does the Government of Canada know how many of  
13 the detainees that have been transferred have been charged  
14 or taken to trial?  
15 A. No, we don't. I do not. I don't know if  
16 there's somebody else in the Government of Canada who  
17 might but I do not.

18 67. Q. Are you aware if the Canadian Forces have ever  
19 been contacted to provide evidence or anything like in any  
20 kind of legal proceeding against detainees?

21 A. I do not have that information. Perhaps you  
22 would want to address that to the Department of Defence.

23 68. Q. Ms. Swords, do you know what are the kind of  
24 people that we are capturing and detaining? It's my  
25 understanding that it's not simply belligerents but we

19

1 capture in fact a wide spectrum of people who we may also  
2 just feel in some way might be interfering with our  
3 mission?

4 A. Again that's something that you might best  
5 address to the Department of Defence because they're the  
6 ones who are actually doing the capturing. The difficulty  
7 with using the word belligerent is that depending on the  
8 nature of the engagement someone may actually be  
9 committing a criminal offence. For example, acts of  
10 terrorism are in our Criminal Code so it's a criminal  
11 offence as well potentially as an act of belligerency in



12 certain contexts so it's very difficult to characterize  
13 what kind of person is being picked up.

14 69. Q. But someone is stopped in the wrong area and  
15 perhaps has a cell phone or a mirror on them, that might  
16 be enough for the Canadian Forces to detain them?

17 A. I do not have information on that.

18 70. Q. What is your understanding of the kind of  
19 people that Canada is detaining? What are the grounds for  
20 capturing individuals? What is your understanding or your  
21 department's understanding of that?

22 A. Again it would be best to speak with the  
23 Department of Defence but my understanding is that they  
24 are people who are considered to be a security threat  
25 either to the Canadian Forces, to Canadian PRT, or to the

20

1 Afghan people.

2 71. Q. Returning to your affidavit for a moment,  
3 paragraph 39 of your affidavit, we were just on that page,  
4 I think. You state that the Afghan government has  
5 initiated investigations concerning claims of detainee  
6 mistreatment that have appeared in the Canadian media?

7 A. That's right.

8 72. Q. Do you have any details about the nature of  
9 this investigation?

10 A. No, I do not at this point. The announcement  
11 that they made was fairly recent. We did encourage the  
12 Afghan government to investigate these allegations and  
13 they have agreed that they're going to do that. We have  
14 offered them assistance should they wish with respect to  
15 that investigation.

16 73. Q. Do you know which branch of the government is  
17 going to conduct the investigation?

18 A. No, I do not.

19 74. Q. Returning to paragraph 37, just at the top of  
20 page 14 you say "There are negotiations, I understand,  
21 with the Afghan government to supplement our arrangement  
22 of December 18th, 2005"?

23 A. That's right.

24 75. Q. The objectives of the negotiations are to  
25 clarify and make express the right of access to and

21

1 monitoring of detainees?

2 A. That's right.

3 76. Q. I note in the second point or bullet under  
4 that you say "Limit the number of facilities in which  
5 detainees transferred by Canada are held in order to  
6 facilitate tracking of detainees and follow-up."

7 From that I understand that we do have some  
8 knowledge that detainees are held in a number of different  
9 facilities?

10 A. Well, the objective of that clause, again  
11 that's an objective, that's not a negotiated arrangement  
12 as yet, would be to ensure that in the future should we  
13 wish to monitor exactly where our detainees are it would  
14 be easier to get to the facilities. Recall that in the  
15 Province of Kandahar the security situation is not good  
16 and every time our civilian members of the PRT leave the

17 Kandahar airfield they do have to be escorted by the  
18 Canadian Forces and therefore our thinking was that if we  
19 could ensure that there were a limited number of  
20 facilities, it would be easier for them to conduct that  
21 monitoring and it would also be easier for us to try to  
22 focus capacity building and mentoring and training on the  
23 specific facilities that detainees transferred by Canada  
24 might be ending up in.

25 77. Q. Do we have any knowledge then that there are  
22  
1 more facilities, that there are several facilities?

2 A. There are a number of detention facilities in  
3 Afghanistan, yes.

4 78. Q. It's my understanding that the premise of this  
5 point of negotiation is that there are Canadian detainees  
6 in a number of different facilities. That's the premise  
7 of that point of negotiation?

8 A. No. The premise is that it would be much  
9 simpler for us to monitor, to the extent we are able to do  
10 that, if there is a limited number of facilities. We do  
11 know that the Afghan government maintains a variety of  
12 different facilities, the police, the army, the NDS, and  
13 since we don't know exactly where Canadian transferred  
14 detainees go, it would make sense it seems to in the  
15 future try to limit the facilities that they might end up  
16 in.

17 79. Q. Ms. Swords, I'm asking you does that mean that  
18 in the past it was the Canadian government's understanding  
19 that they were held in a number of different facilities?

20 A. As I said, we don't know exactly what  
21 facilities they've been held in.

22 80. Q. We're just assuming then?

23 A. We know there are a number of facilities. As  
24 I understand, but this again should be checked with the  
25 Department of Defence, we have handed over to the army, to

23  
1 the police, and to the NDS so it would logically be that  
2 they might start out in one of their facilities as opposed  
3 to another but I do not have personal information on that.

4 81. Q. And your department doesn't have any  
5 information on that?

6 A. Since we have just asked the Afghan government  
7 to inform us which detainees have been released and where  
8 the others are, to get complete information we would need  
9 that response.

10 82. Q. On the third point there you say "A  
11 negotiating point is that we would like notification of  
12 release, legal proceedings, or other change in  
13 circumstances of detainees transferred by Canada" ---

14 A. That's right.

15 83. Q. --- because from what I understand in your  
16 testimony, we have no idea about legal proceedings at this  
17 stage, if any have taken place?

18 A. That's correct. I do not. You say "we." I  
19 do not.

20 84. Q. The department does not?

21 A. I have not seen any reports with respect to

22 legal proceedings against detainees transferred by Canada.  
23 85. Q. In your position if there were such reports  
24 they would likely pass your desk at some point?

25 A. That's a very good question. I hope they

24

1 would but I couldn't guarantee they would.

2 86. Q. I understand. You say "change in  
3 circumstances." What are you referring to there? We've  
4 got release, legal proceedings and I gather assumed is  
5 continued detention. What does change in circumstances  
6 mean?

7 A. It could be possible that someone might  
8 actually be transferred to some administrative agency or  
9 body that we're not familiar with. It could be that the  
10 person is actually from a different country, for example  
11 Pakistan. It's possible that we would have information,  
12 they would tell us that they were deported back to  
13 Pakistan. I think that's the kind of general unknown  
14 circumstance that we're trying to get at so we have an  
15 idea of whether or not a particular detainee we've  
16 transferred is still someone where in the country in a  
17 detention facility.

18 87. Q. Or whether they've been perhaps transferred to  
19 another country?

20 A. That would be, I think, a change in  
21 circumstance although we might want to actually ask that  
22 if that happened that they were transferred to another  
23 country, that they also informed us of that.

24 88. Q. Or that is a detainee died, would that be a  
25 change in circumstances that Canada would want to be

25

1 notified about?

2 A. I think that a death would be something we  
3 would want to be notified of because again the idea is for  
4 us to know which detainees are still in detention  
5 facilities that we may wish to continue monitoring and if  
6 a person has died then they're not in the detention  
7 facility.

8 89. Q. And they're not released, not legal  
9 proceedings, died in custody. I see then in the fourth  
10 point enhanced ability of the AIHRC to monitor including  
11 private access to Canada transferred detainees. In fact  
12 that was an objective of the Canadian government after  
13 all?

14 A. That is something that we have indicated to  
15 the Afghan government that we would like to negotiate  
16 based on the information we've received in this article  
17 that they have made a complaint that they don't have that  
18 private access.

19 90. Q. Ms. Swords, I want to show you a document from  
20 the Motion Record, Volume I, of the Applicants. There's  
21 an affidavit in there.

22 MR. GRAHAM: Sorry, which affidavit are you  
23 referring to?

24 MR. CHAMP: Applicants' Motion Record, Volume I of  
25 III, the Supplementary Affidavit of Alex Neve.

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1 MR. GRAHAM: This is the one sworn April 26th,  
2 2007?  
3 MR. CHAMP: That's right.  
4 BY MR. CHAMP:  
5 91. Q. At Exhibit A of that affidavit, Ms. Swords, is  
6 a newspaper article about Canada losing track of Afghan  
7 detainees. It concerns the National Investigation Service  
8 investigation into the three detainees who it was alleged  
9 may have been abused by Canadian soldiers and it's my  
10 understanding from this article the NIS was trying to find  
11 these individuals and they were unable to do so.  
12 MR. GRAHAM: What's the relevance of this line of  
13 questioning, Counsel?  
14 MR. CHAMP: I'm seeking to confirm if Ms. Swords  
15 is aware if these detainees have been found.  
16 MR. GRAHAM: These detainees have nothing to do  
17 with this case though. This case is about the transfer of  
18 detainees from the Canadian Forces to the Government of  
19 Afghanistan. This case is not about allegations of abuse  
20 of detainees by Canadians.  
21 MR. CHAMP: I'm not going to ask any questions  
22 whatsoever about allegations of abuse of detainees by  
23 Canadian soldiers. The issue that I want to ask is about  
24 where these detainees may be now. It's my understanding  
25 from the article that these detainees were transferred to  
27  
1 Afghan custody and now they have disappeared in Afghan  
2 custody and that's what I want to ask because that is very  
3 much a relevant issue. If there's Canadian detainees who  
4 have gone missing in Afghan custody, that is a relevant  
5 issue to these proceedings.  
6 MR. GRAHAM: Fair enough.  
7 BY MR. CHAMP:  
8 92. Q. Ms. Swords, you're aware of this issue that  
9 some detainees or Canadian detainees were transferred to  
10 Afghan custody, Canadian military investigators are trying  
11 to get access to them to ask them some questions but the  
12 Afghan authorities are unable to say where they are?  
13 A. I do not have any information on this other  
14 than what's in the newspaper article. The actual  
15 investigation is something that's being done by the NIS of  
16 the Department of Defence. I don't think that  
17 investigation is completed and I don't have any other  
18 information.  
19 93. Q. So your department doesn't have any  
20 information about these three detainees going missing in  
21 Afghan custody?  
22 A. I have not seen any other information on that  
23 other than what's been reported publicly in the  
24 newspapers.  
25 94. Q. Ms. Swords, are you ever involved in drafting  
28  
1 or preparing briefing notes or talking points for  
2 ministers?  
3 A. Involved, yes. Usually they're prepared by  
4 other officers and then reviewed by people more senior.  
5 95. Q. Like people in your position?

6 A. That's right. I don't see them all though.  
7 I'm not always in Ottawa but I do see some.  
8 96. Q. Have you ever seen talking points for the  
9 Minister of Foreign Affairs concerning this issue of the  
10 missing detainees?  
11 A. I do not recall seeing any, not talking  
12 points.  
13 97. Q. Briefing notes? People change what they're  
14 called. Sometimes they're QP talking points. Other times  
15 you get briefing notes.  
16 A. I believe there has been information provided  
17 but I don't know exactly to which level in the department  
18 right now about all of the litigation that's going on and  
19 to the extent this is one piece of that litigation, not  
20 litigation but one piece of the legal proceedings that are  
21 going on, that would likely be part of it but that would  
22 just be information of the minister since these are, what  
23 you're referring to as an investigation being conducted by  
24 the Department of Defence. He would not have talking  
25 points on that per se normally. It's an issue for them.

29

1 MR. CHAMP: Would this be a good time to take a  
2 break?  
3 MR. GRAHAM: If you don't mind.  
4 (SHORT RECESS)  
5 BY MR. CHAMP:  
6 98. Q. Ms. Swords, continuing with my questions about  
7 this Affidavit of Mr. Neve, at Exhibit B there is another  
8 newspaper article and this is talking about a fourth  
9 detainee who went missing or had vanished. This detainee  
10 does not have anything to do with the MPCC investigations  
11 or the criminal investigation of the National  
12 Investigation Service.  
13 MR. GRAHAM: Where do we see that?  
14 THE WITNESS: I'm not sure -- B?  
15 MR. GRAHAM: What we have at B seems to be the  
16 second page of an article.  
17 MR. CHAMP: Exhibit B?  
18 MR. GRAHAM: Exhibit B, tab B.  
19 MR. CHAMP: Tab B.  
20 THE WITNESS: It's not the same, I don't think, as  
21 what you're looking at.  
22 MR. GRAHAM: It says "O'Connor calls process  
23 fair." We don't have the first page of that article in  
24 this copy.  
25 MR. CHAMP: Do you have your motion record?

30

1 MR. GRAHAM: We just have the supplement to the  
2 affidavit. Is the record there?  
3 MR. CHAMP: Motion record, Volume I. What you  
4 have there is the second page of the same story.  
5 MR. GRAHAM: Thursday, March 15th.  
6 MR. CHAMP: Yes. As you'll see there, it's  
7 "Detainees from page A1".  
8 MR. GRAHAM: Right. We don't have the first page,  
9 though.  
10 MR. CHAMP: I'm asking do you have Volume I of the

11 Applicant's motion record?  
12 MR. GRAHAM: No. It would be the supplementary  
13 affidavit. Counsel, I haven't seen your record before but  
14 what we have here is the Notice of Application followed by  
15 the Notice of Motion. Then we have the Byers Affidavit,  
16 the Mollard Affidavit, the Neve Affidavit of February 27th  
17 and Hameed Affidavit of March 7th. That takes up Volumes  
18 IV to X and the Supplementary, at least according to the  
19 index, doesn't seem to be in there. Are we overlooking  
20 something?  
21 MR. CHAMP: You do have it. It's been served on  
22 you and confirmed by the service with the court.  
23 MR. GRAHAM: Fair enough. It just doesn't seem to  
24 be part of this record.  
25 MR. CHAMP: I'm trying to figure out an

31

1 expeditious way to resolve this issue.  
2 MR. GRAHAM: Sure. If you've got another copy or  
3 if you want to make a copy of the page.  
4 BY MR. CHAMP:  
5 99. Q. Well, Ms. Swords, I'll just ask you a few  
6 questions and if we have problems we can stop. First of  
7 all, you obviously have been following this issue of  
8 detainee handling quite closely?  
9 A. Yes.  
10 100. Q. That's part of your role in your position?  
11 A. Part. I have many other aspects to my role,  
12 yes.  
13 101. Q. I'm sure you have. There was information that  
14 had come out in the middle of March about a fourth  
15 Canadian detainee who had gone missing. The details that  
16 were reported were as follows,  
17 "A Taliban fighter captured by Canadians last  
18 summer went missing within hours and placed in Afghan  
19 custody. During and after a frenzied battle in the  
20 Panjwai District", that's P-A-N-J-W-A-I ---  
21 MR. GRAHAM: For the Record, Counsel, you're  
22 reading from page 1 of the Globe and Mail?  
23 MR. CHAMP: Yes.  
24 MR. GRAHAM: March 15th is it?  
25 MR. CHAMP: That's right.

32

1 BY MR. CHAMP:  
2 102. Q. --- "of Kandahar province that left one young  
3 Canadian dead and three others wounded. Canadian soldiers  
4 claim six prisoners the documents show. One of the men  
5 captured was sent by helicopter to military hospital.  
6 Four others were also transported to the air base where  
7 they were given medical clearance and turned over to  
8 Afghan authorities as required under the 2005 deal but one  
9 man never arrived at the base because he vanished near the  
10 battle scene after Canadian troops handed him to members  
11 of the Afghan National Army. Members of the  
12 Edmonton-based Princess Patricia's Canadian Light Infantry  
13 battle group who had just taken part in what was described  
14 as the fiercest fighting by Canadian troops in more than  
15 four decades transferred him and two others to the local

16 force after they were captured during the battle. Hours  
17 later, 'the ANA had lost contact with one of the  
18 detainees', a Canadian military captain says in a  
19 situation report included in documents obtained under  
20 Access to Information."

21 I'm just wondering, have you heard of that  
22 incident before, Ms. Swords?

23 A. I do not recall seeing anything in our  
24 department reporting on that incident nor do I recall that  
25 particular article. I see it's the Globe and Mail

33

1 March 15th but I don't recall the article.

2 103. Q. So you have no information on it?

3 A. No, I do not.

4 104. Q. In the same affidavit I'll take you to  
5 Exhibit L.

6 MR. GRAHAM: The affidavit of Alex Neve?

7 MR. CHAMP: Of Alex Neve, yes.

8 THE WITNESS: Sorry. I'm looking in mine.

9 BY MR. CHAMP:

10 105. Q. Exhibit L is a story from the Globe and Mail  
11 entitled, "What Ottawa doesn't want you to know". It was  
12 published April 25th, 2007 and it's about a report by your  
13 department regarding the human rights situation in  
14 Afghanistan. Are you familiar with this newspaper  
15 article?

16 A. I am.

17 106. Q. Are you familiar with the report that it is  
18 speaking about?

19 A. I am familiar with it. I have not read it  
20 from beginning to end. These reports are prepared for --  
21 prepared by the section that handles human rights  
22 generally within the department and that does not fall  
23 under my area of responsibility.

24 107. Q. When did you become familiar with the report?

25 A. When the newspaper article came out I asked to

34

1 see a copy of the report.

2 108. Q. Prior to the publication of this newspaper  
3 article you were aware that the Department of Foreign  
4 Affairs did have such country reports regarding human  
5 rights?

6 A. Yes. We've -- we've prepared reports on not  
7 all countries in the world but a number of countries for a  
8 few years. It originated with the desire to have  
9 information for the Commission on Human Rights, now the  
10 Human Rights Council where they sometimes have resolutions  
11 on countries' situation and we thought it would be useful  
12 to produce reports that could feed into that, for example.  
13 That was the origin of these reports.

14 109. Q. Why did you never ask to see a copy of that  
15 report before April 25th, 2007?

16 A. I did ask to see a copy of the report back in  
17 December, all the reports for the last few years and  
18 unfortunately the Officer that I asked wasn't able to find  
19 them quickly and we then moved on and did some other -- we  
20 were working on some other things.

21 110. Q. But you now have had an opportunity to read  
22 the report?

23 A. I've read the report very quickly, focusing on  
24 the parts that relate to detentions. There's a number of  
25 other things in them about how judges are picked and

35

1 indications of progress that's being made in some areas of  
2 their human rights activities.

3 111. Q. You read the passage about "extraditional  
4 executions, disappearances, torture and detention without  
5 trial are all too common"?

6 A. Could I speak with Counsel for a minute?

7 MR. GRAHAM: Counsel, we're going to object to  
8 this line of questioning. We objected to production of  
9 that document. That's the first one you've asked for and  
10 we're objecting on the same basis to questioning going to  
11 that document.

\*Q\*

12 MR. CHAMP: Are you saying that she's not going to  
13 confirm or deny whether that's in the report?

14 MR. GRAHAM: Yes. I'm objecting to that line of  
15 questioning.

16 MR. CHAMP: Objection noted.

17 BY MR. CHAMP:

18 112. Q. Ms. Swords, did you have an opportunity to  
19 review any of the other reports from 2002 to 2005?

20 A. Yes. I looked at them very quickly. They --  
21 each one is 20, 30 pages long approximately and covers a  
22 huge range of -- of issues, as I said, you know relating  
23 to some of the institutions, independence of the  
24 judiciary, gender-related issues, they're quite lengthy.

25 113. Q. When you read the 2006 report, did what you

36

1 read cause you any concern about detainees in Afghan  
2 prisons?

3 A. Well, obviously allegations that -- that there  
4 are torture and abuse causes concern. These are general  
5 allegations. There's no indication of basis for them.  
6 There's no indication of basis for any of the -- of what's  
7 in the report so it's -- it's difficult to tell whether  
8 these need to be investigated as a question of -- we've  
9 talked to the Afghan government about the importance of  
10 abiding by their human rights and that's the sort of thing  
11 we do with governments. When we see reports related to  
12 areas of difficulty we speak with the government in the  
13 first instance because it's their responsibility and they  
14 who we want to be sure they can improve their human rights  
15 procedures and activities.

16 114. Q. But you'd agree with me that Afghanistan is a  
17 developing country?

18 A. Yes. Afghanistan, I think, under the Human  
19 Development Index comes in at 173 out of 178 or something  
20 and other reports they say they're the seventh poorest  
21 country in the world.

22 115. Q. I've heard the same thing. You would agree  
23 with me that there are patterns of torture in a number of  
24 countries in the world?



25 MR. GRAHAM: How is that relevant?

37

1 THE WITNESS: That's a very general statement,  
2 yeah.

3 MR. GRAHAM: How is that relevant to this  
4 litigation? Don't answer.

\*O\*

5 MR. CHAMP: I believe it is relevant. I think the  
6 Department is aware that there are patterns of torture in  
7 other countries.

8 MR. GRAHAM: The only questions that are relevant  
9 is with the situation in Afghanistan.

10 MR. CHAMP: The government's knowledge and how it  
11 acts or conducts itself with respect to other countries  
12 where there are patterns and similar reports of torture  
13 are relevant, Mr. Graham. Are you going to maintain your  
14 objection?

15 MR. GRAHAM: Yes.

16 MR. CHAMP: I prefer that you don't communicate  
17 with counsel while you're being examined. Can I see the  
18 note that she wrote to you?

19 MR. GRAHAM: No.

20 MR. CHAMP: I insist on seeing that note,  
21 Mr. Graham.

22 MR. CHAMP:

23 116. Q. Ms. Swords, could I ask you just to move a  
24 little bit further away from Counsel during the  
25 examination?

38

1 A. Certainly.

2 117. Q. Thank you. Ms. Swords, are you denying that  
3 there are reports of widespread torture and abuse in  
4 Afghan custody?

5 A. I'm not sure about the "widespread" aspect of  
6 it. I believe the State Department Human Rights Report on  
7 Afghanistan has some indications of -- of mistreatment and  
8 abuses. Again, generally -- general statements.

9 118. Q. The Afghan Independent Human Rights Commission  
10 in a similar report has said that, "Torture and detention  
11 is routine"?

12 A. Sorry. I have not seen or I have not read the  
13 Afghan Independent Human Rights Annual Report.

14 119. Q. An independent expert with the UN Human Rights  
15 Commission investigated human rights conditions in Afghan  
16 custody and concluded that there was torture throughout  
17 Afghan prisons. Have you had an opportunity to ever read  
18 that report?

19 A. No, I have not read that report. Who is the  
20 expert?

21 120. Q. I have that name for you if you haven't  
22 reviewed it yet. Louise Arbour, former Supreme Court of  
23 Canada judge. You're familiar with her, Ms. Swords?

24 A. Yes. I know she was a former -- she's  
25 currently the Commissioner on Human Rights for the UN.

39

1 121. Q. That's right. She's the High Commissioner for  
2 Human Rights. You're aware that she issued a report in

3 March of 2006 that said that, "torture in Afghan custody  
4 is common"?  
5 A. I haven't seen that report.  
6 122. Q. You've been involved in the detainee file  
7 since September 2006?  
8 A. Since September 2006 in my current job, yes.  
9 123. Q. You're aware of when this litigation  
10 commenced, on February 21, 2007? You're aware of that?  
11 A. I know litigation was commenced. I don't  
12 remember the exact date.  
13 124. Q. You're aware it was commenced in February, a  
14 couple of months ago? You're aware of that, Ms. Swords?  
15 A. I'm sorry. I'm not sure exactly when it  
16 commenced.  
17 125. Q. You're not sure?  
18 A. I know that there was litigation commenced.  
19 Exactly when I don't know.  
20 126. Q. Have you been involved at all in assisting in  
21 providing information to people working on the litigation?  
22 A. Well, I've sworn this affidavit.  
23 127. Q. I've seen that. Yes. Have you been providing  
24 assistance up until now?  
25 A. What do you mean by "assistance"?

40

1 128. Q. Have you been involved in collecting  
2 information and so forth?  
3 A. Me personally? No. But people under my -- in  
4 my branch have been assisting and providing information.  
5 129. Q. The Affidavit of Yavar Hameed, have you ever  
6 had an opportunity to see that before?  
7 A. No, I haven't seen it.  
8 MR. CHAMP: Counsel, can you provide Ms. Swords  
9 with Volume 5 of Mr. Hameed's affidavit.  
10 MR. GRAHAM: Volume 5 is --  
11 MR. CHAMP: Exhibit ZZ.  
12 MR. GRAHAM: It's tab 10 of the Record and  
13 Exhibit ZZ.  
14 MR. CHAMP:  
15 130. Q. This is a report by Madam Arbour. You haven't  
16 seen this report ever before?  
17 A. No, I haven't.  
18 131. Q. Have you ever heard about it?  
19 A. I'm trying to think of all the things that one  
20 hears about. I don't -- I don't know if I've heard that  
21 there might have been a statement by Louise Arbour or not.  
22 I have not heard about this particular report.  
23 132. Q. Who in the Department of Foreign Affairs  
24 monitors such things?  
25 A. Well, normally matters relating specifically

41

1 to human rights are handled in the Global Affairs Branch.  
2 133. Q. Do you ever get --  
3 A. That's around the world.  
4 134. Q. Do you ever get reports from the Global  
5 Affairs Branch is there is any information they learn  
6 that's relevant to files that you work on?  
7 A. We could occasionally. I can't recall

8 specifically receiving something on Afghanistan from them.  
9 135. Q. Ms. Swords, is it fair to say that you are the  
10 most senior official dealing with the detainee handling  
11 issue at Foreign Affairs?

12 A. No.

13 136. Q. Who is the senior official most responsible  
14 for managing this issue for Foreign Affairs?

15 A. Well, overall we have a Deputy Minister who is  
16 responsible for all the activities of the Department. We  
17 also have an Associate Deputy Minister who is responsible  
18 for all things related to Afghanistan and detainees is one  
19 -- is one part of the entire Afghanistan file.

20 137. Q. Who is the Assistant Deputy Minister who would  
21 be responsible? Would that be yourself?

22 A. I am responsible for the aspects that relate  
23 to our capacity building in the country because we have  
24 some projects that relate to this and other aspects of  
25 stabilization and reconstruction and I'm responsible for

42

1 NATO policy and in that context detainee policy has been  
2 -- been an area where we have tried to do some capacity  
3 building projects so that falls under my area and NATO  
4 policy falls under my area. Human rights generally around  
5 the world does not.

6 138. Q. You testified before the Parliamentary  
7 Standing Committee for Defence in December of 2006 ---

8 A. That's correct.

9 139. Q. --- on the issue of handling detention  
10 detainees, correct?

11 A. That's correct.

12 140. Q. You're the only person from Foreign Affairs  
13 who testified at that committee?

14 A. I believe so, yes. No. Well, I believe...

15 141. Q. There was Mr. Rigby from National Defence  
16 testified.

17 A. No, but I believe Sabine Nolke who is one of  
18 the counsel in the department gave some testimony as well.

19 142. Q. You said that you've been involved with NATO  
20 detainee policy?

21 A. That's right.

22 143. Q. In your Affidavit you do say that NATO has  
23 been discussing options with respect to detainee handling?

24 A. Well, our Minister has raised the issue with  
25 NATO and with some of our partners in the south.

43

1 144. Q. In paragraph 40 of your affidavit ---

2 A. I don't seem to have my affidavit any more.

3 145. Q. In paragraph 40, the last sentence you say,  
4 "Canada will continue to discuss options with cooperation  
5 from NATO and ISAF partners including monitoring".

6 A. Right.

7 146. Q. That's to do with detainees?

8 A. That's right.

9 147. Q. What are some of the options that NATO are  
10 discussing? Are building detention facilities one of  
11 those options?

12 A. There has been some discussions about whether

13 one could create not a NATO-wide facility but perhaps a  
14 wing of an existing Afghan authority detention facility  
15 where detainees transferred by some of the NATO allies  
16 might be kept. Recall that many of the NATO allies who  
17 are in Afghanistan are in the north and west where there  
18 is less of a security problem and it isn't clear whether  
19 there actually is a problem or are any numbers of  
20 detainees elsewhere so not all of the NATO allies have the  
21 same -- have the same issues with respect to detainees as  
22 those who are located in the south and east.  
23 148. Q. It's my understanding that there is some NATO  
24 or ISAF policy about transferring detainees within 96  
25 hours?

44

1 A. I think I refer to that in my affidavit. I  
2 don't remember the paragraph but it has been referred to  
3 probably in Canada by one of the NATO spokesmen. I think  
4 it's paragraph 33 and he refers to -- to that. It's in --  
5 Exhibit U is what he has to say.

6 149. Q. I think it's at page 177.

7 A. And 176 in my document.

8 150. Q. Okay. So you're quite familiar with it. All  
9 right.

10 A. It's a question of how long the ISAF partners  
11 would hold a detainee before transferring. This NATO  
12 policy is to transfer detainees to the Afghan authorities.  
13 That's consistent with the nature of the mission which is  
14 there to help the Afghan government.

15 151. Q. Is ISAF policy binding on Canada?

16 MR. GRAHAM: We object to that question. It's one  
17 of the documents you've asked for in your request, your  
18 Direction to Attend, and we object to any questions on  
19 that aspect.

\*O\*

20 MR. CHAMP: Colonel Noonan has testified that,  
21 saying that the ISAF policy is binding so I would say --

22 MR. GRAHAM: Well then why didn't you ask the  
23 question to Colonel Noonan?

24 MR. CHAMP: Because I'm asking Ms. Swords because  
25 she's another one of your affiants for the same party.

45

1 MR. GRAHAM: Can you point out where --

2 THE WITNESS: I'm not a party.

3 MR. CHAMP: Yes, I can.

4 MR. GRAHAM: Colonel Noonan deals with that issue?

5 MR. CHAMP: Paragraph 45 of Colonel Noonan's  
6 Affidavit he says that, "We are bound by ISAF policy".  
7 Noonan is N-O-O-N-A-N.

8 MR. GRAHAM: You're asking this witness whether  
9 she agrees with that?

10 MR. CHAMP: Well, she's already testified that she  
11 is the person responsible for dealing with NATO on  
12 detainee policy so yes, I am asking her if she agrees with  
13 that.

14 MR. GRAHAM: Okay. That's a fair question.

15 BY MR. CHAMP:

16 152. Q. Are we bound by ISAF policies?

17 A. Well, we are part of the ISAF force and just  
18 recall that ISAF includes countries other than the NATO  
19 countries so it's more than just NATO. We're working  
20 together with all the other members of ISAF so we would  
21 want to follow the policy. Is it something that's as  
22 binding as legislation? That's -- I can't answer that but  
23 if we want to work together within the context of ISAF we  
24 would want to follow the policies.

25 153. Q. I'm going into another issue now. There have  
46  
1 been recent reports of Correctional Services Canada  
2 officers hearing allegations of abuse. You heard about  
3 that story?

4 A. I believe that was stated in the House by ---  
5 154. Q. Minister Day?

6 A. --- by Minister Day.

7 155. Q. Do you have any other knowledge of it other  
8 than Minister Day's statement?

9 A. I have seen -- I have seen the report, yes. I  
10 believe that's one of the -- one of the documents that  
11 you've asked to be produced today.

12 156. Q. When did you first see that report?

13 MR. GRAHAM: Objecting to further questions on  
14 this.

\*O\*

15 MR. CHAMP: I'm not asking for the document. I'm  
16 just asking if she saw it. I'm not asking about contents.

17 MR. GRAHAM: I object.

18 MR. CHAMP: It's a separate issue.

19 MR. GRAHAM: I object.

20 MR. CHAMP: Sandy, it's a separate issue.

21 MR. GRAHAM: I am objecting to the question.

22 BY MR. CHAMP:

23 157. Q. Ms. Swords, are you aware if the individuals  
24 who the CSC officers interviewed were formerly Canadian  
25 detainees?

47

1 A. No, I am not aware.

2 158. Q. Are you aware one way or the other?

3 A. No, I don't -- I'm not aware one way or the  
4 other.

5 MR. CHAMP: Just give me a moment. Actually,  
6 could I just have two minutes?

7 MR. GRAHAM: Sure.

8 MR. CHAMP: I think I might be done.

9 (SHORT RECESS)

10 BY MR. CHAMP:

11 159. Q. Ms. Swords, I'm handing you a document I  
12 believe is an excerpt from 2004 or 2005, Department of  
13 Foreign Affairs report on "Good Governance, Democratic  
14 Development and Human Rights in Afghanistan." I believe  
15 you confirmed earlier that you had read this report?

16 A. This is the 2005 report. As I indicated, I  
17 skimmed the previous reports.

18 160. Q. Does this look consistent with what you had  
19 skimmed?

20 A. I'm sorry. I don't have that -- the actual

21 document so I -- I think it's consistent but I couldn't  
22 swear to that. Yes, I notice it's just the first two  
23 pages. Well, it seems to be page 1 and page 6 and as I  
24 recall all of the human rights reports were, you know, I  
25 don't remember the exact number but around 20 pages long

48

1 and this is just -- this is two pages.

2 161. Q. But I see the third sentence of this report  
3 says "Extrajudicial executions, disappearances, torture  
4 and detention without trial are all too common." I had  
5 thought that would be a very important phrase or a  
6 sentence that would stand out to you.

7 A. Well, I notice in the document that it's  
8 highlighted and it says, "Section 15, 1" in the bracket  
9 which to me indicates that we may have concerns about this  
10 being injurious to international relations.

11 MR. GRAHAM: That's what it appears to me as well,  
12 Counsel, and I would object to any questions on that  
13 basis.

\*O\*

14 MR. CHAMP: Okay, I'll just ask it be an exhibit  
15 to her cross-examination, Exhibit A.

16 MR. GRAHAM: I don't think it's appropriate to  
17 make it an exhibit. It seems to be an excerpt of a much  
18 larger document. We don't have that document here and we  
19 can't speak about it because of the objection I've just  
20 made. In my submission it should not be.

\*O\*

21 MR. CHAMP: I'm asking it be added as an exhibit  
22 and that's an objection that we can address with the judge  
23 tomorrow.

24 MR. GRAHAM: All right. We can deal with that  
25 tomorrow then.

49

1 MR. CHAMP: Thanks. Just call it Exhibit 1,  
2 subject to objection.

3 EXHIBIT NO. 1: "Good Governance, Democratic  
4 Development and Human Rights in Afghanistan"  
5 Report by Foreign Affairs, 2005.

6 MR. CHAMP: Those are all the questions I have for  
7 Ms. Swords.

8 --- THE EXAMINATION ADJOURNED AT THE HOUR OF 2:33 IN THE  
9 AFTERNOON.

10

11 WE HEREBY CERTIFY THAT the foregoing was  
12 transcribed to the best of our skill and ability,  
13 from taped and monitored proceedings.

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.....  
G R S / B L / S P

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FEDERAL COURT

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B E T W E E N:

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AMNESTY INTERNATIONAL CANADA and

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BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

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Applicants

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10

- and -

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13

CHIEF OF THE DEFENCE STAFF

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FOR THE CANADIAN FORCES,

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MINISTER OF NATIONAL DEFENCE

16

and ATTORNEY GENERAL OF CANADA

17

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Respondents

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CROSS-EXAMINATION OF COLLEEN SWORDS ON AFFIDAVIT sworn May  
1, 2007, pursuant to an appointment made on consent of the  
parties, to be reported by Gillespie Reporting Services, on  
May 2, 2007, commencing at the hour of 1:10 in the  
afternoon.

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APPEARANCES:

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Paul Champ,

for the Applicants

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J. Sanderson Graham,

for the Respondents

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This Examination was monitored by Gillespie Reporting Services at

33

Ottawa, Ontario, having been duly appointed for the purpose.

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INDEX

4

5

NAME OF WITNESS: COLLEEN SWORDS

7

EXAMINATION BY: MR. CHAMP

9

NUMBER OF PAGES: 2 THROUGH 49 INCLUSIVE

11

12

13

14

ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

16

17

\*O\* . . . . . 3, 10, 35, 37, 44, 46, 48

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22

EXHIBITS

23

24

25

EXHIBIT NO. 1: "Good Governance, Democratic Development and  
Human Rights in Afghanistan" Report by Foreign  
Affairs, 2005. . . . . 49

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DATE TRANSCRIPT ORDERED: 02 MAY 2007

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DATE TRANSCRIPT COMPLETED: 02 MAY 2007

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