

FEDERAL COURT

BETWEEN:

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

Applicants

- and -

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

Respondents

SUPPLEMENTARY AFFIDAVIT OF ALEX NEVE

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I, **Alex Neve**, of the City of Ottawa, in the Province of Ontario, **make oath and state as follows:**

- 1) I am the Secretary General of Amnesty International Canadian Section (English Speaking) (hereinafter "AIC"), one of the applicants in this matter, and as such I have knowledge of the matters hereinafter deposed to. Where my knowledge is based on information and belief, I have stated the basis of such information and belief.
- 2) This affidavit is affirmed in support of a motion by the applicants for injunctive relief. I have already affirmed an affidavit dated February 27, 2007, in support of the application.

- 3) Since filing for judicial review in this matter, the Applicants have become aware of several recent developments that have heightened our concern about the safety of detainees captured by Canada and transferred to Afghan custody. Based on the newly available information, as well as other material already filed with the Court, the Applicants believe that the risk of detainees being tortured is both substantial and immediate.

- 4) On March 2, 2007, it was learned that the systems Canada and Afghanistan established to monitor and track transferred detainees were inadequate to verify their whereabouts, let alone their well-being. The *Globe and Mail* published an article on that date stating that the Canadian Forces ("CF") National Investigation Service had been unable to find three detainees who had been transferred by CF to Afghan authorities in April 2006. The Afghan authorities cannot or will not tell the CF what happened to these detainees and their fate remains unknown. A copy of this *Globe and Mail* article is attached hereto as **Exhibit "A"**.

- 5) It was also reported on March 15, 2007 that the CF was aware that another detainee transferred by CF to the Afghan National Army had vanished. A copy of this story from the *Globe and Mail* is attached hereto as **Exhibit "B"**.

- 6) The Respondent Minister of National Defence has confirmed his own belief that the Afghan prison system is unreliable. Speaking on television on March 4, 2007, the Minister admitted that detainees in Afghan custody can escape by a "revolving door system", when tribal influence or bribery is engaged. AIC believes persons who the CF detained as dangerous on the battlefield and transferred to Afghan custody could exit the Minister's "revolving door", and again put at risk the lives and safety of Afghan

civilians and Canadian soldiers. As the Minister said to *CTV's Question Period*:

"Theoretically, in Afghanistan, everyone is member of a tribe and sometimes tribes get their people out of prison either through influence or through paying fines, or something, they get their people out of prison. So, it's quite a revolving door system in their prisons."

An article taken from the CTV website, containing a shortened excerpt of the Minister's statement, is attached as **Exhibit "C"** to my affidavit.

- 7) Shortly after this application was filed, the Applicants also learned that the key safeguard on which the Respondent Minister relied to protect detainees from torture did not actually exist. On at least two separate occasions, the Minister wrongly informed Parliament that the International Committee of the Red Cross (hereinafter "ICRC") oversaw detainees that Canada transferred to Afghan custody, and that the ICRC would notify Canada if they were mistreated.
- 8) While the Applicants always doubted that the ICRC would agree to play such a role, this belief was confirmed by an article published in the *Globe and Mail* newspaper on March 8, 2007. According to that article, a spokesman for the ICRC contradicted the Minister and said that the ICRC was "not monitoring" detainees on behalf of the Canadian government and would only report abuse to the detaining power, in this case the Afghan government. A copy of this *Globe and Mail* article is attached hereto as **Exhibit "D"**.
- 9) After the ICRC contradicted the Respondent Minister, he acknowledged his statements to Parliament were erroneous. He corrected his previous oral

statements to Parliament, and delivered an apology to the House of Commons on March 19, 2007, which reads:

"I fully and without reservation apologize to the House for providing inaccurate information to members. I regret any confusion that may have resulted from these statements. The answers I gave were provided in good faith. I take full responsibility and do so without hesitation.

I would like to be clear. The International Committee of the Red Cross is under no obligation to share information with Canada on the treatment of detainees transferred by Canada to Afghan authorities. The International Committee of the Red Cross provides this information to the country that has the detainees in its custody, in this case, Afghanistan."

A copy of the Minister's oral apology in Hansard is attached hereto as **Exhibit "E"**.

- 10) Further to this apology, the Minister also tabled in Parliament a correction to a reply to written questions on the Order Paper of the House of Commons. The original reply was tabled by the Minister on September 18, 2006, and was as Exhibit "F" to my affidavit dated February 27, 2007. The corrected answers tabled by the Minister on March 19, 2007 are attached hereto as **Exhibit "F"**.
- 11) The supporting affidavits filed by the Applicants in this matter attach numerous reports by various bodies – including the Afghan Independent Human Rights Commission, the UN Commission on Human Rights, the UN High Commissioner for Human Rights, and the US State Department – which all find that torture and abuse is widespread in Afghan custody. More recently, the Secretary-General to the United Nations presented a report to the UN General Assembly and the UN Security Council entitled "The situation in Afghanistan and its implications for international peace and security". Dated March 15, 2007, this report by the UN Secretary

General states that a recent detainee-monitoring campaign in Afghanistan found that "ill-treatment and torture" was used in Afghan prisons. A copy of this report is attached hereto as **Exhibit "G"**.

12) Until very recently, the Applicants did not have any direct information that individual detainees transferred by CF had been tortured by Afghan authorities. AIC nevertheless believed that, based on the numerous reports of widespread and systematic torture, it was very likely that detainees transferred by Canada were also being tortured. AIC's long history and experience with states that torture led me to believe that the assurances given by Afghan authorities to the Canadian government were unreliable. The fact that Afghanistan could not be trusted to observe the *Convention Against Torture and Other Cruel, Degrading and Inhuman Treatment* is an acknowledgment that a risk exists, and it is unclear why assurances are regarded by Canada as any more binding or reliable than an international treaty. This is similar to the views of the UN Special Rapporteur on Torture, who reported to the UN General Assembly in September 2004 that diplomatic assurances should not be accepted in the face of evidence of systematic practice of torture. A copy of this report is attached hereto as **Exhibit "H"**.

13) The Respondents' ability to continue saying that there was no cause for alarm in the absence of specific reports of torture ended on April 23, 2007. That morning, the *Globe and Mail* published a lengthy investigative article which reported that detainees captured by Canada are becoming victims of torture in Afghan prisons. According to the article, thirty individuals gave accounts of being "beaten, whipped, starved, frozen choked and subjected to electric shocks". I believe that these allegations credibly raise serious doubts about the safety of detainees transferred by CF to Afghan custody, particularly as they are consistent with other

reports of widespread torture in Afghan prisons. A copy of this *Globe and Mail* article is attached hereto as **Exhibit "I"**.

14) The capture of detainees by the CF in Afghanistan continues, as does the practice of transferring these individuals into the hands of Afghan authorities. This was confirmed by the Canadian government on April 23, 2007, when Prime Minister Stephen Harper said that the accounts of torture in the *Globe and Mail* were not enough to make Canada stop this practice. These comments were reported in a *Globe and Mail* article published April 24, 2007, a copy of which is attached hereto as **Exhibit "J"**.


15) The *Globe and Mail* provided the names of several individuals who claimed they were detained by the CF and later tortured by Afghan authorities: Abdul Wali, Abdul Ghafar, Abdul Bari, Mohammed Ashraf, Tila Mohammed, Abdullah, and Isa Mohammed. Their names and detailed accounts were published in "Don't bleed on the carpet", an article appearing in the *Globe* April 24, 2007, and attached hereto as **Exhibit "K"**.

16) It is my belief that the Respondents are fully aware of the substantial risk of torture in Afghan custody. It was reported in the *Globe and Mail* on April 25, 2007, that the Department of Foreign Affairs conducted its own review of the human rights situation in Afghanistan. According to the story, the summary of the Department's 2006 report on Afghanistan says, "Extrajudicial executions, disappearances, torture and detention without trial are all too common." A copy of this story is attached hereto as **Exhibit "L"**. Needless to say, execution is harm that is irreparable.

17) It is my belief that, before this application will be heard, many more people will be transferred by the CF to Afghan officials and many will likely be tortured, unless an injunction is issued. The Respondents have already indicated that they will delay a full hearing of the application. In that regard, the Respondents have allowed the time limit to file affidavits to expire and have indicated that they will bring a motion for a 90-day extension of time in which to do so. A copy of a letter dated April 11, 2007 from legal counsel for the Respondents is attached hereto as **Exhibit "M"**.

18) I have been working in the field of international human rights for close to 20 years. My activities have included performing international research missions to report on human rights abuses and attending national and international meetings dealing with the issue of torture. In this work, I have met and interviewed numerous victims of torture. Many of these individuals bear the scars of torture – both physical and psychological – for the rest of their lives. Torture is, by its nature, designed to destroy the personal dignity and psychological integrity of the individual. The harm caused by torture is profound and irreparable.

SWORN BEFORE ME)
 at the City of Ottawa,)
 in the Province of Ontario)
 on this 26 day of)
 April, 2007.)



 A Commissioner for the taking
 of oaths in the Province of Ontario



 ALEX NEVE