

**FEDERAL COURT**

**B E T W E E N:**

**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

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**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. AIC is a non-profit organization incorporated pursuant to the *Canada Corporations Act*, R.S. 1970, c. C-32 (recorded as AMNESTY INTERNATIONAL CANADIAN SECTION (ENGLISH SPEAKING) on April

2, 1981; Film 464, Document 46). AIC has a membership of 60,000 people from across Canada and is governed by a board of 12 elected directors. The head office of AIC is in Ottawa, Ontario, but it also has offices in Toronto and Vancouver. AIC is a distinct and separate legal entity from Amnesty International, International Secretariat, which is located in London, United Kingdom.

3. AIC is part of a worldwide movement founded in 1961 that works to prevent some of the gravest violations to people's fundamental human rights. Amnesty International's vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.
4. In pursuit of this vision, the mission of Amnesty International and AIC is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.
5. AIC is impartial and independent of any government, political persuasion or religious creed. AIC is financed by subscriptions and donations from its membership, and receives no government funding.
6. Amnesty International has formal relations with the United Nations Economic and Social Council (ECOSOC), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Council of Europe, the Organization of American States, the Organization of African Unity, and the Inter-Parliamentary Union. In 1977, Amnesty International was awarded the Nobel Peace Prize for our work in promoting international human rights.
7. There are currently close to 2 million members of Amnesty International in over 162 countries. There are more than 7,500 Amnesty International groups,

including local, youth or student, and professional groups, in more than 90 countries and territories throughout the world. In 55 countries and territories, the work of these groups is coordinated by national sections like AIC.

8. Personally, I was hired as Secretary General of AIC in January, 2000. Prior to assuming this position, I had been an active member of Amnesty International for 15 years, during which time I was employed by AIC and by the International Secretariat in London, England for three years. My activities with Amnesty International have included numerous research missions to monitor and report on human rights abuses, the preparation of international and national reports on issues of concern to Amnesty International and AIC, and attendance at both national and international meetings.
9. In addition to my experience with Amnesty International, I hold a Master of Laws degree in International Human Rights Law, with distinction, from the University of Essex in the United Kingdom.
10. As Secretary General for AIC, I am responsible for overseeing implementation of Amnesty International's mission in Canada. This includes supervising staff and ensuring that there is a national network of volunteers to carry out AI's work in Canada. My responsibilities also include ensuring that Amnesty International's expertise is available to decision-making bodies and the general public, communicating and cooperating with others who are interested in working to advance international human rights issues, and educating the public on human rights.

#### **AIC's views on torture**

11. Among AIC's most longstanding and highest priorities as a membership organization is to advocate against torture, including where Canada is somehow concerned. AIC believes that torture is unacceptable at any time, in any place, for

any reason, and that the legal prohibition against torture is absolute. This belief corresponds to the *UN Convention Against Torture*, a treaty which Canada ratified in 1987, and which reads at Article 2:2:

*“No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.”*

12. AIC advocates against torture at the level of policy, at the level of judicial processes, and at the level of grassroots campaigning. In the following paragraphs are brief examples of each.

**(a) Advocacy against torture at the policy level**

13. Canada’s compliance with its international obligations to prevent torture is a matter of ongoing interest for AIC. AIC has submitted numerous briefs to UN international treaty bodies with respect to Canada’s compliance with its human rights obligations. These include:
- Briefs to the United Nations Committee against Torture, with respect to that Committee’s periodic review of Canada’s compliance with the *UN Convention Against Torture* were made in 2000 and 2004. A copy of the latter is attached as **Exhibit “A”** to this affidavit.
  - Brief to the UN Human Rights Committee, with respect to that Committee’s periodic review of Canada’s compliance with the *International Covenant on Civil and Political Rights* in 2005, a portion of which outlined concerns regarding article 7 of the Covenant, the absolute ban on torture.

(b) **Advocacy against torture in judicial proceedings:**

14. AIC has participated as an intervener and made submission in numerous judicial proceedings on the issue of torture both in Canada and elsewhere, including before the:
- Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar conducted by Mr. Justice Dennis O'Connor in 2004-2006.
  - Supreme Court of Canada in *Suresh v. Canada (Minister of Citizenship and Immigration)*, reported at [2002] 1 S.C.R. 3.
15. AIC has also intervened before the Ontario Court of Appeal in a number of cases involving issues of torture, including:
- *Bouzari v. Islamic Republic of Iran* (Court File C38295, June 30, 2004), a case involving the right of a torture victim to sue for compensation from the offending government
  - *Ahani v. Her Majesty the Queen, The Attorney General of Canada and the Minister of Citizenship and Immigration* (Court file C37565, February 8, 2002), where AI made submissions on Canada's international obligations in response to the UN Human Rights Committee's request that Canada not deport the appellant pending consideration of his complaint to the Committee.
16. Amnesty International has also made submissions on international human rights in judicial proceedings in other countries. In but one recent example, the British House of Lords granted AI intervener status in *A and others v. Secretary of State for the Home Department (No. 2)*, [2005] UKHL 71, an appeal concerning the admissibility of evidence obtained through torture.

(c) **Advocacy against torture at the grassroots campaigning level**

17. AIC maintains an active list of “current actions” for its members to write letters to those implicated in torture, reminding them of the absolute prohibition against torture. AIC promotes 100-150 such actions per year, covering issues such as allegations of torture in prison, use of certain interrogation techniques, letters highlighting our concerns to government officials and heads of state, as well as letters of support to victims of torture.
18. As Secretary General I have the opportunity to hear from the organization’s members about their priorities. Preventing torture is one of the most frequently enunciated priorities.

**AIC’s concerns and actions regarding Canada’s handling of detainees in Afghanistan**

19. Since January 2002, AIC has expressed concerns to the federal government numerous times over the current procedures of the Canadian Forces for arresting persons in Afghanistan, detaining them, and ultimately transferring them to the United States, Afghanistan, or possibly other states. AIC’s concerns have been set out in letters to successive Ministers of National Defence, Ministers of Foreign Affairs, and officials from both departments.
20. Last year, on 3 April 2006, I wrote a letter on behalf of AIC to Minister of National Defence Gordon O’Connor elaborating on these concerns. A copy of this letter is attached to this affidavit as **Exhibit “B”**. Minister O’Connor replied to me on 26 July 2006. A copy of his letter is attached to this affidavit as **Exhibit “C”**.
21. Most recently on 14 November 2006, I wrote again on behalf of AIC to Minister O’Connor to voice our concern over these issues, a copy of which is attached as **Exhibit “D”**.

22. On December 11, 2006, I appeared before the Standing Committee on National Defence to give a presentation regarding AIC's concerns about Afghanistan prisoner transfers. A copy of the transcripts from that hearing is attached hereto as **Exhibit "E"**.
  
23. AIC first wrote to then Minister of Defence Art Eggleton in January 2002 because the U.S. government had made statements that suggested it would not apply the Geneva Conventions to detainees captured in Afghanistan. We urged Minister Eggleton to assure our members that Canada would not transfer detainees to the US until it confirmed the detainees would be treated in accordance with these international legal protections.
  
24. In February and October 2005, AIC wrote to then Minister of Defence Bill Graham. We asked whether Canada had sought or received assurances from the U.S. that detainees transferred from Canadian Forces would not be subject to the death penalty. We also pointed to the widespread and well-documented human rights concerns associated with U.S. detention in both Afghanistan and Guantanamo Bay. We stressed that U.S. assurances of a willingness to act in ways that were consistent with international legal obligations had clearly proven to be inadequate. We called for an end to prisoner transfers, and we again suggested that Canadian troops needed to consider taking responsibility for the detention of individuals apprehended in the course of operations in Afghanistan.
  
25. In November 2005, I met with Minister Graham to discuss these concerns. At that time, we were informed that Canada would be abandoning the practice of transferring detainees to U.S. custody. Instead, a new policy would be adopted of transferring prisoners into Afghan custody. AIC subsequently wrote to Minister Graham to explain, from a human rights perspective, the problems with this approach. We stressed that there were serious concerns about treatment of prisoners in Afghan-operated detention centres. We raised questions about

monitoring, about substantial resource and capacity problems in Afghan prisons, and the need for reliable assurances that there would be no subsequent transfers of prisoners into U.S. custody. We stated again that unless the serious human rights shortcomings we had identified could be addressed, Canada must be prepared to establish and operate its own detention facilities in Afghanistan, perhaps in concert with other nations that have contributed to the International Security Assistance Force. I affirmed and reiterated these concerns in a letter to Mr. Graham dated November 21, 2005, a copy of which is attached hereto as **Exhibit “F”**.

26. I have read the 18 December 2005 Detainee Transfer Arrangement signed by Canada and Afghanistan. I have also reviewed reports by the Afghan Independent Human Rights Commission, the U.N. High Commissioner for Human Rights, and the U.S. State Department about the practice of torture by Afghan authorities. These reports lead AIC to believe that the current procedures of the Canadian Forces do not provide sufficient safeguards that detainees will not be tortured after Canada transfers them to the custody of Afghanistan.
27. Furthermore, AIC is concerned that detainees who may be adversely affected by the lack of safeguards against torture do not have a practical opportunity to litigate to protect their rights and interests, given both their location in Afghanistan and the federal government’s stated position that there is “no requirement to offer detained persons access to legal counsel”. The government made this position publicly known in a reply to written questions on the Order Paper of the House of Commons. The reply by the Minister of National Defence and the Minister of Foreign Affairs was tabled in the House of Commons on September 18, 2006, and is attached hereto as **Exhibit “G”**.
28. AIC is also concerned about detainees captured by Canadian Forces who have already been transferred to the custody of the United States of America, a country



that has a deplorable record with respect to the treatment of detainees in the “global war on terror”. Amnesty International published a comprehensive report in October 2004 on torture committed by the U.S. in Afghanistan, Guantanamo Bay, and elsewhere. The report, entitled “Human dignity denied: Torture and accountability in the war on terror”, describes a horrific pattern of degrading treatment and torture by U.S. forces. A copy is attached as **Exhibit “H”**.

29. Amnesty International has gathered numerous shocking examples of death and abuse in U.S. custody, and has reported on the U.S. government’s failure to adequately investigate or prosecute these crimes. Further, hundreds of detainees are held by the U.S. indefinitely without access to the courts. Others are even less fortunate and simply “disappear” into the country’s international network of secret detention facilities. These findings are detailed in “Guantánamo and beyond: The continuing pursuit of unchecked executive power”, a report published by Amnesty International on May 13, 2005. A copy is attached as **Exhibit “I”**.
30. More recently, the New York Times published a story indicating that the United States was still employing interrogation techniques such as head-slapping, simulated drowning and frigid temperatures. These techniques, separately or particularly in combination, are cruel and inhuman treatment and likely constitute torture. A copy of an article published October 6, 2007, is attached hereto as **Exhibit “J”**.

#### **Developments since commencing the application**

31. 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.

32. 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 “K”**.
33. 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.
34. 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 “L”**.
35. 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. In the apology, he confirmed that the ICRC only informed the

detaining country – in this case Afghanistan – of any complaints of abuse. A copy of the Minister's statement in Hansard is attached hereto as **Exhibit "M"**.

36. 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 is referred to above as Exhibit "F". The corrected answers tabled by the Minister on March 19, 2007 are attached hereto as **Exhibit "N"**.
37. Other 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 has presented reports to the UN General Assembly and the UN Security Council entitled "The situation in Afghanistan and its implications for international peace and security". The first report, dated March 15, 2007, 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 "O"**. A more recent report, dated September 21, 2007, stated that the United Nations Assistance Mission in Afghanistan (UNAMA) continued "to receive and verify" complaints of "ill-treatment and torture" in Afghan custody. A copy of this report is attached hereto as **Exhibit "P"**.
38. Canada appears to be satisfied by assurances from Afghanistan that ill-treatment and torture will not take place in custody. Aside from the numerous reports that torture continues in Afghan custody, AIC's long history and experience with states that torture lead me to believe that the assurances given by Afghan authorities to the Canadian government are 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 “Q”**.

39. 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 “R”**.
40. The *Globe and Mail* published a further story with more details from several individuals who claimed they were detained by the CF and later tortured by Afghan authorities. Their 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 “S”**.
41. Canada signed a new arrangement with Afghanistan on May 3, 2007, that allows Canadians access to Afghan prisons. Our organization strongly supports efforts to improve monitoring and inspection regimes as a means to detect the torture of prisoners already held in detention facilities where the risk of torture is very high. While monitoring mechanisms may reduce the incidence of torture, they do not eliminate it. I wrote a letter to the Minister of National Defence on June 7, 2007, explaining our organization’s views on this issue. The letter was also signed by

Jason Gratl, president of the British Columbia Civil Liberties Association. A copy is attached hereto as **Exhibit "T"**.

42. Further reports have confirmed my view that Canada's new arrangement with Afghanistan will not prevent torture. On October 29, 2007, Montreal's *La Presse* published an account of a journalist's interviews with numerous detainees being held in Afghan prisons. According to the report, these individuals explained that they were well treated by Canadian personnel and were given a copy of the arrangement between Canada and Afghanistan regarding the treatment of detainees. However, the arrangement was not respected when they were transferred to Afghan custody, where they alleged they were beaten with bricks, subjected to electric shocks and had their fingernails torn out. Copies of this story, entitled "C'est vous, Canadiens, qui êtes responsables de la torture", in French and English translation are attached hereto as **Exhibit "U"**.
  
43. 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 "V"**.
  
44. More recently, current Minister of Foreign Affairs Minister Maxime Bernier confirmed that, since the May 3<sup>rd</sup> agreement, Canadian officials had heard seven first-hand complaints of torture from Canadian-transferred detainees in Afghan custody. A copy of this story in the *Globe and Mail*, published November 16, 2007, is attached hereto as **Exhibit "W"**.

45. President Hamid Karzai of Afghanistan has said he does not have control over such matters in his country. According to news stories dated September 18, 2007, President Karzai met with Canadian journalists to explain that, without the presence of Canadian troops, his country would “fall back into anarchy”. A copy of this story is attached hereto as **Exhibit “X”**. Agence France Presse further reported on November 6, 2007, that President Karzai had to plead with senior Afghan police officials to “stop torturing suspects.” A copy of this story is attached hereto as **Exhibit “Y”**.
  
46. The International Secretariat of Amnesty International has carried out its own investigation of detainee handling practices of NATO countries in Afghanistan. The report, released November 13, 2007, concluded that prisoners in Afghanistan facilities continue to face torture and ill-treatment and that NATO countries were in violation of their international obligations by transferring detainees to Afghan custody. The report states that the policy of monitoring detainees was insufficient for adequately reducing the risk of torture. A copy of this report, entitled “Afghanistan: Detainees transferred to torture: ISAF complicity?”, is attached hereto as **Exhibit “Z”**.
  
47. While some NATO officials disagreed with the report, General Egon Ramms, the executive head of ISAF troops in Afghanistan, told reporters on November 14, 2007, that NATO authorities were aware of indications that transferred detainees were being abused by Afghan authorities. A copy of a story by Deutsche Welle, Germany’s public broadcaster, is attached hereto as **Exhibit “AA”**.

### **Significance of Prohibition Against Torture**


48. 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.

- 49. AIC’s fundamental conviction that the prohibition against torture must be absolute, combined with its longstanding involvement in advocacy and research on this topic, makes it particularly well-suited to bring these issues to the attention of a Canadian Court. AIC therefore seeks to litigate in this matter.

SWORN BEFORE ME )  
 at the City of Ottawa, )  
 in the Province of Ontario )  
 on this 29 day of November, 2007, )

  
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 ALEX NEVE

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