

Sunday, September 25, 2011

Chief Constable Jim Chu  
312 Main Street  
Vancouver, BC  
V6A 2T2, Canada

Via email to [Jim.Chu@vpd.ca](mailto:Jim.Chu@vpd.ca)

Dear Chief Constable Chu,

**Re: Visit of Richard (Dick) Cheney to the Vancouver Club, 915 West Hastings Street on September 26, 2011.**

We write to advise you of the duty of all officers of the Vancouver Police Department to:

1. arrest Dick Cheney if he comes to Vancouver and,
2. protect the right of citizens to protest Dick Cheney's presence in Canada.

### **1. Duty to arrest Dick Cheney**

Once Mr. Cheney enters Canada, the torture he has admitted to authorizing and the torture that he is accused of are deemed in law to have been committed in Canada (s. 7(3.7) of the Criminal Code of Canada) and criminal proceedings can be commenced against him in Vancouver (Criminal Code s. 7(5)).

In view of the evidence of Mr. Cheney's complicity in torture, if he enters the City of Vancouver, VPD officers will be duty bound to arrest him for the indictable offence of torture. As you are aware, the duty of the VPD to investigate and prevent statutory crimes arises from both the common law<sup>1</sup> and the Police Act which imposes a mandatory duty on police officers to prevent crimes and offences against the administration of justice.<sup>2</sup> In accordance with the Criminal Code, Mr. Cheney's arrest can be carried out without warrant and in advance of the commencement of criminal proceedings.

We remind you that neither Mr. Cheney's status as former vice-president of the United States or his status as a guest of the Vancouver Club constitute a defense to torture or confer on him any temporary immunity from Canadian law. As you are aware, police officers are compelled by law to treat "...all persons or classes of persons equally..." and to "...uphold rights and freedoms guaranteed or protected by law" such as the right to freedom from torture.<sup>3</sup> A failure by an officer to carry out these duties is considered a disciplinary offence.<sup>4</sup>

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<sup>1</sup> "[common law] recognizes the existence of a broad conventional or customary duty in the established constabulary as an arm of the State to protect the life, limb and property of the subject." *Shacht v. R.* [1973] 1 O.R. 221 at pp. 231-32.

<sup>2</sup> The Police Act, RSBC 1996, Ch. 367, s. 34 (2) The municipal police department, under the chief constable's direction, must perform the duties and functions respecting the preservation of peace, the prevention of crime and offences against the law and the administration of justice assigned to it or generally to peace officers by the chief constable, under the regulations or under any Act.

<sup>3</sup> Code of Professional Conduct Regulations, s. 3 (b) &(c).

<sup>4</sup> *Ibid*, s. 6.

## Evidence of Complicity in Torture

Evidence of Dick Cheney's complicity in the widespread use of torture by the United States is well documented and widely available and Mr. Cheney has publicly admitted to authorizing the use of torture. For a review of some of the evidence we refer you to the June 2001 report, [Getting Away with Torture](#)<sup>5</sup>, which contains references to many reports evidencing the authorization of and use of torture by the Bush administration and Mr. Cheney's complicity. Reports referenced include those of the International Committee of the Red Cross, Physicians for Human Rights and the [US] Senate Armed Services Committee. Attached is [our Sept. 19/11 letter](#) which contains quick references to some of Mr. Cheney's public admissions to authorizing and approving the use of torture.

As observed by Maj. General Antonio M. Taguba, author of the U.S. Army's 2004 internal report on Abu Ghraib,

“... the Commander-in-Chief and those under him authorized a systematic regime of torture.... After years of disclosures by government investigations, media accounts, and reports from human rights organizations, there is no longer any doubt as to whether the current [Bush] administration has committed war crimes. The only question that remains to be answered is whether those who ordered the use of torture will be held to account.”<sup>6</sup>

## The Law

**Criminal Code of Canada;** Under s. 269.1 of the Criminal Code of Canada, torture is an indictable offence bearing a sentence of up to 14 years imprisonment. Aiding, abetting and counseling the use of torture are also offences. Torture is also a crime under the Crimes against Humanity and War Crimes Act. Once Mr. Cheney enters Canada, the torture (both the torture he has admitted to authorizing and the torture that he is accused of) are deemed to have been committed in Canada as determined by the Criminal Code of Canada s. 7(3.7).

### Jurisdiction

(3.7) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, being an accessory after the fact in relation to an offence against, or any counselling in relation to an offence against, section 269.1 shall be deemed to commit that act or omission in Canada if

...

(e) the person who commits the act or omission is, after the commission thereof, present in Canada. (underlining added)

**2. Protecting Civil Liberties:** Attached is the Protesters' Guide to the Law of Civil Disobedience in BC: Take Back our Communities Edition, Sept. 22, 2011, by Leo McGrady Q.C.. The guide explains

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<sup>5</sup> *Getting Away with Torture: the Bush Administration and Mistreatment of Detainees*, Human Rights Watch, June 2011. <http://www.hrw.org/sites/default/files/reports/us0711webwcover.pdf>

<sup>6</sup> Maj. General Antonio M. Taguba (USA-Ret.), Preface to *Broken Laws, Broken Lives: Medical Evidence of Torture by U.S. Personnel and its Impacts*, A Report by Physicians for Human Rights, June 2008. [http://brokenlives.info/?page\\_id=69](http://brokenlives.info/?page_id=69)

what constitutes lawful assembly and expression as part of protests conducted in public places and the lawful role of police.

We understand that the VPD may be under pressure to resort to exceptional measures to shield Mr. Cheney from people lawfully protesting his presence in Canada: the failure of the Canadian Border Services Agency to prevent his entry and the failure of the police to arrest him for torture.

We remind you that the right to publicly protest is guaranteed by the *Charter of Rights and Freedoms*. It is therefore particularly important that the VPD be adequately instructed to keep the peace during the any citizens' protest that takes place on September 26 by protecting and ensuring the right to protest rather than suppressing or violating those rights. We hope the guide attached will be made available to officers involved in policing at or near the site of the Vancouver Club at 915 West Hastings Street.

It is our understanding that the protesters will be calling on the police to uphold and enforce Canadian law and Canada's international law obligations to prevent and punish torture wherever it occurs, whatever the nationality and status of suspected perpetrators and whatever the nationality of victims.

The right (and duty) of individuals to vigorously express criticism of government policies and practices (in this case the refusal to bar Cheney from Canada) in public spaces is the foundation upon which democracy rests. As expressed by Cory, J. in *R. v. Kopyto* (1987), 24 O.A.C. 81.

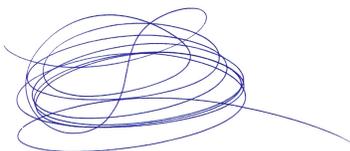
“... it is difficult to imagine a more important guarantee of freedom to a democratic society than that of freedom of expression. A democracy cannot exist without the freedom to express new ideas and to put forward opinions about the functioning of public institutions. These opinions may be critical of existing practices in public institutions and of the institutions themselves. However, change for the better is dependent upon constructive criticism. Nor can it be expected that criticism will always be muted by restraint. Frustration with outmoded practices will often lead to vigorous and unpropitious complaints. Hyperbole and colourful, perhaps even disrespectful language, may be the necessary touchstone to fire the interest and imagination of the public, to the need for reform, and to suggest the manner in which that reform may be achieved.”

As further noted by Mr. Justice Cory in the above noted decision,

“History has repeatedly demonstrated that the first step taken by totalitarian regimes is to muzzle the media and then the individual in order to prevent the dissemination of views and opinions that may be contrary to those of the government.”

We are ready to provide you with more information. We will make a summary of this letter available to interested members of the public and to officers attending any protest held.

Respectfully,



Gail Davidson

Copied to:

Mayor Gregor Robertson  
Vancouver City Hall  
453 West 12th Avenue  
Vancouver, BC V5Y1V4

Honourable Shirley Bond  
Attorney General and Solicitor General  
Government of British Columbia  
PO Box 9053 Stn Prov Govt  
Victoria BC V8W 9E2  
Email: [Shirley.Bond.MLA@leg.bc.ca](mailto:Shirley.Bond.MLA@leg.bc.ca)

The Honourable Robert Douglas Nicholson  
Attorney General of Canada  
284 Wellington Street, Ottawa, Ontario  
Canada KIA OH8  
Fax: 1-613-954-0811  
Email: [rob.nicholson@parl.gc.ca](mailto:rob.nicholson@parl.gc.ca)