

Thursday, December 02, 2004

The Honourable Irwin Cotler
Minister of Justice and Attorney General of Canada
Department of Justice,
#900 840 Howe Street
Vancouver, BC V6Z 2S9

Dear Mr. Cotler:

*Re: In the Matter of the Information filed in the Provincial Court of British Columbia Vancouver Registry under Registry # 128960-1 against George Walker Bush pursuant to the Criminal Code of Canada
Re: Request for Consent of the Attorney General of Canada*

On November 30 2004 we served notice of the commencement by information on that date of proceedings against President George W. Bush for torture contrary to the *Criminal Code*, section 269.1, 21(1) (b), 21(1) (c), 22(1) and 22 (2). As you know, Canada's jurisdiction for these offences is based on section 7 (3.7) of the *Criminal Code*. As the accused is not a Canadian citizen, section 7(7) requires your consent not later than eight days after the proceedings have been commenced.

The next step in the proceedings is the hearing required by section 507.1 of the *Criminal Code*. At such a hearing a Judge hears and considers the allegations and witnesses for the informant, and the Attorney General is given an opportunity to attend, cross-examine witnesses and adduce evidence. The matter has not yet been set down for a section 507.1 hearing and we anticipate the hearing may take place after the expiry of the eight day period. We are asking, therefore, that you consent to the continuation of the proceedings for the limited purpose of allowing the hearing to proceed.

In our respectful submission, allowing the section 507.1 hearing to proceed is the only way to reconcile the requirement for your consent with the exigencies of the rule of law, democracy, transparency, the principle of equality before the law and Canada's legal responsibilities arising from the Convention against Torture, ratified by Canada 24 July 1987 and by the United States 20 November 1994. Relevant excerpts from the Convention against Torture are set out below for your reference. We respectfully submit that your decision on the question of consent to proceedings for torture in the circumstances of this case can only be properly exercised once you have heard the evidence, have had an opportunity to test it by cross-examination and have heard the judge's decision on the merits.

You have our solemn undertaking not to object either to your consent being time limited in this manner or to a reconsideration by you of whether to renew your consent once the judge has adjudicated the matter on the merits.

We look forward to your reply. As time is of the essence, we trust that you will give this correspondence and reply your immediate attention.

Sincerely,

Michael Mandel, Professor, Osgoode Hall

Gail Davidson, member of the Law Society of British Columbia
Enclosure: Information file # 128960-1 2pp.

Contacts:

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**Convention against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment (1987)**

(Excerpts)

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.

...

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures

shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

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