

**FEDERAL COURT**

B E T W E E N:

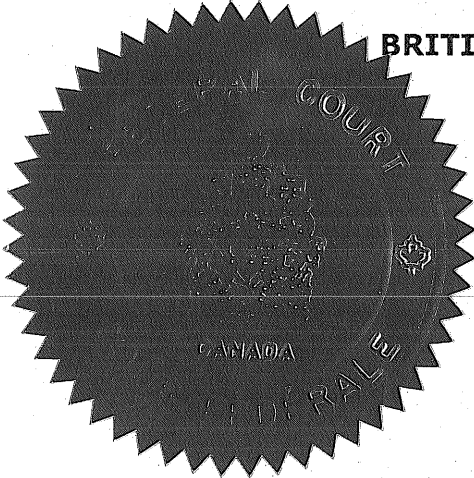
**AMNESTY INTERNATIONAL CANADA and  
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

Applicants

- and -

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

Respondents



APPLICATION UNDER SECTIONS 18 and 18.1 OF THE *FEDERAL COURTS ACT*

**NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of the hearing will be as requested by the Applicants. The Applicants request that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitor, or where the Applicants are self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the

Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 21, 2007

Issued by: \_\_\_\_\_

  
(Registry Officer)

Address of  
local office: \_\_\_\_\_

90 rue Elgin Street  
Ottawa, Ontario  
K1A 0H9

Ann F. [unclear]  
Registry Officer  
Agente du greffe

**TO:** John H. Sims, Q.C.  
Deputy Attorney General of Canada  
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**AND TO:** General Rick J. Hillier  
Chief of the Defence Staff for Canadian Forces

**AND TO:** The Honourable Gordon O'Connoer  
Minister of National Defence

## **APPLICATION**

This is an application for judicial review in respect of actions or potential actions of Canadian Forces deployed in the Islamic Republic of Afghanistan. These personnel are under the overall command of the Chief of Defence Staff of the Canadian Forces and the Minister of National Defence. Canadian Forces have participated in the armed conflict in the territory of Afghanistan since January 2002. Approximately 2,500 Canadian Forces personnel are currently deployed in that country.

On December 18, 2005, General Rick J. Hillier, the Chief of Defence Staff for the Canadian Forces, signed an agreement with Abdul Raheem Wardak, Afghanistan Minister of Defence, to establish procedures for the transfer of individuals captured or detained by Canadian Forces in Afghanistan to Afghan custody ("Canada-Afghanistan Detainee Agreement" or "Agreement").

The Canada-Afghanistan Detainee Agreement does not provide adequate safeguards to ensure that detainees will not be tortured by Afghan forces. Canadian officials have no right to access detainees who have been transferred, and they play no role in monitoring the detention. The Agreement also contemplates that Afghanistan may transfer detainees received from Canada onwards to the custody of a third country. The Agreement does not include any protections or safeguards that would prevent Afghanistan from transferring the detainees to third countries who may torture or execute the detainees. Canada has a previous practice of transferring detainees into the custody of U.S. forces, where there is concern that some have been held in both Afghanistan and Guantanamo Bay in conditions where they have experienced serious human rights violations. The current Agreement keeps open the possibility of third-party transfers into U.S. custody.

There are substantial grounds to believe that Afghan forces are torturing detainees. There is an extensive record documenting pervasive and widespread torture in Afghanistan. Recent reports compiled by the United Nations, the U.S. Department of State, and the Afghan Independent Human Rights Commission all confirm that torture by Afghan authorities is "common" and "routine".

There are also substantial grounds to believe that the United States of America, a likely third country to which detainees may be transferred, is engaged in cruel, degrading and inhuman treatment of detainees, including torture, which is contrary to assurances the US has given to other governments, including Canada. The United Nations, the International Committee for the Red Cross, and Amnesty International have all reported systemic issues of abuse and torture in U.S. custody.

Canadian Forces continue to capture and detain individuals in Afghanistan. Canadian Forces continue to transfer these individuals into the custody of Afghan authorities, despite the substantial risk that these individuals shall be subject to torture. General Hillier has refused to allow these detainees to have access to legal counsel before being transferred to the Afghanistan authorities.

Canada has international commitments under Common Article 3 to the 1949 *Geneva Conventions*, the *Additional Protocol to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, the *Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment*, and the *International Covenant on Civil and Political Rights*. As well, the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides an authoritative statement on detention standards. These treaties and other instruments obligate Canada to protect individuals from torture and other cruel, degrading or inhuman treatment.

**The Applicants make application for:**

- (a) a declaration that the Canada-Afghanistan Agreement violates sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* because it provides for the transfer of detainees to the custody of other countries without adequate substantive and procedural safeguards against a substantial risk of torture;

- (b) a writ of prohibition preventing the Canadian Forces from transferring further detainees to the custody of other countries until and unless adequate substantive and procedural safeguards exist against a substantial risk of torture;
  - (c) a writ of mandamus requiring the Respondents to formally inquire into the condition of all detainees transferred from the Canadian Forces to the custody of other countries since December 2001, and to request that the detaining countries return the individuals to the custody of Canada;
  - (d) the costs of this application; and
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- (e) such further and other relief as counsel may request and this Honourable Court may permit.

**The grounds for the application are:**

- (a) The *Canadian Charter of Rights and Freedoms* applies to the actions of Canadian Forces operating in Afghanistan, particularly with respect to the handling of individuals captured or detained by the Canadian Forces;
- (b) Pursuant to sections 4 and 18 of the *National Defence Act*, R.S. 1985, c. N-5, the Minister of National Defence and the Chief of Defence Staff for the Canadian Forces have responsibility for the management, direction and control of the Canadian Forces;
- (c) Pursuant to section 10(b) of the Charter, individuals detained by the Canadian Forces have the right to retain and instruct legal counsel without delay;
- (d) Pursuant to section 7 of the Charter, Canadian Forces may not take actions that could place individuals at risk of torture or death, as this would violate the individuals' rights to life, liberty and security of the person;

- (e) Pursuant to section 12 of the Charter, Canadian Forces may not take actions that could place individuals at risk of torture or death, as this would violate the individuals' right to be protected from any cruel and unusual treatment or punishment;
- (f) By transferring detainees into the custody of states that may torture them, Canada is in breach of the *Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment*, the *International Covenant on Civil and Political Rights*, and Common Article 3 of the *Geneva Conventions*, and these violations establish that the Respondents have infringed the detainees' rights to life, liberty and security of the person, and the right to be protected from cruel and unusual treatment or punishment, under sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*;
- (g) Section 24(1) of the *Canadian Charter of Rights and Freedoms*; and
- (h) Sections 18 and 18.1 of the *Federal Courts Act*.

**The application will be supported by the following material:**

- (a) The Affidavit of Alex Neve, or some such other material or affidavit;
- (b) The Affidavit of Murray Mollard, or some such other material or affidavit;
- (c) The Affidavit of Yavar Hameed, or some such other material or affidavit;
- (d) The Affidavit of Michael Byers, or some such other material or affidavit; and
- (e) such further and other materials as counsel may advise and this Honourable Court may permit.

Dated: February 21, 2007

A handwritten signature in black ink, appearing to read "Paul Champ", written over a horizontal line.

**Paul Champ**

RAVEN, CAMERON, BALLANTYNE  
& YAZBECK LLP/s.r.l.

Barristers & Solicitors

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Solicitors for the Applicants

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