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September 18, 2006

Council of the Federation
Council of the Federation Secretariat
Suite 630, 360 Albert Street
Ottawa, Ontario K1R 7X7

Attention Loretta O'Connor, Executive Director

Please distribution to members: **Re: The Criminal Code and Torture by Non-State Actors**

Please find attached an explanatory one-page, two-sided fact sheet we gave to our MP Bill Casey. Mr. Casey has agreed to assist us achieve amendments to the Canadian Criminal Code, section 269.1 on torture. Presently section 269.1 refers only to torture committed by “officials”—police, military, or any person who exercises powers in or outside Canada—it does not address torture committed by non-state actors—parents, family members, parent’s friends, guardians, or strangers for example. Supplementary to the information on the attached fact sheet is the need to address “existing provisions” statements.

The “existing provisions” discourse: An existing provision position minimizes the cruelty and horrification of torture victimization. Torture by non-state actors must stand as a specific indictable offence just as torture by state actors stands alone. It must not be watered-down by existing provision statements, a position that says there are other sections in the Criminal Code that cover such a crime. There are not. Torture, is unlike other crimes such as assault. Torture is human cruelty that attempts to destroy the victimized person’s sense of knowing that she/he is human, that she/he is a person. Victimized persons speak of feeling and thinking of them-Self as non-human, an animal, or an object—an “it”. Torturers commit acts of brutalizing dehumanization pervasively and destructively aimed at destroying or fracturing the victimized person’s personality, their mind, and their human dignity. Torture acts can be physical, and sexualized; and always involves acts that are mind-spirit breaking. Acts of physical torture include electric shocking, beatings to the soles of the feet or the simultaneous pounding to both ears—called falanga and telephono in torture language; near-drowning in water in a bath tub, sink, or bucket—water-boarding in today’s torture language; beatings with whips and wires; burnings to the skin or in any orifice with hot electric light bulbs or cigarettes, for example. Sexualized tortures include, for instance, perpetration with knives, guns, penises, hands, and sticks, pliers to the nipples, being tied down and raped, forced to ingest or smear feces, urine, and menstrual blood. Mind-spirit torture includes overwhelming terror, horrification, and isolation that is beyond the capabilities of the organs in the brain to process which leads to dehumanization, objectification, and dissociative responses, the potential for fracturing of one’s personality.

Non-state torturers—like state torturers—must not be allowed to commit such criminal human rights violations with impunity. Canadian children who are victims of non-state actor torture—from infancy onwards (i.e., as evidenced in pedophilic torture pornography)—must not have their

suffering negated by an existing provision discourse. And when a child reaches adulthood, if they decide to report the atrocities they endured, they must not be told they are unable to do so because there is no statute in the Criminal Code that applies to non-state actor torture, a scenario we have repeatedly heard spoken of by adults who have or are attempting to seek justice. Their right to name the atrocity endured and to seek equitable justice presently remains unattainable in Canada.

We ask for your leadership support to assist us and Mr. Casey make Canada a country where due diligence is more than a vision, that it is a country that ensures, as an accepted practice, torture by non-state actors is an indictable crime and a violation of human rights.

Respectively submitted,

Jeanne Sarson and Linda MacDonald

Re: Legislation on Torture: “State Actors” and “Non-State Actors”

Proposal and Goal: To have Canada’s *Criminal Code*, section 269.1 on torture (see the back of this page) amended or changed to include the criminal act of torture committed by a “non-state actor” torturers. Presently section 269.1 refers only to the crime of “state actor” torture.

Canada and Human Rights: Canada prides itself on supporting the human rights of its citizens including its children, as well as the promotion of human rights within civil society. At this very moment Canada has taken a leadership role in the transformation of the UN Human Rights Commission to the Human Rights Council. Canada is a signatory to many UN conventions and protocols including the *Convention on the Rights of the Child* and the *International Covenant on Civil and Political Rights* which, in Article 37 and Article 7 respectively, state: No child or adult shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. To ensure that Canada fulfils its responsibilities and practices with due diligence, including guaranteeing children necessary protection, acts of torture inflicted by “non-state actors” must be recognized and specifically named as a criminal offence.

Why Propose the Change?: Knowledge has expanded since Section 269.1 on torture was written, which only criminalizes torture committed by “state actors”—“officials” such as police or the military. Civil society is gaining increased knowledge and awareness that acts of torture can also be perpetrated within the context of intimate relationships—torture of a child by a parent or grandparent, or torture by a spouse or stranger for example. Under present Canadian law, a person so victimized cannot seek social justice for the victimization they endured—they cannot go to court as a victim of torture. Being able to seek justice, to name the victimization one has endured, is critical to having one’s civil, political, and legal rights, as well as one’s human rights upheld. Also, it holds the torturer accountable for the crime of torture they commit as it says Canada will not permit them to function with impunity. The importance of accurately naming the crime being committed is evidenced, for example, in the recent proposed street racing legislation.

Benefits ~Educative and Protective: Advancing civil society requires naming acts of violence that are acts of torture because naming becomes an essential educational component for the protection of Canadian children or adults who have been, are, or risk being so victimized. For example, child protection workers, teachers, and health professionals educated to recognize that relational torture must be included in their knowledge of child maltreatment will then be accurately informed of the violent risks a child may or can be enduring. We, as health professionals, are into our 14th year of listening to Canadian’s tell of their childhood victimization of being tortured by “non-state actors”: parents and like-minded persons whose repetitive torturous acts included/includes prolonged beatings, telephono (beatings to the ears), falanga (beatings to the soles of the feet), water-boarding (submersion in water to near-drowning), burns to their skin, mouth, anus, and vagina, “short-shackled” with a dog collar or noose, caged, hung by their limbs, refused nourishment, drugged, hooded, choked into unconsciousness, raped, including sadistically, with objects and weapons, transported and trafficked to other pedophiles, degraded by being smeared with, or forced to eat bodily fluids, bestiality, humiliation, and dehumanization are examples. Persons so victimized always ask us: Why didn’t someone reach in to help me? Civil society cannot adequately help if “non-state actor” torture is out of civil society’s stream of awareness or legal responsibility. Thus naming the crime of “non-state actor” torture is essential for the protection of Canadian children or adults who have been, are being, or are at risk of being so horrifically victimized.

Criminal Code of Canada: Section 269.1 Torture

Torture

269.1 (1) Every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Definitions

(2) For the purposes of this section,

“official”
« *fonctionnaire* »

“official” means

(a) a peace officer,

(b) a public officer,

(c) a member of the Canadian Forces, or

(d) any person who may exercise powers, pursuant to a law in force in a foreign state, that would, in Canada, be exercised by a person referred to in paragraph (a), (b), or (c),

whether the person exercises powers in Canada or outside Canada;

“torture”
« *torture* »

“torture” means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

(a) for a purpose including

(i) obtaining from the person or from a third person information or a statement,

(ii) punishing the person for an act that the person or a third person has committed or is suspected of having committed, and

(iii) intimidating or coercing the person or a third person, or

(b) for any reason based on discrimination of any kind,

but does not include any act or omission arising only from, inherent in or incidental to lawful sanctions.

No defence

(3) It is no defence to a charge under this section that the accused was ordered by a superior or a public authority to perform the act or omission that forms the subject-matter of the charge or that the act or omission is alleged to have been justified by exceptional circumstances, including a state of war, a threat of war, internal political instability or any other public emergency.

Evidence

(4) In any proceedings over which Parliament has jurisdiction, any statement obtained as a result of the commission of an offence under this section is inadmissible in evidence, except as evidence that the statement was so obtained.

R.S., 1985, c. 10 (3rd Supp.), s. 2.

References:

Greenspan, E. & Rosenbery, M. (2006). *Martin's Criminal Code 2006*. Aurora, Ont: Canada Law Book Inc.

Department of Justice Canada. (2006, July 14). *Criminal Code of Canada* [On-line]. Available: <http://laws.justice.gc.ca/en/c-46/267426.html>.