

Minister of Justice  
and Attorney General of Canada



Ministre de la Justice  
et procureur général du Canada

The Honourable / L'honorable Rob Nicholson, P.C., Q.C., M.P. / c.p., c.r., député  
Ottawa, Canada K1A 0H8

AUG 24 2009

Ms. Linda MacDonald and Ms. Jeanne Sarson  
361 Prince Street  
Truro NS B2N 1E4

Dear Ms. MacDonald and Ms. Sarson:

Thank you for your correspondence concerning your proposal to amend the *Criminal Code* to create a specific offence for the torture of women and children by non-state actors. As you know, my colleague the Honourable Helena Guergis, Minister of State (Status of Women), has also forwarded to me a copy of her response on this issue. I regret the delay in responding.

The Government of Canada agrees that violence against persons must be prohibited by the criminal law and that such violence should be subject to penalties commensurate with the harm inflicted.

The definition of "torture," as it appears in the United Nations' *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, is any act by which severe pain or suffering is intentionally inflicted on a person by or with the consent or acquiescence of a public official for the purpose of obtaining a confession, or to punish, intimidate, coerce, or discriminate against that person or a third person.

As you may be aware, Canada is a State Party to the Convention and section 269.1 of the *Criminal Code* prohibits torture by public officials. The Code also prohibits violence committed against a person in the private sphere, which includes assault, ranging from simple assault (section 266) to aggravated assault (section 268); sexual abuse, ranging from sexual assault (section 271) to aggravated sexual assault (section 273); forcible confinement and kidnapping (section 279); trafficking in persons (sections 279); as well as specific sexual offences against children, many of which carry mandatory minimum penalties.

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In determining the appropriate sentence to impose in any given case, courts must take into consideration sentencing principles and objectives, including deterrence, denunciation, and reparation to the victims, as well as all mitigating and aggravating circumstances, including evidence that in committing the offence, the offender abused his/her spouse or a young person under the age of 18 years. Where the offence involved the abuse of a young person under the age of 18 years, sentencing courts must give primary consideration to the denunciation and deterrence of such conduct. Sentencing courts are also required to consider any impact statement that may have been prepared by the victim describing the consequential harm done to or loss suffered by the victim.

Accordingly, I believe that the *Criminal Code* already provides the needed prohibitions against acts of violence committed by non-state actors. The existing sentencing penalties and principles equally provide the necessary tools to ensure that the severity and impact of the violence on its victim is fully considered and reflected in the sentence imposed in these cases.

Thank you again for sharing your views on this issue.

Yours truly,



The Honourable Rob Nicholson