



## NEWS RELEASE

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### **A Setback for Human Rights Protection: Federal Court of Appeal Rules in Afghan Prisoner Case**

The British Columbia Civil Liberties Association and Amnesty International today expressed their considerable dismay that the Federal Court of Appeal has upheld a March 2008 Federal Court ruling that the Canadian Charter of Rights and Freedoms has no application to the actions of Canadian soldiers who handle prisoners apprehended in the course of fighting in Afghanistan. The Federal Court of Appeal also held that the Charter cannot prevent the Canadian Forces from transferring prisoners to a serious risk of torture. The Court's judgment was released on December 17, 2008.

The courts of a number of other countries, including the United States and the United Kingdom, have recognized that the constitutional and other national human rights protections of those countries do extend to the actions of their military personnel when operating abroad. "Canada is increasingly isolated among its allies in maintaining the view that this country's preeminent human rights document has no application to military forces once they leave Canadian soil," stated Grace Pastine of the British Columbia Civil Liberties Association.

"The Federal Court of Appeal has missed a valuable opportunity to ensure that the reach and scope of the human rights protections enshrined in the Charter is consistent with what is increasingly recognized as necessary and reasonable by the courts of other nations," said Alex Neve, Secretary General of Amnesty International Canada. "Canada has long stood for global leadership in human rights protection. But with the government's position on this crucial human rights issue, endorsed yesterday by the Court of Appeal, Canada is no longer a champion and increasingly a laggard."

Earlier this year, the Supreme Court of Canada concluded that the Charter of Rights did extend to the actions of Canadian officials who interrogated Omar Khadr in Guantánamo Bay because of the fact that his detention did not meet international human rights requirements. The Federal Court of Appeal concluded that the reasoning in the *Khadr* decision did not apply to the handling of prisoners by Canadian soldiers in Afghanistan. The Court ruling implies that the distinction may be because Omar Khadr is a Canadian citizen and prisoners apprehended in Afghanistan are not. Earlier Supreme Court of Canada decisions have made it clear that, except for the few provisions of the Charter that are explicitly tied to citizenship, Charter protections do extend to both citizens and non-citizens.

The appeal decision comes as part of the court application launched by the two organizations in February 2007 seeking a court order prohibiting Canadian Forces personnel from transferring prisoners into the

custody of Afghan officials because of the serious risk they will be tortured. The earlier Federal Court ruling and yesterday's Federal Court of Appeal decision conclude that prisoners do enjoy the protection of international human rights and humanitarian law standards. "Prisoners at risk of torture are assured they can avail themselves of the protection of international law," noted Paul Champ, lawyer for the two organizations. "That protection is entirely illusory, however, given that there is no international level court to turn to enforce those standards and it is not possible to use those international legal provisions as the basis of a Canadian court application."

The decision comes just one week after the Court heard the appeal, on December 10th, a day that marked the 60th anniversary of the UN's adoption of the Universal Declaration of Human Rights. "On a day when governments around the world should have demonstrated a determination to deepen their commitment to human rights protection, it was troubling to see the Canadian government continue to assert that the Charter of Rights was of no relevance to the actions of Canadian soldiers outside Canada," said Alex Neve. "It is disappointing that the Federal Court of Appeal has accepted that position, leaving prisoners in Afghanistan with no effective legal means to be protected from the serious risk of being tortured after being transferred into Afghan custody."

Given the serious human rights implications of the judgment, Amnesty International and the British Columbia Civil Liberties Association will seek leave to appeal to the Supreme Court of Canada.

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