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First Session, Thirty-ninth Parliament,
55 Elizabeth II, 2006

HOUSE OF COMMONS OF CANADA

BILL C-?

An Act prohibiting the commission, encouragement, use of or complicity in torture by
Canadian officials and ensuring freedom from torture for all Canadians at home or
abroad

FIRST READING, [date]

Draft bill prepared by the B.C. Civil Liberties Association

An Act prohibiting the commission, encouragement, use of or complicity in torture by Canadian officials and ensuring freedom from torture for all Canadians at home or abroad

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

SHORT TITLE

1. This Act may be cited as *The Prevention of Torture Act*

Purpose

PURPOSE OF ACT

2. The purpose of this Act is
 - (1) to clarify and strengthen Canada's position with respect to torture by
 - (a) prohibiting the commission of torture by the government of Canada and its agents,
 - (b) prohibiting encouragement of or complicity in torture,
 - (c) prohibiting the use of information acquired through torture by Canadian officials,
 - (d) placing obligations on the Canadian government and its agents to protect Canadian citizens from torture abroad; and
 - (e) placing obligations on the Canadian government and its agents to undertake timely and effective investigations to prohibit commission and encouragement of and complicity in torture;
 - (2) to ensure that Canada meets or exceeds the standards and obligations with respect to torture imposed on it by the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and the *International Covenant on Civil and Political Rights*;
 - (3) to direct that the Government of Canada and its agents conduct its affairs in a manner which consistently serves to keep both Canadians and foreign nationals free from torture in any matter in which Canada has jurisdiction or influence.

Definitions

INTERPRETATION

3. In this Act,

“department”

“Department” means the Department of Foreign Affairs and International Trade;

“*govern-
mental
agency*”

“governmental agency” means an investigative agency or a department of the federal government;

“*investigative
agency*”

“investigative agency” means the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the Canadian Security Establishment and any other governmental agency involved in the collection of information which may be relevant to the ability of a Canadian official to avoid committing an offence or fulfilling an obligation under this Act, other than the Department of Foreign Affairs and International Trade.

“*Minister*”

“Minister” means the Minister of Foreign Affairs;

“*official*”

“official” means

- (a) a peace officer,
- (b) a public officer,
- (c) a member of the Canadian Armed Forces,
- (d) any employee of, any agent of, or any contractor providing services for
 - (i) Parliament,
 - (ii) the Governor in Council,
 - (iii) the Government of Canada,
 - (iv) a Canadian consulate or embassy, or
 - (v) any agent corporation as defined in section 83 of the *Financial Administration Act*,

or any person who may exercise powers that would, in Canada, be exercised by a person referred to in paragraph (a), (b), (c) or (d), whether the person exercises powers in Canada or outside Canada.

“*sensitive
information*”

“sensitive information” means information relating to

- (a) national defence;
- (b) national security; or
- (c) national or international law enforcement.

“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 him or a third person information, a statement or a confession,
- (ii) punishing him for an act he or a third person has committed or is suspected of having committed,
- (iii) intimidating or coercing him or a third person, or

b) for any reason based on discrimination of any kind, but does not include an act or omission by which pain or suffering arises only from, inherent in or incidental to imprisonment in humane and reasonable conditions pursuant to due process of law.

Offence to commit torture

CRIMINAL OFFENCE OF COMMITTING TORTURE

4. Section 269.1 of the *Criminal Code*, which makes it an offence to inflict torture, is reaffirmed with the following amendments:

- (1) the definition of “torture” is repealed and replaced by the definition of “torture” in section 3 of this Act;
- (2) the definition of “official” is repealed and replaced by the definition of “official” in section 3 of this Act; and
- (3) in subsection (1), the words “fourteen years” are replaced by the words “twenty years.”

Parties to torture

PARTIES TO THE OFFENCE OF TORTURE

5. (1) Any official is a party to torture who would be a party under sections 21, 22, 22.1, 22.2, 23, 23.1, or 24 of the *Criminal Code*.

(2) Notwithstanding subsection 22(3) of the *Criminal Code*, for the purposes of determining who is a party to torture under the *Criminal Code*, “counsel” includes procure, solicit, incite, recommend, capitulate or encourage, whether implicitly or explicitly, by act or omission.

Offence to use information

CRIMINAL OFFENCE OF USING INFORMATION DERIVED FROM TORTURE

6. The *Criminal Code* is amended by adding the following after section 269.1:

*Intentional
use of
information*

269.2 (1) Every official who uses information he knew was derived from torture is guilty of an indictable offence and liable to imprisonment for a term not exceeding twenty years.

*Negligent use
of
information*

(2) Every official who uses information he ought to have known was derived from torture is guilty of a summary offence and liable to imprisonment for a term not exceeding six months.

Definitions

(3) For the purposes of this section,
(a) “official” has the same meaning as “official” for the purposes of s.269.1 of this Act, and
(b) “torture” has the same meaning as “torture” for the purposes of s.269.1 of this Act.

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.

*Use in
judicial
proceedings*

(4) No one commits an offence under this section who uses information derived from torture in connection with any judicial proceedings against a person accused of torture, or who communicates it to persons who are concerned in such proceedings.

*Transfer of
prisoners to
torture*

TRANSFER OF PRISONERS TO TORTURE

7. (1) No official shall expose any prisoner or detainee to substantial risk of torture by
- a) releasing, transferring or ordering the release or transfer of that prisoner or detainee into the custody of another person, group of people or government entity, or
 - b) intentionally or recklessly abandoning a prisoner or detainee,

where there are substantial grounds for believing that prisoner or detainee would be in danger of being subjected to torture.

- (2) Subsection (1) applies to any prisoner or detainee in the custody of any official, irrespective of
- (a) the residency or citizenship of the prisoner or detainee
 - (b) the location in which the prisoner or detainee is being held in custody, or
 - (c) the location in which or to which the transfer is to take or has taken place.

Scope and jurisdiction

SCOPE OF, AND JURISDICTION OVER, THE CRIME OF TORTURE

8. (1) Section 7(3.7) of the *Criminal Code* is amended by adding the following words to the end of paragraph (c):
- or Canadian official as defined in section 269.1 of this Act;
- (2) As amended by subsection (1), section 7 of the *Criminal Code* is deemed to apply to all prohibitions, offences and positive obligations created, enhanced or reaffirmed under this Act.

Torture information resources and watch-list

COLLECTION OF INFORMATION AND MAINTENANCE OF TORTURE-WATCH LIST

9. For the purpose of providing support to any official on whom this Act imposes an obligation or duty, the Minister shall designate an identified employee or working group within the Department to
- (1) collect, organize and make reasonably accessible timely information regarding the practice of torture abroad, sufficient to facilitate compliance with section 7 of this Act;
 - (2) respond in a timely fashion to requests from other officials for this information in a manner which takes into account all relevant circumstances including:
 - (a) the interests of national security,
 - (b) the obligations placed on the official requesting the information under this Act, and
 - (c) the spirit and purpose of this Act;
 - (3) maintain an updated list of countries the officials of which are known or suspected to engage in torture, taking into account all relevant intelligence and considerations including, where applicable, the existence of a consistent pattern of gross, flagrant or mass violations of human rights within that country; and

(4) disseminate the list referred to in subsection (2) to all officials who may be involved, directly or indirectly, in decisions which carry the potential to subject another person to torture.

Duty to report

DUTY TO REPORT

10. (1) If an official becomes aware of any information that gives that official reasonable grounds to suspect torture is being committed by a Canadian official other than an RCMP officer abroad, that official has a duty to report that information immediately to the RCMP.

(2) If an official becomes aware of any information that gives that official reasonable grounds to suspect torture is being committed by a member, employee, agent or contractor in the service of the RCMP, that official has a duty to report that information immediately to the Commission for Public Complaints Against the RCMP and the Minister.

(3) If an official becomes aware of any information that gives that official reasonable grounds to suspect torture is being committed by people other than Canadian officials abroad, that official has a duty to report that information forthwith in written form to the Minister's designate referred to in section 8.

*No
deportation
or extradition
to torture*

PROHIBITION ON DEPORTATION OR EXTRADITION TO TORTURE

11. (1) Notwithstanding the *Immigration and Refugee Protection Act*, no official shall expel, return, 'refouler' or extradite a person to another country where there are substantial grounds for believing that he would be in danger of being subjected to torture.

(2) For the purposes of determining whether the grounds referred to in subsection (1) exist, the official shall

- (a) consult all relevant materials available, including but not limited to, the list compiled in accordance with subsection 9(3), and
- (b) make a request pursuant to subsection 9(2) for any further information which may be relevant.

Information sharing

INFORMATION SHARING

12. (1) An official shall:

Requesting sensitive information

(a) prior to requesting sensitive information from foreign officials, take reasonable steps to ensure that the information requested is not derived from an act of torture, including but not limited to making a request pursuant to subsection 9(2) for any information which may be relevant;

Using and disseminating sensitive information from listed countries

(b) prior to using or disseminating sensitive information derived from foreign officials in countries that are listed pursuant to subsection 9(3),

- (i) seek a guarantee from an appropriate and competent foreign authority that the information to be used was not derived from torture; and
- (ii) take appropriate steps to assess the reliability of that guarantee and of the information itself.

(c) prior to disseminating sensitive information derived from foreign officials in countries listed pursuant to subsection 9(3),

- (i) mark that information as being derived from a country listed pursuant to this Act, and
- (ii) include an indication of its reliability according to the results of investigative measures taken pursuant to subparagraph (1)(b)(ii);

Providing information

(2) No official or investigative agency shall provide information to a foreign country where there is a credible risk that it will cause or contribute to the use of torture.

(3) For the purpose of meeting the obligations imposed under subsection (2), the following guidelines shall be incorporated in the information sharing policies and practices of investigative agencies and the Department:

- (a) if the information is to be provided to a foreign country listed pursuant to subsection 9(3), then:
 - (i) if there is any reasonable suspicion the information may be used for torture, the sharing of that information is prohibited; and

- (ii) if there is no reason to suspect the information may be used for torture, the information may be shared subject to a specific caveat that it shall not be used for torture.
- (b) if the information is to be provided to a foreign country which is not listed pursuant to subsection 9(3),
 - (i) if there is a reasonable likelihood the information will be used for torture, the sharing of that information is prohibited; and
 - (ii) if there is no reasonable likelihood the information will be used for torture, the information may be shared subject to a specific caveat that it shall not be used for torture.

Caveats

- (4) (a) If any official becomes aware that a caveat attached to information shared pursuant to subsection (3) has been violated, that official shall forward all relevant information forthwith to the Minister.
- (b) If the Minister, upon review of materials forwarded to him pursuant to paragraph (a) or by any other means, is convinced that a caveat referred to in paragraph (a) has been contravened, that Minister shall initiate and ensure that a formal objection is made to the foreign state who has committed the contravention in a manner appropriate to the seriousness of the contravention.

Response to torture of Canadians abroad

RESPONSE TO CANADIANS BEING TORTURED ABROAD

13. (1) If any official, including a Canadian consular official, becomes aware of any information that suggests a Canadian citizen is being or has been subjected to torture by any person, group of people or government entity abroad, that official shall immediately file a report outlining the grounds for that suspicion
- (a) to the Minister directly, or
 - (b) with another person within the Department designated for the purpose of receiving such reports and forwarding them immediately to the Minister if they evince a reasonable likelihood that a Canadian citizen is at risk of being tortured abroad.

Minister to undertake diplomatic measures

(2) If a report is filed pursuant to subsection (1), or if the Minister becomes aware in any other way that a Canadian citizen is likely to be at risk of being tortured while abroad, the Minister shall undertake all reasonable diplomatic measures to secure custody of and return that citizen to Canada, irrespective of whether or not that citizen is

- (a) a 'person of interest' to an investigative agency;
- (b) listed on any government watch list or border lookout list; or
- (c) a suspect or faces charges for any crime.

Exercise of consular rights

(3) The diplomatic measures referred to in subsection (2) shall include the exercise, to the fullest extent possible, of Canada's consular rights in relation to country in which the citizen is being detained, including the rights referred to in Article 36 of the *Vienna Convention on Consular Relations*.

Right to request assistance

(4) If the Minister initiates diplomatic measures pursuant to subsection (2), he may request the assistance of any other Canadian or foreign governmental agency in securing custody of and returning that citizen to Canada.

Duty to fulfill request

(5) A Canadian governmental agency receiving a request under subsection (4) shall make concerted efforts to fulfill the Minister's request.

Response protocol

(6) The Minister, in conjunction with investigative agencies and whichever other Canadian governmental agencies he deems appropriate, shall develop a protocol to provide for a coordinated strategy to respond in a timely fashion and with all due diligence to situations in which a Canadian citizen is being detained in a country where there is a credible risk that the citizen is being or may be subject to torture.

(7) The protocol referred to in subsection (6) must include:

- (a) requirements for mutual consultation among designated members of the agencies involved;
- (b) provisions for arriving at and implementing a unified approach in a timely fashion; and
- (c) political accountability for the protocol as a whole as well as the course of action adopted in any particular circumstance.

*Without
prejudice*

(8) No efforts undertaken by the Minister or any other governmental agency under this section shall be taken to undermine or prejudice in any way

(a) the ability of the Minister of Public Safety and Emergency Preparedness or the Attorney General of Canada to initiate or continue criminal or other proceedings against the citizen once he has returned to Canada; or

(b) the ability of any investigative or law enforcement agency to lawfully arrest, charge, or initiate or continue investigations involving that citizen.

*Coming into
force*

COMING INTO FORCE

14. This Act comes into force on a day to be fixed by order of the Governor in Council.