

Sunday, October 27, 2013

Toronto Chief of Police  
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Dear Toronto Chief of Police William Blair and Attorney General John Gerretsen;

**Re: Duty to arrest Richard Cheney as a person suspected on reasonable grounds of authorizing, counseling, aiding, abetting and failing to prevent torture.**

Richard Cheney, former Vice President of the United States of America is scheduled to speak in Toronto Ontario on 31 October 2013 at the Toronto Global Forum, hosted by the International Economic Forum of the Americas at the Metro Toronto Convention Centre.

Once Richard (Dick) Cheney enters Canada:

- All of the torture alleged against and admitted by Dick Cheney, is deemed to have taken place in Canada, pursuant to (s. 7(3.7) of the Criminal Code of Canada (CC);
- criminal proceedings can be commenced against him in Toronto Ontario BC (CC, s. 7(5);
- Canada must ensure that Dick Cheney is either investigated and prosecuted for the indictable offence of torture in Canada or extradited to another country willing and able to do so (Convention against Torture, Art. 7);
- Toronto Police Service (TPS) officers are duty bound to arrest and detain Dick Cheney for investigation on suspicion of torture as part of Canada's mandatory legal obligation to prevent and punish torture globally;
- TPS officers are duty bound to arrest Dick Cheney to ensure the proper conduct of his investigation and prosecution for torture in Canada or his extradition to a country willing and able to prosecute;
- TPS officers are duty bound to arrest Dick Cheney to prevent him from escaping to the United States or some other jurisdiction where he will have 'safe haven' from prosecution for torture;
- the arrest of Dick Cheney can be carried out without warrant in advance of the commencement of criminal proceedings in Canada.

As you are aware, the common law duty of police officers including TPS officers to investigate and prevent crimes such as torture, have been enacted by statute. TPS officers also have a mandatory duty to prevent offences against the administration of justice such as enabling a torture suspect (in this case a person who has admitted to authorizing and failing to prevent torture) to escape prosecution.

The duty to investigate and prevent torture also arises from the Crimes against Humanity and War Crimes Program (War Crimes Program), established to meet the challenge of investigating crimes committed outside Canadian territory. The mandate of the War Crimes Program is to "...support Canada's policy to

deny safe haven to suspected perpetrators of [torture]... and to contribute to the domestic and international fight against impunity.”<sup>1</sup>

The Crimes against Humanity and War Crimes Section has received and is reviewing a request from Lawyers against the War to ensure that Dick Cheney, if he enters Canada, is prosecuted for torture.

We remind you that neither Dick Cheney’s status as former vice president of the United States nor his status as a guest of the Toronto Global Forum or the International Economic Forum of the Americas constitutes a defense to torture or confers on him any temporary immunity from Canadian law. As you are aware, TPS officers are compelled by law to ensure that the criminal law is administered in accordance with s. 15(1) guarantee that, “[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination...”

The prohibition on torture cannot be derogated from under any circumstances including a claim of comity and Canada’s duty to prevent and punish torture is a duty owed to individuals *qua* individuals and takes precedence over any duties owed to the US as a state.<sup>2</sup>  
(See,

Inaction contravenes the *Articles on Responsibility of States for International Wrongful Acts*<sup>3</sup> that prohibit states from recognizing as lawful a serious breach of an obligation arising under a peremptory norm of international law such as freedom from torture.

### **Evidence of Complicity in Torture**

Evidence of Dick Cheney’s complicity in the widespread use of torture by the United States is well documented and widely available and Dick Cheney has publicly admitted to authorizing the use of torture. For a review of some of the evidence we refer you to LAW’s letters of [30 September](#) and [17 October](#) 2013 or go to [www.lawyersagainsthewar.org](http://www.lawyersagainsthewar.org). These letters contain accurate summaries of the law and references to evidence of the widespread use of torture under the authorization and direction of Dick Cheney and other high-ranking members of the administration of G.W. Bush.

The words of Maj. General Antonio M. Taguba, author of the U.S. Army’s 2004 internal report on Abu Ghraib, have been echoed by many scholars,

“... the Commander-in-Chief and those under him authorized a systematic regime of torture.... After years of disclosures by government investigations, media accounts, and reports from human rights organizations, there is no longer any doubt as to whether the current [Bush] administration has committed war crimes. The only question that remains to be answered is whether those who ordered the use of torture will be held to account.”<sup>4</sup>

### **The Law**

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<sup>1</sup> Overview of Operations, mandates and Structure, Canada’s Crimes Against Humanity and War Crimes Program: <http://www.justice.gc.ca/en/ps/wc/oms-ams.html>.

<sup>2</sup> [Duty to Prevent and Punish Torture](#): Summary of International Instruments and Canadian Law, [http://www.lawyersagainsthewar.org/tortureinfo/Duty\\_to\\_prevent\\_and\\_punish\\_torture.html](http://www.lawyersagainsthewar.org/tortureinfo/Duty_to_prevent_and_punish_torture.html)

<sup>3</sup> Adopted by the International Law Commission (53<sup>rd</sup> Sessions, 2001)

<sup>4</sup> Maj. General Antonio M. Taguba (USA-Ret.), Preface to *Broken Laws, Broken Lives: Medical Evidence of Torture by U.S. Personnel and its Impacts*, A Report by Physicians for Human Rights, June 2008. [http://brokenlives.info/?page\\_id=69](http://brokenlives.info/?page_id=69)

**Criminal Code of Canada;** Under s. 269.1 of the Criminal Code of Canada, torture is an indictable offence bearing a sentence of up to 14 years imprisonment. Aiding, abetting and counseling the use of torture are also offences. Torture is also a crime under the Crimes against Humanity and War Crimes Act. Once Dick Cheney enters Canada, the torture (both the torture he has admitted to authorizing and the torture that he is accused of) are deemed to have been committed in Canada as determined by the Criminal Code of Canada s. 7(3.7).

#### Jurisdiction

(3.7) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, being an accessory after the fact in relation to an offence against, or any counselling in relation to an offence against, section 269.1 shall be deemed to commit that act or omission in Canada if

...

(e) the person who commits the act or omission is, after the commission thereof, present in Canada. (Underlining added)

**2. Protecting Civil Liberties:** Attached is the Protesters' Guide to the Law of Civil Disobedience in BC: Take Back our Communities Edition, Sept. 22, 2011, by Leo McGrady Q.C.. The guide explains what constitutes lawful assembly and expression as part of protests conducted in public places and the lawful role of police.

We understand that TPS officers may be under pressure to resort to exceptional measures to shield Dick Cheney from people lawfully protesting his presence in Canada and the refusal of the Attorney General of Canada and the Minister of Citizenship and Immigration to enforce the applicable law which include the Immigration and Refugee Protection Act, the Criminal Code of Canada and other Canadian and binding international law prohibiting torture.

We remind you that the right to publicly protest is guaranteed by the *Charter of Rights and Freedoms*. It is therefore particularly important that TPS officers be adequately instructed to keep the peace during any citizens' protest that takes place on 31 October 2013 by protecting and ensuring the right to protest rather than suppressing or violating those rights. We hope the guide attached will be made available to officers involved in policing at or near the Metro Toronto Convention Centre, the site of the Toronto Global Forum.

We anticipate that protesters will be calling on the TPS to uphold and enforce Canadian law and Canada's international law obligations to prevent and punish torture wherever it occurs, whatever the nationality and status of suspected perpetrators and whatever the nationality of victims. We anticipate that protesters may try to engage officers in conversation on this issue or otherwise persuade officers to act to detain Dick Cheney.

The right (and duty) of individuals to vigorously express criticism of government policies and practices (in this case the refusal to bar Dick Cheney from Canada) in public spaces is the foundation upon which democracy rests. As expressed by Cory, J. in *R. v. Kopyto* (1987), 24 O.C.A. 81.

"... it is difficult to imagine a more important guarantee of freedom to a democratic society than that of freedom of expression. A democracy cannot exist without the freedom to express new ideas and to put forward opinions about the functioning of public institutions. These opinions may be critical

of existing practices in public institutions and of the institutions themselves. However, change for the better is dependent upon constructive criticism. Nor can it be expected that criticism will always be muted by restraint. Frustration with outmoded practices will often lead to vigorous and unpropitious complaints. Hyperbole and colourful, perhaps even disrespectful language may be the necessary touchstone to fire the interest and imagination of the public, to the need for reform, and to suggest the manner in which that reform may be achieved.”

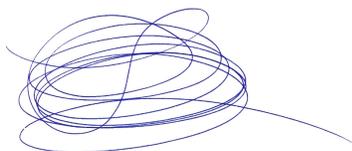
As further noted by Mr. Justice Cory in the above noted decision,

“History has repeatedly demonstrated that the first step taken by totalitarian regimes is to muzzle the media and then the individual in order to prevent the dissemination of views and opinions that may be contrary to those of the government.”

We are ready to arrange education sessions for your police officers as to their policing duties should Dick Cheney--a foreign national suspected on reasonable grounds of authorizing widespread torture outside Canada—enter Canada via Toronto. Given the paucity of international humanitarian law education and training available to police officers across Canada, the failure to provide special training as to the requirements of the law in this situation, may well result in officers misapprehending their duties.

We will make a summary of this letter available to interested members of the public and to officers attending any citizens’ protest.

Respectfully,



Gail Davidson

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