THE UGLY CANADIAN

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Last week we learned that our government has directed CSIS to use information which may have been derived from torture "where a serious risk to public safety exists, and where lives may be at stake". The responsible Minister issued this directive because Canada's number one national security priority is the "fight against terrorism". However, the Minister said that in light of Canada's domestic and international law obligations, CSIS must ensure that its actions do not appear to condone torture.

Canadian history is filled with examples of where our government has used national security objectives to violate our civil liberties and the rule of law. The confiscation of property of Japanese Canadians and the internment of Italian Canadians during the second world war or the "apprehended insurrection" in Quebec which led to the invocation of the *War Measure Act* in 1970 are but a few examples. We should always be wary of government using the "national security card" in order to evade its legal obligations and impair our democratic freedoms.

Although ensuring Canada's national security is a basic function of government, so too is ensuring that all government action conforms with the rule of law and our *Charter of Rights and Freedoms.* Terrorism is no excuse for Canada to rely upon the barbaric practice of

torture which our common law has regarded with abhorrence for over 500 years. Although Canadian operatives would not be engaging in torture, they would be using the product of torture. In short, Canada would be complicit in the use of torture. Up to now, we have rejected the use of or complicity in torture for three fundamental reasons.

First, torture is such an affront to human dignity that our international and domestic law have treated the right to be free from torture as an absolute right even in times of war. The previous Secretary General of the United Nations recently stated: "Let us be clear: torture can never be an instrument to fight terror, for torture is an instrument of terror". A few years ago the Supreme Court of Canada made similar observations when it reminded us that a response to terrorism within the rule of law preserves and enhances the cherished liberties that are essential to democracy and that it would be a pyrrhic victory if terrorism was defeated at the cost of sacrificing our commitment to values such as liberty, the rule of law and the principles of fundamental justice. Our international and domestic laws are clear - torture may not be used even in exceptional circumstances. The prohibition on torture is absolute.

On a personal level, Canada has recently seen the horrific effects of torture on the individual. In the Arar Inquiry, Commissioner Dennis O'Connor found that the consequences of Mr. Arar's torture by the Syrians was profound and included physical, psychological, family and communities, and economic effects. In particular, in regard to psychological effects, Mr. Arar's experiences were devastating. After he returned to Canada he was in a fragile state and was suffering from post traumatic stress. Years of

healing were required. All of this for a "confession" which was not worth the paper it was written on.

The second fundamental reason why our legal system rejects information derived from torture is a practical one. Our experience demonstrates beyond a reasonable doubt that such information is unreliable. It's not rocket science to appreciate why information obtained by torture is unreliable. As one is about to be waterboarded, most detainees would tell the torturer whatever he wanted to hear. This kind of inaccurate information will normally lead to a dead end at the cost of lengthy and wasteful investigations. Of course, there are some regimes such as the Bush-Cheyney administration, which lauded the fruits of information obtained by torture. However, they also believed that waterboarding does not constitute torture. In Canada we are aware of the consequences of using information obtained by torture. The Arar Inquiry analyzed and severally criticized Canadian officials for relying upon the "confession" which Mahar Arar gave the Syrian Military Intelligence while in detention in Syria.

The final reason for rejecting the fruits of torture is the slippery slope that this government direction will likely lead . History shows that when agencies rely on information derived from torture, even in exceptional circumstances, the practice may become regularized. After a while, people become immunized to such intolerable practices. Although the government has attempted to confine its directive to where there is a serious risk to public safety and where lives may be at stake, these words are open to various interpretations. I would venture to say that in light of the "global war against terror" many CSIS operatives

would view this exceptional situation to already exist in light of Al Qaeda's stated targeting of certain nations including Canada and our more aggressive foreign policy of late. Moreover, it is very easy for government to use "exceptional circumstances" as a veritable ticking time bomb situation to frighten the public and thereby justify its new policy. These ticking time bomb situations may happen in television shows but not in the real life of security intelligence today. Finally, this directive becomes part of Canadian policy... Canada now tolerates the use of torture in exceptional circumstances even though this is in violation of our international law obligations. No doubt, the agencies which regularly engage in torture, such as the Syrians or Jordanians, have taken due note of our position. In short, there will be little reason for them to cease these abhorrent practices. Canada, a leading free and democratic nation, has in effect given its imprimatur to the use of torture. Also, as a consumer of information obtained through torture, we are promoting a market for torture in foreign countries. Our international reputation has suffered enough recently without this added blow.

The silver lining in this story is that this government directive is now public. It is time for Canadians to stand up and tell our government that Canada will not be complicit in the use of torture. Hopefully, the publication of this story is the beginning and not the end of the debate. The rule of law and civil liberties are far too important to be left to politicians and CSIS bureaucrats. Although they may be acting in good faith in trying to protect Canadians, this directive is a misguided and dangerous affront to the fundamental values which have made Canada a human rights beacon for the rest of the world.

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