

LEGAL UPDATE: Prosecuting Bush in Canada for Torture

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On November 30 2004 Gail Davidson, co-chair of Lawyers against the War (LAW), filed an Informational Brief in the Provincial Court of B.C. charging George W. Bush as President of the United States and Commander-in-Chief of the U.S. Armed Forces with torture.

When Davidson went to court on December 6th to secure a date for a process hearing, the Attorney General applied to declare the information a nullity on the grounds that, as head of state, Mr. Bush was immune from prosecution. In an extraordinary action and over the objections of the reporter present, the courtroom was sealed and the press and public were excluded. Behind closed doors, the charges against Bush were stopped before any evidence could be heard.

An application for review of that decision was filed in the Supreme Court of B.C. The pre-hearing conference on Thursday is to determine a schedule for the exchange of arguments and authorities and to set a date for the review itself. The Attorney General wants to prevent the public and the press from attending this pre-hearing conference.

Many individuals and organizations around the world allege that George Bush has used his position as President of the United States and Commander-in-Chief of the U.S. Armed Forces to carry out torture that has included among its victims at least one Canadian (a minor) and many, perhaps thousands, of other non-Americans. These allegations and the evidence supporting them are widely available. LAW wants to present this evidence in court.

The Attorney General says that George Bush, as the President of the United States and a sitting head of state, is immune from prosecution. LAW insists that diplomatic immunity is irrelevant to this case of torture. Canadian jurisdiction to prosecute Mr. Bush was triggered when he came to Canada on November 30, 2004 and when a Canadian citizen became the victim of torture under Mr. Bush command.

The law is very clear on torture and LAW simply wants the law to be applied. Under international and domestic law, Canadians have a responsibility to prevent torture and to prosecute those who commit torture. LAW wants the hearing to be public so that Canadians can see justice being done.

Information note on the crime of torture

Torture is a unique international crime. Torture can only be committed by or through state officials. It is a crime universally condemned by Canada and other nations as one of the most egregious violations of both international human right law and international

humanitarian law. Torture is a war crime and a crime against humanity. The prohibition against torture is absolute torture cannot be justified by any circumstances. No nation holds torture to be legal.

The right to freedom from torture is universal and non-derogable it cannot be displaced even temporarily. Criminal law prohibits the torture of anyone.

International law says Canada owes a duty to the whole world to prosecute Mr. Bush for torture. Canada has a duty to act effectively to prevent further torture of the people in Abu Ghraib and Guantánamo Bay and to deter other states from using torture.

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