Canada complicit in illegal detention and torture of Omar Khadr

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Over the strenuous objections of the Canadian government, the country's Supreme Court has unanimously ruled that Ottawa must turn over to the legal defence team representing Omar Khadr, a Canadian citizen and Guantánamo Bay detainee, some of the Crown documents that pertain to his case.

Canada's highest court said the illegal nature of the infamous US detention center was why it upheld a Federal Court of Appeal decision of May 2007 that, under Section 7 of the Canadian constitution's Charter of Rights and Freedoms, Khadr's defence is entitled to Crown documents relevant to the case. (Section 7 states that the right to "life, liberty and security of the person" can only be denied "in accordance with the principles of fundamental justice.")

Although the Supreme Court did reject the Canadian government's claim that the Charter does not apply to Khadr because he is being detained in a foreign country, its May 23rd ruling was extremely limited.

The court was at pains not to appear critical of the US government and justice system. It limited Khadr's access to only some Crown documents, specifically denying him a copy of a document that is said to contradict a key US claim against him, and dictated that the release of any material be "...subject to the balancing of national security and other considerations as required by... the *Canada Evidence Act*."

In deference to national security, the court heard the Khadr case in closed session, with the media barred.

Khadr has been illegally and indefinitely confined by the US government at Guantánamo Bay since he was apprehended, at the age of fifteen, in the summer of 2002. In 2007 he was charged under the Bush administration's patently illegal drumhead military commission system with a long list of crimes, including murder.

The flagrantly illegal character of his detention, in violation of international laws on child soldiers and the Geneva Conventions, has been underscored by accounts of the brutal and degrading treatment he has suffered at the hands of his interrogators.

The attempt to deny Khadr access to Crown documents that could assist his defence is only the latest example of the complicity of the Canadian government in Khadr's detention and torture. Neither the previous federal Liberal government nor the current minority Conservative regime has ever protested Khadr's detention or requested he be extradited to Canada, let alone mounted any pressure on the US government to do so. He is the last remaining citizen of a Western country incarcerated at Guantánamo Bay.

The recent court case arises from the fact that representatives of the Canadian government have assisted US authorities in their investigation of Khadr, including interrogating him at Guantánamo Bay and turning over the transcripts of those interrogations to the US military.

In opposing Khadr's request for materials relating to Canada's role in his detention, the government argued that Canadian Security Intelligence Service (CSIS) agents who assisted in his interrogation were bound by US law since the interrogation took place on US soil (in Guantánamo Bay, Cuba.)

However, in its 9-0 ruling the Supreme Court ruled that "...principles of international law and comity of nations, which normally require that Canadian officials operating abroad comply with local law and which might otherwise preclude application of the *Charter* to Canadian officials acting abroad, do not extend to participation in processes that violate Canada's binding international human rights obligations.

"The process in place at Guantánamo Bay at the time Canadian officials interviewed [Khadr] and passed on the fruits of the interviews to U.S. officials has been found by the U.S. Supreme Court, with the benefit of a full factual record, to violate U.S. domestic law and international human rights obligations to which Canada subscribes. The comity concerns that would normally justify deference to foreign law do not apply in this case. Consequently, the *Charter* applies."

Canada's Supreme Court relied entirely on the findings of the US's highest court, scrupulously avoiding, so as not to offend the US government and elite, any independent judgment on the legality of the Guantánamo Bay process.

Its ruling applies to Khadr's interrogation by CSIS agents, but not any of the other critical documents relating to his case held by the Canadian government. Khadr's defence team was particularly anxious to gain access to a document said to cast considerable doubt, if not refute, the US claim that Khadr killed a member of the US military in the midst of a firefight in Khost

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province, Afghanistan. The US military suppressed the document and now claims it is lost. Ottawa has a copy but has refused to give Khadr access to it and now can continue to do so with the blessing of the Supreme Court.

According to Khadr's US military-appointed lawyer, Lieutenant-Commander Bill Keubler, "...the most important aspect of [this] is that the Supreme Court has said that Guantánamo Bay is illegal, and yet the Canadian government continues to do nothing to intervene on behalf of Omar Khadr."

US soldiers in Afghanistan captured Khadr during a July 27, 2002 assault upon a compound held by Afghani insurgents. After repeated air strikes, US infantry approached the compound under fire from inside the building. During the approach, Sgt. Speer was killed by a grenade lobbed over a wall. When the US soldiers entered the compound, they killed an armed insurgent and shot Khadr, who was crouching against a wall with his back to the door, twice in the back. He was then taken to the infamous prison at the Bagram Air Force Base, and after three months was flown to Guantánamo Bay.

In a sworn affidavit before a US military tribunal, Khadr detailed the treatment which he received at the hands of his interrogators at the two prisons, which included prolonged periods in stress positions while shackled to the floor, physical abuse while he was recuperating from his wounds, and the threat of rape.

After four and a half years of imprisonment as an "enemy combatant" at Guantánamo Bay, the US military commission charged Khadr with the murder of Speer, attempted murder, conspiracy, spying, and providing material support for terrorism.

Although Khadr was just 15 when he was detained, US authorities, with no protest from the Canadian government, have ruled that he will not be treated as a child soldier and can be tried as a war criminal (see "Guantánamo judge rules Omar Khadr, arrested at 15, can be tried as war criminal").

Now 21-years-old, Khadr has spent more than a quarter of his life in American custody. His defence in the military trial has been consistently hindered by the American and Canadian governments.

Early last month, officials at Guantánamo Bay confiscated hundreds of pages of documents in Khadr's possession. His lawyer says that when Khadr asked for the documents "...he was brought an empty box." The judge of the military tribunal threatened last week to suspend the trial should the US government not provide records of Khadr's interrogations to the defence. Yesterday the US military ordered that judge be replaced.

Canada's complicity in Khadr's ordeal has been graphically documented by him in sworn testimony.

In spring 2003, CSIS agents traveled to Guantánamo Bay to interrogate Khadr. "The visitors," says Khadr, "introduced themselves as Canadians. They stated that they knew my mother and grandmother in Scarborough, Canada. We met in a special conference room, rather than the usual interrogation room, and this room was more comfortable. We met for approximately 2-3 hours. Rather than asking me how I was, the visitors had a lot of questions for me.

"I was very hopeful that they would help me. I showed them my injuries and told them that what I had told the Americans was not right and not true. I said that I told the Americans whatever they wanted me to say because they would torture me. The Canadians called me a liar and I began to sob. They screamed at me and told me that they could not do anything for me. I tried to cooperate so that they would take me back to Canada. I told them that I was scared and that I had been tortured."

Several months later, another two CSIS agents interrogated Khadr. After a short period of time, the two agents "...yelled at me and accused me of not telling the truth. One of the Canadian men stated, 'The U.S. and Canada are like an elephant and an ant sleeping in the same bed,' and that there was nothing the Canadian government could do against the power of the U.S.'"

Lawyers for Canada's Ministry of Justice have refused to confirm or deny where they sent the information derived from the CSIS investigation or if there were any restrictions upon its use. However, former CSIS director Jack Hooper testified that the agency handed transcripts of the interviews over to the US government and did not ask that they not be used by the prosecution in Khadr's military tribunal.

The Supreme Court said this act—the unqualified handing over of CSIS documents to US officials—violated Canada's obligations under international law and brought Khadr's *Charter* rights into effect.

While the governments of US allies Great Britain and Australia reluctantly demanded and secured the extradition of their citizens held in Guantánamo Bay, Canada's government, under the Liberals and Conservatives, have not only refused to do so; they have been assisting and continue to actively assist his prosecution under the patently illegal war commission's system.

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