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November 24, 2009

Special Committee on the Canadian Mission in Afghanistan
House of Commons
Ottawa, Ont. K1A 0A6

MR. RICK CASSON - Chair

Dear Sir:

Re: Meeting of November 18, 2009 – Richard Colvin

Further to the meeting of the Special Committee on the Canadian Mission in Afghanistan held November 18, 2009, I am writing to respond to the Committee's request for documents from Mr. Colvin, and also to provide clarity on responses made by Mr. Colvin to questions posed by the Committee.

The Committee's request for documents

The Committee asked whether Mr. Colvin would be willing to share with the Committee any of his reports or other documents. I confirm that on November 18, Mr. Colvin had in his possession the reports that he sent from Kandahar and Kabul that relate to detainees.

My client overall has in his possession a large number of reports that he wrote from Afghanistan between May 2006 and October 2007. Those that directly relate to detainees have been marked with an asterisk in the attached list of those reports. The Kandahar reports were sent in Mr. Colvin's capacity as Political Director at the Provincial Reconstruction Team, in May and June 2006. These are the only reports from the PRT in my client's possession. Both relate directly to areas of the Committee's interest. The remainder are reports sent from the Canadian Embassy in Kabul between August 2006 and October 2007. They were drafted by Mr. Colvin in his capacity as Head of the Political Section and Chargé d' Affaires.

On the list are two documents that fall outside the above framework:

- a) The annual human rights report, listed as having been sent in January 2007, was drafted primarily by Catherine Bloodworth, the embassy's human rights officer. While Mr. Colvin contributed some relevant portions and signed off on the report, it is not in his possession.
- b) An end-of-assignment report that Mr. Colvin wrote for Mr. David Mulroney in October 2007, but did not send. It was intended as a constructive internal critique – similar to the 'dissent channel' that exists within the US State Department – of three issues that in my client's judgment were of great importance: Detainees; Governor of Kandahar Asadullah Khalid; and the overall management by DFAIT and Mr. Mulroney of Canada's mission in Afghanistan. My client believes that this report is directly relevant to the work of the Committee. It is of ambiguous security status. Because it was never sent, it was never given a classification. The Department of Justice has a copy, with the original in Mr. Colvin's possession.

My client assesses the list of these reports to be unclassified. He provided a copy, in September 2009, to the Military Police Complaints Commission, in the presence of a representative of the Department of Justice. The government, neither at the time nor subsequently, expressed any concerns over the transfer to MPCC of this index, even though Section 38 had already been invoked. Since the government did not object to delivery of the index to the MPCC, it is apparent that the document is indeed unclassified and therefore does not fall under the provisions of Section 38. Please find attached that 8 page list of reports.

My client is willing to abide by requests from the Committee for delivery of all relevant documents in his possession, and takes the view that many of the documents referenced in the index are directly relevant to the Committee's work.

Differing interpretations of the applicability of Section 38

We are aware that the Law Clerk and Parliamentary Counsel has advised that statutory provisions, including those under the *Canada Evidence Act*, do not apply to the proceedings of a House committee. However, on November 17, a DFAIT official advised Mr. Colvin that *Canada Evidence Act* provisions apply to parliamentary hearings, even those held *in camera*. On the morning of November 18, officials in DFAIT advised Mr. Colvin in writing that the Government of Canada (GoC) does not accept the Law Clerk's legal opinion. Those officials instructed as follows: "GoC does not share the Clerk's view of the effect of the laws adopted by Parliament on Parliamentary proceedings and as a Public Servant we trust that you will conduct yourself according to the interpretation of the GoC. Should there be any concerns expressed by members of the Committee, those concerns should be referred to government counsel."

Officials in DFAIT and the Department of Justice had earlier directed Mr. Colvin not to deliver any documents that may be subject to a notice issued under s. 38 of the *Canada*

Evidence Act in respect of his evidence. Given DFAIT's interpretation of the Act's applicability to Committee proceedings, and the potentially grave repercussions to Mr. Colvin for violating provisions of the *Canada Evidence Act*, Mr. Colvin is not now in a position to comply with the Committee's request for documents without further instruction or resolution of the question of the applicability of s. 38 to the documents.

As you may be aware, in April 2009, after my client was first advised that he would be subpoenaed by the MPCC, a Department of Justice lawyer embedded in DFAIT informed him in writing that the Department of Justice would determine which of Mr. Colvin's documents he would require in order to prepare for the MPCC hearings and to respond to their subpoena.

On September 4, 2009, the Department of Justice notified Mr. Colvin that "an official has given notice, pursuant to s. 38 of the *Canada Evidence Act* (CEA), with regard to the information that Mr. Colvin may disclose either during this pre-hearing interview or at a public hearing." The letter advised Mr. Colvin that, as a result of the invocation of Section 38, his scheduled interview with counsel for the MPCC could not occur, nor could he provide any documents to MPCC despite their subpoena.

On November 16, 2009 the Department of Justice, through embassy personnel in Washington, inquired how Mr. Colvin had acquired separate, unredacted copies of his reports from Afghanistan, and instructed him to surrender all reports from Afghanistan in his possession to the Department of Justice. The next day, on November 17 DFAIT provided Mr. Colvin with a small portion of his reporting from Afghanistan in redacted form.

Mr. Colvin's responses to the Committee

On November 18, Committee members asked Mr. Colvin whether his reports from Afghanistan were seen by any government ministers. At the time, Mr. Colvin advised that he was unable to answer the question precisely, and suggested that he did not typically copy ministers on his reports from the field. However, Mr. Colvin has since gone back to verify the accuracy of his response to the Committee. He can now confirm that contrary to his initial answer, he did in fact copy the office of the Minister of Foreign Affairs on some of his reports from Afghanistan that relate to detainees. We apologize for any confusion caused by this inadvertent inaccuracy in Mr. Colvin's initial response to the Committee.

Please do not hesitate to contact me if you have any questions with regard to the foregoing.

Best regards,

LORI G. BOKENFOHR

UNCLASSIFIED

Richard Colvin: Reports (May 2006 to October 2007)

May 2006

* Report on International Committee of the Red Cross concerns over procedural problems with notification by Canadian Forces (May 26)

June 2006

* Report on Kandahar prison and Afghan detainees (June 2)

August 2006

Report on the introductory meeting of the Security Operations Group (SOG) of the Policy Action Group (PAG) 'war cabinet' (Aug 8)

Report on informal Joint Coordination and Management Board meeting on biannual progress report (date?)

Report on 'Tea Group' meeting of like-minded embassies on corruption (Aug 11)

Report on meeting with LGen David Richards on auxiliary police (Aug 14)

Report on PAG 'war cabinet' on the Afghan Development Zone ('inkblot') concept (Aug 14)

Report on meeting with UN Special Representative of the Secretary General Tom Koenigs (Aug 14)

Report on Karzai/ donor discussion on security, Afghan Development Zones and auxiliary police (Aug 16)

Report on PAG 'war cabinet' of 10 August (Aug 18)

Report on PAG implementation and coordination team (IACT) meeting (Aug 21)

Report on US-Canadian cooperation to build roads in Kandahar (Aug 28)

Report on ISAF in Kandahar (Aug 28)

Report on 'Tea Group' meeting on Pakistan (Aug 28)

September 2006

Report on ISAF offensive against Taliban in Panjwayi (Sep1)

Report on recruitment of auxiliary police in southern Afghanistan (Sep 4)

Report on PAG 'war cabinet' – Auxiliary police, Afghan Development Zones and provincial PAGs (Sep 5)

Report on IACT meeting on polio, communications, Afghan Development Zones (Sep 5)

Report on Canada and Operation Medusa – meeting with LGen. David Richards (Sep 8)

Report on new offensive in Panjwayi (Sep 8)

Report on visit by Minister of National Defence Gordon O'Connor to Kabul (Sep 9)

Report on SOG: Auxiliary police rollout, and PAG visit to Kandahar (Sep 12)

Report on PAG 'war cabinet': Panjwayi, auxiliary police, provincial PAG (Sep 16)

Report on meetings with parliamentary leaders (Sep 16)

* Report on ISAF concerns with Canadian detainee notification (Sep 19)

Report on Panjwayi, auxiliary police, Afghan Development Zones, security update (Sep 23)

Report on Panjwayi and auxiliary police (Sep 23)

Report on proposals to overhaul the Disarmament of Illegal Armed Groups process (Sep 26)

Report on meeting with Combined Security Transition Command -Afghanistan (Sep 27)

* Update on ISAF concerns with Canadian detainee notifications (Sep 28)

Report on Governor of Kandahar Asadullah Khalid (Sep 29)

Report on meetings of PAG security and development sub-groups (Sep 30)

October 2006

Report on Afghan National Army (Oct 3)

Report # 1 on PAG 'war cabinet' hosted by President Karzai -- Kandahar and Panjwayi (Oct 4)

Report # 2 on PAG 'war cabinet' hosted by President Karzai -- security, development, communications (Oct 5)

Report on Governor of Kandahar Asadullah Khalid (Oct 13)

Report on Afghan National Police (Oct 15)

Report on Pakistan's role in Afghanistan (Oct 16)

Report on Afghan National Security Force deployments in southern Afghanistan (Oct 26)

Report on Governor of Kandahar Asadullah Khalid (Oct 27)

Report on a visit by CIDA minister Josée Verner to Afghanistan (Oct 27)

Report on police reform in Afghanistan (Oct 30)

November 2006

Report on the UN Assistance Mission in Afghanistan (Nov 18)

Report on visit by National Security Advisor Margaret Bloodworth and CIDA President Robert Greenhill to Kabul and Kandahar (Nov 27)

Report on PAG 'war cabinet' – Musa Qala, Afghan Development Zone expansion (Nov 29)

December 2006

Report on renovation of Kandahar-Spin Boldak road (Dec 3)

* Report on detainee policy issues (Dec 4)

Report on meeting with ISAF commander Gen. David Richards and Regional Command -South commander Mgen. Ton van Loon on ISAF's strategy for the south (Dec 10)

Report on PAG 'war cabinet' – Musa Qala, governance, southern PAG (Dec 11)

Report on meeting between President Karzai and Clerk of the Privy Council Kevin Lynch (Dec 15)

Report on meeting between LGen. David Richards and Clerk of the Privy Council Kevin Lynch (Dec 16)

Report on the firing of Helmand governor Daoud (Dec 17)

Report on demarche on Canada's human rights resolution vs. Iran (Dec 18)

Comments on security issues at the Kandahar PRT (Dec 19)

Report on the PAG 'war cabinet' hosted by President Karzai in Kandahar (Dec 19)

Report on discussions with US and UK on the south (Dec 20)

Report on discussions on the south with Dutch, US, UK, Australia and ISAF (Dec 22)

Message on auxiliary police recruitment in Kandahar (Dec 23)

Message on auxiliary police recruitment in Kandahar (Dec 24)

Message on the arrest of Gen. David Richards' interpreter (Dec 25)

Message on Afghan National Army deployments to Kandahar (Dec 26)

Report on the UN Assistance Mission to Afghanistan (UNAMA) in Kandahar (Dec 27)

January 2007

* Embassy annual human rights report on Afghanistan

Report on PAG 'war cabinet' – security, Musa Qala (Jan 23)

February 2007

Report on the Taliban spring offensive (Feb 4)

Report on the south: Musa Qala, poppy eradication and Uruzgan (Feb 5)

Report on PAG 'war cabinet': Auxiliary police and funding for governors (Feb 11)

Report on Afghan border patrol/ urban police force (Feb 13)

Report on introductory call on new ISAF commander Gen. Dan McNeill (Feb 15)

Report on visit by the Afghan Foreign Minister to Canada, the next Joint Coordination and Management Board meeting, and elections (Feb 19)

Report on European Union-hosted meeting on reconciliation, media law, police (Feb 20)

Report on demarche to the Minister of Interior on an investigation (Feb 25)

Report on PAG 'war cabinet' on governors' operational funds (Feb 26)

Report on Governor of Kandahar Asadullah Khalid (Feb 26)

Report on PRT Executive Steering Committee meeting (Feb 26)

Report on police reform (Feb 28)

April 2007

Report on ongoing Ministry of Interior investigation (April 3)

Report on police reform (April 6)

Exchanges with the Kandahar PRT on auxiliary police in Kandahar (April 8)

Report on 'Tea Group' meeting on the Joint Coordination and Management Board and UN Assistance Mission to Afghanistan (April 9)

Report on private-sector investment in Afghanistan (April 9)

Report on the Dahla dam (April 9)

Report on Afghanistan and Pakistan (April 12)

Report on a kidnapping case (April 15)

Report on the UN High Commissioner for Refugees "kitchen cabinet" group on refugee policy (April 16)

Report on meeting with Foreign Minister Rangin Spanta (April 16)

Report on meeting with ISAF commander Gen. Dan McNeill (April 17)

Report on the UN Assistance Mission for Afghanistan in southern Afghanistan (April 18)

Report on a 'consular' case (April 19)

* Report on UK, Dutch, Australian and US detainee approaches (April 20)

Report on Disarmament of Illegal Armed Groups (DIAG) meeting with Afghan governors (April 22)

* Message with recommendation on detainees (April 23)

Message on meeting with Attorney-General Sabit (April 23)

* Message re: demarche on detainees (April 23)

* Message re: demarche on detainees (April 24)

* Message with recommendations on 'Detainee Diplomatic Contingency Plan' (April 24)

* Message with recommendations on Afghan detainees (April 25)

* Two messages on detention facilities (April 25)

* Message on possible demarche to President Karzai on detainees (April 25)

* Report on demarche to NDS chief Amrullah Saleh on detainees (April 25)

* Report on demarche to Karzai's chief of staff Omer Daoudzai on detainees (April 25)

* Report on the Afghanistan Independent Human Rights Commission (April 25)

* Report on meetings with the International Committee of the Red Cross and UN Assistance Mission to Afghanistan (draft, edited version, not sent)

* Report on meetings with the International Committee of the Red Cross and UN Assistance Mission to Afghanistan (approved version, April 30)

* Report on Dutch procedures for detainees (April 30)

May 2007

* Report on detainees: Options/ ideas for building capacity (May 3)

* Message with comments on draft Standard Operating Procedures for monitoring detainees (May 3)

* Further message on draft Standard Operating Procedures (May 4)

Report on Afghan media issues (May 7)

* Report on detainees: Request by Afghanistan Independent Human Rights Commission, and UK proposal (May 7)

Report on Kandahar governor and *Globe & Mail* allegations of torture (May 7)

Report on alleged suicide bomber (May 10)

Report on death of Mullah Dadullah (May 14)

Report on consular case (May 14)

Report on PAG 'war cabinet' on governors' outreach funds, security (May 15)

Report on UNHCR refugee "kitchen table" meeting (May 18)

June 2007

Report on UNHCR refugee "kitchen table" meeting (June 5)

* Report on site visit to National Directorate of Security detention facility in Kabul (June 6)

* Report on meeting with the International Committee of the Red Cross (June 9)

* Report on meeting with National Directorate of Security chief Amrullah Saleh (June 21)

Report on security situation in Kabul and the north (date?, sent?)

Report on NGO problem (June 26)

Report on 'Tea Club' meeting – civilian casualties, Government of Afghanistan appointments, and the Rome process on justice reform (June 29)

* Messages on detainee site visits (June 30)

Report on PAG 'war cabinet' – civilian casualties, counter-narcotics (June 30)

July 2007

* Report on proposal to renovate NDS facility in Kabul (July 4)

Report on the Strategic Advisory Team and other countries' embeds in Afghan ministries (July 9)

Report on visit by Attorney General Sabit to Kandahar (July 14)

Report on 'security' detainee (July 17)

* Report on meeting with UNAMA on regional actors, the insurgency (July 17)

Message on Iran and Afghanistan (July 17)

Report on refugees (July 17)

Report on possible parliamentary visit to Canada (July 19)

Report on the European Union police mission and Ministry of Interior reform (July 27)

August 2007

Report on European Union-hosted meeting on the EU police mission (August 23)

* Report on ISAF Regional Command-South meeting on detainees (August 27)

Assessment of Afghanistan security trends (August 31)

September 2007

Report on embassy visit to the Panjshir valley (September 14)

Note on NGO problem (date?)

Report on European Union police mission (September 14)

October 2007

* End-of-assignment report to David Mulrone (drafted but never sent)