



July 30, 2008

The Honourable Rob Nicholson, P.C., Q.C., M.P.  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H6

The Honourable Stockwell Day, P.C., M.P.  
Minister of Public Safety and Emergency Preparedness Canada  
269 Laurier Avenue West  
Ottawa, ON K1A 0P8

Dear Ministers,

**Re: Capital Punishment of Canadians Abroad**

I am writing on behalf of the Canadian Bar Association concerning the assistance provided by the Canadian government when its citizens face capital punishment in foreign countries. The CBA represents over 37,000 lawyers, law students, academics and notaries from across the country, and our mandate includes improvement in the law and the administration of justice.

In November, 2007, Minister Day announced that Canada would no longer intervene on behalf of Canadians who face the death penalty in other countries that have democratic governments. In May, 2008, another report said that Canada would make clemency requests, but on a “case by case” basis. The Minister has appealed to Saudi Arabia for clemency for Mohamed Kohail, but not for Ronald Smith on death row in Montana.

The CBA has expressed its opposition to the death penalty through a resolution of our National Council. We believe that a policy of never intervening or of intervening only in particular cases is inconsistent with Canada’s fundamental opposition to the death penalty. We urge the Government of Canada to clearly commit to seek clemency for *all* Canadians who face the death penalty in *any* country.

There are several compelling reasons for our position.

***Canada is opposed to the death penalty***

For decades, Canadians have expressed their opposition to the death penalty. That opposition was most recently expressed in an open vote in the House of Commons.<sup>1</sup> That opposition has further been echoed worldwide, including by the United Nations.

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<sup>1</sup> 39<sup>th</sup> Parliament, 2<sup>nd</sup> Session, Hansard #065 (March 12, 2008).



***Canadian law does not permit extradition of its citizens where they may face the death penalty***

In the *United States v. Burns and Rafay*,<sup>2</sup> the Supreme Court of Canada held that an extradition request for Canadians to the United States without assurances that they would not face the death penalty could be refused. By this decision, the Court recognized the logical force of not permitting Canadians to face the death penalty in other parts of the world when they could not face that penalty in their own country.

The principled extension of Canada's rejection of the death penalty as a form of punishment regardless of the offence requires government action when Canadians face the death penalty in other countries.

***Ad hoc requests for clemency lack moral force***

If Canada wishes to persuade other countries to exercise clemency in certain situations, it must do so from a solid moral ground. Anything less will be unlikely to persuade those countries. Only by showing Canada's position that the death penalty is wrong wherever and whenever it is carried out do we stand a chance of being effective in convincing the country in question.

***A request for clemency should not be based on another country's institutions***

Requesting clemency on the basis of whether the institutions of another country are "democratic" or not carries with it an inappropriate judgment of that country. Clearly, a request for clemency in any case, no matter how sympathetic and deserving, is unlikely to be well received if it implicitly suggests that Canada has judged the other country's justice system to be inadequate and undemocratic. Another reality is that Canada may be reluctant to make the request at all, no matter what the other country's policies happen to be, if that country is a close ally or trading partner. When the matter is quite literally one of life and death, we suggest that this assessment should not be the basis for Canada's decision whether or not to act.

***Ad hoc request for clemency will not be seen as principled***

Different cases gain different levels of attention, interest and public sympathy. Public reaction may well be unrelated to the actual legal merit of the particular case against a Canadian citizen. An *ad hoc* or case by case review for Canadians facing the death penalty abroad may suggest that cases garnering more public or media attention are more deserving of thorough review and consideration. This is not a legitimate way of proceeding. It could bring the entire review process into disrepute and devalue the critical concern over human error in the administration of the death penalty.

We thank you for considering our views. For all the reasons outlined above, the CBA asks that the Government of Canada adopt an unequivocal position that clemency will be sought for all Canadians abroad facing the death penalty.

Yours truly,

*(Original signed by Bernard Amyot)*

Bernard Amyot

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<sup>2</sup> [2001] 1 SCR 283.