

CSIS would use torture-tainted info, briefing notes say

Jim Bronskill

Ottawa — The Canadian Press

Published on Sunday, Sep. 12, 2010 4:02PM EDT

Canada's spy agency says it would use information obtained through torture to derail a possible terrorist plot – a position critics argue will only encourage abusive interrogations.

The statement from the Canadian Security Intelligence Service, contained in briefing notes released to The Canadian Press, echoes remarks by a spy agency official that sparked a public controversy – and a quick retraction – last year.

CSIS will share information received from an international partner with the police and other authorities “even in the rare and extreme circumstance that we have some doubt as to the manner in which the foreign agency acquired it,” say the notes prepared for CSIS director Dick Fadden.

The notes say although such information would never be admissible in court to prosecute someone posing an imminent threat, “the government must nevertheless make use of the information to attempt to disrupt that threat before it materializes.”

The CSIS position is “alarming” and contravenes a federal government directive to the spy agency to shun brutal methods, NDP public safety critic Don Davies said. “CSIS appears to be trying to open the door to be able to rely on information derived from torture, and that's in violation of the policy.”

The federal directive, made public last year, says the government “is steadfast in its abhorrence of and opposition to the use of torture by any state or agency for any purpose whatsoever.”

It instructs CSIS to “not knowingly rely upon information which is derived from the use of torture” and to take measures “to reduce the risk that any action on the part of the Service might promote or condone, or be seen to promote or condone the use of torture.”

The CSIS position spelled out in the briefing notes falls short of an “absolute repudiation” of torture, said Alex Neve, secretary general of Amnesty International Canada. On the contrary, it indicates the spy agency would use information gleaned through coercive tactics, he said.

“And that's problematic, because anything that sends a signal to torturers that there's a ready and willing market for the fruits of their misdeeds is only going to encourage further torture.”

The briefing notes, drafted for Mr. Fadden's June interview with CBC television, were recently obtained by The Canadian Press under the Access to Information Act. The CBC did not raise the subject of torture during the interview.

Critics say torture is not only a barbaric violation of fundamental human rights, but a highly unreliable method of intelligence gathering because people being abused will often say anything to make the pain stop.

CSIS has never condoned torture and finds it abhorrent, the briefing notes say.

They add, however, that Canadians would not forgive the intelligence service if it completely ignored information that could have been used to investigate and prevent a terrorist attack because that tip came from a country with a suspect human rights reputation.

In addition to sharing such information with Canadian police, CSIS would pass it to relevant foreign agencies after taking steps to ensure it would be used appropriately, the notes say.

Mr. Neve said Amnesty International is not suggesting CSIS turn a blind eye to suspect information about a possible threat.

“If a signal has come to their attention that a threat, a potential attack, is in the offing, then other avenues need to be pursued to explore and see whether that truly is a legitimate threat, other avenues which don't involve further complicity in torture,” Mr. Neve said.

A federal inquiry by Mr. Justice Dennis O'Connor into the Maher Arar torture affair recommended in 2006 that policies include specific directions “aimed at eliminating any possible Canadian complicity in torture, avoiding the risk of other human rights abuses and ensuring accountability.”

Mr. Arar, a Syrian-born Canadian, was jailed in Damascus and tortured into giving false confessions about terrorist links.

CSIS maintains it has implemented all of Judge O'Connor's recommendations to prevent a recurrence.

But the spy agency's position on torture hasn't always been clear.

In March last year, CSIS lawyer Geoffrey O'Brian told the Commons national security committee the agency would use information gathered through torture in the rare instance that it could prevent a catastrophic terrorist plot like the 1985 Air India bombing or the 9/11 attacks.

“The simple truth is, if we get information which can prevent something like the Air India bombing, the Twin Towers – whatever, frankly – that is the time when we will use it despite the provenance of that information.”

Mr. O'Brian's comments drew sharp criticism from opposition MPs and human-rights advocates, and prompted then-public safety minister Peter Van Loan to quiz Jim Judd, CSIS director at the time, about the agency's policy on torture.

Mr. O'Brian backpedaled two days later, telling the committee in a letter that CSIS does not condone torture, nor knowingly rely on information obtained through such means.

The latest briefing notes say CSIS would “follow up on any and all leads” related to an imminent threat to Canada or Canadian interests. “We would be remiss in our duties if we did not.”

Mr. Davies said the government and CSIS must clearly condemn the use of force to get people to talk.

“It can't be equivocal, where, ‘Well, if the information's really important to us, then it's OK.’ Otherwise, you really don't have a prohibition on the use of torture.”

The latest CSIS statements beg clarity, Mr. Neve said.

“I think we are still left in a very confused and uncertain place, and that's not where we should be when it comes to something as profoundly important as how the issue of torture is being handled.”