



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

STRENGTHENING THE CANADIAN CONSULAR SERVICE TODAY AND FOR THE FUTURE

**Report of the Standing Committee on Foreign Affairs
and International Development**

Michael Levitt, Chair

**NOVEMBER 2018
42nd PARLIAMENT, 1st SESSION**

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Standing Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website
at the following address: www.ourcommons.ca

**STRENGTHENING THE CANADIAN CONSULAR
SERVICE TODAY AND FOR THE FUTURE**

**Report of the Standing Committee on
Foreign Affairs and International Development**

**Michael Levitt
Chair**

NOVEMBER 2018

42nd PARLIAMENT, 1st SESSION

NOTICE TO READER

Reports from committee presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT

CHAIR

Michael Levitt

VICE-CHAIRS

Hon. Erin O'Toole

Hélène Laverdière

MEMBERS

Ziad Aboultaif

Leona Alleslev

Frank Baylis

Pamela Goldsmith-Jones (Parliamentary Secretary — Non-Voting Member)

Kamal Khera (Parliamentary Secretary — Non-Voting Member)

Hon. Andrew Leslie (Parliamentary Secretary — Non-Voting Member)

Raj Saini

Jati Sidhu

Anita Vandenbeld

Borys Wrzesnewskyj

OTHER MEMBERS OF PARLIAMENT WHO PARTICIPATED

John Barlow

Luc Berthold

James Bezan

Hon. Steven Blaney

Pierre Breton

Linda Duncan

Rosemarie Falk

Sean Fraser

Marilyn Gladu

Tom Kmiec

Alaina Lockhart
Marc Miller
Hon. Robert D. Nault
Robert-Falcon Ouellette
Pierre Paul-Hus
Joe Peschisolido
Deborah Schulte
Bev Shipley
Gagan Sikand
Francesco Sorbara
Marwan Tabbara
Geng Tan

CLERK OF THE COMMITTEE

Angela Crandall
Erica Pereira

LIBRARY OF PARLIAMENT

Parliamentary Information and Research Service

Allison Goody, Analyst
Brian Hermon, Analyst
Scott McTaggart, Analyst

THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT

has the honour to present its

TWENTY-FIRST REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied the provision of assistance to Canadians in difficulty abroad (consular affairs) and has agreed to report the following:

TABLE OF CONTENTS

LIST OF RECOMMENDATIONS	1
STRENGTHENING THE CANADIAN CONSULAR SERVICE TODAY AND FOR THE FUTURE	5
INTRODUCTION	5
CONSULAR AFFAIRS IN CONTEXT	6
THE LEGAL AND POLICY REGIME GOVERNING CANADIAN CONSULAR SERVICE.....	8
A. Perspectives on Enshrining a Right to Consular Service.....	9
B. Limitations to the Crown Prerogative	12
C. Strengthening Canada’s Consular Framework.....	14
COMPLEX CONSULAR CASES.....	15
A. Kidnapping and Ransom Cases.....	16
1. Perspectives on the Payment of Ransom and the Government of Canada’s Policy in Response to Kidnapping Incidents	17
2. The Criminalization of Ransom Payments	20
3. Supporting the Victims of Kidnapping.....	24
B. Cases of Dual Citizens in Distress Abroad	25
1. International Cooperation on Consular Protection for Dual Citizens	27
C. The Torture, Mistreatment and Abuse of Canadians Detained Abroad	30
CONSULAR ACCOUNTABILITY AND MODERNIZATION.....	33
A. The Consular Service Fee.....	33
B. Service Standards and Oversight.....	35
C. Outreach and Modernization.....	38
STRENGTHENING CANADA’S CONSULAR NETWORK.....	42
CONCLUSION	44
ADDENDUM	45

A. The Office of the Auditor General of Canada’s Report on Consular Services to Canadians Abroad	46
1. Responding to Cases of Canadians Arrested or Detained Abroad.....	46
APPENDIX A LIST OF WITNESSES	51
APPENDIX B LIST OF BRIEFS.....	53
REQUEST FOR GOVERNMENT RESPONSE	55
SUPPLEMENTARY OPINION OF THE NEW DEMOCRATIC PARTY OF CANADA	57

LIST OF RECOMMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Recommendation 1

The Government of Canada should continue to review the legal and policy regime governing Canadian consular services, with the objective of ensuring that Canadians are not subject to arbitrary treatment or discrimination in the provision of consular services. 15

Recommendation 2

The Government of Canada should ensure that Canadian policy in kidnapping situations is always guided by one fundamental objective: ensuring the safety and security of each and every Canadian. 20

Recommendation 3

The Government of Canada should review section 83.03 of the *Criminal Code* in order to clarify that Canadians who engage in peaceful actions to secure the release of a kidnapping victim, including through the payment of a ransom, will not be subject to criminal prosecution. 23

Recommendation 4

The Government of Canada should review each kidnapping situation with a view to identifying and applying lessons learned and to establish best practices related to family engagement, including in the areas of communication and information sharing. 25

Recommendation 5

The Government of Canada should review the application of the *Privacy Act* as it relates to the sharing of information with the families or legal counsel of Canadians who are the subject of complex consular cases. 25

Recommendation 6

The Government of Canada should work with provincial authorities to ensure that victims of kidnappings and their families are supported in the aftermath of critical consular incidents from a mental health perspective. 25

Recommendation 7

The Government of Canada should continue to support efforts aimed at building international cooperation and consensus related to consular protection for dual citizens. In this regard, the Government of Canada should continue to support the Global Consular Forum, and consider hosting an upcoming summit of the Forum’s member countries. 30

Recommendation 8

The Government of Canada should review how it responds to consular cases involving Canadian permanent residents who request and require emergency assistance abroad to ensure a coherent approach to such requests..... 30

Recommendation 9

The Government of Canada should undertake a review of the consular service fee to ensure that the fee is appropriate and that the consular program is financially sustainable into the future..... 35

Recommendation 10

The Government of Canada should review the role of Global Affairs Canada’s Office of the Inspector General and consider expanding it to include the review of consular services and standards. 38

Recommendation 11

The Government of Canada should develop a strategy to promote the Registration of Canadians Abroad system to target audiences of Canadians travelling to, or living in, locations that are particularly susceptible to natural disasters or political instability. As part of this strategy, the Government of Canada should leverage its outreach capacity by working with stakeholders and partners in the travel and tourism sector. 41

Recommendation 12

The Government of Canada should modernize its communication tools with regard to consular services, including greater use of digital tools such as online applications and social media. 41

Recommendation 13

The Government of Canada should ensure ongoing dialogue between Canadian consular officials and experts drawn from civil society, the private sector, the legal community, and diaspora communities, for regular discussions about best practices and lessons learned in the area of Canadian consular affairs. 44

Recommendation 14

The Government of Canada should develop service standards that set out concrete timelines for the formal assessment of allegations of torture or mistreatment of Canadians detained abroad, and for the notification of the Minister of Foreign Affairs and the Deputy Minister of Foreign Affairs in all cases where there is credible information that a Canadian detained abroad has been tortured or mistreated. Those timelines should respect the seriousness of these consular cases, while also reflecting the need for a prompt, consistent and effective response on the part of the Government of Canada. 49

Recommendation 15

The Government of Canada should ensure that Canadian consular officers receive in-depth and cyclical training on how to conduct prison visits in relation to Canadians arrested or detained abroad, and that Canadian consular officers also receive such training on how to detect incidents of torture, abuse, or mistreatment. 49



STRENGTHENING THE CANADIAN CONSULAR SERVICE TODAY AND FOR THE FUTURE

INTRODUCTION

The House of Commons Standing Committee on Foreign Affairs and International Development (the Committee) conducted a study on the provision of Canadian consular services.¹ The Committee's study of Canadian consular services – which refers to the help, advice and support that the Government of Canada provides to Canadians travelling or living abroad – was opportune. This was the first time that a parliamentary committee had conducted a comprehensive study of Canadian consular services, including an examination of the legal and policy foundations for the provision of consular assistance.

During more than 10 hours of testimony, the Committee heard from a broad spectrum of witnesses. These included officials from Global Affairs Canada (GAC) and the Royal Canadian Mounted Police (RCMP), as well as former Canadian consular officers. The Committee also heard from academics and experts in the consular field, human rights advocates, as well as from individuals directly involved in or affected by complex and critical consular cases. In addition, the Committee received several written briefs from interested individuals and organizations, which helped to inform and supplement the study.²

The following report presents the Committee's findings. It begins by situating the delivery of Canadian consular services within the context of the changing global environment for consular affairs. The report then looks at the policy and legal regime governing consular services for Canadians, and presents witness viewpoints regarding the Crown prerogative power over the conduct of Canadian consular affairs. In the following section, the report examines Canadian policy in complex consular cases,

1 The Committee's study originated with the following motion: "That, pursuant to Standing Order 108(2), the Standing Committee on Foreign Affairs and International Development undertake a study on the provision of assistance to Canadians in difficulty abroad, including but not limited to: standard consular assistance; complex cases, including political and human rights-related consular cases, international child abductions, kidnapping and hostage situations, and cases involving permanent residents of Canada; consular service fees; and coordination of services among relevant government departments; and report its findings back to the House." House of Commons, Standing Committee on Foreign Affairs and International Development [FAAE], *Minutes of Proceedings*, 1st Session, 42nd Parliament, 9 February 2017.

2 See: FAAE, *Provision of Assistance to Canadians in Difficulty Abroad (Consular Affairs)*.



including in kidnapping scenarios, instances of dual Canadian citizens in distress abroad, and situations where the human rights of Canadians in detention abroad are at risk. The final sections of the report address issues relating to the internal governance of the Canadian consular program, including with respect to service standards, accountability, and consular outreach and modernization. The report contains 15 recommendations to the Government of Canada, which are focused on these areas of study.

CONSULAR AFFAIRS IN CONTEXT

The field of consular affairs is broad and multifaceted. It involves numerous policy issues, domestic, foreign and multilateral legal frameworks, as well as bilateral international relations. It also involves interdepartmental coordination and cooperation at the domestic level. In addition to Global Affairs Canada – which is responsible for the delivery of Canadian consular services – several other government departments and agencies have consular-related responsibilities. These include Immigration, Refugees and Citizenship Canada, and Public Safety Canada, under which the Canada Border Services Agency (CBSA) and the RCMP fall. Immigration, Refugees and Citizenship Canada, for example, is responsible for Canada’s passport program, and the RCMP provides advice and support in critical consular situations, including in instances of Canadians kidnapped abroad. For its part, CBSA is responsible for investigating individuals on behalf of Canadian immigration agents stationed abroad, including with respect to the issuance of passports.

While already complex, the Committee heard that the provision of consular assistance is becoming increasingly challenging. Canadians are choosing to live, work, study, and travel overseas in ever-greater numbers. Moreover, Canadians are increasingly travelling to, and living in, more distant and potentially dangerous locations. A few statistics illustrate the current and growing complexity of the policy environment for the provision of Canadian consular assistance. According to GAC, an estimated 2.8 million Canadians live outside of Canada.³ The Office of the Auditor General of Canada (OAG) estimates that Canadians made approximately 55 million trips abroad in 2015, which is a 21% increase from 10 years ago.⁴ While still dominated by travel to the United States (U.S.), Canadians are increasingly travelling to other destinations. Notably, in 2017, Canadians made a record 12.8 million trips to countries other than the U.S., an increase of 7.2% from the number of such visits in 2016. In fact, the number of Canadians

3 FAAE, *Evidence*, 1st Session, 42nd Parliament, 5 October 2017.

4 Office of the Auditor General (OAG), *Report 7 – Consular Services to Canadians Abroad – Global Affairs Canada*, 2018 Spring Reports of the Auditor General of Canada. The OAG’s report is discussed in detail in the addendum of this report.

travelling to destinations other than the U.S. has increased annually since the early 1990s, rising 153% from the 5.1 million trips that were taken in 1993.⁵

As Canadians continue to travel and live abroad in greater numbers, they are encountering more diverse risks and challenges. Alex Neve, Secretary General, Amnesty International Canada, spoke to this point. He noted that today “the world is a much smaller place and business, work, studies, humanitarian work, journalism, family visits, and personal travel take more Canadians to more corners, including dangerous corners, of the world, more frequently.”⁶ Heather Jeffrey, Assistant Deputy Minister, Consular, Emergency Management and Security, GAC, provided a similar perspective, explaining that “[w]ith increased travel comes heightened risk to Canadians in regard to security threats and terrorism.” Ms. Jeffrey elaborated:

New security threats from Daesh and other terrorist and criminal entities in all regions of the world have had an impact on Canadians in Europe, Asia, Africa, and in the Middle East, from Cancun, to the Philippines, to Paris, to Barcelona. The tragic events [in October 2017] in Las Vegas have again shown that Canadians can be at risk from other forms of violence, even closer to home.⁷

In addition to security threats, witnesses identified several other risks and challenges, which are affecting Canadians travelling abroad. These include, for example, natural disasters and significant weather events. Referencing the 2017 Atlantic hurricane season – one of the most destructive hurricane seasons in history – officials from GAC pointed out that “abnormal weather events are increasing in regularity and complexity.”⁸

The growing number of Canadians living and travelling abroad has meant that the client base for Canadian consular service has become larger and more geographically dispersed. Canadian officials provide consular services at more than 260 points of service in 150 countries. In 2017, the number of cases opened by Canadian consular officers was approximately 278,000 – an increase of 4% over 2016. According to GAC, in 2017, the vast majority of Canadian consular cases – almost 98% – were of a routine or administrative nature and were resolved quickly at the relevant diplomatic mission.⁹

5 Statistics Canada, “[Travel between Canada and other countries, December 2017](#),” *The Daily*, 20 February 2018.

6 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 13 February 2018.

7 Four Canadians were among the 58 people killed in the Las Vegas shooting in October 2017 – the deadliest mass shooting in United States (U.S.) history. FAAE, [Evidence](#), 1st Session, 42nd Parliament, 5 October 2017.

8 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 5 October 2017.

9 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 27 March 2018.



Indeed, more than 80% of consular cases were either passport or citizenship requests.¹⁰ Conversely, GAC opened approximately 6,400 complex consular cases in 2017, which related to Canadians who required urgent assistance while travelling or residing abroad.¹¹

In spite of what he called an “increasingly inhospitable international environment,” Gar Parfy, a former Canadian diplomat and Director General of Canada’s Consular Affairs Bureau, testified that he does not expect Canadians to travel any less in the future.¹² On the contrary, he and several other witnesses indicated that the number of Canadians travelling and living abroad is expected to continue growing. Consequently, the demand for consular services is also expected to grow. As witnesses underlined throughout the Committee’s study, Canada must ensure that it has the tools and resources necessary to manage the rising demand and expectations for consular services going forward.

THE LEGAL AND POLICY REGIME GOVERNING CANADIAN CONSULAR SERVICE

It has been more than 50 years since the *Vienna Convention on Consular Relations* (the Vienna Convention) was adopted at the United Nations Conference on Consular Relations in Austria.¹³ The Vienna Convention contains provisions that outline what type of access consular officers should have to their citizens in foreign countries, and what type of access citizens should have to their country’s consular officers. The convention focuses on protecting the rights of foreign nationals who are subject to the law of the country where they are located, and reconciling those rights with the minimum protections available in international law.

The Vienna Convention – to which Canada acceded in 1974 – remains the basis of the international legal framework allowing for Canadian citizens’ access to consular

10 In 2017, Global Affairs Canada (GAC) managed 204,000 passport requests and 26,000 citizenship requests. FAAE, [Evidence](#), 1st Session, 42nd Parliament, 27 March 2018.

11 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 27 March 2018.

12 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 8 February 2018.

13 The Vienna Convention was adopted on 22 April 1963 and entered into force on 19 March 1967. 179 countries are States parties to the convention. See: United Nations Treaty Collection, [Vienna Convention on Consular Relations](#).

services.¹⁴ In Canada, responsibility for the conduct and management of consular affairs falls to the Minister of Foreign Affairs under section 10(2) of the *Department of Foreign Affairs, Trade and Development Act*. This Act states: “In exercising and performing his or her powers, duties and functions under this Act, the Minister is to conduct all diplomatic and consular relations on behalf of Canada.”¹⁵ The Act further provides the Minister with responsibility for managing Canada’s diplomatic and consular missions, and coordinating the direction given to heads of missions by the Government of Canada.

While the Minister of Foreign Affairs is responsible for consular affairs, no Canadian law expressly obligates the Government of Canada to provide consular services to Canadians. More specifically, under the Crown prerogative power to conduct foreign affairs, the Government of Canada has the authority, but not the obligation, to provide consular services. The term Crown prerogative refers to the powers granted to the executive branch of government to take action at its discretion where not otherwise limited, or required, by the Constitution or an Act of Parliament. The execution of foreign affairs, of which consular affairs forms a part, is one area traditionally reserved for the executive branch pursuant to the Crown prerogative.

A. Perspectives on Enshrining a Right to Consular Service

The subject of the Crown prerogative power in the conduct of consular affairs was a central theme of the Committee’s hearings. Throughout the study, the Committee heard a variety of perspectives regarding the application of the Crown prerogative in the provision of consular assistance. These included opinions from witnesses regarding what they viewed as the strengths or weaknesses of this legal regime, as well as proposals for reforming Canadian consular policy.

Broadly speaking, the main critique of witnesses regarding the application of the Crown prerogative over consular affairs pertained to concerns about equality of service. Several witnesses argued that the discretionary power afforded to the Government of Canada under the Crown prerogative over consular affairs could result in discrimination. Gar Pardy summarized this argument:

Simply put, since it's not established in Canadian law, the government of the day can decide who is to be helped or not helped. Needless to say, such discretion on the part of

14 The *Foreign Missions and International Organizations Act* implements into Canadian law sections of the Vienna Convention. See: Government of Canada, *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41.

15 Justice Laws, *Department of Foreign Affairs, Trade and Development Act*, S.C. 2013, c. 33, s. 174.



governments has occasionally led to discrimination, with serious consequences for the Canadians involved.¹⁶

The possibility that reliance on the Crown prerogative could result in discrimination or in the unequal provision of consular services has fuelled some civil society proposals for reforming Canada’s legal framework in this area. One of the most vocal proponents of reform in this regard has been Mohamed Fahmy, co-founder of the Fahmy Foundation, and an Egyptian-Canadian journalist who was wrongfully arrested in Egypt in December 2013 and detained for 14 months.

Mr. Fahmy testified before the Committee and offered an important first-hand perspective on his experience in detention. Mr. Fahmy explained that he was arrested on “trumped-up charges of belonging to the Muslim Brotherhood” – a group designated by Egypt as a terrorist organization – and accused of “fabricating news to serve [the Muslim Brotherhood’s] agenda.”¹⁷ During his detention, he spent months in a maximum security prison, including in solitary confinement, where he suffered with a broken shoulder. It took seven months before he was transferred to a hospital for surgery. According to Mr. Fahmy, it quickly became evident that his case was “of a complicated political nature and based on geopolitical score-settling between regional powers.”¹⁸

Mr. Fahmy told the Committee that he is “very grateful for the intervention of the Canadian consular team at the time, who visited me in my place of detention and communicated with my family.” Officials at the Canadian Embassy in Cairo also intervened early on – albeit unsuccessfully – to have him moved to a hospital for treatment of his broken shoulder. According to Mr. Fahmy, these efforts differed from those at the official state level. Specifically, Mr. Fahmy expressed his concerns, and those of others, regarding the consular assistance he received from the Government of Canada. He told the Committee, “[m]any observers were critical of the intervention process during my case, because some felt there was discrimination in the level of consular support I received in comparison to other cases in the past.”¹⁹

The distinction made by Mr. Fahmy regarding the work of consular officials on the ground versus higher-level intervention at the official state level was echoed by other witnesses. While witnesses were complimentary of the work of consular officers at Canadian diplomatic missions around the world, some suggested that greater

16 FAAE, *Evidence*, 1st Session, 42nd Parliament, 8 February 2018.

17 FAAE, *Evidence*, 1st Session, 42nd Parliament, 13 February 2018.

18 Ibid.

19 Ibid.

engagement is required at more senior government, including political, levels in Ottawa when complex consular cases arise. The Committee heard that high-level leadership is especially important in situations where Canadians are detained in countries that do not have the same kind of legal and judicial standards as Canada.

Following his release from prison, Mr. Fahmy, together with Amnesty International Canada and several other organizations and individuals, authored what they call a Protection Charter. The Protection Charter contains 12 recommendations, the first of which calls on the Government of Canada to enshrine the right to consular assistance and equal treatment in Canadian law.²⁰ According to the authors of the Protection Charter, “[R]ight or wrong, perceptions have grown over the years that some Canadians experiencing human rights violations abroad receive greater, more immediate and higher-level consular assistance from the government than others.” The authors of the Protection Charter argue that current Canadian policy “leaves a sense of discrimination and double-standards.” They recommend that “Canadian law should clearly establish that all Canadians will be treated equally in the provision of consular assistance.”²¹

Mr. Fahmy underlined the point about fear of the arbitrary or selective provision of consular services during his testimony before the Committee. He stated:

Right or wrong, I believe that this perception and uncertainty – and the fear I faced – which surely many of the hundreds of Canadians detained abroad experience today, can be eliminated when there is a law set in stone: legislation that obligates the government to follow specific guidelines of intervention so that it is not left to the discretion of the Minister of Foreign Affairs.

Uncertainty and fear are every prisoner's nightmare. Is the government going to bat for me hard enough? Am I on the agenda on the next trip? Legislation would end this dilemma and allow every Canadian leader to operate relieved of red tape and any political concerns of the case at hand.²²

Mark Warren, a human rights researcher, testified that many countries view the delivery of consular services as a legal obligation, rather than a discretionary prerogative. According to his research, at least 45 countries have enacted laws imposing a mandatory consular duty to protect all citizens abroad.²³ He indicated, for example, that Mexican consulates are required by law to protest any denial of rights or mistreatment of their

20 For the full list of recommendations, see Amnesty International and the Fahmy Foundation, [Protection Charter](#).

21 Ibid.

22 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 13 February 2018.

23 Ibid.



citizens by foreign authorities. According to Mr. Warren, the many examples of countries that have enacted laws imposing a mandatory duty to provide consular assistance all prompt the same question, which he posed to the Committee:

Are Canadians less deserving of a legally binding duty to protect their human rights while abroad than the citizens of Mexico, the United States, or China? Surely, we all deserve better from our government than selective protection based on vague and shifting policy guidelines that have no legal force.²⁴

According to Mr. Warren, “[L]egislation is the best way to guarantee consistent and effective consular services for those who are most in need of that assistance.” Anything less, he argued, “threatens to reduce Canadians to second-class status among the citizens of the world.”²⁵

B. Limitations to the Crown Prerogative

While the Government of Canada has discretionary authority over consular affairs, it is important to note that the Crown prerogative is not unlimited. The Crown prerogative is, in fact, limited by the *Charter of Rights and Freedoms* (the Charter) and obligations under the *Vienna Convention on Consular Relations*. Indeed, in recent years, court decisions have affirmed that the executive branch of government is not exempt from constitutional scrutiny in the exercise of the Crown prerogative over Canadian consular affairs.

The Supreme Court of Canada’s decision in *Canada (Prime Minister) v. Khadr* is an important example in this regard. In 2010, the Supreme Court issued a ruling in the case of Omar Khadr, a Canadian citizen who was being detained at a U.S. military prison in Guantanamo Bay, Cuba for allegedly committing war crimes in Afghanistan. While the Supreme Court found that Canada had “actively participated in a process contrary to its international human rights obligations and contributed to [Mr. Khadr’s] ongoing detention so as to deprive him of his right to liberty and security of the person,” it did not order the government to seek Mr. Khadr’s repatriation to Canada as he was requesting. Instead, the Court stated that the “appropriate remedy in this case is to declare that [Mr. Khadr’s] *Charter* rights were violated, leaving it to the government to

24 *Ibid.*

25 *Ibid.*

decide how best to respond in light of current information, its responsibility over foreign affairs, and the *Charter*.”²⁶

While this decision reinforced the Crown prerogative over foreign affairs, it also underlined that courts have the jurisdiction and duty to determine whether the exercise of the prerogative power infringes on the Charter and other constitutional norms. In its decision, the Supreme Court stated: “Courts have the jurisdiction and the duty to determine whether a prerogative power asserted by the Crown exists; if so, whether its exercise infringes the *Charter* or other constitutional norms; and, where necessary, to give specific direction to the executive branch of the government.”²⁷ As the Supreme Court stated in its ruling, the ability of the courts to review the exercise of the Crown prerogative reflects the fact that all government power must be exercised in accordance with the constitution.²⁸

Beyond the legal limitations to the exercise of the Crown prerogative over consular affairs, the testimony of GAC officials made clear that the government’s policy is to provide consular services to Canadians whenever possible. Ms. Jeffrey stated that consular officials make every effort, including by using all the options at their disposal, to provide consular services to Canadians abroad. She explained:

While the provision of consular services is under the crown prerogative, our policy as a government is to assist all Canadians to the best of our ability wherever they are. We take that very seriously. We are not able to in all cases because of natural disasters, emergency or inhospitable local environments, war zones, etc. We go to great lengths, though, to have access as quickly and as directly as we can.²⁹

She further indicated that she did not think that a legislated mandate to provide consular services would “result in our making additional efforts beyond what we normally do.” According to Ms. Jeffrey, the “fact that we have the crown prerogative allows us to be flexible in our choice of the means and mechanisms by which we assist in each individual case, but the overall level of service, which is to assist Canadians to the full extent of our ability, is a constant part of our policy.”³⁰

26 [*Canada \(Prime Minister\) v. Khadr*](#), 2010, Supreme Court of Canada, case number 33289.

27 Ibid.

28 Ibid.

29 FAAE, [*Evidence*](#), 1st Session, 42nd Parliament, 5 October 2017.

30 Ibid. In May 2018, as part of its Spring Reports to Parliament, the Office of the Auditor General of Canada published the results of its audit on the delivery of Canadian consular service. The audit found that consular officers did not always meet Global Affairs Canada’s service standards in situations of Canadians detained or arrested abroad, or with respect to the processing of regular passports at all its missions. See: OAG,



The notion that the Crown prerogative provides the Government of Canada with flexibility in the provision of consular services was mentioned by GAC officials on several occasions. Ms. Jeffrey underlined that consular officers need the flexibility that will allow them to adapt and tailor their response to different locations and scenarios. She commented:

We have guidelines and policies about all the different avenues we pursue, but every context and every case is different. In some cases certain tactics will be more effective; in other cases not. In some cases working publicly is more effective. In other cases working behind the scenes is in the best interest of the consular client.

It is not a one-size-fits-all solution. It's adapted to the local circumstance, but that doesn't mean people are getting different levels of service.³¹

Patricia Fortier, Fellow at the Canadian Global Affairs Institute and former Assistant Deputy Minister at GAC with responsibility for Consular, Security, and Emergency Management, also highlighted the need for flexibility in responding to consular cases. She explained that “consular situations are as different as the people in them” and expressed concern that, with legislation, time could be diverted away from case management and support.³² Ms. Fortier also stated that Canadian consular service is “consistently among the best” even compared to those countries that have a legislated mandate to provide consular assistance.

C. Strengthening Canada’s Consular Framework

The Committee heard testimony for and against the need for legislation guaranteeing the provision of consular services. Recent court decisions have demonstrated both strengths and weaknesses of the current regime. On the one hand, they have reaffirmed that there are limits to the Crown prerogative; the executive branch is not exempt from constitutional scrutiny in the exercise of this power. In other words, consular cases engage the *Charter* rights of Canadians and the Government of Canada has a duty to protect those rights. On the other hand, defining Canadians’ rights to consular service through costly, stressful and time-consuming court cases is neither optimal nor efficient.

The Committee believes that flexibility in the manner the Government of Canada responds to complex consular cases is important. As government officials argued, every

Report 7 – Consular Services to Canadians Abroad – Global Affairs Canada, 2018 Spring Reports of the Auditor General of Canada. The OAG’s audit is discussed in detail in the addendum of this report.

31 FAAE, *Evidence*, 1st Session, 42nd Parliament, 5 October 2017.

32 FAAE, *Evidence*, 1st Session, 42nd Parliament, 22 March 2018.

consular case is different, and the tools needed to respond to one case may not be the same used to react to another. Any legislated consular mandate would need to distinguish between the types of consular cases and allow the Government of Canada flexibility to respond to different cases in different ways. It would need to ensure assistance where necessary, without requiring action in situations where it would be inappropriate, unhelpful, or even counter-productive. It is not clear to the Committee how this could be achieved without providing the Government with discretionary authority similar to that which it currently exercises. In fact, well-meaning legislation may make the situation worse by potentially increasing litigation in this area, without substantially changing the government's behaviour.

At the same time, the Committee strongly believes that equality of service in the provision of consular services is essential. While the courts have played an important role in affirming the rights of Canadians caught in complex consular situations in recent years, concerns about equality of service in such scenarios remain. These concerns need to be addressed.

Recommendation 1

The Government of Canada should continue to review the legal and policy regime governing Canadian consular services, with the objective of ensuring that Canadians are not subject to arbitrary treatment or discrimination in the provision of consular services.

COMPLEX CONSULAR CASES

As noted earlier in this report, the incidents or circumstances that are often referred to as “complex consular cases” represent a very small proportion of the overall caseload for Canadian consular officers. Indeed, GAC considered almost 98% of consular cases in 2017 to be routine and largely administrative in nature (e.g., a lost passport; support in arranging medical care; etc.). The remaining cases – broadly defined as complex consular cases – pertain to Canadians who require urgent assistance while travelling or living abroad.³³ Such cases rightfully receive significant attention due to their seriousness. They can include the unlawful detention or imprisonment of Canadians abroad and situations in which Canadians have suffered or may be suffering violations of their human rights. These cases become even more complex when they involve Canadians who hold dual citizenship and are consequently at particular risk when detained in the other country of which they hold citizenship.

33 GAC, [Departmental Results Report 2016-2017](#); FAAE, [Evidence](#), 1st Session, 42nd Parliament, 27 March 2018.



While a subset of the overall caseload, the number of complex cases has increased in recent years.³⁴ According to Ms. Jeffrey, GAC has “more cases that require a longer time to resolve and a more intensive investment of time and attention.”³⁵ In particular, Ms. Jeffrey noted that GAC has seen a significant increase in the number of family-related cases, including those related to child custody or abduction. From a geographic perspective, the Committee heard that complex cases occur most often in places where the legal and political systems are weak and differ considerably from Canada’s, or where there are significant security issues that can make consular access more difficult.

The following sections will discuss Canadian policy in complex consular situations. They address three scenarios: cases of Canadians kidnapped for ransom in a foreign country; situations of dual Canadian citizens in distress abroad; and instances where Canadians abroad are at risk of or have suffered human rights abuses, including torture and mistreatment.

A. Kidnapping and Ransom Cases

The Committee was informed about a subset of complex cases called “critical incidents” that are among the most difficult kinds of consular cases involving Canadian citizens abroad. As Mark Gwozdecky, Assistant Deputy Minister, International Security and Political Affairs, GAC, explained, critical incidents involve “individuals who have been abducted by terrorist organizations or organizations affiliated with terrorist bodies, which seek not only concessions from the family, but ransom and concessions from the Government of Canada, and therefore, have national security implications.”³⁶

Global Affairs Canada has the lead role in the Government of Canada’s response to critical incidents. It does so by coordinating an interdepartmental task force, which draws on the efforts and expertise of Canadian diplomatic, law enforcement, intelligence, and military personnel.³⁷ The Committee was told that every critical incident is different, and each requires its own unique response. GAC noted that the government has a range of tools at its disposal in such situations, which include applying

34 As an example of the increase in complex consular casework, in 2006-2007, Canadian consular officers opened more than 5,700 cases related to Canadians in distress abroad. By comparison, in 2016-2017, consular officers opened approximately 6,200 cases related to Canadians who required urgent assistance while travelling or residing abroad. See: Department of Foreign Affairs and International Trade, *Departmental Performance Report 2006-2007*, and GAC, *Departmental Results Report 2016-2017*.

35 FAAE, *Evidence*, 1st Session, 42nd Parliament, 5 October 2017.

36 Ibid.

37 FAAE, *Evidence*, 1st Session, 42nd Parliament, 27 March 2018.

diplomatic pressure, working with counterpart hostage response units in like-minded countries, and deploying Canadian military or counter-terrorism assets as necessary.

GAC told the Committee that it studies each terrorist hostage situation carefully, while also assessing previous incidents for lessons learned. David Drake, Director General, Counter-Terrorism, Crime and Intelligence Bureau, GAC, said that terrorist hostage takings “require a different toolkit, as well as specialized expertise and skills because of their national security implications.” While noting that there is no publicly available document that would reveal how the Government of Canada responds to terrorist hostage incidents, Mr. Gwozdecky provided insight into one of the overriding principles governing the interdepartmental task force’s response to such situations:

We try to work on the basis of acting in a way that, on one hand, would best and most likely result in the safe release of the individual but also to not do anything that might jeopardize the safety of that individual or make it more likely that Canadians in the future would be abducted and face the same sort of situation.³⁸

GAC officials informed the Committee in March 2018 that, for the first time since 2007, the department was not currently managing any active terrorist hostage case.³⁹ Since 2005, the Government of Canada has responded to 20 cases that qualify as critical incidents.⁴⁰

1. Perspectives on the Payment of Ransom and the Government of Canada’s Policy in Response to Kidnapping Incidents

One response that the Government of Canada has explicitly ruled out as an option in terrorist hostage situations is the payment of ransom. The Government of Canada has a firm policy of not paying ransoms to terrorists who have kidnapped Canadians abroad. That policy is grounded in the logic that ransoms reward, sustain, and empower terrorist groups, and make the citizens of countries that pay ransoms more vulnerable to future kidnappings. A no-ransom policy has been reiterated in recent years by international

38 FAAE, *Evidence*, 1st Session, 42nd Parliament, 5 October 2017.

39 FAAE, *Evidence*, 1st Session, 42nd Parliament, 27 March 2018.

40 Ibid.



bodies, including the G7 and the United Nations Security Council.⁴¹ The Committee was told, however, that ransoms have been paid by governments, companies, and family members in different cases.⁴²

In September 2017, the Honourable Chrystia Freeland, Minister of Foreign Affairs, reiterated the Canadian policy on ransom payments in response to a petition to Parliament:

The Government of Canada's policy against paying ransoms is longstanding. The Government of Canada is firm in its resolve to deny terrorists the resources they need to conduct attacks against Canada, its allies, and its partners. Furthermore, the payment of ransom creates greater incentive for terrorists to resort to hostage-taking, increasing the risks for Canadians travelling and working abroad, and thereby would endanger the lives of every single one of the millions of Canadians around the globe.⁴³

The policy of not paying ransom or providing concessions to terrorist groups was also reaffirmed by GAC officials during their appearances before the Committee in October 2017 and March 2018.⁴⁴

-
- 41 UN Security Council Resolution 2133 (2014) called on Member States to prevent terrorists from benefiting directly or indirectly from ransom payments or from political concessions. The resolution says that ransom supports the recruitment efforts of terrorist groups, strengthens their operational capability to organize and carry out terrorist attacks, "and incentivizes future incidents of kidnapping for ransom." See: United Nations Security Council, [Resolution 2133 \(2014\)](#), S/RES/2133 (2014), 27 January 2014. In 2016, G7 leaders stated: "We unequivocally reiterate our resolve not to pay ransoms to terrorists, to protect the lives of our nationals and, in accordance with relevant international conventions, to reduce terrorist groups' access to the funding that allows them to survive and thrive, and call on all states to do so." See: [G7 Ise-Shima Leaders' Declaration](#), G7 Ise-Shima Summit, 26-27 May 2016. In 2013, G8 leaders had declared: "We are committed to protecting our nationals and reducing terrorist groups' access to funding which allows them to thrive. We unequivocally reject the payment of ransoms to terrorists and we call on countries and companies around the world to follow our lead and stamp out this as well as other lucrative sources of income for terrorists. We will help each other to resolve hostage incidents by sharing best practice in advance and offering expertise as necessary when they take place." Later, in the same document, the leaders welcomed "efforts to prevent kidnapping and to secure the safe release of hostages without ransom payments, such as those recommended by the [Global Counter Terrorism Forum], specifically in the Algiers Memorandum on Good Practices on Preventing and Denying the Benefits of Kidnapping for Ransom by Terrorists." See: [G8 Lough Erne Leaders Communiqué](#), 2013 Lough Erne Summit, 18 June 2013.
- 42 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 8 February 2018; [Written brief](#) submitted to the Committee by Daniel Livermore on 23 February 2018.
- 43 [Response to Petition](#), House of Commons of Canada, Petition No. 421-01510, 13 June 2017. The petition called on the Government of Canada to, inter alia, increase consular assistance for kidnapped or abducted Canadian citizens. See: [E-696 \(Foreign Policy\)](#), Parliament of Canada, 29 November 2016.
- 44 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 5 October 2017; FAAE, [Evidence](#), 1st Session, 42nd Parliament, 27 March 2018.

Over the course of its study, the Committee heard from several individuals who suggested that Canada should re-examine its policy governing responses to situations where Canadians have been kidnapped overseas by terrorist groups. For example, while not necessarily advocating for the payment of ransoms, Gar Pardy testified that greater flexibility in the policy might facilitate discussions through intermediaries that could result in the release of a captive.⁴⁵ He pointed to the results of research indicating that what is important “is the process by which a government organizes itself and goes about it with the objective of saving the life of one of its citizens.”⁴⁶ When asked, Mr. Pardy indicated that the key element to resolving any kidnapping situation is not to talk publicly about the process, which he said “creates more danger than anything else does.” He further suggested in his written brief that Canada should consider adopting a more flexible policy “where the lives of victims is given greater prominence.”⁴⁷

Daniel Livermore, Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa, echoed the point about the need for the Canadian government to be flexible and adaptable in situations of Canadians kidnapped overseas. He argued that Canadian diplomatic representatives should be afforded greater latitude in building what he described as “a full range of contacts abroad,” including with organizations or groups possibly involved in perpetrating a kidnapping.⁴⁸ According to Mr. Livermore, such contacts – which he said should be authorized by the Canadian government and tightly controlled within GAC – may pay dividends when adverse situations such as kidnappings abroad arise. He further argued, “[I]n a rough world ... it is simply naïve and counter-productive to have no contacts at all, and especially to have no means of engaging in contacts.”⁴⁹

Canada’s no-ransom policy was also critiqued by witnesses for lacking empirical evidence to support the contention that individuals are targeted by kidnappers because of their nationality. The Committee heard from several witnesses that kidnapping victims are more likely targets of opportunity than targets of nationality. In a similar vein, the Committee heard that there is a lack of evidence linking the non-payment of ransom with a lower likelihood of future kidnappings and vice versa. Mark Gwozdecky of Global Affairs Canada acknowledged as much in his testimony. According to Mr. Gwozdecky,

45 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 8 February 2018.

46 Ibid.

47 Gar Pardy, *Political Violence and Kidnapped Canadians*, December 2017, paper provided to the Committee by Mr. Pardy in February 2018.

48 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 22 March 2018; [Written brief](#) submitted to the Committee by Daniel Livermore on 23 February 2018.

49 [Written brief](#) submitted to the Committee by Daniel Livermore on 23 February 2018.



“It’s very difficult to point to empirical evidence that the payment of ransoms does facilitate further hostage-taking.”⁵⁰ At the same time, Mr. Gwozdecky stated, “[T]here is certainly a strong body of anecdotal evidence that suggests that whenever you enrich a group through the payment of ransoms, they have the means to continue to conduct that business line. It is, therefore, the policy of the Government of Canada not to do so.”

It is clear from this testimony that there are no easy answers to the question of how best to respond to cases of a Canadian kidnapped abroad. As the Committee heard from witnesses, terrorist hostage situations are arguably the most complex and challenging kinds of consular cases. While each kidnapping situation is different, and each requires a different strategy, the fundamental objective of Canadian policy in such situations must remain the same: to ensure the safety and security of each and every Canadian.

Recommendation 2

The Government of Canada should ensure that Canadian policy in kidnapping situations is always guided by one fundamental objective: ensuring the safety and security of each and every Canadian.

2. The Criminalization of Ransom Payments

One of the key agencies involved in the interdepartmental task force on critical incidents is the RCMP. The RCMP plays an investigative role in gathering and documenting evidence that could permit the laying of charges and the prosecution of perpetrators. In concert with GAC, the RCMP also has a role in providing support to the victims of kidnappings through family liaison officers. James Malizia, Assistant Commissioner, National Security and Protective Policing, Federal Policing, RCMP, described the role of family liaison officers during his appearance before the Committee:

Their role is to keep families as well informed as possible on the situation, and on the Government of Canada's efforts to secure the release of their loved ones.

Family liaison officers and investigators also assist the families of victims through various investigative strategies, including, but not limited to, the collection of evidence that may be needed to advance the investigation and support an eventual prosecution. The efforts of the family liaison officers continue long after the resolution of the hostage-taking, as the victims and their families may also be called to relive their experiences before the courts.⁵¹

50 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 5 October 2017.

51 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 27 March 2018.

The role that the RCMP played in the case of Amanda Lindhout was referenced several times during the Committee’s study. Amanda Lindhout was kidnapped in August 2008 – along with Nigel Brennan, an Australian photographer – by Islamic extremists near Mogadishu, Somalia, where she was working as a freelance journalist. Ms. Lindhout spent 460 days in captivity, during which time she was starved, beaten, and sexually assaulted. Ms. Lindhout and Mr. Brennan were released in November 2009 following the payment of a private ransom.⁵²

The RCMP was involved in efforts to secure the release of Ms. Lindhout and to apprehend those responsible for her kidnapping. A contingent from the RCMP rented a house in Sylvan Lake, Alberta – where Amanda Lindhout’s mother Lorinda Stewart was living – to provide advice to her during the negotiations.⁵³ Following the release of Ms. Lindhout, the RCMP undertook a multi-year operation to arrest one of the individuals involved in her kidnapping. In June 2015, Ali Omar Ader, a Somali national, was arrested in Ottawa and charged with hostage-taking for his involvement as a negotiator in the kidnapping of Amanda Lindhout. Mr. Ader was lured to Canada by the RCMP on the promise of obtaining a book deal to write about the history of Somalia. On 6 December 2017, Mr. Ader was found guilty in an Ontario Superior Court for his involvement in the kidnapping.⁵⁴

Notwithstanding the successful apprehension and prosecution of Mr. Ader, the RCMP and the Government of Canada have faced criticism for their handling of certain aspects of Ms. Lindhout’s case. Ms. Stewart, for example, has stated that the Government of Canada provided her with incomplete information about the case during her daughter’s captivity. Moreover, she suggested that the RCMP’s insistence on controlling the hostage negotiations might have needlessly delayed Ms. Lindhout's release.⁵⁵

52 Ms. Lindhout and Mr. Brennan’s kidnappers initially demanded a ransom of approximately US\$2.5 million. Following months of negotiation, the families of Ms. Lindhout and Mr. Brennan raised approximately US\$600,000 with support from private donors. An additional sum of approximately US\$600,000 was raised to pay British private security firm AKE, who had negotiated the ransom and made arrangements for the release of the captives. Rosemary Westwood, [“Escape from hell: Amanda Lindhout and Nigel Brennan left Somalia after a dramatic rescue. How it worked, and what’s happened since,”](#) *Macleans*, 6 September 2013.

53 Colin Perkel, [“Mother of Amanda Lindhout pens memoir describing nightmare of daughter’s kidnapping,”](#) *Global News*, 17 October 2017.

54 On 18 June 2018, Ali Omar Ader was sentenced to 15 years in prison for his role in Ms. Lindhout’s kidnapping. John Paul Tasker, [“Amanda Lindhout’s kidnapper sentenced to 15 years in prison,”](#) *CBC News*, 18 June 2018.

55 Geoffrey York, [“New Book by Amanda Lindhout’s mother criticizes Ottawa’s handling of hostage case,”](#) *The Globe and Mail*, 17 October 2017.



Ms. Stewart also indicated that the RCMP warned her that paying ransom is a crime under the *Criminal Code*.⁵⁶ The specific offense that Ms. Stewart was made aware of relates to section 83.03 of the *Criminal Code* which deals with the financing of terrorism. According to Section 83.03:

Everyone who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services

(a) intending that they be used, or knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity, or

(b) knowing that, in whole or part, they will be used by or will benefit a terrorist group, is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.⁵⁷

In his testimony before the Committee, Mr. Malizia explained that, as part of its work with the families of kidnapping victims, the RCMP “do of course explain the potential for criminal offences depending on what happens within a case.”⁵⁸ According to Mr. Malizia, this work is about ensuring that the “family understands the risks associated with any type of negotiation and the impacts they are going to have on the safety of the hostage.” At the same time, Mr. Malizia insisted that the RCMP has provided assurances to families that they would not be pursued criminally for privately paying ransom. He stated:

Let me say this: we're very clear to state that it is not and has never been in the public interest for us to pursue criminal charges – whether they be for terrorist financing or facilitation – with any family member, nor have we ever investigated or considered laying charges towards any family member.⁵⁹

Mr. Malizia expanded on the kinds of assurances the government may provide to private individuals or organizations involved in negotiations with terrorist groups during an appearance before the Standing Senate Committee on National Security and Defence. In testimony before that committee, Mr. Malizia, indicated that “comfort letters” have

56 Amanda Lindhout, “[I owe my life to those who paid my ransom. But should Ottawa pay ransoms? No,](#)” *National Post*, 29 April 2016.

57 This section was included in the *Criminal Code* in an amendment through the 2001 *Anti-terrorism Act* in order to prevent the deliberate financing of terrorism. See: “[Financing of Terrorism,](#)” *Criminal Code* (R.S.C., 1985, c. c-46).

58 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 27 March 2018.

59 Ibid.

been provided to private companies involved in ransom negotiations to assure them that they would not be prosecuted criminally.⁶⁰

While research indicates that no family member, employer or insurer of a Canadian national kidnapped abroad has been prosecuted in connection with the payment of a ransom, the law has been criticized for creating legal uncertainty for the families of kidnapping victims.⁶¹ Similar concerns were also expressed by the families of kidnapping victims in the United States, which resulted in a shift in U.S. policy related to Americans held hostage abroad. In 2015, President Obama announced that, while the U.S. government would continue to oppose ransom payments, it would now be open to communicating and negotiating with hostage takers, and would not stop families from paying ransoms on their own. Families that paid ransom in the U.S. could previously be subject to criminal charges.⁶²

It is clear to the Committee that families are going to pay ransom regardless of section 83.03 of the *Criminal Code*. To acknowledge this is not to demonstrate a lack of resolve in countering terrorism, or terrorist financing. It is simply to recognize that people whose loved ones have been kidnapped will do whatever they can to secure their release. The Committee strongly believes that families of kidnapping victims should not have to face additional anxiety about the prospect of being charged criminally for undertaking peaceful attempts to secure the release of their loved one. While the comments of the RCMP surrounding comfort letters and other forms of assurances that it provides to the families of kidnapping victims are helpful, they do not go far enough. The Committee believes that the Government of Canada must provide greater legal certainty to Canadians in this area.

Recommendation 3

The Government of Canada should review section 83.03 of the *Criminal Code* in order to clarify that Canadians who engage in peaceful actions to secure the release of a

60 Senate, Standing Committee on National Security and Defence, *Evidence*, 1st Session, 42nd Parliament, 12 February 2018.

61 Gar Pardy, *Political Violence and Kidnapped Canadians*, December 2017, paper provided to the Committee by Mr. Pardy in February 2018.

62 During his announcement of the new U.S. hostage policy, President Obama stated that “no family of an American hostage has ever been prosecuted for paying a ransom for the return of their loved ones.” Bill Chappell, “[U.S. Clarifies Hostage Policy, Saying it Won’t Prosecute Families Over Ransom](#),” *National Public Radio*, 24 June 2015; Tom Keatinge, “[Pay the Price: Washington’s Change of Heart on Ransom Payments](#),” *Foreign Affairs*, 1 July 2015.



kidnapping victim, including through the payment of a ransom, will not be subject to criminal prosecution.

3. Supporting the Victims of Kidnapping

A final theme that came out of witness testimony on the subject of kidnappings concerned the need to support the victims of kidnappings and their families both during and after the incident. The Committee heard about instances where the family members of kidnapping victims did not feel properly informed by the Government of Canada about the status of their loved one being held hostage abroad. The Committee also heard criticism about what was referred to as a lack of mental health support for the victims of kidnappings in the aftermath of their release.

With respect to communication, some witnesses expressed concerns about a lack of information sharing by the Government of Canada with the families of Canadians who are the subject of complex consular cases, or to their legal counsel. For example, Gary Caroline, President, the Ofelas Group, argued that there is an “almost universal cloak of secrecy” that consular officers place over their work. He suggested that this “includes an unwillingness to explain the efforts being taken, and the inappropriate use of privacy laws to justify withholding crucial information from family and legal counsel.”⁶³ This perspective was shared by Dean Peroff, lawyer, Peroff Professional Corporation, who indicated that privacy concerns can be used as a “cover” not to share information with the legal representatives of individuals involved in complex consular cases.⁶⁴

On the subject of information sharing, the Committee heard from Ms. Jeffrey that Global Affairs Canada takes its responsibilities under the *Privacy Act* “very seriously” and will not release information “about the cases of individuals or their circumstances and how they’re being served” without their consent.⁶⁵ Ms. Jeffrey continued, “That includes release to family members and can include in some cases release to their lawyers. The issue of consent of the client is of overriding importance in the [*Privacy Act*], and that’s what we respect.” The Committee was informed that consular officials will always try to obtain the consent of an individual involved in a complex consular case, including those being detained abroad. However, GAC officials noted that there are provisions in the *Privacy Act* whereby if the safety and security of the client – the Canadian who is at risk

63 FAAE, *Evidence*, 1st Session, 42nd Parliament, 15 February 2018.

64 Ibid.

65 FAAE, *Evidence*, 1st Session, 42nd Parliament, 27 March 2018.

abroad – is under imminent threat, and their best interest is served by sharing information, then the department will do so.⁶⁶

The Committee believes that the Government of Canada should learn from the experience of every complex case or critical incident. It should strive to ensure that the families of kidnapping victims are kept as informed as possible about the status of their loved one, and provided with the support they need to navigate often complex consular situations. The Committee also underlines the importance of post-critical incident support to the victims of kidnappings and their families. While the Committee heard from GAC and RCMP officials about Canadian policy during kidnapping incidents, there was limited testimony about how the Government of Canada assists the victims of kidnapping in the aftermath of these situations from a mental health perspective. The Committee believes that this is an area that warrants attention.

Recommendation 4

The Government of Canada should review each kidnapping situation with a view to identifying and applying lessons learned and to establish best practices related to family engagement, including in the areas of communication and information sharing.

Recommendation 5

The Government of Canada should review the application of the *Privacy Act* as it relates to the sharing of information with the families or legal counsel of Canadians who are the subject of complex consular cases.

Recommendation 6

The Government of Canada should work with provincial authorities to ensure that victims of kidnappings and their families are supported in the aftermath of critical consular incidents from a mental health perspective.

B. Cases of Dual Citizens in Distress Abroad

A second type of complex consular case that was discussed during the Committee's study concerned dual Canadian citizens in distress abroad. Specifically, the Committee was informed about the challenges that can arise in attempting to provide consular services to Canadian citizens in another country where they also have citizenship. According to the 2016 Census, more than 1.4 million Canadians are citizens of Canada

66 Ibid.



and at least one other country.⁶⁷ Canada is amongst more than 100 countries in the world that allow their citizens to maintain more than one nationality.⁶⁸

As witnesses explained, Canadians who travel to a country where they are also a national can expect to be treated like any other citizen of that country. Heather Jeffrey told the Committee that dual citizens “can find themselves at particular risk when they travel to their countries of origin, in light of the fact that not all countries ... recognize Canadian citizenship and provide us with the consular access that we continue to seek.”⁶⁹ The Committee was informed that gaining consular access to dual citizens can be particularly challenging when a dual Canadian national enters their country of second citizenship on that country’s passport.

While the *Vienna Convention on Consular Relations* guarantees Canadian citizens some degree of consular service abroad, including access to consular officers, there are limited safeguards in international law for dual citizens who face difficulties in one of their other countries of citizenship. Mark Warren highlighted this challenge in his testimony:

It's a murky subject in international law. There is really no consensus on whether a country has an obligation to afford consular access to what it sees as its own citizen detained in their own country of origin when they happen to also have foreign nationality.⁷⁰

Ms. Jeffrey indicated that in cases where a Canadian is in distress in their other country of citizenship, consular officers will make representations with the local government and utilize all options to gain consular access. She elaborated, “Our approach with countries is to continue to insist on the fact that Canadian citizens are Canadian and that we have a right under the Vienna convention to provide consular services to them. We continue to insist on that right even in countries where that right is not recognized.”⁷¹ At the same time, the Committee heard that the intervention of Canadian consular officials can be met with suspicion and may generate an inconsistent response in certain countries. Indeed, the Committee heard about occasions where – in the same country – Canada has been granted consular access to one of its citizens with dual nationality, but not to another.

67 Statistics Canada, “[Data Tables](#),” *2016 Census of Population*, Statistics Canada Catalogue no. 98-400-X2016184.

68 Arton Capital, [Dual Citizenship](#).

69 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 5 October 2017.

70 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 13 February 2018.

71 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 5 October 2017.

The Committee was told that the legal landscape for dual citizens is fragmented, as many countries have sought bilateral agreements to manage relations and possible disputes in this area. In 1997, for example, Canada signed a bilateral consular agreement with China.⁷² While Chinese law does not recognize dual nationality, the parties agreed to facilitate travel between the two states of a person “who may have a claim simultaneously” to the nationality of China and of Canada. Under the agreement, Canada and China established that dual citizens will be treated exclusively as a citizen of their passport of entry. In other words, if a Chinese-Canadian dual citizen enters China travelling on their Canadian passport, then the Chinese government agrees to treat them as a Canadian citizen exclusively. The Canada-China agreement also provides for consular rights to augment the Vienna Convention, including the right to visit a detained national within two days of notification.

In the absence of an international legal framework, the Committee was told that bilateral agreements can be an effective way of securing consular rights for dual Canadian citizens. GAC officials indicated that Canada also explores other options in cases where countries do not recognize dual citizenship and refuse consular access to a Canadian citizen. For example, Ms. Jeffrey noted that the International Committee of the Red Cross, which has a special mandate to visit detainees in prisons, is often able to facilitate access for Canadian officials in situations where Canada’s consular rights are not being recognized by a specific state.⁷³

1. International Cooperation on Consular Protection for Dual Citizens

In several government publications, Global Affairs Canada describes the possible risks that dual Canadian citizens can face in countries in which they also maintain citizenship. For example, a Government of Canada webpage titled “Travelling as a dual citizen” provides the following general information:

If you are a dual citizen and travel to the other country where you hold citizenship, local authorities could refuse to give you access to Canadian consular services. This could prevent Canadian consular officers from providing you with those services.⁷⁴

The Government of Canada also publishes advisories on travel to foreign countries, including with respect to security conditions as well as entry and exit requirements.

72 Government of Canada, *Consular Agreement Between the Government of Canada and the Government of the People’s Republic of China*, 28 November 1997.

73 FAAE, *Evidence*, 1st Session, 42nd Parliament, 5 October 2017.

74 Government of Canada, *Travelling as a dual citizen*.



These travel advisories provide information on whether or not a country recognizes dual citizenship and how that can impact individuals that maintain Canadian citizenship and the citizenship of the country where they are visiting.⁷⁵

Notwithstanding these publications, several witnesses suggested that the Government of Canada needs to improve its outreach and communications with respect to the consular challenges that dual Canadian citizens can face abroad. Daniel Livermore argued that the potential complexities that dual Canadian citizens can face need to be communicated more effectively to those individuals. According to Mr. Livermore, “The warnings in Global Affairs consular materials aren't enough. Much more should be done through outreach and communications, including in ethnic newspapers.”⁷⁶

The Committee heard about the need to build international cooperation around issues associated with dual citizenship. As noted above, the current global landscape for cooperation in this area is fragmented and inconsistent. Gar Pardy submitted a paper to the Committee in which he argued that there is an urgent need to develop international agreement on issues related to dual citizenship.⁷⁷ In the paper, Mr. Pardy suggests that the issue of dual citizenship would be an appropriate subject for revisions to the Vienna Convention or as an associated protocol. He suggested that the Government of Canada should urge the United Nations to convene a review conference related to the Vienna Convention. Mr. Pardy indicated that such a review conference could be predicated on identifying and managing consular issues that have become problematic over the past 50 years, including with respect to dual citizenship.

While Mr. Pardy and other witnesses argued that the Vienna Convention required an update to bring it in line with modern realities, the Committee heard little evidence to suggest that there is an appetite internationally to renegotiate the treaty. A more probable avenue for discussions about consular challenges related to dual citizenship could be the Global Consular Forum. It was created in 2013 with the aim of fostering international engagement on consular policy and partnership in the field of consular and emergency management services.⁷⁸ The Forum is made up of 35 member countries. Canada is a member of the forum's steering committee and is the host of its secretariat.

75 See: Government of Canada, *Travel Advice and Advisories*.

76 FAAE, *Evidence*, 1st Session, 42nd Parliament, 22 March 2018.

77 See: Gar Pardy, *Canadians Abroad: A Policy and Legislative Agenda*, Canadian Centre for Policy Alternatives and the Rideau Institute, March 2016.

78 See: Global Consular Forum, *Mission & Overview*.

The Committee was told that the Global Consular Forum needs to be strengthened. The Forum has held only three senior level summits since it was established. While infrequent, there are indications that these summits have been useful in building networks between countries in the consular field and in addressing difficult complex issues such as consular protection for dual nationals. Both the 2013 summit in the United Kingdom and the 2015 summit in Mexico addressed issues related to dual nationality and agreed to look for practical solutions to challenges in this area.⁷⁹

Further consideration is also required for situations involving Canadian permanent residents. While Canadian dual nationals are entitled to consular services, permanent residents are not. The Committee was informed that the provision of Canadian consular service is predicated on citizenship and therefore Canadian permanent residents do not have a right to such service under the *Canadian Consular Services Charter*.⁸⁰ However, as Alex Neve explained, “often these individuals have no closer connection to any other government aside from Canada.” He noted that, “Their spouses, children, parents, siblings call Canada home. Understandably they look to Canada for assistance.”⁸¹

While there is no obligation to provide consular service to Canadian permanent residents in distress abroad, in some instances the Government of Canada will provide assistance if the local host government is willing to cooperate. In speaking about Canadian permanent residents, for example, Heather Jeffrey told the House of Commons Standing Committee on Public Accounts that “in cases of crises, emergency, or where there are humanitarian considerations under way, we do our utmost to help.”⁸² As Michael Ferguson, Auditor General of Canada, noted, if Canada has provided consular service to permanent residents in the past, it “raises the question of why they did so in some cases and not in others.”⁸³ According to Mr. Neve, there is “a need for guidelines that will clearly establish when and in what ways the Canadian government will take up cases of non-citizens with close Canadian connections facing serious human rights violations.”

79 See: Global Consular Forum, *Conference report: Contemporary consular practice: trends and challenges*, Wilton Park, 2013; and Global Consular Forum, *Report: Global Consular Forum 2015*.

80 The *Canadian Consular Services Charter* outlines the types of consular services available to Canadian citizens as well as those services not offered by consular officers. See: Government of Canada, *Canadian Consular Services Charter*.

81 FAAE, *Evidence*, 1st Session, 42nd Parliament, 13 February 2018.

82 House of Commons Standing Committee on Public Accounts, *Evidence*, 1st Session, 42nd Parliament, 5 June 2018.

83 FAAE, *Evidence*, 1st Session, 42nd Parliament, 17 September 2018.



As a diverse country made up of immigrants from around the world, the issues of consular protection for dual nationals and permanent residents are especially relevant for Canada. Moreover, in an increasingly globalized world where Canadians are travelling, living, studying, and doing business abroad in ever-greater numbers, issues and challenges relating to consular protection for dual citizens and permanent residents will likely only increase. The Committee believes that Canada can and should be a leader in advancing global norms, solutions and cooperation in these areas of critical importance.

Recommendation 7

The Government of Canada should continue to support efforts aimed at building international cooperation and consensus related to consular protection for dual citizens. In this regard, the Government of Canada should continue to support the Global Consular Forum, and consider hosting an upcoming summit of the Forum's member countries.

Recommendation 8

The Government of Canada should review how it responds to consular cases involving Canadian permanent residents who request and require emergency assistance abroad to ensure a coherent approach to such requests.

C. The Torture, Mistreatment and Abuse of Canadians Detained Abroad

A third category of complex cases involves situations where Canadians suffer or are at risk of human rights abuses while in custody abroad. Despite representing a small proportion of the overall consular caseload, these cases are among the most difficult and serious kind of consular casework. They may involve basic violations of due process, including arbitrary arrest, unlawful imprisonment and unfair trials, as well as torture and other forms of violence and deprivation.

Alex Neve told the Committee that the number of cases involving Canadians detained abroad in adverse situations is increasing. Mr. Neve stated:

... the number of Canadian citizens, permanent residents, and other individuals with close Canadian connections who are imprisoned abroad in circumstances where there are very serious human rights concerns has grown exponentially. From perhaps one or

two cases per year, it is now common for us to be monitoring 20 to 25 such cases at any one time...⁸⁴

According to Mr. Neve, the growing number of cases reflects several factors. These include, as discussed in the previous section, the fact that many governments do not recognize dual nationality. He also pointed to the realities of a more globalized world in which people are working, studying, and travelling abroad more frequently and in more dangerous locations. Mr. Neve further stated that the increase in this type of cases can be attributed to governments around the world that feel “increasingly emboldened to disregard fundamental due process and human rights safeguards for prisoners” on national security grounds.⁸⁵

There are a number of circumstances in which Canadians are finding themselves at risk of human rights abuse while detained abroad. Many are dual nationals who are living in or visiting their other country of nationality, while other cases involve individuals who have no other passport than their Canadian one and who may be travelling to, or working in, another country for a short period of time. Canadians at risk of human rights abuse while detained abroad also come from many different professional backgrounds. As Lawyers’ Rights Watch Canada explained in a written brief, cases may involve individuals who are human rights defenders, humanitarian workers, journalists, academics, or business people.⁸⁶

The Committee was informed that journalists are among the individuals who are most vulnerable to violations of due process and other human rights. In his testimony, Mr. Fahmy stated: “During the course of my multiple-decade career in the field, I have not witnessed such an unprecedented attack on journalists and human rights defenders as we are seeing today, with more than 250 journalists behind bars worldwide.”⁸⁷ According to Mr. Fahmy, the risks facing journalists are especially acute because they work “on the front line.” He highlighted the case of Zahra Kazemi, an Iranian-Canadian photojournalist who was arrested and tortured by Iranian officials and who died in

84 FAAE, *Evidence*, 1st Session, 42nd Parliament, 13 February 2018.

85 Ibid.

86 Lawyers’ Rights Watch Canada submitted a written brief to the Committee that discusses the cases of several Canadians detained abroad who allege human rights abuse and mistreatment. According to the brief, the cases that it identified “disclose inconsistencies in purpose, frequency and effect of consular visits and consular protection, and failure to provide adequate or any information to victims’ families, sometimes citing ‘privacy legislation.’” See: Lawyers’ Rights Watch Canada, *Consular protection and diplomatic intervention: International law duties to provide access to remedies for human rights violations against Canadians abroad*, submitted to the Committee on 12 March 2018.

87 FAAE, *Evidence*, 1st Session, 42nd Parliament, 13 February 2018.



custody in 2003, as one stark example of the dangers that journalists can face abroad.⁸⁸ According to Mr. Fahmy and Mr. Neve, the Government of Canada should do more to support and protect Canadian journalists from false imprisonment and abuse in foreign states.⁸⁹

The Committee was also told more generally that the Government of Canada should make better use of the tools at its disposal for responding to cases involving possible human rights violations against Canadians abroad. Gary Caroline, for example, suggested that the Government of Canada should be more willing to work with the families of victims and their legal counsel in complex consular situations.⁹⁰ For his part, Dean Peroff said that high-level advocacy by senior government leaders is another necessary tool that should be employed in the most serious kinds of consular cases. Mr. Peroff also argued that Canadian consular officers should be trained to advocate on behalf of Canadians in distress abroad when the situation warrants.⁹¹

In its policy dealing with arrests and detentions abroad, the Government of Canada states that, “If your international human rights are known to have been violated, the Government of Canada may take steps to pressure the foreign authorities to abide by their international human rights obligations and provide minimum standards of protection.”⁹² The manner in which GAC responds to consular cases where the human rights of Canadians are at risk came into sharp focus during the Committee’s study with the release of the Auditor General’s May 2018 report on the delivery of Canadian consular services.⁹³ The audit looked specifically at how consular officers responded to situations where Canadians had been arrested or detained abroad, including cases that

88 Mr. Fahmy also referenced the case of Kavous Seyed-Emami, an Iranian-Canadian professor, who died in Evan prison in Tehran in February 2018 after his arrest on spying allegations. In a statement following his death, Canada’s Minister of Foreign Affairs said: “We are seriously concerned by the situation surrounding the detention and death of Mr. Seyed-Emami...We expect the Government of Iran to provide information and answers into the circumstances surrounding this tragedy.” See: Government of Canada, “[Canada offers condolences following death of Mr. Seyed-Emami](#),” Statements, 14 February 2018.

89 Recommendation three of the Protection Charter, which was co-developed by Amnesty International and the Fahmy Foundation, states the “The Canadian Government should put in place mechanisms to support and protect journalists and staff from false imprisonment and abuse at the hands of foreign states. That support should include elaborating and enforcing a safety and security code for media organizations employing Canadians abroad or broadcasting in Canada.” See: Amnesty International and the Fahmy Foundation, [Protection Charter](#).

90 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 15 February 2018.

91 Ibid.

92 Government of Canada, [Arrest and Detention](#).

93 See: Office of the Auditor General of Canada (OAG), [Report 7—Consular Services to Canadians Abroad—Global Affairs Canada](#), of the 2018 Spring Reports of the Auditor General of Canada.

involved allegations of torture or mistreatment. Those cases were an area in which the OAG was critical of the department's performance. The OAG's audit and the Committee's response to its findings are discussed in detail in the addendum to this report.

CONSULAR ACCOUNTABILITY AND MODERNIZATION

Over the course of its study, the Committee heard a wide variety of perspectives on issues related to the internal governance and structure of the Canadian consular program. These perspectives touched on several aspects of Canadian consular service, including with respect to funding, accountability and service standards, as well as mechanisms for outreach and modernization. The following section will provide an overview of the key points and suggestions for improvement raised by witnesses in these areas.

A. The Consular Service Fee

In 1995, the Government of Canada introduced regulations establishing a consular service fee of \$25 on the issuance of any travel document, including a Canadian passport, certificate of identity or refugee travel papers.⁹⁴ The fee was set with a view to recovering the cost of providing consular services to Canadians. The fee was approved on the condition that the Department of Foreign Affairs and International Trade (now Global Affairs Canada) would provide full disclosure of the cost of providing consular services and of the revenues collected under the fee. The department was to adjust the fee, if necessary, to ensure that the revenues did not exceed the full cost of providing consular services.

The Committee was informed that for the first 10 years after the consular service fee was established, consular revenues and expenditures tracked quite closely. Michael C. Welsh, a former Canadian Ambassador and Director General of Canada's Consular Affairs Bureau, submitted a brief to the Committee, which indicated that, between the 1996-1997 and 2005-2006 fiscal years, consular revenues amounted to \$479.4 million, while expenditures totalled \$520.4 million.⁹⁵

Mr. Welsh explained, however, that consular revenues began to outpace expenditures beginning in 2006. This was due in large part to the United States' Western Hemisphere

94 [*Consular Services Fees Regulations*](#), SOR/95-538, Registration 1995-11-08.

95 [*Written brief*](#) submitted to the Committee by Michael C. Welsh on 25 February 2018.



Travel Initiative. That initiative required all visitors to the U.S., including Canadians, to carry a valid passport. As a consequence, passport demand in Canada increased significantly and consular revenues swelled. In 2008, the Office of the Auditor General issued a report that found problems with the department's accounting and reporting of the consular service fee.⁹⁶ The OAG recommended that the department review its costing methodology and "take any necessary action to adjust the fee in view of the trend of surpluses." The department agreed that it would review its costing methodology based on the OAG report.

The Committee was informed that the balance between consular revenues and expenditures began to reverse in 2013. In that year, the 10-year passport was introduced. While the price of the 10-year passport (\$160) is 33% higher than that of the 5-year passport (\$120), the consular fee of \$25 remains the same for both passports. According to Mr. Welsh, uptake on the 10-year passport has been very high, with more Canadians opting for the longer duration passport.⁹⁷

The Committee heard that the current fee structure has put financial pressure on the consular service program. Over the past several years, the cost of delivering Canada's consular service program has outstripped the revenues collected. Between the 2014-2015 and 2016-2017 fiscal years, consular service revenues were \$304.5 million versus a full cost of \$392 million in consular expenditures. Mr. Welsh stated in his written brief that it is "an open question as to why [the department] has not acted despite the many troubling signs with funding for the [consular service fee] ..."⁹⁸ Mr. Pardy made a similar point, telling the Committee that there is a "real problem looming" in the area of the consular service fee.⁹⁹

Global Affairs Canada acknowledged the gap between revenues and expenditures in its testimony before the Committee. Ms. Jeffrey noted that the cost of delivering consular services has exceeded the amount collected "significantly" over the past several years.

96 Auditor General of Canada, "[Chapter 1 – Management of Fees in Selected Departments and Agencies](#)," *May Report of the Auditor General of Canada*, 2008. The OAG's 2018 report also identified issues with the consular service fee. Specifically, the OAG noted that GAC did not have "reliable information to calculate the cost of consular services, which is necessary to set its fee for these services." The OAG recommended that GAC update the cost method that it uses to support the consular service fee and its funding arrangements. It further recommended that GAC update its performance information for the consular service fee. See: OAG, [Report 7 – Consular Services to Canadians Abroad – Global Affairs Canada](#), 2018 Spring Reports of the Auditor General of Canada.

97 [Written brief](#) submitted to the Committee by Michael C. Welsh on 25 February 2018.

98 Ibid.

99 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 8 February 2018.

She explained that in the 2016-2017 fiscal year, the department collected \$105 million in fees, but spent \$131 million in delivering consular services.¹⁰⁰ Ms. Jeffrey indicated that the deficit in the consular program is paid out of GAC's resources. Troublingly, she told the Committee that the department foresees this trend continuing and "the gap widening in the future." Indeed, according to its *Departmental Results Report 2016-2017*, GAC forecasts that revenues collected through the consular service fee will be \$28.1 million in 2019-2020. For that same fiscal year, GAC estimates that the full cost of delivering the consular program will be \$136.8 million.¹⁰¹

The Committee urges Global Affairs Canada to undertake an immediate review of the consular service fee. The review should determine whether or not the current consular service fee is appropriate to meet the needs of Canada's consular program. This review should look at both the funding regime and the costing methodology for Canada's consular program with a view to ensuring that the program is sustainable over the long-term.

Recommendation 9

The Government of Canada should undertake a review of the consular service fee to ensure that the fee is appropriate and that the consular program is financially sustainable into the future.

B. Service Standards and Oversight

The provision of Canadian consular services is assessed based on written service standards that detail the time and cost expectations for the range of services that are provided by consular officers.¹⁰² These standards also detail the qualitative and quantitative standards to be used by employees. During its study, the Committee heard about how GAC uses these standards to ensure that it provides effective and efficient consular services to Canadians around the world. It also heard from other witnesses about ways that GAC could improve its consular service, and better incorporate client feedback about the quality of consular assistance that Canadians are receiving while abroad.

The service standards that GAC maintains provide information on the target response time for a range of consular services. For example, in the area of protection and

100 FAAE, *Evidence*, 1st Session, 42nd Parliament, 27 March 2018.

101 See: GAC, "[Section IV: Supplementary Information](#)," in *Departmental Results Report 2016-17*.

102 See: Government of Canada, [Consular Services: Service Standards](#).



assistance, the target time for communicating with family and/or friends in the event that a Canadian encounters an emergency overseas is 12 hours. The target time for contacting a Canadian that has been arrested or detained overseas is within 24 hours. GAC also provides target times for the range of administrative services it provides as part of the consular program. For example, the target time for processing a regular passport at full service diplomatic missions outside of the U.S. is 20 working days.¹⁰³ According to GAC's *Departmental Results Report 2016-2017*, 92% of Canadians reported receiving satisfactory consular assistance abroad.¹⁰⁴

The Committee heard from GAC officials that the department is constantly evaluating the consular services it provides. Ms. Jeffrey told the Committee that Canada has "feedback forms online [as well as at] all of our points of service abroad where we invite and request our clients to provide us with their views on the level of service provided."¹⁰⁵ The Committee was also informed that people who wish to make a complaint about the quality of the consular service they received while abroad can do so using a client feedback form provided by GAC.¹⁰⁶

In response to specific questions from Committee members, Global Affairs Canada submitted a written brief that discussed the follow-up process for managing complaints about Canadian consular services.¹⁰⁷ In addition to the client feedback form, GAC indicated in the written brief that individuals can submit complaints to the department via ministerial correspondence, or by addressing a letter to a particular Canadian diplomatic mission abroad or to the consular team in Ottawa. When a consular complaint is received, GAC explained that it undertakes a number of steps. These steps include consulting with the mission or consular case management officer that worked on the particular file, and comparing the services provided to GAC's policies and service standards. The department then prepares a formal written response to the complainant, which includes the results of the review and any actions that were taken as a result of the complaint.

103 According to GAC, at many missions abroad there are peak periods where it may not be possible to meet this time standard for passport services. In addition, GAC notes that "while every effort is made to ensure missions have adequate resources to meet the demand, issues of workload and volume may from time to time affect the ability of some missions to meet these standards. Clients should check with individual missions directly, or visit their websites, for information on any deviation from these standards." Government of Canada, *Consular Services: Service Standards*.

104 GAC, *Departmental Results Report 2016-2017*.

105 FAAE, *Evidence*, 1st Session, 42nd Parliament, 5 October 2017.

106 See: Foreign Affairs, Trade and Development Canada, *Client Feedback Form*.

107 Written brief submitted to the Committee by Global Affairs Canada in February 2018.

Notwithstanding these tools for submitting consular feedback and complaints, several witnesses argued that there is insufficient oversight of the Canadian consular program and no mechanism for obtaining redress in situations where errors have been made. Gar Pardy made this point in his written submission to the Committee:

As matters now stand, short of the judicial system, there is no independent arbitrator available to investigate charges of governmental incompetence, inept actions or unjust policies in relation to consular affairs. As a result, in recent years many Canadians have resorted to the courts to compel more appropriate actions by government. It has proven time consuming, cumbersome, costly and procedurally challenging for individuals to obtain redress or for the government to demonstrate that its actions were appropriate.¹⁰⁸

During his testimony, Gar Pardy argued for the establishment of an independent mechanism to adjudicate disputes on consular affairs between Canadians and the government. According to Mr. Pardy, putting in place such a mechanism would help deal with consular issues before they end up in the court system.¹⁰⁹

This point about the need to establish an independent mechanism that would review and arbitrate consular disputes was made by several witnesses. For example, in his appearance before the Committee, Alex Neve argued for the need to establish an office that would play an oversight and review role around consular cases. Mr. Neve also referred to recommendation six of the Protection Charter, which calls for the establishment of an independent office for the review of consular assistance. According to the authors of the Protection Charter, such an office could be responsible for ensuring full compliance with the obligation to provide non-discriminatory consular assistance to Canadians.¹¹⁰

Other proposals made by witnesses to improve accountability and oversight include a call to establish an independent ombudsperson with oversight over consular affairs. Gary Caroline and Dean Peroff submitted a proposal to the Committee that called for the creation of an office of a consular advocate general. The mandate of this office as proposed by Mr. Caroline, Mr. Peroff and others would be to provide advocacy and active case management on some of the most difficult consular files. The proposed office would also have an accountability function through annual reports to Parliament

108 Gar Pardy, *Canadians Abroad: A Policy and Legislative Agenda*, Canadian Centre for Policy Alternatives and the Rideau Institute, March 2016.

109 FAAE, *Evidence*, 1st Session, 42nd Parliament, 8 February 2018.

110 Amnesty International and the Fahmy Foundation, *Protection Charter*.



that would detail the work being done on behalf of Canadians who require assistance abroad.¹¹¹

During their appearance before the Committee, GAC officials indicated that they were paying close attention to the different submissions and reports that have been made about ways that the department can improve Canadian consular services.¹¹² The Committee believes that this sort of feedback loop is important because the Government of Canada has an obligation to be client-focused in the area of consular service. Such an obligation is due in no small part to the fact that Canadians pay a fee for consular services and therefore have a right to expect quality. While the degree to which Canadians have expressed satisfaction with the quality of the consular services they have received is encouraging, the Government of Canada should strive to do better. In this respect, the Committee urges the Government of Canada to give consideration to the witness proposals discussed above regarding ways to improve consular oversight and accountability.

Recommendation 10

The Government of Canada should review the role of Global Affairs Canada’s Office of the Inspector General and consider expanding it to include the review of consular services and standards.

C. Outreach and Modernization

The ongoing need to modernize Canada’s consular program, particularly with respect to client outreach and communication, was discussed throughout the Committee’s study. Officials from GAC testified about the efforts being undertaken to modernize their digital tools to ensure that Canadians have access to the most up-to-date information on travelling or living abroad. The Committee also heard from other witnesses about the importance of being proactive with respect to communication before an emergency occurs, and about the need to build alliances with stakeholders across the travel and tourism industry.

GAC officials told the Committee about the many initiatives and tools that the department employs for informing Canadians before a departure abroad and during travel. These include, for example, travel advisories that provide travellers with up-to-date information on the situation in foreign countries. Global Affairs Canada also

111 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 15 February 2018.

112 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 5 October 2017.

publishes a document entitled *Bon Voyage, But...Essential Information for Canadian Travellers*. The document is included with the issue of every new passport and provides recommendations and information for Canadians on safe travel abroad.

Heather Jeffrey told the Committee that GAC “remains committed to the process of consular modernization to meet the increasing demand” for consular services. She explained that GAC is improving its existing digital communications tools and promoting new online applications such as the “Ask Travel” initiative.¹¹³ In addition, the Committee was told that the consular program uses social media, including Facebook and Twitter, to provide Canadians with information on living and travelling abroad. On the communications front, Ms. Jeffrey explained that every year the consular outreach team travels across the country to meet with travelling Canadians and travel sector representatives at industry events, trade fairs and conferences. She also noted that the department is reaching out to Canadians through public information campaigns to coincide with spring break for university students, and the annual Atlantic hurricane season.¹¹⁴

Another tool that was referenced several times by GAC officials and other witnesses was the Registration of Canadians Abroad (ROCA) service. ROCA is a service that permits the Government of Canada to notify a Canadian in situations of an emergency abroad or of a personal emergency at home. The service allows Canadians to receive information in relation to a natural disaster or civil unrest regarding their destination. According to the Government of Canada, it is “strongly recommend[ed] that all Canadian citizens travelling or living abroad sign up for Registration of Canadians Abroad.”¹¹⁵

Despite efforts to promote the ROCA service, uptake remains low. Heather Jeffrey told the Committee that, as of March 2018, approximately 220,000 Canadians were registered in the system. This represents only a very small percentage of the travelling public and those living abroad. As the Committee heard from witnesses, part of the reason for the low registration is that the majority of Canadians travel to places such as the United States or the Caribbean sun destinations that they consider low risk. Ms. Jeffrey spoke to this issue:

With the travellers to destinations that are perceived as less risky or for Canadians who are travelling through a number of countries and aren't sure where they're going to be on different dates, it's a much lower rate of take-up. We saw this most recently in the

113 The Ask Travel initiative is an online portal that provides information, and responses to frequently asked questions, on living and travelling abroad to Canadians. See: Government of Canada, [Ask Travel](#).

114 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 27 March 2018.

115 Government of Canada, [Registration of Canadians Abroad – FAQ](#).



Caribbean, where we had low numbers of Canadians registered, in some cases, but found that there were many times more Canadians who actually happened to be on that island on that particular day.¹¹⁶

Ms. Jeffrey noted, for example, that only 15 Canadians were registered in the ROCA system as being present in Dominica when GAC was doing its planning ahead of Hurricane Maria. She explained, however, that GAC later found out that approximately 250 Canadians were present in Dominica at the time of the hurricane, which struck the island in September 2017.

The 2017 Atlantic hurricane season underlines the importance of promoting client outreach and digital communication tools such as the ROCA. Not only are such tools important in the event of an emergency, but they play an important preventative function as well. Patricia Fortier told the Committee that education and outreach are the best ways to prevent terrible or problematic situations before they occur. She explained: “Risk is part of the allure of travel, but the risk and the limitations need to be understood better by our citizens. Consular and emergency management tools have to be continuously modernized to educate and to provide this information.”¹¹⁷

Ms. Fortier said that building partnerships with a network of international and private sector partners is another way to keep Canadians safe when abroad. Indeed, the Committee heard that the tourism and hospitality industry, including airline companies, can play a particularly helpful role in the event of a crisis such as a hurricane. Ms. Fortier explained that it was the airlines who knew where Canadians were during the hurricanes that struck the Caribbean and Florida in August and September 2017.¹¹⁸

The need to improve consular outreach and to modernize consular tools was discussed in a 2012 report authored by an evaluation team at the then-Department of Foreign Affairs and International Trade.¹¹⁹ The report made four recommendations for improving the delivery of consular services and international emergency management. Among its recommendations was a call for the department to establish a modern public outreach campaign, which would maximize the use of social media platforms to educate the public explicitly on what clients should expect from consular services in routine, distress and emergencies. There are indications that GAC considered this recommendation and worked to implement it. For instance, GAC’s *Departmental Plan 2018-2019* is replete

116 FAAE, *Evidence*, 1st Session, 42nd Parliament, 5 October 2017.

117 FAAE, *Evidence*, 1st Session, 42nd Parliament, 22 March 2018.

118 Ibid.

119 Government of Canada, *Summary Evaluation of the Delivery of Consular Services and International Emergency Management*, November 2012.

with references to consular modernization and new digital initiatives aimed at better informing Canadians about travel conditions abroad both before and after departure.

One area where little progress appears to have been made relates to the Registration of Canadians Abroad system. The ROCA system remains as underutilized today as it was in 2012. According to the 2012 consular evaluation report, ROCA registrants typically represent less than 10% of the visiting and resident Canadian communities in any one location. While the report noted that the vast majority of Canadian diplomatic missions relied on ROCA, 95% of the missions surveyed recognized that the system was not reflective of the actual number of Canadians in their territory. Case studies from Lebanon, India, Indonesia, and Mexico also suggested that the information in ROCA was incomplete, which reduced its usefulness during an emergency.¹²⁰

Despite the lack of uptake, it is clear from witness testimony that the ROCA system is an important tool for the consular program. The challenge for GAC is to find ways to better promote the tool and to communicate more effectively about its benefits. Developing a strategy to augment registration has become all the more important given that Canadians are increasingly travelling and living abroad. One strategy that the department could consider pursuing is to take a more targeted approach with ROCA that focuses promotion efforts on individuals travelling to certain locations at specific times of the year. For example, this could include targeting Canadians travelling to the Caribbean during hurricane season, or Canadians travelling to countries that have seen recent political and civil strife. In promoting the ROCA with these target audiences, GAC should ensure that it works closely with stakeholders in the travel and tourism industry.

Recommendation 11

The Government of Canada should develop a strategy to promote the Registration of Canadians Abroad system to target audiences of Canadians travelling to, or living in, locations that are particularly susceptible to natural disasters or political instability. As part of this strategy, the Government of Canada should leverage its outreach capacity by working with stakeholders and partners in the travel and tourism sector.

Recommendation 12

The Government of Canada should modernize its communication tools with regard to consular services, including greater use of digital tools such as online applications and social media.

120 Ibid.



STRENGTHENING CANADA'S CONSULAR NETWORK

The world is too large and complex for Canada to have diplomatic or consular representation everywhere. This was a clear and consistent message that the Committee heard from the broad spectrum of witnesses who testified before it or submitted written briefs. As a result, the Committee heard that bilateral and multilateral relationships and partnerships with civil society organizations, the private sector, and other stakeholders are critical to an effective consular program. Several witnesses indicated that the Government of Canada, through GAC and Canada's network of diplomatic missions abroad, should cultivate these relationships and explore new ones as a means of strengthening Canadian consular service.

Officials from Global Affairs Canada told the Committee that consular sharing or cooperation agreements with other countries are one way that Canada can expand its global reach. To take one example, the Committee was informed that Canada and Australia have a consular sharing agreement, which allows consular services to be extended to nationals of the other country in locations where one of the countries lack a diplomatic presence.¹²¹ From a regional perspective, this allows Canadians to receive consular services in countries where Australia's diplomatic presence is particularly extensive, such as in the South Pacific. For their part, Australians are able to receive consular services in areas where the Canadian diplomatic network is strong, including in several West African and Latin American countries.

Along with consular sharing agreements, the Committee heard that Canada's bilateral consular cooperation includes protective power arrangements which it maintains with certain countries. A "protecting power" is a country that is appointed to represent the interests of another sovereign state that does not have diplomatic representation in a third country. This arrangement differs from a consular sharing agreement in that protecting powers are typically appointed when two states break off diplomatic or consular relations or where one country lacks access to its nationals in another state.¹²² Lisa Helfand, Director General, Consular Operations, GAC, told the Committee that Canada has three protecting power agreements for Canadians abroad. Sweden is Canada's protecting power in North Korea; Italy is Canada's protecting power in Iran;

121 Under the agreement, Canadians can receive consular services from Australian officials in 20 countries where Canada does not have an office, and Australians can seek similar assistance from Canadian missions in 23 countries. Government of Canada, [Canada-Australia Consular Services Sharing Agreement](#); and High Commission of Canada in Australia, [Canada-Australia Relations](#).

122 Federal Department of Foreign Affairs, Switzerland, [ABC of Diplomacy](#).

and Romania is Canada's protecting power in Syria.¹²³ Ms. Helfand spoke to the function of these arrangements:

Each protecting power agreement is different, but what it comes down to is communication between the protecting power and us. We will ask them, either through informal or formal channels, to carry out a particular consular service for us, for example, to go visit someone in prison, and they will come back and report to us on the results of the visit.¹²⁴

In addition to formal bilateral agreements and partnerships in the area of consular affairs, the Committee heard about the utility of building contacts with like-minded countries through multilateral fora. Such fora include, as previously discussed, the Global Consular Forum. From an intelligence perspective, the Committee was informed that the Five Eyes partnership is an important network that the RCMP can leverage during critical incident scenarios.¹²⁵ Notwithstanding these two examples, witnesses suggested that Canadian consular officials should seek out further opportunities to meet with their counterparts in other countries to share best practices and lessons learned in the area of consular affairs.

Finally, several witnesses made the case that Canada should take better advantage of the expertise of individuals in civil society, the private sector, and the legal community in the area of consular affairs. For example, Gary Caroline and Dean Peroff argued that Canadian consular officials should look to collaborate with legal experts who have experience managing complex consular cases.¹²⁶ Alex Neve also encouraged the government to draw on the experiences, insights, and connections of the diverse range of other stakeholders involved in consular issues. According to Mr. Neve, these stakeholders include civil society organizations, business groups, and relevant diaspora communities.¹²⁷

The Committee agrees with witnesses that partnerships are critical to a successful consular program. Having a broad range of relationships at the domestic, bilateral, and international levels can be especially useful during consular emergencies and in complex consular situations. The Committee encourages the Government of Canada to look for

123 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 5 October 2017.

124 Ibid.

125 The Five Eyes is an intelligence sharing alliance between Canada, Australia, New Zealand, the United Kingdom, and the United States. FAAE, [Evidence](#), 1st Session, 42nd Parliament, 27 March 2018.

126 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 15 February 2018.

127 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 13 February 2018.



innovative strategies to strengthen Canadian consular relationships abroad and to better take advantage of consular expertise in Canada.

Recommendation 13

The Government of Canada should ensure ongoing dialogue between Canadian consular officials and experts drawn from civil society, the private sector, the legal community, and diaspora communities, for regular discussions about best practices and lessons learned in the area of Canadian consular affairs.

CONCLUSION

The global context for the provision of consular services to Canadians is changing. As this report has highlighted, Canadians are travelling abroad in growing numbers, including to more distant and potentially dangerous locations. Increased international mobility has driven the demand for consular services higher, both in terms of routine administrative requests as well as complex consular cases. Not only are consular officers confronting a greater number of consular cases, but the kinds of consular cases that they are encountering are becoming increasingly challenging. At any one time, consular officers may be managing a range of complex cases, which could include a Canadian stranded overseas by a natural disaster, the unlawful detention of a Canadian abroad, or an international child abduction situation.

In meeting consular challenges such as these, Canadian consular officers must be armed with a variety of tools. These must include tools to respond to emergency situations – such as the convening of an interdepartmental task force responsible for critical incidents – as well as preventative tools designed to advise and inform Canadians before an emergency occurs. Ensuring that the Canadian consular program continues to modernize its outreach and communication tools is therefore critical.

The success of the Canadian consular program also depends on partnerships, both between government departments and agencies, as well as with external stakeholders. It is for this reason that the Committee believes that the Government of Canada should expand its network of consular relationships. It can do so by collaborating with like-minded countries on best practices, and by leveraging the expertise of individuals in civil society, the private sector, and the legal community on matters of consular affairs.

Canadian consular officers must also be armed with a strong legal and policy foundation on which to deliver consular services. As discussed, the subject of the Crown prerogative over consular affairs was a central theme of the Committee's study. While flexibility in

the manner the Government of Canada responds to complex consular cases is important, the Committee strongly believes that equality of service in the area of consular affairs is essential. The Government of Canada should address the concerns expressed by some witnesses about the Crown prerogative over consular affairs by providing Canadians with greater certainty regarding their right to equitable consular assistance.

The Committee wishes to acknowledge the work of the Office of the Auditor General of Canada, which released a report on the delivery of Canadian consular services in May 2018. That audit, which is discussed in the addendum of this report, provided the Committee with important insights into areas where Global Affairs Canada needs to improve, strengthen and modernize its approach.

The Committee also wants to highlight the exceptional work done by Canada's consular officers across the world and at headquarters in Ottawa. Throughout its study, the Committee heard praise for the professionalism and commitment that these individuals show to Canadians in their daily work. The Committee has met with a number of consular officers in the context of its fact-finding missions abroad in the 42nd Parliament and has witnessed these qualities first-hand. The Committee would also like to note the outstanding contribution of locally engaged staff at Canadian missions across the world. As Daniel Livermore told the Committee, locally engaged staff are "the backbone of consular affairs. We boast some of the finest [locally engaged staff] consular officers in the world."¹²⁸ The Committee agrees and expresses its gratitude to all of Canada's front-line consular service officers. It is the Committee's hope that this report can contribute to an even stronger consular regime into the future.

ADDENDUM

On 29 May 2018, as part of its Spring Reports to Parliament, the Office of the Auditor General of Canada published the results of its audit examining the Government of Canada's delivery of consular services to Canadians.¹²⁹ The OAG's audit, which covered the period 1 January 2016 to 31 October 2017, specifically addressed the performance of Global Affairs Canada in responding to requests for consular assistance from Canadians living or travelling abroad. This audit was the first conducted by the OAG on this policy issue.

128 FAAE, *Evidence*, 1st Session, 42nd Parliament, 22 March 2018.

129 See: OAG, *Report 7 – Consular Services to Canadians Abroad – Global Affairs Canada*, 2018 Spring Reports of the Auditor General of Canada.



The results of the OAG's audit were published around the time the Committee was completing its report on the provision of Canadian consular services. Given the intersection between the subject matter of the two reports, members decided to invite the OAG to appear in front of the Committee before it finalized its own report. On 17 September 2018, Michael Ferguson, Auditor General of Canada, and Carol McCalla, Principal, OAG, provided their testimony. This addendum discusses the OAG's report and then concludes with the Committee's perspectives on some of those findings.

A. The Office of the Auditor General of Canada's Report on Consular Services to Canadians Abroad

The scope, objective, and methodology of the OAG's examination into the delivery of Canadian consular services differed from the approach taken by the Committee. The OAG looked at GAC's performance in the delivery of consular services in relation to the department's internal procedures, guidelines, and service standards. By contrast, the Committee's study focused on broader issues connected to the Government of Canada's policy on consular affairs, including with respect to complex consular cases.

Notwithstanding these different approaches, the OAG's audit reinforces and complements the work done by the Committee. Indeed, there are several areas where the two examinations produced similar recommendations. For example, like the OAG, the Committee is recommending that the federal government strengthen its consular outreach and communications strategy, and that it inform travellers about the risks associated with travel to certain locations. In addition, both examinations found that the gap between the cost of delivering consular services and the amount that is collected through the consular service fee is widening. As such, that fee will need to be reviewed.

The Committee highlights these areas of commonality because it is worth noting that two separate examinations of Canada's consular service program resulted in similar findings and recommendations. The OAG made seven recommendations on ways that GAC should improve its delivery of consular services. Global Affairs Canada agreed with all of them. The Committee looks forward to receiving a report from the department soon on its progress in undertaking the necessary reforms.

1. Responding to Cases of Canadians Arrested or Detained Abroad

GAC's involvement in cases where Canadians have been arrested or detained abroad was one of the areas in which the OAG report was critical of the department's performance. The OAG found that GAC did not always meet the department's service standards when contacting Canadians who had been arrested or detained abroad, and

that case files often provided no explanation as to why no contact was made. Moreover, contact was often made by phone and email, rather than in-person. As the OAG explained, Canadian consular officers are required by policy to initiate contact with arrested or detained Canadians within 24 hours of being notified, and to make subsequent contact at set frequencies, depending on the world region.¹³⁰ The OAG also found that many consular officers did not document their assessments of the vulnerability of imprisoned individuals, nor did they identify which individuals might require more frequent contact and oversight.¹³¹

GAC policy also requires the department to advise the Minister of Foreign Affairs promptly in writing if there is credible information indicating torture, and to inform the Deputy Minister of Foreign Affairs in cases indicating mistreatment. The term “promptly” is not defined. However, in its review of 15 cases where GAC officials had found that allegations of torture (5 cases) and mistreatment (10 cases) were serious and credible, the OAG determined that it had taken at least one and, in some instances, up to six months for departmental officials to formally assess those allegations. Once officials had determined that torture or mistreatment had likely occurred, the OAG explained that it took a further 47 days, on average, for GAC staff to inform the Minister in writing in cases of torture, and 29 days, on average, to inform the Deputy Minister in writing in cases of mistreatment. Mr. Ferguson informed the Committee that, in one case, seven months had elapsed before GAC had informed the Minister about the likely torture of a detained Canadian.¹³²

The quality and frequency of training received by consular officers is another issue of concern. While consular officers are provided with what is described as “general awareness” training on the requirements of prison visits, the OAG found that the courses did not “provide tools or sufficient guidance on how to detect incidents of

130 According to Global Affairs Canada, the Canadian service standard for contact with prisoners varies from country to country depending on needs and conditions. GAC indicates that “generally” contact with prisoners is made as follows: 3 months for prisoners in Africa, the Middle East, Asia, the South Pacific Islands, Latin America, and Eastern Europe; 6 months for prisoners in Western Europe (except in the United Kingdom); and 12 months for prisoners in Australia, New Zealand, the United Kingdom and the United States. See: Government of Canada, *Consular Services: Service Standards*.

131 OAG, *Report 7 – Consular Services to Canadians Abroad – Global Affairs Canada*, 2018 Spring Reports of the Auditor General of Canada, para. 7.46.

132 FAAE, *Evidence*, 1st Session, 42nd Parliament, 17 September 2018.



torture, abuse, or mistreatment.”¹³³ Based on its findings in this area, the OAG made the following recommendation:

Global Affairs Canada should strengthen its quality control process to ensure its consular officers contact and offer to help Canadians who have been arrested or detained, with a focus on those who may be at greater risk because of who or where they are. As well, consular officers should receive dedicated, cyclical training on arrest and detention cases throughout their careers. Such training should include how to conduct prison visits and provide tools for detecting incidents of torture, abuse, or mistreatment.¹³⁴

From the Committee’s perspective, the OAG’s findings with respect to cases of Canadians arrested or detained abroad are troubling. They are particularly concerning given that such deficiencies – with respect to timely service and training – have been raised in the past. In 2006, Ontario Court of Appeal Justice Dennis O’Connor released his report into the rendition and torture of Canadian citizen Maher Arar (known as the O’Connor Inquiry).¹³⁵ The 2006 O’Connor Inquiry made recommendations similar to the OAG’s findings that the Committee feels still need to be implemented.

The Committee agrees with the OAG that taking three months¹³⁶ or more to advise the Minister of Foreign Affairs about whether a Canadian detained abroad is being or has been tortured “does not,” in the words of the OAG, “meet the intent of Justice O’Connor’s recommendations.”¹³⁷ It also agrees with Mr. Ferguson that GAC must ensure that its consular officers are properly prepared to help Canadians arrested or

133 OAG, [*Report 7 – Consular Services to Canadians Abroad – Global Affairs Canada*](#), 2018 Spring Reports of the Auditor General of Canada, para. 7.50.

134 GAC agreed with the OAG’s recommendation and stated that it would “review its service standards and reinforce its monitoring activities. Global Affairs Canada is already in the process of modernizing its case management information systems, which will further enhance the quality control and monitoring capabilities of the program.” According to GAC, the department “has already piloted enhanced training in regard to the safe conduct of prison visits and will extend this to all consular officers. A process will also be put in place to ensure that officers are fully trained, including in arrest and detention cases. The initial actions associated with this recommendation will be completed by December 2018, with final systems updates to be completed by September 2020.” *Ibid.*, para. 7.52.

135 Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, [*Report of the Events Relating to Maher Arar: Analysis and Recommendations*](#), 2006.

136 The OAG indicated that it took between one and six months for departmental officials to formally assess whether allegations of torture or mistreatment were serious and credible. Once officials had determined that torture or mistreatment had likely occurred, it then took a further 47 days on average to inform the Minister in writing for cases of torture and 29 days on average to inform the Deputy Minister in writing for cases of mistreatment.

137 OAG, [*Report 7 – Consular Services to Canadians Abroad – Global Affairs Canada*](#), 2018 Spring Reports of the Auditor General of Canada, para. 7.48.

detained abroad through better and more targeted training.¹³⁸ The Committee was told that consular officers themselves are requesting such training.

Recommendation 14

The Government of Canada should develop service standards that set out concrete timelines for the formal assessment of allegations of torture or mistreatment of Canadians detained abroad, and for the notification of the Minister of Foreign Affairs and the Deputy Minister of Foreign Affairs in all cases where there is credible information that a Canadian detained abroad has been tortured or mistreated. Those timelines should respect the seriousness of these consular cases, while also reflecting the need for a prompt, consistent and effective response on the part of the Government of Canada.

Recommendation 15

The Government of Canada should ensure that Canadian consular officers receive in-depth and cyclical training on how to conduct prison visits in relation to Canadians arrested or detained abroad, and that Canadian consular officers also receive such training on how to detect incidents of torture, abuse, or mistreatment.

138 FAAE, [Evidence](#), 1st Session, 42nd Parliament, 17 September 2018.

APPENDIX A LIST OF WITNESSES

The following table lists the witnesses who appeared before the Committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the Committee’s [webpage for this study](#).

Organizations and Individuals	Date	Meeting
Department of Foreign Affairs, Trade and Development Mark Berman, Director General, Consular Policy Mark Gwozdecky, Assistant Deputy Minister, International Security and Political Affairs Lisa Helfand, Director General, Consular Operations Heather Jeffrey, Assistant Deputy Minister, Consular, Emergency Management and Security	2017/10/05	74
As an individual Gar Pardy, Former Canadian Diplomat	2018/02/08	85
As an individual Mark Warren, Human Rights Researcher	2018/02/13	86
Amnesty International Canada Alex Neve, Secretary General	2018/02/13	86
Fahmy Foundation Mohamed Fahmy, Co-Founder	2018/02/13	86
As an individual Gary Caroline, President, The Ofelas Group Dean Peroff, Lawyer, Peroff Professional Corporation	2018/02/15	87
As an individual Louis Guay	2018/03/20	89

Organizations and Individuals	Date	Meeting
As an individual Amanda Lindhout Daniel Livermore, Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa Lorinda Stewart	2018/03/22	90
Canadian Global Affairs Institute Patricia Fortier, Fellow	2018/03/22	90
Department of Foreign Affairs, Trade and Development David Drake, Director General, Counter-Terrorism, Crime and Intelligence Bureau Heather Jeffrey, Assistant Deputy Minister, Consular, Emergency Management and Security	2018/03/27	91
Royal Canadian Mounted Police James Malizia, Assistant Commissioner, National Security and Protective Policing, Federal Policing	2018/03/27	91
Office of the Auditor General Michael Ferguson, Auditor General of Canada Carol McCalla, Principal	2018/09/17	104

APPENDIX B LIST OF BRIEFS

The following is an alphabetical list of organizations and individuals who submitted briefs to the Committee related to this report. For more information, please consult the Committee's [webpage for this study](#).

Lawyers' Rights Watch Canada

Livermore, Daniel

Welsh, Michael C.

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 74, 85, 86, 87, 89, 90, 91, 95, 99, 104, 108 and 112](#)) is tabled.

Respectfully submitted,

Michael Levitt
Chair

Consular Affairs Report of the House of Commons Standing Committee on Foreign Affairs and International Development

Supplementary Opinion – New Democratic Party of Canada

November 9, 2018

The New Democratic Party is pleased the Committee agreed to our request to undertake this study on Consular Affairs. All Members of Parliament, regardless of political affiliation, are concerned with consular cases of Canadians in trouble abroad, which range from minor problems such as lost passports to serious and troubling human rights cases. It is clear that Canadians expect a high level of consular service from their government. It is also clear that Canadians need greater clarity regarding policies and procedures of the Canadian government with regard to consular affairs.

While we agree with much of this report, we are disappointed that the Committee did not recommend several specific bold steps that were recommended by expert witnesses during Committee hearings – steps we believe should be undertaken in order to ensure Canadians are safer when travelling abroad.

The Committee heard from several witnesses who recommended the provision of consular services be enshrined in legislation. **The NDP believes the Government of Canada should introduce legislation to govern the provision of consular services, with the objective of guaranteeing that all Canadians will be treated equally in the provision of such services.**

Unfortunately, the Committee did not hear from all witnesses suggested by the NDP, including family members of several Canadians who survived kidnapping, or who tragically lost their lives. However, the public record shows that families in these heartbreaking situations want better communication from the Government. **The NDP believes the Government of Canada must improve its communication with families in complex cases involving kidnapping and hostage situations. Government departments must improve their inter-departmental communication and cooperation in order to ensure a whole of government approach to complex cases, and improved communication to families.**

The Committee recommended the Government *review* section 83.03 of the *Criminal Code* in order to clarify that Canadians who engage in peaceful actions to secure the release of a kidnapping victim, including through the payment of a ransom, will not be subject to criminal prosecution. **The NDP believes the Government should amend this section of the Criminal Code immediately.**

It's not enough to promise that service standards will improve. Following from the Auditor General's report, **the NDP recommends the Government of Canada immediately commit to improved service standards, including a mechanism to track the extent to which consular services meet service standards.**

In addition, we are concerned that the Auditor General's report revealed that the Government of Canada has not implemented all of the recommendations on consular protection arising from the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (2006) and the

Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin (2008). The Canadian Government failed to protect these four Canadians from serious abuses. This must not happen again. It is scandalous and unacceptable that successive Conservative and Liberal governments have not implemented the important recommendations from these two Commissions of Inquiry. **The NDP believes the Government of Canada should immediately implement the recommendations on consular protection arising from Commissions presided by Justices O'Connor and Iacobucci.**

All Canadians must be treated equally in the provision of consular assistance. The Committee heard from Mohamed Fahmy and other witnesses, that while they were grateful for the work of consular officers on the ground, they constantly and consistently feared that their government would not be meaningfully engaged in their case. It is clear that the current discretionary prerogative to provide consular services results in the perception that all Canadians in trouble abroad are not treated equally, and that greater engagement is required at the more senior government levels in Ottawa on complex consular cases. **The NDP believes the Government of Canada should establish an independent mechanism that would review and arbitrate consular disputes, and that would ensure full compliance with the obligation to provide non-discriminatory consular assistance to Canadians.**

In conclusion, the NDP joins the Committee in thanking all the witnesses who testified and all those who submitted written briefs for their work and efforts to improve the Canadian Consular Services system. It is our hope that the 15 recommendations of the committee as well as those contained within this supplemental report will be adopted by the Government in order to strengthen the current system of consular services available to all Canadians.