

Beyond the Law

The War on Terror's Secret Network of Detentions

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CAGEPRISONERS

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FOREWORD

Before I was appointed UN Special Rapporteur on Torture, I served for eight years as expert member of the UN Working Group on Enforced or Involuntary Disappearances and dealt with many thousands of cases of enforced disappearances in Latin America, Iraq, Sri Lanka, Yemen, Bosnia and Herzegovina, Croatia and many other countries in all regions of the world. From this experience, I know that torture and enforced disappearances are closely interlinked. Usually, the very purpose of making a person disappear is to find a quiet place where information can be extracted from the detainee by means of torture without any accountability. But even in the absence of any proof of torture - which is extremely difficult to establish in disappearance cases - prolonged periods of incommunicado detention and disappearance as such constitute a violation of the right not to be subjected to torture and ill-treatment, according to international case law.

The use of secret places of detention and the practice of enforced disappearances are among the worst human rights violations of our time. If such practices are applied in a widespread or systematic manner, they even constitute a crime against humanity according to the Rome Statute of the International Criminal Court. In order to eradicate such practices, the newly created Human Rights Council in June 2006 agreed on the text of a United Nations Convention on Enforced Disappearances after many years of negotiations; it will most probably be adopted by the General Assembly in December 2006. It is ironic that in the very same year, Cageprisoners publishes a comprehensive report which reveals the systematic practice of enforced disappearances in a global network of secret places of detention.

The practice of enforced disappearances was typically associated with military dictatorships and similar authoritarian and totalitarian regimes. It is therefore difficult to comprehend that Governments, which have been associated as pioneers in the practice and promotion of human rights, democracy and the rule of law, both domestically and internationally, have now been implicated in such practices.

I am extremely grateful to the courageous efforts of journalists, such as Dana Priest of the Washington Post or Stephen Grey who recently published a book on CIA rendition flights, of non-governmental organizations, such as Human Rights Watch and Cageprisoners, and of inter-governmental investigators, such as Dick Marty of the Council of Europe or the Temporary Committee of the European Parliament, for providing conclusive evidence which constitutes different pieces of a an emerging global puzzle.

Ultimately, however, it is the responsibility of those Governments mentioned in the present report to provide the missing pieces in this global puzzle of enforced disappearances. It is these governments who will have to establish the necessary inquiry commissions to investigate and reveal the full truth about the practice of secret places of detention and enforced disappearances.

[Manfred Nowak – United Nations Special Rapporteur on Torture]

Few were surprised by the revelation that US aircraft had been refuelling at British airports while taking prisoners to unknown destinations to be detained and tortured. We have become used to the view of the present US administration that responding to acts of terrorism legitimises the wholesale abandonment of the rule of law. George Bush and

his friends have made no secret of their belief that the abuse of human rights of those suspected – often on the flimsiest grounds – of supporting terrorism is necessary to defend against it.

This is a belief which flies in the face of common sense and common humanity. It is also extremely dangerous for the future of all of us as is demonstrated by the growth of terrorism since the so-called “War on Terror” began. The truth is that our safety depends on the exact opposite of the Bush philosophy. It demands that the effort to uphold human rights principles for all be strengthened. It obliges us to expose and challenge abuses of human rights wherever they occur.

A necessary accompaniment of the effort to halt those abuses is the collection and analysis of information about the behaviour of the US Government, aided and abetted by the British government, in pursuit of its strategy.

This report is directed at one glaringly disgraceful element in that strategy: the detention without charge or trial and the physical abuse of those suspected of involvement in terrorism. Doubtless it was thought at one time that civilised legal safeguards could be sufficiently by-passed by consigning such people to Guantanamo, outside US territory and described by a British judge as a legal “black hole”. The more the scandal of Guantanamo has been illuminated by the spotlight of international condemnation, the more alternative hiding places have been sought and found among states subservient to the US which lack democratic or legal safeguards. These compliant states have, as this report demonstrates, made available throughout the world to the US authorities an extensive network of prisons where torture can be carried on away from the prying eyes of family and friends and others concerned about justice and decency, and in most cases at least, without the possibility of legal redress.

The courage and persistence of the researchers who have compiled this report deserves the highest praise. The information clearly comes from a variety of sources, including many accounts of personal experiences, not all of which can be verified by the authors with complete confidence in their accuracy. The point, however, is not that the report should present a complete picture but that it should tell us enough to shift the burden to the US government and its British partner to acknowledge what is happening and to take urgent steps to comply with international legal standards in their treatment of all prisoners held under their control. That must mean at the very least access to legal advice and proper legal processes. The practice of secret detention cannot be justified. It must stop and the rule of law be observed by the United States and British governments in accordance with their own legal traditions, tragically subverted by the current US administration and condoned by our own. The need to defend human rights and the rule of law has never been more urgent.

[Geoffrey Bindman – Chair, British Institute of Human Rights]

This report from Cageprisoners is an important and brave attempt to begin the task of charting the full extent of the global U.S. prison system.

It comes just after the fifth anniversary of President Bush's first executive order permitting the detention without trial of foreign nationals. Six weeks later, on 27th December 2001 Donald Rumsfeld announced that he would be moving the “worst of the worst” to Guantanamo Bay, and on 11th January 2002, the first planeload of prisoners arrived there from Afghanistan.

Despite the extensive media coverage, almost five years and numerous court battles later, the world barely knows the names of those imprisoned in Guantanamo Bay. Roughly three quarters of them have never seen a lawyer, and thanks to the latest moves of the administration trying to abolish the right to habeas corpus, that may remain the case. However bad this is, those in Guantanamo represent only four percent of the 14,000 prisoners held by the U.S. worldwide – a figure recently verified by the official U.S. government publication, Congressional Quarterly. The other 96 percent still worse off: all are held anonymously, and not one has ever seen a lawyer.

Yet despite the Bush Administration's effort to keep the secret prisons and the ghost prisoners from the public eye, this report from Cageprisoners makes clear that there is a disgraceful tale of torture that is gradually emerging. Another disgraceful truth involves the complicity of governments allied to the U.S. in these criminal acts.

Some countries accept prisoners from the U.S. for the purpose of interrogation and torture. Some hold individuals for the U.S. out of the range of American lawyers. All conspire to prevent efforts to investigate the secret rendition and torture programmes.

Thankfully, Cageprisoners had begun the task of producing a global picture of the rendition spider web. It is a testament to the dedication of the Cageprisoners team, and an important step towards defending justice and the rule of law. We should all applaud this work, and join in it.

[Clive Stafford Smith – Legal Director, Reprieve]

There are names and terms associated with the US led war on terror that have become indelible in the collective memory of people: Usama bin Ladin, Al-Qaeda, 'Operation Enduring Freedom', Tora Bora, Falluja, 'the Axis of Evil', Saddam Hussein, 'Islamofascists', Abu Ghraib and Guantánamo Bay.

The process of 'extraordinary rendition' – a euphemism for abduction, kidnap, false imprisonment, torture and even death – is also a part of the US response to the September 11 attacks. But much less is known about this, as well as the Ghost detention sites where thousands of men (and in some cases women and children) have been routinely and secretly held by the CIA, US military or proxy agencies.

Statements emanating from the highest levels of the US administration too not only confirm, but attempt to justify the existence of these shadowy sites and the 'robust' interrogation techniques applied therein to extract useful information.

The term 'rendition' was used during the slavery era in the USA to describe the capture and return of runaway slaves to their respective states. In the 1970s, during the six year reign of the military junta in Argentina, over 30,000 were 'disappeared'. Then as now, in the US-led War on Terror, people were often taken from their homes, hooded, shackled, beaten and held in secret locations where they awaited – without charge or trial – a very uncertain future. There are estimates today that over 14000 people around the world are being held in ghost detention sites under direct US control, or by others at their behest.

For those who know, 'ghost detention' is a tactic designed to instil terror by the state on the individual. It demonstrates how terrorism works both ways.

[Moazzam Begg – Spokesman, Cageprisoners]

INTRODUCTION

"If you want a serious interrogation, you send them to Jordan. If you want them to be tortured you send them to Syria. If you want someone to disappear – never see them again – you send them to Egypt."

[Robert Baer – former CIA Case Officer]

"It's very convenient. It's finding someone else to do your dirty work."

[Michael Scheuer – former Senior Counter-Terrorism Official with the CIA]

"You can check-in any time you want, but you can never leave."

[Hotel California – The Eagles – rendition by US soldiers]

Guantanamo Bay has been presented to the world as the face of the War on Terror, on both sides of the divide. However, over the last three years, through the work of human rights NGOs, lawyers, investigative journalists and statements of released detainees, a far more sinister image has begun to emerge from the shroud of secrecy that surrounds United States policy. A network of worldwide complicity has been established where countries are willing to detain not only their own nationals, but also receive nationals kidnapped abroad to interrogate them, often through the use of torture.

In March 2006, Cageprisoners produced a report entitled *Fabricating Terrorism: British Complicity in Renditions and Torture*, to highlight the extent the British government and its intelligence agencies had been involved in illegal practices abroad. The War on Terror often being used as a means of justifying many actions which otherwise would have been deemed inhumane. In this latest report, the list of prison locations seeks to highlight the level of worldwide cooperation in detention policies and also the extent to which external agencies are involved.

Security is a word that has been used liberally to justify the current detention policy. Wide nets have been cast across the globe with the aim of seizing any and all individuals deemed to have some connection to international terrorism. The problem with such a policy being, that often this leads to innocents being held in circumstances which are fit only for nightmares. The practice of torture is prevalent in the prison systems of Pakistan, Afghanistan, Syria, Morocco, Iraq, Egypt, and other countries across the Middle East and Sub-Continent, and yet many detainees have been outsourced to these places with full knowledge of what will take place against them.

The report: *Beyond the Law – The War on Terror's Secret Network of Detentions* for the first time brings together information that has been collated over the last year from different sources working to reveal the global system. Of the more important findings that the list highlights, are the alarming number of countries involved in the practice, the extent to which the US has been complicit in many of those detentions, and also the complete lack of due process throughout the system.

The system of detention has a number of permutations which need to be separated in order to understand in what ways the detentions take place. Due to the involvement of multiple agencies, difficulties arise in categorisation however the following four broadly cover the types that are used globally:

- 1. Black Sites** – the least transparent system of detention that has been highlighted. They are mostly used by US intelligence services to hold detainees of higher value in order to extract information.

2. **Department of Defense Facilities** – in many of the zones of conflict and in allied countries around the world, the US has established prisons and bases which have been used to house detainees.
3. **Proxy Detention Facilities** – those picked up in countries at the request of outside agencies or are interrogated by those agencies are held in these prisons and they form the largest category of prisons used around the world.
4. **Constructive Detention Facilities** – finally a network of safe-houses, hotels and schools are commandeered by military and intelligence agencies to hold detainees. The detainees are often tortured and interrogated for lengthy periods of time in complete secrecy before being moved to larger prisons.

It is imperative that these detentions be highlighted and cases brought before the courts in order to stop the pandemic use of arbitrary detention and torture. Citizens of the world must work in their own countries to place pressure on their governments to bring this system to an end, and also to re-establish some semblance of the rule of law which has thus far been brushed aside by the global interests of the US and her allies.

[Asim Qureshi – Researcher, Cageprisoners]

Cageprisoners

Cageprisoners was formed in October 2003 as a human rights organisation with the sole purpose of raising awareness of the plight of the prisoners in Guantanamo Bay and other detainees held as part of the 'War on Terror'.

The organisation works by attempting to provide a comprehensive resource of information on Guantanamo Bay and other detainees to the public and professionals in order to ensure that their plight is continually highlighted and never forgotten and to act as a voice for the voiceless.

By bringing together sources from all media outlets around the world, lawyers, activists and families of the detainees are often able to use the website as a one-stop resource for all aspects of detentions in the 'War on Terror'.

INTERNATIONAL HUMAN RIGHTS LAW

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
[Article 5 – United Nations Universal Declaration of Human Rights]

No one shall be subjected to arbitrary arrest, detention or exile
[Article 9 – United Nations Universal Declaration of Human Rights]

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him
[Article 10 – United Nations Universal Declaration of Human Rights]

The number of commentaries written on the status of detentions in the War on Terror are many¹ and do not need to be reiterated in light of the findings of this report. The above three principles taken from provisions considered by many to be the status of customary international law are sufficient to highlight the unlawfulness of secret detention and the process that has been used globally. Although the US has claimed that approximately 100 detainees have passed through the programme of secret detention, the number of disappeared worldwide goes far beyond that figure.

Running through the list of prisons and the circumstances of detention, in many cases there have been clear examples of arbitrary arrest or detention. Cases such as those of Moazzam Begg, Masood Janjua and Muhammad Al-Assad are just some examples of the complete arbitrary manner in which the men were taken.

Not all of the detentions however have been necessarily arbitrary in terms of the manner of arrest. Many of those detainees arrested in Afghanistan and Iraq were quite literally detained from the battlefield. However, as prisons such as Bagram, Kandahar, and Abu Ghraib have shown, the manner of detention in many circumstances has been arbitrary. Further, the article 10 requirement of the right to a fair and public hearing has lacked realisation through a variety of security excuses made by the US administration.

The most horrendous aspect of the entire system that continues to take place until this day is the level of torture that has been permitted. Once relegated to the despotic regimes of this world, torture has now become a widespread practice in the process of detention. The level of complicity in this torture can be as little as allowing for it to occur, knowing full well it is taking place², to actually carrying it out. The pictures from Iraq and Afghanistan have gone far to prosecuting a case against the US administration in its practice of such techniques. However those outsourced or detained in countries which commonly use torture have little chance of coming out of their predicament the same.

“Beyond the most abusive actions at Abu Ghraib, there is plentiful evidence that senior officers were aware of practices like forced nudity and the use of unmuzzled dogs to intimidate prisoners. Col. Thomas Pappas, the military intelligence officer in charge of interrogations at Abu Ghraib, is reported as having openly acknowledged the use of forced nudity as part of the intelligence process.”³

For the purposes of the report to prove the illegality of the global network of detention, it is enough to place the terms of reference solely within the framework of the Universal Declaration which in turn covers a plethora of national and international legislation providing substance to these provisions. It is imperative that international standards of human rights must not only be returned to but also upheld; without doing so the level of globally accepted violence will increase drastically causing a backsliding to barbarism.

DETENTION FACILITIES

The detention facilities used in the War on Terror do not take one standard form. Rather the global network relies heavily upon a number of different locations and types of facilities to be used to keep the whole process in as much darkness as possible. The status of the prisons has been assigned through meticulous assessment and cross corroboration of information received.

'Confirmed' prisons have been identified by detainees who were imprisoned therein, or those identified by governmental officials or public statements. Those prisons whose names and precise locations are unknown by released detainees have been placed in the 'confirmed' category. That they exist is not disputed, but it is virtually impossible to pinpoint that specific prison's location. For example, ex-Guantanamo detainee Mamdouh Habib was held in an unknown Egyptian prison where he was tortured for six months at the behest of the Americans. The country of the prison was crystal clear from the dialect of the guard and interrogators; the location was not disclosed to him.

Other sites have been designated as **'Suspected'** due to lack of transparency from governments and intelligence agencies. These sites have been identified mainly by the research of investigative journalists and human rights organisations. There are varying degrees of suspicion that these prisons exist or are being used, for example the US base on the British island of Diego Garcia has no confirmed detentions to date, but remains the list of suspected black sites because of the docking of the USS Bataan there; the same ship where John Walker Lindh was held and interrogated for weeks.

The 'Suspected' prisons have been included in the list due to the lack of transparency surrounding detentions in the 'War on Terror'. The US has deliberately veiled its practices behind a thick shroud of secrecy claiming operational reasons to prevent oversight of the process.

Beyond the status of 'confirmed' or suspected' the list places each site in one of four broad categories to help differentiate between the manner in which the detention facilities are used and their level of legality:

Black Site

Detention facilities run completely or almost entirely by the CIA in various locations around the world are considered to be 'black sites'. It is generally believed that a relatively small number of detainees are held in these exceptional prisons, especially those considered to be somewhat of a higher value to the US. The existence of US bases in different locations around the world, including Europe, has led to strong suspicions of those bases being used, especially when correlations are made with rendition flights.

"The US government must shed some light on Kabul's 'Dark Prison'...No one, no matter their alleged crime, should be held in secret prisons or subjected to torture."⁴

These black sites have been used as part of the 'High-Value Detainee' programme carried out by the CIA which had been sanctioned by the Bush administration. George W. Bush in a statement to the American public admitted the existence of such prisons however claimed that no detainee is being held in the programme. However it is strongly suspected that this is not the case as there are many 'ghost' prisoners who still remain unaccounted for.

"Since 911, we have been engaged in a struggle against an elusive enemy; terrorists work in the shadows, relying on secrecy and the element of surprise to maximize the impact of their attacks. Timely and accurate intelligence is crucial to success in the War on Terrorism. One of the key tools in this war has been the information we have gleaned from the terrorists themselves. Detainees who have been in the inner circle of al-Qa'ida, occupying some of the most important positions in that organization, hold information that simply cannot be obtained from any other source."⁵

Department of Defense Facility

Offensives in Afghanistan and Iraq have resulted in the erection of many detention facilities to house those caught in the course of the armed conflict; they are largely US bases or commandeered prisons. Notoriously this would include facilities such as Bagram, Guantanamo Bay, Abu Ghraib and others. There is much evidence suggesting that in these prisons detainees are often moved around from one part of the facility to another in order to avoid producing them in front of the International Committee of the Red Cross. Further, it has been recorded that large prison ships have been used not only to transport detainees around the world, but also to hold them for extended periods of time.

Although often the prisons may be publicly disclosed, the process of detention retains its secrecy as the detainees are hidden or refused access to any form of due process, independent medical care, familial communication and in many cases have been subjected to ill-treatment and dubious interrogation techniques.

"All I do nowadays is chart complaints against the US military...Many thousands of people have been rounded up and detained by them. Those who have been freed say that they were held alongside foreign detainees who've been brought to this country to be processed. No one is charged. No one is identified. No international monitors are allowed into the US jails."⁶

With allied forces ever present in and around the world, often the bases that operations are launched from are used as detention facilities where interrogations take place. These have led to some of the most manifest abuses seen under the occupying forces with civilians being routinely taken to them.

"They handcuffed me and blindfolded me and put a piece of white cloth over my eyes. They bundled me into a Humvee and took me to a place inside the palace. I was dumped in a room with a single wooden chair. It was extremely cold. After five hours they brought my sister in. I couldn't see anything but I could recognize her from her crying."⁷

Proxy Detention Facility

It is these detention facilities that are used in proxy that are by far the most worrying aspect of the global network. Detainees have been found in various locations worldwide where countries are known to practice torture and gross human rights abuses. Unfortunately often evidence emerges of the presence, whether physical or otherwise, of outside agencies from the Western world being involved. This is specifically known due to acceptance by US officials that they request other nations to do their dirty work in order to soften prisoners up.

The first form of proxy facilities used are those that run in conjunction with the host nation. An example of such a prison can be found in Jordan, home to Al Jafr Prison. This facility is run by the Jordanian authorities with complete access given to CIA agents. In these prisons the external agency will play a crucial hand in the interrogation process.

Kohat prison in the north of Pakistan similarly is under the control of the US. Detainees who spent time there made reference to the prison being used as a filtration point from where detainees would be sent to other prisons around the world.

A second form of proxy detention is where the external agency is still physically present, but far more passive in its involvement of any torture or abuse, simply being there to provide independent interrogation. In Adiala prison in Pakistan, Zeeshan Siddiqui was being abused by his Pakistani guards, and although MI6 were not involved in such activities, they knew full well what was taking place to him and continued with the inquiries regardless. Similarly with the case of Farid Hilali where the British were not only aware of his detention, but knew full well what was taking place against him,

"...in fact they were asking these questions on behalf of the British Intelligence Service. How else could one explain why I was being questioned about people in the UK and my whereabouts in UK mosques etc? I was never questioned about my activities in the Morocco or who I knew in Morocco, the questions were always about the UK and people in the UK."⁸

The final form of detention by proxy is that which takes place without any physical presence of the external agency. Having been sent to Morocco by the Americans, Binyam Mohammed Al Habashi was being interrogated by the Moroccan security services with questions that could only ever have been supplied directly by the intelligence services in the UK. Such techniques of external agencies feeding information to detaining nations is common, as evident in the cases of Ahmed About El Maati, Maher Arar, Abdullah Almalki and Muayyad Nureddin who all had information sent on them from Canadian security services to Syrian intelligence.

Constructive Detention Facility

The locations are generally found to be in normal residential areas of a country. In some circumstances hotels or motels are used to interrogate people. Sometimes it is the entire hotel as with the commandeered Ariana in Kabul, other times just part of the hotel as with a hotel in Skopje, or even a schoolhouse such as the one in Mazar-e-Sharif where John Walker Lindh was held.

Another type of civilian detention facility is the use of residential housing. Seemingly normal homes are used to hold suspects where once again they are interrogated and often tortured. The usage of such property allows suspects to be withheld from any official records and away from any petitions for habeas corpus. The Pakistanis particularly have been found in favour of using such sites which were used to interrogate detainees like Moazzam Begg, Masood Janjua, Omar Deghayes and the Afzal brothers.

These locations of detention are normally used as an extension of the process of proxy detention where more access is given to external agencies such as the CIA or MI6. The sites provide the perfect opportunity for interrogation away from the possibility of exposure. Those held in these civilian facilities have often commented on the presence of non-native interrogators. The reason for their status as Constructive Detention Facilities is due to the non-systematic nature in which they are used.

RECOMMENDATIONS

Cageprisoners calls for the following actions to be taken with all expediency in order to combat the existence of the global network of detentions, secret detention and rendition of suspects to torture in proxy detention facilities.

Calls all governments to immediately:

- End the process of secret detention and bring all detainees before fair and open courts.
- Transfer all detainees to prisons that are known as part of the penal system of the state and qualify as being acceptable according to international standards of detention.
- Cease the acceptance of prisoners into their territorial jurisdiction without full and fair extradition/deportation proceedings having been initiated.
- Give access to all foreign nationals within their borders to diplomatic or consular assistance from their state of origin.
- Refuse the transference or refolement of suspects to any state with a history of human rights violations, especially those that systematically carry out torture.
- Reject any request to use their ports or airports to refuel ships or airplanes used in the process of transferring the detainees around the world.
- Provide access to the families and lawyers of those held in their custody.
- Request evidence of actual criminal activity when requested by an external agency to arrest a suspect within their borders.
- Investigate the existence of secret detention facilities in its borders and then to bring before open and fair courts any individual held in such a way.
- Investigate all claims of torture by detainees from their state wherever they are held in the world, and further investigate claims of torture from those held within their own boundaries.
- Provide compensation to all those who have been tortured and kept in secret detention illegally, and also compensation to their families.

Calls the public to:

- Write to both the home and foreign ministries raising issue relating to the extent to which these secret detentions have taken place worldwide, also calling governments to carry out the above recommendations.
- Organise events in your locality raising awareness relating to the issues surrounding secret detention, especially those relating to each geographical region.

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	Clive Stafford Smith	Legal Director, Reprieve
	Moazzam Begg	Spokesman, Cageprisoners
	Clara Gutteridge	Researcher, Reprieve

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- ¹ The following documents all discuss the legal position on secret detention in greater depth:
http://www.apt.ch/secret_detention/Secret_Detention_APT.pdf;
http://www.humanrightsfirst.org/us_law/PDF/EndingSecretDetentions_web.pdf;
<http://www.asil.org/insights/2006/02/insights060214.html>; Satterthwaite M, Huckerby J 'Whereabouts Unknown: Detainees in the War on Terror' Center for Human Rights and Global Justice
- ² See Cageprisoners Report 'Fabricating Terrorism: British Complicity in Renditions and Torture' 03/2006
<http://www.cageprisoners.com/articles.php?id=13074>
- ³ <http://www.crimesofwar.org/special/prisoner/fs.html>
- ⁴ Human Rights Watch 'US Operated Secret Dark Prison in Kabul'
- ⁵ Office of the Director of National Intelligence 06/11/2006
- ⁶ The Guardian 'One Huge US Jail' 19/03/2005
- ⁷ The Guardian 20/09/2004
- ⁸ Statement of Farid Hilali: Farid Hilali v Central Court of Criminal Proceedings No 5 of the National Court Madrid, Spain – in the High Court of Justice – Queen's Bench Division