



**FEDERAL COURT**

**ABOUSFIAN ABDELRAZIK**

Plaintiff

-and-

**ATTORNEY GENERAL OF CANADA and  
LAWRENCE CANNON**

Defendants

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**STATEMENT OF CLAIM**

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TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the Plaintiff's solicitor or, where the Plaintiff does not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

September 21, 2009

Issued by:   
(Registry Officer) **DANIELLE PARENT  
REGISTRY OFFICER  
AGENT DU GREFFE**

~~Federal Court of Canada~~ 90 Sparks Street / 90, rue Sparks  
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**TO:** John H. Sims, Q.C.  
Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8  
Tel: (613)957-4998  
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I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au dossier de la Cour fédérale.

**AND TO:** Lawrence Cannon

Filing date 21-Sep-09

Date de dépôt

Dated   
Fait le

**DANIELLE PARENT  
REGISTRY OFFICER  
AGENT DU GREFFE**

## **CLAIM**

1. The Plaintiff claims against the Defendant Attorney General of Canada the following:
  - (a) General and special damages in the amount of \$20,000,000 on the basis of false imprisonment, torture negligence, intentional infliction of mental suffering, breach of fiduciary duty, and breach of sections 6, 7 and 12 of the *Canadian Charter of Rights and Freedoms*;
  - (b) Punitive and aggravated damages in the amount of \$4,000,000;
  - (c) The costs of this action on a solicitor-and-client basis, and;
  - (d) Such further relief this Honourable Court may deem just.
  
2. The Plaintiff claims against the Defendant Lawrence Cannon the following:
  - (e) General and special damages in the amount of \$2,000,000 on the basis of misfeasance in public office, intentional infliction of mental suffering, and breach of sections 6 and 7 of the *Canadian Charter of Rights and Freedoms*;
  - (f) Punitive and aggravated damages in the amount of \$1,000,000;
  - (g) The costs of this action on a solicitor-and-client basis, and;
  - (h) Such further relief this Honourable Court may deem just.

## **PARTIES**

3. The Plaintiff is a Canadian citizen of Sudanese origin. He fled Sudan in 1989 and came to Canada, where he was granted Convention Refugee status in 1990. Throughout his time in Canada, the Plaintiff has resided in Montreal, Quebec, where he resides today. The Plaintiff has one son, two daughters and a step daughter in Canada.
  
4. The Defendant Attorney General of Canada is representative of the Government of Canada and all departments and agencies that constitute part of the Government of Canada. All actions of the Defendant that are the subject of the instant action were carried out by representatives or agents of different branches of the Government of Canada.

5. The Defendant Lawrence Cannon resides in Gatineau, Quebec. At all material times, he was the Minister of Foreign Affairs and took individual actions and decisions that he knew or ought to have known were unlawful and would harm the Plaintiff.

## **OVERVIEW**

6. The Plaintiff is a Canadian citizen who travelled to Sudan in 2003. The Plaintiff claims that the Defendants took numerous actions to harm him in that country, including arranging for his arbitrary imprisonment by Sudanese authorities, encouraging or condoning his torture at the hands of Sudanese authorities, and actively obstructing his repatriation to Canada for several years. The Defendants acted in a bad faith and callous manner at every turn, resulting in significant physical and psychological harm to the Plaintiff.

## **BEFORE TRAVELING TO SUDAN**

7. In March 2003, the Plaintiff returned to Sudan to visit his mother, who was ill. Subsequently, between September 2003 and June 2009 he was prevented from returning to Canada by the direct and/or indirect intentional actions, omissions and/or negligence of the Defendants.
8. From the late 1990s until his departure to Sudan in March 2003, the Plaintiff states that he was under surveillance by and was frequently visited by agents of the Canadian Security Intelligence Service (CSIS), a branch of the Defendant. The individual agents identified themselves as CSIS to the Plaintiff on different occasions.
9. The Plaintiff learned from his neighbours living in his community that agents of the Defendant, identifying themselves as *Mukhabarat* (Arabic word for secret intelligence agents of the state, the equivalent of CSIS in Canada) were making inquiries about his activities, his religious affiliations and his personal views.
10. In or about 2000, the Plaintiff's home was repeatedly visited by CSIS agents. The Plaintiff met with two CSIS agents in front of his apartment building and told them he would speak to law enforcement officials, but not CSIS agents. He was appalled by the persistence of the CSIS agents and their refusal to heed his request to stay away from him and his family.
11. In 2001-2002, CSIS agents repeatedly visited and followed the Plaintiff's wife, Johanne Robitaille, while she was ill with cancer. This included an

occasion in April 2002 when two CSIS agents visited her unannounced in a Montreal hospital while she was terminal with her illness. The agents took the opportunity to ask her questions about her husband. She died shortly thereafter. The agents were determined to go to any lengths to learn information about the Plaintiff's private life.

12. In or about mid March 2003, when the Plaintiff was preparing to visit Sudan to see his ailing mother, two CSIS agents approached him near his home in Montreal and asked about his upcoming trip. The agents intimated that they were aware that the Plaintiff was travelling to Sudan and asked that he confirm his plans.
13. The agents then followed the Plaintiff to his house at which point the Plaintiff entered his home and called the Montreal police. Montreal police officers arrived on the scene and asked the CSIS agents to leave. However, prior to departing one of the two CSIS agents told the Plaintiff, in a threatening manner, that "You will see..." The Plaintiff understood this to mean: you will see what will happen for refusing to co-operate.

#### **ARREST BY SUDANESE AUTHORITIES**

14. The Plaintiff arrived in Sudan in about mid March 2003. In or about July 2003, he was joined by his new wife and infant son from Montreal.
15. His new wife, Myriam St-Hilaire, returned to Canada in August 2003 along with their son. Upon their arrival in Montreal, the Plaintiff's wife was detained for over seven hours by Canadian customs officials at Pierre Elliott Trudeau International Airport. She was asked a series of questions by Canada Border Services Agency (CBSA) officials about her husband, his whereabouts and the date of his expected return to Canada.
16. Ms. St-Hilaire confirmed to the CBSA agents that the Plaintiff was to return to Canada in or about mid-September 2003.
17. On September 12, 2003, not long before his anticipated return to Canada, the Plaintiff was contacted by an individual who identified himself as a person working abroad with one of the Plaintiff's nephews. The person advised the Plaintiff that he had been asked to deliver a package to the Plaintiff from his nephew who was living abroad. The person arranged to meet with the Plaintiff near a local mosque to retrieve the package later that day.
18. When the Plaintiff, accompanied by his brother and his cousin, arrived at the meeting, he was met by members of the Sudanese National Security Intelligence (NSI). They told the Plaintiff to get into a waiting car. The

Plaintiff initially refused but was eventually forced to comply after one of the NSI agents brandished a firearm and advised the Plaintiff that, if he did not go with them, they were authorized to shoot him.

19. The Plaintiff entered the car without resisting given that the NSI agents were armed.
20. The NSI is well known in Sudan and abroad for extra-judicial killing, disappearing of prisoners, torture and flogging of prisoners in Sudan.

#### **FIRST DETENTION (SEPTEMBER 2003 – JULY 2004)**

21. Upon his arrest on September 12, 2003, the Plaintiff was taken to a central holding area at the NSI headquarters in Khartoum, where he was stripped of his belongings and detained without being informed of the basis for his detention. During their initial questioning of the Plaintiff, the Sudanese officials asked him why he was in Sudan. The Plaintiff replied that he was visiting his ailing mother, at which point one of the Sudanese agents suggested to the Plaintiff that he was also there to get away from the Canadian "Mukhabarat".
22. Initially, the Plaintiff was detained in a small office about 4 metres square, with no windows. There was no bed but there were two desks with two chairs. He was allowed out of the room at gunpoint once or twice per day for a visit to the toilet. He was fed one meal per day.
23. The Plaintiff demanded to be informed about the basis of his detention and asked to speak to a Canadian official, but his requests were denied.
24. After approximately 10-12 days of secluded detention, the Plaintiff was subjected to interrogation by the two NSI officials who had arrested him. The two officials would enter the Plaintiff's office/cell at night and kick him to wake him up. Although he was not physically tortured during this interrogation, the Plaintiff was informed that he must tell the truth "or you will suffer". The interrogation was aggressive, with the Sudanese officials yelling, pointing fingers in the Plaintiff's face, and slapping him.
25. The NSI interrogators asked the Plaintiff a series of questions about his knowledge of persons in Canada who were alleged to be involved in terrorist activities. Some of the names the Plaintiff knew, others he did not. No questions pertained to persons in Sudan or the Plaintiff's activities in that country.
26. These interrogation sessions would last for approximately four hours each night and continued for approximately four nights. On the first night, the

interrogators were reading information from papers they would refer to as they asked questions. The interrogators did not refer to these papers on the subsequent nights, but the questions remained essentially the same.

27. The Plaintiff was later moved from the office/cell, but was still held in the NSI compound. He was imprisoned in two different rooms. He remained in isolation in the first room, a self contained wooden cell, with one meal per day, no exercise, and allowed to visit the bathroom at gunpoint only infrequently. A couple of weeks later he was moved to a cell in another holding area where other prisoners were present. While the Plaintiff was kept in his cell in isolation, he could sometimes speak through the door to the other prisoners. During this time, he was occasionally abused by soldiers for perceived transgressions such as reading a newspaper given to him by another prisoner. The abuse at this time took the form of being slapped by soldiers, pushed to the ground, and forced to stand against a wall for hours. The Plaintiff was so distraught about his circumstances that he would shout at his jailers, yelling, "Why are you keeping me?" This protest only led to further abuse.
28. While in detention at the NSI state security prison, the Plaintiff was not permitted to speak to the guards. He was on occasion made to stand facing a wall for 4 to 5 hours consecutively. His asthma inhaler and eyeglasses were also removed from him and were not returned despite his request for same in view of the fact that he has serious asthmatic reactions and his eyesight is extremely poor.

### **CANADIAN GOVERNMENT'S ROLE IN DETENTION**

29. The Defendant Government of Canada was responsible for the Plaintiff's detention by Sudanese authorities in September 2003. The detention was effected by the Sudanese government at the request, suggestion or prompting of the Defendant. This request was made by CSIS with the knowledge, complicity and/or cooperation of other Canadian government officials or departments.
30. The Defendant communicated information and questions to the Sudanese authorities so they could interrogate the Plaintiff on behalf of the Defendant. The fruits of the interrogations were communicated from the Sudanese to the Defendant.
31. Sudan is a country well known for abuse and torture of its prisoners. The Defendant itself prepares detailed annual human rights reports which document the human rights abuses perpetrated by Sudanese officials. There are also numerous publicly available reports from highly credible sources such as the United States State Department, Amnesty

International, Human Rights Watch and United Nations bodies, all of which confirm that torture of prisoners is a systemic practice in Sudan.

32. The Defendant was aware of these reports at the time that it requested the Plaintiff's detention and at the time it shared information with the Sudanese government. The Defendant knew or ought to have known that the Plaintiff would be abused or tortured in Sudanese custody.
33. Sudanese authorities informed CSIS of the Plaintiff's detention almost immediately after his arrest.
34. On or about September 12, 2003, CSIS informed the Security and Intelligence Bureau ("ISI") of the Department of Foreign Affairs of the fact of the Plaintiff's arrest by Sudanese authorities. Yet neither CSIS nor ISI took any steps whatsoever to inform Canada's Consular Affairs officials or the Plaintiff's family of his detention by Sudanese NSI.
35. The Plaintiff's family contacted the Consular Affairs section at the Canadian Embassy in Khartoum not long after his disappearance at the hands of NSI officials. Canadian officials in Khartoum could not confirm the Plaintiff's whereabouts, although they made inquiries with the Sudanese government. Consular Affairs officials were advised by Canadian ISI officials in early October 2003 that the Plaintiff may have been arrested by the Sudanese, and that they should follow up. ISI officials knew for a fact that the Plaintiff had been detained but did not want to confirm this to Consular Affairs as they were also assisting in the planning of a trip by CSIS officials to Sudan.

### **INTERROGATION BY CSIS**

36. In late October 2003, the Plaintiff received his first visit from Canadian officials while in detention in Sudan. But the visitors were not Consular Affairs officials providing assistance to an imprisoned Canadian citizen. The visitors were CSIS agents whose sole intention was to conduct a coercive interrogation of the Plaintiff, something they could not do on Canadian soil.
37. Two CSIS agents interrogated the Plaintiff over two nights, starting on or about October 28, 2003, in a large boardroom at the NSI compound.
38. The Plaintiff states that one of the CSIS officials was the same person who had been following him in Montreal. Upon seeing the Plaintiff, this official exclaimed words to the effect, "I told you, you would see." The Plaintiff states that these words were meant as a reminder that by not cooperating with CSIS in Montreal, he had now become a prisoner in Sudan.



39. The CSIS agents conducting the interrogation of the Plaintiff asked the same questions posed by the Plaintiff's Sudanese jailers. In that regard, they asked a number of questions relating to the Plaintiff's activities in Canada and his knowledge of persons in Montreal.

40. The Plaintiff was not tortured during his interrogation by CSIS officials, but the interrogation took place in the presence of two Sudanese intelligence officials. While the CSIS agents were asking questions in English, the Sudanese officials would sometimes say to the Plaintiff in Arabic, "Tell the truth or we will slaughter you." The Plaintiff felt completely distraught, fearful and helpless.

41. At the time of their interrogation of the Plaintiff, CSIS officials knew that the Plaintiff could be tortured, disappeared or even killed by NIS.

42. During the interrogation, CSIS officials told the Plaintiff:

- That he was not a Canadian;
- That he does not belong in Canada;
- That Sudan would be the Plaintiff's "Guantanamo Bay";
- That Canada does not need the Plaintiff;
- That the Plaintiff would never leave Sudan, nor would he be allowed to communicate with his children in Canada unless and until he cooperated with CSIS.

Further, in response to a request by the Plaintiff that the Canadian officials convey a message to his daughters in Montreal, the officials from CSIS stated "We don't help terrorists."

43. The Plaintiff asked several times during his interrogation for the assistance of the CSIS agents as they were officials within the government of Canada. At no time, however, did the agents indicate that they would provide any assistance to the Plaintiff. To the contrary, the CSIS agents indicated that they would keep the Plaintiff in Sudan and would not provide any support to him unless he would cooperate with them.

44. The CSIS agents relied on information derived from torture to question the Plaintiff. The agents told the Plaintiff that a friend of his from Montreal, Canadian citizen Raouf Hannachi, was detained and "suffering" in Tunisia. The agents said that while Hannachi was suffering at the hands of Tunisian authorities he had told them "everything" about the Plaintiff. The agents never told the Plaintiff what "everything" meant and did not relate any details, but it is evident the CSIS agents understood any information from Hannachi was derived through torture.

45. The CSIS interrogations took place over two evenings, and lasted approximately four hours each time. The CSIS officials recorded the interviews with a tape recorder.
46. At the end of the second interview, the Plaintiff pleaded with the CSIS officials to tell his children where he was. The CSIS officials refused. The Sudanese officials returned the Plaintiff to his cell and he did not see the CSIS agents again.
47. The Plaintiff was emotionally and psychologically overwhelmed by his interviews with the CSIS officials. He lost any hope of returning to his family and his life in Canada. He was insulted and berated in a racist manner and made to feel like a second class Canadian citizen.

#### **OTHER EVENTS DURING FIRST DETENTION AND CONSULAR VISITS**

48. On or about December 13, 2003, several prisoners escaped from the NSI state security prison shortly after the dawn (morning) congregational prayers. The Plaintiff was imprisoned there at the time.
49. That same morning, the Plaintiff was transported by NSI officials to the head quarters for the Sudanese Ministry of Foreign Affairs, where he met with the Canadian Head of Mission in Sudan, David Hutchings. This was the Plaintiff's first consular visit. Mr. Hutchings told the Plaintiff that Canada had learned of his imprisonment from his wife, Ms. St-Hilaire, and that it took Canadian officials a long time to find him.
50. At no time during the interview was the Plaintiff left alone with Mr. Hutchings, there being at least one Sudanese official present in the room. The Plaintiff pleaded with Mr. Hutchings for him to intervene to secure his release from detention. Mr. Hutchings indicated that there was nothing he could do. Mr. Hutchings had brought pictures and letters from the Plaintiff's daughters. The Plaintiff wept as he looked at the pictures.
51. At the termination of this interview, the Plaintiff was returned to the state security detention facility. That same day, the Plaintiff was beaten severely by his jailers. The Sudanese soldiers tied the Plaintiff's hands to a door frame and flogged him with a rubber hose on the back of his legs and back. The Plaintiff was asked questions about the prisoners who had escaped that morning, but he did not know anything. The Plaintiff was beaten in this manner for many days in a row. The pain from these beatings was excruciating.

52. Not long after the severe daily beatings were over, the Plaintiff was transferred by Sudanese authorities to the Kober prison notorious for its overcrowded population and extremely harsh living conditions.
53. The Plaintiff's transfer to Kober prison occurred in early January 2004. For approximately his first two weeks at Kober, the Applicant was held in isolation. He was subsequently placed in the security wing of the prison and was lodged in a room approximately 5 metres by 6 metres with 25 other prisoners.
54. While in Kober prison, the Plaintiff was made to stand at attention facing the wall for hours at a time. He was deprived of sleep, subjected to verbal assaults, pummeled, kicked and flogged with a rubber hose on his back and legs. The beatings at Kober prison would occur with regularity, and would seem to be inflicted randomly and without reason. Sometimes, the soldiers would beat only some of the prisoners in the same room as the Plaintiff. On other occasions, all of the prisoners would be abused.
55. The Plaintiff's second consular visit occurred on or about January 10, 2004. The Plaintiff was transferred from Kober prison to NSI headquarters for the Plaintiff's second meeting with David Hutchings. Two Sudanese NSI officials sat in the room during the meeting. Mr. Hutchings gave the Plaintiff another letter from home. The Plaintiff told Mr. Hutchings that his glasses and asthma medication had been taken away, but did not say anything further as the NSI officials were present. Mr. Hutchings asked the Plaintiff – who by then had been imprisoned without charge for four months – whether he needed a lawyer. The Plaintiff replied in the affirmative, and Mr. Hutchings showed him a list of local lawyers to select from. Mr. Hutchings emphasized that Canada would not pay for the lawyer but would inform him of the Plaintiff's circumstances. The Plaintiff selected one. Shortly thereafter, the meeting came to an end and the Plaintiff was returned to Kober prison.
56. The Plaintiff's third visit with a Canadian consular official was on or about March 16, 2004. The junior consular official was female and she brought apples and chocolate to the Plaintiff. The consular official did not indicate that Canada could do anything further to help the Plaintiff.
57. Despite his requests of Sudanese officials, the Plaintiff was not given access to the lawyer he had chosen until three months later in April 2004. The lawyer told the Plaintiff that he had been trying to meet with him but access was refused by Sudanese officials. The lawyer said he would make inquiries and contact the relevant officials, but it was understood that the Plaintiff was a 'security' detainee.
58. The Plaintiff went on three hunger strikes during this period of time to

protest his detention and the cruel treatment to which he was subjected. He had not seen any family during his detention, other than a brother-in-law in the military who came to see him once. The Plaintiff was deeply depressed about his hopeless situation.

59. In May 2004, the Plaintiff was moved to the Office of the Crimes Against the State. In this facility, he was initially imprisoned at night with several other prisoners in a large metal shed on the compound, which was enclosed by a gate. He did not have the permission to leave the compound, but could move about the compound during the day. The metal shed where he slept was intolerably hot. The Plaintiff and others were made to sleep on the floor of this shed.
60. Between May and July 20, 2004, the Plaintiff met with David Hutchings, and his assistant Samia Ahmed at the Office of the Crimes Against the State approximately five or six times. During these meetings, the Plaintiff was for several minutes left alone with Mr. Hutchings and Ms. Ahmed. He told them that he had been beaten in jail. He described the ill-treatment he received. Mr. Hutchings did not react to the Plaintiff's allegations of torture. The Plaintiff insisted that he wanted to return to Canada. Mr. Hutchings' answer was to the effect that the Plaintiff was Sudanese, that he could live in Sudan and questioned what incentive he would have to go back to Canada.

#### **RELEASE AND INTERFERENCE WITH RETURN**

61. In July 2004, the Plaintiff was informed by Sudanese officials that the Defendant was making arrangements to repatriate him to Canada.
62. At this time, the Plaintiff's then wife, Ms. St-Hilaire, was vigorously advocating for her husband's immediate and safe return to Canada and was in constant communication with senior Canadian consular official, Odette Gaudet-Fee.
63. The Defendant made travel arrangements for the Plaintiff's return to Canada for July 23, 2004 aboard a Lufthansa flight to Germany connecting to an Air Canada flight to Montreal. The funds to pay for the flight were provided by Ms. St-Hilaire.
64. Days before the flight was scheduled to leave, the Defendant was advised by the United States government that it had concerns about the Plaintiff's return to Canada. U.S. officials asked senior Canadian government officials if they would object to the U.S. taking steps to bar the Plaintiff's return. The request was made through channels to senior levels of government in the Privy Council Office. Senior Canadian government

officials agreed that the Plaintiff should not be allowed to return to Canada, although this decision was not communicated to Consular officials in Khartoum at the time.

65. After senior Canadian government officials decided to prevent the Plaintiff's repatriation, Lufthansa, Air Canada and Germany all contacted Canadian Consular officials and raised security concerns regarding the Plaintiff. The Defendant did not take reasonable steps to assure Lufthansa, Air Canada or Germany that the Plaintiff would be escorted and under Canadian supervision at all times. The Defendant intentionally decided not to take any steps because its desired objective was to prevent the Plaintiff's return to Canada.
66. The Sudanese officials released the Plaintiff from his arrest conditions at the Office of Crimes Against the State on July 20, 2004, in expectation that he would be leaving the country soon. Although released from imprisonment, the Plaintiff was nevertheless kept under a form of house arrest by the Sudanese in a 'half-way house' where he was required to stay each night. Until the end of August 2004, the Plaintiff was required to sign in at the Office of Crimes Against the State on a daily basis.
67. When the Lufthansa flight failed, Canadian Consular officials in Khartoum began to look at alternative routes, including a specific route that went through Casablanca to Montreal on Air Emirates and Royal Air Maroc. A reservation was made for the Plaintiff by Consular officials for July 26, 2004. Before the reservation could be communicated to the Plaintiff, the repatriation flight was expressly refused by Canadian officials in Ottawa. The reservation expired without the Plaintiff even being aware it had been made.
68. On July 27 2004, the Director of Case Management for Consular Affairs, Konrad Sigurdson, ordered Consular officials in Khartoum to take no further steps for airline bookings to repatriate the Plaintiff without the approval of the Privy Council Office (PCO) of the Defendant.
69. The Plaintiff states that the PCO was kept apprised of significant developments in respect of possible repatriation of the Plaintiff and was effectively controlling the process. By covertly undermining the July 23, 2004 repatriation effort, and the July 26, 2004 Casablanca flight, the PCO was conspiring to keep the Plaintiff in Sudan indefinitely.
70. Throughout, the Defendant told the Plaintiff's family, and have maintained until the present, that Canada intended in good faith to repatriate the Plaintiff in July 2004. This position, which is false, was repeated by the solicitors for the Defendant in Federal Court on May 8, 2009.

71. On July 30, 2004, senior Consular Affairs official, Odette Gaudet-Fee, observed that the Plaintiff's wife was attempting to mobilize funds for a private charter plane to repatriate the Plaintiff to Canada. Ms. Gaudet-Fee opined as to how the Defendant could prevent the Plaintiff's repatriation through such means. This statement exemplified the Defendant's true objective (i.e. to indefinitely prevent the Plaintiff's return to Canada) and the duplicitous manner in which it dealt with the Plaintiff and his family.
72. In early August 2004, during his detention at the 'half-way house', the Plaintiff met with a Canadian consular official named Rudy, who was temporarily replacing David Hutchings. Rudy accompanied the Plaintiff on his daily visit to the Office of the Crimes Against the State. The Plaintiff showed him the inhumane conditions of the prisoners living in the shed-like environment. The Plaintiff also told Rudy about beatings that occurred at night, and explained that he too had been abused while in detention in this facility.
73. In August 2004, Canadian International Development Agency (CIDA) Minister Aileen Carroll was scheduled to visit Sudan. Even prior to the Minister's visit, the Defendant through officials in the Department of Foreign Affairs stated that the Plaintiff should not be permitted to return with the Minister.
74. The continued delays in securing the Plaintiff's repatriation to Canada caused strain on the Plaintiff's relationship with his wife and in September 2004, his marriage with Ms. St-Hilaire ended. This caused the Plaintiff significant emotional distress.
75. In September 2004, Mr. Sigurdson confirmed that no extraordinary step would be taken to repatriate the Plaintiff to Canada.
76. On or about October 20, 2004, the Government of Sudan offered to fly the Plaintiff back to Canada aboard a Sudanese jet.
77. In response to the Sudanese offer, Mr. Sigurdson stated that Canada would not contribute in any way to the expense of the flight, that it would provide an Emergency Passport to the Plaintiff only once all travel arrangements had been finally confirmed, that no Canadian escort would be provided and that all logistics for the repatriation flight, including routing, call signs and other technical specifications would have to be arranged by the Government of Sudan without assistance from Consular Affairs.
78. Although the Government of Canada had approved an escort for the scheduled flight in July 2004, there is no explanation as to why an escort was categorically denied in respect of the Sudanese offer.

79. Due to the failure of the Defendant to take reasonable steps to facilitate the Sudanese offer of repatriation, the flight on the Sudanese jet never materialized.

## **SECOND DETENTION**

80. After July 2004, the Plaintiff was in frequent and direct communication with the Defendant through its embassy in Khartoum. He repeatedly requested assistance for his return to Canada. The Defendant's officials indicated that they could only promise to issue an emergency travel passport if the Plaintiff were able to secure a travel itinerary to Canada. As later events would demonstrate, this promise, repeatedly made, was given falsely and in bad faith.
81. As a result of his treatment in detention, the Plaintiff's eyesight had considerably diminished and his physical and mental health had deteriorated making his employability difficult in his vocation of training as a machinist. The Sudanese authorities had also at times informed him that he was not allowed to work. Accordingly, the Plaintiff lived on borrowed funds and found himself in a situation of basic subsistence, or a "hand to mouth" existence.
82. In these dire circumstances, the Plaintiff received the support and companionship of a Sudanese woman. The Plaintiff was beginning to consider the prospect that he would be trapped in Sudan for the rest of his life. In October 2004, he married her according to religious custom. The Plaintiff later had a child with his wife in 2005. Throughout this period, the Plaintiff also maintained regular contact with his children in Canada by telephone.
83. In October 2005, the Plaintiff was informed by NSI officials that they had documents to deliver to him from Canada. They asked the Plaintiff to come to NSI headquarters and pick up the documents.
84. The Plaintiff was understandably deeply suspicious of the NSI and had no desire to attend their headquarters. On or about October 16, 2005, the Plaintiff visited the Canadian embassy in Khartoum and spoke with the Head of Mission, Alan Bones. He asked Mr. Bones to intercede on his behalf and to confirm the nature of documents in the possession of the Sudanese and whether indeed it was necessary for him to attend the meeting or if the Canadian embassy could receive the documents for the Plaintiff.
85. Mr. Bones declined the Plaintiff's requests and assured him that there was

no risk in meeting with the Sudanese and that he would not be rearrested. The Plaintiff continued to plead for the assistance of Mr. Bones and the Canadian government, suggesting that perhaps a Canadian official could accompany him. Mr. Bones refused any assistance, but repeated his assurance that the Plaintiff would not be arrested. Mr. Bones told the Plaintiff to call after the interview with NSI was over, and if they did not hear from him they would follow up.

86. Under the assurance of the Defendant that his meeting with the Sudanese would not result in re-arrest, the Plaintiff went to meet with NSI officials. In the reception area of the NSI headquarters, the Plaintiff was met by an NSI official who asked him to step outside on the street. A car was waiting and the Plaintiff was asked to get in. Two other men with machine guns made it apparent he did not have an option. One of the NSI officials informed the Plaintiff that they had a demand from the NSI Director to arrest him.
87. The Plaintiff was emotionally devastated by this news. He pulled out his mobile phone and immediately called Alan Bones. He was able to tell Mr. Bones that he had been arrested, but he did not have time to hear Mr. Bones' reply as his phone was taken by his Sudanese captors.
88. The Plaintiff was immediately taken to Dabak prison, north of Khartoum. Dabak is one of the most brutal and inhumane prisons in Sudan. It houses prisoners who are "security" or "political" prisoners". Upon learning he was being transported to Dabak, the Plaintiff believed he had little hope for survival.
89. The Plaintiff was housed in a cell that was a small metal container. There were windows but it was very hot. The Plaintiff was kept in isolation and became despondent. He started to refuse food, which made the soldiers very angry. They started abusing him at meal time when he refused to eat. He was slammed against the wall, kicked, slapped, and beaten by two soldiers at once with rubber hoses. After five days, the Plaintiff was taken by force to the prison's medical clinic. He fainted and woke up with an intravenous tube in his body. He subsequently started eating again.
90. It was very difficult for the Plaintiff to breathe at Dabak prison. There was a brick kiln or factory beside the prison and the air was very poor. Without his asthma medication, the Plaintiff's breathing was distressed.
91. The Plaintiff was kept in isolation, the conditions of which became so overwhelming for the Plaintiff that he became seriously depressed. At one point, he began screaming, ripping his clothes, and banging his head into the wall until it began to bleed profusely and he was rendered unconscious.



92. The Plaintiff awoke in a hospital. The attending physician diagnosed the Plaintiff with severe depression and asthma. She recommended that he be placed in a general population holding rather than in isolation. After spending a few days in the hospital, the Plaintiff was returned to the same small cell but another prisoner was placed in the cell with him.
93. During his incarceration at Dabak, the Plaintiff was beaten arbitrarily approximately three to five days per month. Beatings would take place approximately four times per day, and would include flogging, kicking, pummeling and other forms of violence. The flogging with a rubber hose was one of the most painful torture techniques administered to the Plaintiff.
94. On several occasions, the Plaintiff was suspended by his wrists and tied to the door frame of his cell before being beaten.
95. In later January or early February 2006, the Plaintiff was transferred from Dabak to Kober prison. The Plaintiff contracted malaria and typhoid while at Kober and became very ill. He was also extremely depressed. He had had no contact from Canadian officials or his family and he was feeling entirely hopeless.
96. The Plaintiff became so depressed during this period at Kober prison that he would begin to beat his head against the cement floor of his cell. This led to him being taken to the NSI hospital again, where he saw the same doctor as before. The doctor recommended that the Plaintiff be transferred to a psychiatric hospital on a long term basis, but the NSI refused. Instead, the doctor gave the Plaintiff medication that made him sleep for several days.
97. When the Plaintiff was returned to Kober prison from the hospital, he was placed in isolation again. He was beaten occasionally by the guards and on one occasion shackles were placed on his wrists and feet, which were connected to each other by a chain and to a weight on his feet. Thus shackled, he was also tied to the frame of his bed for two weeks. The Plaintiff would have to plead with his jailers to be released from this position so he could urinate in a cup in his cell.
98. For reasons unknown, the Plaintiff was transferred from Kober prison back to Dabak in approximately April 2006. The Plaintiff was kept in isolation and was given medication that he understood were prescribed by the NSI doctor. The Plaintiff was so upset he lost track of time and often could not recognize whether it was night or day. He engaged in another hunger strike which he maintained for several days. He was again forcibly placed on an intravenous tube.

99. The Plaintiff was transferred for a final time in May or June 2006 back to Kober prison. This time, he was kept in a common cell with other prisoners. It was during this period that he received his first visit from family, namely his new wife and child. The Plaintiff remained seriously depressed about his circumstances, though he was not subjected to regular beatings during this final period at Kober.
100. In March 2006, while the Plaintiff was being tortured at Dabak and Kober prisons, the Defendant was in communication with the Sudanese Ministry of Foreign Affairs (MFA). In particular, the MFA promised the Defendant that the Government of Sudan was prepared to release the Plaintiff within 48 hours provided that the Defendant could make arrangements for his immediate transport to Canada aboard a military plane.
101. Canadian officials in Khartoum were instructed to give only vague and non-committal responses to this request. In a meeting that took place on March 20, 2006, MFA and NSI officials informed Canadian consular officials in Khartoum that their respective departments were losing patience with the Defendant and that they were prepared to hand the file to the Sudanese military intelligence for a "permanent solution". The Canadian officials understood this to be a threat that the Plaintiff would be executed and so advised senior officials in Ottawa. Despite this threat, and the belief of consular officials that the Plaintiff was likely being tortured at this time, the Defendant failed to take reasonable steps to protect the Plaintiff.
102. Throughout the entire period of the Plaintiff's second detention, he received no Consular visits from Canadian officials. He also did not have access to a lawyer. But for a single visit that was allowed to his wife in Sudan, he had no contact with the outside world.

## **SECOND RELEASE AND CONTINUED INTERFERENCE WITH RETURN**

103. The Plaintiff was released from his second detention on July 20, 2006. He was only given one day notice of his release. When he was told that he would be released, the Plaintiff could not believe it.
104. The Plaintiff was met by Canadian consular official Michael Pawsey on July 20, 2006 at NSI headquarters. Mr. Pawsey signed some forms and the Plaintiff was released.
105. Following the Plaintiff's release, no Canadian official asked him about his treatment during incarceration. The officials were either aware or suspected that the Plaintiff had in fact been tortured, but they did not want

to learn anything more about it, as it may have required them to take some kind of action.

106. None of the consular officials dealing with the Plaintiff's case in the Canadian embassy in Khartoum had any formal training in the detection of torture. Moreover, there was no established protocol in place to deal with complaints of torture from Canadians detained abroad.

107. The Plaintiff states that the Defendant failed to take necessary and reasonable steps to prevent his torture and abuse. Not only is the Defendant directly or indirectly responsible for the Plaintiff's detention on two occasions, had it taken reasonable steps, it could have saved the Plaintiff from his terrible fate by hastening his release from detention.

### **1267 LISTING AND SAFE HAVEN IN THE CANADIAN EMBASSY**

108. In late July 2006, shortly after his release from custody, the Plaintiff was summoned to a meeting with Mr. Pawsey. It was explained by Mr. Pawsey that the Plaintiff's name had been added to a United Nations Consolidated List under Security Council Resolution 1267. Accordingly, it was explained by Mr. Pawsey that there was an absolute ban on the Plaintiff's mobility and that he was not permitted to return to Canada.

109. Mr. Pawsey indicated that he wished he could do more for the Plaintiff's case, but did not see any way that the embassy could be of assistance in the circumstances.

110. The Defendant made no attempt to seek any means of repatriating the Plaintiff until the Plaintiff's solicitor made a request for his delisting in October 2007.

111. The Defendant, through internal communications of the Department of Foreign Affairs, confirmed that the Plaintiff was entitled to return to Canada under International Law despite his listing on the 1267 Consolidated List.

112. Notwithstanding its own legal assessment of the case allowing for the Plaintiff's repatriation, the Defendant opposed attempts by the Plaintiff to return to Canada by relying on the false argument that the 1267 listing prevented an individual's return to the country of his or her citizenship. In fact, the 1267 regime contains an explicit exception for repatriation. This did not stop the Defendant's Ministers and representatives from repeatedly stating that the Plaintiff could only return to Canada if he was removed from the 1267 list.

113. In or about March 2008, the Plaintiff obtained a meeting in Khartoum with the Parliamentary Secretary to the Minister of Foreign Affairs, Deepak Obhrai. During this meeting, the Plaintiff showed Mr. Obhrai scars on his body that were the result of torture he experienced while he was in detention between 2003 and 2006.
114. Rather than provide any assistance to the Plaintiff, Mr. Obhrai asked a series of questions about the Plaintiff's personal views regarding conflict situations throughout the world. In particular, he asked the Plaintiff his view of the conflict between Israel and Palestine, his view regarding Hamas and his opinion of the terror attacks of September 11, 2001. Mr. Obhrai stated that unless the Plaintiff provided answers to his questions, he would not receive any assistance from the Government of Canada.
115. Despite seeing first hand, scars from torture, the Defendant took no immediate steps to seek psychological or physical medical care for the Plaintiff. To the contrary, no additional measure of any kind was adopted to assist the Plaintiff. Mr. Obhrai stated that it was the Plaintiff's responsibility to remove his name from the 1267 list before he could return to Canada. This position is wrong at law and was a clear affront to the dignity of the Plaintiff who was seeking some compassion.
116. In April 2008, the Plaintiff was approached by two Sudanese NSI officials. They advised the Plaintiff that they were aware he was speaking to journalists and warned him to stop. The Plaintiff viewed this as a threat that he might be imprisoned and tortured again. On April 30, 2008, the Plaintiff entered the Canadian embassy in Khartoum and asked for safe haven as he believed his physical safety was at risk.
117. The Defendant accepted that the risk to the Plaintiff was real and allowed him to reside in the embassy. However, the Defendant made no attempts to assist the Plaintiff's return to Canada and in fact actively opposed his Federal Court application for a repatriation order. Instead, the Plaintiff was given spartan accommodations in the hopes he would leave the embassy on his own.
118. For weeks, the Plaintiff was forced to sleep on the floor in an embassy bathroom. He was later given a cot and was allowed to sleep in the gym. However, he had to leave the gym early in the morning and was usually required to stay in the reception area for the rest of his day. The Plaintiff lived like this in the embassy from April 30, 2008, until June 26, 2009, when he finally left the premises to fly back to Canada.
119. The Plaintiff found living in the embassy extremely stressful. He became seriously depressed and often viewed the embassy as another kind of prison. He came close to leaving several times, but ultimately decided to

stay as he knew the risks he faced outside the embassy walls were much worse.

120. In August 2008, the Defendants secretly investigated whether its formal position that the 1267 listing prevented the Plaintiff's return to Canada was valid. Department of Foreign Affairs officials asked Germany whether it required the consent of other countries to return a listed individual to Morocco, his country of citizenship. German officials confirmed to the Canadians that no consent or authorization was required to repatriate an individual on the 1267 list. Despite this information, the Defendants did not change their formal position and continued to actively oppose the Plaintiff's repatriation.

121. The Defendants never sought clarification from the United Nations 1267 Committee on whether it could repatriate the Plaintiff, despite his being on the 1267 list. The Defendants failed to take such steps because it wanted to keep the Plaintiff out of Canada, despite his citizenship, the presence of his children in Canada, and the knowledge that he was at risk of further torture in Sudan.

122. On May 6, 2009, the Coordinator of the United Nations Monitoring Committee for Resolution 1267 made public statements to the *Globe and Mail*, *Le Devoir* and the CBC National News stating that it was entirely up to Canada how it would choose to repatriate the Plaintiff and that the United Nations placed no impediment upon it.

123. Despite this clear and unambiguous public statement by a responsible U.N. official, the Defendants maintained their argument before the Federal Court that Canada was prohibited from repatriating the Plaintiff due to the 1267 travel ban. This argument was maintained in bad faith with the intention of further obstructing the Plaintiff's efforts to return to Canada.

### **DENIAL OF AN EMERGENCY PASSPORT**

124. Between July 2004 and June 2009, the Defendant's officials repeatedly stated to the Plaintiff that the Canadian government would issue an Emergency Passport to him in the event he was able to present a travel itinerary for his return to Canada.

125. Travel itineraries for the Plaintiff's return to Canada were confirmed for flights scheduled to depart on September 15, 2008 and April 3, 2009. On each occasion, the Defendant did not provide the Plaintiff with an Emergency Passport, contrary to the many explicit promises.

126. The September 15, 2008 itinerary was an unpaid booking. The

Defendant failed to give any formal response to the request for an emergency passport for this flight, other than to say it was under consideration. The booking expired without a response.

127. On December 23, 2008, the Defendant's Passport Office informed the Plaintiff in writing that an emergency passport would only issue upon presenting a paid itinerary. The letter from the Passport Office also emphasized that any application for a passport was governed by the rules of procedural fairness and natural justice.
128. The Defendant made the promise of an emergency passport in bad faith as it was assumed the Plaintiff would never be able to fulfill the condition of securing a paid itinerary. Not only was the Plaintiff impecunious, the *United Nations Taliban and Al Qaeda Regulations*, SOR99-444, which implement domestically the UN 1267 Resolution, arguably made it a crime to directly or indirectly provide financial assistance to the Plaintiff as a listed person under the Resolution. It was therefore assumed by the Defendant that individuals would not be willing to pay for an airline ticket for the Plaintiff.
129. In March 2009, more than 200 Canadians donated funds to purchase a plane ticket for the Plaintiff. On March 15, 2009, the paid itinerary was presented by the Plaintiff to Canadian embassy officials in Khartoum, with a request for an emergency passport. The flight was scheduled to depart April 3, 2009.
130. The Plaintiff waited anxiously for the Defendant's response to the request for an emergency passport. Living in the embassy for almost a year had been extremely stressful and he deeply missed his children in Canada. He became emotional and irritable as he waited.
131. On April 3, 2009, legal counsel for the Department of Foreign Affairs delivered a letter to the Plaintiff's legal counsel less than two hours before the Plaintiff's flight was scheduled to depart Khartoum. The one-sentence letter communicated the decision by the Minister of Foreign Affairs, the Defendant Lawrence Cannon, to refuse an emergency passport to the Plaintiff on the ground he was a threat to national security. The Defendant Cannon gave no reasons indicating why the Plaintiff was deemed a national security threat, or how his circumstances had changed since December 2008.
132. The Minister's decision was devastating to the Plaintiff. His hopes had been high that finally he would be allowed to return to his children in Canada. As the date of April 3 drew closer, he became increasingly distressed and anxious. The Defendant Cannon's one-sentence decision caused him significant mental suffering.

133. The Defendant Cannon rendered a decision that was wholly unlawful for several reasons, and he knew or ought to have known it was unlawful and would cause the Plaintiff psychological harm. The denial of an emergency passport violated the Plaintiff's right to enter Canada under subsection 6(1) of the *Canadian Charter of Rights and Freedoms*. The Defendant Cannon breached the Plaintiff's *Charter* right knowingly and in bad faith.

134. The Defendant Cannon rendered his decision in a callous manner that violated all rules of natural justice and procedural fairness. The decision was delivered in a disrespectful, high handed and malicious fashion, without any forewarning and in a manner designed to harm the Plaintiff emotionally.

135. The Defendants arranged for the Plaintiff's return to Canada on June 27, 2009. This action was not voluntary, but rather was compelled by a judgment and order of the Federal Court rendered June 4, 2009, which found that the Defendants had violated the Plaintiff's constitutional right to enter Canada under s. 6(1) of the *Charter*.

#### **FALSE IMPRISONMENT AND BREACH OF SECTION 7 OF THE CHARTER**

136. The Plaintiff states that the Defendant is liable for the tort of false imprisonment on the following grounds:

- a. That Defendant through CSIS and/or other branches of the federal government requested, prompted or suggested that the Sudanese government should imprison the Plaintiff in or about September 2003;
- b. The Defendant knew that there were no reasonable or probable grounds to imprison the Plaintiff for any crime committed in Canada, Sudan or any jurisdiction of the world;
- c. The Defendant through CSIS and/or other branches of the federal government shared information about the Plaintiff with Sudanese officials, some of which was false, misleading, and inflammatory, with the knowledge the Sudanese would rely on the information to imprison the Plaintiff;
- d. The Defendant was aware that human rights standards in Sudan are much lower than in other parts of the world and that preventive or other forms of detention take place with little or no evidence;
- e. The Defendant wanted the Plaintiff imprisoned in Sudan so he

could be prevented from returning to Canada and be interrogated in a country where the rule of law was weak;

- f. The Defendant encouraged the continued false imprisonment of the Plaintiff when CSIS agents interrogated the Plaintiff while in Sudanese custody, thus condoning his continued imprisonment;
- g. CSIS agents never took any steps to encourage the Sudanese to release the Plaintiff, although the Defendant was aware that CSIS was the only branch of the Canadian government that Sudanese NSI officials deemed as responsible for the question, and;
- h. The Defendant is liable for the Plaintiff's false imprisonment from September 2003 to July 2004, and also the continued custodial restrictions imposed on the Plaintiff by the Sudanese government from July 2004 until October 2005.

137. In addition, the Defendant was also directly or indirectly responsible for the Plaintiff's imprisonment in October 2005. The Defendant prompted the Sudanese government to imprison the Plaintiff a second time. The Defendant knew there were no reasonable or probable grounds for imprisoning the Plaintiff. Accordingly, the Defendant is liable for the Plaintiff's false imprisonment from October 2005 to July 2006.

138. The Defendant has a duty not to deprive the Plaintiff of his liberty or security of the person, except in accordance with the principles of fundamental justice. By deliberately encouraging or prompting the Sudanese to imprison the Plaintiff without reasonable grounds, the Defendant violated the Plaintiff's rights under section 7 of the *Canadian Charter of Rights and Freedoms*.

#### **BREACH OF THE PROHIBITION AGAINST TORTURE AND SECTION 12 OF THE CHARTER**

139. Torture is prohibited by customary international law and is a *jus cogens* norm binding on all states. The prohibition against torture as a principle of customary international law is part of the common law of Canada.

140. Under the common law prohibition against torture, the Defendant has a legal duty to refrain from the infliction of torture and to prevent it whenever possible. The Defendant also has a duty not to be complicit in the commission of torture, including by encouragement, condonation or receipt of information derived from torture.

141. The Defendant was aware that the Plaintiff faced a substantial risk of



- torture in Sudanese custody. The Defendant breached its duty to refrain from the participation in or facilitation of torture by arranging for, prompting or suggesting the Plaintiff's arrest by Sudanese authorities.
142. The Defendant breached its duty to prevent torture when it shared information about the Plaintiff with the Sudanese authorities. The Defendant knew or ought to have known that the information would be used to torture the Plaintiff.
143. The Defendant breached its duty to prevent torture on every occasion it received information from Sudanese authorities regarding their interrogation of the Plaintiff. The Defendant knew or ought to have known that the information had been derived by torture, and that by accepting the information it was condoning or reinforcing the practice of torture.
144. Having placed the Plaintiff at risk of torture, the Defendant had a duty to take all reasonable steps to protect him by repatriating the Plaintiff to Canada by any safe means at its disposal, including the use of Canadian government or military aircraft. After the Plaintiff's release from custody in July 2004, it was foreseeable that, if he did not leave Sudan, he was at risk of being detained and tortured again.
145. As a result of these breaches, the Defendant is liable for the torture inflicted on the Plaintiff by Sudanese authorities.
146. The Defendant also has a duty under section 12 of the *Canadian Charter of Rights and Freedoms* not to subject the Plaintiff to cruel or unusual treatment or punishment. The Defendant was directly or indirectly responsible for the Plaintiff's detention in Sudan, with the knowledge he would be subjected to cruel and unusual treatment or punishment. The Defendant did so at least in part because CSIS agents determined that the Plaintiff had not been sufficiently co-operative while on Canadian soil. By these actions, the Defendant breached the Plaintiff's right under s. 12 of the *Charter*.

#### **BREACH OF SECTION 6 OF THE CHARTER**

147. The Defendants Attorney General of Canada and Lawrence Cannon breached the Plaintiff's constitutional right to enter Canada, as guaranteed by section 6(1) of the *Canadian Charter of Rights and Freedoms*. All the actions were taken in bad faith and with the knowledge they were harming the Plaintiff and violating his rights. These actions included:

- a. CSIS and/or other branches of the federal government requested, prompted or suggested that the Sudanese government should imprison the Plaintiff in or about September 2003, which prevented him from returning to Canada;
- b. When the Plaintiff was released from custody, the Defendants engaged in an ongoing course of conduct to frustrate, prevent and otherwise obstruct the Plaintiff's ability to return to Canada;
- c. Canadian government officials agreed to the Plaintiff being prevented from flying to Canada on July 23, 2003, via Germany;
- d. Canadian government officials refused to allow the Plaintiff to fly to Canada on July 27, 2003, via Morocco;
- e. Canadian government officials delayed and refused to facilitate the Plaintiff's return to Canada on a Sudanese jet;
- f. Canadian government officials asserted that the U.N. 1267 list prevented the Plaintiff's repatriation to Canada, with full knowledge that this was not the case, and;
- g. Canadian government officials, including and in particular the Defendant Cannon, refused to issue the Plaintiff an emergency passport so he could fly to Canada on travel itineraries booked for September 14, 2008 and April 3, 2009.

### **MISFEASANCE IN PUBLIC OFFICE**

148. The Plaintiff claims that the Defendant Cannon is personally liable for misfeasance in public office on the basis of the facts set out in this claim, including:
- a. The Defendant Cannon, as the Minister of Foreign Affairs, is a public official with a duty to act in accordance with the laws of Canada;
  - b. The Defendant Cannon was aware that the Plaintiff had the constitutional right to enter Canada under s. 6(1) of the *Canadian Charter of Rights and Freedoms*, and that the Plaintiff's right to travel to Canada was permissible under international law, despite being listed by the United Nations 1267 Committee;
  - c. The Defendant Cannon was aware that the Plaintiff had the legal

- right to an emergency one-way passport for the purpose of returning to Canada;
- d. The Defendant Cannon was aware that he owed the Plaintiff a legal duty of procedural fairness in considering the Plaintiff's March 15, 2009 application for an emergency passport;
  - e. The Defendant Cannon deliberately and flagrantly violated the Plaintiff's constitutional right to enter Canada, and his legal right to procedural fairness and natural justice, by refusing to issue an emergency passport to the Plaintiff, and;
  - f. The Defendant Cannon was aware that his unlawful conduct would cause harm to the Plaintiff.

### **BREACH OF SECTION 7 OF THE CHARTER**

149. In the particular circumstances of this case, the passport application process engaged the Plaintiff's right to security of the person under section 7 of the *Canadian Charter of Rights and Freedoms*. Given the risk of further unlawful imprisonment and torture the Plaintiff faced in Sudan, and the distress arising from the Plaintiff's separation from his children in Canada, the Plaintiff's ability to return to Canada was of critical importance to his physical and psychological integrity, and thus his security of the person interest was engaged by the application process.

150. The Defendants Attorney General of Canada and Lawrence Cannon violated the Plaintiff's right to security of the person by directing the Plaintiff to participate in a passport application process that was conducted in bad faith and in flagrant disregard to the Defendants' own stated rules of procedural fairness. The Defendants had no intention of granting the Plaintiff an emergency passport, regardless of whether he obtained a travel itinerary, paid or otherwise. The Defendants thereby violated the Plaintiff's section 7 Charter right in bad faith and caused the Plaintiff psychological harm.

### **INTENTIONAL INFLICTION OF MENTAL SUFFERING**

151. Numerous employees and agents of the Defendant Attorney General of Canada intentionally caused the Plaintiff psychological harm and emotional distress. These actions and harms are as described above in paragraphs 27-47, 49-51, 54, 58-59, 64, 68-70, 80-81, 84-87, 89-99, 102,

110-115, 117-119, 121, 123, 126, 128, 130-132 and 134.

### **BREACH OF FIDUCIARY DUTY**

152. The Defendant Attorney General of Canada owed a fiduciary duty to the Plaintiff as a Canadian citizen detained in a foreign country and at risk of being treated in a manner that violates his fundamental human rights protected by international law. This fiduciary duty entailed taking all reasonable steps within the Defendant's power to protect the Plaintiff from further human rights violations.
153. At international law, the Defendant has the right to consular access to a Canadian citizen detained in a foreign country. Even where a Canadian citizen detained in a foreign country does not have access to a lawyer or outside visits of any other kind, the Defendant may have the power to gain access to the citizen by virtue of this right under international law. Thus, the Canadian citizen is in a uniquely vulnerable position wherein only the Defendant can provide assistance. Where a Canadian citizen is so imprisoned and is being treated in a manner that violates fundamental human rights protected by international law, the Defendant owes a fiduciary duty to provide assistance to that citizen.
154. The Plaintiff was imprisoned by Sudan and was being treated in a manner that violated international human rights law. The Sudanese authorities were aware they were violating the Plaintiff's human rights by detaining him indefinitely without charge and explicitly told the Defendant so. The Defendant was aware or ought to have been aware that the Plaintiff was suffering serious human rights abuses, including cruel and inhuman treatment and torture. In these circumstances, the Defendant owed a fiduciary duty to the Plaintiff to take reasonable steps to protect him.
155. The Defendant is liable for breach of fiduciary duty based on the facts set out in this claim, including:
- a) The Defendant's failure to take reasonable steps to cause the Plaintiff to be released from detention;;
  - b) The Defendant's refusal to issue an emergency passport to the Plaintiff; and
  - c) The Defendant's ongoing refusal to take whatever steps necessary to repatriate the Plaintiff to Canada.

## **NEGLIGENCE**

156. In the alternative to the intentional torts and constitutional breaches pleaded above, the Plaintiff states that the Defendant Attorney General of Canada is liable for the injuries to the Plaintiff in negligence on the following grounds:

- a. The Defendant shared information with the Government of Sudan about the Plaintiff, which it knew or reasonably ought to have known would place the Plaintiff at risk given that it was purportedly regarding his actions or acquaintances with people of interest in security investigations in Canada;
- b. In the event that a general duty of care is not owed to all Canadian citizens abroad in distress, which is denied, the Plaintiff states that a specific duty of care was owed to him because the Defendant placed the Plaintiff at risk;
- c. The Defendant negligently advised the Plaintiff to attend an interview with Sudanese authorities, and such negligence resulted in the Plaintiff's arbitrary detention, as described above in paragraphs 84-86, and;
- d. Due to the Defendant's negligence, the Plaintiff was falsely imprisoned, tortured, and abused, and has suffered severe physical and mental injuries as a result.

## **DAMAGES**

157. As a result of the breaches of legal and constitutional duties referred to above, the Plaintiff has suffered general and special damages and claims against the Defendant Attorney General \$20,000,000 for:

- a. Suffering and pain from physical abuse;
- b. Suffering and pain from psychological injuries, including severe depression and acute Post Traumatic Stress Disorder;
- c. Emotional distress caused by loss of companionship with the Plaintiff's children;
- d. Irreparable harm to the Plaintiff's family and social life;
- e. Loss of enjoyment of life;
- f. Past loss of income;
- g. Future loss of income, and;
- h. Cost of future medical care for psychological injuries.

158. As a result of the breaches of legal and constitutional duties referred to

above, the Plaintiff has suffered general and special damages and claims against the Defendant Lawrence Cannon \$2,000,000 for:

- a. Suffering and pain from psychological injuries, including severe depression and acute Post Traumatic Stress Disorder;
- b. Emotional distress caused by loss of companionship with the Plaintiff's children;
- c. Irreparable harm to the Plaintiff's family and social life;
- d. Loss of enjoyment of life;
- e. Past loss of income, and;
- f. Cost of future medical care for psychological injuries.

159. Further details of the Plaintiff's injuries and damages will be provided prior to trial.

### **PUNITIVE AND AGGRAVATED DAMAGES**

160. The Defendants' breached legal and constitutional duties owing to the Plaintiff in a manner that was high-handed and callous in the extreme. The Defendants' conduct interfered with and violated the Plaintiff's most fundamental rights as a human being, including the right to liberty and security of the person, the right to be free from torture, the right to raise his children and develop meaningful relationships with them, and the right to personal dignity.

161. The involvement of Canadian government officials in the false imprisonment and torture of a Canadian citizen abroad is conduct that must be condemned in the strongest possible manner by way of punitive damages. The Defendants also made repeated promises to the Plaintiff that he would be given an emergency passport to return to Canada if he obtained a travel itinerary. These promises, given to a Canadian in distress, were made in bad faith and with no intention of being fulfilled.

162. The Plaintiff claims aggravated and punitive damages against the Attorney General of Canada in the amount of \$4,000,000, and the Defendant Lawrence Cannon personally in the amount of \$1,000,000.

September 21, 2009

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