

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SUAAD HAGI MOHAMUD, MOHAMED KATI
ASBSCIR HUSSEIN by his Litigation Guardian Suaad Hagi Mohamud,
MOHAMUD OSMAN and ASIA WARSAME

Plaintiffs

-and-

LAWRENCE CANNON, LILIANE KHADOUR, ROSS HYNES,
DARRYL HUARD, PETER VAN LOAN, ANDREW JENKINS,
JASON KENNEY, JOHN DOE, JANE DOE and
THE ATTORNEY GENERAL OF CANADA

Defendants

AMENDED THIS 1st of October 2009
Pursuant to
MODIFIE CE CONFORMEMENT A
RUE/LA RÈGLE 26.02 (2)
THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE
REGISTRAR
SUPERIOR COURT OF JUSTICE
GRIFFIN
SUPERIEUR COUR DE JUSTICE

AMENDED STATEMENT OF CLAIM
(Notice of Action issued on August 21, 2009)

CLAIM

1. The Plaintiff, Suaad Hagi Mohamud, claims:
 - a) General damages in the amount of \$1,000,000.00;
 - b) Special damages in a sum to be disclosed before trial;
 - c) Aggravated and/or exemplary damages in the amount of \$500,000.00;
 - d) Punitive damages in the amount of \$500,000.00;
 - e) Damages pursuant to s. 24(1) of *the Canadian Charter of Rights and Freedoms*;
 - f) Pre and post judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C. 43 and/or section 31 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
 - g) Her costs of this action on a substantial indemnity basis, together with Goods and Services Tax payable pursuant to the *Excise Act*; and
 - h) Such further and other relief as this Honourable Court deems just.

2. The Plaintiff, Mohamed Kati Asbscir Hussein, claims:
 - (a) General Damages in the amount of \$200,000.00;
 - (b) Special damages in a sum to be disclosed before trial;
 - (c) Aggravated, exemplary and/or punitive damages in the amount of \$100,000.00;
 - (d) Damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3 in the amount of \$100,000.00;
 - (e) Damages pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms*;
 - (f) Pre and post judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C. 43 and/or section 31 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
 - (g) His costs of this action on a substantial indemnity basis, together with Goods and Services Tax payable pursuant to the *Excise Act*; and
 - (h) Such further and other relief as this Honourable Court deems just.

3. The Plaintiffs, Mohamud Osman and Asia Warsame each claim:
 - (a) Damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3 in the amount of \$100,000.00;
 - (b) Pre and post judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C. 43 and/or section 31 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
 - (c) Their costs of this action on a substantial indemnity basis, together with Goods and Services Tax payable pursuant to the *Excise Act*; and
 - (d) Such further and other relief as this Honourable Court deems just.

INTRODUCTION

4. Suaad Hagi Mohamud (hereafter "Ms. Mohamud") brings this action against the Defendants flowing from their callous and reckless treatment of her while she was abroad. As a direct result of the Defendants' actions, Ms. Mohamud was robbed of her identity, denied her rights as a Canadian citizen and abandoned to the whims of Kenyan authorities for three months. Her twelve year old son,

Mohamed Kati Asbscir Hussein, lost the care of his mother and suffered the shock and trauma of not knowing when, if ever, his mother would return home to him. The Plaintiffs, Ms. Mohamud and her family, claim damages for failure to provide consular services, negligence, breach of contract, negligent investigation, misfeasance in public office, defamation, malicious prosecution nervous shock and violations of sections 6, 7, 9, 11(d), 12 and 15 of the *Canadian Charter of Rights and Freedoms* with respect to the Defendants' wrongful conduct in denying Suaad Hagi Mohamud her citizenship and her identity.

THE PARTIES

5. The Plaintiff, Suaad Hagi Mohamud, is a Canadian citizen who resides in the City of Toronto in the Province of Ontario. She was born on December 1, 1977 in Mogadishu, Somalia. She has resided in Canada since March 30, 1999 and became a Canadian citizen in 2003. She brings this action on her own behalf and as litigation guardian on behalf of her son, Mohamud Hussein.

6. The Plaintiff, Mohamud Hussein, is a Canadian citizen who resides in the City of Toronto. He was born on January 3, 1997 in Nairobi, Kenya. He has resided in Canada since March 30, 1999 and became a Canadian citizen in 2003.

7. The Plaintiff, Mohamud Osman, is Ms. Mohamud's husband. They were married on December 12, 2007 in Nairobi, Kenya. Mr. Osman is a citizen of Kenya and resides in the city of Nairobi in Kenya.

8. The Plaintiff, Asia Warsame, is Ms. Mohamud's mother. She was born on March 30, 1949. She is a citizen of Somalia and a resident of Nairobi, Kenya.

9. The Defendant, Lawrence Cannon, resides in Gatineau in the Province of Quebec (hereafter “Cannon”) and was at all material times, the Minister of Foreign Affairs. Pursuant to the *Department of Foreign Affairs and International Trade Act*, R.S.C. 1985, c. E-22, Cannon is responsible for the conduct of the external affairs of Canada. The Minister of Foreign Affairs is responsible for, amongst other things, the conduct of all diplomatic and consular relations on behalf of Canada, the conduct of all official communication between the Government of Canada and the government of any other country, coordination of the direction given by the Government of Canada to the heads of Canada’s diplomatic and consular missions, the management of Canada’s diplomatic and consular missions and the administration of the foreign service of Canada. Pursuant to the *Order Respecting Canadian Passports*, SI/81-86, the Minister of Foreign Affairs is responsible for Canadian passports, the control and management of Passport Canada and maintains a royal prerogative over the issuance and revocation of Canadian passports. As such, and without limiting the generality of the foregoing, the Defendant Cannon is personally liable for his conduct in failing to properly and competently supervise, control, manage and direct agents and/or employees of the Canadian High Commission in Nairobi; for his refusal to take appropriate steps to confirm Ms. Mohamud’s identity and ensure her prompt return to Canada; and for his false and defamatory and/or negligently made statements about Ms. Mohamud.

10. The Defendant, Ross Hynes, is a Canadian citizen and resident of the City of Nairobi in the Country of Kenya (hereafter “Hynes”). At all material times, Hynes was the Canadian High Commissioner for Kenya, a full-service High Commission offering visa and immigration services as well as consular and diplomatic services. Pursuant to the *Department of Foreign Affairs and International Trade Act*, R.S.C. 1985, c. E-22, Hynes was responsible for the management and direction of the Commission and its activities, and the supervision of the official activities of the

various departments and agencies of the Government of Canada in Kenya. As such, and without limiting the generality of the foregoing, the defendant Hynes is personally liable for his conduct in failing to properly and competently supervise, control, manage and direct agents and/or employees of the Canadian High Commission in Nairobi and for his refusal to take appropriate steps to confirm Ms. Mohamud's identity and ensure her prompt return to Canada.

11. The Defendant, Liliane Khadour, is a resident of the Province of Ontario (hereafter "Khadour"). At all material times, Khadour was the Vice-Consul at the Canadian High Commission in Nairobi, Kenya. As such, she was responsible for the provision of consular and diplomatic services to Canadian citizens in Kenya, including but not limited to, offering assistance to Canadian citizens who have been arrested and/or detained, those who require confirmation of their identity as Canadian citizens, and the issuance and/or replacement of passports and other Canadian travel documents. Khadour is personally liable for her conduct in falsely advising Kenyan authorities that Ms. Mohamud was not a Canadian citizen and her failure to competently and fairly provide consular and/or diplomatic services to Ms. Mohamud.

12. The Defendant, Peter Van Loan, is a resident of the Province of Ontario (hereafter "Van Loan"). At all material times, Van Loan was the Minister of Public Safety and was responsible for the management and direction of the Department of Public Safety. This Defendant was responsible for, *inter alia*, the Canada Border Services Agency and the enforcement of the *Canada Border Services Agency Act*, 2005, c.38, C-1.4 and the *Immigration and Refugee Protection Act*, 2001, c. 27, including but not limited to, the coordination, direction and supervision of officers employed by the Canada Border Services Agency, the administration of examinations at ports of entry and the establishment of policies respecting the enforcement of the Acts. As such, and without limiting the generality of the

foregoing, the defendant Van Loan is personally liable for his conduct in failing to properly and competently supervise, control, manage and direct agents and/or employees of the Canada Border Services Agency, both in Canada and abroad, and for his refusal to take appropriate steps to confirm Ms. Mohamud's identity and ensure her prompt return to Canada.

13. The Defendant, Andrew Jenkins, is a resident of the Province of Ontario (hereafter "Jenkins"). Jenkins was at all material times a Regional Intelligence Officer with the Canada Border Services Agency responsible for conducting an investigation into Ms. Mohamud's identity.

14. The Defendant, Jason Kenney, is a resident of the City of Calgary in the Province of Alberta (hereafter "Kenney"). At all material times, Kenney was the Minister of Citizenship, Immigration and Multiculturalism and was responsible for the management and direction of the Department of Citizenship and Immigration. Kenney was responsible for the administration of the *Citizenship Act*, c. 29 and the *Immigration and Refugee Protection Act*, 2001, c. 27 including but not limited to the provision of services pursuant to these Acts at the Canadian High Commission in Nairobi. As such, and without limiting the generality of the foregoing, the Defendant Kenney is personally liable for his conduct in failing to properly and competently supervise, control, manage and direct agents and/or employees of the Department of Citizenship and Immigration Canada, both in Canada and abroad, and for his refusal to take appropriate steps to confirm Ms. Mohamud's identity and ensure her return to Canada.

15. The Defendant, Darryl Huard, is a Canadian citizen and resident of Nairobi, Kenya (hereafter "Huard"). At all material times, Huard was the Second Secretary (Immigration) at the Canadian High Commission in Nairobi, Kenya and was responsible for, *inter alia*, the administration, provision of

services and enforcement pursuant to the *Immigration and Refugee Protection Act, 2001, c. 27* and was responsible for conducting an investigation into Ms. Mohamud's identity. Huard is personally liable for his conduct in failing to take appropriate steps to promptly confirm Ms. Mohamud identity and ensure her prompt return to Canada.

16. The Defendants, John Doe and Jane Doe, are members of the Government of Canada, the Canadian High Commission in Nairobi, the Department of Foreign Affairs and International Trade, the Canada Border Services Agency, and/or Citizenship and Immigration Canada who were involved in the detention and investigation of Ms. Mohamud. The names and relevant actions and inactions taken by John Doe and Jane Doe are within the unique knowledge of the defendants.

17. The Defendant, Attorney General of Canada, is the legal entity that is liable in respect of torts committed by servants and agents of Her Majesty the Queen in Right of Canada pursuant to section 3 and 23(1) of the *Crown Liability and Proceedings Act, R.S.C. 1985, c.C.50*.

18. The Defendants Cannon, Hynes, Khadour, John Doe and Jane Doe are hereafter collectively referred to as the Department of Foreign Affairs and International Trade "DFAIT" Defendants.

THE FACIS

19. On April 30, 2009, Ms. Mohamud left Toronto by air and traveled to Nairobi, Kenya for a three-week trip to visit her mother and husband. She arrived in Nairobi on May 1, 2009. She presented her Canadian passport to authorities in Toronto, Amsterdam and Nairobi with no difficulties. Ms. Mohamud's Canadian passport was issued in 2005. The passport photograph was an accurate portrayal of her appearance at all material times.

20. Ms. Mohamud left her son in the care of a family friend in Toronto, for what was intended to be a three-week journey.

21. On May 21, 2009, Ms. Mohamud attended at Jomo Kenyatta International Airport in Nairobi for her return flight to Canada. She was stopped by two KLM airline employees. She was told that she did not look sufficiently like her passport photographs. She believed these employees were seeking payment of a bribe in exchange for permission to board her flight. She refused to pay a bribe and was thereafter turned over to Kenyan immigration authorities and placed in detention at the airport.

22. Kenya in general, and Jomo Kenyatta International Airport in particular, are notorious for bribery and corruption. This reality was well-known or should have been well-known to the Defendants.

23. Ms. Mohamud requested and was permitted to contact officials at the Canadian High Commission on the evening of May 21, 2009. She spoke with a male party, whose identity is not known to the Plaintiffs. She advised him of her predicament and sought consular assistance.

24. The following day, May 22, 2009, two individuals from the High Commission attended at the airport and interviewed Ms. Mohamud in custody. The identities of these individuals are not known to the Plaintiffs. The individuals from the Canadian High Commission had an adversarial approach from the outset and operated on the presumption that Ms. Mohamud was an imposter. She provided identifying records and information about her employment and family in Canada, and contact information for individuals who could confirm her identity. She offered to show Canadian identification from her wallet. These individuals declined to view the identification and advised Ms.

Mohamud that they believed her to be an imposter. Rather than take any further investigative steps, they confiscated her passport and left her in the custody of Kenyan officials at the airport, where she remained until May 25, 2009.

25. On May 25, 2009, Kenyan officials escorted Ms. Mohamud to the Canadian High Commission where she was interviewed. The identities of the two individuals who interviewed her at the High Commission are not known to the Plaintiff. She provided the interviewers with multiple pieces of identification, including: her Ontario Driver's license; Canadian Citizenship card; Social Insurance Number; Desjardins Financial Security insurance card; a dry cleaning receipt from a Toronto drycleaner; Bell Calling Card; HBC Rewards card; her son's Social Insurance Number; a Visa card; her expired Ontario Health Card; her son's Ontario Health Card; a Royal Bank card; her son's citizenship card; Canadian Tire money; and photographs on her camera taken in Canada.

26. In the course of the interview with the individuals from the Canadian High Commission, Ms. Mohamud suggested various ways in which her identity could be confirmed, including by way of fingerprinting. Rather than take any further investigative steps, the interviewers advised her that she was an imposter and returned her to the custody of Kenyan officials.

27. Thereafter, High Commission officials refused to receive or return phone calls from Ms. Mohamud's lawyers, friends, and family, who were attempting to assist in proving her identity. No additional steps were taken by any employee or agent of the Canadian High Commission to investigate Ms. Mohamud's identity.

28. On May 25, 2009, Kenyan officials released Ms. Mohamud on a two-week bond during which time she was required to report to Kenyan authorities daily.

29. Rather than render Ms. Mohamud the assistance that she was entitled to receive at law, on May 28, 2009 the Defendant Khadour, the Vice-Consul at the High Commission, delivered a false and defamatory letter (the “Khadour letter”) to Michael Ojwang, the Kenyan Director of Immigration Services, Immigration Investigations and Prosecutions Division, stating:

Please be advised that we have carried out conclusive investigations including an interview and have confirmed that the person brought to the Canadian High Commission on suspicion of being an imposter is not the rightful holder of the aforementioned Canadian passport.... As requested, the Canadian High Commission is releasing the passport to your office for the purposes of prosecution regarding the improper use of the passport by a person other than the rightful holder.... With best regards and appreciation for your ongoing cooperation....

30. Khadour enclosed with the letter the original Canadian passport for the purposes of prosecution. Khadour did not have lawful authority to provide the Canadian passport to Kenyan authorities. The letter was sent with the knowledge and intent that it would result in the prosecution of Ms. Mohamud.

31. Khadour was directed and/or assisted in this regard by the defendant Ross Hynes, the Canadian High Commissioner for Kenya, and Darryl Huard, the Second Secretary (Immigration) at the High Commission.

32. The statements in the Khadour letter were published within numerous media articles. The August 11 and 12, 2009 editions of the *Toronto Star*, included the following quotation from the letter:

We have carried out conclusive investigations including an interview and have confirmed that the person brought to (us) on suspicion of being an imposter is not the rightful holder of the aforementioned Canadian passport.

33. On June 3, 2009, Ms. Mohamud was formally charged with “Possessing and Using a Passport issued to another person” and “being unlawfully present in Kenya”. She was incarcerated at the Langata prison in Nairobi in inhumane and degrading conditions until in and around June 12, 2009, at which time her mother was finally able to arrange for and pay bails demanded.

34. Following extensive media coverage in Canada about Ms. Mohamud’s plight, the Defendants, for the first time, took steps to investigate Ms. Mohamud’s identity. The steps taken by the Defendants did not accord with the urgency of Ms. Mohamud’s situation.

35. Ms. Mohamud’s fingerprints were taken on or about July 9, 2009. On July 21, 2009, Ms. Mohamud was advised through counsel that the Government of Canada did not have her fingerprints on file for comparison purposes. As a result, the process was delayed as the Defendants claimed to be waiting for the results of fingerprint tests that could not have taken place.

36. It was not until on or about July 13, 2009 that Ms. Mohamud’s workplace was first contacted. The Defendant Huard emailed Ms. Mohamud’s employer to verify Ms. Mohamud’s employment in Canada. On July 15, 2009, Huard received confirmation of both Ms. Mohamud’s employment and her approved vacation period.

37. On July 20, 2009, Ms. Mohamud’s counsel, Raoul Boulakia, filed six affidavits in Federal Court confirming Ms. Mohamud’s identity.

38. On July 22, 2009, Andrew Jenkins, investigator with Canada Border Services Agency, attended at the offices of Ms. Mohamud's employer. He confirmed Ms. Mohamud's identity by interviewing Ms. Mohamud's supervisor who readily identified Ms. Mohamud in photos presented to him by Jenkins.

39. Despite their knowledge of overwhelming evidence of Ms. Mohamud's identity, the Defendants maintained the position that Ms. Mohamud was an imposter. On July 24, 2009, the Defendant Cannon made statements to the media about Ms. Mohamud as follows:

The individual has to be straightforward, has to let us know whether or not she is a Canadian citizen. She's saying so, but there is no tangible proof to the effect. All Canadians who hold passports generally have a picture that is identical in their passport to what they claim to be.

40. On July 24, 2009, the Canadian Broadcasting Corporation published the Defendant Cannon's statement on its website at www.cbc.ca. On July 25, 2009, the Toronto Star published the Defendant Cannon's statement in an article entitled "Woman's DNA test delayed".

41. In light of the Defendants' deliberate and/or incompetent delay in repatriating her to Canada, Ms. Mohamud was required to bring a motion to compel the Defendants to test her DNA in order to prove what officials already knew – that she was Suaad Mohamud. Even so, the Defendants refused to conduct the DNA testing on an expedited basis, and three weeks passed before the DNA tests conclusively established her identity on August 10, 2009.

42. The Defendants did not acknowledge her identity to Kenyan authorities until August 11, 2009. The Defendants did not agree to repatriate Ms. Mohamud until August 13, 2009. The Defendants refused to inform Ms. Mohamud of when and how she would be repatriated.

43. On August 14, 2009, the Kenyan charges were withdrawn. Thereafter, Ms. Mohamud was provided with a temporary travel document and permitted to return to Canada.

44. Ms. Mohamud's counsel repeatedly sought assistance from the Defendants in securing appropriate and safe accommodation for Ms. Mohamud while the investigation was being conducted. Ms. Mohamud had no identity papers and was vulnerable to arrest, deportation and bribery attempts by Kenyan authorities when she left her accommodations. In addition, Ms. Mohamud contracted a serious respiratory illness while incarcerated in the Langata prison and her health continued to deteriorate. In spite of their knowledge of Ms. Mohamud's vulnerabilities, the Defendants refused to provide any assistance.

45. The Defendant Ministers Cannon, Van Loan and Kenney were all personally aware of Ms. Mohamud's situation by in and around June 2009 and each failed and/or intentionally refrained from taking timely and/or reasonable steps to ensure Ms. Mohamud's repatriation.

FAILURE TO PROVIDE CONSULAR AND/OR DIPLOMATIC SERVICES

46. A Canadian passport is *prima facie* evidence of Canadian citizenship. As a holder of a valid Canadian passport, Ms. Mohamud was entitled to diplomatic and/or consular protection from Canada while abroad. Further and/or in the alternative, at the time of application for her Canadian passport, Ms. Mohamud paid by way of consideration a \$25 "consular services fee", which was accepted and entitled her to diplomatic and/or consular protection from Canada while abroad.

47. The DFAIT Defendants had a legal obligation and/or contractual obligation to provide Ms. Mohamud consular and/or diplomatic services. In addition and/or in the alternative, the DFAIT

Defendants individually and/or collectively owed a duty of care to Ms. Mohamud to provide her with reasonable consular and/or diplomatic services.

48. The DFAIT Defendants breached their legal duties and/or contractual obligations and/or their duty of care, by (without limiting the generality of the foregoing):

- (a) Failing to conduct reasonable, timely and prudent inquiries to confirm Ms. Mohamud's identity and/or to correct untrue allegations that she was an imposter;
- (b) Failing to ensure Ms. Mohamud resided in safe circumstances while awaiting her repatriation to Canada;
- (c) Seizing and/or revoking Ms. Mohamud's Canadian passport without lawful authority, and in a manner that did not comply with established procedures for seizing and revoking Canadian passports;
- (d) Failing to advocate with Kenyan authorities for Ms. Mohamud's timely return to Canada;
- (e) Failing to provide information to Ms. Mohamud concerning the conduct of the investigation.

49. The DFAIT Defendants individually and/or collectively had additional legal and/or contractual duties and/or owed an enhanced duty of care to Ms. Mohamud to provide her with reasonable consular and/or diplomatic assistance while in the custody of the Kenyan authorities. The DFAIT Defendants breached this duty of care, by (without limiting the generality of the foregoing):

- (a) Failing to notify and/or provide information to Ms. Mohamud's family, friends and legal counsel regarding her situation, and to facilitate their communication and assistance with Ms. Mohamud;

- (b) Failing to request immediate and regular access to Ms. Mohamud;
- (c) Failing to seek to ensure Ms. Mohamud's equitable and prompt treatment under local laws upon her arrest and detention, consistent with the standards in Kenya;
- (d) Failing to provide Ms. Mohamud, her counsel or family with information on the local judicial and prison systems; and,
- (e) Failing to ensure that Ms. Mohamud received adequate nutrition, and medical and dental care.

50. As a result of the DFAII Defendant's individual and/or collective acts and omissions, Ms. Mohamud suffered damages, which were all foreseeable consequences of DFAII's failure to provide consular and/or diplomatic services.

51. The Plaintiffs plead and rely upon section 10 of the *Department of Foreign Affairs and International Trade Act*, R.S.C. 1985, c. E-22, articles 5 and 10 of the *Vienna Convention on Consular Relations (1963)*, the *Vienna Convention on Diplomatic Relations (1961)*, *Consular Services Fees Regulations* SOR/95-538, customary practice, the DFAII publication "A Guide to Canadians Imprisoned Abroad", s. 6(1) of the *Canadian Charter of Rights and Freedoms* and Citizenship and Immigration Canada's publication "Overseas Processing Manual 1 (OP-1)".

LIABILITY FOR NEGLIGENT INVESTIGATION

52. The Plaintiffs repeat and rely upon paragraphs 4 to 51 and state the following. The Defendants owed a duty of care to the Plaintiffs to conduct its investigation of Ms. Mohamud in a reasonably competent manner. The Defendants individually and/or collectively breached this duty, the particulars of which, without limiting the generality of the foregoing, are as follows:

- (a) From their first contact with Ms. Mohamud, the Defendants operated with tunnel vision and with the belief that she was an imposter;
- (b) By concluding that Ms. Mohamud was an imposter when they lacked any reasonable grounds for so believing;
- (c) Were motivated by bias on the basis of race, national and/or ethnic origin and/or cultural stereotypes and prejudices;
- (d) Initially failed to take even the most rudimentary steps to confirm Ms. Mohamud's identity, including failing to contact her employer and family in Canada and thereafter failed to conduct reasonable, timely and prudent inquiries to confirm Ms. Mohamud's identity;
- (e) Failed to obtain and fairly consider all of the necessary evidence to complete a fair and balanced investigation, including evidence that conclusively established Ms. Mohamud's identity; and,
- (f) Negligently communicated their conclusion that she was an imposter to Kenyan authorities with the knowledge that such communication would result in her prosecution and deportation to Somalia.

53. As a result of the tortious conduct of these defendants, Ms. Mohamud suffered damages, all of which were foreseeable consequences of the failure to conduct a competent investigation.

MALICIOUS PROSECUTION

54. The Plaintiffs repeat and rely upon paragraphs 4 to 53 and state the following. The Plaintiffs state that, in advising Kenyan authorities that Ms. Mohamud was an imposter and by providing Kenyan authorities with Ms. Mohamud's revoked Canadian passport, the Defendants initiated, encouraged and participated in the prosecution of Ms. Mohamud in Kenya. By failing to take prompt

action to confirm Ms. Mohamud's identity and citizenship to Kenyan authorities, the Defendants thereby caused the prosecution to continue for three months.

55. The prosecution of Ms. Mohamud was initiated and/or carried out maliciously, without reasonable or probable grounds and for the unlawful purpose of injuring Ms. Mohamud. The Plaintiffs state that the Defendants' conduct was deliberate and actuated by malice, including bias on the basis of race, national and/or ethnic origin and/or cultural stereotypes and prejudices. Having caused injuries and/or losses to the Plaintiff, the Defendants are liable to the Plaintiff for malicious prosecution.

MISFEASANCE IN PUBLIC OFFICE

56. The Plaintiffs repeat and rely upon paragraphs 4 to 55 and state the following. The Defendants were acting in their respective capacities as public office holders regarding their investigation of Ms. Mohamud. The Defendants deliberately and/or intentionally engaged in unlawful conduct, as pleaded above. These Defendants were aware that they were acting unlawfully, and intended to cause harm to the Plaintiffs. In the alternative, the Defendants were aware that they were acting unlawfully, and were reckless to the fact that their conduct would cause injury to the Plaintiffs.

LIABILITY FOR DEFAMATION AND/OR NEGLIGENT STATEMENTS: KHADOUR

57. The Plaintiffs repeat and rely upon paragraphs 4 to 56 and state the following. The Plaintiffs state that the Defendant, Khadour, is liable for the defamatory, or alternatively, negligent statements about Ms. Mohamud made to Kenyan authorities in the "Khadour letter" and published in the Toronto Star (as detailed in paragraphs 29 to 32 above). Thereafter, Khadour has intentionally and/or negligently refrained from correcting her false and defamatory statements.

58. Without restricting the generality of the foregoing, the Plaintiffs state that Khadour's comments state and/or imply, amongst other things, that Ms. Mohamud was dishonest, had lied about her identity, and had committed criminal misconduct in relation to her Canadian passport. Khadour made the statements knowing that they were false and with the intention of harming Ms. Mohamud's reputation and/or made the statements in circumstances where she knew or ought to have known they were false.

59. The Plaintiffs plead that Khadour intentionally, deliberately and maliciously disseminated for publication and broadcast the above noted defamatory and/or negligent statements.

60. In addition and/or in the alternative, the Plaintiffs plead that Khadour negligently made the above noted statements. The Plaintiffs state that Khadour owed a duty of care to the Plaintiffs, which duty was breached when she negligently made the statements above in circumstances where she knew or ought to have known that they were false.

61. The Plaintiffs further plead that, knowing that the statements would result in Ms. Mohamud's prosecution and deportation to Somalia, Khadour had a legal duty to ensure that the statements she made were accurate and based on reliable information. The Plaintiffs plead that Khadour breached this duty when she made the above noted statements.

LIABILITY FOR DEFAMATION AND/OR NEGLIGENT STATEMENTS: CANNON

62. The Plaintiffs repeat and rely upon paragraphs 4 to 61 and state the following. The Plaintiffs state that the Defendant, Cannon, is liable for, among other things, the defamatory, or alternatively, negligent statements about Ms. Mohamud made to the media on July 24, 2009 (as detailed in

paragraphs 39-40 above). Cannon has intentionally and/or negligently refrained from correcting his false and defamatory statements.

63. Without restricting the generality of the foregoing, the Plaintiffs state that Cannon's comments state and/or imply, amongst other things, that Ms. Mohamud was dishonest, had lied about her identity, and did not fully co-operate with Canadian officials during their investigation. Cannon made the statements knowing that they were false and with the intention of harming Ms. Mohamud's reputation and concealing the misconduct of Canadian officials and/or made the statements in circumstances where he ought to have known they were false.

64. The Plaintiffs plead that Cannon intentionally, deliberately and maliciously disseminated for publication and broadcast the above noted defamatory and/or negligent statements.

65. In addition and/or in the alternative, the Plaintiffs plead that Cannon negligently made the above noted statements. The Plaintiffs state that Cannon owed a duty of care to the Plaintiffs, which was breached when he negligently made the statements above in circumstances where he knew or ought to have known they were false.

INFLECTION OF MENTAL SUFFERING AND PSYCHIATRIC DAMAGE

66. The Plaintiffs repeat and rely upon paragraphs 4 to 65 and state the following. The conduct of the Defendants, as set out above, was outrageous, flagrant and in direct contradiction to the law and policy governing the treatment of Canadian citizens abroad. The Defendants' intentional conduct caused the Plaintiffs to suffer psychiatric damage and/or nervous shock. These were consequences that the Defendants knew or ought to have known would follow from their conduct.

67. Further, and/or in the alternative, the Plaintiffs plead that they have suffered psychiatric damage as described in the above paragraph, and said damage was the result of the Defendants' negligent conduct. The Defendants knew or ought to have known that their conduct, as described above, would cause the Plaintiffs to suffer psychiatric damage.

BREACHES OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

68. The Plaintiffs repeat and rely upon paragraphs 4 to 67 and state the following. The Plaintiffs state that the *Canadian Charter of Rights and Freedoms* applies to the conduct of the Defendants because the conduct was within the exclusive jurisdiction of Canada and/or occurred in Canada, and/or within territory over which Canada exercises effective control and/or that the Defendants participated in the activities of a foreign state and/or its agents that were contrary to Canada's international obligations and fundamental human rights.

69. The Defendants denied Ms. Mohamud the right to return to Canada as pleaded aforesaid and thereby violated s. 6(1) of the *Charter*.

70. In accordance with procedures established by Passport Canada, prior to revoking Ms. Mohamud's passport, the DFAII Defendants had an obligation to afford Ms. Mohamud a hearing before an impartial adjudicator at which she both had knowledge of the particulars of the case against her and an opportunity to respond. The Defendants did not afford Ms. Mohamud such a hearing. As a result, the actions of the Defendants as described above breached Ms. Mohamud's right to liberty and security of the person, pursuant to s. 7 of the *Charter*, in a manner that was not in accordance with the principles of fundamental justice guaranteed by s. 7 of the *Charter*.

71. The actions of the Defendants, as described above, deprived Mohamud Hussein of his relationship with his mother and thereby breached his right to security of the person in a manner that was not in accordance with the principles of fundamental justice guaranteed by s. 7 of the *Charter*.

72. By intentionally communicating untrue allegations to Kenyan authorities that Ms. Mohamud was an imposter, the Defendants caused Ms. Mohamud to be detained in Kenyan custody without articulable cause, reasonable suspicion, or reasonable grounds. Accordingly, the Defendants violated Ms. Mohamud's right not to be arbitrarily detained pursuant to section 9 of the *Charter*.

73. Prior to revoking her passport, the DFAIT Defendants were obligated by law to afford her a fair hearing at which she was entitled to be presumed innocent of the allegations against her. The Defendants did not provide her with such a hearing and thus violated Ms. Mohamud's rights pursuant to s. 11(d) of the *Charter*.

74. The Defendants intentional conduct, as plead above, caused Ms. Mohamud to be detained in the Langata prison in inhumane and degrading conditions. As a result, the acts and omissions as described above violated Ms. Mohamud's right not to be subjected to any cruel and unusual treatment, as guaranteed by section 12 of the *Charter*.

75. The Defendants conduct, as plead above, was motivated by bias on the basis of race, national and/or ethnic origin and/or cultural stereotypes and prejudices. As a consequence, Ms. Mohamud was denied her right to equal protection and equal benefit of the law without discrimination on the basis of race, national or ethnic origin, colour, religion, and/or sex, in violation of section 15 of the *Charter*.

TORTIOUS VIOLATIONS OF CUSTOMARY INTERNATIONAL RIGHTS LAW

76. The Plaintiffs repeat and rely upon paragraphs 4 to 75 and state the following. The Defendants seized and/or revoked Ms. Mohamud's Canadian passport, with the result that she was stranded in Kenya and subject to deportation to Somalia and permanent denial of her right to return to her country of citizenship. In so doing, the Defendants breached international rights law guaranteeing citizens their right to return to their country of citizenship and separated Ms. Mohamud from her child.

77. The Plaintiffs plead and rely on articles 1-3, 5, 7, 9-13, 16(3) and 21 of the *Universal Declaration of Human Rights*, articles 6, 7, 9, 10, 12, 23(1), 25(a), 25(c) and 26 of the *International Covenant on Civil and Political Rights* and articles 2, 3, 6(2), 9, 10, 16 and 39 of the *Convention on the Rights of the Child* as mandatory and critical interpretive reference points for interpreting Canadian constitutional, statutory and common law, and as evidence of customary international law; on customary international law as part of the law of Canada; and on general principles of international law. The Plaintiffs plead the *jus cogens* status of international human rights obligations breached by the Defendants.

DAMAGES

78. As a result of the Defendants' misconduct the Plaintiffs suffered damages, all of which the Defendants knew or ought to have known would occur.

79. Ms. Mohamud, has suffered and continues to suffer physically, psychologically, emotionally, and financially as a direct result of the conduct of the Defendants as plead above. The Plaintiff suffers

mental distress, damage to her reputation, and disruption of her daily life. This Plaintiff also suffered a loss of income and special damages, the particulars of which will be disclosed prior to trial.

80. The Plaintiffs, Mohamud Hussein, Mohamud Osman and Asia Warsame have and continue to suffer physically, psychologically, emotionally and financially as a direct result of the conduct of the Defendants, as well as loss of income and special damages, the particulars of which will be disclosed prior to trial.

81. The Plaintiffs, Mohamud Hussein, Mohamud Osman and Asia Warsame plead and rely upon section 61 of the *Family Law Act* R.S.O. 1990, c. F 3. These Plaintiffs enjoyed and continue to enjoy a close and loving relationship with Ms. Mohamud and as such have suffered a loss of care, guidance and companionship and pecuniary loss as a result of the injuries incurred by her.

82. The Plaintiffs Ms. Mohamud and Mohamud Hussein plead and rely upon the *Canadian Charter of Rights and Freedoms*, in particular section 24(1), and state that these Plaintiffs are additionally entitled to a remedy that this Honourable Court considers appropriate and just in the circumstances.

AGGRAVATED, EXEMPLARY AND PUNITIVE DAMAGES

83. The Plaintiffs state that Defendants acted in a high-handed, malicious, arbitrary and/or highly reprehensible manner, as described herein. The Defendants' conduct constitutes a marked departure from the ordinary standards of decent behaviour. Accordingly, the Plaintiffs plead that this is an appropriate case for punitive, aggravated and/or exemplary damages.

84. The reprehensible high-handed conduct of the Defendants towards Ms. Mohamud and her family is reflected in both the incompetent manner in which Ms. Mohamud was investigated and the steps taken by the Defendants, acting individually and/or collectively, to conceal the shortcomings of the investigation. This high-handed conduct was calculated to, and had the effect of, both protecting public officials from embarrassment and discrediting the Plaintiff Suaad Mohamud as an imposter.

85. Despite the fact that the Defendants had closed their investigative file as of May 28, 2009 (see Khadour letter of May 28, 2009), they actively misled the public by claiming through carefully crafted “media lines” that they were working jointly with Kenyan authorities on an ongoing investigation to determine Ms. Mohamud’s identity. The Plaintiffs state that this deception was orchestrated to present the Defendants as even-handed and open-minded investigators and to conceal the premature nature of the Defendants’ conclusion that Ms. Mohamud was an imposter.

86. The Plaintiffs state that when the frailties of the investigation began to surface internally in early July 2009, the Defendants engaged in a reprehensible form of damage control which involved new “media lines” that misled the public by falsely stating that the investigation had been completed and discrediting Ms. Mohamud as an imposter. This high-handed conduct included, among other things, entreaties by Minister Cannon’s political staffer, Darryl Whitehead, to Ms. Mohamud’s Member of Parliament, the Honourable Mr. Joe Volpe (hereafter “Volpe”) in early July 2009, asserting Ms. Mohamud’s guilt even though Minister Cannon knew or was reckless to the fact that the most elementary forms of investigation had yet to be conducted. Ms. Mohamud and her son were entitled to seek representation and assistance from their Member of Parliament, but the actions of Mr. Whitehead on behalf of Minister Cannon were calculated to persuade Mr. Volpe of Ms. Mohamud’s guilt as a perpetrator of “identity fraud”.

87. The Plaintiffs plead particulars of the above actions as follows. As of May 28, 2009, the Defendants from the High Commission in Nairobi had concluded their investigation and branded Ms. Mohamud an imposter. However, by July 1, 2009, the Defendants were facing mounting questions about their conduct from members of the media and Ms. Mohamud's Member of Parliament, Mr. Volpe. In the face of these inquiries, senior officials within DFAIT and Mr. Cannon's office including (but not limited to) Odette Gaudet-Fee (Consular Case Management Officer and supervisor of Khadour), Darryl Whitehead (Special Assistant/political staffer to the Defendant Lawrence Cannon) and Khadour, became aware that the initial investigation had significant frailties, was closed prematurely and/or was incompetent.

88. Gaudet-Fee, Whitehead and Khadour, amongst others, re-opened the investigation in and around July 2, 2009, in order to address the shortcomings of the initial investigation and with a view to proving that Ms. Mohamud was an imposter. Between May 28, 2009 and July 1, 2009, Gaudet-Fee, Whitehead and Khadour, amongst others, actively concealed the fact that they had already concluded the investigation, had branded Ms. Mohamud an imposter and had participated in her prosecution and incarceration by Kenyan authorities. Instead, through "media lines" supplied to reporters, they advised the public that "Canadian officials are working with Kenyan authorities to verify the identity of the individual. Consular assistance will be provided if the individual is determined to be a Canadian citizen."

89. As of July 2, 2009, notwithstanding the fact that they were aware that the initial investigation was incompetent and had been re-opened, Gaudet-Fee, Whitehead, Khadour, amongst others, developed new "media lines" to disseminate to reporters that stated "following an extensive

investigation, officials at the Canadian High Commission in Nairobi have determined that the individual arrested by Kenyan authorities is not Ms. Suaad Mohamud Haji.” In so doing, Gaudet-Fee, Whitehead and Khadour, amongst other employees and agents of the Government of Canada, deliberately concealed both their knowledge about the initial investigation’s shortcomings and the existence of a re-opened investigation, for the purposes of, *inter alia*, protecting their own reputations, avoiding embarrassment to the government and/or in order to dissuade and/or sabotage any and all efforts to assist Ms. Mohamud. The Plaintiffs state and the fact is that nothing had changed in the conduct of the Defendants’ investigative file from the old media lines claiming the investigation was ongoing to the new media lines on July 2 declaring the investigation was closed.

90. Further, on July 2, 2009, Whitehead, spoke with the Honourable Joe Volpe on two occasions. During these meetings, amongst other things, Whitehead communicated to Volpe that CBSA and DFAIT officials were confident that the individual claiming to be Ms. Mohamud was an imposter. He advised Volpe “... how the real Ms. Mohamud had not presented herself . . . ” In so doing, Whitehead re-published the defamatory claim that Ms. Mohamud was an imposter with the express purpose of dissuading Volpe from advocating on her behalf and/or discrediting Ms. Mohamud. At all material times, Whitehead was acting with the express and/or implied authority of Minister Cannon.

91. Since Ms. Mohamud’s return to Canada on August 15, 2009, the Defendants have steadfastly refused to acknowledge to the Plaintiffs or the public that they made a mistake in labelling Suaad Mohamud an imposter. To the contrary, the Defendants have falsely asserted, privately and publicly, that Ms. Mohamud was evasive and untruthful in the course of her interviews with a Migration Integrity Officer between May 21, 2009 and May 25, 2009 and have insinuated that she was engaged

in a fraud to obtain illegal entry to Canada for a family member. They have taken these actions with full knowledge of the following facts to the contrary:

- a. The Migration Integrity Officer who conducted the interviews with Ms. Mohamud on May 21, 22 and 25, 2009 took a photograph of the woman he interviewed and who was being held in custody by Kenyan authorities. This photo depicts the identical likeness of the person who attended for DNA testing on July 27, 2009 as well as the same person who boarded the plane on August 15, 2009 to return to Canada and reunite with her son;
- b. The woman depicted in the photograph took a return flight to Canada on August 15, 2009 with a travel document provided by DFAIT officials in the name of Suaad Mohamud.
- c. The woman in the photograph and who is now in Canada with her son is in fact Suaad Mohamud.

92. The failure by the Defendants to publicly acknowledge that a mistake was made as well as their continuing conduct in disseminating false and misleading information about Suaad Mohamud has led to an ongoing taint on her reputation and has aggravated the emotional and/or psychological harm suffered by the Plaintiffs. The Defendants engaged in this conduct intentionally and/or for the purpose of discrediting Ms. Mohamud and convincing the Canadian public that she had engaged in fraudulent behaviour and/or was the author of her own misfortune.

93. The Plaintiffs plead and rely upon the *Negligence Act*, R.S.O. 1990, c. N.1 as amended, *Libel and Slander Act*, R.S.O. 1990, C.L.12; the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C.50,

the *Family Law Act*, R.S.O. 1990, c. F.3; the *Department of Foreign Affairs and International Trade Act*, R.S.C. 1985, c. E-22, *Order Respecting Canadian Passports*, SI/81-86; *Consular Services Fees Regulations* SOR/95-538; the *Department of Citizenship and Immigration Act*, C-29.4 *Citizenship Act*, c. 29; *Immigration and Refugee Protection Act* 2001, c. 27; *Canada Border Services Agency Act*, 2005, c. 38, C-1.4; *Order Transferring from the Minister of Citizenship and Immigration to the Deputy Minister and Minister of Public Safety and Emergency Preparedness the Control and Supervision of the Canada Border Services Agency*, SI/2003-24; the *Canadian Charter of Rights and Freedoms*; the *Vienna Convention on Diplomatic Relations (1961)*; the *Vienna Convention on Consular Relations (1963)*; article 13(2) of the *Universal Declaration of Human Rights*; article 12 of the *International Covenant on Civil and Political Rights (1966)*.

94. The Plaintiffs propose that this action be tried in Toronto.

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Court File No: CV-09-385510

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

AMENDED STATEMENT OF CLAIM

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OCT 01 2009

ON BEHALF OF THE
DEPUTY ATTORNEY GENERAL OF CANADA

per: John Smith
Department of Justice
John Smith 10:00