

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MAHER ARAR, MONIA MAZIGH, BARAA ARAR (by her Litigation Guardian MAHER ARAR), HOUD ARAR (by his Litigation Guardian MAHER ARAR), ABDUL HAMID ARAR, NAJAT JABAKHANJI, HASSAN ARAR, SAMIR ARAR, SAHER ARAR, TAOUFIK ARAR, BASSAM ARAR, and YASSER ARAR

Plaintiffs

-and-

~~HER MAJESTY THE QUEEN IN RIGHT OF CANADA, THE ATTORNEY GENERAL OF CANADA, THE SOLICITOR GENERAL OF CANADA, WAYNE EASTER, THE CANADIAN SECURITY INTELLIGENCE SERVICE, DIRECTOR WARD ELCOCK, THE ROYAL CANADIAN MOUNTED POLICE, COMMISSIONER GIULIANO ZACCARDELLI, CONSTABLE RANDY BUFFAM, CONSTABLE MARC SURPRENANT, CONSTABLE ANN MARIE WHITNEY, CONSTABLE DAN ZAVARISE, CONSTABLE VINCE PUCCI, CORPORAL R.T. JENKINS, RCMP OFFICER CAMPBELL, RCMP OFFICER LEMAY, CANADA BORDER SERVICES AGENCY, THE MINISTER OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE, THE HONOURABLE WILLIAM GRAHAM, FOREIGN AFFAIRS CANADA, GAR PARDY, MAUREEN GIRVAN, LEO MARTEL, FRANCO PILLARELLA, THE RIGHT HONOURABLE JEAN CHRETIEN, THE OTTAWA POLICE SERVICES BOARD, OTTAWA CHIEF OF POLICE VINCE BEVAN, PEEL REGIONAL POLICE CHIEF NOEL P. CATNEY, REGIONAL MUNICIPALITY OF PEEL POLICE SERVICES BOARD, JOHN DOE AND JANE DOE~~

Defendants

AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules

of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or 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 is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5000.00 costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date: May 3/05 Issued by: "T. Staley"
Local registrar

Address of Court office: 161 Elgin Street
Ottawa, Ontario
K2P 2K1

TO: **DEPUTY MINISTER OF JUSTICE AND DEPUTY ATTORNEY
GENERAL OF CANADA**
Department of Justice
284 Wellington Street, Room 4121
Ottawa, Ontario
K1A 0H8

AND TO: OTTAWA POLICE SERVICES BOARD
110 Laurier West
Ottawa, Ontario
K1P 1J1

AND TO: OTTAWA CHIEF OF POLICE VINCE BEVAN
110 Laurier West
Ottawa, Ontario
K1P 1J1

AND TO: PEEL REGIONAL POLICE CHIEF NOEL P. CATNEY
10 Peel Centre Drive
Brampton, Ontario
L6T 4B9

AND TO: REGIONAL MUNICIPALITY OF PEEL POLICE SERVICES BOARD
10 Peel Centre Drive
Brampton, Ontario
L6T 4B9

CLAIM

1. The Plaintiff, Maher Arar, claims against the defendants:

- (a) Damages for negligence, negligent investigation, injurious falsehood, defamation, false imprisonment, assault and battery, *refoulement* and complicity to torture, conspiracy, abuse of public office, and breaches of sections 7, 8, 9, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (hereafter “the *Charter*”) in the amount of \$50,000,000.00 (“FIFTY MILLION DOLLARS”);
- (b) Special damages in an amount to be determined with particulars provided prior to trial;
- (c) Punitive, exemplary, and/or aggravated damages in the amount of \$20,000,000.00 (“TWENTY MILLION DOLLARS”);
- (d) Pre and post judgement interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43;
- (e) Costs of this action on a substantial indemnity basis together with the applicable goods and services tax payable pursuant to the *Excise Tax Act*, R.S.C., c.E.15; and
- (f) Such further and other relief as this Honourable Court deems just.

2. The Plaintiffs, Monia Mazigh, Baraa Arar, Houd Arar, Abdul Hamid Arar, Najat Jabakhanji, Hassan Arar, Samir Arar, Saher Arar, Taoufik Arar, Bassam Arar, and Yasser Arar each claim against the defendants:

- (a) Damages for abuse of public office in the amount of \$10,000,000.00 (“TEN MILLION DOLLARS”);

- (b) Damages pursuant to s. 61 of the *Family Law Act* R.S.O. 1990, c.F.3 in the amount of \$10,000,000.00 ("TEN MILLION DOLLARS");
- (c) Special damages in an amount to be determined with particulars provided prior to trial;
- (d) Punitive, exemplary, and/or aggravated damages for abuse of public office in the amount of \$10,000,000.00 ("TEN MILLION DOLLARS");
- (e) Pre and post judgement interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43;
- (f) Costs of this action on a substantial indemnity basis together with the applicable goods and services tax payable pursuant to the *Excise Tax Act*, R.S.C., c. E.15; and
- (g) Such further and other relief as this Honourable Court deems just.

Introduction

3. The plaintiffs' claims arise from, *inter alia*, the negligent investigation, false imprisonment, injurious falsehood, defamation, assault and battery, *refoulement* and complicity to torture, conspiracy and breaches of the *Charter* in relation to the plaintiff Maher Arar by several Canadian government agencies and officials. The misconduct by these defendants caused the plaintiff to be detained in the United States and then deported to Syria where he was subjected to torture, prolonged arbitrary detention and cruel, inhuman, and degrading treatment. As a result the plaintiffs suffered severe damages

The Parties

The plaintiffs

4. The plaintiff, Maher Arar (hereinafter referred to as "Mr. Arar"), is a 34-year-old Canadian citizen who resides in the city of Ottawa in the province of Ontario. He and his parents came to Canada from Syria when he was seventeen years old. Mr. Arar attended McGill University in Montréal and obtained a Masters degree in telecommunications. Prior to his detention in the United States and Syria, Mr. Arar worked as a wireless technology consultant. Mr. Arar brings this litigation on his own behalf and as litigation guardian on behalf of two his minor children.

5. The plaintiff, Monia Mazigh is the wife of Maher Arar. She is a Canadian citizen and resides with her husband in Ottawa in the province of Ontario. Ms. Mazigh came to Canada from Tunisia in 1991 and obtained her doctorate in finance from McGill University in Montreal. The couple married in 1994.

6. The plaintiffs, Baraa Arar and Houd Arar, are the minor children of Mr. Arar and Ms. Mazigh. Baraa was born on February 24, 1997. Houd was born on February 8, 2002. Both children are Canadian Citizens and live with their parents in Ottawa in the province of Ontario.

7. The plaintiffs, Abdul Hamid Arar and Najat Jabakhanji, are the father and mother of the plaintiff Maher Arar. They are Canadian citizens and reside in the city of Montréal, in the province of Québec.

8. The plaintiffs, Hassan Arar, Samir Arar, Saher Arar, Taoufik Arar, Bassam Arar and Yasser Arar are the brothers and sister of the plaintiff Maher Arar. They are all Canadian Citizens and reside in the province of Québec.

The defendants

~~9. The defendant, Her Majesty the Queen in Right of Canada, is the legal entity liable for the torts committed by its agents and servants pursuant to section 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985 c. C-50.~~

10. 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 23 (1) of *the Crown Liability and Proceedings Act* R.S.C., 1985, c.C50.

11. The defendant, Wayne Easter, ~~Solicitor General of Canada~~, resides in the Province of Ontario. He was at all relevant times the Solicitor General of Canada. The Solicitor General is responsible for the control and management of the Royal Canadian Mounted Police (hereinafter the "RCMP") and the Canadian Security Intelligence Service (hereinafter "CSIS"). As such, and without limiting the generality of the foregoing, the defendant Wayne Easter is personally liable for his conduct in failing to properly and competently supervise, control and manage members of the RCMP and CSIS and for his refusal to take appropriate steps to assist in obtaining the release of Mr. Arar.

~~12. The defendant, the Canadian Security Intelligence Service (hereinafter referred to as "CSIS"), is a government agency responsible for investigating threats to Canada's national security pursuant to the provisions of the *Canadian Security Intelligence Act* R.S.C. 1984~~
~~e.21.~~ The defendant, Ward Elcock is the Director of CSIS. As such he is responsible to the Solicitor General for the control and management of CSIS. Accordingly, and without limiting the generality of the foregoing, the defendant Ward Elcock is personally liable for his conduct in failing to properly and competently supervise, control and manage members of CSIS and to properly and competently report to the Solicitor General regarding the role of members of CSIS in Mr. Arar's detention, deportation, and torture.

~~13. The defendant, the Royal Canadian Mounted Police (hereinafter referred to as the "RCMP"), is the Canadian national police service governed by the *Royal Canadian Mounted Police Act* R.S.C. 195, c. R-10.~~ The defendant, Giuliano Zaccardelli, is the Commissioner of the RCMP. As such he is responsible to the Solicitor General for the control and management of the RCMP. Accordingly, and without limiting the generality of the foregoing, the defendant Giuliano Zaccardelli is personally liable for his conduct in failing to properly and competently supervise, control and manage members of the RCMP and to properly and competently report to the Solicitor General regarding the role of members of the RCMP in Mr. Arar's detention, deportation, and torture.

14. The defendants, Constable Randy Buffam, Constable Marc Surprenant, Constable Ann Marie Whitney, Constable Dan Zavarise, Corporal R I. Jenkins, RCMP Officer Campbell, and RCMP Officer Lemay were at all material times members of the RCMP.

~~15. The defendant, Canada Border Services Agency (formerly the Canada Customs and Revenue Agency), is the agency responsible for, *inter alia*, monitoring Canada's borders for potential threats to national security by conducting investigations, detentions, intelligence and enforcement.~~

~~16. The defendant, Foreign Affairs Canada (formerly the Department of Foreign Affairs and International Trade (hereinafter referred to as "DFAIT")), is responsible, *inter alia*, for conducting all diplomatic and consular relations on behalf of Canada as well as conducting all official communications between the government of Canada and foreign governments.~~

The defendant, William Graham, was at all material times the Minister of Foreign Affairs and International Trade, and resides in the province of Ontario. The responsibilities of the Minister of Foreign Affairs and International Trade include conducting all diplomatic and consular relations on behalf of Canada, overseeing the provision of consular services, supervising employees of the Department of Foreign Affairs and International Trade as well as conducting all official communications between the government of Canada and foreign governments. As such, and without limiting the generality of the foregoing, the defendant William Graham is personally liable for his own conduct in failing to take appropriate steps to assist in obtaining the release of Mr. Arar despite his knowledge of Mr. Arar's detention, deportation and torture in Syria.

17. The defendant, Gar Pardy, resides in the province of Ontario and was at all material times the head of consular services at DFAIT

18. The defendant, Maureen Girvan, resides in New York in the United States of America and was at all material times the senior Canadian consular officer of DFAIT.

19. The defendant, Leo Martel, was at all material times the Canadian Consul in Syria.

20. The defendant, Franco Pillarella, was at all material times the Canadian Ambassador in Syria.

21. The defendant, Jean Chrétien, was at all material times the Prime Minister of Canada. As such, and without limiting the generality of the foregoing, the defendant Jean Chrétien is personally liable for his own conduct in failing to take appropriate steps to assist in obtaining the release of Mr. Arar and/or direct Canadian officials to take steps to secure Mr. Arar's release despite his knowledge of Mr. Arar's detention, deportation and torture in Syria.

22. The defendant, Ottawa Police Services Board, is a municipal police services board incorporated pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, Chap. P.15 and was at all material times responsible for the provision of police services, law enforcement and crime prevention in the City of Ottawa. The Police Services Board is

liable for its own conduct, and by virtue of section 50(1) of the *Police Services Act*, R.S.O. 1990, c.P.15 as amended, the Police Services Board is liable in respect of torts committed by members of the Ottawa Police Service.

23. The defendant, Ottawa Chief of Police Vince Bevan, was at all material times the Chief of Police of the Ottawa Police Service and responsible at law, to the extent that the Board is not responsible, for the supervision, training, direction and control of police officers employed by the Ottawa Police Service.

24. The defendant Constable Vince Pucci was at all material times a member of the Peel Regional Police.

25. The defendant, Regional Municipality of Peel Police Services Board, is a municipal police services board incorporated pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, Chap. P.15 and was at all material times responsible for the provision of police services, law enforcement and crime prevention in the Region of Peel. The Police Services Board is liable for its own conduct, and by virtue of section 50(1) of the *Police Services Act*, R.S.O. 1990, c.P.15 as amended, the Police Services Board is liable in respect of torts committed by members of the Peel Regional Police, including officer Vince Pucci and Police Chief Noel P. Catney.

26. The defendant, Peel Regional Police Chief Noel P. Catney was at all material times the Chief of Police of the Peel Regional Police Service and responsible at law, to the

extent that the Board is not responsible, for the supervision, training, direction and control of police officers employed by the Peel Regional Police Service including officer Vince Pucci.

27. The defendants, John Doe and Jane Doe, are members of CSIS, the RCMP, the Ottawa Police Service, the Peel Regional Police and the Canada Border Services Agency who were involved in the surveillance and investigation of Mr. Arar prior to September 26, 2002 and onwards. The names of and relevant actions and inactions taken by John Doe and Jane Doe are within the unique knowledge of the defendants

28. The defendants, ~~CSIS, Director~~ Ward Elcock, ~~RCMP, Commissioner~~ Giuliano Zaccardelli, Constable Randy Buffam, Constable Marc Surprenant, Constable Ann Marie Whitney, Constable Dan Zavarise, Corporal R.T. Jenkins, Constable Vince Pucci, RCMP Officer Campbell, RCMP Officer Lemay ~~the Solicitor General of Canada,~~ Wayne Easter, the Ottawa Police Services Board, the Ottawa Police Chief Vince Bevan, ~~the Canada Border Services Agency,~~ the Peel Regional Police Chief Noel P. Catney, the Regional Municipality of Peel Police Services Board, Jane and John Doe are hereinafter collectively referred to as the “The Canadian Investigation Team” or “CIT”.

29. The defendants, ~~the Minister of Foreign Affairs and International Trade, Foreign Affairs Canada,~~ the Honourable William Graham, Gar Pardy, Maureen Girvan, Leo Martel, and Franco Pillarella are hereinafter collectively referred to as the “DFAIT defendants”.

A. Liability of the Defendants prior to September 26, 2002

30. The investigation of the plaintiff, Mr. Arar, by the CIT defendants commenced prior to September 26, 2002. At this time, the CIT members combined and agreed to act collectively in pursuing an investigation of Mr. Arar.

31. On December 20, 2001, Mr. Arar was detained and questioned by Canadian customs officials for two hours at Ottawa International Airport when returning home from a business trip to the United States. The Canadian customs officials seized his identity documents, wallet, computer and personal data organizer. His identity documents and wallet were returned forty-five minutes later, however, his computer and personal data organizer were seized and retained for 24 hours without a warrant and/or reasonable grounds.

32. During this 24 hour period, Mr. Arar's computer was searched by the Canadian Customs officials without a warrant or reasonable grounds.

33. In January 2002, two RCMP officers came to the Arar family home in Ottawa to speak with Mr. Arar. Ms. Mazigh advised that her husband was in Tunisia to care for her father who was ill. The RCMP officers informed her that the matter was not urgent but asked that Mr. Arar contact Constable Randy Buffam, an investigator with the RCMP's National Security Investigation Section. Ms. Mazigh immediately called her husband in Tunisia and gave him the contact information. Mr. Arar immediately contacted Constable Buffam and left him a message including his contact information.

34. The day after Mr. Arar returned to Canada in and around January 23, 2002, Constable Buffam telephoned to request an interview. Constable Buffam refused to disclose why the RCMP wanted to speak with Mr. Arar. Mr. Arar agreed to fully cooperate and meet with Constable Buffam.

35. Mr. Arar's lawyer, Michael Edelson then called a Crown prosecutor to confirm that Mr. Arar would meet with Constable Buffam in the presence of counsel. Constable Buffam never contacted Mr. Arar or his lawyer to conduct an interview

36. During the period prior to September 26, 2002, the CIT pursued numerous investigative steps regarding the plaintiff, Mr. Arar. Without limiting the generality of the foregoing, these investigative steps included:

- (a) monitoring and surveillance of Mr. Arar's whereabouts;
- (b) monitoring and surveillance of Mr. Arar's private communications;
- (c) illegal searches of Mr. Arar's computer and bank accounts;
- (d) illegal seizure of Mr. Arar's computer, palm pilot, apartment rental agreement and other documents;
- (e) interviews of associates and family members of Mr. Arar.

37. Notwithstanding that the CIT had no reasonable or probable grounds to suspect Mr. Arar of any wrongdoing whatsoever, the CIT continued to investigate, monitor, and engage in the surveillance of the plaintiff based on racial and cultural stereotypes concerning persons of Middle-Eastern origin.

38. The CIT compiled a dossier concerning Mr. Arar that suggested and/or concluded that he was connected to international terrorism. The CIT conveyed its dossier relating to Mr. Arar to U.S. authorities in and around the period of September 2001 to September 2002, and/or continuously conveyed information gathered from its investigation of Mr. Arar to U.S. authorities during this period.

39. Mr. Arar is not and has never been connected in any way whatsoever to international terrorism or any other criminal activity.

Negligent investigation

40. The CIT owed a duty of care to the plaintiffs to conduct its investigation of Mr. Arar in a reasonably competent manner. The members of the CIT individually and or collectively breached this duty, the particulars of which (without limiting the generality of the foregoing) are as follows:

- (i) The CIT targeted the plaintiff Arar for investigative scrutiny on the basis of racial and cultural stereotypes and prejudices;
- (ii) The CIT failed to interview the plaintiff Arar to provide him an opportunity to answer the allegations, in spite of his offer to submit to such interview;
- (iii) The CIT failed to obtain and consider all of the necessary evidence to complete a fair and balanced investigation;

(iv) The CIT drew unreasonable inferences and conclusions from the evidence that was collected;

(v) The CIT relied on unreliable sources of information about Mr. Arar, and failed to properly investigate the sources of such information;

(vi) The CIT employed illegal and unconstitutional methods in the course of the investigation; and,

(vii) The CIT negligently transmitted the results of its investigation to U.S. authorities.

41. The CIT's breach of its duty as pleaded above resulted in the preparation of a false, inaccurate and/or incomplete dossier concerning Mr. Arar. The dossier falsely suggested and/or concluded that Mr. Arar was connected to international terrorism. The CIT knew or ought to have known that this dossier would be relied on by Canadian authorities, and authorities in other jurisdictions, including but not limited to the United States, Jordan and Syria, in their respective treatment of Mr. Arar.

42. The CIT's negligence in investigating Mr. Arar and the negligent transmission of the dossier concerning Mr. Arar to U.S. authorities was the proximate cause of this plaintiff's detention and interrogation in the U.S., and his deportation to, torture and prolonged arbitrary detention in, Jordan and Syria. The damages suffered by the plaintiffs resulting

from the negligent investigation were a foreseeable consequence of the CIT's acts and omissions. The CIT was aware that Mr. Arar was a dual Canadian/Syrian citizen, and foresaw that he would likely be deported to Syria and would likely be subjected to torture by Syrian authorities. The CIT was further aware of the practice by U.S. authorities of rendering detainees to foreign jurisdictions that permitted interrogation under torture, including the rendering of detainees for the purpose of such interrogation in order that information could be coerced through means not permitted in the United States or Canada.

Breaches of the *Charter*

43. The CIT conducted a warrantless search and seizure of Mr. Arar's laptop computer and personal data organizer for the purpose of furthering its investigation of Mr. Arar. Mr. Arar had a reasonable expectation of privacy in respect of these items. The search and seizure by the CIT was effected without a warrant and/or reasonable and probable grounds, and was conducted in an unreasonable manner. Accordingly, the CIT breached Mr. Arar's right to be free from unreasonable search and seizure pursuant to section 8 of the *Canadian Charter of Rights and Freedoms*.

44. The CIT detained Mr. Arar for questioning at Ottawa International Airport for the purpose of furthering their investigation. The detention of Mr. Arar was effected without articulable cause, reasonable suspicion or reasonable grounds. Accordingly, the CIT violated Mr. Arar's right to be free from arbitrary detention pursuant to section 9 of the *Charter*.

45. These violations of section 8 and 9 of the *Charter* as pleaded above also constitute violations of Mr. Arar's right not to be deprived of liberty and security of the person except in accordance with the principles of fundamental justice pursuant to section 7 of the said *Charter*.

46. Further, the CIT members individually and/or collectively targeted Mr. Arar for investigation, in the absence of either reasonable grounds or reasonable suspicion, based on stereotypical assumptions about his racial or cultural background. The CIT's reliance on Mr. Arar's racial or cultural background was discriminatory, and therefore breached Arar's right to equality before and under the law pursuant to section 15 of the *Charter*. The said breach cannot be justified as a reasonable limit on the right in a free and democratic society pursuant to section 1 of the *Charter*.

Conspiracy

47. The CIT members agreed and combined to act unlawfully, as pleaded above, with the predominate purpose of injuring Mr. Arar, and in particular (without limiting the generality of the foregoing) for the purpose of causing his detention and interrogation by U.S. authorities, and his subsequent deportation to Jordan and Syria.

48. In the alternative, the defendants agreed and combined to act lawfully with the predominate purposes of injuring Mr. Arar, ~~and in particular (without limiting the generality of the foregoing) for the purpose of causing his detention and interrogation by~~

U.S. authorities, and his subsequent deportation to Jordan and Syria. In particular, and without limiting the generality of the foregoing, the CIT members formed an agreement to pursue a course of actions and omissions that were designed to cause Mr. Arar's detention and interrogation by U.S. authorities, and his subsequent deportation to Jordan and Syria. The defendants' overt acts in furtherance of the said conspiracy are pleaded at paragraphs 30-38 above.

49. In the further alternative, the CIT members agreed and combined to act unlawfully, as pleaded above, where the likelihood of injury to Mr. Arar was known or ought to have been known to the defendants. In particular, and without limiting the generality of the foregoing, these defendants knew or ought to have known that Mr. Arar would be detained and interrogated in the U.S. and then deported to Jordan and Syria as the direct result of their agreement to act unlawfully.

Abuse of Public Office

50. The CIT members were acting in their capacity as public office holders with respect to their investigation of Mr. Arar. The CIT members 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 ought to have been aware that their conduct would cause injury to the plaintiffs.

50 A. Without limiting the generality of the foregoing paragraph, the plaintiffs state that the defendants, the Ottawa Police Chief Vince Bevan, John Doe and Jane Doe (employees of the Ottawa Police Service whose identities are within the unique knowledge of the defendants) were acting at all times in their respective capacities as public office holders in respect of the investigation of Mr. Arar.

50 B. The particulars of the abuse of public office conducted by these defendants includes (without restricting the generality of the foregoing) that notwithstanding that these defendants had no reasonable or probable grounds to suspect Mr. Arar of any wrongdoing whatsoever, these defendants continued to investigate, monitor, and engage in the surveillance of Mr. Arar based on racial and cultural stereotypes concerning persons of Middle-Eastern origin. In addition, these defendants failed to obtain and consider all of the necessary evidence to complete a fair and balanced investigation, drew unreasonable inferences and conclusions from the evidence that was collected, relied on unreliable sources of information without properly investigating such sources and then improperly transmitting this information.

50 C. The plaintiffs plead and rely upon paragraphs 50-50B and state that the defendant Ottawa Police Services Board is vicariously liable for the aforesaid conduct of the defendants John Doe and Jane Doe and the defendant Chief of Police Vince Bevan.

B. Liability of the Defendants between September 26 and October 8, 2002

51 In September 2002, Mr. Arar was on a family vacation in Tunisia when he received an email from his former employer advising him of a business opportunity that necessitated his return to Ottawa. Mr. Arar left his family to continue their vacation and obtained a flight from Tunis to Montreal with stopovers in Zurich and New York.

52 Mr. Arar arrived in New York at 2:00 p.m. on September 26, 2002 in order to catch his connecting flight to Montréal. Mr. Arar presented his Canadian passport at the immigration counter and his name was entered onto a computer. Mr. Arar was then pulled aside, fingerprinted and photographed. His bags were also searched and his passport taken to be photocopied.

53 Officials from the Federal Bureau of Investigation and the New York Police Department assured Mr. Arar that he would catch his connecting flight to Montréal provided he answered their questions. In response to his request for a lawyer, Mr. Arar was told that he had no right to a lawyer because he was not an American citizen.

54 Mr. Arar was interrogated until midnight. During the questioning, the officials consulted the dossier that was prepared by the CII containing information of about his life in Canada. The officials questioned Mr. Arar about his work, salary, travel to the United States, and about his relationship with different people many of whom he had never met. During the interrogation, Mr. Arar was subjected to verbal abuse, profanity and insults.

55. Throughout the interrogation, Mr. Arar's repeated requests for a lawyer were ignored. Mr. Arar was then shackled at the wrists and ankles and transported to a detention centre near the airport where he was placed in a cell without a bed.

56. The interrogation of Mr. Arar resumed the following morning for eight hours. The interrogators asked Mr. Arar what he thought about Osama Bin Laden, Palestine, and Iraq. They asked Mr. Arar about the mosques he prayed in, his bank accounts, his e-mail addresses, and his relatives who live in the United States.

57. Mr. Arar was taken to a detention facility and strip searched and given an orange jumpsuit to wear. Officials then administered a vaccination the name of which the officials refused to disclose. Mr. Arar's arm was red for nearly two weeks following the vaccination.

58. After five days in detention, Mr. Arar was finally permitted to make a two minute telephone call to his mother-in-law. Mr. Arar advised that he feared he might be sent to Syria and that he needed a lawyer.

59. When Mr. Arar did not make his connecting flight to Canada, his family began to frantically search for him. The family contacted the RCMP who told them to contact the local police. After the family was told that the local police and the New York Police could not help them, the family again contacted the RCMP who gave them the phone number of the Department of Foreign Affairs and International Trade (DFAIT). Ms. Mazigh called the Canadian embassy in Tunis who told them they would contact DFAIT.

60. Upon learning that Mr. Arar was being detained in the United States, the family contacted the Office for Canadian Consular Affairs to request their assistance.

61. On or around October 1, 2002, Mr. Arar was found to be inadmissible in the United States on the basis of an allegation that he belonged to an organization designated by the Secretary of State as a Foreign Terrorist Organization, namely, Al Qaeda.

62. On the seventh or eighth day of detention, U.S. officials told Mr. Arar that he was going to be deported. They informed Mr. Arar that he had a choice of places to which he could be deported. Mr. Arar indicated, in writing, that he wanted to return to Canada.

63. On October 3, 2002, the Canadian consul in New York, Maureen Girvan, visited Mr. Arar in detention. Mr. Arar told her that he feared he would be deported to Syria. Ms. Girvan assured Mr. Arar that he would not be deported to Syria because he was a Canadian citizen but failed to take any steps to ensure that he would not be deported.

64. On October 6, 2002, at approximately 9:00 p.m., Mr. Arar was taken to a room with about seven or eight people which was monitored by camera. These individuals all introduced themselves with the exception of one man, who spoke with a French Canadian accent. The plaintiffs state and the fact is that this individual was a member of the RCMP. The identity of this individual is within the unique knowledge of the defendants. In the presence of the unidentified RCMP officer, Mr. Arar stated that he would be tortured if he was sent to Syria.

65. Ms. Mazigh contacted Ms. Girvan to advise of her concern that her husband would be deported to Syria. Ms. Girvan reassured Ms. Mazigh that Mr. Arar would not be

deported to Syria but rather to Canada or to Switzerland, where Mr. Arar's flight had originated. In addition, Mr. Arar's brothers were assured by an unidentified official from DFAIT that Mr. Arar would not be deported to Syria, but rather to Canada or to Switzerland.

66. On October 8, 2002, Mr. Arar was advised that on the basis of classified information, he was being deported to Syria. The plaintiffs state and the fact is that the "classified information" consisted of the dossier concerning Mr. Arar prepared within Canada by the CIT and further communications concerning Mr. Arar between the defendants in Canada and U.S. authorities. The plaintiffs state and the fact is that any and all information concerning Mr. Arar relied on by U.S. authorities originated in Canada and was transmitted by the defendants from within Canada.

67. The defendants individually and/or collectively advised the U.S. authorities in and around September 26 through October 9, 2002, that Canada's position was that Mr. Arar should not be returned to Canada.

68. The plaintiffs plead and the fact is that the defendants were aware that Mr. Arar would be deported to Syria for torture and prolonged arbitrary detention in degrading and inhuman conditions, and intended that he be deported to Syria for this purpose.

Injurious Falsehood, Libel and Slander

69. Between September 26 through October 8, 2002, the CIT conveyed the dossier and communicated allegations concerning Mr. Arar to U.S. authorities suggesting that the plaintiff was involved in international terrorism. These allegations were false and

known to be false by the CIT. The CIT communicated these false allegations with malice, intending that Mr. Arar be detained and that he be deported to Jordan and Syria for torture and prolonged arbitrary detention under degrading and inhuman conditions. As a result of the CIT's misconduct, Mr. Arar suffered damages as pleaded below.

70. Between September 26 and October 8, 2002, the CIT libeled Mr. Arar by transmitting and/or publishing allegations in written form to U.S. authorities identifying Mr. Arar as a person who was involved in international terrorism. These allegations were untrue and defamatory. They resulted in severe damage to his reputation, and caused him to be detained and interrogated by U.S. authorities, and subsequently deported to Jordan and Syria where he was subjected to torture and prolonged arbitrary detention in degrading and inhuman conditions.

71. Between September 26 and October 8, 2002, the CIT also slandered Mr. Arar by uttering defamatory words to U.S. authorities identifying Mr. Arar as a person who was involved in international terrorism. As a result, Mr. Arar was deported to Jordan and Syria, where he was subjected to torture and prolonged arbitrary detention in degrading and inhuman conditions.

False Imprisonment

72. By conveying false allegations to U.S. authorities, the CIT caused Mr. Arar to be totally confined in the custody of U.S. authorities without means of escape. The

confinement of the plaintiff, based on allegations that were false and known to be false by the CIT, was unauthorized and/or unlawful. The CIT intended that Mr. Arar be confined without lawful authority.

Breaches of the *Charter*

73. In communicating untrue allegations to U.S. authorities concerning Mr. Arar's involvement in international terrorism, in circumstances in which they knew or ought to have known that such allegations were false, the CIT caused Mr. Arar to be detained in U.S. custody without articulable cause, reasonable suspicion, or reasonable grounds. Accordingly, the CIT violated Mr. Arar's right not to be arbitrarily detained pursuant to section 9 of the *Charter*.

74. In communicating untrue allegations to U.S. authorities concerning Mr. Arar's involvement in international terrorism, in circumstances in which they knew or ought to have known that such allegations were false, the CIT caused Mr. Arar to be deported to Syria where he was subjected to torture. Accordingly, the CIT violated Mr. Arar's right not to be subjected to cruel and unusual treatment or punishment pursuant to section 12 of the *Charter*.

75. The CIT's misconduct as pleaded above also resulted in the violation of Mr. Arar's right not to be deprived of liberty and security of the person except in accordance with the principles of fundamental justice pursuant to section 7 of the *Charter*.

76. The CII's misconduct as pleaded above, being motivated in whole or in part by racial and/or ethnic profiling, resulted in the violation of Mr. Arar's right to equality before and under the law pursuant to section 15 of the *Charter*. This violation cannot be justified as a reasonable limit pursuant to section 1 of the *Charter*.

Conspiracy

77. The CII members agreed and combined to act unlawfully, as pleaded above, with the predominate purpose of injuring Mr. Arar, ~~and in particular (without limiting the generality of the foregoing) for the purpose of maintaining and prolonging his detention and interrogation by U.S. authorities, and his subsequent *refoulement*/deportation to Jordan and Syria for torture and prolonged arbitrary detention in degrading and inhuman conditions.~~ In particular, and without limiting the generality of the foregoing, the CII members formed an agreement to pursue a course of actions and omissions that were designed to maintain and prolong Mr. Arar's detention and interrogation by U.S. authorities, and his subsequent *refoulement*/deportation to Jordan and Syria for torture and prolonged arbitrary detention in degrading and inhuman conditions. The defendants overt acts in furtherance of the said conspiracy are pleaded at paragraphs 51-68 above.

78. In the alternative, the CII members agreed and combined to act lawfully with the predominate purposes of injuring Mr. Arar, and in particular (without limiting the generality of the foregoing) for the purpose of maintaining and prolonging his detention and interrogation by U.S. authorities, and his subsequent *refoulement*/deportation to

Jordan and Syria for torture and prolonged arbitrary detention in degrading and inhuman conditions.

79. In the further alternative, the CIT members agreed and combined to act unlawfully, as pleaded above, where the likelihood of injury to Mr. Arar was known or ought to have been known to the defendants. In particular, and without limiting the generality of the foregoing, the CIT knew or ought to have known that Mr. Arar's detention in the U.S. would be maintained and prolonged, and that his *refoulement*/deportation to Jordan and Syria was the likely and probable result of their agreement to act unlawfully. The CIT was further aware that torture and prolonged arbitrary detention in degrading and inhuman conditions was the likely and probable result of his *refoulement*/deportation to Jordan and Syria.

Abuse of Public Office

80. The CIT members were acting in their capacity as public office holders with respect to their communications with U.S. authorities while Mr. Arar was in U.S. custody. The CIT members deliberately engaged in unlawful conduct, as pleaded above. The CIT members were aware that they were acting unlawfully, and intended to cause harm to the plaintiffs. In the alternative, the CIT members were aware that they were acting unlawfully and ought to have been aware that their conduct would cause injury to the plaintiffs.

80 A. Without limiting the generality of the foregoing paragraph, the plaintiffs state that the defendants, the Ottawa Police Chief Vince Bevan, John Doe and Jane Doe (employees of the Ottawa Police Service whose identities are within the unique knowledge of the defendants) were acting at all times in their respective capacities as public office holders in respect of the investigation of Mr. Arar.

80 B. The plaintiffs state that particulars of the abuse of public office conducted by these defendants includes (and without restricting the generality of the foregoing) the transmitting of information concerning Mr. Arar to U.S. authorities for the purpose of deporting Mr. Arar to Syria to be tortured and detained in degrading and inhuman conditions.

80 C. The plaintiffs plead and rely upon paragraphs 80-80B and state that the defendant Ottawa Police Services Board is vicariously liable for the aforesaid conduct of the defendants John Doe and Jane Doe and the defendant Chief of Police Vince Bevan.

Tortious violations of customary international rights law

81. The CIT was aware of the U.S. practice of “extraordinary rendition” (*refoulement*/deportation) of terrorism suspects to third countries that engage in torture and prolonged arbitrary detention in cruel and inhuman conditions. The CIT was further aware that Mr. Arar was a dual citizen of Canada and Syria, and that Syria was a country that practiced torture. The CIT communicated false allegations of Mr. Arar’s involvement in international terrorism to U.S. authorities for the purpose of instigating, cooperating in, and/or acquiescing in, his deportation to Jordan and Syria and with the

intent that he would be subjected to torture in Syria. As a result of the CIT's wrongful conduct, Mr. Arar was subjected to torture and experienced severe mental and physical pain and suffering as pleaded below. Mr. Arar also experienced prolonged arbitrary detention and cruel, inhuman and degrading treatment and conditions of detention, a result that was intended by the CIT.

82. The plaintiff pleads and relies on the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and on the International Covenant on Civil and Political Rights, both 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 plaintiff pleads the *jus cogens* status of international human rights obligations breached by the CIT, including but not limited to those relating to torture, prolonged arbitrary detention, and cruel, inhuman and degrading treatment.

Negligence of the DFAIT defendants

83. The DFAIT defendants individually and collectively owed a duty of care to Mr. Arar to provide him with reasonable consular and/or diplomatic assistance while he was in the custody of U.S. authorities. The DFAIT defendants were fully aware that Mr. Arar was a dual citizen of Canada and Syria, and as such, was liable to deportation to Syria where they knew or ought to have known he would be subjected to torture. The DFAIT defendants were aware of the U.S. practice of deporting terrorism suspects to third

countries that practiced torture, such as Syria. The DFAIT defendants breached this duty of care, the particulars (without limited the generality of the foregoing) of which are as follows:

- (i) They failed to properly advocate for Mr. Arar's return to Canada with U.S. authorities;
- (ii) They were aware that Mr. Arar was not involved with international terrorism and failed to so advise the U.S. authorities;
- (iii) They failed to request assurances from U.S. authorities that Mr. Arar would not be deported to Syria;
- (iv) They failed to obtain assurances from U.S. authorities that Mr. Arar would not be deported to Syria;
- (v) They failed to make any representations to U.S. authorities concerning Mr. Arar's "extraordinary rendition" to Syria;
- (vi) They failed to provide any assistance to Mr. Arar in obtaining legal advice and/or representation;
- (vii) They failed to communicate with, and ascertain the involvement of, the CIT concerning Mr. Arar's detention;

(viii) They took no steps to restrain the CIT from communicating additional false allegations concerning Mr. Arar;

(ix) They failed to correct or refute the untrue allegations made by the CIT when they knew or ought to have known that such allegations were false; and,

(x) They acquiesced in the U.S. authorities' conduct in returning Mr. Arar to Syria, a country they knew or ought to have known engaged in the practice of torture.

84. As a result of the DFAIT defendants' individual and collective acts and omissions, Mr. Arar was deported to Syria where he was subjected torture, cruel, inhuman and degrading conditions of treatment, and prolonged arbitrary detention. Mr. Arar's deportation to Syria and his torture while in Syrian custody was a foreseeable consequence of the DFAIT defendants' negligence. As a result, Mr. Arar suffered damages as pleaded below.

C. Liability of the Defendants from October 8, 2002 to October 5, 2003

85. On or about October 8, 2002, Mr. Arar was driven to an airport in New Jersey and put on a small private jet and flown to Washington. Mr. Arar overheard the officials on the plane talking about how Syria had refused to accept him directly, but that Jordan would admit him. Mr. Arar was flown to Jordan and arrived on October 9, 2002.

86. Upon arrival, Mr. Arar was met by about six officials of the Jordanian government. Mr. Arar was blindfolded, shackled, and placed in a van. Mr. Arar was forced to bend his head down in the back seat and was then beaten. When Mr. Arar arrived at a building, the blindfold was removed and he was questioned briefly before being placed in a cell. Later that day, Mr. Arar was fingerprinted, blindfolded again, and put in a van. He was told that he was being sent back to Montreal.

87. About forty-five minutes later, Mr. Arar was put into a different car. He was beaten again and forced to keep his head down. They drove for about an hour until they arrived at the Jordanian-Syrian border.

88. On October 8, 2002, Ms. Girvan informed Ms. Mazigh that Mr. Arar was no longer in the United States and that Mr. Arar may have been deported to Syria via Jordan. For the next 10 days, Mr. Arar's family desperately tried to find out his exact whereabouts. It was not until October 21, 2002 that Gar Pardy, the Director General of the Consular Affairs Bureau of DFAIT contacted Ms. Mazigh to inform her that the Syrian government confirmed that that Mr. Arar had arrived in Syria.

89. Once in Syria, Mr. Arar was sent to the Palestine Branch of the Syrian military intelligence. Mr. Arar was not formally charged with any offence. He was detained against his will and was denied access to a lawyer.

90. At the Palestine Branch, Mr. Arar was locked in a tiny cell with very little light. He was given two blankets, two dishes, one bottle for water and one bottle for urinating into. There was a small opening in the ceiling of his cell through which rodents roamed and cats urinated. Mr. Arar was kept in this cell for ten months and ten days.

91. The torture began on the second day of detention. One of the tactics used by the torturers was to question Mr. Arar for two hours, then put him in a waiting room so that he could hear the screams of other prisoners being tortured before the interrogation was resumed.

92. The torturers used a two-inch thick electric cable to beat Mr. Arar. They used the cable to hit Mr. Arar all over his body, aiming mostly at his palms. They also struck Mr. Arar on his hips and lower back. In addition, the torturers constantly threatened to use the metal chair, tire and electric shocks. The torturers used the tire to restrain prisoners while beating the soles of their feet. Mr. Arar was put in the tire as a threat, but was not beaten while in the tire.

93. The torturers beat Mr. Arar with the cable on the second and third day of his detention. After that, the torturers beat Mr. Arar with their fists. They struck Mr. Arar's stomach, the back of his neck, and his face. At the end of the second day, the torturers told Mr. Arar that the next day would be worse.

94. On the third day, Mr. Arar was interrogated for approximately eighteen hours. The torturers alternated between beating Mr. Arar and making him wait in the waiting room where he could hear the screams of other prisoners being tortured.

95. The torturers wanted Mr. Arar to say that he had been in Afghanistan. They continued beating Mr. Arar until he falsely confessed to having gone to Afghanistan.

96. The intensity of the beatings became less severe on the following days, however, at the end of each day Mr. Arar was told, "Tomorrow will be harder for you." Mr. Arar

could not sleep with the constant threat of torture hanging over him. For the first four days, Mr. Arar did not sleep at all and for the first two months, he was only able to sleep for two hours a day. Often, during interrogation sessions, Mr. Arar was not taken back to his cell, but to the waiting room where he had to listen to the torture of other prisoners.

97. The beatings subsided around October 17, 2002. Instead, the torturers commenced a form of mental torture. The torturers took Mr. Arar into a room where he could hear people talking about him. Mr. Arar could hear them saying, "He knows lots of people who are terrorists"; "We will get their numbers"; "He is a liar"; and "He has been out of the country for long". Then they would say, "Let's be frank, let's be friends, tell us the truth", after which they approached Mr. Arar and slapped his face.

98. The interrogation and beatings ended on October 20, 2002, three days before the Canadian consul's first visit. Mr. Arar was told not to disclose the beatings to the Canadian Consul. On October 23, 2002, Mr. Arar had a ten-minute meeting with the Canadian consul, Leo Martel. The colonel and three other Syrian officials were also in the room, along with an interpreter. Mr. Arar was told to speak in Arabic. Mr. Arar wept during the meeting, but could not say anything about the torture. Mr. Martel told Mr. Arar that Canada could not help him because he is a dual citizen.

99. On October 29, 2002, Mr. Arar had a second consular visit with Mr. Martel. Mr. Arar asked Mr. Martel to get the Prime Minister to intervene and was told that he could not help because Mr. Arar was a dual citizen. On November 12, 2002, Mr. Arar had his third consular visit, which lasted only ten minutes. On December 10, 2002, Mr. Arar had his

fourth consular visit, which lasted thirty minutes. Mr. Martel informed him that he was very busy and that he might not be able to visit as often.

100. Mr. Arar had two more consular visits, one on January 7, 2003 and one on February 18, 2003. Like the previous visits they were futile and frustrating because Mr. Arar was unable to tell the consul about the conditions of his detention and consul kept telling Mr. Arar that there was nothing the Canadian government could do to help him.

101. On April 22, 2003, Members of Parliament, Marlene Catterall and Sarkis Assadourian visited Mr. Arar for ten minutes. Canadian Ambassador Franco Pillarella was also present along with someone from the Canadian embassy. Mr. Arar expressed his desire to return to Canada and was told by Ms. Catterall that they were trying but needed to respect Syrian law.

102. The last consular visit occurred on August 14, 2003. Mr. Arar decided to disclose his mistreatment despite the potential consequences. Mr. Arar broke down and told Mr. Martel about the conditions he was living in and the torture. The interpreter tried to interrupt and stated that this was not true.

103. On August 19, 2003, Mr. Arar was forced to write that he had been to a training camp in Afghanistan and to put his thumbprint and signature on the last page of the false statement.

104. The next day, Mr. Arar was transferred to the Sednaya prison and remained there until September 28, 2003, when he was blindfolded, and taken back to the Palestine

Branch where he was placed in a waiting room for one week listening to the screams of persons being tortured.

105. On October 5, 2003, Mr. Arar was driven to a court and placed in a room with a prosecutor. Mr. Arar was then taken back to the Palestine Branch where he was met by the head of the Syrian military intelligence and officials from the Canadian embassy including Mr. Martel. Mr. Arar was then released and allowed to return to Canada.

106. Syrian officials investigated every allegation contained in the CIT's dossier and all other allegations made by the CIT against Mr. Arar, but could find no such connection between Mr. Arar and terrorist activity. Syria eventually released Mr. Arar because Syrian officials could find no evidence whatsoever to suggest that Mr. Arar is connected in any way with international terrorism. Syria now considers Mr. Arar completely innocent.

107. Throughout the period of October 9, 2002 and October 5, 2003, the CIT communicated allegations and provided documents concerning Mr. Arar's supposed connection to international terrorism to Syrian officials. The CIT did so, knowing that the allegations were false, and with the intent that this information and material would be used by Syrian officials in their interrogations of Mr. Arar under torture.

108. During the time that Mr. Arar was wrongly detained in the United States and Syria, his family engaged in significant efforts to have him returned to Canada. However, such efforts were consistently ignored by the defendants. Without restricting the generality of the foregoing, such efforts included:

- (i) In November 2002, the RCMP was asked to provide a letter to Syrian authorities confirming that they did not have any evidence linking Mr. Arar to terrorist activities, which request was refused;
- (ii) On November 19, 2002, Ms. Mazigh met with DFAIT officials and urged them to tell the Canadian public and the Syrian authorities that there was no evidence linking Mr. Arar to terrorism, which request was refused;
- (iii) On May 9, 2003, Ms. Mazigh and one of Mr. Arar's brothers met with Gar Pardy and were advised that the Deputy Foreign Minister Gaetan Lavertu would be visiting Syria. Ms. Mazigh requested that the Minister provide a letter to the Syrian authorities confirming that Mr. Arar had no links to terrorism and should be returned to Canada. The CII refused to prepare any such a letter;
- (iv) On June 13, 2003, Ms. Mazigh met with ~~Foreign Affairs Minister~~ William Graham to request that he prepare a letter stating that the Canadian government has no evidence linking Mr. Arar to terrorist activities. This defendant refused to provide such letter, based on advice by the CII that they had even more concerns about Mr. Arar than they did in the past;
- (v) On July 18, 2003, Ms. Mazigh wrote to ~~Solicitor General~~ Wayne Easter to request that the Mr. Arar's family be advised of the evidence that the government had linking Mr. Arar to terrorism so they could have an opportunity to respond, which request was ignored;

(vi) On July 23, 2003, Ms. Mazigh wrote to ~~Prime Minister~~ Jean Chretien, informing him that Mr. Arar had been tortured and appealing to the Prime Minister to support her request to the Solicitor General, which request was ignored;

109. At no time did the defendants advise the Syrian authorities that Mr. Arar was not connected to terrorism. At all material times the defendants knew or ought to have known that their failure to so advise the Syrian authorities would result in his continued torture, and cruel, inhuman and degrading treatment.

109A. The plaintiffs state that the defendant Wayne Easter was personally aware of Mr. Arar's circumstances throughout the time of his detention in Syria, including his torture, and cruel, inhuman and degrading treatment. This defendant also knew or ought to have known that CSIS officers had met with Syrian intelligence officials in Syria concerning Mr. Arar. This defendant was aware that Syrian officials alleged that CSIS had advised them that the Canadian government did not want Mr. Arar to return to Canada. Wayne Easter refrained from directing CSIS officials to inform Syrian officials that the Canadian government desired Mr. Arar's return, knowing that such failure would result in Mr. Arar's continued torture, and cruel, inhuman and degrading treatment. Wayne Easter also refused to sign a joint letter with William Graham requesting Mr. Arar's release, knowing that such refusal would cause injury to Mr. Arar.

109B. The plaintiffs state that the defendant Ward Elcock was personally aware of Mr. Arar's torture and cruel, inhuman and degrading treatment in Syria. Ward Elcock was aware that CSIS officials had visited Syria during Mr. Arar's detention and had conveyed the impression that CSIS opposed Mr. Arar's return to Canada. This defendant refrained from directing CSIS officials to advise Syrian officials that CSIS supported Mr. Arar's return, knowing that this failure would result in further damages to the plaintiffs. This defendant also refused to recommend that Wayne Easter sign a joint letter with William Graham requesting Mr. Arar's release from Syrian custody, knowing that the failure to send a joint letter would result in Mr. Arar's continued torture, and cruel, inhuman and degrading treatment.

109C. The plaintiffs state that the defendant William Graham was personally aware of the nature of Mr. Arar's treatment and the conditions of his detention while in the custody of Syrian intelligence officials. In and around November 2002, this defendant personally authorized contact between CSIS and Syrian officials in Syria when he knew or ought to have known that other DFAIT officials opposed such contact and that such contact was likely to result in the continuation of Mr. Arar's torture, and cruel, inhuman and degrading treatment. This defendant personally authorized and approved a policy of co-operation between Canadian and Syrian intelligence officials, both generally and specifically with respect to Mr. Arar, while knowing that Syrian officials engaged in the systemic practice of torture and cruel, inhuman and degrading treatment of detainees.

109 D. The plaintiffs state that the defendant Jean Chrétien was personally aware of the circumstances of Mr. Arar's detention in Syria including his cruel, degrading and inhuman treatment. Notwithstanding this knowledge, this defendant intentionally refrained from requesting Mr. Arar's release from Syria for a prolonged period of time (the precise period of time is within the unique knowledge of the defendant Jean Chrétien). The plaintiffs state that when the defendant Jean Chrétien did finally request Mr. Arar's release by letter in July 2003, he intentionally refrained from disavowing any Canadian allegations of Mr. Arar's involvement in international terrorism knowing that such allegations were false and that such failing was likely to result in Mr. Arar's continued and prolonged detention.

110 After Mr. Arar was permitted to return to Canada, the CIT continued to assert and/or imply that Mr. Arar was linked to terrorist activities. Without restricting the generality of the foregoing, the CIT defendants leaked extracts from statements obtained from Mr. Arar while under severe torture in Syria, including a statement that he had been in a training camp in Afghanistan, to the Canadian media. The plaintiffs state and the fact is that the CIT obtained a copy of this statement directly from the Syrian torturers who were given specific questions to ask Mr. Arar by the CIT.

Injurious Falsehood, Libel and Slander

111 While the Mr. Arar was in custody in Syria, the CIT communicated allegations to Syrian authorities suggesting that Mr. Arar was involved in international terrorism. These allegations were untrue. The CIT communicated these untrue allegations with malice, intending that Mr. Arar's detention continue and that he be subjected to torture,

prolonged arbitrary detention, and cruel, inhuman and degrading treatment in Syria. As a result of the CIT's misconduct, Mr. Arar suffered damages.

112. While Mr. Arar was in Syrian custody, the CIT libeled Mr. Arar by transmitting and/or publishing allegations in written form to Syrian authorities identifying Mr. Arar as a person who was involved in international terrorism. These allegations were untrue and defamatory. They resulted in severe damage to his reputation, and his torture, prolonged arbitrary detention, and cruel, inhuman and degrading treatment in Syria.

113. While Mr. Arar was in Syrian custody, the CIT also slandered Mr. Arar by uttering defamatory words to Syrian authorities identifying Mr. Arar as a person who was involved in international terrorism. Mr. Arar suffered special damages as a result, as pleaded below.

False Imprisonment

114. By conveying untrue allegations to Syrian authorities, the CIT caused Mr. Arar to be totally confined in Syria without means of escape. The confinement of the plaintiff, based on false allegations, was unauthorized and/or unlawful. The CIT intended that Mr. Arar be confined without lawful authority.

Breaches of the *Charter*

115. In communicating untrue allegations to Syrian authorities concerning Mr. Arar's involvement in international terrorism, in circumstances in which they knew or ought to have known that such allegations were false, the CIT caused Mr. Arar to be detained in Syria without articulable cause, reasonable suspicion, or reasonable grounds. Accordingly, the CIT violated Mr. Arar's right not to be arbitrarily detained pursuant to section 9 of the *Charter*.

116. In communicating untrue allegations to Syrian authorities concerning Mr. Arar's involvement in international terrorism, in circumstances in which they knew or ought to have known that such allegations were false, the CIT caused Mr. Arar to be subjected to torture, prolonged arbitrary detention, and cruel, inhuman and degrading treatment in Syria. Accordingly, the CIT violated Mr. Arar's right not to be subjected to cruel and unusual treatment or punishment pursuant to section 12 of the *Charter*.

117. The CIT's misconduct as pleaded above also resulted in the breach of Mr. Arar's right not to be deprived of liberty and security of the person except in accordance with the principles of fundamental justice pursuant to section 7 of the *Charter*.

Conspiracy

118. The CIT members agreed and combined to act unlawfully, as pleaded above, with the predominate purpose of injuring Mr. Arar, ~~and in particular (without limiting the generality of the foregoing) for the purpose of instigating, encouraging, and/ or acquiescing in his torture and cruel, inhuman and degrading treatment by Syrian~~

authorities. In particular, and without limiting the generality of the foregoing, the CIT members formed an agreement to pursue a course of actions and omissions that were designed to instigate, encourage, and/ or acquiesce in Mr. Arar's torture and cruel, inhuman and degrading treatment by Syrian authorities. The defendants' overt acts in furtherance of the said conspiracy are pleaded at paragraphs 85-110 above.

119. In the alternative, the CIT members agreed and combined to act lawfully with the predominate purposes of injuring Mr. Arar, and in particular (without limiting the generality of the foregoing) for the purpose of maintaining and prolonging his detention in Syria and torture, and cruel, inhuman and degrading treatment by Syrian authorities.

120. In the further alternative, the CIT members agreed and combined to act unlawfully, as pleaded above, where the likelihood of injury to Mr. Arar was known or ought to have been known to the defendants. In particular, and without limiting the generality of the foregoing, the CIT members knew or ought to have known that Mr. Arar's detention in Syria would be maintained and prolonged, and that he would be tortured and subjected to cruel, inhuman and degrading treatment as the likely and probable result of their agreement to act unlawfully.

Abuse of Public Office

121. The CIT members were acting in their capacity as public office holders with respect to their communications with Syrian authorities while Mr. Arar was in Syrian custody. The CIT members deliberately engaged in unlawful conduct, as pleaded above.

The defendants were aware that they were acting unlawfully, and intended to cause harm to the plaintiffs. In the alternative, the CIT members were aware that they were acting unlawfully and ought to have been aware that their conduct would cause injury to the plaintiffs.

121 A. Without limiting the generality of the foregoing paragraph, the plaintiffs state that the defendants, the Ottawa Police Chief Vince Bevan, John Doe and Jane Doe (employees of the Ottawa Police Service whose identities are within the unique knowledge of the defendants) were acting at all times in their respective capacities as public office holders in respect of the investigation of Mr. Arar.

121 B. The plaintiffs state that the particulars of the abuse of public office conducted by these defendants includes (and without restricting the generality of the foregoing) transmitting information that Mr. Arar was involved in international terrorism knowing that such information was untrue and would likely result in Mr. Arar being subjected to torture, prolonged arbitrary detention, cruel, inhuman and degrading treatment in Syria.

121 C. The plaintiffs plead and rely upon paragraphs 121-121B and state that the defendant Ottawa Police Services Board is vicariously liable for the aforesaid conduct of the defendants John Doe and Jane Doe and the defendant Chief of Police Vince Bevan.

Tortious violations of customary international rights law

122. The CIT was aware that Syria engaged in the practice of torture in respect of persons suspected of terrorism. The CIT communicated untrue allegations of Mr. Arar's involvement in international terrorism to Syrian authorities, both directly and indirectly through U.S. authorities, for the purpose of instigating, cooperating with, and/or acquiescing in his torture by Syrian authorities. As a result of the CIT's wrongful conduct, Mr. Arar was subjected to torture and experienced severe mental and physical pain and suffering. He also experienced prolonged arbitrary detention, and cruel, inhuman and degrading treatment and conditions of detention.

123. The plaintiff pleads and relies on the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and on the International Covenant on Civil and Political Rights, both 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 plaintiff pleads the *jus cogens* status of international human rights obligations breached by the CIT, including but not limited to those relating to torture, prolonged arbitrary detention, and cruel, inhuman and degrading treatment.

Assault and Battery

124. The CIT communicated untrue allegations of Mr. Arar's involvement in international terrorism to Syrian authorities, both directly and indirectly through U.S.

authorities, with the intent that the Syrian authorities would apply force to Mr. Arar without his consent, and with the intention that Mr. Arar would be harmed and injured.

Negligence of the DFAIT defendants and the defendant Jean Chrétien

125. The DFAIT defendants individually and/or collectively and the defendant Jean Chrétien owed a duty of care to Mr. Arar to provide him with reasonable consular and/or diplomatic assistance while in the custody of the Syrian authorities. The DFAIT defendants and the defendant Chrétien were aware that Syria engaged in the practice of torture with respect to detainees who are suspected of terrorism. The DFAIT defendants and the defendant Jean Chrétien breached this duty of care, the particulars (without limited the generality of the foregoing) of which are as follows:

- (i) They failed to properly advocate for Mr. Arar's return to Canada with Syrian authorities;
- (ii) They were aware that Mr. Arar was not involved with international terrorism and failed to so advise the Syrian authorities;
- (iii) They failed to request and obtain assurances from Syrian authorities that Mr. Arar would not be tortured;
- (iv) They failed to make reasonable inquiries to determine whether Mr. Arar was being subject to torture;
- (vi) They conducted consular visits with Mr. Arar in the presence of his torturers;

(v) They failed to request and secure private consular access to Mr. Arar that would permit him to advise DFAIT of his torture;

(vi) They failed to make any representations to Syrian authorities concerning Mr. Arar's torture;

(vii) They failed to provide any assistance to Mr. Arar in obtaining legal advice and/or representation in Syria;

(vii) They failed to communicate with, and ascertain the involvement of, the CII concerning Mr. Arar's detention and torture;

(xi) They took no steps to restrain the CII from communicating additional false allegations to the Syrians concerning Mr. Arar;

(x) They failed to correct or refute the untrue allegations made by the CII when they knew or ought to have known that such allegations were false;

(xi) They acquiesced in the torture of Mr. Arar by Syrian authorities.

126. As a result of the acts and omissions of the DFAIT defendants and the defendant Chrétien, Mr. Arar was subjected to torture, prolonged arbitrary detention, and cruel, inhuman and degrading treatment for a period of one year. Mr. Arar's treatment while in

Syrian custody was a foreseeable consequence of the defendants' negligence. As a result, Mr. Arar suffered damages as pleaded below.

Damages

127. The plaintiff, Mr. Arar, has and continues to suffer physically, psychologically and emotionally as a direct result of the conduct of the defendants as plead aforesaid. The plaintiff suffers mental distress from the humiliating treatment that he received at the hands of the defendants and also suffered and continues to suffer from significant damage to his reputation as a result of the continuing misconduct. Mr. Arar continues to suffer from anxiety and nightmares as a result of the torture that he was subjected to. Furthermore, Mr. Arar has suffered and continues to suffer loss of income as a result of the conduct of the defendants. The damages suffered by Mr. Arar are all consequences which the defendants intended or knew, or ought to have known, would result from their wrongful conduct.

128. The plaintiffs, Monia Mazigh, Baraa Arar, Houd Arar, Abdul Hamid Arar, Najat Jabakhanji, Hassan Arar, Samir Arar, Saher Arar, Taoufik Arar, Bassam Arar, and Yasser Arar have and continue to suffer physically, psychologically and emotionally as a direct result of the bad faith conduct of the defendants as plead aforesaid. The damages suffered by these plaintiffs are all consequences which the defendants knew or ought to have known would result from their wrongful conduct.

129. The plaintiffs, Monia Mazigh, Baraa Arar, Houd Arar, Abdul Hamid Arar, Najat Jabakhanji, Hassan Arar, Samir Arar, Saher Arar, Taoufik Arar, Bassam Arar, and Yasser

Arar, plead and rely upon the relevant provisions of the *Family Law Act*. In particular, these plaintiffs enjoyed and continue to enjoy a close and loving relationship with Mr. Arar and as such have suffered a loss of care, guidance and companionship as a result of the injuries incurred by him. In addition, these plaintiffs have also suffered pecuniary loss, in that they have been deprived of the financial support that Mr. Arar would have provided but for the conduct of the defendants.

130. The plaintiffs state that the defendants acted in high-handed, malicious, arbitrary and/ or highly reprehensible manner, as described herein, that 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. In particular and without restricting the generality of the foregoing, the plaintiffs rely on the following facts for their claim for punitive, aggravated and/or exemplary damages:

- (i) The defendants' outrageous misconduct persisted over a lengthy period;
- (ii) The defendants concealed and/ or attempted to cover up their misconduct;
- (iii) The interests violated by the defendants' misconduct, namely Mr. Arar's liberty and his right to be free from torture and cruel, inhuman and degrading treatment, was deeply personal to the Plaintiffs;
- (iv) Mr. Arar's status as a prisoner created a significant power imbalance in that he was completely vulnerable and dependant on the defendants' decision making power and conduct; and

(v) As plead above, the defendants acted in a high-handed, malicious, arbitrary and/ or highly reprehensible manner, that constitutes a marked departure from the ordinary standards of decent behaviour and which caused serious injury to the Plaintiffs;

(vi) The defendant William Graham participated in a press conference in and around August 2003 wherein he denied that Mr. Arar had been tortured in circumstances in which he was personally aware that Mr. Arar had been subjected to torture and cruel, inhuman and degrading treatment; and

(v) The defendant Jean Chrétien steadfastly refused to call an inquiry into Mr. Arar's deportation to and detention and torture in Jordan and Syria in order to conceal the role of Canadian authorities.

131. The plaintiffs plead and rely upon the *Negligence Act* R.S.O. 1990, c. N.1. as amended.

132. The plaintiffs plead and rely upon the *Police Services Act*, R.S.O. 1990, c.P.15, as amended.

133. The plaintiffs plead and rely upon the *Crown Liability and Proceedings Act* R.S.C., 1985, c.C50.

134. The plaintiffs plead and rely upon the *Canadian Security Intelligence Act* R.S.C. 1984 c.

135. The plaintiffs plead and rely upon the *Royal Canadian Mounted Police Act* R.S.C. 195, c. R-10.

136. The plaintiffs plead and rely upon section 61 of the *Family Law Act* R.S.O. 1990, c.F.3.

137. The plaintiffs plead and rely upon the *Canadian Charter of Rights and Freedoms*.

138. The plaintiffs propose that this action be tried in Ottawa.

Date of issue:

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Solicitors for the Plaintiffs

MAHER ARAR et al.
Plaintiffs

-and-

HER MAJESTY THE QUEEN et al.
Defendants
Court File No: 05-CV-030945

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced in OTTAWA

AMENDED THIS 19th DAY / JOUR
MODIFIÉE DE
OF / DE January 20 06
PURSUANT TO RULE 86.06(1)
CONFORMÉMENT À LA RÈGLE
OR ORDER
OU À L'ORDONNANCE
DATED THIS / FAIT CE
DAY / JOUR OF / DE 20
REGISTRAR, SUPERIOR COURT OF JUSTICE
CRÉFFIER, COUR SUPÉRIEURE DE JUSTICE

*Amended Statement of
Repetition Claim.*

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