

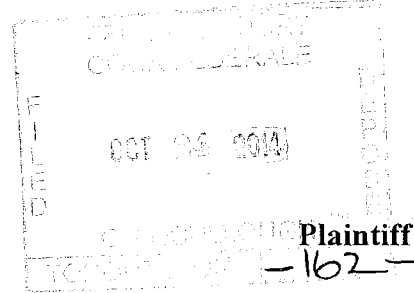
ID 336

Court File No. T-536-04

FEDERAL COURT

BETWEEN:

OMAR AHMED KHADR



- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

**AMENDED AMENDED AMENDED FRESH AS AMENDED
STATEMENT OF CLAIM TO THE DEFENDANT**

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

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

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

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

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

Date: March 15, 2004

Issued by: Chantal St. Jean
(Registry Officer)

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Solicitor for the Defendant

CLAIM

1. The Plaintiff, Omar Ahmed Khadr ("Omar"), claims general, *Charter*, punitive, and aggravated damages in the amount of \$20,000,000 particularized as follows:

- a) Compensatory damages for negligent investigation, conspiracy either directly or as parties to a conspiracy with the United States Government through its agents or servants and other unknown parties in the arbitrary detention, torture, cruel, inhuman and degrading treatment, false imprisonment, intentional infliction of mental distress, assault and battery, and misfeasance in public office;
- b) *Charter* damages pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") and an Order declaring that the Defendant has violated the Plaintiff's rights under ss.7, 10 (a), 10 (b), and 12 of the *Charter*;
- c) Punitive and aggravated damages;
- d) In addition to the damages set out in subparagraphs (a), (b) and (c) above, the Plaintiff claims for special damages in an amount to be determined with particulars provided prior to trial;
- e) Pre and post-judgment interest in accordance with ss. 36 and 37 of the *Federal Courts Act*, R.S.C., c. F-7;
- f) Costs on a substantial indemnity basis; and
- g) Such further and other relief as this Honourable Court deems just.

I. OVERVIEW OF THE CLAIM AND BACKGROUND

A. Overview of the Claim

2. Omar is a Canadian citizen who, at age 15, was captured by American troops in Afghanistan. He has been in custody since July 27, 2002, first in the American military base in Bagram, Afghanistan ("Bagram Air Base"), then in the American military base at Guantánamo Bay, Cuba ("GTMO" or "Guantánamo Bay"). On September 29, 2012, Omar was repatriated to Canada. He was initially imprisoned at Millhaven Institution, a maximum security penitentiary located in Bath, Ontario, and then transferred to Edmonton Institution, a maximum security penitentiary located in Fort Saskatchewan, Alberta.

3. Shortly after Omar's capture, and as early as September 2002, officials from the Royal Canadian Mounted Police ("RCMP"), the Canadian Security Intelligence Service ("CSIS") and the Department of Foreign Affairs and International Trade ("DFAIT") (collectively "Canadian Officials") formed an agreement with officials from the government of the United States of America the predominant purpose of which was to harm and damage Omar by, amongst other effects, taking steps to ensure Omar's ongoing and potentially indefinite detention, either in Guantánamo Bay or by prosecution in Canada, if the government of the United States ultimately decided not to prosecute the Plaintiff.

4. The terms of the agreement required the Canadian Officials to cooperate with their American counterparts, including the sharing of the products of all of their interrogations of Omar, as well as permitting Canadian Officials to take advantage of the methods of interrogation, detention and torture utilized by the Americans on Omar at Guantánamo Bay.

5. In the alternative, Canadian Officials formed their agreement with their American counterparts and the Canadian Officials committed unlawful acts, contrary to both domestic laws and binding obligations under international law, knowing that those unlawful acts were likely to cause harm to Omar. Among other acts, Canadian Officials interrogated Omar knowing that torture had been used on him to facilitate those interrogations, contrary to Omar's rights under

the *Charter* as informed by the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and principles of fundamental justice pursuant to s. 7 of the *Charter*.

6. These interrogations of Omar occurred with the assistance of American officials who, at the time, were operating under a regime declared illegal by their own Government. The Canadian officials conducted their interrogations knowing they were participating in this illegal regime which, *inter alia*, denied Guantánamo detainees the right to counsel and *habeas corpus* and, in the case of Omar, violated his *Charter* rights as informed by the *Convention on the Rights of the Child*, the *Youth Criminal Justice Act*, and ss. 7, 10(a), 10(b) and 12 of the *Charter*. The subsequent sharing of Omar's untested statements made to the Canadian interrogators with American officials to be used in criminal and/or military proceedings against him constituted a further violation of Omar's rights under Canadian domestic law pursuant to the *Charter* and international obligations relating to child detainees abroad.

7. Through the period of time leading up to the agreement between the Canadian Officials and their American counterparts, the Canadian Officials had formed the opinion that Omar could be prosecuted under Canadian domestic law and was a potential target and accused in the Canadian Officials' investigations. Notwithstanding Omar's age and his being targeted as an accused, pursuant to the agreement between the Canadian Officials and their American counterparts, the Canadian Officials agreed to share any information they extracted from Omar with their American counterparts to assist in the American's own interrogations and prosecution of Omar. In addition, as part of the agreement, Canadian Officials and the government of the United States conspired to guarantee Omar's continued and potentially indefinite detention.

8. In furtherance of this conspiracy, Canada tacitly approved of, and utilized the fruits of, various acts of torture performed on Omar by American authorities in Guantánamo Bay that assisted both Canada and the U.S. in extracting information from Omar during several interrogations over the course of his detention. Canadian Officials knew that Omar had been tortured leading up to their interrogations of him, but did not take any steps to ensure his

constitutional rights, safety or to independently verify any of the statements he made to Canadian or American authorities. In turn, these statements contributed to the alleged factual basis for the American military proceedings instituted against Omar and, ultimately, his coerced guilty plea, which paved the way for his repatriation to Canada and continued detention here.

9. Omar was a Canadian citizen, a youth and a potential target of a criminal investigation, all of which was known to the Canadian Officials at the time of their investigations and interrogations of Omar. These officials owed a duty of care to Omar, as a Canadian citizen, youth and potential criminal accused. Canada's failure to ensure Omar's constitutional rights, safety, or to corroborate statements made as a result of torture, constituted negligent investigation on the part of Canadian Officials.

10. Canadian Officials used their positions of power to ensure Omar's continued indefinite detention and, as will be described below, contributed to harm suffered by Omar both at the hands of his American captors and ongoing harm upon his return to Canada constituting misfeasance in public office.

11. Despite its domestic law and international commitments, Canada knew that Omar was being deprived of all of his legal entitlements and took no steps to protect him, resisted all urging to extend assistance, and instead exploited the circumstances of his imprisonment, in violation of his *Charter* and other rights, for its own and the American government's benefit.

B. Omar's Family

12. Omar's father, Ahmed Said Khadr ("Ahmed"), was an Egyptian Canadian who died in 2003 in a firefight with Pakistani military forces. He was married to Maha El-Samnah ("Maha"), and together they had seven children, including Omar.

13. In 1994, Ahmed moved his family to the Peshawar region of Afghanistan. At the time of the move to Afghanistan, Omar was only 8 years old. The family moved again in September of 1997, this time to Jalalabad, Afghanistan. The move to Jalalabad coincided with a closer association between Ahmed and Osama Bin Laden.

C. Omar is Severely Wounded and Captured by the United States

14. In July 2002, Ahmed visited his family, who at the time were living in Wazaristan, and arranged for Omar to join a group of Arab men to act as a Pashto translator. At his father's direction, Omar, then only 15 years old, traveled with these men to the Afghan city of Khost. On approximately July 26, 2002, Omar was taken by the group to Abu Ykhiel, a village outside of Khost, where they stayed the night.

15. In the early morning of July 27, 2002, American soldiers went to Abu Ykhiel to search the home of a suspected explosives maker. A firefight ensued, ending with an air strike by American forces. Omar was severely injured during the firefight and lost consciousness. One American soldier, Sgt. Speer, was also injured and ultimately died as a result of his injuries.

16. Omar received onsite medical treatment and was then air lifted to Bagram Air Base, where he became a prisoner.

D. Omar is Interrogated and Tortured at Bagram Air Base

17. Omar did not regain consciousness for one week following his arrival at the Bagram Air Base. His injuries were very serious. His chest wounds were infected, swollen and still seeping blood for months following his capture. His injuries have since caused him severe, chronic pain and rendered him susceptible to painful infections and other related health problems.

18. Omar spent approximately 90 days at Bagram Air Base; the first two weeks in a tent hospital and the remainder of his time in a holding pen with adult detainees. From the outset,

American personnel singled out Omar for particularly harsh treatment, taking the position that Omar had "murdered" Sgt. Speer.

19. While at Bagram Air Base, the Americans interrogated Omar approximately 42 times, frequently employing torture.

20. Once Canada became aware that Omar, a 15 year old Canadian citizen, was in the custody and control of American authorities abroad, it took no steps to prevent his ongoing abuse and torture, thereby condoning and facilitating contraventions of his *Charter* rights as informed by international law, including the *Convention on the Rights of the Child*.

E. Canadian Officials and the U.S. Conspire to Detain Omar Indefinitely

21. Despite having been denied consular access to Omar, the Canadian Officials began making plans to take advantage of Omar as an intelligence source while he was in American custody and requested access to Omar in anticipation of his transfer to GTMO in the fall of 2002.

22. Canadian Officials worked in conjunction and consultation with American authorities to set up interviews with Omar for the express purpose of gathering incriminating evidence to be used against him in future criminal proceedings in both Canada and the U.S. The U.S. agreed to give Canadian authorities access to Omar in exchange for Canada's agreement to provide to the American authorities any self-incriminating or otherwise useful information extracted from him. All information gathered was intended to ensure Omar's ongoing and indefinite detention.

F. American Acts in Furtherance of the Conspiracy

23. In order to justify Omar's continued detention, Canada and the U.S. needed him to confess to his alleged crimes.

24. On approximately October 29, 2002, Omar was moved to GTMO, where his torture continued. As a result of the ongoing torture, whenever Omar was interrogated he would tailor his answers according to what he thought the interrogators wanted to hear, hoping to avoid further abuse.

25. Improper treatment, perpetrated by American officials, included, but was not limited to:

- a) Solitary confinement in inhumane conditions;
- b) Detention with adults, despite Omar's status as a juvenile detainee;
- c) Intimidation;
- d) Torture;
- e) Sleep deprivation;
- f) Lack of access to educational opportunities;
- g) Lack of adequate medical treatment;
- h) Lack of independent legal counsel;
- i) Preventing access between Omar and his brother, Adurahman; and
- j) Holding Omar without charge for 1,197 days.

26. All of these actions were taken to provide American and Canadian authorities with the necessary leverage to effectuate their own intelligence and law enforcement objectives in furtherance of their goal of keeping Omar imprisoned indefinitely.

27. Canada was aware of the abuses taking place at GTMO including those acts specifically perpetrated against Omar. Regardless of whether the Americans shared this information with Canada directly, the abuses within the prison were well known and indeed notorious. Omar himself advised Canadian agents of the abuse he was subjected to while imprisoned. Rather than

seeking protection for Omar, Canada, in cooperation with the U.S., sought to exploit the situation by using Omar as an intelligence source and to obtain inculpatory statements from him.

G. Canada's Acts in Furtherance of the Conspiracy

28. President George W. Bush established a military commission process by Executive Order in Guantánamo Bay, in order to "adjudicate" the cases against the prisoners. These military commissions were notorious and Canada knew that the system radically departed from basic international and domestic norms of due process.

29. Notwithstanding this, agents of the Canadian government interrogated Omar on at least six separate occasions while the Americans detained him at GTMO. These visits were not aimed at providing Omar with consular assistance, although each of the early delegations of Canadian agents included a member of the Department of Foreign Affairs and International Trade ("DFAIT") to give the visits a veneer of legitimacy. Instead, Canada used these visits to extract information from Omar for Canada's own intelligence purposes and to provide this information to the U.S. for use in the military proceedings against Omar. In short, Canada knowingly participated in a process that placed Omar's life and future liberty in jeopardy.

30. The first Canadian visit included four interrogations over four days beginning on February 13, 2003. The Canadian delegation included three people: two men and one woman. They told Omar they knew his mother and grandmother. They met him in a special conference room, which was more comfortable than the normal interrogation room.

31. Omar initially believed these Canadians were really American agents so he told them the same stories he had told the Americans. However, his suspicions eventually relented and he accepted that these new interrogators were in fact Canadian.

32. Omar was initially hopeful that the Canadians were there to assist him. He told the Canadians that he was scared and that the Americans had tortured him. He tried to cooperate so that the Canadians would take him home and, initially at least, he tailored his answers to their

questions accordingly. When Omar explained to the Canadians that he had told his American interrogators whatever he thought they wanted to hear in order to avoid further torture, the Canadians berated him and told him there was nothing they could do for him.

33. During these visits, agents from the Canadian Security Intelligence Service ("CSIS") and DFAIT actively extracted information from Omar, but refused him any kind of assistance, even when he pleaded for help. Canada used these interrogations in an attempt to obtain intelligence to implicate Omar in crimes against Canada and the U.S. and not to assist Omar in ensuring proper treatment as a detainee or prisoner. Canada knew that Omar was 15 years old when he was captured and thus qualified as a "child" or "child soldier" under domestic and international law. Canada also knew that Omar had been successively and brutally interrogated without any access to counsel or even to any adult or guardian who would have his best interests in mind.

34. In conducting their interviews, CSIS and DFAIT officials had control over the questions asked and the subject matter of the interviews. Canadian Officials also knew and intended that the American authorities would have full access to the contents of the interrogations pursuant to the agreement between the Canadian Officials and their American counterparts. In addition, the Canadian Officials knew the Americans were recording their interrogations of Omar. Despite this, Canada agreed not to have any restrictions placed on the Americans' use of the information or statements Canada obtained through its interrogations of Omar, knowing and intending that Omar was likely to be charged with an offence for which American prosecutors might seek the death penalty (i.e. the offence of murder) as a result.

35. Knowing the jeopardy in which they placed him, Canadian Officials questioned Omar on matters that provided important evidence relating to future criminal proceedings against him. They did so knowing that there were no charges laid against him and, at the time he had been stripped of the basic right to challenge his indefinite imprisonment by way of *habeas corpus*. Through their questioning, the Canadians helped build both their own case and the American case against Omar.

H. Additional Canadian Acts in Furtherance of the Conspiracy

36. In or around late September 2003, two different Canadian agents visited Omar. These two men aggressively berated and belittled Omar as part of the collective effort to extract more information from him. They also told him there was nothing the Canadian government could or would do against the power of the United States, which reinforced a point well known to Omar by this time - he was entirely on his own with no end to his ordeal in sight.

37. Once again, Canada controlled these interviews and shared the fruits of these interrogations with the Americans, with no restrictions placed on their use.

I. Canada and the U.S. Work Together to Ensure Omar's Continued Detention

38. In or around March 2004, a Canadian agent returned to Guantánamo Bay to interrogate Omar. Prior to that agent's arrival, the Americans subjected Omar to what is known as the "frequent flyer program". This meant that Omar's captors moved him from cell to cell every three hours each day for the 21 days prior to the Canadian agent's arrival in Guantánamo Bay. The Americans used this technique to "soften up" prisoners prior to interrogations. Canada was aware that the U.S. used the "frequent flyer program" prior to their interrogations but took no steps to prevent the abuse or to corroborate Omar's evidence through other means.

39. The "frequent flyer program" was used on Omar in coordination with the arrival of the Canadian interrogator who capitalized on Omar's mental and physical exhaustion by engaging in an in-depth and wide-ranging interrogation, which included asking him about his brother, Abdullah. The Canadian left Omar with no illusions about what he was doing there. He told Omar, "I'm not here to help you. I'm not here to do anything for you. I'm just here to get information".

40. Once again, at the time of this interrogation, Omar was an unrepresented “child” or “child soldier” who was, at that point, being imprisoned indefinitely.

II. THE U.S. CONTINUES THE CONSPIRACY THROUGH THE DETENTION AND ONGOING TORTURE OF OMAR

J. The First Military Commission

41. The Americans continued to hold Omar without charge until November 7, 2005, when they formally charged him with Murder by an Unprivileged Belligerent, Attempted Murder by an Unprivileged Belligerent, Aiding the Enemy, and Conspiracy with Bin Laden and various other members of the al Qaeda organization. It was in or around this time that Omar was permitted to speak to counsel for the first time, though not counsel of choice. This military commission was ultimately deemed to be unlawful.

K. The Second Military Commission

42. New charges were brought against Omar on or around February 2, 2007. This time Omar was charged with Murder in Violation of the Law of War, Attempted Murder in Violation of the Law of War, Conspiracy, Providing Material Support for Terrorism, and Spying.

III. THE U.S. USES EVIDENCE SUPPLIED BY CANADA AS PART OF A COERCED GUILTY PLEA

43. Because of the conspiratorial acts of Canada and the U.S., Omar remained in custody at Guantánamo Bay for more than eight years, many of them without charge. Ultimately, Omar faced the impossible choice between indefinite detention in GTMO (even were he to be found innocent) or accepting a pre-trial agreement admitting guilt in exchange for being able to eventually return to his family and home in Canada. Omar chose to return home.

44. On October 13, 2010, Omar accepted the Offer for Pre-Trial Agreement (the "Pre-Trial Agreement"). Omar pleaded guilty to all five charges against him. As part of the Pre-Trial Agreement, Omar was also required to:

- a) enter into a Stipulation of Fact;
- b) waive any request for any forensic or scientific testing of physical evidence in the American government's possession;
- c) permit the American government to destroy any evidence in its possession;
- d) waive any claim to confinement credit;
- e) sign a Waiver/Withdrawal of Appellate Rights, through which he waived his right "to appeal this conviction, sentence, and/or detention to the extent permitted by law, or to collaterally attack my conviction, sentence, and/or detention in any judicial forum (found in the United States or otherwise) or proceeding, on any grounds, except that I may bring a post-conviction claim if any sentence is imposed in excess of the statutory maximum sentence or in violation of the sentencing limitation provisions contained in this agreement"; and
- f) agree "[n]ot [to] initiate or support any litigation or challenge, in any forum in any Nation, against the United States or any official in their personal or official capacity with regard to my capture, detention, prosecution to include discovery practice, post-conviction confinement and/or detainee combatant status."

45. The Stipulation of Fact was, in part, based on evidence provided by Canada in furtherance of the conspiracy.

46. In exchange for Omar's coerced plea, the Convening Authority, which is the authority in charge of the military commission system at Guantánamo Bay, agreed not to approve a sentence of confinement of greater than eight years, and to take all appropriate actions to support Omar's transfer from the U.S. to Canada after one year of custody.

47. The Canadian government was aware of the circumstances of the so-called negotiations surrounding the Pre-Trial Agreement, and in particular, that the essence of the bargain for Omar was to ensure that he returned to Canada promptly after the expiry of the one further year of confinement as stipulated in the Pre-Trial Agreement.

48. On October 23, 2010, the Canadian and American governments exchanged the diplomatic notes, which were a condition precedent to the Pre-Trial Agreement, and two days later the military judge responsible for Omar's Military Commission entered findings of guilt on the record against Omar.

49. On or around October 31, 2010, in the presence of a representative from Canada, the military commission sentencing panel sentenced Omar to be confined for 40 years, even though the prosecution had sought a 25-year sentence. Pursuant to the Pre-Trial Agreement, Omar's approved sentence of confinement could not exceed eight years.

IV. CANADA CONTINUED TO SUPPORT THE CONSPIRACY THROUGH THE DELAYED REPATRIATION OF OMAR

50. At the time Omar entered into the Pre-Trial Agreement, he was the last citizen of any Western democracy who remained imprisoned in Guantánamo. More than 20 other detainees from Western countries had already been released upon request by their countries of origin. Canada alone refused to request Omar's repatriation, notwithstanding the fact that, unlike many of the other detainees, Omar was a "child" and a "child soldier".

51. On or around February 1, 2011, Omar completed an application to be transferred from Guantánamo Bay to a prison facility in Canada. On or around May 9, 2011, Omar completed an application with the American government stating that he wished to be transferred to a Canadian prison. Each of these requests was submitted to the appropriate government, in the proper form,

all in anticipation of Omar's prompt transfer after the one-year deadline of October 31, 2011 had passed.

52. A memorandum dated October 7, 2011, on the letterhead of the Deputy Minister of Public Safety Canada, sought the Minister's consideration of Omar's request for transfer under the *International Transfer of Offenders Act*. The memorandum explained that the department had received the Correctional Service of Canada's assessment of Omar's request for a transfer, that the file was complete and ready for the Minister's review and decision, and that the Minister should render his decision as soon as possible. In or around March 24, 2012, the Minister's spokesman stated in the media that Omar's file had not yet come to the Minister's office for review, and that its current status was unknown.

53. Ultimately, on September 29, 2012 almost one year after he otherwise should have been qualified to return to Canada, and almost one year after the Minister received his completed application package for consideration, Omar was repatriated. He was initially imprisoned at Millhaven Institution, a maximum security penitentiary located in Bath, Ontario, and is currently imprisoned at Edmonton Institution, a maximum security penitentiary located in Alberta.

V. THE PRIME MINISTER AND MINISTER MAKE INFLAMMATORY STATEMENTS

54. In support of Omar's continued and indefinite detention at Guantánamo, the Prime Minister and members of the Executive have made inflammatory and often inaccurate public statements about Omar, demonstrating a wanton disregard for both Canada's domestic and international laws, as well as Omar's security. Specific examples of such statements made to the media include but are not limited to:

- a) On or around July 10, 2008, the Prime Minister stated that Canada had no real alternative but to defer to the American legal process to arrive at the truth concerning the accusations against Omar, and that this process should continue;

- b) On or around August 9, 2008, in response to Omar's application for judicial review of the decision not to seek his repatriation, the Prime Minister's director of communications dismissed the application as predictable, and little more than an attempt by Omar's lawyers to avoid a trial;

VI. CANADA'S KNOWLEDGE OF U.S. ACTS IN FURTHERANCE OF THE CONSPIRACY – A SUMMARY

55. During the period of Omar's captivity in Guantánamo Bay, Canada knew Omar:

- a) was in jeopardy of being charged by the government of the United States of America for acts he allegedly committed when he was 15 years old, and for which he could face the penalty of death;
- b) faced trial before military commissions convened by the government of the United States of America according to a process which constituted a gross departure from recognized principles of fairness, natural justice and fundamental justice and which would shock the Canadian conscience;
- c) was initially prohibited from receiving any advice from legal counsel, and later was still prohibited from receiving counsel of his choice in respect of his criminal prosecution;
- d) was prohibited from contact with members of his family;

- e) was regularly and rigorously interrogated by officials of the United States government;
- f) was never brought before an independent judicial authority for the purpose of determining his legal status or the validity of his detention;
- g) was held for a total of 1,197 days (or 3 years, 3 months, and 9 days) without charge and was to be detained apparently indefinitely;
- h) was generally deprived of all the legal rights conferred upon him by the *Charter* and domestic law as informed by international law, including those reflected in the *United Nations Convention on the Rights of the Child* and the *Geneva Conventions*;
- i) was the victim of criminal offences committed against him by officials of the government of the United States of America contrary to s. 3(10) of the *Geneva Conventions Act of Canada* and s. 6 of the *Crimes Against Humanity and War Crimes Act of Canada*;
- j) was tortured by officials of the United States of America, including through the infliction of a sleep deprivation program known as the "frequent flyer program";
- k) was effectively forced to plead guilty, under duress, as the only means available to him to attempt to secure his liberty from GTMO; and
- l) was facing evidence obtained through Canada's unlawful interrogations.

56. Despite Canada's knowledge of the above, and in furtherance of the conspiracy to detain Omar indefinitely, Canada took no actions in support of Omar's repatriation despite legal rationale for doing so.

VII. CANADA WAS NEGLIGENT IN ITS INVESTIGATION OF OMAR

57. As detailed above at paragraphs 29 to 41, Canadian Officials attended at Guantánamo Bay for the express purpose of interrogating Omar. Even though the Canadian Officials were aware that Omar had been the subject of torture, no efforts were made to corroborate his inculpatory statements from other parties or sources of evidence. The Canadian Officials owed a duty of care to Omar as a person under investigation, but by failing to corroborate his evidence did not meet the standard of care for an investigating officer.

VIII. CANADIAN OFFICIALS COMMITTED THE TORT OF MISFEASANCE IN PUBLIC OFFICE

58. As detailed in paragraphs 29 to 56, Canadian Officials conducted interrogations of Omar while knowing that he had been tortured prior to their interviews, and none-the-less used the information gathered in these interviews for their own benefit. The Canadian Officials were aware that use of this illegally gathered information would harm Omar.

59. Through the above noted acts, Canada and its agents have engaged in deliberate and unlawful conduct in the course of exercising their functions, knowing that such conduct is contrary to the *Charter* as informed by international and domestic law, and that it would and in fact has caused damages to Omar.

IX. DAMAGES

60. As a result of the conspiracy and Canada's misfeasance in public office, Omar suffered torture at the hands of his American captors. As a direct result of those acts and the torture, Omar has suffered the following damages:

- a) severe and permanent psychological, physical and emotional trauma;
- b) loss of educational opportunities;
- c) loss of social development, leading to permanent social impairments;
- d) worsening physical health because of inadequate medical support, including degeneration of eyesight
- e) threats and assaults while in custody, both in Canada and during the prior detention;
- f) loss of sleep;
- g) loss of trust in others;
- h) loss of self-confidence;
- i) loss of income;
- j) loss of opportunity for future income; and
- k) post-traumatic stress disorder.

61. Canada not only failed to come to Omar's aid, in violation of his rights, but Canada actively, knowingly and willfully participated in harming Omar. Canada's acts in both failing to prevent the torture of Omar and in fact actively encouraging the use of torture to further the conspiracy were malicious, oppressive and high-handed and would offend the court's sense of decency. Canada's acts were such a significant departure from a normal sense of decency, and Canada's obligation to protect Canadian citizens detained abroad that they warrant a substantial award of punitive damages.

62. As identified in paragraphs 29 to 41 and paragraph 56, Canada's failure to protect Omar's s. 7, s. 10(a), s. 10(b) and s. 12, *Charter* rights, represents a significant departure from Canada's obligation to its citizens and makes the application of *Charter* damages a just and appropriate response to Canada's actions, both to repair the Plaintiff and to deter future similar actions by Canada.

X. STATUTES & INTERNATIONAL INSTRUMENTS RELIED UPON

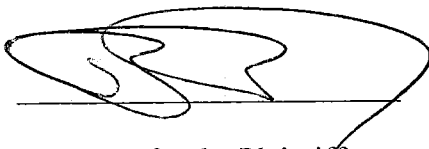
63. The Plaintiff pleads and relies on the following international conventions which Canada has ratified:

- a) United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (defined above as UN-CAT);
- b) International Covenant on Civil and Political Rights;
- c) United Nations Convention on the Rights of the Child.

64. In addition, the Plaintiff pleads and relies upon the provisions of the *Canadian Charter of Rights and Freedoms*, including ss.7, 10, 12 and 24.

65. The Plaintiff proposes that this action be tried in Toronto.

March 15, 2004 amended November 8, 2004,
Amended Amended May 15, 2009,
Amended Amended Amended Fresh As Amended
October 24, 2014.



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Solicitors for the Plaintiff

OMAR AHMED KHADR
Plaintiff

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
Defendant

Court File No. T-536-04

FEDERAL COURT

Proceeding commenced at
EDMONTON

**AMENDED AMENDED AMENDED
FRESH AS AMENDED STATEMENT OF CLAIM
TO THE DEFENDANT**

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