

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

ESTATE OF THE LATE ZAHRA (ZIBA)
KAZEMI,

NO: 500-17-031760-062

and

STEPHAN (SALMAN) HASHEMI,

Plaintiffs

v.

THE ISLAMIC REPUBLIC OF IRAN,

and

AYATOLLAH SAYYID ALI KHAMENEI,

and

SAEED MORTAZAVI,

and

MOHAMMAD BAKHSHI,

Defendants

RE-AMENDED MOTION TO INSTITUTE PROCEEDINGS
(Articles 111 and 111.1 C.C.P.)

**IN SUPPORT OF THEIR MOTION TO INSTITUTE PROCEEDINGS, THE
PLAINTIFFS RESPECTFULLY SUBMIT THE FOLLOWING:**

INTRODUCTION

1. These proceedings concern the arrest, detention, torture and death of Ms. Zahra (Ziba) Kazemi Ahmad-Abadi (hereinafter referred to as “Ms. Kazemi”) by Iranian authorities in late June and July, 2003. They are brought against the Defendants, both in their official and personal capacities on the basis that the Defendants authorized, ordered, facilitated and committed the acts which led to Ms. Kazemi’s death and subsequently actively sought to prevent the actual circumstances of Ms. Kazemi’s abuse, torture and death from becoming known;

The Parties

The Plaintiffs

2. The Plaintiff, Stephan (Salman) Hashemi, is a Canadian citizen and lives in Montreal, Quebec. He is the only child of the late Ms. Kazemi;
3. Mr. Hashemi brings this proceeding on his own behalf and in his capacity as liquidator of the Estate of the late Ms. Kazemi;
4. By way of these proceedings, Mr. Hashemi seeks damages on his own behalf and on behalf of Ms. Kazemi's Estate for the prejudice suffered as a result of her wrongful arrest, detention, sexual assault, torture and death in Iranian custody;
5. Mr. Hashemi also seeks the disinterment and repatriation of his mother's remains for independent autopsy and burial in Canada;

The Defendants

6. The Defendant, the Islamic Republic of Iran is a member state of the United Nations;
7. The Defendant, Ayatollah Sayyid Ali Khamenei, is the Supreme Leader of the Islamic Republic of Iran;
8. The Defendant, Mr. Saeed Mortazavi, is the Chief Public Prosecutor for Tehran;
9. The Defendant, Mr. Mohammad Bakhshi, is the former Deputy Chief of Intelligence for Evin Prison in Tehran;
10. The individually-named Defendants are all citizens and residents of the Islamic Republic of Iran;

The Deceased: Zahra (Ziba) Kazemi

11. Ms. Kazemi was an Iranian-Canadian photojournalist, filmmaker and artist. She was born in Shiraz, Iran on October 9, 1948;
12. She came to Canada from Paris in 1993 with her only child, Mr. Hashemi, and settled in Montreal. She became a citizen of Canada in 1997;
13. Before coming to Canada, Ms. Kazemi had spent twenty years in France, during which time she had completed a Ph.D. in cinema. In recent years, she had concentrated on photography and much of her later work captured the lives of women and children in countries around the world on film;

14. Ms. Kazemi was domiciled in Montreal, and immediately prior to her trip had been living with her son Mr. Hashemi in Montreal;

Arrest and Detention at Evin Prison

15. During a 2003 visit to Iran, Ms. Kazemi obtained a permit from the Foreign Press Service of the Ministry of Culture and Islamic Guidance which allowed her to take pictures of the daily life of Iranians. At the time, Ms. Kazemi was doing freelance photographic work for a Canadian publication;
16. On or about June 23, 2003, Ms. Kazemi went to take photographs of men and women protesting the arrest and detention of their family members and friends outside the Evin Prison in Tehran;
17. At the order of Tehran's Chief Public Prosecutor, Mr. Mortazavi, Ms. Kazemi was arrested and detained while taking photographs outside Evin Prison. During her detention, Ms. Kazemi was beaten, sexually assaulted and tortured by Iranian authorities. No one other than Iranian officials had access to Ms. Kazemi during her detention;
18. Although Iranian authorities have stated that a temporary arrest warrant was issued, charges against Ms. Kazemi were never substantiated;
19. Despite repeated requests, Ms. Kazemi was not permitted to contact counsel or her family or to obtain consular assistance from Canadian authorities. During the entire period that she was in Evin Prison, neither her family nor Canadian authorities were aware that she had been arrested or detained;

Extensive Interrogation by Iranian Authorities

20. During her detention at Evin Prison, Ms. Kazemi was repeatedly interrogated by Iranian authorities;
21. Ms. Kazemi was at different times under the surveillance of and interrogated by representatives of the Iranian Ministry of Justice, the Intelligence Unit of the Iranian Law Enforcement Force ("LEF") and the Iranian Ministry of Intelligence, among others;

Transfer from Evin Prison to Baghiatollah Hospital without Notification to Family

22. At some time prior to July 6, Ms. Kazemi was taken from Evin Prison to Baghiatollah Hospital (...) in Tehran;
23. Ms. Kazemi was unconscious when she was admitted to hospital. She was initially diagnosed with gastro-intestinal bleeding, but it later became apparent that she had suffered a brain injury. Ms. Kazemi went into a coma and was transferred to intensive care;

24. Despite the seriousness of her condition, no attempt was made to notify either Canadian consular officials or members of her family. For the entire length of Ms. Kazemi's detention and for most of her period of hospitalization, Ms. Kazemi's family was not contacted and was unaware of her arrest, detention and subsequent hospitalization;
25. It was not until July 6 that Ms. Kazemi's mother, Mrs. Ezat Ebrahimi (Kazemi Ahmad-Abadi) (hereinafter referred to as "Mrs. Kazemi Ahmad-Abadi") learned that her daughter was in trouble and in Iranian custody;
26. Mrs. Kazemi Ahmad-Abadi boarded the next available flight to Tehran from her home town of Shiraz;
27. Once in Tehran, based on the unclear information she had received by telephone, Mrs. Kazemi Ahmad-Abadi went to Evin Prison in search of her daughter and was eventually directed to Baghiatollah Hospital;

Refusal to Allow Access to Ms. Kazemi in Hospital

28. Even once Mrs. Kazemi Ahmad-Abadi was able to locate her daughter at Baghiatollah Hospital, she was forbidden from having any contact with her. Mrs. Kazemi Ahmad-Abadi was denied access to her daughter's hospital room and was limited to seeing her through a window;
29. On July 6, Mrs. Kazemi Ahmad-Abadi persuaded a nurse to allow her to return to the hospital after hours in order to be able to see her daughter up close. Only then was she able to survey Ms. Kazemi's body and get a sense of the extent of the physical trauma evident on various parts of her body;
30. It was only through Mrs. Kazemi Ahmad-Abadi's efforts and through members of Ms. Kazemi's family in Iran that Canadian consular officials and then Mr. Hashemi were informed of Ms. Kazemi's whereabouts and condition;
31. Because of the need to find someone who could deliver the news to Mr. Hashemi in French, Mrs. Kazemi Ahmad-Abadi was unable to contact him immediately. Mr. Hashemi was only made aware of his mother's whereabouts and of the fact that she was in a coma on the evening of July 7;
32. On or about July 6, Mrs. Kazemi Ahmad-Abadi had contacted the Canadian Embassy in Tehran for assistance. Canadian consular officials visited Baghiatollah Hospital on July 7, 8 and 10. They were prevented from approaching Ms. Kazemi and were only able to view her covered body from a distance through a glass window;

Refusal to Allow Independent Medical Assistance or Examination

33. On July 8, the Canadian Embassy in Tehran sent a diplomatic note to the Iranian Ministry of Foreign Affairs seeking information concerning the circumstances that had led to Ms. Kazemi's injuries and hospitalization. No information was provided;
34. The following day, Mrs. Kazemi Ahmad-Abadi went to the Canadian Embassy in Tehran and asked for the assistance of Canadian consular officials in arranging an independent medical examination of and independent medical treatment for Ms. Kazemi;
35. On July 10 in Ottawa, Iran's Ambassador to Canada was summoned to a meeting with Canada's Deputy Minister of Foreign Affairs, during which the Deputy Minister expressed serious concern over Ms. Kazemi's treatment and requested co-operation in securing independent medical treatment for her. The Deputy Minister also requested an investigation into the circumstances surrounding Ms. Kazemi's injuries;
36. On the same day, when Canadian consular officials arrived at Baghiatollah Hospital, doctors indicated to them that Ms. Kazemi had been declared medically brain dead with no expectation of recovery. Representatives of the Consular Affairs Bureau of the Department of Foreign Affairs and International Trade ("DFAIT") then contacted Mr. Hashemi and notified him of his mother's medical condition;
37. DFAIT's Consular Affairs Bureau then contacted the Iranian Ambassador to Canada in order to confirm Ms. Kazemi's medical condition;
38. On or about July 10, despite the ongoing efforts of both Mr. Hashemi and Mrs. Kazemi Ahmad-Abadi to obtain independent medical assistance for Ms. Kazemi and to arrange for her transport to Canada for further treatment, medical staff at the hospital took Ms. Kazemi off life support and pronounced her dead;
39. This action was in direct contravention of the wishes of the Kazemi family. It is not clear who authorized this decision or whether it was medically justifiable. Doctors at the hospital had previously indicated that Ms. Kazemi could potentially have remained on life support, albeit clinically brain dead, for weeks, months, or even years;
40. Iranian officials did not contact members of the Kazemi family or Canadian officials to notify them of Ms. Kazemi's death;

Wrongful Death in Iranian Custody

41. On July 12, the Iranian government made an official announcement of Ms. Kazemi's death through the Islamic Republic News Agency ("IRNA"), the country's official news agency;
42. Later that same day, officials from DFAIT contacted Mr. Hashemi and notified him of his mother's death;

43. In the weeks following Ms. Kazemi's death, various explanations were provided for the cause of death. At no time did the Iranian government dispute the fact that Ms. Kazemi had died while in Iranian custody;
44. Mohammad Hossein Khoshbakht, the Director General of the Foreign Press Service of the Ministry of Culture and Islamic Guidance, announced that Ms. Kazemi had died as a result of a stroke. Mr. Khoshbakht would later indicate he was pressured into making this declaration by Mr. Mortazavi;
45. By the end of July however, Iran's Vice President Mohammad Ali Abtahi told reporters following a cabinet meeting that Ms. Kazemi's death was likely a murder and that the cause of death was likely a blow to the head;

Evidence of Torture

46. While detained by Iranian officials, Ms. Kazemi was physically and sexually assaulted and tortured, as evidenced by the extensive physical injuries she sustained to most parts of her body. Her injuries included :
 - a) a fractured nose bone;
 - b) a crushed right upper eardrum with small bones exposed;
 - c) deep parallel linear abrasions on the back of her neck;
 - d) a possible fracture of one or more of her ribs;
 - e) several strip-like wounds on her back;
 - f) extensive ecchymosis (skin discoloration caused by the escape of blood into the tissues from ruptured blood vessels) in the pubic area, thighs, groin, back, buttocks and the sacrum;
 - g) trauma to the genital area;
 - h) extensive ecchymosis on the backs of both arms, both legs and on the soles of both feet;
 - i) fractured bones and broken nails on her hands;
 - j) crushed and fractured toes and nails;
 - k) multiple linear wounds along the back of her forelegs;

47. These injuries are clearly indicative of severe physical abuse to most of Ms. Kazemi's body;
48. The concentration of ecchymosis in the pelvic area and the trauma to the genital area also indicate that Ms. Kazemi was sexually abused;
49. Iranian officials attempted to conceal Ms. Kazemi's torture and sexual abuse. They deliberately delayed contacting Ms. Kazemi's family in order to prevent them from discovering the full extent of her injuries;
50. By delaying informing anyone of Ms. Kazemi's whereabouts, Iranian officials deliberately attempted to conceal the extent of her torture and abuse while in Iranian custody. The longer the Iranian officials delayed, the more the severity of the appearance of the wounds on Ms. Kazemi's body would diminish;

Autopsy and Burial in Iran Against the Family's Wishes

51. Iranian government officials arranged for an autopsy to be performed without consulting Ms. Kazemi's family;
52. Despite the obvious need for an independent and transparent process and despite the importance of consulting the family with regard to any dealings with the body after death, Iranian officials proceeded with the autopsy and later refused to release the results to either the family or to Canadian consular officials;
53. In the days after his mother's death, Mr. Hashemi indicated in writing his wish to have his mother's remains returned to Canada for burial in Montreal. This was formally conveyed to Iranian authorities in a letter hand delivered with diplomatic covering note to the Iranian Embassy by DFAIT officials in Ottawa;
54. On July 17 and 18, members of the Kazemi family discussed the logistics of transportation and burial arrangements for Ms. Kazemi's remains in a series of phone calls between Iran and Canada;
55. On July 19, during a teleconference which included Mr. Hashemi and his counsel, the Iranian Ambassador in Ottawa, the Canadian Ambassador in Tehran and Mrs. Kazemi Ahmad-Abadi, Mr. Hashemi reiterated his wish to have his mother's remains returned to Canada for burial;
56. Both Mr. Hashemi and Mrs. Kazemi Ahmad-Abadi then signed letters indicating their desire to have Ms. Kazemi's remains buried in Canada and had their signatures authenticated by consular officials in Canada and Iran respectively;
57. Despite these multiple requests and precautions, on July 22, 2003, the IRNA published a letter allegedly signed by Mrs. Kazemi Ahmad-Abadi stating that she wished to have her daughter buried in Shiraz;

58. Mrs. Kazemi Ahmad-Abadi would later indicate, during a July 30 interview with the Iranian newspaper *Yas e no*, that she had been pressured by Iranian officials, including Mr. Mortazavi, to allow for her daughter's burial in Iran. Under pressure to name an Iranian burial site, she selected her hometown of Shiraz, so that she would at least be able to access the gravesite;
59. Despite further objection by Canadian authorities to the burial of Ms. Kazemi's remains in Iran, the Iranian government arranged for the burial of her remains in Shiraz, in Iran on July 23;
60. That same day, Canada's Minister of Foreign Affairs, Bill Graham, announced the withdrawal of Canada's Ambassador to Iran and the Prime Minister of Canada Jean Chrétien publicly condemned Iranian authorities for proceeding with a burial in Iran against the wishes of Ms. Kazemi's son and mother;

Lack of Independent Investigation into Ms. Kazemi's Death

61. The various actions taken by Iranian authorities relating to the investigation of Ms. Kazemi's death have not led to justice for the deceased or for her family. Instead, they have been marred by a lack of good faith, a lack of transparency and an unwillingness to pursue those in positions of authority who ordered and participated in the events that led to her death;
62. Preliminary reports from the Office of the Prosecutor indicated that Ms. Kazemi died from a digestive disorder, but no independent medical examination was allowed;
63. Waves of protest greeted this announcement since all non-governmental reports indicated that Ms. Kazemi's death was the direct result of wrongful treatment during her detention and required an immediate independent and transparent investigation;
64. On July 13, President Khatami announced that an inquiry into Ms. Kazemi's death would be carried out by a Ministerial Inquiry Committee composed of representatives from five ministries (Culture and Islamic Guidance, Justice, Intelligence, the Interior and Health);
65. As noted earlier, on or around July 13, the Director General of the Foreign Press Service of the Ministry of Culture and Islamic Guidance announced that Ms. Kazemi had died of a stroke;
66. The Director General later recanted this statement, indicating that he had been pressured into making it by Mr. Mortazavi, who threatened him with responsibility for Ms. Kazemi's death on the basis that it was the Director General's office who had originally issued Mr. Kazemi's permit for the purpose of taking photographs during her stay in Iran;
67. On July 16, Vice-President Abtahi announced that Ms. Kazemi had died, not of a stroke, but of a skull fracture after sustaining a blow to the head while in custody;

68. The Report of the Ministerial Inquiry confirmed this cause of death. The Report, released on July 21, indicated that Ms. Kazemi had died from a fractured skull and brain hemorrhage after « either a hard object struck her head, or her head struck a hard object » and stated that Ms. Kazemi's body had showed no signs of any other injury;
69. The Ministerial Inquiry recommended further investigation into the circumstances surrounding Ms. Kazemi's death and the case was to be referred to a judicial official who would lead that subsequent investigation;
70. Despite strong suggestion in the preliminary report that the Office of the Prosecutor and in particular the Chief Public Prosecutor of Tehran, Mr. Mortazavi, was directly implicated in the events leading to Ms. Kazemi's death, Ayatollah Mahmud Hashemi-Shahrudi, Head of the Iranian Judiciary, appointed Mr. Mortazavi to lead the inquiry into Ms. Kazemi's death;
71. The protests that greeted this announcement inside and outside of Iran were so immediate and widespread that Mr. Mortazavi's appointment was withdrawn and Judge Javad Esmaeili was assigned to the investigation on or about July 25;
72. On July 26, the Iranian government announced that five individuals had been arrested in connection with Ms. Kazemi's death, but did not release their names or information regarding the charges they were facing;
73. No charges were laid against the Office of the Prosecutor despite the strong indications from various sources that the Office of the Prosecutor was directly involved in Ms. Kazemi's death;
74. At the end of July, the Article 90 Commission of the Majlis decided to launch a separate inquiry into Ms. Kazemi's death;
75. In early August, two female Iranian prison guards detained in connection with Ms. Kazemi's death were released on bail, leaving three other individuals in detention for questioning;
76. In late August, it was reported that two Iranian interrogators had been detained in connection with Ms. Kazemi's death, a death which by this point was being described as a « quasi-intentional murder »;
77. On or about October 28, the Article 90 Commission of the Majlis released its report, which indicated that Mr. Mortazavi and other members of the judiciary were directly involved in Ms. Kazemi's torture and death and were part of an ongoing attempt to keep any information related to her death from becoming known;
78. The only individual to eventually face trial on charges relating to Ms. Kazemi's death, Mr. Reza Ahmadi, was acquitted following a trial held in July, 2004;

79. During Mr. Ahmadi's trial, it was apparent that the presiding judge had little interest in providing conditions for a fair, transparent and genuine trial: the judge was belligerent with counsel and flippant in his references to key events, counsel were denied access to key witnesses prior to the start of the trial and were also denied access to important documentary and physical evidence both prior to and during the trial;
80. There is widespread concern that the arrests made in connection with Ms. Kazemi's death have been of lower-level officials, and not of individuals who, although they may have had some level of involvement, would not have been in a position to order and orchestrate her arrest, detention, beating, rape and torture on their own;

Prejudice Suffered by Mr. Hashemi

81. Mr. Hashemi suffered considerable prejudice in the period leading up to Ms. Kazemi's death and continues to suffer as a result of that death. This prejudice includes but is not limited to the following elements :
82. Mr. Hashemi suffered the initial psychological trauma of learning of his mother's hospitalization in Iran and of the fact she was in a coma;
83. He suffered considerable trauma as a result of the knowledge that Iranian authorities would not grant either his grandmother or Canadian authorities access to his mother, or provide information about the circumstances that had led to her hospitalization. This trauma was exacerbated by the unwillingness of Iranian authorities to allow for independent medical assistance or examination of Ms. Kazemi;
84. Mr. Hashemi suffered the further trauma of learning that Iranian authorities had decided to remove his mother from life support while he was attempting to arrange for independent medical and her eventual transportation to Canada for further medical care;
85. Mr. Hashemi suffered in the knowledge that his mother's death had occurred in suspicious circumstances, and received only conflicting information regarding the cause of death and an unwillingness on the part of Iranian authorities to provide the family with information concerning the circumstances leading to Ms. Kazemi's death;
86. As evidence of torture was found, Mr. Hashemi suffered the extreme prejudice of learning that his mother had been severely beaten, tortured and sexually abused while in Iranian custody;
87. Despite having made his wishes clear through official diplomatic channels, Mr. Hashemi suffered the further prejudice of seeing his wishes ignored in relation to the holding of an independent autopsy and subsequent repatriation of his mother's body to Canada for burial;

88. Mr. Hashemi has suffered tremendous prejudice by the unwillingness of Iranian authorities to properly and transparently investigate the circumstances of his mother's death. The various alleged attempts to do so have all been marred by intervention or complete lack of cooperation on the part of those in a position to provide answers regarding Ms. Kazemi's treatment;
89. Mr. Hashemi has suffered the loss of an ongoing, close relationship with his mother, a loss made more acute by the fact that he was an only child of divorced parents, and that he and his mother had emigrated to Canada on their own;
90. The ongoing unwillingness of Iranian authorities to adequately investigate Ms. Kazemi's death and to prosecute those in positions of authority who ordered, participated in and subsequently hid the circumstances leading to her death has necessitated that Mr. Hashemi dedicate much of the past three years to the pursuit of justice on his mother's behalf from his home in Canada;

Prejudice Suffered by Ms. Kazemi

91. Ms. Kazemi suffered extreme prejudice from the moment of her arrest by Iranian authorities until her death in their custody, including but not limited to the following elements :
92. Ms. Kazemi suffered the indignity of being wrongfully arrested and detained, an indignity which was compounded by her inability to make contact with counsel, Canadian consular officials or her family;
93. Ms. Kazemi suffered the extreme psychological, emotional and physical harm of interrogations, beatings, rape and torture, all in the knowledge that she had committed no crime. Ms. Kazemi would have realized that she faced torture and interrogation for a potentially unlimited period since she was not in possession of information capable of bringing such treatment to an end;
94. Ms. Kazemi's suffering would have been heightened by her knowledge that no one apart from Iranian authorities was aware of her arrest and detention and that there was therefore no possibility of her receiving any assistance or reprieve from such treatment;
95. Even when her physical suffering became severe, Ms. Kazemi was denied medical attention while in detention. Only once her condition had deteriorated to the point of losing consciousness was she finally transferred to hospital;
96. Ms. Kazemi eventually suffered the ultimate prejudice of loss of life when she was removed from life support by Iranian authorities on July 10;

Liability of the Defendants

97. The defendants, both in their professional and personal capacities, are jointly and severally liable for the prejudice caused to both Ms. Kazemi and Mr. Hashemi through their intentionally wrongful acts as well as their negligence;
98. The Defendant, Ayatollah Sayyid Ali Khamenei, as Supreme Leader of the Islamic Republic of Iran, oversaw the appointment of key individuals to senior positions, including the head of the judiciary and the Chief Public Prosecutor for Tehran, in a manner that placed few or no restrictions on their ability to exercise power;
99. Ayatollah Sayyid Ali Khamenei was instrumental in creating the conditions in which wrongful arrest, unwarranted detention, interrogation and torture leading to death are acceptable tools of the Iranian State and of its officers;
100. Ayatollah Sayyid Ali Khamenei knew, or ought to have known, of the circumstances surrounding Ms. Kazemi's arrest, detention, torture and death and continues to facilitate the cover-up of any investigation into Ms. Kazemi's death, including by allowing the individuals who perpetrated the acts of torture to retain key positions within the Iranian government and judiciary;
101. The Defendant, Mr. Mortazavi, the Chief Public Prosecutor for Tehran, ordered, oversaw and actively participated in Ms. Kazemi's interrogation and torture;
102. The Defendant, Mohammad Bakhshi, in his former role as Deputy Chief of Intelligence for Evin Prison in Tehran, interrogated, physically assaulted and tortured Ms. Kazemi;
103. The Defendants all knew, or ought to have known, of the circumstances surrounding Ms. Kazemi's detention, torture and death, and have all participated, either actively or by virtue of their negligence, in the ongoing cover-up of the circumstances surrounding Ms. Kazemi's death;
104. The Defendants' acts are of such an intentional and egregious nature that they cannot seek impunity with reference to their official positions. Their responsibility extends beyond their former and current offices to leave them accountable for Ms. Kazemi's treatment in their personal as well as official capacities;

Jurisdiction and Applicable Law

105. The Plaintiffs submit that the Superior Court of Quebec has jurisdiction to hear this case on the basis that extensive damage was clearly suffered in Quebec as a result of the actions taken in Iran. By virtue of the Plaintiffs' residence and domicile in Quebec, these damages have been suffered within the province and the Court therefore has jurisdiction over the civil liability proceedings related to those damages (Article 3148 C.C.Q.);

106. In the event that the Court were to hold that it does not in principle have jurisdiction over the claims brought by the Estate, it should exercise its discretion to hear the case since the dispute has a sufficient connection with Quebec and since it cannot be reasonably suggested that such proceedings could be instituted in Iran, the only other jurisdiction relevant to this case (Article 3136 C.C.Q.);
107. The Islamic Republic of Iran has demonstrated that it is not an appropriate forum for this case since it has been unwilling and unable to provide fair or transparent treatment of any of the issues related to Ms. Kazemi's death;
108. [...]
109. [...]
110. [...]
- 110.1 Mr. Hashemi further pleads that subsection 3(1) of the *State Immunity Act*, R.S.C. 1985, c. S-18 is no bar to these proceedings in this case;
- 110.2 Paragraph 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44 provides that “[e]very law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied to [...] (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations; [...]”;
- 110.3 The application of subsection 3(1) of the *State Immunity Act* in this case would therefore infringe paragraph 2(e) of the *Canadian Bill of Rights* as it would deprive the Plaintiffs of their “right to a fair hearing in accordance with the principles of fundamental justice for the determination of [their] rights and obligations”, namely rights resulting from the Defendants’ role in the unlawful detention, torture, rape and wrongful death of Ms. Kazemi, as no such case may be entertained and no fair hearing may be held in Iran under its current political regime and legal system;
- 110.4 To the extent that subsection 3(1) of the *State Immunity Act* cannot be construed or applied in a manner that avoids depriving the Plaintiffs of their right to a fair hearing under paragraph 2(e) of the *Canadian Bill of Rights*, or that avoids authorizing such a deprivation, subsection 3(1) of the *State Immunity Act* is inapplicable or inoperative;
111. [...]
112. [...]

- 112.1 Subsidiarily, in the event that this Court came to the conclusion that subsection 3(1) of the *State Immunity Act* is operative and applicable in the circumstances of this case, which is denied, Mr. Hashemi pleads that it should not defeat the Plaintiffs' claims against Messrs. Mortazavi and Bakhshi as the *State Immunity Act*, correctly interpreted, does not prohibit civil proceedings against lower level public officials for acts of torture;
- 112.2. The doctrine of state immunity in customary international law, which must guide this Court in its interpretation of the *State Immunity Act*, is by definition limited to matters sufficiently affiliated with a state so as to merit immunity as official acts and as a result, a state agent violating fundamental international human rights norms, especially where they have reached the status of *jus cogens*, does not act within the scope of his or her agency and does not benefit from state immunity, the whole as will be further demonstrated at the hearing;

DAMAGES

113. As a direct result of the Defendants' abuse, sexual assault and torture of Ms. Kazemi, which led directly to her death, the Plaintiffs are entitled to claim, and do hereby claim against the Defendants, both jointly and severally, the following damages:
- a) for the Estate of the late Zahra (Ziba) Kazemi, for the physical, psychological and emotional pain and suffering undergone by Ms. Kazemi from the time of her arrest until the time of her death: \$5,000,000;
 - b) for Stephan Hashemi, son and only child of the late Zahra Kazemi, for the loss of his very close relationship with his mother and for the psychological and emotional prejudice occasioned by this loss: \$5,000,000;
 - c) for the Estate of the late Zahra (Ziba) Kazemi, exemplary and punitive damages due to the Defendants' unlawful and intentional interference with Ms. Kazemi's rights and freedoms: \$5,000,000;
 - d) for Stephan Hashemi, son and only child of the late Zahra Kazemi, exemplary and punitive damages due to the Defendants' unlawful and intentional interference with Mr. Hashemi's rights: \$2,000,000;
 - e) expenses for the disinterment of the remains of the late Zahra Kazemi, for their return to Canada, and for their burial in Canada following an independent autopsy, such amount to be perfected at trial;
 - f) reimbursement for legal expenses incurred by the Plaintiffs in the preparation of the present proceedings;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the Plaintiffs' Re-Amended Motion to Institute Proceedings;

CONDEMN the Defendants, on a solidary basis, to pay to the Plaintiff, the Estate of the late Zahra (Ziba) Kazemi, the amount of ten million dollars (\$10,000,000);

CONDEMN the Defendants, on a solidary basis, to pay to the Plaintiff, Stephan (Salman) Hashemi, the amount of seven million dollars (\$7,000,000);

ORDER that the Defendants arrange for the disinterment of Ms. Kazemi's remains under the supervision of Canadian authorities in Iran and immediately release Ms. Kazemi's remains into their custody so that they may be returned to Canada for independent autopsy and burial;

THE WHOLE with costs, including expert fees.

MONTREAL, this 31st day of October 2007

(S) Irving Mitchell Kalichman

IRVING MITCHELL KALICHMAN, LLP

Attorneys for the Plaintiffs