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FEDERAL COURT

JEAN MARC MURAT

Court File No.

T-1742-16

FEDERAL COURT COUR FÉDÉRALE		
F I L E D	OCT 17 2016	D É P O S É
	IMRANA AHMED	
	TORONTO, ON /	

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

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 Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

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

Copies of the Federal 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.

OCT 17 2016
Date: ~~October 14, 2016~~ →

IMRANA AHMED
Registry Officer
Issued by: **Agent du greffe**

Address of local office: Registry of the Federal Courts
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: HER MAJESTY THE QUEEN

The Department of Justice
The Exchange Tower, Box 36
130 King St. W., Suite 3400
Toronto, ON M5X 1K6

THE CLAIM

1. The Plaintiff, Jean Marc Murat, claims as against the Defendant, Her Majesty the Queen in Right of Canada:
 - a. General damages for negligence, negligent investigation, false imprisonment, cruel and/or unusual treatment, and/or breaches of sections 2, 7, 9, 10 and 12 of the *Canadian Charter of Rights and Freedoms* ("Charter") pursuant to s. 24(1) of the *Charter*, in the amount of \$1,000,000.00, or any such amount which this Honourable Court deems just;
 - b. Damages for past and future loss of income in the amount of \$ 500,000.00, or any such greater amount which this Honourable Court deems just;
 - c. Special damages in an amount to be determined with particulars provided prior to trial;
 - d. Aggravated damages in the amount of \$500,000.00;
 - e. Punitive damages in the amount of \$250,000.00;
 - f. Prejudgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - g. Postjudgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - h. Payment of the Plaintiff's costs on a substantial indemnity basis; and
 - i. Such further and other relief as this Honourable Court deems just.

THE PARTIES

2. The Plaintiff, Jean Marc Murat, was born on March 9, 1971 in Haiti. The Plaintiff has been in Canada since 2000 and has no criminal record in Canada. The Plaintiff was sponsored to Canada by his Canadian spouse and common-law partner, Yamille Julien. The Plaintiff is a father of two Canadian children. He was granted permanent resident status in Canada on July 12, 2012 by Citizenship and Immigration Canada ("CIC").
3. The Defendant, Her Majesty the Queen in Right of Canada, is vicariously liable for the tortious acts of its agents and servants, including individual employees. In this case, the defendant is responsible for the acts of the Canada Border Services Agency ("CBSA"), all levels of the Immigration and Refugee Protection Board ("IRB") including the Immigration Division ("ID"), Citizen and Immigration Canada ("CIC"), the Royal Canadian Mounted Police ("RCMP"), and any other crown servant/agent as disclosed in these pleadings.

THE RELEVANT EVENTS

Overview

4. As a result of the negligent actions of the Defendant's agents and representatives, on September 23, 2014, the Plaintiff was arrested, detained, and deprived of his liberty, for a crime he did not commit, for an unreasonable 39 days.
5. On October 16, 2012 two Canadians, Nicolas Moscoso and Coralie Moscoso (the "Moscosos") were kidnapped in Haiti and held for ransom. At all materials times prior to, during, and after the kidnapping in Haiti, the Plaintiff was working in Canada in his capacity as a machine operator at ecycle Solutions Inc. located in Ontario.
6. On September 23, 2014, the Plaintiff was wrongfully and publically arrested for the kidnapping of the Moscosos outside of his home in Mississauga, Ontario. He was handcuffed and transported to jail in front of his two children and neighbours. He was

falsely and wrongfully imprisoned from September 23, 2014 to October 31, 2014. At all material times, the Plaintiff advised all parties to his detention proceedings that he was physically present in Canada during the kidnappings and therefore could not have been the kidnapper. At no time were his exculpatory statements investigated, which could have led to his early release and prevented a miscarriage of justice.

Denied Entry to Jamaica and Detention at Pearson International Airport

7. On July 28, 2014 the Plaintiff was travelling to Jamaica from Canada for a festival. He was denied entry at the airport and detained in Jamaica. The Plaintiff was not provided reasons for his detention and was told that he would be sent back to Canada. The Plaintiff was able to informally discover that the Haitian government had issued a warrant for his arrest.
8. Upon his arrival to Pearson International Airport (from Jamaica) on July 29, 2014, the Plaintiff was met by numerous Canada Border Services Agency ("CBSA") officers. The Plaintiff was confronted by the officers in front of the other passengers while he was disembarking the plane. The Plaintiff was publically escorted to a separate area where he was detained and examined for about an hour, and then his belongings were searched. He was not advised of his right to counsel while detained at the airport.
9. The Plaintiff asked CBSA for the reasons for his detention. An officer explained that there had been a kidnapping in Haiti in October 2012 and that there was an outstanding warrant for his arrest in connection with that and associated crimes. The Plaintiff explained that this must be a misunderstanding: he could not be a fugitive because he was in Canada during the relevant dates (October 2012). The Plaintiff also explained that he rarely visits Haiti and had only travelled to Haiti to visit his sick father from December 25, 2012 to January 2, 2013, well after the offence in question.
10. The Plaintiff advised CBSA that they must be mistaken. He further advised them to check his entry records into Canada. The Plaintiff provided his home address, and phone number to CBSA officials in the event that they required further information from him. The Plaintiff was then released from CBSA's custody and able to leave the airport.

Public arrest in front of spouse, children and neighbours

11. On September 23, 2014, CBSA officers prepared an admissibility report pursuant to s. 44 of the *Immigration and Refugee Protection Act*, alleging that there are reasonable grounds to believe the Plaintiff had committed serious crimes in Haiti and was a fugitive from Haitian justice. CBSA referred the report to the Immigration Division ("ID") of the IRB and an admissibility hearing was scheduled, a mechanism through which a member of the ID makes a determination as to whether the individual is entitled to remain in Canada.
12. That same day, September 23, 2014, the Plaintiff was arrested by the Toronto Fugitive Squad and CBSA at his home in Mississauga, Ontario. When the police and CBSA officials arrived, the Plaintiff, like many of his neighbours, was outside on his front porch supervising his children, while they played.
13. The Plaintiff was asked whether he is Jean Marc Murat and responded in the affirmative.
14. The Plaintiff was then advised that there was a warrant outstanding for his arrest for the kidnapping of the Moscosos and the associated crimes of forcible confinement for ransom, asset laundering, death threats, identity theft, forgery and use of forged documents, illegal firearms trafficking and association with criminals.
15. The Plaintiff responded that the officials had the wrong person. He explained that he has only been in Haiti once and that was in December of 2012. He maintained that he was not in Haiti at the time of the kidnapping. He asked his wife to retrieve his expired and valid passports from their safe, which she did. The expired passport was valid during both the months of October and December of 2012 (the date of the kidnapping and the date of the Plaintiff's travel) back to Haiti. His wife immediately provided both of these passports to the officers for their inspection.

16. During this encounter, the Plaintiff asked CBSA why he was not arrested on July 29, 2014 at the airport instead of in front of his children, partner, and neighbours. He was advised that he was being arrested on the basis of an outstanding Haitian arrest warrant.
17. The Plaintiff then asked whether he could get dressed before leaving the premises, as he was wearing shorts. A CBSA official refused to allow him back into his home and instead asked his elder daughter, "to go get pants for papa."
18. He also asked if CBSA would not handcuff him in front of his children. However, the officer refused to comply with his request and the Plaintiff was handcuffed in front of his two daughters.
19. From the Plaintiff's home, he was transferred to the Maplehurst Correctional Complex ("Maplehurst"), a maximum security provincial detention centre, where he held in custody. At no time during his arrest or transport did any official advise the Plaintiff of his right to counsel. During the first interrogation at Maplehurst, the Plaintiff asked to see the Haitian warrant and a picture of the alleged suspect but was denied this request.
20. The Plaintiff was detained on September 23, 2014 until October 31, 2014 as a suspect for a crime that he did not commit. The basis for his detention was the CBSA's allegation that he posed a danger to the public and/or was unlikely to appear for further immigration proceedings.
21. During his incarceration, the Plaintiff was transferred by the CBSA to the Central East Correctional Centre in Lindsay ("Lindsay"), another maximum security facility located hours away from his family.

Initial/48 hour IRB detention review

22. Pursuant to s. 57(1) of the *IRPA*, the ID was required to review the reasons for the Plaintiff's detention ("detention review") within 48 hours or "without delay afterward."

23. On September 26, 2014 the Plaintiff had a detention review before Member Oksana Kowalyk ("Member Kowalyk") of the ID. A CBSA hearings officer named Naureen Ismail attended that hearing on behalf of the Minister of Public Safety and Emergency Preparedness ("Minister's counsel"). As Maplehurst was on lock-down at the time, the Plaintiff's detention review was conducted over teleconference in the visiting room of Maplehurst, in front of other detainees, and their visitors. The Plaintiff felt uncomfortable and embarrassed that his case was being discussed in front of other people. The Plaintiff asked Member Kowalyk and CBSA if they could wait until he had counsel before beginning his proceeding. His request was denied, and the review proceeded.
24. CBSA sought the Plaintiff's continued detention on the basis that he was a danger to the public and/or unlikely to appear for an admissibility hearing. CBSA's reasoning for finding that the Plaintiff was a flight risk is that he was an alleged fugitive fleeing from Haitian justice.
25. CBSA submitted that the Plaintiff was a danger to the public because he had allegedly committed violent crimes in connection with the kidnapping in Haiti. CBSA relied on unsourced and unverified information by the Haitian Government to establish that the Plaintiff is a violent dangerous criminal.
26. Further, the CBSA's allegation that the Plaintiff was a danger to the public was also based on his 20 year old criminal record in the U.S., a record which Canada had formally forgiven. In the U.S., the Plaintiff had been convicted of attempted robbery (second degree), possession of narcotics and possession of a false instrument. These conviction were all registered between 1988 and 1995. When the Plaintiff came to Canada he fully disclosed his criminal record and sought criminal rehabilitation pursuant to s. 18 of the *Immigration and Refugee Protection Regulations*. This application was approved by CIC on June 20, 2012 and the effect thereof was that the Plaintiff was and no longer is considered criminally inadmissible to Canada.
27. During that review the Plaintiff maintained that he was in Canada working during the time of the kidnapping, that he has to palm scan himself into his office building in order

to enter, and initial daily for his attendance. The Plaintiff requested that both the Member and the Minister's counsel confirm his whereabouts with his employer and release him. He was informed that it is not the job of CBSA to collect evidence exonerating him. He was informed that it was his obligation to collect this evidence and provide it to CBSA or the Member.

28. On September 30, 2014, Member Kowalyk ordered that the Plaintiff remain detained.

Seven-day review

29. On October 6, 2014 another detention review was held. By this time, the Plaintiff had been detained for 14 days, in direct contravention of the fact that section 57(2) of the *Immigration and Refugee Protection Act*, which specifically provides for a second detention review to be held seven-days after being detained. The Plaintiff, his counsel, Guidy Mamann, and a different CBSA hearings officer, Sean Quigg were present at that hearing, which was again presided over by Member Kowalyk.

30. Again, CBSA sought the Plaintiff's continued detention on the basis of danger to the public and/or unlikely to appear for an admissibility hearing. Again, CBSA submitted that the Plaintiff was the fugitive and was wanted in Haiti for kidnapping and the associated crimes.

31. The Plaintiff again requested to view the photograph and the warrant from the Haitian government, as well as any other evidence against him. CBSA advised the Member that it did not have the authority to release the relevant information without the approval of the law enforcement/partner agency. Member Kowalyk refused to require CBSA to produce the warrant and the grounds for the Plaintiff's arrest.

32. The Plaintiff, once again, maintained that his employment records and travel stamps on his passport prove that there must be a mistake.

33. The Plaintiff's counsel demanded that a copy of the notice of the arrest (issued by CBSA) be provided. Counsel also demanded:
- a. particulars of the Plaintiff's involvement in the kidnapping, if any existed;
 - b. pictures of the wanted persons;
 - c. the Haitian arrest warrant; and
 - d. the legal grounds for withholding the Haitian arrest warrant from the Plaintiff.
34. In a fax dated October 6, 2014, the CBSA notice of arrest was provided. It was three pages long and did not include any of the evidence relied upon by the Haitian government, or a picture of the alleged suspect.
35. The Plaintiff's continued detention was again ordered. The next detention review was scheduled for October 22, 2014.

30 day review

36. At the Plaintiff's 30 day detention review on October 22, 2014, Member Kowalyk of the ID presided. On October 22, 2014, the Plaintiff was provided with a document disclosure by the CBSA outlining the reasons for his detention. This was the first time that he was provided with any sort of disclosure. The disclosure contained:
- a. A Report from the National Human Rights Defense Network (NHRDN) about the kidnapping of the Moscosos;
 - b. a Haitian newspaper article about the kidnapping;
 - c. a copy of the Haitian criminal code (untranslated);
 - d. a Toronto Police Services report stating that Jean Marc Murat was captured in Canada after fleeing Haiti;
 - e. a CP24 article about the arrest of the Plaintiff in Canada;
 - f. an email dated October 21, 2014 from Interpol Ottawa apologizing for the delay in providing CBSA with information from Interpol Port au Prince and explaining

that Interpol Ottawa was still waiting on Interpol Port au Prince to authorize the use the information for Jean Marc Murat; and

g. a Haitian arrest warrant.

37. The warrant identified someone with the Plaintiff's name as a suspect for the kidnapping but did not provide any foundation for this conclusion. Factors identifying the Plaintiff such as the Plaintiff's date of birth, and passport number were provided in the warrant. However, the warrant did not disclose an evidentiary basis for linking the Plaintiff, who lives in Canada, to the crime.
38. The warrant also included pictures of black male suspects. The Plaintiff is a black male.
39. CBSA refused to investigate the exculpatory evidence disclosed by the Plaintiff and his counsel. CBSA also refused to release the Plaintiff pending disclosure of information connecting him to the crime. There was no order to the CBSA to investigate the matter further, or order his release.
40. CBSA sought the Plaintiff's continued detention on the basis of danger to the public and/or his apparently being unlikely to appear for an admissibility hearing.
41. The Plaintiff indicated among other things that: only one picture in the Minister's disclosure was of him and was outdated; he was not in Haiti at the time of the kidnapping; he was instead at work in Canada; that his employment records including palm scan technology showed that he was at work; that on October 15, 2012 he left work briefly to assist his wife as she had a car accident and had to sign back in when he returned; that he had lost his driver's licence while in Haiti in December 2012; that he travelled to Haiti after the kidnapping on his Haitian passport all in a manner inconsistent with being a fugitive; and that his spouse could act as a bondsperson.
42. The Member requested that certain documents be translated into English, and a subsequent review was scheduled for October 28, 2014.

Postponement of next detention review

43. On October 28, 2014 CBSA requested that the detention review be postponed until November 5, 2014 so that the translations could be completed. This request was granted by the Member. In the meantime, the Plaintiff continued to be incarcerated.

Release

44. On October 30, 2014, CBSA wrote to the ID stating that the grounds for his inadmissibility and lawful detention no longer exist. A day later, on October 31, 2014, the Plaintiff was unconditionally released.

CBSA investigation, and determination that Plaintiff was not the fugitive

45. Throughout the investigation, CBSA and the ID ignored the Plaintiff's explanation that he could not possibly be the fugitive, including his statements that he was at work and in Canada, which were completely ignored without due consideration.
46. The evidentiary basis and grounds for the Plaintiff's detention were withheld from the Plaintiff by CBSA. The ID did not mandate disclosure either, despite their role to oversee the process and ensure that the reasons for the detention of the Plaintiff were legitimate.
47. On October 22, 2014, a month after his detention and many months after the CBSA became aware that the Plaintiff had been (wrongly) implicated in the kidnapping, the Plaintiff was finally provided with the documents supposedly supporting his arrest. The Plaintiff was detained for 30 days, until October 22, 2014, without even seeing the Haitian warrant for his arrest. The documents were not translated when they were finally provided.
48. Disclosure was not completed in a timely manner, and the delay in translating documents went unexplained.

49. Counsel for the Plaintiff provided CBSA proof that the Plaintiff was employed and physically present in Canada during the dates in question. However the CBSA disregarded this information, only making their decision regarding the Plaintiff's release based on evidence received from Haiti. On October 30, 2014, CBSA requested the Plaintiff's release.
50. The Plaintiff remained wrongfully imprisoned for another 24 hours. On October 31, 2014 the ID ordered the Plaintiff be unconditionally released from custody.
51. Despite being aware that the Plaintiff was incarcerated in harsh conditions at Maplehurst, and later Lindsay, the CBSA did not undertake any reasonable steps to ensure a timely response from Haitian authorities. Further, at all times, CBSA failed to investigate or consider the exculpatory evidence of physical presence in Canada that the Plaintiff disclosed.

Conditions of Detention

52. The experience of incarceration was profoundly distressing and isolating for the Plaintiff. From the outset of his detention, the Plaintiff experienced an overwhelming level of stress, fear, and anxiety that he would be deported to Haiti, where he could be wrongfully imprisoned for life.
53. He was deprived of his liberty and subjected to degrading conditions including, but not limited to:
- a. denied visitation rights, specifically his wife and children were not allowed to visit him even during regular visiting hours, on account of the detention centre being locked down;
 - b. denial of exercise, outdoor activities and other basic necessities;
 - c. limited phone access to call his counsel or his wife;
 - d. no access to a library or entertainment;
 - e. subject to unsanitary and unhygienic living conditions;
 - f. severe overcrowding; and

g. intimidation by other inmates.

54. The Plaintiff was incarcerated in Maplehurst which is a provincially operated correctional facility for the majority of his detention. The Plaintiff was imprisoned in a maximum security facility with violent offenders. The Plaintiff witnessed and experienced several acts of intimidation and violence by other inmates and was fearful for his own personal safety. The Plaintiff experienced threatening behaviour including an event where he was yelled at and approached by another man. His cellmate intervened and then the guards separated the parties.
55. The Plaintiff felt fearful and intimidated by the other inmates for the duration of his stay. As a result, he kept mostly to himself, and experienced profound social isolation.
56. During his incarceration the Plaintiff became increasingly frustrated that no one was listening to him or even investigating the possibility that he was innocent. He felt like he had no control over this situation, or the direction of his life. As such, he started to experience dissociative feelings, and feelings of resentment against individuals on the outside, including even his wife and family.
57. Throughout the Plaintiff felt like he was being discriminated against and racially profiled.

Impact of Detention

58. As a result of his wrongful imprisonment, and the Defendant's failure to exonerate the Plaintiff in a reasonable time frame, he has suffered irreparable harm. His wrongful imprisonment has resulted in damages including, but not limited to the following:
- a. Inability to care for his children while incarcerated;
 - b. Lost income due to expenditures on childcare;
 - c. Lost income due to loss of earnings and inability to work;
 - d. Feelings of isolation and distance from his family;

- e. Psychological hardship including feelings of insecurity and paranoia;
- f. Trauma and mental anguish;
- g. Family insecurity including his children's worry about his permanence in their lives;
- h. Resentment and anger at being presumed to be guilty on account of his race and an old criminal record;
- i. Loss of reputation within the neighbourhood and at his workplace due to the public nature of the arrest, and public statements of criminal involvement;
- j. Humiliation and embarrassment;
- k. Continued inability to travel due to an outstanding warrant in his name; and
- l. Continued inability to apply for citizenship.

59. Specifically, during the time the Plaintiff was incarcerated, his spouse was working three jobs and was the primary caregiver for their two children. Both the Plaintiff and his spouse found it difficult to ask for help with the child care responsibilities during this time because of their embarrassment over his arrest. Additionally, the Plaintiff was unable to work during this time and lost wages.

60. The impact of wrongful imprisonment did not end when the Plaintiff was released. Within his neighbourhood his reputation is tarnished. His name is still associated with criminal activity through Google searches and publicly available records. People look at him with suspicion, and some neighbours refuse to allow their children to play with his children. Whenever he leaves his children to run an errand, his children ask whether he will be coming back.

61. The Plaintiff experiences anxiety that he will be taken away again. He feels distanced from everyone, and traumatized by the events, which he views as completely preventable.

62. On the basis of the events provided above, the Plaintiff pleads the relief set out in paragraph 1 above.

CAUSES OF ACTION

63. In accordance with the *Crown Liability and Proceedings Act*, the Defendant is liable for all the negligent and wrongful actions of the agents and servants involved, namely the officers and delegates of the IRB, the CBSA, the RCMP, and other partner law enforcement agencies.

Negligence and Negligent investigation

64. At all relevant times, the CBSA officers and the ID handling the Plaintiff's case owed him a duty of care to perform their jobs in a reasonably competent manner, in keeping with the significant personal interests at stake for the Plaintiff, namely his right to liberty and security of the person.

65. Following the initial interview and investigation, the CBSA officers negligently failed to give due consideration to the Plaintiff's explanation that he could not be the fugitive as he was physically present in Canada during the kidnapping – a fact that ought to be fairly easy to establish. The CBSA officers also, among other things:

- (a) ignored passport evidence confirming the Plaintiff's dates of travel;
- (b) negligently failed to investigate exculpatory evidence, namely the Plaintiff's employment records that confirmed his physical presence in Canada;
- (c) ignored evidence that the Plaintiff, an alleged fugitive, had voluntarily travelled back to Haiti after the crimes had been committed;
- (d) failed to consider that the Plaintiff had lost an identity document in Haiti; and
- (e) failed to investigate the Plaintiff's claim that his wife was in a car accident on October 15, 2012 and that the insurance company should have a record of the incident.

66. Further, the Member of the IRB failed to order an investigation, timely disclosure and translation of pertinent documents.

67. This and all other available evidence would lead a reasonably competent investigator to conclude that the Plaintiff was not a fugitive from justice. At the very least a reasonably competent investigator would have contacted the Plaintiff's employer to confirm his whereabouts during the kidnapping in question.

False and wrongful imprisonment

68. The CBSA officers falsely and wrongfully imprisoned the Plaintiff and maintained his incarceration despite lacking reasonable and probable grounds to conclude that he was the fugitive wanted by Haitian authorities. The CBSA falsely imprisoned the Plaintiff by refusing to consider whether there were any reasonable and probable grounds for the Haitian authorities to issue an arrest warrant. This false imprisonment either commenced at the moment he was first transferred to Maplehurst on September 24, 2012, or at other times when CBSA officers were confronted with the Plaintiff's statements that he was physically in Canada during the kidnapping and refused to verify or investigate these statements. The false imprisonment continued while the Plaintiff was transferred to Lindsay and ended on his release on October 31, 2014.

69. CBSA officers falsely imprisoned the Plaintiff from October 30, 2014 to October 31, 2014 by failing to secure his immediate release despite knowing without a doubt that he was not the wanted fugitive.

70. The Defendant Her Majesty the Queen in Right of Canada falsely imprisoned the Plaintiff from September 23, 2014 to October 31, 2014.

Breach of Section 12 of the Charter

71. The Plaintiff pleads that the condition of his unlawful detention in a maximum security prison constitutes cruel and unusual punishment and was a breach of his section 12 *Charter* rights.

72. The Plaintiff claims that the difficult conditions in detention were exacerbated by frequent lockdowns. The excessive hardship resulting from lockdowns included:
- a. Being locked in his cell for 24 hours per day frequently;
 - b. Inability to shower daily;
 - c. No recreation time;
 - d. Inability to make telephone calls to his wife and lawyer;
 - e. No public visits;
 - f. Lack of access to legal representation: inability to use telephone and inability of counsel to visit;
 - g. Adverse reactions from other inmates including fights and banging on walls;
 - h. Difficulty to sleep;
 - i. Lack of hygiene and unsanitary conditions;
 - j. Cancellation of programs; and
 - k. Mental distress.

73. The Plaintiff claims that the addition of frequent, random and unplanned lockdowns to the already unsanitary, punitive conditions in detention constitutes a breach of section 12 of the *Charter*.

Charter breaches

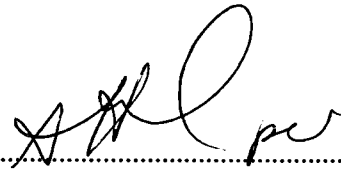
74. Section 2(a) of the *Charter* guarantees that "everyone has the following fundamental freedoms: (a) freedom of conscience and religion."
75. Section 7 of the *Charter* guarantees that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."
76. Section 9 of the *Charter* guarantees that "everyone has the right not to be arbitrarily detained or imprisoned."

77. Section 10 of the *Charter* guarantees that "everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefor; (b) to retain and instruct counsel without delay and to be informed of that right; and (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful."
78. Section 12 of the *Charter* guarantees that "everyone has the right not to be subjected to any cruel and unusual treatment or punishment."
79. The Plaintiff claims that he was denied of his liberty and security of the person and arbitrarily detained and imprisoned during his incarceration at Maplehurst. CBSA officers detained and imprisoned the Plaintiff on material that they failed to verify, and failed to disclose to him and/or his counsel. The IRB and CBSA were aware that the Plaintiff alleged he was physically present in Canada during the crimes and refused to investigate. The IRB and CBSA refused to release him until faced with irrefutable evidence of the Plaintiff's innocence. This was not in accordance with the principles of fundamental justice.
80. The Plaintiff claims that he was arbitrarily detained and imprisoned as he was imprisoned on the basis of suspect information that did not connect the Plaintiff to the crime.
81. The Plaintiff claims that his 10(a) rights were breached because he was not allowed to see the Haitian arrest warrant, the alleged basis for his arrest. The Plaintiff claims that his 10(b) rights were breached during his detention at the airport on July 29, 2014 and when he was arrested on September 23, 2014. The Plaintiff claims that his 10(c) rights were breached as his detention was not lawful but he was not released. The IRB and CBSA recommended his detention without possession of the relevant Interpol materials, and never assessed the reasonableness of the Haitian arrest warrant. Further, neither the CBSA nor the IRB considered an appropriate alternative to detention, such as having the Plaintiff's wife act as a bonds person.

DAMAGES

82. For all the causes of action outlined above, the Plaintiff claims for general damages for mental suffering and harm to dignity the amount of \$1 million.
83. For all the causes of action outlined above, the Plaintiff claims for special damages for loss of income due to absence from work and inability to continue his child care responsibilities.
84. For all the causes of action outlined above, the Plaintiff claims for aggravated damages in the amount of \$500,000. The Plaintiff was humiliated in front of his neighbours and his reputation is permanently tarnished. If a potential future employer searches the Plaintiff's name on the internet, it immediately states that the Plaintiff was arrested for the above-referenced kidnapping, which severely inhibits his ability to find gainful employment. He was severely traumatized by the experience of protesting his innocence and having no one listen to his account or investigate his story. He was socially isolated during this encounter and experienced mental anguish at the thought of living out his life in a Haitian prison. The impact on his psychological state is long lasting and he experiences insecurity and/or paranoia. The entire family has experienced emotional hardship and permanent dissonance as a result of watching the Plaintiff be handcuffed, arrested, and removed from their lives. All of these experiences were completely preventable, had at any time, an officer investigated the Plaintiff's account of events. These are all factors justifying an award of aggravated damages.
85. For all of the causes of action outlined above, the Plaintiff claims for punitive damages in the amount of \$250,000.00.
86. The Plaintiff proposes that this matter be tried in Toronto.

Date of issue: October __, 2016 .



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Lawyer for the Plaintiff

Court File No.

FEDERAL COURT

Between:

JEAN MARC MURAT

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN
RIGHT OF CANADA**

Defendant

STATEMENT OF CLAIM



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Immigration Lawyers
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Toronto, Ontario
M5C 2G3

Attn: Daniel Kingwell

Tel: 416-862-0000
Fax: 416-862-0625

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____
day of _____ A.D. 20 _____

Dated this _____ day of _____ 2016


IMRANA AHMED
Registry Officer
Agent du greffe

SOLICITORS FOR THE PLAINTIFF



Courts Administration Service administratif des
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For file / Pour le dossier # : T-1742-16 Doc. # : 1 (ID # : 1)

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