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Court File No.

FEDERAL COURT

B E T W E E N:

Dikla Mizrachi, Iris Liniado, Jacqui Vital, Rachel Ohnona and Centre for Israel and Jewish Affairs

Moving Parties
(Applicants)

and

THE ATTORNEY GENERAL OF CANADA

Responding Party
(Respondents)

NOTICE OF APPLICATION
Pursuant to section 18 and 18.1 of the *Federal Courts Act*

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts 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 OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

April 4, 2024

Issued by: _____
(Registry Office)

Address of local office: Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, ON
K1A 0H9

TO: The Registrar
Federal Court

AND TO: The Attorney General of Canada
Department of Justice Canada
T: 613-670-6291
Fax: 613-954-1920
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

APPLICATION

This is an application for judicial review in respect of a decision made by Global Affairs Canada (GAC) on March 8, 2024, and communicated by The Honourable Ahmed Hussen, Minister of International Development to reinstate Canadian funding to United Nations Relief and Works Agency (UNRWA), which funding had been suspended on January 26, 2024 by GAC which was communicated that day by the same Minister of International Development, The Honourable Ahmed Hussen.

Introduction

1. On October 7, 2023, the foreign terrorist organization Hamas launched a surprise attack on the innocent civilians of southern Israel. This attack resulted in the murder of over 1,200 Israelis and over 6,900 injured civilians. During this attack, Hamas terrorists brutally beat, tortured, raped, and murdered men, women, and children. But Hamas did not carry out these attacks alone. Rather, they were financed and aided by the United Nations Relief and Works Agency (UNRWA) for Palestine Refugees in the Near East. For a number of years, the Canadian Government has contributed substantial funds to UNRWA, which has significant operations in the Gaza Strip. Once the funds reach the Gaza Strip, UNRWA redistributes those funds to Hamas members on their payroll, some of whom are directly engaged in acts of terrorism, including but not limited to, the October 7th atrocities; to schools that are used to store Hamas' weapons and other equipment; and to the production of educational materials that promote violence against Jews, including the destruction of the state of Israel.

Parties

2. a) Dikla Mizrachi is the Canadian mother of Ben Mizrachi who was killed at the Nova Music

Festival on October 7, 2023.

b) Iris Lianiado is a dual Canadian citizen and the daughter of Judih Weinstein and Gad Haggai who were both murdered and their bodies taken hostage.

c) Jacqui Vital is a dual Canadian citizen and the mother of Adi Vital-Kaploun who was murdered on October 7, 2023.

d) Rachel Ohnona is a permanent resident of Canada and the mother of Alexandre Look who was killed on October 7, 2023.

e) The Centre for Israel and Jewish Affairs (CIJA) is the advocacy agent of the Jewish Federations across Canada, and exists to preserve, protect, and promote Jewish life in Canada through advocacy. Shimon Koffler Fogel is the Chief Executive Officer (CEO) of CIJA.

THE APPLICANTS MAKE APPLICATION FOR:

1. A declaration that the Respondents decision to re-instate funding to UNRWA is unreasonable in light of
 - a) UNRWA's history and participation with Hamas, a listed terrorist entity pursuant to *Criminal Code* section 83.05; and/or
 - b) the Respondents failure to comply with their statutory duties pursuant to:
 - i. the *Department of Foreign Affairs, Trade and Development Act*;
 - ii. the *Official Development Assistance Accountability Act*; and
 - iii. the *Canadian Charter of Rights and Freedoms* ("the *Charter*").
2. An order in the nature of certiorari to quash the March 8, 2024, impugned decision.
3. Such further and other relief as counsel may advise and this Honourable Court permit.

THE FACTUAL BASIS FOR THIS APPLICATION

History of UNRWA

1. For years, UNRWA teachers in UNRWA funded schools have been using textbooks to teach Palestinian children to hate and kill Jews.
2. Hamas terror tunnels have been located under or next to UNRWA funded schools in 2017, 2021, 2022 and post October 7, 2023.
3. UNRWA institutions have been used as rocket launch sites, weapons arsenals and for computer servers for Hamas use.

October 7, 2023

4. On October 7, 2023, the Gaza-based terrorist organization, Harakat al-Muqawama al-Islamiya—generally known as “Hamas”—led a terrorist attack in southern Israel that killed over 1,200 Israelis and took over 200 hostages. Hamas tortured and butchered innocent men, women, and children at a music festival, as well as in their homes across southern Israel. The attack included a barrage of over 2,200 missiles shot from Gaza into Israel. Over 6,900 people were injured in the attacks.
5. During these attacks, Hamas terrorists raped, mutilated, and brutally beat women. According to the Association of Rape Crisis Centers in Israel (ACCRI), “rape was conducted in front of an audience, such as partners, family, or friends, to increase the pain and humiliation for all present.” Independent news organizations, like *The New York Times* and *BBC*, have verified, through tapes and first-hand accounts, that Hamas committed these heinous acts of sexual violence.
6. According to a report released on March 4, 2024, by the UN Special Representative on Sexual Violence in Conflict, “[T]here are reasonable grounds to believe that conflict-

related sexual violence occurred during the 7 October attacks in multiple locations across the Gaza periphery, including rape and gang rape, in at least three locations.” The UN team investigating Hamas’ actions reported “that several fully naked or partially naked bodies from the waist down were recovered—mostly women—with hands tied and shot multiple times, often in the head.” In addition, “[t]here are further accounts of individuals who witnessed at least two incidents of rape of corpses of women.”

7. The report continues, “Based on the first-hand accounts of released hostages, the mission team received clear and convincing information that sexual violence, including rape, sexualized torture, and cruel, inhuman and degrading treatment occurred against some women and children during their time in captivity and has reasonable grounds to believe that this violence may be ongoing.”
8. Videos from October 7, 2023, also show Hamas terrorists, including UNRWA employees, dragging dead bodies and innocent hostages into cars and celebrating and parading Israeli bodies around Gazan cities.
9. 15 UNRWA employees participated in the attack.
10. When the attacks concluded, the October 7, 2023, massacre marked the deadliest day for the Jewish people since the Holocaust.
11. 1650 UNRWA employees are members of a terror organisation, 327 UNRWA employees are members of the Hamas military wing.

Post October 7, 2023

12. *The Washington Post* also recently released CCTV footage of an UNRWA social worker driving toward an open gate to Kibbutz Be’eri on October 7, 2023. In the footage, the UNRWA employee picks up an apparently deceased Israeli body off the street, loads the

body into his SUV, and drives off.

13. A hostage that was released reported having been held captive in a UNRWA teacher's home.
14. UNRWA has repeatedly expressed its solidarity with Hamas. UNRWA Deputy Commissioner- General Leni Stenseth has met in the past with Hamas leader (and mastermind of the October 7 massacre) Yahya Sinwar at his office.
15. At that meeting, Stenseth "affirmed her solidarity" with Hamas on behalf of UNRWA.
16. On January 26, 2024 in a Statement by the Minister - Canada temporarily paused UNRWA funding pending the UN investigations.
17. On February 1, 2024, CIJA sent a letter to the Minister outlining alternative means of providing relief to the Palestinians in Gaza.
18. On February 2, 2024, CIJA sent a letter to the Minister outlining UNRWA's involvement with Hamas.
19. On February 13, 2024, CIJA sent an email re: the Hamas data center that had been located under UNRWA headquarters.
20. On March 8, 2024, without waiting for the final report of the UN Office of the Internal Oversight Services (OIOS) or the independent review of UNRWA, Canada announced re-instatement of funding to UNRWA.

THE STATUTORY BASIS FOR THIS APPLICATION:

21. *Federal Courts Act*, RS 1985, c. F-7, sections 18(1), 18.1, 18.1(3)(a), and 44.
22. *The Department of Foreign Affairs Trade and Development Act*, S.C. 2013, c. 33
23. *The Official Development Assistance Accountability Act*, S.C. 2008, c. 17.
24. *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11, section 7.

25. *Criminal Code of Canada*, R.S.C., 1985, c. C-46, section 83.

26. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE LEGAL BASIS FOR THIS APPLICATION

Department of Foreign Affairs et al Act

27. Pursuant to the *Department of Foreign Affairs, Trade and Development Act* S.C. 2013 c.

33, the Minister of Foreign Affairs' duties and responsibilities are set out and include, *inter alia*, fostering "sustainable international development and poverty reduction in developing countries and provid[ing] humanitarian assistance during crises."

28. The Minister of International Development is an "Additional Minister" who is to assist the Minister of Foreign Affairs in carrying out their responsibilities.

29. The Minister of International Development is to foster sustainable development and poverty reduction in developing countries and provide humanitarian assistance during crises by, *inter alia*, ensuring Canada's contributions to international development and humanitarian assistance are in line with Canadian values and priorities.

30. Canadian values at a minimum, include the constitutionally protected values of life, liberty and security of the person.

31. The impugned decision to re-instate funding to UNRWA, given UNRWA's history including:

- a. UNRWA teachers teaching hate in UNRWA's schools; and
- b. Providing material support for Hamas by allowing the Hamas to store weapons, rockets and operational infrastructure in UNRWA buildings

is a grotesques violation of Canadian values.

32. The impugned decision to reinstate funding to UNRWA, given the proof of UNRWA's employees participation in the October 7, 2023, massacre and UNRWA's employees memberships in Hamas and Hamas militant faction is again, completely contrary to Canadian values.

The Official Development Assistance Accountability Act

33. The purpose of the *Official Development Assistance Accountability Act* is

“to ensure that all Canadian official development assistance abroad is provided with a central focus on poverty reduction and in a manner that is consistent with Canadian values, Canadian foreign policy, the principles of the Paris Declaration on Aid Effectiveness of March 2, 2005, sustainable development and democracy promotion and that promotes international human rights standards.”

and is to be defined exclusively by these values.

34. The Minister of International Development is the Minister responsible to ensure that assistance is governed by these terms and in particular “is consistent with international human rights standards.”

35. The history of involvement of UNRWA with Hamas culminating in the October 7, 2023, massacre by UNRWA assisted Hamas violate international human rights standards.

Gender Based Violence

36. UNRWA has a history of involvement with Hamas and participated in the October 7, 2023, gender-based violence against Israeli women and girls and the subsequent sexual abuse of female hostages. This runs completely contrary to the 2021-22 objectives of the Parliamentary report of the Minister of International Development.

Hamas – terrorist listed entity

37. Hamas is a “listed entity” pursuant to section 83.05 of the *Criminal Code of Canada*.

38. The definition of “terrorist activity” under the *Criminal Code* is broad and includes acts or omissions committed outside of Canada.
39. The activities of UNRWA clearly fall within the parameters of section 83.03 of the *Criminal Code* which makes it a criminal offence to:
- a. collect or provide property, or
 - b. make available financial or other services knowing that they will be used in whole or in part, for the purpose of facilitating terrorist activity.
40. The impugned decision to re-instate UNRWA funding flies in the face of Canada’s own anti-terrorism provisions of the *Criminal Code*.

Minister’s Statement of January 26, 2024

41. The Minister of International Development announced on January 26, 2024, the suspension of Canada’s funding to UNRWA pending the final results and reports of two independent investigations.
42. On March 8, 2024, the Minister of International Development did not have the final results of either investigation, yet he chose to make the impugned unreasonable decision anyway in violation of the legitimate expectation generated by his January 26 announcement.

Conclusion

43. The impugned decision is unreasonable for the reasons set out above and because on or before March 8, 2024, the Minister had information which confirmed UNRWA’s history of involvement with Hamas and, how the use of funds by UNRWA did not respect or reflect Canadian values.

44. The impugned decision was made by the Minister at a time when he knew of the facilitation, involvement and participation of UNRWA and its employees in the October 7, 2023, massacre.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIALS:

1. 2021-22 Parliamentary Report of Minister of International Development
2. GAC statement by Minister Hussen of January 26, 2024.
3. GAC statement by Minister Hussen of March 8, 2024.
4. Affidavit of Shimon Koffler Fogel.
5. Affidavits of Dikla Mizrachi, Iris Liniado, Jacqui Vital and Rachel Ohnona.
6. Such further and other materials as counsel may advise and this Honourable Court permit.

Dated at Ottawa this 4th day of April, 2024.



Lawrence Greenspon
LSO #20301D



Hannah Drennan
LSO #86555W
Greenspon Granger Hill
331 Somerset St. W
Ottawa ON, K2P 0J8
Email: lawrence@gghlawyers.ca



Jillian Siskind
LSO #45809N
Siskind Doyle LLP
58 Shaftesbury Avenue
Toronto, ON M4T 1A3
Email: jillian@siskinddoyle.com

Counsel for the Applicants