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Condo Alert!

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Editor:
Andrea Lusk

Justice for family victims of terrorism

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GMA's Senior Legal Counsel, Mark Arnold, is acting for a number of family victims arising from the shooting down of Ukraine International Airways flight PS 752 by the Islamic Republic of Iran on January 8, 2020. The incident resulted in the death of all on board including approximately 75 Canadians.

On behalf of the surviving family members, Mark is pursuing a claim in the Ontario Superior Court of Justice naming the Islamic Republic of Iran and others as defendants.

The claim was brought under the Canadian *Justice for Victims of Terrorism Act* (JVTA) and *State Immunity Act*. Those statutes collectively permit legal claims to be brought in Canada against Iran as a country designated under Canadian law to be a state sponsor of terrorism.

The claim filed with the court alleged that the shooting down of the airplane was an intentional act of terrorism on the part of the Islamic Republic of Iran and the other defendants. The claim seeks damages exceeding \$1 billion.

Despite having been served with the Statement of Claim, the defendants failed to defend and were noted in default.

On May 20, 2021, Justice Edward Belobaba, on behalf of the court, released a default judgement decision that focused on liability. The court found that Iran and the other defendants committed an intentional act of terrorism in the shooting down of the aircraft with the loss of all on board. The case is titled *Zarei v Islamic Republic of Iran et al* [2021] O.J. No. 2766.

This Decision of the Ontario Superior Court of Justice is unprecedented in Canadian jurisprudence. It is also the first case to apply the JVTA against a foreign state.

The case will now proceed to a determination of damages for the surviving family victims who we act for. Victim impact statements have been prepared. A legal brief is in process. As a result of continuing Covid restrictions, the damages claim will be decided by the court based on written submissions. A final decision on compensation is expected to be released by the court before the end of the Summer.



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Pay Up! – Responding to a Request for Records

J. Robert Gardiner, B.A., LL.B, ACCI, FCCI



In a new CAT decision, the Board's Response to an owner's Request for Records was a charge of \$3,258 to provide requested engineering foundation reports, \$4,372 for 7 other standard contracts and \$11,850 for all invoices during the past 3 years. The applicant-owner objected that the fees to provide those printed non-core documents were excessive and unreasonable.

In *Bolanos v. Carleton Condominium Corporation No. 14*, there was no formal contract with a construction company where work had evolved over three years, amounting to \$90,000. The Board's Response indicated that an implied contract would have to be compiled from a series of emails, with extra time to be spent to redact information related to individual units and owners. The condo's management contract required a special extra-work fee at the rate of \$125/hour, but the board kept the rate down to \$65/hour for this records request. The condo's charges to provide that particular contract were based upon the expectation of four hours of labour to review 20 pages at a rate of \$65/hour, amounting to a cost of \$262.

The CAT refused to accept that rate. The condo's board failed to change the rate charged for other straight-forward contracts which would not involve redacting time to be spent. Lacking any evidence that the work would require any specialized knowledge, the CAT approved the rate of \$32/hour to accumulate the records (double the current minimum wage in Ontario) plus HST if the work were to be undertaken by a contractor, rather than an employee. There was no evidence to suggest the work involved in reviewing the records required any specialized knowledge (recognizing that a different rate might be reasonable in other cases based on the specifics of the case). The CAT assessed that a 20-page construction contract could be reviewed at 8.3 min per page during 2.4 hours at a rate of \$32/hour plus \$0.20/page for photocopying, for a total charge of \$78.80 rather than the amount of \$262 set out in the Board's Response.

The board had calculated that in the case of 6 other standard contracts, it would cost \$4,372 to review, and in some cases redact, 185 pages over 68 hours at the rate of \$65/hour. The CAT applied similar fee reductions to those other contracts and noted that some simple contracts would require no detailed review or redaction and could be processed in a period of no longer than one hour at the rate of \$32/hour. The CAT concluded that the corporation had requested arbitrarily high fees, constituting an unreasonable barrier to obtaining the Records. The Tribunal ordered the corporation to provide all seven contracts at no cost to the owner, within 30 days. It can be presumed that the CAT was penalizing the condo for its excessive charges.

The CAT accepted the board's estimated 180 hours of labour to review and redact 1,500 pages of invoices, to be sorted from various boxes, some of which would relate to individual owners or units, giving rise to additional redaction time to be spent. The CAT adopted a rate of at least 8.3 pages/hour to calculate the expected work time involved (recognizing a different page rate might be reasonable in other circumstances).

The Tribunal recommended that the owner's very broad request should best be narrowed down and advised the owner to identify the specific information sought. The CAT reduced the board's charge for those invoices from \$11,850 to \$5,760, based on \$32/hour for 180 hours for 1,500 pages of invoices which were not available electronically (including the copying cost). The owner had requested electronic copies, but those records were not maintained electronically, so the Corporation would be entitled to charge \$0.20/page for photocopying costs.

The Tribunal ordered that if the owner wished to pursue a request for all invoices during the preceding three years, she must pay the corporation \$5,760 within thirty days of the date of the decision, whereupon the corporation would have to provide the invoices within 30 days of receipt of payment. (It seems unrealistic for most management companies to dedicate staff to serve one condo client for 180 hours within 30 days.)

As the unsuccessful party, the corporation was required to pay the owner's CAT fees of \$200 (since no other reasonable dispute-related expenses were alleged) failing which, the owner would be entitled to set off that amount from their common expense contributions.