



Court File No. T-1228-08

FEDERAL COURT

OMAR AHMED KHADR

Applicant

- and -

**THE PRIME MINISTER OF CANADA,
THE MINISTER OF FOREIGN AFFAIRS, THE DIRECTOR OF THE
CANADIAN SECURITY INTELLIGENCE SERVICE, and
THE COMMISSIONER OF THE ROYAL CANADIAN MOUNTED POLICE**

Respondents

NOTICE OF APPLICATION

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 Edmonton.

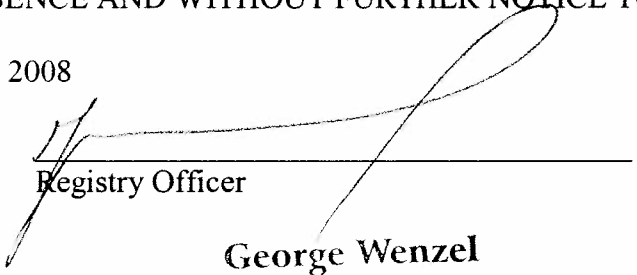
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any steps in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Court Rules, 1998 and serve it on the Applicant's solicitor WITHIN 10 DAYS after being served with this Notice of Application.

Copies of the Federal Court Rules, 1998, 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.

August 8, 2008

Issued by:



Registry Officer

George Wenzel
Registry Officer

Address of local office:

Scotia Place
10060 Jasper Avenue
Tower 1, Suite 530
Edmonton, AB T5J 3R8
(Mailing address: P.O. Box 51)
Telephone Number: (780) 495-4651
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TO:

The Right Honourable Stephen Harper, P.C., M.P.
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

The Honourable David Emerson
Minister of Foreign Affairs
Department of Foreign Affairs and International Trade
125 Sussex Drive
Ottawa, ON K1A 0G2

Director Jim Judd
Canadian Security Intelligence Service
PO Box 9732 Stn T
Ottawa, ON K1G 4G4

Commissioner William J.F. Elliott
RCMP Headquarters
1200 Vanier Parkway
Ottawa, ON K1A 0R2

AND TO:

Department of Justice Canada
211, 10199 – 101 Street
Edmonton, AB T5J 3Y4

Attention: Doreen Mueller

APPLICATION

This is an application for judicial review in respect of:

- (1) The Respondents' ongoing decision and policy not to request the repatriation of the Applicant from the custody of U.S. forces in Guantanamo Bay, Cuba; and
- (2) The Respondents' decision not to provide the Applicant with copies of all documents in the possession of the Government of Canada which are relevant to the issues raised in his prosecution.

The Applicant makes application for:

- (1) An Order pursuant to ss. 6, 7, 12 and 24(1) of the *Canadian Charter of Rights and Freedoms* in the nature of *mandamus* requiring the Respondents to demand the repatriation of the Applicant from the custody of U.S. forces in Guantanamo Bay, Cuba;
- (2) An Order pursuant to ss. 6, 7, 12 and 24(1) of the *Canadian Charter of Rights and Freedoms* in the nature of *certiorari* quashing the Respondents' ongoing decision and policy not to request the repatriation of the Applicant from the custody of U.S. forces in Guantanamo Bay, Cuba;
- (3) An Order pursuant to ss. 7, 12, and 24(1) of the *Canadian Charter of Rights and Freedoms* in the nature of *mandamus* directing the Respondents to provide counsel for the Applicant with full and complete disclosure of all documents, records and other materials in the possession of all departments of the Crown in Right of Canada which might be relevant to the charges faced by the Applicant in Guantanamo Bay, and which have not already been produced pursuant to the Order of the Supreme Court of Canada dated May 23, 2008, and the Order of the Federal Court dated June 25, 2008, and which are therefore necessary for the purpose of allowing the Applicant to raise full answer and defence to the charges, subject to any terms and conditions which this Court might deem to be just and appropriate;
- (4) Costs; and
- (5) Such further and other relief as the Court deems to be just and appropriate.

The grounds for the application are:

- (1) The Applicant is a Canadian citizen and has been held in unlawful detention by U.S. forces since July 27, 2002, when he was 15 years old.
- (2) The Respondents' policy and decisions with respect to the Applicant are patently unreasonable and perverse, and were formulated in bad faith.

(3) The Respondent's decisions and ongoing policy reflect errors of law and jurisdiction in that they are contrary to ss. 6, 7, and 12 of the *Canadian Charter of Rights and Freedoms* as informed by Canada's obligations under international law, notably Article 7 of the *Convention on the Rights of the Child on the involvement of children in armed conflict*.

(4) Since being taken prisoner, the Applicant has been subjected to torture, cruel and inhumane treatment, and "enhanced interrogation techniques" by officials of the United States contrary to s. 269.1 of the *Criminal Code* of Canada, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and the *Geneva Convention Relative to the Treatment of Prisoners of War*, as affirmed by the *Geneva Conventions Act*, R.S.C. 1985, c. G-3.

(5) The Applicant's detention and prosecution in Guantanamo Bay is, and has always been unlawful. Among the unlawful features of his detention and pending trial are the following:

1. The admissibility of statements derived from coercion and inhumane treatment.
2. Denial of fair trial protections under Common Article 3 of the *Geneva Conventions*.
3. Denial of a Prisoner of War Status determination under Article 5 of the *Geneva Conventions*.
4. Prolonged arbitrary detention without the right to a speedy trial.
5. Discrimination on the basis of nationality.
6. The imposition of *ex post facto* charges which did not exist at the time of their alleged commission.
7. Denial of the right of *habeas corpus*.
8. Denial of the right to counsel.
9. Violations of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

(6) The past and ongoing nature of the above violations "shocks the conscience" of the Canadian public.

(7) On several occasions which at least included February, 2003, November, 2003, and March, 2004, officials of the Government of Canada attended at Guantanamo Bay and interrogated Mr. Khadr for intelligence and law enforcement purposes. During these interviews, the Canadian officials intentionally elicited incriminating statements from Mr. Khadr. The statements elicited from Mr. Khadr during all the

interviews were shared with officials from the U.S. and the RCMP without restrictions or caveats as to their use.

(8) The interrogations conducted by officials of the Government of Canada were conducted at a time when the illegality of Mr. Khadr's detention under international law was open and notorious, and was known or ought reasonably to have been known by the Government of Canada. The interrogations were also conducted in the face of actual knowledge on the part of Canadian government officials that Omar had been tortured by officials of the U.S. government.

(9) More specifically, prior to conducting the Canadian interrogations in March, 2004, Mr. James Gould, an official with the intelligence branch of the Department of Foreign Affairs and International Trade was advised by a U.S. official that Mr. Khadr had been subjected to harsh and abusive treatment, to wit: prolonged sleep deprivation, in order to prepare him for his interrogation by Mr. Gould. This treatment constituted torture and or cruel and inhumane treatment contrary to the *United Nations Convention Against Torture* and the *Geneva Conventions*. Notwithstanding this information, Mr. Gould proceeded to conduct the interrogation.

(10) The Supreme Court of Canada has held that the interrogations conducted by officials of the Government of Canada, the sharing of the statements derived from those interrogations, and the subsequent refusal of the Canadian government or produce relevant documents constituted violations of Mr. Khadr's rights under s. 7 of the *Canadian Charter of Rights and Freedoms*, the *Geneva Conventions Act*, and his rights under international law.

(11) The Federal Court of Canada has held that the Government of Canada was complicit in the torture of Omar in that they conducted interrogations of him with knowledge of the fact that he had been tortured. Evidence of this mistreatment was not provided to the Applicant prior to the date of this Order and was not available by the exercise of due diligence prior to its provision pursuant to this Order.

(12) The Supreme Court of the United States has held that the conditions of the Applicant's detention, notably the denial of *habeas corpus*, the denial of access to counsel, and the features of the pre-*Hamdan* military commission regime constitute violations of U.S. statutory law, U.S. Constitutional law, and international law, notably Common Article 3 of the *Geneva Conventions*.

(13) The Applicant relies upon the following:

- a. *Canadian Charter of Rights and Freedoms*, ss. 6, 7, 12, and 24(1);
- b. *Geneva Conventions Act*, R.S., 1985, c. G-3;
- c. *Criminal Code*, R.S., c. C-46, s. 269.1;
- d. *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, Can. T.S. 1987 No. 36, Arts;

- e. *Convention on the Rights of the Child*, Can. T.S. 1992, No. 3, Art. 37;
- f. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, U.N. doc. A/RES/54/263, 25 May 2000;
- g. *Declaration of the Rights of the Child*, G.A. Res. 1386 (XIV) (1959);
- h. *Universal Declaration of Human Rights*, U.N.G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948), Art. 8;
- i. *International Covenant on Civil and Political Rights*, Can. T.S. 1976 No. 47, Art. 9;
- j. *Declaration on the Protection of all Persons from Enforced Disappearance*, Adopted by General Assembly resolution 47/133 of 18 December 1992.

(14) Such further and other grounds as this Honourable Court might allow.

This application will be supported by the following material:


- (1) The Affidavit of Omar Ahmed Khadr;
- (2) The Affidavit of Lt. Cdr. William Kuebler;
- (3) The Affidavit of April Bedard; and
- (4) Such other material as counsel may advise and this Court may allow.

The Applicant requests the Respondent to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Respondent to the Registry:

- (1) Any relevant documentary material not already in the possession of the Applicant.

August 8th, 2008

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