

**CITATION: Zarei v Iran, 2021 ONSC 3377**  
**COURT FILE NO.: CV-20-635078**  
**DATE: 20210520**

*ONTARIO*

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**MEHRZAD ZAREI personally and on behalf of the Estate of ARAD ZAREI deceased or as Personal Representative of ARAD ZAREI deceased and**

**SHAHIN MOGHADDAM personally and on behalf of the Estate of SHAKIBA FEGHAHATI deceased or as Personal Representative of SHAKIBA FEGHAHATI deceased and on behalf of the Estate of ROSS TIN MOGHADDAM deceased or as Personal Representative of ROSS TIN MOGHADDAM deceased and**

**ALI GORJI, personally and on behalf of the Estate of POUNEH GORJI deceased or as Personal Representative of POUNEH GORJI deceased and on behalf of the Estate of ARASH POURZARRADI deceased or as Personal Representative of ARASH POURZARRADI deceased and**

**JOHN DOE, JANE DOE, BILL DOE and SAM DOE**

Plaintiffs

-and-

**ISLAMIC REPUBLIC OF IRAN, ISLAMIC REVOLUTIONARY GUARD CORPS, aka ARMY OF THE GUARDIANS OF THE ISLAMIC REVOLUTION also known as IRANIAN REVOLUTIONARY GUARD CORPS, IRANIAN ARMED FORCES aka ARMED FORCES OF THE ISLAMIC REPUBLIC OF IRAN, ALI KHAMENEI also known as SUPREME LEADER OF IRAN, MOHAMMAD BAGHERI also known as MOHAMMAD-HOSSEIN AFSHORDI, HOSSEIN SALAMI, SEYYED ABDOLRAHIM MOUSAVI and AMIR ALI HAJIZADEH**

Defendants

**BEFORE:** Justice Edward Belobaba

**COUNSEL:** *Mark H. Arnold and Jonah Arnold* for the Plaintiffs<sup>1</sup>

No one appearing for the Defendants noted in default

**HEARD:** In writing

**Motion for Default Judgment – Liability**

[1] The plaintiffs move for default judgment in this action against the Islamic Republic of Iran, the Islamic Revolutionary Guard Corps and the other named Iranian defendants to establish their liability for shooting down Ukraine International Airline Flight PS 752 on January 8, 2020. The missile attacks destroyed the aircraft and killed all 167 passengers and 9 crew on board, including family members of the plaintiffs.

[2] Normally, where a defendant fails to defend and is noted in default (as happened here) the defendant is deemed under Rule 19.02 to admit the truth of the allegations of fact made in the claim. Here, however, the primary defendant is a foreign state. Under section 3(1) of the *State Immunity Act*,<sup>2</sup> a foreign state is immune from the jurisdiction of any court in Canada “except as provided” by this Act. Section 3(2) of the SIA makes clear that the state immunity protection extends even to a foreign state that has been noted in default:

In any proceedings before a court, the court shall give effect to the immunity conferred on a foreign state by subsection (1) notwithstanding that the state has failed to take any step in the proceedings.

[3] Therefore, it is not enough that the defendant state has been noted in default. The plaintiffs must satisfy the court that its action against Iran is permitted under federal legislation and if so, that liability and damages can be established.

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<sup>1</sup> I note that Mr. Zafir Jetha-Rattani, a law student at Osgoode Hall Law School, is also a member of the plaintiffs’ legal team.

<sup>2</sup> *State Immunity Act*, R.S.C., 1985, c. S-18.

[4] In a procedural Order dated January 25, 2021, Sanderson J. directed that the motion for default judgment establishing liability be heard in writing. If liability is established, the plaintiffs will then seek a judgment on damages.

[5] The *State Immunity Act*, together with its companion enactment, the *Justice for Victims of Terrorism Act*<sup>3</sup> permit civil claims against foreign states where the losses sustained were caused by the state's "commercial activity" and, in more limited circumstances, "terrorist activity". The plaintiffs focus on the "terrorist activity" exception. In their Fresh as Amended Statement of Claim, they allege that the Iranian defendants' attack on Flight 752 was an intentional act of terrorism.

[6] As I explain further below, any such judicial finding must satisfy the statutory requirements set out in the SIA, the JVTA and the *Criminal Code*.<sup>4</sup>

[7] I am assisted in this regard by the expert reports filed by Dr. Bahman Jeldi of the Canadian Society for Persian Studies and Mr. Alireza Nader, Senior Fellow at the Washington-based Foundation for the Defense of Democracies. Both Dr. Jeldi and Mr. Nader are qualified experts on Iranian political and military matters: see my rulings in the attached Appendix.q

[8] I will briefly set out the background.

### **Background**

[9] The actual events of January 8, 2020 are not in dispute. The grim chronology, as set out in numerous international reports and media investigations, can be summarized as follows.

[10] Ukraine International Airlines Flight PS 752 (a Boeing 737-800) was shot down by two Islamic Revolutionary Guard Corps ("IRGC") Tor M-1 missiles shortly after departing Tehran for Kiev. The first missile hit at 6:15 a.m., the second about 30 seconds later. Engulfed in flames, Flight 752 turned to return to the airport and continued flying for another four minutes. Then it crashed. All 167 passengers (55 Canadian citizens, 30 permanent residents and 53 others on their way to Canada) and 9 crew were killed.

[11] After several days, the IRGC publicly admitted responsibility for the crash, blaming human error. The commander of the IRGC Aerospace Force said a defense system operator mistook the passenger jet for a cruise missile. Iranian media offered two

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<sup>3</sup> *Justice for Victims of Terrorism Act*, S.C. 2010, c.1, s.2.

<sup>4</sup> R.S.C. 1970, c. C-34, as am.

explanations: that it was a mistake made by a junior IRGC officer operating the missile system or the result of electronic warfare by the U.S. Army that caused the missile system to see the Boeing 737-800 airplane as a U.S. cruise missile.

### **The plaintiffs**

[12] Four plaintiffs bring this action as personal or estate representatives of the named deceased and as their surviving family members.

[13] Merzhad Zarei lost his 18-year-old son, Arad, and sues on his behalf. Shahin Moghaddam lost his wife Shakiba and their son Rossitin. Ali Gorji lost his niece Poure and her husband Arash. They were newlyweds. The fourth plaintiff, Jane Doe, was also newly married. She had intended to take Flight 752 with her husband but was unable to obtain a visa in time for the flight. Ms. Doe asks for anonymity for fear of reprisal from the defendants. I grant this request for the reasons set out in the Appendix.

[14] Counsel advises that the three remaining Does are place-holders for plaintiffs who fear similar reprisals and may be added to the action.

[15] I am satisfied on the evidence that the three named plaintiffs are Canadian citizens or permanent residents of Canada. Jane Doe is a Canadian refugee claimant. The plaintiffs, their deceased family members and this action all have a real and substantial connection to Canada. In addition to claiming damages for terrorism, they also plead losses sustained under Section 61 of the *Family Law Act*.<sup>5</sup>

[16] The nature and extent of the damages claims is not part of this motion for default judgment on liability. Damages will be addressed in a subsequent proceeding.

### **Service of the claims on defendants**

[17] The Statement of Claim was issued on January 24, 2020 and forwarded to Global Affairs Canada on January 28, 2020, to be served on the defendants. Under s. 9 of the *SIA*, the Canadian Minister of Foreign Affairs (Global Affairs Canada) is authorized to serve such claims on foreign state defendants. Eventually, service was achieved. GAC confirmed serving the claim and issued a Certificate of Service on September 1, 2020.

[18] In his Order of October 5, 2020, Master McGraw directed that Statements of Defence be delivered by November 13, 2020, failing which the defendants could be noted in default. The defendants were noted in default on December 21, 2020.

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<sup>5</sup> R.S.O. 1990, c. F.3.

## The applicable legislation

[19] In 2012, Canada amended the SIA and enacted the JVTa to address the growing threat of international terrorism. As the Court of Appeal noted in *Tracy v Iran*,<sup>6</sup> it was Parliament’s intention “to carve out a new exception to state immunity for the purposes of (i) deterring terrorism and (ii) making it easier for plaintiffs to make claims against states that support terrorism and that have assets in Canada that could assist in satisfying a judgment”.<sup>7</sup>

[20] The amended SIA allows the federal Cabinet to “list” foreign states or entities that are supporters of terrorism. Section 6.1(1) provides that a listed state or entity “is not immune from the jurisdiction of a court in proceedings against it for its support of terrorism”. If a foreign state or entity is listed as a supporter of terrorism, the immunity against lawsuits is lifted under the JVTa.

[21] Section 4(1) of the JVTa creates a civil cause of action for claims against listed supporters of terrorism if the actions of the foreign state or entity that caused loss or damage are actions that are terrorism offences as set out in the *Criminal Code*. Section 4(1) of the JVTa provides as follows:

Any person that has suffered loss or damage in or outside Canada on or after January 1, 1985 as a result of an act or omission that is, or had it been committed in Canada would be, punishable under Part II.1 of the *Criminal Code*, may, in any court of competent jurisdiction, bring an action to recover an amount equal to the loss or damage proved to have been suffered by the person and obtain any additional amount that the court may allow, from any of the following:

...

(b) a foreign state whose immunity is lifted under section 6.1 of the *State Immunity Act*, or listed entity or other person that ... committed an act or omission that is, or had it been committed in Canada would be, punishable under any of ss. 83.02 to 83.04 and 83.18 to 83.23 of the *Criminal Code*.

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<sup>6</sup> *Tracy v. Iran (Information and Security)*, 2017 ONCA 549.

<sup>7</sup> *Ibid.*, at para. 52.

[22] On September 7, 2012 under Section 6.1(2) of the *SIA* and the requisite Order-in-Council, the Islamic Republic of Iran was listed as a foreign state sponsor of terrorism and remains so to this day.<sup>8</sup>

[23] As the Court of Appeal explained in *Tracy v Iran*:<sup>9</sup>

A plain reading of the *JVTA*, together with the contemporaneous amendments to the *SIA*, establishes that Iran's immunity from civil proceedings related to terrorism was lifted in September 2012, exposing them to liability for acts of terrorism they supported that occurred on or after January 1, 1985.

[24] Although the *JVTA* itself does not explicitly state that only foreign states on the list established by the Cabinet under s. 6.1(2) of the *State Immunity Act* may be sued using the cause of action described in s. 4(1) of the *JVTA*, the practical effect of the amendments introduced by the *SIA* is that only listed foreign states may be sued. This is because the amendments to the *SIA* create an exception to state immunity only for listed states that support terrorism.<sup>10</sup>

[25] Section 2 of the *SIA* defines "terrorist activity":

Terrorist activity in respect of a foreign state has the same meaning as in subsection 83.01(1) of the *Criminal Code* provided that a foreign state set out on the list referred to in subsection 6.1(2) does the act or omission on or after January 1, 1985.

[26] Under the amended *SIA* and the *JVTA*, the plaintiffs are permitted to sue the Iranian defendants for shooting down Flight 752 if they can establish that the missile attacks were actions that would be punishable in Canada under any of ss. 83.02 to 83.04 and 83.18 to 83.23 of the *Criminal Code*.

[27] Section 83.02 (a) is the most relevant herein:

**83.02** Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years who, directly or indirectly, wilfully and without lawful justification or excuse, provides

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<sup>8</sup> *Order Establishing a List of Foreign State Supporters of Terrorism*, S.O.R. 2012-170.

<sup>9</sup> *Supra*, note 6, at para. 46.

<sup>10</sup> *Ibid.*, at para. 53.

... property intending that it be used or knowing that it will be used, in whole or in part, in order to carry out

(a) an act or omission that constitutes an offence referred to in subparagraphs (a)(i) to (ix) of the definition of terrorist activity in subsection 83.01(1);

[28] Section 83.01(1) of the *Criminal Code* defines “terrorist activity”. The civil aviation dimension in this definition and the corresponding provisions that best apply on the facts herein are set out in s. 83.01(1)(a)(ii) which links to ss. 7(2) and 77 as follows:

**83.01(1)(a)** An act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:

...

(ii) the offences referred to in subsection 7(2) that implement the *Convention for the Suppression of Unlawful Acts against the Safety of Civilian Aviation*, signed at Montréal on September 23, 1971...

**7(2)** Notwithstanding this Act or any other Act, everyone who ... (b) in relation to an aircraft in service, commits an act or omission outside Canada that if committed in Canada would be an offence against any of paragraphs 77 (c), (d) or (g) ...

**77(c)** Everyone who ... causes damage to an aircraft in service that renders the aircraft incapable of flight or that is likely to endanger the safety of the aircraft in flight... is guilty of an indictable offence and liable to imprisonment for life.

[29] The definition of “terrorist activity” in s. 83.01(1) of the *Criminal Code* concludes by making clear that the definition does not include acts committed during “an armed conflict” that accords with customary international law:

... for greater certainty, [“terrorist activity”] does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.

[30] I pause here to note that the plaintiffs also plead the more conventional understanding of “terrorist activity” as defined in s. 83.01(1)(b) — an act or omission that is committed for “a political, religious or ideological purpose, objective or cause with the intention of intimidating the public ... with regard to its security ...”.

[31] This case however, involves the shooting down of a civilian passenger plane. Therefore, the definition of “terrorist activity” as set out in s. 83.01(1)(a), which explicitly deals with civil aviation, provides a sufficient platform for analysis.

[32] Because this is a civil action, the applicable burden of proof is balance of probabilities.<sup>11</sup>

## **Two issues**

[33] As already noted, the actual events of January 8, 2020 are not in dispute — the defendants shot down a civilian passenger jet, Ukrainian Airlines Flight 752, with two missiles spaced 30 seconds apart, killing all onboard.

[34] The applicable law, as set out above, requires that the court focus on two issues: (i) whether the missile attacks were intentional;<sup>12</sup> and (ii) whether these actions occurred during an armed conflict. Both questions can be answered on the balance of probabilities.

[35] For the reasons that follow, I answer both questions in favour of the plaintiffs. The plaintiffs have established on a balance of probabilities that the missiles were launched intentionally and during a time in which there was no armed conflict.

## **Analysis**

### **(1) The missile attacks were intentional**

[36] In the many reports that have studied the shoot-down of Flight 752, most researchers linked this deadly event to what had happened five days before.

[37] On January 3, 2020, the United States launched a drone strike killing terrorist Qasem Soleimani, Commander of the Islamic Revolutionary Guard Corps' Qods Force near Baghdad Airport in Iraq. U.S. officials reported that General Soleimani was planning imminent attacks on Americans and had to be stopped.

[38] The plaintiffs submit that the shoot-down of Flight 752 was Iran’s retaliation for the killing of Soleimani. They point to what Iran said in its *Final Report of the Aircraft Accident Investigation Board of the Islamic Republic of Iran* dated March 15, 2021. Iran itself suggested the linkage:

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<sup>11</sup> *Tracy, supra*, note 6, at para. 65

<sup>12</sup> It is trite law that *mens rea* or ‘knowledge of wrongdoing’ is generally required for a criminal conviction — in this civil action, as already noted, this knowledge or intention requirement can be established on a balance of probabilities.



Iran strongly condemned the assassination (of Gen. Soleimani) and officially declared it a clear example of state terrorism, the responsibility for the consequences of which would rest entirely with the U.S. regime. *Iranian officials also vowed they would exact revenge on the U.S. action appropriately.* (Emphasis added).

[39] These comments are relevant but not determinative. The evidence that allows this court to find on a balance of probabilities that the missiles attacks on Flight 752 were intentional are the findings in the numerous reports that have studied the matter including the two expert reports filed by the plaintiffs.

[40] One example is the report of Ralph Goodale, Special Advisor to Canadian Prime Minister.<sup>13</sup> The Goodale Report rejects Iran's claims of human and technical error and concludes that the Iranian claims are unsubstantiated. Those claims allege that the missile defense battery made a 107-degree directional error, that IRGC personnel lost all contact with the command center for several crucial seconds and the operators, "mistook a [130-foot] long commercial passenger jet taking off and ascending from east to west for some sort of threatening aircraft or missile coming in from west to east."

[41] Another example is the report of Agnes Callamard, Special Rapporteur to the United Nations Human Rights Council. The Callamard Report<sup>14</sup> of February 23, 2021 examines the missile attacks in detail and also disputes the Iranian government's claims that the shooting down of Flight 752 was an "accident" due to "human error." The UN Special Rapporteur concludes that "the inconsistencies in the official explanations seem designed to create a maximum of confusion and a minimum of clarity. They seem contrived to mislead and bewilder".

[42] I rely mainly on the expert reports filed by the plaintiffs. The expert reports are detailed in their analyses and unequivocal in their conclusions. In the opinion of Dr. Jeldi, an Iranian analyst with the Canadian Society for Persian Studies, "the IRGC knew Flight PS 752 was a civilian airplane and purposefully shot it down with the intent to destroy it." Dr. Jeldi explains:

Considering the TOR-M1 advanced military capabilities, two radars and control system, pre-approved flight plans and control of the airspace resting with the IRGC, and the firing of not one, but two missiles, it is

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<sup>13</sup> Report of the Special Advisor to the Prime Minister, Government of Canada, *Flight 752: The Long Road to Transparency, Accountability and Justice*, (December 2020).

<sup>14</sup> Agnes Callamard, *Mandate of Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, (December 24, 2020) (AL IRN 28/2020).

not possible for two missiles to be fired by mistake as IRGC claims. There are multiple redundant systems and procedures to prevent accidental shooting of civilian aircraft. Also, the IRGC did not target the other aircraft in flight at the same time. The military in Iran controlled the airspace and aircraft within that space and knew that Ukraine International Airways PS 752 was a civil aircraft and was not hostile.

In my opinion, based upon the research I have conducted, the documents reviewed and listed and my experience, the Islamic Republic of Iran, IGRC and other parties listed as defendants in this claim planned and deliberately committed the intentional act of shooting down Ukrainian International Airlines PS 752 on January 8, 2020.

[43] This was also the conclusion of Elireza Nader, Senior Fellow at the Foundation for the Defense of Democracies:

It is my opinion that the IRGC's shoot down of PS752 was intentional. It is highly unlikely that the IRGC operators mistook PS752 for a U.S. missile as the Iranian government claims. It is highly unlikely that a technical "misalignment" or "human error" caused the IRGC operators to shoot down PS752. The firing of not one but two surface-to-air missiles at PS752 also reinforces the intentional nature of the IRGC's actions.

[44] Based on these national and international reports and in particular on the detailed analyses in the Jeldi and Nader expert reports, I find on a balance of probabilities that the missile attacks on Flight 752 were intentional.

## **(2) There was no "armed conflict"**

[45] Likewise, I find on a balance of probabilities, that the "armed conflict" exception is not available to the defendants because there was no armed conflict in the region at the time in question.

[46] Strictly speaking, the onus is on the defendants to lead evidence of any such armed conflict. As the Supreme Court of Canada noted in *Khawaja*,<sup>15</sup> the purpose of the "armed conflict" exception is to exempt conduct during an armed conflict that is in accordance with applicable international law. The "armed conflict" exception is only available as a defence. In a criminal trial, the onus is on the accused to raise the exception and provide a *prima facie* case that it applies.<sup>16</sup>

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<sup>15</sup> *R. v. Khawaja*, [2012] S.C.J. No 69.

<sup>16</sup> *Ibid.*, at paras. 98-100.

[47] Here, the defendants have been noted in default. They are not before the court on this motion for default judgment. I can nonetheless make a finding on the “armed conflict” issue on a balance of probabilities based on the evidence adduced by the plaintiffs.

[48] As this court has noted, this particular finding can be based on “books, articles and the opinions of international law experts.”<sup>17</sup> In the matter before me, I base my finding on the following reports and expert opinions.

[49] UN Special Rapporteur Agnès Callamard concluded in her report of August 15, 2020<sup>18</sup> that there was no armed conflict in the region on or around January 8, 2020. She said this:

In the months preceding the [Soleimani] strike, neither the US nor Iran spoke of their being in armed conflict with the other... Following the Soleimani strike, the US administration officially declared that the “United States is not currently engaged in any use of force against Iran”, and that following the strike and Iran’s response, “there have been no further uses of force between Iran and the United States”. Iran’s Foreign Minister declared the strike an “act of terrorism”, and Iran promised revenge. But no action or statement has been made suggesting that either State considered themselves to be at war, either before or after the strike against General Soleimani.

[50] Messrs. Jeldi and Nader, the two Iran experts, also concluded that there was no armed conflict in the region during the time of the missile attacks on Flight 752. Dr. Jeldi stated the following:

Although there were skirmishes in the region between Iran and the United States of America surrounding the Soleimani incident, those skirmishes did not amount to an armed conflict between those countries

[51] After a detailed review of the evidence, Mr. Nader also concluded that there was no armed conflict in the region when Flight 752 was shot down.

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<sup>17</sup> *R. v. N.Y.*, 2008 CANLII 24543 (ONSC), at para. 77.

<sup>18</sup> Agnès Callamard, *Use of Armed Drones for Targeted Killings A/HRC/44/38, Report of Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions* (August 15, 2020) at Annex, Part II, paras. 24 and 39.

## Conclusion

[52] I find on a balance of probabilities that the missile attacks on Flight 752 were intentional and directly caused the deaths of all onboard. I further find on a balance of probabilities that, at the time in question, there was no armed conflict in the region.

[53] The plaintiffs have established that the shooting down of Flight 752 by the defendants was an act of terrorism and constitutes “terrorist activity” under the SIA, the JVTA and the provisions of the *Criminal Code*, as discussed above.

[54] The plaintiffs are entitled to default judgment on liability.

## Disposition

[55] The motion for default judgment on liability is granted.

[56] I shall remain seized with respect to the damages trial.

[57] The plaintiffs ask for \$157,569 in costs on a full indemnity basis. This costs request is inclusive of fees, disbursements and HST and covers all work done to date including the numerous court attendances. I have reviewed the costs outline and find it to be fair and reasonable.

[58] Under s. 131 of the *Courts of Justice Act*<sup>19</sup> and Rule 57.01(4)(d) the court has the discretion to award the costs on an elevated basis not only for egregious conduct during the course of the litigation but also (albeit rarely) for egregious and blameworthy pre-litigation conduct.<sup>20</sup> As the Alberta Court of Appeal noted in *Pillar Resources*:

Where the positive misconduct of the party *which gives rise to the action is so blatant and is calculated to deliberately harm the other party*, then despite the technically proper conduct of the legal proceedings, the very fact that the action must be brought by an injured party to gain what was rightfully his in the face of an unreasonable denial is in itself positive misconduct deserving of indemnification whether punitive damages are awarded or not.<sup>21</sup> (My emphasis).

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<sup>19</sup> R.S.O. 1990, c. C.43.

<sup>20</sup> *Hunt v. TD Securities Inc.* (2003), 66 O.R. (3d) 481 (C.A.) at para. 123; *Davies v Clarington (Municipality)*, 2009 ONCA 722 at para. 30.

<sup>21</sup> *Pillar Resource Services Inc. v PrimeWest Energy Inc.* [2017] A.J. No. 41 (C.A.) at para. 89.

[59] In my view, the facts and findings herein fully support an award of costs on a full indemnity basis.

[60] Order to go accordingly.

Signed: *Justice Edward P. Belobaba*

Notwithstanding Rule 59.05, this Judgment [Order] is effective from the date it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal Judgment [Order] need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party to this Judgment [Order] may nonetheless submit a formal Judgment [Order] for original signing, entry and filing when the Court returns to regular operations.

**Date:** May 20, 2021

### **Appendix: Procedural Rulings**

*The plaintiffs filed two procedural motions: the first deals with expert reports and the second deals with a request to seal a confidential affidavit and allow one of the plaintiffs to use the name “Jane Doe”.*

***The motion for an Order declaring the reports of Bahman Jeldi dated March 17, 2021 and Alireza Nader dated March 15, 2021 as expert reports is granted.*** Both are easily qualified as experts on Iran political and military matters. Mr. Jeldi is an Iranian Affairs Analyst with the Canadian Society for Persian Studies. Mr. Nader is a Senior Fellow at the Foundation for the Defense of Democracies, a specialist in Iranian issues and long-time advisor to the U.S. government. Both conclude their detailed analyses with the shared opinion that (i) the double-missile attack was intentional and (ii) the Islamic Republic of Iran and the United States were not engaged in an "armed conflict" as that term is known and understood at international law.

The third report, written by a senior and experienced Canadian airline pilot, repeats the “intention” conclusions in the other reports and is not required for the purposes of this decision.

***The motion for an Order sealing the confidential affidavit of “Jane Doe” and allowing her to use this name in this proceeding is granted.*** I have reviewed the confidential

affidavit material. Jane Doe has a genuine and credible fear of reprisal against herself here in Canada and her family still in Iran. As she explains in her affidavit:

After Iran shot down PS 752, I was threatened by Iranian officials not to talk to any media about what happened and not to engage in any public protests. I feared for my life.

I have applied for refugee status in Canada. If I return to Iran, my life will be at risk. My participation as a plaintiff puts my life at further risk ...I have no plans to leave Canada and no plans to return to Iran. Canada is my new home.

I have asked to remain anonymous as a plaintiff. If I become known as a plaintiff my family in Iran will be in grave danger. I have a sister and a brother still living in Iran. My siblings are prominent Iranian citizens who hold top positions in their respective professions.

My brother and sister each advised me and I believe, a high-ranking officer of the defendant Islamic Revolutionary Guard Corps ("IRGC") contacted them multiple times over the past year. This IRGC officer threatened my family and me with arrest and jail time if we speak with the media, any foreigners, or engage in any political activity relating to the plane crash. My remaining family in Iran is under IRGC scrutiny because they are related to a person who lost his life when Iran shot the airplane down.

If I become known as a plaintiff, there is a real and substantial risk the Iranian regime will take members of my family into custody where they will face torture and or be killed by the Iranian regime. They will do this to silence me.

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