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Affidavit of Kourosh Farrokhzad

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FEDERAL COURT

BETWEEN:

ABOUSFIAN ABDELRAZIK

Applicant

- and -

**MINISTER OF FOREIGN AFFAIRS
and THE ATTORNEY GENERAL OF CANADA**

Respondents



AFFIDAVIT OF KOUROSH FARROKHZAD



I, Kourosh Farrokhzad, of the City of Ottawa in the Province of Ontario MAKE OATH AND SAY:

- 1. I am a sole practitioner and associate within the law association of Hameed Farrokhzad St-Pierre based in Ottawa, Ontario. I am not involved as counsel with respect to any matter relating to the Applicant. I have knowledge of the facts to which I herein depose based on my review of the documents attached to my affidavit and based upon information communicated to me by Mr. Yavar Hameed, counsel for the Applicant, all of which I believe to be true.
- 2. I make this affidavit in support of the Applicant's motion to be heard on November 26, 2008 to compel answers to certain questions of the Respondents' witness Sean Robertson, to admit as part of the record of this application a document identified as the "Etihad Itinerary", to compel production of documents listed in the Amended Direction to Attend addressed to Sean Robertson and for a declaratory relief.
- 3. I am informed by Mr. Hameed that the Applicant is a Canadian citizen who is currently unable to return to Canada. In 2003 he travelled to Sudan, his country of origin, where he was subsequently detained by Sudanese authorities on two occasions for a cumulative period of approximately two years. The Applicant affirms he was mistreated and abused while in detention.

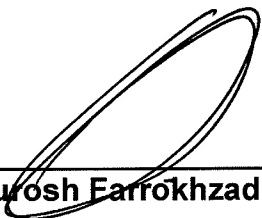
4. I am informed by Mr. Hameed that, in April 2008, the Applicant sought refuge in the Canadian Embassy in Khartoum given the newly emergent media attention on his case and the increased fear of repercussion, arbitrary detention or mistreatment by Sudanese or other authorities. He has remained in the Canadian Embassy in Sudan in a status known as "temporary safe haven" since April 2008.
5. On May 7, 2008, the Applicant issued a Notice of Application in this matter pursuant to sections 18 and 18.1 of the *Federal Courts Act*. The original application named the Minister of Foreign Affairs and International Trade. Upon leave of the Court, the Applicant filed on October 6, 2008, an Amended Notice of Application correcting the Minister's name and adding the Attorney General of Canada as a Respondent. A copy of the Amended Notice of Application is attached hereto as Exhibit A.
6. In his Amended Notice of Application, the Applicant seeks a mandatory order directing the Respondents to immediately repatriate him from Sudan to Canada by any safe means at its disposal. The Notice of Application also seeks a declaration that the Respondents violated the Applicant's right to enter Canada under section 6(1) of the *Canadian Charter of Rights and Freedoms*.
7. I am informed by Mr. Hameed that the Applicant filed two affidavits in support of the instant application. The affidavit of the Applicant Abousfian Abdelrazik and an affidavit sworn by Ms. Jo Wood were filed on July 29, 2008.
8. On September 12, 2008, the Respondents filed four affidavits in support of their response to the Application including affidavits from a Senior Consular Official in the Canadian embassy in Khartoum, Eric O'Connor, a Department of Foreign Affairs Consular Affairs representative in Ottawa, Sean Robertson and two military personnel: Michel Latouche and Geoffrey Everts.
9. The Applicant chose to cross-examine orally only Mr. Robertson; accordingly, the cross-examination of Mr. Robertson was held on October 7, 2008. The Applicant proceeded by way of written examination for Mssrs. Latouche and Everts' affidavits and Mr. O'Connor was not cross-examined. Mr. Robertson's affidavit sworn on September 9, 2008 is attached hereto as Exhibit B.
10. I am informed by Mr. Hameed that, on September 15, 2008, the Applicant served the Respondent with a Direction to Attend addressed to Sean Robertson. The Applicant subsequently amended the Direction to Attend and informed the Respondents on September 21, 2008 that he was withdrawing paragraphs 3, 4, 7 and 11-13. The Amended Direction to Attend, a copy of which is attached hereto as Exhibit C, was served on the Respondents on October 6, 2008.
11. On October 6, 2008, Mr. Hameed received a letter from Elizabeth Richards, counsel for the Respondents, informing the Applicant of the Respondents' refusal to produce

the documents requested at item 10 of the Amended Direction to Attend on the basis that they are “not relevant to the matters at issue in this Application”. A copy of Ms. Richards’ letter setting out the Respondents’ position is attached hereto as Exhibit D.

- 12. During the course of cross-examination of Mr. Robertson, which was conducted by Professor Amir Attaran as agent for Mr. Hameed, Professor Attaran posed several questions to the witness, to which counsel for the Respondents objected. These questions include questions 167 to 170 and 582 to 586 as per the transcript of Mr. Robertson’s cross-examination.
- 13. With respect to questions 582 through 586, counsel for the Applicant requested the Respondents to identify two documents. The first document is a Globe and Mail article dated September 11, 2008 by Paul Koring entitled, “Ottawa withholding travel papers for Canadian”. The Globe and Mail article is attached hereto as Exhibit E.
- 14. Likewise, the second document is a travel itinerary for Mr. Abdelrazik’s proposed travel from Khartoum to Toronto on September 15, 2008 on Etihad Airlines. The Itinerary was prepared by Etihad Airlines and submitted to the Applicant’s counsel on August 25, 2008. The Etihad Airlines itinerary (the “Etihad Itinerary”) is attached hereto as Exhibit D.
- 15. I am informed by Mr. Hameed that counsel for the Respondents objected to Mr. Robertson identifying the documents and further objected to counsel for the Applicant entering the documents as lettered exhibits to the cross-examination of Mr. Robertson for the purpose of identification in the event of a subsequent motion.
- 16. Counsel for the Respondents refused to permit Mr. Robertson to answer any question relating to the Etihad Itinerary on the purported basis that the itinerary was protected by settlement privilege, litigation privilege and solicitor-client privilege. Counsel for the Respondents suggested that the documents in question should be submitted as part of a motion to compel answers from the witness.
- 17. Counsel for the Applicant proceeded to ask questions 582 through 586 relating to the Etihad Airlines intinerary. The witness was directed not to answer these questions on the basis that the itinerary was part of a settlement.

Sworn before me at the)
 City of Ottawa in the Province of)
 Ontario on November 7, 2008)

 A Commissioner Etc.



 Kouros Farrokhzad