

11-26-2008

## Respondent's Notice of Motion returnable 26 November 2008

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**FEDERAL COURT**

BETWEEN:

**ABOUSFIAN ABDELRAZIK**

Applicant

and

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

Respondents

**NOTICE OF MOTION**

**TAKE NOTICE THAT** the respondents will make a motion before Prothonotary Tabib on Wednesday, November 26, 2008, at 9.30 a.m. or as soon thereafter as the motion can be heard, at the Federal Court, Ottawa.

**THE MOTION IS FOR:**

- a) leave of the Court pursuant to Rules 84(2) and 312(a) of the *Federal Courts Rules* for the respondents to file additional affidavits;
- b) such further and other relief as counsel may advise and this Honourable Court may permit.

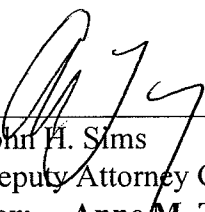
**THE GROUNDS FOR THE MOTION ARE:**

- a) During cross-examination on his affidavit, the applicant raised entirely new allegations. He claimed for the first time that he had informed Government of Canada officials of torture he alleges to have suffered while in Sudanese custody.
- b) The applicant did not include these allegations in his affidavit. Neither were the allegations contained in the applicant's other supporting affidavit, or his notice of application. Furthermore, up until the cross-examination of the applicant, the applicant's theory of the case appeared to be that the applicant had *not* informed Canadian officials of alleged torture – the exact inverse of the new allegation.
- c) The respondents, therefore, were not made aware of the allegations and were unable to anticipate them. As a result, the respondents were denied the opportunity to submit affidavit evidence in response.
- d) The respondents therefore seek leave to file additional affidavit evidence. The additional affidavits are for the limited purpose of responding to the allegations that the applicant told Canadian officials about his alleged torture in Sudanese custody.
- e) Rules 84 and 312 of the *Federal Courts Rules*.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- a) The applicant's affidavit sworn June 25, 2008;
- b) excerpts of the transcripts of the cross-examination of the respondents' affiant, Sean Robertson;
- c) excerpts of the transcripts of the cross-examination of the applicant;
- d) the Affidavit of David Hutchings sworn November 5, 2008;
- e) such further and other materials as counsel may advise and this Honourable Court may permit.

November 7, 2008

  
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John H. Sims  
Deputy Attorney General of Canada  
**Per: Anne M. Turley**  
**Elizabeth Richards**  
Department of Justice  
Room 1148, East Tower  
234 Wellington Street  
Ottawa, ON K1A 0H8

Tel: (613) 941-2347  
Fax: (613) 954-1920

Solicitors for the Respondents

TO: **Yavar Hameed**  
Barrister & Solicitor  
Equity Chambers  
43 Florence Street  
Ottawa, ON K2P 0W6  
Tel: 613-232-2688  
Fax: 613-232-2680  
Solicitor for the Applicant