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Excerpts of transcript of the Cross-examination of the Respondent's Affiant, Sean Robertson

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1 PROFESSOR ATTARAN: Ms. Turley, you know the
2 question was asked in relation to consular services
3 because it had been asked in relation to consular services
4 for five previous ones. We're on number six now.

5 70. Q. In relation to consular services, Mr.
6 Robertson, are those affected with respect to number six?
7 Which has already been read into the record.

8 A. Number six says contacting relatives or
9 friends to ask them to send money or airline tickets. No,
10 there's no restriction on him contacting relatives or
11 friends, the individuals that may themselves be under 1267
12 restrictions in terms of transferring money or airline
13 tickets, but again that's -- that would be the effect on
14 the individuals.

15 71. Q. So he may contact them but not necessarily
16 receive from them?

17 A. That's my understanding. I'm not an expert on
18 the 1267.

19 72. Q. Understood. Thank you for giving your best
20 answer. Are you aware if the Applicant has, in pursuit of
21 consular services, applied for a passport while in Sudan?

22 A. I believe, yes, he has applied for a passport.

23 73. Q. I believe he applied for a passport in
24 September 2005; is that correct?

25 A. Possibly, yes.

1 74. Q. Let me give you this to refresh your memory,
2 the consular case file.

3 MS. TURLEY: Is it in his Affidavit?

4 PROFESSOR ATTARAN: It's from the consular case
5 file.

6 MS. TURLEY: So it's in Jo Wood's Affidavit?

7 PROFESSOR ATTARAN: Yes.

8 MS. TURLEY: If you can refer us to the page then
9 I can open it for him.

10 PROFESSOR ATTARAN: We'll give it to you, we'll
11 give you copies. It's on the CD-ROM in Jo Wood's
12 Affidavit and rather than require you to all bring
13 computers and look at the CD-ROM we printed out--

14 MS. TURLEY: We have printed copies. We have
15 everything printed.

16 PROFESSOR ATTARAN: Do you?

17 MS. TURLEY: So if I know the case note file I can
18 find it.

19 PROFESSOR ATTARAN: Would you prefer to do it that
20 way?

21 MS. TURLEY: Yes.

22 PROFESSOR ATTARAN: Or would you like our copies?

23 MS. TURLEY: No, I'd like to see where it is in Jo
24 Wood's Affidavit.

25 PROFESSOR ATTARAN: It's page 246, if you look at

1 the bottom right corner.

2 MR. HAMEED: We have a copy as well, if you want
3 to refer to...

4 PROFESSOR ATTARAN: Let's confirm that we've got
5 the same document. We've handed you copies as well and,
6 Ms. Turley, I'm going to suggest, to make it easier, that
7 although this material is already in Jo Wood's Affidavit
8 at Exhibit A on CD-ROM it may be simpler for the court if
9 these same documents are exhibited in this Cross-
10 Examination once you're satisfied they're exactly the same
11 documents. That way they'll be in a single place, a
12 single transcript with all of the attachments.

13 MS. TURLEY: As long as Mr. Robertson can speak to
14 them and they're properly made exhibits, yes, but if he
15 cannot speak to them then they're not proper exhibits.

16 PROFESSOR ATTARAN: It's only for a matter of
17 convenience, to have them in one place.

18 MS. TURLEY: That's fine.

19 PROFESSOR ATTARAN: Thank you for your agreement.

20 75. Q. Mr. Robertson, I saw your counsel producing
21 from her volume of documents corresponding to Exhibit A in
22 Jo Wood's Affidavit a printed version of a document which
23 bears near the lower right-hand corner the page number
24 000246; is that correct?

25 A. Correct.

1 76. Q. Just to confirm, that document of which we've
2 also handed you a copy, and your counsel, is an email from
3 John Fink sent to Odette Gaudet-Fee on September 22nd,
4 2005; is that right?

5 A. Correct.

6 77. Q. Odette Gaudet-Fee I believe works for you in
7 the consular section; is that right?

8 A. Correct. She's the consular case management
9 officer for Africa.

10 78. Q. And was she in that position at the time of
11 this email?

12 A. Yes, she was.

13 PROFESSOR ATTARAN: Could you please just have a
14 look at that email quickly and then I'll ask you a
15 question on it.

16 MS. TURLEY: Sorry, could we go off the record for
17 a moment?

18 (OFF RECORD DISCUSSION)

19 PROFESSOR ATTARAN: Okay, we're back on the
20 record.

21 79. Q. Mr. Robertson, does this document refresh your
22 memory as to the timing that the Applicant applied for a
23 Canadian passport in September 2005?

24 A. Yes, it does.

25 PROFESSOR ATTARAN: And let's mark this, if we

1 could, as an exhibit.

2 EXHIBIT NO. 1: An email from John Fink sent to
3 Odette Gaudet-Fee on September 22nd, 2005. (From
4 page 000246 of Exhibit A in Jo Wood's Affidavit).

5 PROFESSOR ATTARAN:

6 80. Q. Mr. Robertson, are you aware of any later
7 passport application made by the Applicant?

8 A. Yes. I believe he applied for a passport in
9 the spring of 2008. The exact date of the application,
10 though, I don't recall off the top of my head.

11 81. Q. I believe it was March 2008. Does that sound
12 right?

13 A. Sounds about right, yes.

14 82. Q. Are you aware if there has been a decision
15 given to the Applicant on either the September 2005 or the
16 March 2008 passport applications?

17 A. The September 2005 I don't recall what the
18 Applicant was advised with respect to that application.
19 The spring 2008 that application he was advised that a
20 travel document could be issued subject to provision of a
21 confirmed travel itinerary.

22 83. Q. Has a passport been issued in accordance with
23 either the September 2005 or the March 2008 application?

24 A. No, it has not.

25 84. Q. Are those applications now refused or are they

1 pending?

2 MS. TURLEY: I'm not sure the relevance of this.
3 I've looked at the Notice of Application and this is not
4 an issue in this Application, nor has Mr. Robertson given
5 any evidence about this in his Affidavit, which the
6 questions would flow from.

7 PROFESSOR ATTARAN: He's given evidence that the
8 provision of a passport is a consular service. So I'm
9 asking if that consular service has now been rendered.

10 85. Q. Are you aware if the passport applications
11 filed in September '05 and March '08 have been declined or
12 are they still pending?

13 A. As I have already said, the September 2005
14 application I'm not aware of the status of that. I would
15 have to see the file. The March 2008 to my knowledge
16 that's still an active request.

17 86. Q. It's still pending?

18 A. Yes.

19 87. Q. In paragraph 8 of your Affidavit, sir, you say
20 the consular fair policy does not include a number of
21 services, such as making travel arrangements, intervening
22 in private legal matters, or accepting mail. Will you
23 agree that in this file at times those three things have
24 happened, perhaps outside of policy?

25 A. Maybe I could offer a precision on that.

1 information was checked and matched the passport
2 information?

3 A. That's what it says, yes.

4 132. Q. And he is also listed in PCL. What is PCL?

5 A. PCL is the passport control list.

6 133. Q. So the passport control list contained his
7 legal name as you find here at Exhibit H and his date of
8 birth and it was a match?

9 A. That's what the note says, yes.

10 134. Q. What's the significance of the passport
11 control list?

12 A. It's a document used by Passport Canada to...
13 I think the best way to describe it, as a list of
14 individuals who when they apply for a passport their
15 applications would require further screening. So, for
16 example, someone who has received financial assistance
17 from the government and has not paid it back would be on
18 the passport control list.

19 135. Q. If a person is on the passport control list
20 does it affect the consular services that may be given to
21 him?

22 A. It may affect the passport services which can
23 be provided to them.

24 136. Q. In which way?

25 A. In that Passport Canada, not Foreign Affairs

1 but Passport Canada, would have to determine -- if, for
2 example, the individual applied for a passport while
3 listed on the passport control list Passport Canada would
4 have to determine their eligibility for passport services.

5 137. Q. And so before, if I understand you correctly
6 and please correct me if I'm wrong, before consular
7 services would issue a passport it would check with
8 Passport Canada whether a person is on the passport
9 control list and whether issuing a passport would be
10 permitted?

11 A. That's correct. Every passport application
12 there's a check against the PCL to determine if the
13 individual is on there. If they are listed on the PCL
14 then they would refer the file to Passport for, basically,
15 their concurrence before a document could be issued.

16 138. Q. Is Passport Canada's concurrence also required
17 for the issuance of an emergency passport?

18 A. That's correct.

19 139. Q. It is?

20 A. Yes, for an individual listed on the PCL.

21 140. Q. So we have here the Applicant, Abousfian
22 Abdelrazik, born January 1st, listed on the passport
23 control list as of October 2003. Is he still on the
24 passport control list?

25 A. Yes.

1 141. Q. Mr. Abdelrazik is, as you mentioned, an
2 unusual consular services client because he's the only
3 living Canadian on the 1267 Committee list. Would you
4 characterize this as an ordinary consular case or as
5 what's been referred to in the documents as a consular
6 security case?

7 MS. TURLEY: Can you refer him to a document that
8 says that?

9 PROFESSOR ATTARAN: If you'd like.

10 142. Q. Page 1267. No, I'm sorry, page 1236, and
11 please indicate to me when you're ready to proceed.

12 MS. TURLEY: Sorry, maybe in light of this you
13 could just repeat the question.

14 THE WITNESS: Yes, could you repeat the question?

15 PROFESSOR ATTARAN:

16 143. Q. Let's just make sure we're literally on the
17 same page. Are you on page 1236?

18 A. Yes.

19 144. Q. And that contains an email from Jim Wright at
20 MJW. What's MJW?

21 A. That's four years ago, so. I'm not sure what
22 MJW is.

23 145. Q. I brought a list of DFAIT acronyms. Would it
24 refresh your memory if we provided a list?

25 A. Yes. The acronyms change with some

1 PROFESSOR ATTARAN: Are we on? We're good to go?

2 159. Q. Mr. Robertson, we just had a discussion about
3 the issuance of a passport and the passport control list
4 and its significance. I'd like to go back briefly to
5 paragraph 7 of your Affidavit where you mention the Manual
6 of Consular Instructions.

7 A. Yes.

8 160. Q. I've got here an excerpt from the Manual of
9 Consular Instructions. I'll just give that over to you.

10 MS. TURLEY: Is that reproduced in his exhibits as
11 well?

12 PROFESSOR ATTARAN: No.

13 161. Q. Have you satisfied yourself that is an excerpt
14 of the manual?

15 A. Yes it is, of volume two of the manual.

16 162. Q. I'm going to be referring to the page numbers
17 in the lower right-hand corner, which are page numbering
18 from an Access to Information Act request.

19 A. Okay.

20 163. Q. On page 316 there's discussion of the passport
21 control list and codes that are used on the list to
22 identify the reason, to annotate the reason the person is
23 on the list. Which codes apply to Mr. Abdelrazik in his
24 listing on the PCL?

25 A. I don't know the answer to that question.

1 It's not normally information that Passport Canada shares
2 with Foreign Affairs.

3 164. Q. It's not? Okay. On the next page, which is
4 317...

5 MS. TURLEY: They're cut off on the bottom of this
6 one. Oh, there they are. Okay.

7 PROFESSOR ATTARAN:

8 165. Q. Do you see the 317?

9 A. Yes, I do.

10 166. Q. Under section 520.1, reasons for refusal, it
11 lists that an application for a passport made abroad
12 should be refused from a person who, and then you see
13 conditions A, B and C?

14 A. Yes, I see that.

15 167. Q. Has the passport in this case not been issued
16 because Mr. Abdelrazik does not present sufficient
17 information to establish his identity or Canadian
18 citizenship, which is ground A?

19 MS. TURLEY: Mr. Attaran, I've given you a lot of
20 leeway with respect to this passport issue but I'll go
21 back to my objection before and I'm not going to allow him
22 to answer this, is, with respect to the Notice of
23 Application this isn't a judicial review of any refusal
24 and it's an application with respect to section 6 rights
25 and order of repatriation. There is no issue in the

1 application about the refusal to provide a passport or the
2 reasons underlying it. So I'm going to refuse it. *O*

3 PROFESSOR ATTARAN: He has said that consular
4 services include replacing a lost, stolen, damaged or
5 expired passport. That's in paragraph 7 of his Affidavit.
6 That is a consular service. I'm asking him about whether
7 the consular service has not been provided for any of
8 three reasons in the Manual of Consular Instructions to
9 which he has referred in his Affidavit. So I believe this
10 is highly relevant, Ms. Turley.

11 MS. TURLEY: The reasons for the refusal is not
12 relevant to the Application and I'm not allowing him to
13 answer, and you have your remedy if you don't like that.

14 PROFESSOR ATTARAN: His passport is relevant to
15 repatriation, which is the objective of this Application.

16 MS. TURLEY: It's not listed anywhere in your
17 Notice of Application. You're asking for the remedy of
18 repatriation.

19 PROFESSOR ATTARAN: Repatriation is not...
20 Alright, let me put it this way.

21 168. Q. Can a person be repatriated without a
22 passport, Mr. Robertson?

23 A. It would depend on where they're being
24 repatriated from.

25 169. Q. From Sudan to Canada.

1 A. You would probably need a passport, yes.

2 PROFESSOR ATTARAN: You would need a passport. So
3 I believe questions about getting a passport become--

4 MS. TURLEY: It doesn't meet the refusal. It's a
5 different thing. You're asking questions about why he has
6 not gotten a passport so far and why he may not have had
7 one, which is not on your Application. This is not an
8 application for judicial review with respect to refusal to
9 provide him a passport. I'm not going to argue any more
10 with you, Mr. Attaran. If you don't like that I'm
11 refusing it then you have your remedies and I'm not going
12 to argue with you on the record about it.

13 PROFESSOR ATTARAN: If we have to seek a direction
14 that question be answered, I'll be informing you we'll be
15 seeking costs, perhaps solicitor-client costs, on that
16 application.

17 MS. TURLEY: That's entirely up to you.

18 PROFESSOR ATTARAN: It is our position that
19 because the witness has said a passport would be required
20 for repatriation and the Application concerns repatriation
21 why he does not have a passport is a relevant issue for
22 cross-examination, particularly as the witness has sworn
23 that the provision of a passport is a consular service and
24 he is giving an affidavit and evidence on consular
25 services. Does that induce you to change your mind, Ms.

1 Turley?

2 MS. TURLEY: No.

3 PROFESSOR ATTARAN: Okay. We'll have this marked
4 as an exhibit.

5 EXHIBIT NO. 4: Main Table of Contents from Manual
6 of Consular Instruction.

7 PROFESSOR ATTARAN:

8 170. Q. I'm not going to ask you the reason, to
9 satisfy Ms. Turley's objection, but, Mr. Robertson, are
10 you aware, without disclosing the reason to me, why he has
11 not been given a passport?

12 MS. TURLEY: He doesn't have to answer that
13 either.

14 PROFESSOR ATTARAN: Yes he does, as a matter of
15 fact. I'm not asking the reason and your objection has
16 been to the reason being disclosed.

17 MS. TURLEY: Yes.

18 PROFESSOR ATTARAN: I want to know if it is within
19 his knowledge in order that...

20 MS. TURLEY: It's all irrelevant.

21 PROFESSOR ATTARAN: ...the direction can be
22 obtained. Would you please not interrupt me, Ms. Turley,
23 as you've done many times. I'm asking whether he has
24 knowledge of this matter in order that I may have, as you
25 put it, my remedy of, if necessary, applying for a

1 576. Q. Was there one or several escorts on those
2 flights from Lebanon back to Canada?

3 A. I don't know the answer to that question.

4 577. Q. Were there any escorts?

5 A. None to my knowledge. I believe they were
6 charter aircraft. There may have been. I mean there were
7 tens of flights back so who was present on all flights I
8 don't know.

9 578. Q. You don't know?

10 A. No.

11 579. Q. You don't know one way or another whether
12 there were or weren't?

13 A. No.

14 580. Q. Among those repatriated, the thousands of
15 persons repatriated from Lebanon back to Canada, were some
16 of them dual nationals?

17 A. I would -- I would suspect so.

18 581. Q. That seems likely?

19 A. It would seem likely, yes. However, I haven't
20 examined birth records of individuals repatriated.

21 582. Q. Are you aware that a flight reservation was
22 made for Mr. Abdelrazik from Khartoum back to Toronto on
23 Etihad Airways departing on September 15th?

24 MS. TURLEY: We're not answering questions about
25 that. We have previously noted on the record that was a

1 settlement proposal put forward. It's after the
2 litigation and any questions about that would be covered
3 under either settlement privilege, litigation privilege or
4 solicitor/client privilege.

O

5 PROFESSOR ATTARAN: I'm not asking about the
6 settlement offer. I'm simply asking whether he has
7 knowledge of the existence of an itinerary.

8 MS. TURLEY: It's part of the settlement offer
9 so...

10 PROFESSOR ATTARAN: No, it isn't.

11 MS. TURLEY: ...my objection stands.

12 PROFESSOR ATTARAN:

13 583. Q. I'd like to pass a Globe and Mail article over
14 to you.

15 MS. TURLEY: He's not going to answer questions
16 about that. And we already made our position quite clear
17 that it was improper for that even to be leaked to the
18 Globe and Mail because it was a settlement proposal.

O

19 PROFESSOR ATTARAN: And I believe the
20 Chief Justice reminded you of Section 2(b) of the Charter
21 on that issue.

22 MS. TURLEY: Not in respect of the settlement he
23 didn't.

O

24 PROFESSOR ATTARAN: Ms. Turley, I'll put on the
25 record that the letter of August 26th to yourself from

1 Mr. Hameed was not marked without prejudice.

2 MS. TURLEY: It doesn't matter whether it's marked
3 without prejudice or not. It says it's a settlement
4 proposal so that the Application for Judicial Review would
5 be discontinued. That is a clear settlement offer.

6 PROFESSOR ATTARAN: Then what we'll do is this, is
7 as we've done with Exhibits A and B. We're going to
8 attach this --

9 MS. TURLEY: No. I'm not agreeing that it gets
10 because it does not belong on the public record. So that
11 you can bring a separate motion on because it does not
12 belong on the record at all.

13 PROFESSOR ATTARAN: The Globe and Mail article is
14 public record.

15 MS. TURLEY: I'm not agreeing that that goes
16 before Mr. Robertson.

17 PROFESSOR ATTARAN: So you're disagreeing that
18 that even gets in as Exhibit C or as a numbered exhibit?

19 MS. TURLEY: Because you're wanting to ask
20 questions again about your settlement proposal.

21 PROFESSOR ATTARAN: Do you want me to ask my
22 questions on the record now to be dealt with for a motion
23 later?

24 MS. TURLEY: No, because with respect to that,
25 it's a blanket refusal to answer any questions respect of

1 the settlement proposal.

2 PROFESSOR ATTARAN: Okay. Well, I'll just ask my
3 questions and you can object one at a time.

4 584. Q. Are you aware, Mr. Robertson, of a flight
5 reservation that was made for Mr. Abdelrazik on
6 Etihad Airways returning on September 15th from Khartoum
7 to Toronto?

8 MS. TURLEY: He's not answering that question. *O*

9 PROFESSOR ATTARAN:

10 585. Q. Was that itinerary which was provided to
11 Ms. Turley in turn provided to you?

12 MS. TURLEY: He's not answering that question. *O*

13 PROFESSOR ATTARAN:

14 586. Q. Are you aware that there is
15 regularly-scheduled service on Etihad Airways and that
16 Etihad Airways has agreed to carry the Respondent from
17 Khartoum to Canada?

18 MS. TURLEY: He's not answering that but for a
19 different reason why he's not answering that. He's not
20 here to give evidence upon which he didn't even swear in
21 his Affidavit anything about. *O*

22 PROFESSOR ATTARAN: I believe the matter is highly
23 relevant to the relief sought in this Application,
24 Ms. Turley.

25 MS. TURLEY: It's not relevant to the relief