

FEDERAL COURT

BETWEEN:

**HAMMAM FARAH, HIBA FARAH, AYMAN OWEIDA, X. Y.,
CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS, and
AL-HAQ - LAW IN THE SERVICE OF MAN**

Applicants

- and -

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

Respondents



**NOTICE OF APPLICATION TO FEDERAL COURT
FOR JUDICIAL REVIEW
Pursuant to Section 18.1 of the *Federal Courts Act***

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appears on the following pages.

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 Applicants. The Applicants request that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitor or, if the Applicants are self-represented, on the Applicants, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, 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.**

March 5, 2024

Issued by: _____

Address of local office:

180 Queen Street West, Suite 200

Toronto, ON M5V 3L6

TO: MINISTER OF FOREIGN AFFAIRS OF CANADA

Global Affairs Canada

125 Sussex Drive

Ottawa, ON K1A 0G2

AND TO: MINISTER OF JUSTICE AND ATTORNEY GENERAL OF CANADA

c/o Deputy Attorney General of Canada

Office of the Deputy Attorney General of Canada

284 Wellington Street

Ottawa ON K1A 0H8

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**APPLICATION FOR JUDICIAL REVIEW
UNDER SECTION 18.1 OF THE
FEDERAL COURTS ACT (R.S.C., 1985, c. F-7)**

This is an application for judicial review in respect of the issuance of export and brokering permits (together, “export approvals”) for arms, ammunition, implements or munitions of war (collectively, “military goods or technology”) to Israel, as authorized by the Minister of Foreign Affairs (the “Minister”) at any time on or after October 9, 2023.

1. THE APPLICATION IS FOR:

- a) A Declaration that the issuance of permits to broker or export military goods or technology to Israel, or ultimately destined for Israel, at any time on or after October 9, 2023, places the Respondents in breach of the *Export and Import Permits Act* (the “EIPA”);

- b) A Declaration that the issuance of such permits is unlawful due to the “substantial risk” (s. 7.4 of the *EIPA*) that military goods or technology will be used by Israel to commit or facilitate violations of international humanitarian law (“IHL”), international human rights law (“IHRL”), and/or serious acts of violence against women and children, and/or undermine peace and security;
- c) To the extent that the issuance of such permits is permitted under the *EIPA*, a Declaration pursuant to section 52(1) of the *Constitution Act, 1867* that the relevant provisions of the *EIPA* are of no force or effect;
- d) A Declaration that the issuance of such permits places the Respondents in breach of Canada’s obligations under section 7 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”);
- e) A Declaration that the issuance of such permits places the Respondents in breach of Canada’s obligations under the *Geneva Conventions Act*;
- f) A Declaration that the issuance of such permits places the Respondents in breach of Canada’s international treaty obligations;
- g) A Declaration that the issuance of such permits places the Respondents in breach of Canada’s legal obligations under customary international law;
- h) An Order that the issuance of such permits be quashed and that the Respondents immediately cease issuing all permits for the brokering and export of military goods or technology, including such items capable of being adapted for military use, to or ultimately destined for Israel, and cancel all such permits issued since October 9, 2023, or prior to that date but continuing in effect on or after October 9, 2023;
- i) An Order that all applications for permits currently under consideration be denied;

- j) An Order that the Respondents immediately remove Israel from the Automatic Firearms Country Control List, pursuant to section 6 of the *EIPA*;
- k) An Order for the Applicants' costs in this matter;
- l) An Order that the Applicants not be required to pay costs, should this Application be rejected, in accordance with Rule 400 of the *Federal Court Rules*; and
- m) Any such further and other relief as counsel may request and this Honourable Court may deem just.

2. THE GROUNDS FOR THE APPLICATION ARE:

A. Background

1. Hammam Farah is a Canadian citizen of Palestinian origin and psychotherapist resident in Ontario. He has many family and friends who are members of the Holy Family Church, the last remaining Roman Catholic Church in Gaza. Since October 9, 2023, some of his family and friends in the Occupied Palestinian Territory ("OPT") have been killed by Israeli military personnel.
2. Hiba Farah is a retired Canadian citizen of Palestinian origin resident in Ontario. She has many family and friends who are members of the Holy Family Church, the last remaining Roman Catholic Church in Gaza. Since October 9, 2023, some of her family and friends in the OPT have been killed by Israeli military personnel. She is the mother of the Applicant Hammam Farah.
3. Ayman Oweida is a Palestinian-Canadian and resident in Quebec. He is Assistant Professor in Radiobiology, Nuclear Medicine, and Immunology at the Université de

- Sherbrooke. Since October 9, 2023, some of his family in Gaza have been killed by Israeli military personnel.
4. X.Y. is a 26-year old Palestinian woman from Gaza who is resident in Ontario. She is currently seeking asylum in Canada. Her immediate family still resides in Gaza.
 5. Canadian Lawyers for International Human Rights (“CLAIHR”), founded in 1992, is a nongovernmental organization of lawyers, law students, and legal academics working to promote international human rights within and in connection to Canada.
 6. Al-Haq - Law in the Service of Man (“Al-Haq”) is an independent Palestinian non-governmental human rights organisation established in 1979 in Ramallah, West Bank, to protect and promote human rights and the rule of the law in the OPT.
 7. The Applicants plead that, since on or around October 9, 2023, Canada has unlawfully approved exports or brokering permits for military goods or technology to Israel.

B. Israel-Hamas Conflict (October 7, 2023 to present)

8. On October 7, 2023, the Al Qassam Brigades and Islamic Jihad launched an armed incursion in Israel that killed over 1,100 people, including 695 Israeli civilians, 71 foreigners, and 373 Israeli military personnel. About 240 civilians and Israeli soldiers were taken as hostages into Gaza, of which an estimated 134 hostages are still being held or are unaccounted for, in acts which may amount to international crimes.
9. On October 9, 2023, Israel commenced a retaliatory air attack on Gaza, accompanied by ground forces.
10. On October 27, 2023, Israel commenced a full-scale ground invasion in Gaza.

11. Israel's conduct in its military campaign in Gaza since October 9, 2023 violates fundamental principles of international law, including international human rights law ("IHRL"), international humanitarian law ("IHL"), and constitutes serious violence against women and children.
12. On or around the time of filing this Notice, Israel's conduct, which includes acts of omission and commission by Israel's political leadership, military leadership, and soldiers of the Israel Defense Forces ("IDF") reportedly includes, *inter alia*, in approximate figures:
 - a. The killing of at least 30,228 Palestinians and injuries to 71,377 Palestinians in Gaza, the majority of which (an estimated 70 percent of dead and wounded) are said to be women and children. This proportion of civilian deaths is reportedly higher than the average in all world conflicts in the second half of the 20th century;
 - b. The forced displacement of approximately 1.7 million people as a result of Israel's military operations, representing 85% of the total population in the territory;
 - c. Indiscriminate attacks on civilian infrastructure in Gaza, including destruction or damage to approximately 77% of health facilities; 70% of homes; 72% of municipal services such as parks, courts and libraries; 68% of telecommunications infrastructure; and 76% of commercial sites;
 - d. Targeted attacks on hospitals, medical centres, ambulances, and medical convoys;

- e. Targeted attacks on “safe zones” and “safe routes” after being designated as such by Israel;
- f. The employment of starvation as a method of warfare, including the escalation of Israel’s pre-existing siege on Gaza, withholding virtually all sources of food, water, fuel, and electricity;
- g. Attacks on humanitarian aid convoys;
- h. Attacks on Palestinians seeking essential aid supplies;
- i. Instances of IDF soldiers desecrating the bodies of dead Palestinians;
- j. Targeting of Palestinian children (including reports of the deliberate killing of children by IDF snipers);
- k. Killing (targeted and/or indiscriminate) of doctors and medical workers, journalists, and civil defence and aid workers, including United Nations (“UN”) staff;
- l. Killing of unarmed civilians waving white flags (including, in one instance, a group of unarmed Israeli hostages who were shot and killed by IDF soldiers);
- m. Arbitrary detentions and inhumane treatment, some of which possibly amount to torture, of thousands of Palestinians from Gaza;
- n. Sexual assault of Palestinian women in detention centres, including rape;
- o. Increased forced displacement, extrajudicial killings, and arbitrary detentions of Palestinians living in the West Bank;
- p. Acts of genocide accompanied by various statements of Israeli officials, including the President of Israel, demonstrating an intent to destroy the Palestinian population of Gaza in whole or in part; and

- q. Inciting violence against the Palestinian civilian population, calling for collective punishment of civilians in retaliation for the Hamas attack of October 7, 2023, and inciting the commission of genocide against the Palestinian people in Gaza.

C. ICJ Ruling

13. On December 29, 2023, South Africa filed an application instituting proceedings against Israel before the International Court of Justice (“ICJ”), the principal judicial organ of the United Nations, in which it asserted violations by Israel of its obligations under the *Convention on the Prevention and Punishment of the Crime of Genocide* (the “*Genocide Convention*”).
14. As members of the UN, Canada and Israel have both accepted the jurisdiction of the ICJ, which adjudicates legal disputes between States and provides advisory opinions on legal questions referred to it by authorized UN organs and specialized agencies.
15. On January 26, 2024, the ICJ issued a Provisional Measures Order (the “ICJ Order”), finding that it was plausible that genocide was being committed in Gaza.
16. On February 23, 2024 the UN Office of the High Commissioner for Human Rights issued a press release with a message from UN experts reminding states that assisting Israel by providing arms or approving arms exports is likely to violate international humanitarian law and that state officials involved in arms exports may be individually criminally liable for aiding and abetting any war crimes, crimes against humanity or acts of genocide.

D. Canada's Provision of Export Approvals Since October 9, 2023

17. On January 28, 2024, a coalition of individuals and civil society organizations, including the Applicants Ayman Oweida, X.Y., CLAIHR, and Al-Haq, sent a letter (the "Letter") to the Respondent Minister of Foreign Affairs, urgently requesting information on Canada's approval of permits for exporting and brokering military goods or technology destined for Israel, and demanding that the Respondents cease issuing such permits pursuant to sections 7.3-7.4 of the *EIPA*, and to cancel all permits issued after October 7, 2023.
18. The Letter requested that the Minister respond within 14 days. As of the time of filing this Notice, the Minister has not responded to the Letter.
19. Publicly, the Respondents have consistently maintained they have not issued any export approvals for "full weapon systems" since October 9, 2023.
20. Recent Access to Information requests have revealed that, between October 9, 2023, and early December 2023, Canada has approved an additional \$28.5 million in exports of military goods and technology, representing a higher total value of military exports to Israel than the 30-year annual record high of \$26 million in 2021.
21. In approximate figures, the categories of Canada's export approvals to Israel include, *inter alia*:
 - a. \$1.7 million in export approvals relating to "bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, and specially designed components";
 - b. \$18.4 million in approvals of military items categorized as "electronic equipment";

- c. \$9.2 million in approvals in a category which includes aircraft, lighter-than-air vehicles, unmanned aerial vehicles, aero-engines, aircraft equipment, related equipment, and components;
- d. \$859,000 in approvals for “ground vehicles and components”; and
- e. \$7.3 million in export approvals for the category “fire control, and related alerting and warning equipment.”

E. Canada’s Legal Obligations to Control Arms Exports

- 22. Canada has legal obligations, under both domestic and international law, to control its export of military goods or technology to countries engaged in violations of human rights.
- 23. The *EIPA* covers a variety of matters relating to exports, imports, and the regulation of international trade. In 2018, Canada amended the *EIPA* to bring it into compliance with the 2014 *Arms Trade Treaty* (“*ATT*”) (discussed below).
- 24. Under section 7.3(1) of the *EIPA*, the Minister of Foreign Affairs is required to review all export and brokering permits to determine whether the goods or technology specified in the application for the permit:
 - a. would contribute to peace and security or undermine it; and
 - b. could be used to commit or facilitate:
 - i. a serious violation of international humanitarian law,
 - ii. a serious violation of international human rights law,
 - iii. an act constituting an offence under international conventions or protocols relating to terrorism to which Canada is a party,
 - iv. an act constituting an offence under international conventions or protocols relating to transnational organized crime to which Canada is a party, or
 - v. serious acts of gender-based violence or serious acts of violence against women and children.

25. Section 7.4 of the *EIPA* further prescribes that the Minister “shall not” issue a permit in respect of arms, ammunition, implements or munitions of war if the Minister determines there is a “substantial risk” that the brokering or export of the goods or technology would result in any of the negative consequences described above.
26. Section 7 of the Canadian *Charter of Rights and Freedoms* protects the interests of “life, liberty and security of the person”. The *Charter* is engaged when the federal government makes decisions to allow the transfer of military goods or technology to other states. Further, the *Charter* applies to actions of government authorities with extraterritorial reach.
27. Other key federal statutes that implement Canada’s international legal obligations include the *Geneva Conventions Act* and the *Crimes Against Humanity and War Crimes Act*.
28. Permits issued authorizing the brokering and export of Canadian military goods or technology destined for Israel on or after October 9, 2023 therefore puts Canada in breach of its domestic law obligations.

F. Canada’s International Legal Obligations to Prevent Violations of International Law

29. Under both treaty and customary international law, Canada is obligated to uphold IHL and IHRL.
30. Canada is also under a legal obligation to uphold peremptory norms of international law, which include the prohibition on genocide.

31. Canada and Israel are parties to the *Geneva Conventions*, which define the rules of war and international conflict, including protections for the wounded, sick, civilians, and prisoners.
32. The *Geneva Conventions* require that parties (1) differentiate between legitimate military targets versus civilian populations and objects; (2) prohibit attacks that would cause excessive incidental harm to civilians (including infrastructure) compared to the direct military advantage anticipated; and (3) take all feasible precautions to avoid and minimize incidental harm to civilians.
33. Canada and Israel are also parties to the *Genocide Convention*, which provides that States must punish and prevent genocide. The obligation to prevent genocide requires that States which are aware, or should be aware, of the serious danger that genocide could be committed, employ all means reasonably available to them to prevent it.
34. Canada is also a party to the *Rome Statute* (2002) establishing the International Criminal Court (“ICC”), whose jurisdiction is limited to the “most serious crimes of concern to the international community as a whole”, including (a) the crime of genocide; (b) crimes against humanity; (c) war crimes; and in certain circumstances, (d) the crime of aggression. In March 2021, the ICC opened an investigation into alleged crimes committed in the OPT.
35. Further, Canada and Israel are parties to the *Arms Trade Treaty*, which aims to establish international standards to regulate the international arms trade and to prevent and eradicate illicit arms trade for the purpose of, among other things, reducing human suffering.

36. Canada has other treaty obligations, including those reflected in the core UN human rights treaties, including the *International Covenant on Civil and Political Rights*, which will be relied upon in the course of these proceedings.
37. Export approvals of Canadian military goods or technology destined for Israel on or after October 9, 2023 therefore breach Canada's international law obligations.
38. Canada's international law obligations in turn inform its obligations under domestic law.

3. THE APPLICANTS RELY ON THE FOLLOWING AUTHORITIES AND RULES:

- a) *Federal Courts Act*, R.S.C. 1985 c. F-7;
- b) *Federal Courts Rules*, SOR/98-106;
- c) *Export and Import Permits Act*, R.S.C. 1985, c. E-19;
- d) *Automatic Firearms Country Control List*, SOR/91-575;
- e) *Export Control List*, SOR/89-202;
- f) *United Nations Arms Trade Treaty*, 3013 UNTS 269 (Dec. 24, 2014), CTS 2019 No. 24;
- g) Global Affairs Canada, *Export Control List*, SOR/89-202;
- h) Global Affairs Canada, *A Guide to Canada's Export Control List* (Dec. 2018);
- i) Global Affairs Canada, *Export and Brokering Controls Handbook* (Aug. 2019);
- j) *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies* (1996);
- k) *Geneva Conventions Act*, R.S.C. 1985, c. G-3;
- l) *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949)* (Aug 12, 1949) 75 UNTS 31; *Geneva Convention (III) relative to the Treatment of Prisoners of War*, 12 August 1949, 75 UNTS 135; *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 UNTS 287, CTS 1965 No. 20;

- m) *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts* (June 8, 1977) 1125 UNTS 3; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts* (June 8, 1977) 1125 UNTS 609, CTS 1991 No. 2;
- n) *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24;
- o) *Criminal Code* R.S.C., 1985, c. C-46;
- p) *Rome Statute of the International Criminal Court*, (July 1, 2002) 2187 UNTS 38544, CTS 2002 No. 13;
- q) *United Nations Convention on the Prevention and Punishment of the Crime of Genocide* (Dec 8, 1948) 78 UNTS 277, CTS 1949 No. 27;
- r) *Canadian Charter of Rights and Freedoms*, 1982; and
- s) Such further and other materials as counsel may advise and this Honourable Court may permit.

4. THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- a) Affidavits and documentary evidence to be produced;
- b) Public reports about the human rights situation in the OPT;
- c) Public statements made by representatives of the Government of Canada regarding the export of military goods or technology to Israel;
- d) Expert reports;
- e) Letter from Canadian/Palestinian Coalition to Minister Joly, “Re: Canadian military goods and technology transfers to Israel since 7 October 2023” (dated January 28, 2024);
- f) Materials that will be transmitted under Rule 317 of the *Federal Court Rules* and will be considered relevant; and
- g) Such further and other evidence as counsel may advise and this Honourable Court may permit.

5. REQUEST FOR DISCLOSURE UNDER RULE 317

The Applicants request that the Minister send a certified copy of the following material that is not in the possession of the Applicants but is in the possession of the Minister to the Applicants and to the Registry:

- a) The record of materials before the Minister from October 9, 2023 to the date of this application concerning the Minister's decisions in respect of the issuance of export and brokering permits to Israel;
- b) All communications - including but not limited to all complaints, directives, letters, emails, documentation, and any other records - between and among Global Affairs Canada personnel (including the Minister of Foreign Affairs), and between the same and the Prime Minister's Office and Privy Council Office, regarding the situation of human rights in the OPT and/or and the risk that the exports of military goods or technology to or ultimately destined for Israel would be used against civilian populations;
- c) All permits (including general permits) to export or broker military goods or technology destined for Israel issued on or after October 9, 2023 by the Minister of Foreign Affairs or any federal government official and any and all reports, briefing notes and/or opinions issued in respect of such permits, singly or jointly;
- d) All analyses undertaken by the Respondents, pursuant to the *EIPA*, to evaluate whether the export of military goods or technology to or ultimately destined for Israel posed or poses a "substantial risk" of violations of IHRL or IHL, or serious acts of violence against women and children, or would undermine peace and security;
- e) Regulations and guidelines pursuant to the *EIPA*;

- f) All potential or actual sales or contracts that may be relevant to these proceedings between the Government of Canada and other parties;
- g) All communications - including but not limited to all complaints, directives, letters, emails, documentation, and any other records - between and among Global Affairs Canada personnel (including the Minister of Foreign Affairs), and between the same and the Prime Minister's Office and Privy Council Office, pertaining to the Letter dated January 28, 2024;
- h) All communications - including but not limited to all complaints, directives, letters, emails, documentation, and any other records - between and among Global Affairs Canada personnel (including the Minister of Foreign Affairs), and between the same and the Prime Minister's Office and Privy Council Office, regarding the assessment and/or determination of applications for export permits of military goods or technology to or ultimately destined for Israel;
- i) Such further and other material that may be in the possession, power, or control of the Minister and that may be relevant to these proceedings.

DATE: March 5, 2024

Barbara Jackman

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Court File No.: _____

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Proceeding commenced at Toronto

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