

FEDERAL COURT

B E T W E E N:

**ABOUSFIAN ABDELRAZIK,
BRITISH COLUMBIA
CIVIL LIBERTIES ASSOCIATION,
and
INTERNATIONAL CIVIL LIBERTIES
MONITORING GROUP**

Applicants

-and-

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION
Pursuant to sections 18 and 18.1 of the *Federal Courts Act*

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicant 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 the hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa.

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 prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, 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.

June 7, 2010

Issued by: _____
(Registry Officer)

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APPLICATION

This is an application pursuant to sections 18 and 18.1 of the *Federal Courts Act*, for declarations and an order quashing the *United Nations Al-Qaida and Taliban Regulations*, SOR/99-444 (the “*Regulations*”), on the basis that the *Regulations* violate the *Canadian Charter of Rights and Freedoms*, the *Canadian Bill of Rights*, and are *ultra vires* the jurisdictional grant of their enabling legislation, the *United Nations Act*.

The Applicant Abdelrazik is a Canadian citizen who resides in Montreal, Quebec. In July 2006, Abdelrazik was informed by Michael Pawsey, a diplomat with Canada’s Department of Foreign Affairs, that he had been added to the United Nations Consolidated List of individuals and entities associated with Al Qaida (the “1267 List”). Mr Pawsey said he did not know why Abdelrazik had been placed on the 1267 List and could provide no further information. As Abdelrazik would learn, the impact on his personal life would be profound.

The United Nations Security Council adopted Resolution 1267 on October 15, 1999. The purpose of Resolution 1267, as amended and supplemented by subsequent resolutions, is to restrict the rights and freedoms of individuals alleged to be associated with the Taliban, Osama Bin Laden or Al Qaida. The Resolutions created a Committee (the “1267 Committee”) that maintains a Consolidated List of individuals alleged to be associated with the Taliban or Al Qaida. The 1267 regime calls upon States to freeze, without limit of time, any funds, resources or assets owned by an individual on the list. It also prohibits listed individuals from travelling internationally. Individuals are given no notice that they are being placed on the list, and, at least until recently, were not given any reasons for the listing. There is no independent review or appeal mechanism to challenge one’s listing.

The Government of Canada did not pass legislation to implement the 1267 regime.

Rather, it issued regulations by Order in Council – the *United Nations Al-Qaida and Taliban Regulations* - pursuant to the *United Nations Act*, R.S.C. 1985, c. U-2. Under section 2 of that *United Nations Act*, the Governor in Council may make orders or regulations to implement measures requested by the U.N. Security Council. In turn, section 3 of the *Act* makes it a criminal offence to breach any such order or regulation, attracting a penalty of up to 10 years' imprisonment. The *Regulations* have the effect of freezing any assets or resources owned by a listed individual. The *Regulations* also prohibit any person in Canada, or any Canadian outside Canada, from directly or indirectly providing any funds, property or financial resources to listed individuals.

The *United Nations Act* was originally passed by Parliament in 1947. At that time, it was understood that measures requested by the United Nations Security Council would relate to state actors. It was never within the contemplation of Parliamentarians that the *United Nations Act* would be used to suspend the fundamental human rights and freedoms of Canadian citizens.

The *Regulations* require Canada to automatically impose these sanctions on any individual who is designated by the U.N. 1267 Committee as an associate of Al Qaida. There is no independent review by Canada, and no domestic judicial recourse to challenge the listing. The only way an individual can be removed from the list is to successfully petition the 1267 Committee, but that process does not afford the most basic procedural fairness and natural justice protections that are fundamental to the rule of law.

Since the Applicant Abdelrazik was designated as an associate of Al Qaida by the United Nations Security Council, the Respondent has frozen his bank account and funds. Abdelrazik must petition the United Nations simply to access a subsistence level of his own money to pay for rent and food. It is difficult if not impossible for Abdelrazik to find employment because any potential employer would have to petition the United

Nations simply to pay Abdelrazik his wages. If the potential employer fails to do so, or makes any mistakes or errors in payment of wages, he or she could face criminal charges under the *United Nations Act*. Similarly, Abdelrazik must always be worried that any friend or relative who gives him a gift or assists him in any way may be subjected to criminal sanctions. These measures have had a profound impact on Abdelrazik's personal and family life, causing him significant hardship.

It is almost impossible for the Applicant Abdelrazik to be de-listed. In 2007, Abdelrazik asked Canada to transmit a petition to the 1267 Committee requesting that he be removed from the 1267 List. The Royal Canadian Mounted Police and the Canadian Security Intelligence Service gave opinions to the Respondent that Abdelrazik was not involved in any criminal activities. On this basis, the Respondent supported Abdelrazik's de-listing petition. On December 17, 2007, Abdelrazik was informed by the Respondent that the United Nations Security Council had refused his petition. No reasons were provided.

In June 2009, the 1267 Committee posted a brief document on its website that provided a "narrative summary" of its reasons for listing the Applicant Abdelrazik in 2006. According to the "narrative", Abdelrazik was alleged to be "closely associated" with Abu Zubaydah, an individual described as a "lieutenant" to Osama Bin Laden. In 2008, it came to light that Abu Zubaydah was repeatedly tortured by the United States of America into providing statements. More recently, the United States has withdrawn its allegations that Abu Zubaydah was even associated with Al Qaida, never mind a top lieutenant.

In determining that the Applicant Abdelrazik was associated with Al Qaida, the United Nations Security Council relied on false statements obtained through the torture of Abu Zubaydah. The use of these statements contravenes the customary international law prohibition against torture. By imposing sanctions on Abdelrazik in these

circumstances, Canada is complicit in the violation of international law.

The Applicants British Columbia Civil Liberties Association (BCCLA) and International Civil Liberties Monitoring Group (ICLMG) are non-profit organizations that support the promotion and respect for individual civil liberties and human freedoms. The BCCLA and ICLMG are widely respected and well-established organizations that regularly engage provincial and federal governments regarding civil liberties and human rights. They have been invited to countless Parliamentary and provincial standing committees and have participated in numerous public inquiries and royal commissions on issues involving civil liberties and national security.

The BCCLA is membership-based and comprised of thousands of civic-minded Canadians from across the country. The ICLMG is a pan-Canadian coalition of civil society organizations that includes unions, professional associations, faith groups, environmental organizations, and human rights and civil liberties advocates. BCCLA and ICLMG, as well as their members, have been particularly involved and active in matters regarding national security and the impact on civil liberties. Both organizations have closely followed the plight of the Applicant Abdelrazik and have engaged in public advocacy and education regarding his situation. Both organizations are deeply concerned about the gross infringement of human rights that the 1267 regime represents. The organizations and their members are all particularly concerned about the risk of imprisonment faced by anyone who chooses to simply associate with Abdelrazik and provide him with funds.

The Applicants makes application for:

- (a) A declaration that the *United Nations Al-Qaida and Taliban Regulations* are *ultra vires* of the *United Nations Act*, and therefore are of no force and effect;

- (b) A declaration that the *United Nations Al-Qaida and Taliban Regulations* violate freedom of association as protected by section 2(d) of the *Canadian Charter of Rights and Freedoms*, and therefore are of no force and effect;
- (c) A declaration that the *United Nations Al-Qaida and Taliban Regulations* violate the rights to liberty and security of the person under section 7 of the *Canadian Charter of Rights and Freedoms* in a manner that does not accord with the principles of fundamental justice, and therefore are of no force and effect;
- (d) A declaration that the *United Nations Al-Qaida and Taliban Regulations* violate sections 1(a) and 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44, and the right to enjoyment of property and not to be deprived thereof except in accordance with due process of law, and therefore are of no force and effect;
- (e) A declaration that imposing sanctions on Abousfian Abdelrazik based on information derived from torture violates customary international law;
- (f) The costs of this application, on a solicitor-and-client basis; and
- (g) Such further and other relief as counsel may request and this Honourable Court may permit.

The grounds for the application are:

- (a) Sections 2(d), 7 and 52(1) of the *Canadian Charter of Rights and Freedoms*;

- (b) Sections 2 and 3 of the *United Nations Act*;
- (c) Sections 1(a) and 2(e) of the *Canadian Bill of Rights*;
- (d) The customary international law prohibition against torture and the use of information derived from torture; and
- (e) Sections 18(1) and 18.1(1) of the *Federal Courts Act*.

The application will be supported by the following material:

- (a) The Affidavit of Abousfian Abdelrazik, or some such other material or affidavit;
- (b) The Affidavit of David Eby, or some such other material or affidavit;
- (c) The Affidavit of Roch Tassé, or some such other material or affidavit;
- (d) The Affidavit of Professor Reem Bahdi, or some such other material or affidavit; and
- (e) Such further and other materials as counsel may advise and this Honourable Court may permit.

Dated: June 7, 2010

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