# Ex. 2

# EXPERT REPORT OF ED MORGAN

## UNIVERSITY OF TORONTO, FACULTY OF LAW

### Background and Qualifications

1. I am a tenured law professor at the University of Toronto, Faculty of Law and the faculty Chair of the International Human Rights program. I teach in the areas of international law, international criminal law, conflicts of law, and constitutional law, and am the author of, among other publications, a book entitled *International Law and the Canadian Courts*. I have been a member of the bar of the Province of Ontario, Canada, since 1988, and have submitted expert reports and been qualified as an expert in international law and Canadian court jurisdiction by the Ontario Superior Court as well as by numerous federal and state courts in the United States. My first law degree is from the University of Toronto, and my LL.M. is from Harvard Law School. I attach a copy of my current resumé.

2. I have taught law at the University of Toronto since 1986, and have been doing so on a full time basis since 1998. From 1989 to 1997 I taught as an adjunct lecturer while I was in civil litigation practice at the Toronto law firm Davies, Ward & Beck, first as an associate (1989-1992) and then as a partner (1992-1997), before returning full time to the University of Toronto where I had previously been a faculty member (1986-1989). As a litigation lawyer, I have appeared at all levels of the Canadian federal courts and the Ontario courts, including several cases argued as lead counsel for parties at the Supreme Court of Canada. Two of these appearances have been as counsel to party interveners filing written briefs and presenting oral argument in the cases of *R. v. Finta* and *R. v. Oberlander et al.*, the only two war crimes and crimes against humanity

cases ever to go to the Supreme Court of Canada. In addition, I have appeared before the Justice Committee of Parliament on the *Anti-Terrorism Act* of 2001 and before the Foreign Affairs Committee of the Parliament on the *War Crimes and Crimes Against Humanity Amendment Act* of 1999.

3. Outside of North America, I have appeared as counsel at the Inter-America Court of Human Rights and at the United Nations Decolonization Committee, and have written the briefs for cases submitted to the Supreme Court of Singapore, the High Court of Barbados, and the Royal Court of Jersey.

4. I have guest lectured and taught international law courses at the University of Helsinki, Finland, the University of Dar Es Salaam, Tanzania, and at Haifa University, Israel. I have also presented papers and lectured at international law conferences throughout the United States, Canada, and western Europe. My scholarly writing has focused on international law in the courts, and has spanned public international law, international human rights law, and private international law (conflicts of law) themes. I have also written and lectured extensively on the constitutional and jurisdictional aspects of Canadian conflicts of law.

5. I have filed expert reports and been qualified as an expert in the Ontario Superior Court, as well as in the U.S. District Courts for Rhode Island, Minnesota, the Southern and the Eastern Districts of New York, and in the California Superior Court. My two most recent expert appearances were in the U.S. District Court for Rhode Island in the case of *Ungar v. Palestinian Authority*, in which I filed a declaration, cited with approval by the court, dealing with international legal questions in a terrorism law suite brought by plaintiffs injured outside the United States, and in the Ontario Superior Court

in the case of *Bouzari v. Islamic Republic of Iran*, Canada's leading case dealing with claims of torture in a foreign country, in which I was qualified as an expert and testified on the issue of Canadian court jurisdiction over such a claim.

6. The opinions and conclusions I state in the report are based on my professional experience described above and in the attached resumé. I understand that discovery is on-going in this case. I may supplement or modify the opinions in this report based on that discovery.

7. I have read (i) the Complaint of Jane and John Doe in this action, (ii) the declaration of Yusuf Abdi Ali dated January 7, 2005, (iii) the opinion of Gerald Chipeur conveyed to Joseph Peter Drennan by later dated March 30, 2005, and (iv) the report of Noah Novogrodsky filed in the earlier action in this matter.

8. I have never met Jane Doe, John Doe or Yusuf Abdi Ali and I have no personal knowledge of the circumstances in this case beyond what is stated in the documents discussed above.

**Question Presented**

9. Would it have been possible for the Plaintiffs to have brought an action in Ontario against Mr. Ali similar to the current case in the U.S. District Court for the Eastern District of Virginia, during the period in which Mr. Ali lived in Toronto, Ontario between December 1990 and October 1992?

**Short Answer**

10. In my opinion, it would not have been possible for the Plaintiffs to have brought an action against Defendant Abdi Ali as no Canadian court would have had jurisdiction over an action based on the facts alleged in the Complaint.

**Discussion**

11. The Complaint in this action alleges that Defendant Abdi Ali personally tortured or commanded troops who tortured Plaintiffs Jane Doe and John Doe in Somalia between 1984 and 1987. Defendant Abdi Ali lived in Toronto, Ontario, Canada between December 1990 and October 1992 when he was deported to the United States. Declaration of Yusuf Abdi Ali, ¶¶ 15-18. There is no evidence in this case that Plaintiffs have any connection to Canada, that they have ever interacted with a Canadian or that they had knowledge of Defendant's presence in Canada between 1990 and 1992. In that period, Somalia's central government collapsed, clan-based violence erupted and mass starvation ensued. Complaint ¶ 48-49.

12. Whether or not Plaintiffs could have physically filed an action in Canada against the Defendant, they would have been legally barred from doing so for three independent reasons.

13. First, as the Supreme Court of Canada has stated, "[i]n Canada, a court may exercise jurisdiction only if it has a 'real and substantial connection' (a term not yet fully defined) with the subject-matter of the litigation." *Tolofson v. Jensen* (1994), 129 D.L.R. (4th) 289, 305 [citations omitted]. Thus, in order to have commenced a civil action in an Ontario court (or, for that matter, the courts of any other Canadian province), the Plaintiffs would have had to have met this threshold jurisdictional standard. Only if the plaintiff satisfies this test does the court consider whether there is a more appropriate alternative forum for the action (the *forum non conveniens* test). *See Bouzari* v. *Islamic Repuclic of Iran* [2004] O.J. No. 2800 Dockiet No. C38295, at para 23; *Muscutt v.*

*Courcelles* (2002), 213 D.L.R. (4th) 577 (Ont. C.A.). In Canadian law, the question is whether Ontario has jurisdiction *simpliciter*.

14. That question is normally resolved by examining the connection between the forum and the plaintiff's claim. *See Muscutt*, para. 43.[1] Territoriality is the norm that governs civil jurisdiction in common law Canada.[2] For a foreign plaintiff to avail herself of the Ontario forum, she must overcome the presumption against claims arising from injuries suffered outside the jurisdiction. A case in point is *Bouzari*, an action against the Islamic Republic of Iran claiming damages for acts of torture committed by Iranian officials in Iran against a non-Canadian. Mr. Bouzari, the victim of the torture, moved to Canada a decade later and alleged in his claim that the torture he suffered in Iran had a continuing effect on him in Ontario. The Ontario Court of Appeal was unmoved by the fact that a party who suffers harm abroad may have subsequently moved to Ontario, observing that the plaintiff's "connection to Ontario for the purposes of [the 'real and substantial'] test is very tenuous." *Bouzari*, at para. 33. This judgment has been reinforced by an identical ruling this year in the case of *Arar v. Syrian Arab Republic*, [2005] O.J. No. 752, para. 8.

15. Using language that would be highly applicable in the present case, the 'real and substantial connection' test has been described as a means by which to limit Canadian courts to disputes in which they have a true local interest: "To prevent

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1 Other factors include: the connections between or among the forum, the unfairness to the defendant in assuming jurisdiction, unfairness to the plaintiff in not assuming jurisdiction, involvement of other parties to the suit, the court's willingness to recognize and enforce extra-provincial judgment rendered on the same jurisdictional basis, whether the case is interprovincial or international in nature (although *Beals v. Saldanha*, [2003] 3 S.C.R. 416, suggests there is little difference between the two), comity and the standard of jurisdiction, recognition and enforcement prevailing elsewhere.

2 *See* M. Baer, *Private International Law in Common Law Canada* (Toronto, E. Montgomery 1997).

overreaching, however, courts have developed rules governing and restricting the exercise of jurisdiction over extra-territorial and transnational transactions." *Tolofson v. Jensen*, at p. 304. On this basis, for example, the courts of Manitoba have declined jurisdiction over a claim by Ontario resident plaintiffs for breach of an Ontario contract by a corporate defendant that did business in both provinces and had executable assets in Manitoba. *Tortel Communications Inc. et al. v. Suntel, Inc.* (1994), 120 D.L.R. (4th) 100 (Man. C.A.). In the view of the Manitoba Court of Appeal, where "the only factor related to this jurisdiction is the 'happenstance', discovered by the plaintiffs, that [the defendant or its assets are physically present] . . . the plaintiffs' action simply has no 'real and substantial connection' with [the forum]." As the Ontario Court of Appeal said in *Muscutt*, at para. 79, "[m]ere residence in the jurisdiction does not constitute a sufficient basis for assuming jurisdiction."

16. Applying this test to tort cases, the Canadian courts have followed the theory that, "[t]he jurisdictional act can well be regarded, in an appropriate case, as the infliction of injury . . . " *Moran v. Pyle National* (1973), 43 D.L.R. (3d) 239, 248 (S.C.C.). Thus, fraudulent misrepresentations are actionable in the place where the fraud was perpetrated and acted on by the victims, regardless of where the defendant might reside. *Petersen v. AB Bahco Ventilation* (1979), 107 D.L.R. (3d) 49 (B.C.S.C.). The same is true of medical malpractice cases as well as motor vehicle cases; the real and substantial connection is in the jurisdiction where the negligent medical treatment or the car accident took place, without regard to where the parties happen to reside. *MacDonald v. Lasier* (1994), 21 O.R. (3d) 177 (Ont. S.C.).

17. The 'real and substantial connection' test serves as a check on the assumption of jurisdiction in a province that permits *ex juris* service.[3] Whereas Alien Tort Claims Act and Torture Victim Protection Act cases in the U.S. have been limited by the need for *in juris* or tag jurisdiction – a requirement that demands the physical presence of the defendant in the forum – Canadian provinces allow plaintiffs to serve notice on defendants either inside or outside the jurisdiction where the case is otherwise valid.[4] In Ontario, standing to bring a civil action is thus limited not by the defendant's location but by reference to a multi-prong test; and courts across the country have made it clear that "residence is not a sufficient connection to ground jurisdiction simpliciter" for a cause of action arising out of the jurisdiction. *Marren v. Echo Bay Mines Ltd.*, [2003] B.C.J. No. 1138, para. 17 (B.C.C.A.).

18. The 'real and substantial' test applies even if the defendant is present in the jurisdiction, and in my opinion, the claim by the Doe Plaintiffs does not satisfy the 'real and substantial' test. In 1990-92, the presence of the Defendant within Ontario was mere "happenstance", entirely unconnected to the cause of action or to the circumstances of the claim. Therefore, an Ontario court, or any other court in Canada, would have declined jurisdiction over the claim had it been brought in Canada at that time.

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[3] Ontario Rules of Civil Procedure, RRO 1990, Reg 194, rule 17.02(h): "A party to a proceeding may, without court order, be served outside Ontario with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims, ..."

[4] Rule 17.02 (h) sanctions ex juris service "in respect of damage sustained in Ontario arising from a tort, breach of contract, breach of fiduciary duty or breach of confidence..."

19. Second, there is no statute in Canada recognizing the tort of torture. Civil remedies are provincial in Canada and Ontario law has never recognized a cause of action for torture or extrajudicial killing equivalent to the Torture Victim Protection Act.[5]

20. Comparing the Canadian Criminal Code references to assault with references to torture makes it clear that Canadian law views these offenses as distinct from each other. The sole reference to torture in Canadian law appears in Canada's Criminal Code Section 269 (2) which incorporates the definition of torture adopted in Article 1 of the Convention Against Torture[6] and provides that torture can only be committed by officials acting in their public capacity. *Bouzari v. Islamic Republic of Iran* [2004] O.J. No. 2800 Docket No. C38295 at para 70. An official is defined as (a) a peace officer, (b) a public officer, (c) a member of the Canadian Armed Forces or a person in a position of command responsibility in a foreign country, specifically (d) "any person who may exercise powers, pursuant to a law in force in a foreign state, that would, in Canada, be exercised by a person referred to in paragraph (*a*), (*b*), or (*c*)."[7] Canada's Criminal Code further distinguishes torture from assault with a weapon and assault causing bodily harm by the severity of sentences (a maximum of 14 years imprisonment rather than a range of 18 months to 10 years).[8] Significantly, Section 269 (3) provides

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5 *See* Jennifer Orange, "Torture, Tort Choice of Law and *Tolofson*," in *Torture As Tort* (C. Scott, ed., Oxford, Hart 2001).

6 Article 1 of the Convention Against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, entered into force 26 June 1987, defines torture as any "act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

7 Criminal Code Section 269 (2), available at http://laws.justice.gc.ca/en/c-46/42801.html.

8 Criminal Code Sections 266 – 269.

that, "It is no defence to a charge under this section that the accused was ordered by a superior or a public authority to perform the act or omission that forms the subject-matter of the charge or that the act or omission is alleged to have been justified by exceptional circumstances, including a state of war, a threat of war, internal political instability or any other public emergency." In sum, Canada's criminal law of torture contemplates elements and aspects that are not implicated by the criminal offense of assault causing bodily harm.

21. I know of no reported cases in the province of Ontario – or in any other Canadian jurisdiction – of a civil action seeking liability *from individual defendants* for acts of torture.[9] And although Canada is a party to a number of international human rights conventions, there is no treaty or customary law that obliges or even authorizes courts to take jurisdiction over civil actions respecting torture committed abroad. *Al-Adsani v. United Kingdom* (2001), 12 H.R. Case Dig. 899 (Eur. Ct. H.R.).

22. Moreover, there are no reported cases in Canada of civil actions claiming damages for war crimes or crimes against humanity. While it is true, as Mr. Chipeur points out in his declaration, that Canada has the jurisdiction to criminally prosecute perpetrators of war crimes and crimes against humanity under the War Crimes and Crimes against Humanity Amendment Act, that legislation was only passed in 1999. Prior to the enactment of that statute – i.e. in 1990-92 when the Defendant resided in Canada – the relevant war crimes provisions of Canada's Criminal Code were designed to address only Second World War-era criminals and were thus limited, among other

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[9] The lack of precedent is recognized in Edward Hyland's, "International Human Rights Law and the Tort of Torture: What Possibility for Canada?" in *Torture As Tort* (C. Scott, ed., Oxford, Hart 2001). One explanation is that in civil cases in Canada, the loser ordinarily pays the successful party's legal fees which acts to dissuade potential plaintiffs from bringing untested actions.

things, to wars in which Canada was an active participant. In the early 1990s, it would have been doctrinally impossible for the Plaintiffs to base a civil cause of action for damages resulting from events in Somalia under Canada's war crimes and crimes against humanity statutory provisions in place at that time.

23. Third, in *Tolofson v. Jensen,* [1994] 3 SCR 1022, the Supreme Court of Canada clarified that conflict of laws questions with respect to tort are resolved according to the rule of *lex loci delicti*, the law of the place. If a Canadian court had taken and kept jurisdiction of the case, the question of whether recovery in tort would be possible would depend almost entirely on the existence of a legally viable civil cause of action for the acts of torture in the location of the injury. Applied to this case, the substantive law of Somalia would govern any claim filed in Ontario by the Doe Plaintiffs.

24. I therefore disagree with the conclusion of Mr. Chipeur in the following respects:

(i) A civil action – regardless of how the cause of action is framed – is only available to a plaintiff if he or she has standing to bring the case. Ontario courts will not examine the cause of action if jurisdictional requirements are not satisfied. Mr. Chipeur's report neither identifies the 'real and substantial connection' test nor shows how the present claim meets the standard. In attempting to demonstrate his argument, Mr. Chipeur cites none of the Supreme Court of Canada or other appellate judgments on point, but rather relies on only one decision – the obscure case of *Somji v. Somji* (2001), 21 R.F.L. (5th) 223 (Alta. Q.B.), decided nearly a decade after Mr. Ali was deported from Canada. In *Somji*, a motions court in the Province of Alberta refused to dismiss an action brought in that province alleging that a constructive trust had been formed prior to the

plaintiff's immigration to Canada from Tanzania. In relying on the *Somji* case, however, Mr. Chipeur makes a crucial error. Indeed, the case is factually distinguishable from the present case in a way that is central to its analysis. *Somji* entailed a property dispute arising in connection (although not formally consolidated) with a matrimonial action. The defendants, Bashir and Shirin Somji, and the plaintiff, their daughter, Nimet Sonji, had all already immigrated to Canada. There was no doubt about Alberta court jurisdiction, all parties having taken up permanent residence in that province. Indeed, the very first sentence of the court's analysis states, "[t]he issue to be decided is the *forum conveniens* for this lawsuit." *Somji*, at p. 225. In other words, the Alberta motions court saw the issue as a contest of convenience between two valid jurisdictions, Alberta or Tanzania, not as a challenge to Alberta jurisdiction itself. The Ontario Court of Appeal has admonished that, "[i]t is important to distinguish the real and substantial connection test from the discretionary *forum non conveniens* doctrine." *Muscutt*, at p. 593. Yet it is precisely this distinction that Mr. Chipeur has failed to keep in mind.

(ii) If an Ontario court had granted foreign Plaintiffs standing to sue for an injury incurred abroad and if the case had survived the *forum non conveniens* analysis, *Tolofson* would require application of *lex loci delecti*, the law of the place of injury. Mr. Chipeur's analysis is as silent regarding *Tolofson* on conflict-of-laws as it is on the question of whether Somali law provides civil remedies for torture. In the absence of evidence that Somali law provided civil remedies for torture and the other causes of action raised in the present Complaint, Mr. Chipeur's analysis is flawed. It simply cannot be stated with any certainty that this action could have been brought at all under the governing Canadian conflicts principles.

(iii) The two Ontario cases of *Bouzari* and *Arar*, each decided in the last year, have demonstrated that even plaintiffs with a genuine connection to Ontario have been unable to sue for torture. Mr. Chipeur's failure to address either of these cases, or to review and integrate the present case with the jurisprudence relating to the governing 'real and substantial connection' test, is not only baffling, it is fatal to his analysis.

25. Indeed, the only way to reach the conclusion that an Ontario court would entertain a civil action by Somalis for abuses that allegedly occurred in Somalia at the hands of a Somali colonel is to (a) ignore the threshold 'real and substantial connection' test while focusing entirely on the secondary *forum non conveniens* analysis, (b) characterize torture committed by a foreign official as "assault and battery[10] and negligence," and (c) refuse to address either *Tolofson*, Canada's leading conflict-of-laws case or *Bouzari*, the first Ontario effort to seek a remedy for torture committed abroad.

**Conclusion**

26. In my professional opinion, (1) nothing in this case suggests the Doe Plaintiffs had a 'real and substantial' enough connection to the forum to satisfy the requirements of Ontario jurisdiction, and they would therefore be unable to file even a common law claim based on their injuries from the events in this case; (2) the law of Ontario does not provide remedies for acts of torture; and a common law claim for battery or intentional personal injury is significantly different from a torture claim; and (3) Somali tort law would govern any claim filed in Ontario by these plaintiffs, and if Somali law lacked a substantive claim, Ontario would not recognize one.

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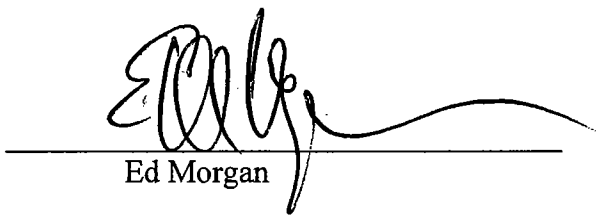
10 In Ontario, assault is the criminal law offense; battery is the actionable civil tort.

27. For all the reasons set forth above, even assuming, *arguendo*, the Plaintiffs in this case had known of the Defendant's presence in Canada and fashioned a way to file a suit in Ontario, Plaintiffs would have found it impossible to sustain their case. The action would have been barred by the absence of jurisdiction, the absence of an enabling statute, and the rule of *lex loci delecti*.

Executed this 29th day of July, 2005, at Toronto, Ontario, Canada.



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## ACADEMIC APPOINTMENTS

| | |
|---|---|
| July 1998 - present | Associate Professor<br>University of Toronto, Faculty of Law<br>(tenure granted May 1999)<br><br>Teaching fields: Public International Law, Private International Law, International Criminal Law, Constitutional law |
| 1989 - June 1998 | Special Lecturer in International Law<br>University of Toronto, Faculty of Law |
| 1986 - 1989 | Assistant Professor<br>University of Toronto, Faculty of Law |

## LAW PRACTICE

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|---|---|
| 1997 - present | Counsel practice and expert witness in conflicts of law and international law, constitutional litigation, corporate and property disputes, commercial crime, professional responsibility, human rights |
| 1991 - 1997 | Partner, Davies Ward & Beck, Toronto |
| 1989 - 1991 | Associate, Davies Ward & Beck |

## JUDICIAL CLERKSHIP

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|---|---|
| 1984 - 1985 | Law Clerk to The Hon. Madam Justice Bertha Wilson, Supreme Court of Canada |

## EDUCATION

| | |
|---|---|
| 1985 - 1986 | LL.M., Harvard Law School |
| 1981 - 1984 | LL.B., University of Toronto |
| | Michael Moldaver prize for Standing First in Third Year of Law (1984)<br>Honours List in Law (1982, 1983, 1984)<br>Co-Editor of *Faculty of Law Review* |
| 1972 - 1976 | B.A., Northwestern University |

## COMMUNITY SERVICE

| | |
|---|---|
| 2004 - present | National President, Canadian Jewish Congress |
| 2004 – 2005 | Board member, Canadian Human Rights Museum |
| 2001 - 2004 | Chair, Canadian Jewish Congress (Ontario) |
| 1998 - 2001 | Legal Counsel, Canadian Jewish Congress (National) |
| 1994 - 1998 | Legal Counsel, Canadian Jewish Congress (Ontario) |

## SELECTED CONSTITUTIONAL and INTERNATIONAL LAW CASES

*Halpern v. A.G. Canada*, counsel to Coalition of Liberal Rabbis for Same Sex Marriage as intervenor in Ontario Court of Appeal and in follow-up *Reference re Same Sex Marriage* in Supreme Court of Canada

*Ungar v. Palestinian Authority*, expert witness for plaintiffs in U.S. District Court on foreign sovereign immunity and legal status of Palestinian Authority

*Bouzari v. Islamic Republic of Iran*, expert witness for plaintiff suing foreign sovereign in Ontario Superior Court for torture while in foreign prison

*Russo v. A.G. Canada,* counsel for plaintiff Green Party leader challenging first-past-the-post electoral system as violation of right to vote and equality rights

*Freitag v. Speaker of the Ontario Legislature,* challenge to the opening of legislative sessions with the Lord's Prayer.

*Suresh v. Minister of Immigration,* counsel to Canadian Arab Federation as intervenor in Supreme Court of Canada appeal regarding membership in a "terrorist organization".

*Schreiber v. Federal Republic of Germany,* counsel to Germany in Ontario Superior Court, Ontario Court of Appeal and Supreme Court of Canada in sovereign immunity case.

*Regina v. Parker,* counsel to Epilepsy Association of Toronto as intervenor in Ontario Court of Appeal advocating medical use exemption to marijuana charges.

*In re Livent, Inc.,* expert evidence submitted to U.S. District Court for the Southern District of New York on jurisdictional issues, Ontario class action certification and other procedural issues on *forum non conveniens* motion.

*In re Corel Corp. Securities Litigation,* expert evidence submitted to U.S. District Court for the Eastern District of New York on conflicts of law, jurisdictional and procedural issues.

*Canadian Foundation for Children v. Attorney General of Canada,* expert opinion submitted to Superior Court of Ontario on issues of treaty interpretation and constitutional law.

*Awas Tingni v. Government of Nicaragua,* co-counsel to Assembly of First Nations as Intervenor in Inter-American Court of Human Rights in aboriginal land rights claim.

*Taylor v. Attorney General of Canada,* counsel to Canadian Jewish Congress as Intervenor in Federal Court of Appeal in challenge to judicial immunity doctrine for spectator expelled from court for refusing to remove religious headwear.

*Tapper v. Law Society of Upper Canada,* counsel to Law Society in constitutional and jurisdictional challenge to Ontario Bar levies on out-of -province members.

*Minister of Citizenship v. Tobiass, Dueck, Oberlander,* counsel to Canadian Jewish Congress as Intervenor on appeal to Supreme Court of Canada of stay order

pertaining to judicial independence in denaturalization proceedings against alleged war criminals.

*Luigino's Inc. v. Maple Leaf Foods Inc.*, expert opinion submitted to U.S. District Court for Minnesota on issues of choice of forum and non-exclusive jurisdiction clauses.

*Minister of Immigration v. Nemsila*, counsel to Canadian Jewish Congress as Intervenor in Federal Court Trial Division and Federal Court of Appeal review of Immigration Appeal Board decision on war criminal deportation.

*Wong v. Estate of Chan*, expert opinion submitted to Superior Court of California on issues of Canadian choice of law in tort claim.

*Adler v. Ontario*, counsel to Applicants at trial, Court of Appeal and Supreme Court of Canada in freedom or religion and equality rights challenge to Education Act.

*Rosen and Sav-On Drugs v. Ontario*, counsel to Appellants in Court of Appeal in freedom of expression challenge to Tobacco Control Act prohibition on sale of tobacco in pharmacies.

*Hill v. Church of Scientology*, counsel to Writers' Union, PEN Canada, Canadian Association of Journalists and others as Intervenors in Court of Appeal and Supreme Court of Canada in freedom of expression challenge to libel law.

*Iorfida and NORML Canada v. MacIntyre*, counsel to Plaintiffs in freedom of expression challenge to "drug literature" provision in Criminal Code.

*Regina v. Finta*, counsel to Canadian Jewish Congress as Intervenor in Supreme Court of Canada appeal of first Criminal Code war crimes prosecution.

*Kazembe v. Law Society*, counsel to Applicant in appeal of bar admission conditions violating freedom of expression.

*Toronto Stock Exchange v. Quotron Systems*, expert evidence in area of Canadian private international law and Ontario court jurisdiction submitted to and cited by U.S. District Court for Southern District of New York.

*In the Matter of Christine Lamont and David Spencer*, counsel to Canadians in Brazilian prison in presenting submissions to Minister of Foreign Affairs requesting Canadian government espousal and intervention.

*Keegstra v. The Queen*, co-counsel to Canadian Jewish Congress as Intervenor in Supreme Court of Canada appeal of hate propaganda prosecution.

## PUBLICATIONS

### BOOK

*The Aesthetics of International Law* (Toronto: U. of Toronto Press, forthcoming).

*International Law and the Canadian Courts* (Toronto: Carswell, 1990).

### EDITOR

*Canadian Journal of Law and Jurisprudence*, 2002, guest editor of special issue on international law theory

*Canadian Yearbook of International Law*, member of the Board of Editors, 1997 - present

### ARTICLES

"The Law of Betrayal in the Wild West Bank", 1 J. Int'l Law and Int'l Rel. (2005) (forthcoming)

"The Mild, Mild West: Living By a Code in Canadian Law and Film", (2005) J. Law, Culture 7 Hum. (forthcoming)

"The Aesthetics of International Law", 18 Leiden J. Int'l Law 163 (2005)

"Slaughterhouse-Six: Updating the Law of War", (2004) 5 German L.J. 525

"The Crying of Rule 49", (2004) 54 U.T.L.J. 1

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"On Art and the Death Penalty: Invitation to a Beheading", *15 Cardozo Studies in Law and Literature* 279 (2003)

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"The Roullette of Suffering", 8 Cardozo J. Int'l & Comp. Law 401 (2001)
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"Discovery", [1999] 10 European J. Int. Law 583 (1999).

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"The Hermaphroditic Paradigm of International Law", *State Sovereignty: The Challenge of a Changing World*, 78 Canadian Council on International Law (1992).

"Rabbi Kahane, International Law and the Courts: Democracy Stands on Its Head", 4 Temple J. Int. and Comp. Law 185 (1991) (with Ofer Attias).

"When the Minister Meets His Equal: International Law and the Jurisdiction to Tax", Ontario Centre for International Business, Working Paper 1988-89 (12), 1989.

"Aliens and Process Rights: The Open and Shut Case of Legal Sovereignty", 7 Wisc. Int'l L.J. 107 (1989).

"Foreign State Debtors in the Domestic Courts: A Theory of Sovereign Immunity", 3 Banking & Fin. Law Rev. 287 (1989).

"International Law in a Post-Modern Hall of Mirrors", 26 Osg. Hall L.J. 209 (1988).

"The Imagery and Meaning of Self-Determination", 20 N.Y.U. Jo. Int. Law & pol. 355 (1988).

"Criminal Process, International Law and Extra-Territorial Crime", 38 U.T.L.J. 245 (1988).

"Retributory Theater", 3 Am. Univ. J. Int. Law 1 (1988).

"Internalization of Customary International Law: An Historical Perspective", 12 Yale J. Int. Law.

"Contract Theory and the Sources of Rights: An Approach to the Arbitrability Question", 60 So. Cal. L. Rev. 1059 (1987).

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