



Citing Genocide Convention, Seven Lawyers Launch Historic Lawsuit Against Canada

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Dimitri Lascaris (DL): Good day, this is Dimitri Lascaris coming to you from Ottawa, Canada, on November 6th, 2024. Today, I joined with six other lawyers from across the country to commence a lawsuit against the Government of Canada on behalf of two Palestinian Canadians who have lost dozens of members of their families in Gaza over the past year and whose pleas for assistance and justice from the Canadian government have gone entirely unheeded for far too long. After filing our statement of claim in the Ontario Superior Court of Justice yesterday, we held a press conference here in Ottawa where I spoke, along with my colleague Shane Martinez, and with one of the plaintiffs, Hany El-Batnigi, who gave a moving statement at the conclusion of our press conference. We then took some questions from the media. Two members of our team were in Ottawa but were unable to attend the press conference. Those were Professor Faisal Bhabha of Osgoode Hall Law School at York University, and Yavar Hameed, an accomplished lawyer here in Ottawa who is in private practice. You'll hear from them at the end of the video of our press conference, which I'm about to share with you. In addition, there were three members of our team who were not in Ottawa today, and I want to mention them because their work has been invaluable to this entire project. Asaf Rashid, a criminal lawyer in Halifax, Jouman El-Asmar, an immigration lawyer in Edmonton, and Professor Emilio Dabed, a professor of law of Chilean and Palestinian origin who is travelling this week. I hope that the Canadian government will finally understand that citizens of conscience will take all lawful measures to bring an end to this genocide and to hold all those accountable who must and should be held to account. This is a historic lawsuit. We don't know how it's going to play out, but you can be sure that all seven of these lawyers who are working on a pro bono basis will do the utmost to achieve justice at the end of the day.

DL: Good morning. My name is Dimitri Lascaris. I'm one of seven lawyers in the Coalition for Canadian Accountability in Gaza. We represent two Palestinian Canadians, Hany El-Batnigi and Tamer Jarada. Mr. El-Batnigi is here to my right today. On March 13th, 2024, our clients who have lost dozens of family members to Israel's attacks on Gaza, announced their intention to pursue claims against Canada's government. Since then, the Canadian

government has done nothing to address their pleas. Yesterday we filed a civil claim on their behalf, seeking declarations from the Ontario Superior Court of Justice, that Canada has failed to fulfil its duty to take all reasonable measures within its power to prevent genocide and has violated the charter rights of our clients. For more than one year, the world has watched in horror as Israel has perpetrated a genocide in Gaza. Israeli munitions have burned Palestinian refugees alive. Israeli snipers have shot Palestinian children in the head while they were playing in or near their homes. Doctors have been forced to perform amputations on Palestinian children without anaesthetic. Palestinian children have been crushed and trapped in collapsed buildings targeted by Israel's Western supplied bombs. Sometimes no one was able to come to their rescue before they died; an agonising and lonely death. The official death toll for Palestinian children in Gaza now exceeds 16,000. The true number is certainly far higher. The number of Palestinian children who have been disabled, wounded, traumatised or orphaned is far higher still. For more than one year, Israel has pursued a deliberate policy of depriving Palestinian children of food and water. Doctors in Gaza have revealed to the world images of emaciated babies on the verge of death. The casualty figures I've cited thus far do not come close to telling the full story. In July of this year, the prestigious medical journal The Lancet issued a report in which it estimated the true death toll in Gaza. As The Lancet explained: "Armed conflicts have indirect health implications beyond the direct harm from violence. Even if the conflict ends immediately, there will continue to be many indirect deaths in coming months and years. In recent conflicts, such indirect deaths range from three to 15 times the number of direct deaths". The Lancet applied a conservative estimate of four indirect deaths per one direct death to the 37,396 official deaths reported at that time, and thereby opined that 186,000 deaths could very well be attributable to Israel's war on Gaza. In a report issued on October 10th, the UN Independent International Commission of Inquiry on the occupied Palestinian territory in Israel documented that Israel had perpetrated a concerted policy to destroy Gaza's health care system as part of a broader assault on Gaza. The Commission also investigated the treatment of Palestinian detainees in Israel and of [Israeli] victims since October 7th and concluded that Israel is responsible for torture and sexual and gender based violence. There's more. Israel has repeatedly bombed UNRWA operated schools where the displaced were sheltering. Israel has destroyed the universities of Gaza. Throughout this period of horrors, Canada's support for Israel has not wavered. Although Justin Trudeau and Mélanie Joly periodically expressed their grave concern for the plight of Palestinians, not once have they backed up their purported concern with real action. Canada has imposed no meaningful sanctions on Israeli political or military leaders. It continues to allow Canadian citizens to serve in Israel's military. It continues to permit Canadian made military equipment to be delivered to Israel and even purchases deadly weapons from Israel. Canada also continues to accord trade benefits to Israeli businesses, including those situated in illegal West Bank settlements. Canada continues to accord charitable status to Canadian entities that funnel money to Israel or that are devoted to whitewashing Israel's crimes. On January 26th of this year, the International Court of Justice ruled that it was plausible that Israel is committing genocide within the meaning of the Genocide Convention. On that very day, Canada suspended funding for UNRWA, the main humanitarian agency operating in Gaza. It did so based on allegations by Israel, the perpetrator of this genocide, that a tiny number of lower level

UNRWA employee's had participated in the October 7th attacks. Months later, belatedly, Canada restored its funding for UNRWA, but only after the international media revealed that Israel's allegations were not supported by even a shred of credible evidence. Canada has done nothing, emboldening Israel to be more brazen. Israel, in fact, has now designated every major human rights organisation in Palestine as a terrorist entity. Today, the world sees clearly that when it comes to the suffering of Palestinians, our brothers and sisters in Palestine, Canada has no red line. There is no atrocity Israel can commit, that would end Canada's support for Israel. Our clients and all Palestinian Canadians are, in effect, victims of Canada's anti-Palestinian racism. Confronted by so much pain and so much government indifference to their agony, our clients have decided to seek justice. As stated by former U.S. Supreme Court Justice Louis Brandeis. Sunlight is the best disinfectant. Aided by a team of lawyers who are pursuing this litigation on a pro bono basis, Hany and Tamer, our clients will shine a cleansing light on Canada's indefensible support for Israel's genocidal regime. Moreover, neither they nor their lawyers will cease until Canada has been held accountable. Even if Israel stopped its genocide tomorrow, this litigation will continue. We will not relent. We will not give Canada's government a free pass. I now invite my co counsel, Shane Martinez, to address the legal nature of our client's claims. Shane is a lawyer with the Canadian branch of the International Centre of Justice for Palestinians, whose practice is focussed on criminal and human rights law. And after my colleague has spoken, Hany will make a brief statement and we will then take questions from the media.

Shane Martinez (SM): Thank you and good morning. The case announced today marks an important milestone in holding Canada accountable for failing to take reasonable measures to prevent Israel's genocidal campaign against the Palestinian people. Canada refuses to uphold the rule of law where Israel's armed forces are concerned. This refusal to act in combination with Canada's bolstering of Israel's military capabilities has had devastating consequences for Palestinian Canadians, including our clients. These consequences have engaged two of the most important legal instruments, the Convention on the Prevention and Punishment of the Crime of Genocide and the Canadian Charter of Rights and Freedoms. Our claim alleges that Canada, by failing to fulfil its legal duty to take all reasonable measures to prevent the crime of genocide against the Palestinian people in Gaza did causally contribute to violations of our client's rights under the Charter. I'll first share some background information on our clients. I'll then explain the importance of the Genocide Convention and the Charter, and then address the nexus between the two in this case. Our client, Hany El-Batnigi, is a Canadian citizen and Palestinian Canadian born in Gaza. He escaped Gaza as a teenager in 1967 during the Israeli army's raids. He later moved to Canada in 1989, residing here with his wife and children. On September 20th, 2023, Hany returned to Gaza for the first time. When Israel began bombing Gaza in early October 2023, Hany and his relatives fled from neighbourhood to neighbourhood, evading the attacks. They endured harrowing conditions and scarce resources. Despite multiple evacuation attempts coordinated through Global Affairs, Hany repeatedly faced setbacks and danger. After a near-fatal bombing injured him on November 6th, he finally crossed into Egypt. Tragically, while in Cairo, he learned that several family members, including his niece and her young children, were killed in airstrikes. Hany later sought to bring surviving relatives to Canada under a special refugee program, but found

himself ineligible due to his financial situation as a pensioner. Tamer Jarada, a Palestinian Canadian from Calgary, moved to Canada in 2011, where he resides with his wife and two children. When Israel's attacks on Gaza began in October 2023, Mr. Jarada was consumed with fear for his family's safety. Most of his relatives were sheltering in Gaza, but with each passing week, his family grew smaller as his mother, father, two sisters, two nephews, an uncle and his wife, three cousins and their spouses and children of two of those cousins were all killed in Israel's ongoing bombardment. In a desperate effort to save his surviving relatives, Mr. Jarada applied on January 9th, 2024, to bring 14 family members to Canada through a temporary resident visa program. While his sister and others managed to reach Egypt, bureaucratic delays and restrictive visa processing left most of his family stranded. As of August 19th, 2024, of the 14 members he sponsored, only two of his spouses' unmarried siblings have been granted visas and were allowed to enter Canada. His family's situation remains precarious. While Tamer continues to grapple with trauma, unfulfilled Canadian assurances and an uncertain future for his loved ones. The Genocide Convention is a cornerstone of customary international law, and as such is automatically adopted into Canadian common law as a means of combating the odious scourge that is genocide. The duty to prevent genocide is enshrined in Article three of the Genocide Convention, and it imposes a legal duty on states to act within their capabilities and to take all reasonable measures to prevent genocide when there are grounds to believe that it could occur. The duty is so important that it prevails over conflicting treaties or domestic law, thus reflecting the international community's recognition that it is imperative to prevent this crime of all crimes. Canada, as a party to the Genocide Convention, has a legal duty to act within its capabilities to prevent genocide when there's reasonable grounds to believe that it could occur. In this context, Canada's duty to prevent genocide compelled it to take all reasonable actions within its power to stop the assault in Gaza. Although Canada hasn't always succeeded in preventing genocide, it has a well-established track record of trying to do so by taking meaningful actions against perpetrators and providing meaningful support to victims. But instead, as has been outlined by my colleague Mr. Lascaris, over the past year, Canada has taken no meaningful action to exert diplomatic, economic or military influence over Israel, even while hundreds of Palestinian Canadians, including Mr. El-Batnigi, desperately tried to escape Israel's indiscriminate bombing of Gaza, Canada took no action to restrain Israel. We still facilitated record levels of arms exports engaged in military cooperation, allowed groups in Canada to recruit volunteers for the Israeli military and failed to stop organisations with charitable status from subsidising the operations of Israel's Ministry of Defence. Canada's actions and emissions towards a plausible campaign by Israel to destroy the Palestinian people of Gaza violated its duty to prevent the crime of genocide, a duty imposed on it by the Common Law and the Genocide Convention. The charter forms part of Canada's constitution and protects the civil rights of Canadians against government action. Section seven and 15 of the Charter are engaged by this claim. Section seven of the Charter provides that everyone has the right to life, liberty and security of the person and not to be deprived thereof except in accordance with the principles of fundamental justice. The guarantee of fundamental justice applies to deprivations of security of the person by foreign state actors, if there's sufficient causal connection between Canada's conduct and the deprivation. This does not require direct causation, but rather a meaningful or substantial link between Canada's actions and the harm

suffered, where the harm is a foreseeable consequence. Mr. El-Batnigi claims that Canada's failure to take all reasonable measures within its power to prevent Israel from committing the crime of genocide against the Palestinian people, in addition to its collaboration with Israel, contributed to a deprivation of physical and psychological security of the person while he was attempting to survive and escape Israel's military bombardment of Gaza. Section 15 of the Charter provides that every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination. The claim alleges that Canada discriminated against Mr. El-Batnigi and Mr. Jarada in two ways. First, Canada discriminated against Mr. El-Batnigi when it failed to take all reasonable measures within its power to prevent Israel from committing the crime of genocide, arbitrarily departing from its history of fulfilling that duty in other plausible cases. Second, Canada discriminated against Mr. El-Batnigi and Mr. Jarada when it denied them access to reasonably functional immigration and evacuation programs such as those it provides to Canadians seeking refuge for themselves or family members from other parts of the world. Canada's conduct was based in whole or in part on Mr. El-Batnigi and Mr. Jarada's race, religion or ethnic or national origin as Palestinians and Muslims. In closing, Canada's failure to fulfil its duty to prevent genocide even admits glaring warning signs is an admission of such egregiousness that it would shock the conscience of Canadians. Such shock would be compounded further by the fact that Canada maintained its course of conduct in the face of full knowledge of the potential risks. And for these reasons, the Coalition for Canadian Accountability in Gaza has filed this claim, seeking declarations from the Ontario Superior Court that Canada has failed these duties and has violated the rights of Mr. El-Batnigi and Mr. Jarada. And now I welcome Mr. El-Batnigi to share his comments as well with us.

Hany El-Batnigi: Good morning. My name is Hany El-Batnigi. I'm a Palestinian Canadian from Gaza, who lives in Ottawa. Almost one year ago today, I stood here in a press room on Parliament Hill to tell my story. Last November, I came to tell the government of Canada out of shock, trauma and sadness, that I had to take immediate action to stop what seems like, at the time, potential genocide in Gaza. I'm deeply heartbroken and angry that Canada did not listen to me. Instead in the last year it has carried on business as usual with Israel, supporting it, aiding it, facilitating this death and destruction throughout Gaza. The fact that I am still heart hurting and standing here before you today means that I am one of the lucky ones. On November 23rd, I narrowly avoided death when attempting to escape from Gaza. The Canadian government did not send military aircrafts to evacuate me like it did for more than a thousand Israeli Canadian and permanent residents. It did not help me at all to reach the Rafah border crossing. It simply let me make my way on my own, four times, waving through bombardment, making my way through the rubble, destruction and dead bodies. Seeing the dead and the dying, it is a miracle that I am here today. I didn't die from bombing, disease or starvation and avoiding getting shot in the head. Although I fell to the ground from the shock of the bombing blast that made my ears bleed. I survived, but people I cherish did not survive. I lost my niece Heba and her two young children. My sister Nadya was shot by Israeli snipers. She remains in a critical condition with no access to medical care to this day. I have survived as witness to what was lost and what can never be replaced. And since I last spoke in this press room one year ago, our Prime Minister has not looked me in the eye. He

has not come to grief for the loss of Palestinian lives. Instead, he has declared his support for Israel in countless ways. I am beyond grief, stressing that our government, instead of finding a way to use their influence to encourage Israel to stop its slaughter in Gaza, has pleaded its commitment to support Israel. Our government imposes no red lines on Israel. No matter how terrible Israel's crimes are, our government refuses to withdraw its support for Israel.

Palestinian Canadian lives matter. Palestinians matter. We are human beings. We deserve compassion and support and dignity. While Canada has been outspoken about Russia's war and Ukraine, giving money and weapons and support for the protection of Ukraine, it has purposefully let Palestinians die and suffer. Today, my legal team is my voice. It speaks in a language that Canadians cannot silence, with the force of law and values of a human right and international law. I have filed a legal action in the Ontario Supreme Court, an action that forces Canada to recognise my humanity as a Palestinian Canadian. This action puts Canadians in notice that it cannot ignore the rights of Palestinian Canadians. It cannot turn a blind eye to our pain. It cannot assist the very country that is destroying and killing Palestinian lives and at the same time pretend to be at law by waiting. Canada will count for our action in a court of law. This is not an action for money or material compassion. We are asking the Court simply to declare that our rights matter and that Canada is responsible for fighting Palestinian Canadians, for ignoring international law, and for destroying [inaudible] guarding. It is a basic responsibility to take all responsibility measures in its power to prevent genocide. The world is waiting. Canada, we wait for a response. Thank you.

DL: We're now happy to take any questions from the media.

Journalist: Hi. I just spoke to Minister Joly. Yesterday, the UN rapporteur for Palestinian territories was here, Francesca Albanese. She said that Canada violated international law because there's a genocide in Gaza. And Madam Joly just said that basically Canada was doing exactly what the rapporteur told them to do. But yesterday, the rapporteur was really clear that Canada is violating international law. So what's your comment about that? And is Canada doing what Madam Joly said?

DL: I would have loved to have heard Madam Joly explain precisely in concrete terms what it is that Canada is doing to fulfil its obligations. As I indicated in my opening statements and the extraordinary UN special rapporteur Francesca Albanese, has specifically talked about this. Canada continues to send military equipment to Israel. Canada is even buying military equipment from Israel and thereby enriching the military contractors that are complicit in the mass murder of Palestinians. And I mentioned the fact that charitable status is being recorded by the Canadian government to pro-Israel organisations funnelling money to Israel, whitewashing its crimes. Canada allows Canadian citizens to fight in Gaza on behalf of the Israeli military. In the case of Ukraine, Madam Joly or I should say Deputy Prime Minister Chrystia Freeland threatened any Canadians who fought on the side of Russia with prosecution. Not only was there no threat in this case, but the government knows that there are Canadians fighting in Gaza where war crimes are being committed on a daily basis. So I could go on and on. There is simply absolutely no meat on those bones. Madam Joly is making empty declarations that are not backed up by any evidence, and we look forward to

proving in a court of law that Canada has failed abjectly to fulfil its obligation to prevent genocide.

Journalist: I have another question.

DL: Sure.

Journalist: At the light of the US election today, what do you think Canada can do for Palestine? You know, for peace in Palestine, in the conflict despite the [inaudible] and the bonus of the [inaudible]. What do you think Canada should do besides stopping every affair they have with Israel?

SM: I think what we have to understand is that no matter who was going to win the US election, Palestine was going to lose, insofar as what the response of the US government was going to be. We know that Vice President Kamala Harris was entirely involved in the shipment of practically all of the arms that Israel used to devastate and demolish Gaza. We know that now President elect Trump is also intending to assist Israel, however possible, in trying to complete its mission of destruction. I think that right now this needs to be a wake up call to people to continue to mobilise, to continue to raise their voices against the Canadian government. Canada should be speaking out just as much as it should be speaking out against what Israel is doing. They should be speaking out about what the United States is doing. The United States is the largest arms supplier to Israel. If it wasn't for the United States sending over £2,000 bombs, we wouldn't see what's happening right now. We wouldn't see this devastation. They're just as guilty. They're just as complicit as Israel is. And Canada needs to be speaking out against both countries.

Journalist: To speak out against the United States?

SM: It's imperative. It has to happen.

Journalist: Under this government?

SM: No, this government has no interest in it. That's not where their priority... Pardon?

Journalist: Under what government could that change?

SM: That's up to the people to determine. But certainly not under this one. This government has been nothing short of complicit with what's happening, as Mr. Lascaris outlined. Whether it's through letting charitable organisations subsidise the operations of Israel's Ministry of Defence in contravention of CRA policy, allowing organisations to recruit volunteers for Israel's military in violation of the Foreign Enlistment Act, continuing military cooperation between Canada and Israel under the Canada Israel Strategic Partnership. These are all just a few examples of what Canada is engaged in right now. In addition to continuing to ship arms to Israel in violation of the Arms Trade Treaty. So this government has no priority whatsoever for standing up for the Palestinian people, and that's why the people themselves need to stand up to this government.

Journalist: And the last question would be, as I am the only media here, do you think that mobilisation can still be a way to change people's minds, not governments minds, but people's minds?

DL: I just want to make sure I heard you correctly, you said mobilisation? I think at this stage we need to use every tool in the tool kit. Civil society needs to come forward and persist in mass demonstrations, engaging even in civil disobedience where necessary and appropriate. We need to have petitions brought forward in Parliament drawing attention to the complicity of Canada in this genocide. We need to have legal actions brought. This is just one; there was another one actually pending in the courts of Canada relating specifically to the transfer of weapons to Israel, and there may well be others in the future. So there are also boycotts. Civil society can make a difference by not doing business with corporations that are complicit in Israeli genocide. If we use all of the resources and tools at our disposal, we can bring this to an end.

Journalist: You said this government is complicit. So is there any way the law can do something?

DL: We certainly believe that if we're granted the relief we're requesting in this case, which is a declaration, that Canada is violating its obligation under Article one of the Genocide Convention to Prevent Genocide, that would be a very black mark on the record of this or any other Canadian government. And that will place enormous pressure on the government to act. But also it can become a legal basis for further actions involving more dramatic forms of relief like injunctive relief or monetary compensation. But we're just one of the many lawyers around the world who are taking legal action. There's legal action being taken in the courts of the Netherlands. There is legal action being taken in the United States. We are part of an international legal movement to bring justice to the Palestinian people.

Journalist: Will it lead to something, this type of action?

DL: We certainly believe so. Otherwise we wouldn't be here.

Journalist: Thank you.

Faisal Bhabha: Hi, I'm Faisal Bhabha, an associate professor of law at Osgoode Hall Law School in Toronto. I've joined this team of lawyers to represent these two clients, Mr. Tamer Jarada and Hany El-Batnigi, in this challenge to the Canadian government's failure to fulfil its legal obligations. We've been deeply saddened and outraged by the failure of our country, of this particular government to take meaningful action as it has in the past to stand up for peace and take action to prevent genocide. We have credible information from credible sources, including the International Court of Justice, raising the alarm bell about the conditions in Gaza. And we have a Canadian government that, by its own description, is closely aligned with Israel. And yet it has failed to take any meaningful action whatsoever to halt that country's genocidal conduct in Gaza.

Yavar Hameed: My name is Yavar Hameed and I'm part of the Coalition for Canadian Accountability in Gaza with my colleagues on probably one of the most important domestic and international human rights issues of our time. One year ago, we were on Parliament Hill with Hany El-Batnigi and Tamer Jarada virtually putting the government of Canada on notice about what was then an evolving situation which we believed was genocide. Today the facts have only worsened with tens of thousands of deaths, with tremendous atrocities. And we've seen the government of Canada simply doubled down in its position in assisting Israel. There needs to be resistance. There needs to be resistance through the vehicle of law. And our coalition is putting this question squarely before the courts. And we hope to set an important precedent for holding our government accountable for what it has not done and what it should be doing to take all reasonable measures to prevent the crime of genocide.

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