

Historic court award in Flight 752 case sends a message

By Mark PavilonsEditor

The Ontario Superior Court of Justice's massive \$107 million award to the families of six victims in the shooting down of Ukraine Airlines Flight PS752 by the Islamic Republic of Iran sends a strong message to the world. The decision follows the May 20, 2021 decision of the court in which it found that the shooting down of the airplane was an intentional terrorist act perpetrated by Iran and the other defendants named in the Claim. Names in the suit were the Republic of Iran, the Revolutionary Guard, Armed Forces and Supreme Leader of Iran himself. On Jan. 8, 2020, the Islamic Republic of Iran fired two missiles into Ukraine International Airlines Flight 752 departing Tehran en route to Kiev causing the aircraft to crash. Approximately 75 Canadians were killed. The plaintiffs are some surviving family members who lost spouses, children, nieces and nephews. They filed a private law claim in the Ontario Superior Court of Justice against the Islamic Republic of Iran and others responsible for the disaster. This damages Decision of the Ontario Superior Court of Justice is unprecedented in Canadian law. It is significant for the impact it will have on immediate surviving family members seeking justice. Nobleton's Shahin Moghaddam lost his wife Shakiba and young son Rosstin in the tragedy. Each of the plaintiffs filed victim impact statements and photographs from "happier times." If the words on the victim impact statements do not convey the full measure of the loss, the family photos that were attached to the affidavits certainly do," Judge Edward Belobaba wrote. The images reveal the enormity of the personal losses. A press conference was held Jan. 4 via Zoom but it was derailed by strange images from hackers. Jonah Arnold, of Weinman Arnold LLP, said the fight continues and work so far has been a total team effort. Mark Arnold, counsel with Gardiner Miller Arnold LLP, said he expected this decision. "My initial thought was profound sadness," he said, adding they knew if they put together a solid case, they'd get the results. Moghaddam thanked the legal team and others, who did a great job. He extended his thanks to the support received from people around the world. Justice Belobaba awarded \$7 million in compensatory damages and \$100 million in punitive damages, plus interest, to the family members who went to court. "We intend to collect on this decision," Mark Arnold said. He pointed out money is not the issue but the judgement sends a clear message that these acts can't be tolerated. The significance of this decision is how it will play out in the coming months. The legal team can take this objective number and use it any future negotiations. In the damages decision, Ontario Superior Court Justice Edward Belobaba found on a balance of probabilities that the missiles that shot down the Ukraine International Airlines Flight were fired deliberately at a time when there was no armed conflict in the area. As a result, he found it constituted an act of terrorism that would invalidate Iran's immunity against civil litigation. Arnold has said that his team will look to seize Iranian assets in Canada and abroad to get the compensation. The case was filed by Nobleton's Shahin Moghaddam, Mehrzad Zarei and Ali Gorji. Fearing reprisals from Iran, some of the other plaintiffs withheld their names. Regarding pain and suffering, Judge Balabado asked "how exactly should a court monetize the terror that both crew and passengers must have felt after being hit by the first missile?" And 30 seconds later, by a second missile?" And then over the next four minutes as the plane hurtled towards earth and inevitable death?" He pointed out that U.S. judges "uniformly" award \$1 million to victims of terrorism and the judge felt this was appropriate for each of the case's plaintiffs. He admitted when setting punitive damages, it was the most challenging component of the analysis. The level and importance of this decision weighed heavily on him. He said the focus should not be on the plaintiffs' losses but the defendants' misconduct and damages should be seen as a deterrent. While the judge admitted that huge sums against foreign countries are seldom collected and remain outstanding, he's "satisfied that some level of enforcement may well be possible and some level of deterrence may we be achieved." The \$100 million in punitive damages are made largely due to the enormity of the defendants' misconduct of killing innocent people. The judge also believes stronger messages in the war against terrorism need to be sent. "This court is prepared to add its voice to others in the international community collectively condemning the terrorist actions of the defendant state," he wrote.