

Ontario court rules shooting down of Flight 752 was an intentional terrorist act

By Mark PavilonsEditor

Families of victims of Ukrainian Flight 752, shot down by Iranian forces in January 2020, received some justice last week. Ontario Superior Court Justice Edward Belobaba ruled the missile attack was deliberate, and further, it constituted an act of terrorism that would invalidate Iran's immunity against civil litigation. The State Immunity Act protects foreign states from legal claims, but the Justice for Victims of Terrorism Act provides an exception in cases where the losses are caused by terrorist activity, the ruling said. More than 100 of the 176 people killed in the plane crash had ties to Canada, including 55 Canadian citizens and 30 permanent residents. The lawsuit was filed last year by four people whose loved ones were killed in the attack. One was Nobleton's Shahin Moghaddam, who lost his wife, Shakiba, and their son Rossitin. He's been lobbying the government and pushing for justice, through the Association of Families of Flight PS752 Victims. Justice Belobaba relied on expert reviews and reports on Iran's Final Report, all of which refute their arguments of human error or technical failure. He wrote that the missile attacks were intentional; there was no armed conflict in the region, and the plaintiffs established this was, in fact, an act of terrorism. Justice Belobaba, in this default judgement, said it was fair to award the plaintiffs legal costs of just over \$150,000. The lawyers representing the families said the decision came with "mixed emotions." While delighted with the outcome, they are all "infinitely sad" that this case had to begin in the first place. There are two parts to the case, explained Mark Arnold, of Bay Street firm Gardiner Miller Arnold. The first part was establishing liability, which meant proving it was an intentional, terrorist act. Justice Belobaba agreed they met that burden. Arnold said Belobaba was absolutely in his right to make such bold statements. The suit names a number of defendants, including the Islamic Republic of Iran and the Islamic Revolutionary Guard Corps. Iran was served with the claim through Global Affairs Canada in September, but failed to file a statement of defence and was found in default in December. "The plaintiffs have established that the shooting down of Flight 752 by the defendants was an act of terrorism and constitutes 'terrorist activity' under the SIA, the JVTA and the provisions of the Criminal Code," Belobaba wrote. Arnold noted Justice Belobaba will remain the presiding judge over the next phase of the case, which involves damages. Arnold is asking for a six-person jury to preside over the matter. He noted since the loss was felt by the greater community, members of the community should play a role in determining damages. The hearing will be precedent-setting and it will also be a defining moment for the families and solicitors. Preliminary reports released by Iranian authorities last year pointed to an air-defence operator who they said mistook the Boeing 737-800 for an American cruise missile. Iran's civil aviation body released a final report earlier this year that blamed "human error" for the firing of the missiles but named no one responsible. "As the Ontario Superior Court confirmed, the Iranian regime committed an intentional act of terrorism. Iran is a state sponsor of terror who must be held to account for the murder of killing 176 innocent lives. Residents of King and Vaughan tragically lost their loved ones, including Mr. Moghaddam, who lost his son and wife. It is for them and all victims that we expect accountability and justice for those most heinous crime against civilians," said King-Vaughan MPP Stephen Lecce. Iran's foreign ministry responded to the verdict, saying it was unsubstantiated. "This verdict has no basis and does not consist of any objective reasoning," said the statement. "This behaviour of the Canadian judge, by following orders and political cliches, is shameful for a country which claims to follow the rule of law." "Now that a legal precedent has been set in the Canadian judiciary system that Iran's destruction of PS752 was an intentional act of state orchestrated terrorism, it will be highly damaging to Canada's credibility on the world stage if Canada does not proceed to the International Criminal Court to hold Iran accountable for Crimes Against Humanity," said Schomberg's PS752 investigator Andre Milne, of Unicorn Aerospace.