

C-CAT Update – Jan. 12, 2022

Jan. 3, 2022

Ontario Court Awards \$107 Million to Terror Victims under C-CAT’s JVTA

C-CAT’s JVTA anti-terrorism legislation successfully holds Iran and the IRGC to account for terrorism in the shutdown of Ukrainian Airlines Flight PS752 on Jan. 8, 2020, killing all 176 people aboard including 85 Canadian citizens or permanent residents



From the Decision of Justice Edward Belobaba

“This may be the first time that a Canadian court has been asked to determine damages for lives lost to terrorism”

“I concluded on the expert evidence before me that the missile attacks were intentional. I further concluded that the shooting down of the civilian aircraft constituted terrorist activity under applicable federal law and exposed the defendants to civil liability.”

“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 hurled towards earth and inevitable death?”

A Few Key Points on the PS752 Decision

1. What is the JVTA?

The Justice for Victims of Terrorism Act (JVTA) was authored by C-CAT, which led the 8-year [campaign](#) for its passage into law in 2012. Under the JVTA, terror victims can sue state and non-state sponsors of terrorism, in Canadian courts. This most recent decision is the second major judgment against Iran for terrorism under the JVTA, jointly amounting to billions of dollars in Canadian judgments against the regime, widely acknowledged as the globe's most egregious state sponsor of terrorism.

2. The Globe and Mail: The Decision is “Unprecedented”

The Globe and Mail described this \$107 million decision as “a precedent-setting case that determines a price for state-sponsored terrorism against Canadians”.

3. Justice Belobaba: Large damages awards are “to punish, deter and condemn”

- “The court was advised that ... no specific penalties or sanctions have been imposed by the federal government for the shooting down of Flight PS 752. The analysis of the factors just noted suggests the need for a significant award....”
- “[T]he fact that a large punitive damages award may be seen by some as a “windfall” for the plaintiffs should not detract from its underlying purpose and rationale: to punish, deter and condemn the defendant state’s “highly reprehensible” misconduct.”

4. UN Special Rapporteur, Dr. Agnes Callamard: “It is not governments who will deliver justice”

“Ultimately, in many cases that I have had to work on, including the shooting down of the plane, it is not governments who will deliver justice. It is the victims with their lawyers and a good court. This is what happened in this case. This is what I've learned over the last many, many years.... It's about the fact that we are not turning the page on the victims, which is what governments want to do.” (from a transcript of a press conference on Jan. 4, 2022)

The JVTA's Recent Success on PS752 Lauded by Senior UN Official:

This case is an "example of why we need to be persistent and why we need to look beyond the official institutions of government for the delivery of justice"



The JVTA's success in enabling the \$107 million judgment against Iran on behalf of the families of PS752, received approbation from **Dr. Agnes Callamard, the UN Special Rapporteur on Extra-Judicial Summary or Arbitrary Executions** (Aug. 2016 to Mar. 2021). Dr. Callamard was responsible for the UN report on Iran's shutdown of PS752. As noted by 752 victims' attorney Mark Arnold, her report was instrumental in the judge's decision. Later at a press conference Dr. Callamard called in to and made the following statement in response to Arnold's [criticism](#) of the Canadian government for being "opaque, unlawful and unhelpful" with his case, adding it had "failed" in attempts to negotiate with Iran:

"Thank you very much, Mr. Arnold. ... I just wanted to really just congratulate you ... for being persistent demanding and ensuring that justice could be delivered. I also wanted to say that I could not agree with you more regarding Canada, and I could not agree with you more regarding the notion that ultimately, in many cases that I have had to work on, including the shooting down of the plane -- it is not governments who will deliver justice.

It is the victims with their lawyers and a good court. And yet again, this is what happened in this case. This is what I've learned over the last many, many years. And that is a typical example of why we need to be persistent and why we need to look beyond the official institutions of government for the delivery of justice....

It's about people being heard. It's about the fact that we are not turning the page on the victims, which is what governments want to do. Canada wants to do. The US wants to do. Iran wants to do. And in the case of 9/11, that's what Saudi Arabia wants to do. Everyone wants to turn the page and move on. But you have ensured that this did not happen with the victims, and that, I have to say, is a fantastic lesson. And I can't thank you enough for the work that you have done right now for the delivery of justice and for demonstrating, even when you're fighting against one of the most terrible governments in terms of its human rights record, something can be done, and you've done it with the victims' families." (from the transcript of a press conference on Jan. 4, 2022)

The Import of the JVTA Rulings Against Iran

The passage of the JVTA resulted in Iran’s listing under Canadian law as a State Supporter of Terrorism. Iran and its apologists, including those seeking reengagement with Iran at almost any price, have vociferously opposed Iran’s designation under the JVTA. They continue to lobby to have the JVTA rescinded or to have Iran delisted, ignoring, diminishing, or whitewashing Iran’s well-earned position as the globe’s most egregious state sponsor of terrorism. Nevertheless, the JVTA has enabled successful lawsuits against Iran in Canada. The courts’ rulings have provided an independent, credible, and essential counterweight to the regime’s propaganda machinery, and have contributed greatly to strengthening the rule of law both domestically and internationally with regard to the crime of terrorism. Below is a brief summary outlining the **import of the JVTA’s successes, as the most effective legal instrument In Canada to have successfully held the regime accountable for its crimes against Canadians over the last 40 years:**

1. Iran and Canadian Law

The findings of the courts have confirmed Iran’s culpability in terror sponsorship as a matter of Canadian law. This will strengthen other efforts seeking to deter the terrorism diplomacy of the Iranian regime in Canada and abroad.

2. The IRGC and Canadian Law

The courts’ decisions have established the centrality of the Islamic Revolutionary Guard Corps (IRGC) in the execution of Iran’s terrorist foreign policy, and bolster [arguments](#) that Canada list the IRGC *in its entirety*, as a terrorist entity under Canadian law.

3. Setting a Threshold in Public Policy for the Value of Canadian Lives

The precedent setting decision to award \$107 million to the families of the PS752 has set a [precedent](#) “that determines a price for state-sponsored terrorism against Canadians” and will also set a threshold for Iranian liability in whatever future negotiations may ensue between Canada and the regime regarding its shutdown of 752.

4. Establishing the Credibility of Civil Litigation as a Singular Tool in Fighting Terrorism

The successful litigation against Iran under the JVTA has established the JVTA as an essential and unique tool against terrorism and in pursuing justice for its victims in the face of the Canadian government’s unwillingness or inability to take appropriate steps to do so. The findings of the courts under the JVTA have explicitly recognized and given their approbation to the intent and method of the JVTA, and to the utility and import of civil litigation against terrorism in Canada. (see pages 3 and 5)

Two Canadian Justices Weigh in on the JVTA and Civil Judgments Against Terrorism

- ❖ In his recent decision (Dec. 31, 2021) awarding \$107 million to the victims of PS752 under the JVTA, Justice Belobaba quoted a Supreme Court majority opinion regarding the importance of civil remedies for terrorism:

“The Court’s majority opinion cited the following passage with approval:

As Professor Koh wrote about civil remedies for terrorism:

Whenever a victim of a terrorist attack obtains a civil judgment [in a court of law], that judgment promotes two distinct sets of objectives: the objectives of traditional tort law and the objectives of public international law. A judgment awarding compensatory and punitive damages to a victim of terrorism serves the twin objectives of traditional tort law, compensation and deterrence. At the same time, the judgment promotes the objectives of public international law by furthering the development of an international rule of law condemning terrorism ... the ... court adds its voice to others in the international community collectively condemning terrorism as an illegitimate means of promoting individual and sovereign ends.

This court is prepared to add its voice to others in the international community collectively condemning the terrorist actions of the defendant state.”

- ❖ In the first JVTA lawsuit against Iran in 2017, (Tracy v. Iran), Justice C. William Hourigan addressed the legitimacy and efficacy of civil suits against State Sponsors of Terrorism under the JVTA in his multi-billion-dollar judgment against Iran:

“The fact that a foreign government would engage in the sponsorship of such atrocities is chilling.... There is nothing offensive about using peaceful legislative means to combat terrorism.... To the contrary, awarding damages that may have a deterrent effect is a sensible and measured response to the state sponsorship of terrorism and is entirely consistent with Canadian legal morals.”