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DATED AT TORONTO THIS
FAIT À TORONTO LE

DAY OF
JOUR DE

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REGISTRAR

GREFFIER

ONTARIO

SUPERIOR COURT OF JUSTICE

Court File No.:

CV-18-00599976-0000

BETWEEN:

Bhagabati Adhikari, individually and as Litigation Guardian for her minor children
Krishna Dhungana and Kripan Dhungana;
Radhika Baruwal Chhetri, Parita Baruwal;
Goma Kumari Gole individually and as Litigation Guardian for her minor child Ashisma
Gole;
Bel Kumari Gurung individually and as Litigation Guardian for her minor child Subarna
Gurung, Sneha Gurung;
Yungsong Gurungseni individually and as Litigation Guardian for her minor child Anita
Gurung, Binita Gurung;
Chitra Kumari Koirala individually and as Litigation Guardian for her minor child
Manisha Koirala, Parmila Koirala, Kabita Koirala, Rajita Koirala;
Deva Kumari K.C. individually and as Litigation Guardian for her minor children Sanu
Chhetri;
Sanjita Kumari Lama individually and as Litigation Guardian for her minor child Jenish
Thapa;
Ganga Mahat Subedi individually and as Litigation Guardian for her minor children
Binayak Subedi and Bigyan Subedi;
Ganga Kumari Rana Magar individually and as Litigation Guardian for her minor
children Asma Rana Magar and Anup Raj Rana Magar, Astha Rana Magar;
Buddhi Maya Tamang, Dele Tamang, Purnimaya Tamang, Rujit Tamang;
Shanti Kumari Lama Tamang, Sagar Tamang, Lemisha Tamang;
Durga Thapa, Bishu Thapa, Rashu Thapa, Mirog Thapa;
Kalpana Thapa individually and as Litigation Guardian for her minor child Deepen
Thapa, Deepika Thapa;
Rukmani Thapa individually and as Litigation Guardian for her minor child Supriya
Thapa
Amrit Rokaya Chhetri;
Prem Bahadur Chhetri;
Krishna Kumar Deuja;
Man Bahadur Thapa;
and
Chet Prasad Sherchan

Plaintiffs

- and -

Attorney General of Canada,
Sabre International Security LLC,

Sabre International Security Security Services,
Sabre International Security Limited (formerly known as SIS Iraq Limited),
and
Sabre International Security Limited

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiffs' lawyer or, where the plaintiffs does not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: June __, 2018

Issued by: _____
Registrar

Address of court office:
393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: Attorney General of Canada

AND TO: Sabre International Security LLC, Sabre International Security Security Services, Sabre International Security Limited (formerly known as SIS Iraq Limited), and Sabre International Security Limited

CLAIM

1. The plaintiffs claim as follows:

- (a) Bhagabati Adhikari, Krishna Dhungana and Kripan Dhungana:
 - (i) USD 270,000 in life insurance benefits;
 - (ii) USD 350,000 in loss of financial support and household services;
and
 - (iii) \$300,000 in loss of guidance, care, and companionship.
- (b) Radhika Baruwal Chhetri and Parita Baruwal:
 - (i) USD 270,000 in life insurance benefits;

- (ii) USD 150,000 in loss of financial support and household services;
and
 - (iii) \$200,000 in loss of guidance, care, and companionship.
- (c) Goma Kumari Gole and Ashisma Gole:
- (i) USD 270,000 in life insurance benefits;
 - (ii) USD 400,000 in loss of financial support and household services;
and
 - (iii) \$200,000 in loss of guidance, care, and companionship.
- (d) Bel Gurung, Subarna Gurung, and Sneha Gurung:
- (i) USD 270,000 in life insurance benefits;
 - (ii) USD 265,000 in loss of financial support and household services;
and
 - (iii) \$300,000 in loss of guidance, care, and companionship.
- (e) Yungsong Gurungseni and Anita Gurung:
- (i) USD 270,000 in life insurance benefits;
 - (ii) USD 185,000 in loss of financial support and household services;
and
 - (iii) \$200,000 in loss of guidance, care, and companionship.
- (f) Chitra Kumari Koirala, Manisha Koirala, Parmila Koirala, Kabita Koirala,
and Rajita Koirala:
- (i) USD 270,000 in life insurance benefits;

- (ii) USD 230,000 in loss of financial support and household services;
and
 - (iii) \$500,000 in loss of guidance, care, and companionship.
- (g) Deva Kumari K.C. and Sanu Chhetri:
- (i) USD 270,000 in life insurance benefits;
 - (ii) USD 355,000 in loss of financial support and household services;
and
 - (iii) \$200,000 in loss of guidance, care, and companionship.
- (h) Sanjita Kumari Lama and Jenish Thapa:
- (i) USD 270,000 in life insurance benefits;
 - (ii) USD 265,000 in loss of financial support and household services;
and
 - (iii) \$200,000 in loss of guidance, care, and companionship.
- (i) Ganga Mahat Subedi, Binayak Subedi, and Bigyan Subedi:
- (i) USD 270,000 in life insurance benefits;
 - (ii) USD 240,000 in loss of financial support and household services;
and
 - (iii) \$300,000 in loss of guidance, care, and companionship.
- (j) Ganga Kumari Rana Magar, Astha Rana Magar, Asma Rana Magar, and Anup Raj Rana Magar:
- (i) USD 270,000 in life insurance benefits;

- (ii) USD 240,000 in loss of financial support and household services;
and
 - (iii) \$400,000 in loss of guidance, care, and companionship.
- (k) Buddhi Maya Taman, Dele Tamang, Rujit Tamang, and Purnimaya Tamang:
- (i) USD 270,000 in life insurance benefits;
 - (ii) USD 160,000 in loss of financial support and household services;
and
 - (iii) \$400,000 in loss of guidance, care, and companionship.
- (l) Shanti Kumari Lama Tamang, Sagar Tamang, and Lemisha Tamang:
- (i) USD 270,000 in life insurance benefits;
 - (ii) USD 230,000 in loss of financial support and household services;
and
 - (iii) \$300,000 in loss of guidance, care, and companionship.
- (m) Durga Thapa, Bishu Thapa, Rashu Thapa, and Mirog Thapa:
- (i) USD 270,000 in life insurance benefits;
 - (ii) USD 160,000 in loss of financial support and household services;
and
 - (iii) \$400,000 in loss of guidance, care, and companionship.
- (n) Kalpana Thapa, Deepen Thapa, and Deepika Thapa:
- (i) USD 270,000 in life insurance benefits;

- (ii) USD 205,000 in loss of financial support and household services;
and
 - (iii) \$300,000 in loss of guidance, care, and companionship.
- (o) Rukmani Thapa and Supriya Thapa:
- (i) USD 270,000 in life insurance benefits;
 - (ii) USD 171,000 in loss of financial support and household services;
and
 - (iii) \$200,000 in loss of guidance, care, and companionship.
- (p) Chet Prasad Sherchan:
- (i) USD 270,000 in permanent disability benefits;
 - (ii) USD 205,000 in loss of earning capacity;
 - (iii) \$200,000 in non-pecuniary losses; and
 - (iv) special damages and future costs of care to be determined.
- (q) Amrit Rokaya Chhetri:
- (i) USD 270,000 in permanent disability benefits;
 - (ii) USD 285,000 in loss of earning capacity;
 - (iii) \$200,000 in non-pecuniary losses; and
 - (iv) special damages and future costs of care to be determined.
- (r) Krishan Kumar Deuja:
- (i) USD 270,000 in permanent disability benefits;
 - (ii) USD 185,000 in loss of earning capacity;

- (iii) \$200,000 in non-pecuniary losses; and
 - (iv) special damages and future costs of care to be determined.
- (s) Prem Bahadur Chhetri:
- (i) USD 270,000 in permanent disability benefits;
 - (ii) USD 220,000 in loss of earning capacity;
 - (iii) \$200,000 in non-pecuniary losses; and
 - (iv) special damages and future costs of care to be determined.
- (t) Man Bahadur Thapa:
- (i) USD 270,000 in permanent disability benefits;
 - (ii) USD 175,000 in loss of earning capacity;
 - (iii) \$200,000 in non-pecuniary losses; and
 - (iv) special damages and future costs of care to be determined.
2. The plaintiffs also seek:
- (a) a declaration that Canada breached s. 15(1) of the *Charter of Rights and Freedoms*; and
 - (b) *Charter* damages.

Summary

3. Kabul, Afghanistan is one of the world's most dangerous cities. To protect its embassy in Kabul, the Government of Canada sought out former Nepali and Indian army soldiers as security guards. Often referred to as Gurkhas, they were selected due to their reputation as highly trained, skilled, and fearless soldiers.

4. On the morning of June 20, 2016, the Taliban launched a bomb attack against an unprotected minibus carrying Nepali and Indian security guards on their daily commute to protect the Canadian embassy. Fifteen guards were killed in the attack and five were seriously injured (the "Security Guards").

5. The attack was a foreseeable consequence of the negligence of Canada and Sabre International Security, including their discriminatory treatment of Nepali and Indian guards. White security guards were lodged on the Embassy grounds; the Nepali and Indian guards were lodged several kilometres away and were not provided with reasonable protection during their forced daily commute.

6. To date, the victims of the attack have not received fair or adequate compensation for the negligent and discriminatory treatment by Canada and Sabre International Security. White security guards were protected by an insurance policy that provided 300,000 USD in life and disability insurance; contrary to prior written and oral representations, the Nepali and Indian security guards only benefited from 30,000 USD in life and disability insurance under the same policy.

7. In the days following the attack, Canada provided virtually no support for the survivors or families of the deceased. Canada's High Commissioner for India visited the survivors in hospital and provided a few packets of biscuits to those who were conscious, but Canada has not otherwise assisted with their recovery or compensation.

8. The survivors have not had any contact from individuals they knew and protected at the Canadian embassy. Canada has never contacted the families of the deceased.

Parties

9. The defendant Attorney General of Canada has an address for service at 120 Adelaide Street West, Suite #400, Toronto, Ontario M5H 1T1. These proceedings are taken against the Crown ("Canada") in the name of the Attorney General of Canada pursuant to s. 23(1) of the *Crown Liability and Proceedings Act*. Canada is responsible, through the Minister of Foreign Affairs and the Department of Foreign Affairs and International Trade, for the management of Canada's embassy in Afghanistan.

10. Sabre International Security LLC ("Sabre LLC") contracted with Canada for the provision of security services at the Canadian embassy in Kabul, Afghanistan. Sabre International Security LLC was not incorporated in any jurisdiction known to the plaintiffs.

11. Sabre International Security Security Services ("Sabre Afghanistan") was a corporation formed under the laws of Afghanistan with registration number 102514. It was incorporated on September 30, 2012, and its registration status expired on February 3, 2017.

12. Sabre International Security Limited (formerly known as SIS Iraq Limited) ("Sabre BVI") was a corporation formed under the laws of the British Virgin Islands with company number 570881. It was incorporated on December 5, 2003, and was struck off the corporate register on May 2, 2017 for non payment of annual fees.

13. Sabre International Security Limited ("Sabre Iraq") was a corporation formed under the laws of Iraq. It was incorporated on June 15, 2004 with company number 17504. Sabre Iraq is no longer listed in the Iraqi Companies Registry.

14. Sabre Iraq, Sabre BVI, and Sabre Afghanistan (the "Sabre Companies") had owners and directors in common. The Sabre Companies operated as one overarching business with no real separation of roles between the different companies. Business was done in the name of "Sabre International Security", "Sabre International Security LLC" or "Sabre" so that any Sabre company could be put forward as the relevant company if legal difficulties arose. One or more of the Sabre Companies, or another corporation with common owners and directors, signed contracts with Canada and the plaintiffs related to the provision of security services for the Canadian embassy in Afghanistan. The Sabre Companies and the unincorporated entity Sabre International Security LLC will be collectively referred to as "Sabre".

15. Bhagabati Adhikari is the widow of Krishna Dhungana, a Gurkha security guard who was killed in the bombing. Bhagabati Adhikari brings this action in her own capacity and as Litigation Guardian for her minor children Krishna Dhungana and

Kripan Dhungana. Bhagabati Adhikari and her children Krishna Dhungana and Kripan Dhungana reside in Nepal and have an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

16. Radhika Baruwal Chhetri is the widow of Hari Baruwal Chhetri, a Gurkha security guard who was killed in the bombing. She resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

17. Parita Baruwal is the adult child of Hari Baruwal Chhetri, a Gurkha security guard who was killed in the bombing. She resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

18. Goma Kumari Gole is the widow of Akur Tamang, a Gurkha security guard who was killed in the bombing. Goma Kumari Gole brings this action in her own capacity and as Litigation Guardian for her minor child Ashisma Gole. Goma Kumari Gole and Ashisma Gole reside in Nepal and have an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

19. Bel Gurung is the widow of Suk Gurung, a Gurkha security guard who was killed in the bombing. Bel Gurung brings this action in her own capacity and as Litigation Guardian for her minor child Subarna Gurung. Bel Gurung and Subarna Gurung reside in Nepal and have an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

20. Sneha Gurung is the adult child of Suk Gurung, a Gurkha security guard who was killed in the bombing. Sneha Gurung resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

21. Yungsong Gurungseni is the widow of Lil Bahadur Gurung, a Gurkha security guard who was killed in the bombing. Yungsong Gurungseni brings this action in her own capacity and as Litigation Guardian for her minor child Anita Gurung. Yungson

Gurungseni and Anita Gurung reside in Nepal and have an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

22. Chitra Kumari Koirala is the widow of Madhusudan Koirala, a Gurkha security guard who was killed in the bombing. Chitra Kumari Koirala brings this action in her own capacity and as Litigation Guardian for her minor child Manisha Koirala. Chitra Kumari Koirala and Manisha Koirala reside in Nepal and have an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

23. Parmila Koirala is the adult child of Madhusudan Koirala, a Gurkha security guard who was killed in the bombing. Parmila Koirala resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

24. Kabita Koirala is the adult child of Madhusudan Koirala, a Gurkha security guard who was killed in the bombing. Kabita Koirala resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

25. Rajita Koirala is the adult child of Madhusudan Koirala, a Gurkha security guard who was killed in the bombing. Rajita Koirala resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

26. Deva Kumari K.C. is the widow of Nabin Chhetri, a Gurkha security guard who was killed in the bombing. Deva Kumari K.C. brings this action in her own capacity and as Litigation Guardian for her minor child Sanu Chhetri. Deva Kumari K.C. and Sanu Chhetri reside in Nepal and have an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

27. Sanjita Kumari Lama is the widow of Jitendra Thapa, a Gurkha security guard who was killed in the bombing. Sanjita Kumari Lama brings this action in her own

capacity and as Litigation Guardian for her minor child Jenish Thapa. Sanjita Kumari Lama and Jenish Thapa reside in Nepal and have an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

28. Ganga Mahat Subedi is the widow of Bidur Subedi Chhetri, a Gurkha security guard who was killed in the bombing. Ganga Mahat Subedi brings this action in her own capacity and as Litigation Guardian for her minor children Binayak Subedi and Bigyan Subedi. Ganga Mahat Subedi, Binayak Subedi and Bigyan Subedi reside in Nepal and have an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

29. Ganga Kumari Rana Magar is the widow of Chandra Bahadur Rana Magar, a Gurkha security guard who was killed in the bombing. Ganga Kumari Rana Magar brings this action in her own capacity and as Litigation Guardian for her minor children Asma Rana Magar and Anup Raj Rana Magar. Ganga Kumari Rana Magar, Asma Rana Magar and Anup Raj Rana Magar reside in Nepal and have an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

30. Astha Rana Magar is the adult child Chandra Bahadur Rana Magar, a Gurkha security guard who was killed in the bombing. Astha Rana Magar resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

31. Buddhi Maya Tamang is the widow of Chyangwa Tamang, a Gurkha security guard who was killed in the bombing. Buddhi Maya Tamang resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

32. Dele Tamang is the adult child of Chyangwa Tamang, a Gurkha security guard who was killed in the bombing. Dele Tamang resides in Nepal and has an address for

service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

33. Rujit Tamang is the adult child of Chyangwa Tamang, a Gurkha security guard who was killed in the bombing. Rujit Tamang resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

34. Purnimaya Tamang is the adult child of Chyangwa Tamang, a Gurkha security guard who was killed in the bombing. Purnimaya Tamang resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

35. Shanti Kumari Lama Tamang is the widow of Dammbar Tamang, a Gurkha security guard who was killed in the bombing. Shanti Kumari Lama Tamang resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

36. Sagar Tamang is the adult child of Dammbar Tamang, a Gurkha security guard who was killed in the bombing. Sagar Tamang resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

37. Lemisha Tamang is the adult child of Dammbar Tamang, a Gurkha security guard who was killed in the bombing. Lemisha Tamang resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

38. Durga Thapa is the widow of Amrit Thapa, a Gurkha security guard who was killed in the bombing. Durga Thapa resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

39. Bishu Thapa is the adult child of Amrit Thapa, a Gurkha security guard who was killed in the bombing. Bishu Thapa resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

40. Rashu Thapa is the adult child of Amrit Thapa, a Gurkha security guard who was killed in the bombing. Rashu Thapa resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

41. Mirog Thapa is the adult child of Amrit Thapa, a Gurkha security guard who was killed in the bombing. Mirog Thapa resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

42. Kalpana Thapa is the widow of Govind Singh Thapa, a Gurkha security guard who was killed in the bombing. Kalpana Thapa brings this action in her own capacity and as Litigation Guardian for her minor child Deepen Thapa. Kalpana Thapa and Deepen Thapa reside in India and have an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

43. Deepika Thapa is the adult child of Govinda Singh Thapa, a Gurkha security guard who was killed in the bombing. Deepika Thapa resides in India and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

44. Rukmani Thapa is the widow of Ganesh Thapa, a Gurkha security guard who was killed in the bombing. Rukmani Thapa brings this action in her own capacity and as Litigation Guardian for her minor child Supriya Thapa. Rukmani Thapa and Supriya Thapa reside in India and have an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

45. Amrit Rokaya Chhetri is a Gurkha security guard who was seriously injured in the bombing. He resides in Nepal and has an address for service care of Camp

Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

46. Prem Bahadur Chhetri is a Gurkha security guard who was seriously injured in the bombing. He resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

47. Krishna Kumar Deuja is a Gurkha security guard who was seriously injured in the bombing. He resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

48. Chet Prasad Sherchan is a Gurkha security guard who was seriously injured in the bombing. He resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

49. Man Bahadur Thapa is a Gurkha security guard who was seriously injured in the bombing. He resides in Nepal and has an address for service care of Camp Fiorante Matthews Mogerman, Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5.

Canada's Contract for Security

50. Canada opened its embassy in Kabul in August 2003. Security of the embassy and its staff has been a priority for the embassy since its opening due to unstable and dangerous conditions in Kabul. Canada contracted with various private security companies to provide security for the embassy at various times.

51. Canada signed its first contract with Sabre for security services in 2011. In 2013, Canada and Sabre entered another contract for security services for the period May 2013 to March 2014 (the "Canada-Sabre Contract"). The Canada-Sabre Contract contained options that allowed Canada to extend its terms to subsequent periods. Canada extended the Canada-Sabre Contract for the following periods:

- (a) In March 2014, for the period ending March 31, 2015;
- (b) In March 2015, for the period ending March 31, 2016;
- (c) In February 2016, for the period May 22, 2016;
- (d) In June 2016, for the period ending August 17, 2016;
- (e) In July 2016, for the period ending March 31, 2017.

52. The Canada-Sabre Contract was in effect at the time each Security Guard was working for Sabre. It governed the relationship between Canada, Sabre, and the Security Guards at the time of the bomb attack.

53. The Canada-Sabre Contract was to be governed and construed in accordance with the laws in force in Ontario.

54. Security personnel were required to work exclusively for the Canadian Embassy.

55. The Canada-Sabre Contract gave Canada extensive rights regarding security personnel, including rights to:

- (a) grant security screening levels to personnel;
- (b) conduct background checks on personnel;
- (c) decide that specific personnel could or could not provide services at the embassy;
- (d) access time sheets for personnel;
- (e) receive details of Sabre's screening process, photographs, personal history, personnel records, and training records for all security personnel;
- (f) inspect personnel accommodation without advance notice;
- (g) require Sabre to retain personnel employed by former contractors.

56. The Canada-Sabre Contract imposed conditions on Sabre regarding terms of work for security personnel, including:

- (a) job descriptions;
- (b) qualifications;
- (c) accommodation;
- (d) transportation;
- (e) access to laundry, physical fitness, and recreational facilities;
- (f) meals;
- (g) annual leave.

57. The Canada-Sabre Contract required Sabre to provide "secure and adequate transportation" for the guards. In times of heightened security conditions, Sabre was required to provide an escort when transporting guards to and from the embassy.

58. Canada was aware of the potential for exploitation of security guards in the private security contractor industry. The Canada-Sabre Contract recognized Canada's involvement in and support of the Montreux Document, an intergovernmental statement that articulates good practices for dealing with private security companies. Practice #13 of the Montreux Document requires states contracting with private security companies to consider the respect of the contractor for the welfare of its personnel, including:

- (a) providing personnel a copy of any contract to which they are a party in a language they understand;
- (b) providing personnel with adequate pay and remuneration arrangements commensurate to their responsibilities and working conditions;
- (c) preventing unlawful discrimination in employment.

Discrimination

59. The Canada-Sabre Contract is discriminatory on the basis of race, ancestry, place of origin, colour, national origin, ethnic origin, and citizenship. It includes the following definitions:

Ex-Patriot (EXPAT): Member of the security team occupying the positions of: Security Advisor, Ops Room Coordinator, Close Protection Team Leader, Close Protection Operator

and

Third Country National (TCN): Ex-member of the Indian or Nepalese military

60. All of the positions included in the definition of "expat" required a minimum of 6 or 8 years of military or police experience in a NATO member country. In practice, all of the "expats" who provided security at the embassy were white and were from countries with a white majority population.

61. The Security Guards were Nepali and Indian expatriates working in Afghanistan, but were defined as "third country nationals" instead of "expats". They were required to have a minimum of 10 years experience in the Indian or Nepalese military.

62. The Canada-Sabre Contract provided for significant differences in benefits for "expats" and "third country nationals".

63. "Expats" were entitled to:

- (a) 8 weeks of work with 4 weeks of leave;
- (b) accommodation provided by the embassy;
- (c) meals provided by the embassy.

64. "Third country nationals" were entitled to:

- (a) 11 months of work with one month of leave;
- (b) accommodation provided by Sabre, with a maximum of 4 guards to a room;

- (c) three meals per day provided by Sabre;
- (d) transportation to and from the work site by Sabre.

65. The "expats" slept at the embassy, ate in the embassy dining hall with embassy staff, and regularly participated in social events with embassy staff.

66. The "third country national" Security Guards had a dangerous daily commute to and from the embassy, ate meals separate from embassy staff, and with rare exceptions, were not invited to participate in social events with embassy staff.

67. The remuneration for "expats" and "third country nationals" was not based on their responsibilities and working conditions. It was based on race, ancestry, place of origin, colour, national origin, ethnic origin, and citizenship.

68. In addition to the explicit discrimination in the Canada-Sabre Contract, Canada knew or ought to have known that Sabre:

- (a) did not provide the Security Guards with copies of contracts of employment in languages they understood;
- (b) did not provide the Security Guards with adequate pay and remuneration commensurate to their responsibilities and working conditions;
- (c) discriminated against the Security Guards with respect to terms of employment and remuneration that were not explicitly set out in the Canada-Sabre Contract.

The Sabre-Guard Contracts

69. When Sabre began providing security services in 2011, Canada exercised its rights to require Sabre to employ guards who were already working at the embassy and wanted to continue working there. Sabre also hired guards who were working for the previous contractor at the Canadian and other embassies.

70. Sabre advised guards that had been working for the previous contractor, including some of the Security Guards, that the benefits of working for Sabre included life and disability insurance in the amount of USD 300,000.

71. The earliest written contracts that Sabre entered into with any of the Security Guards were dated May 2011 and were written in English. These contracts specified that a guard would earn \$950 per month and would work 8 hour days six days a week. The contracts included an attachment showing that life and disability insurance was provided through a group policy. The insurance policy provided for the following benefits, regardless of nation of origin or ethnicity:

(a) Accidental Death: USD 300,000 per person

(b) Permanent Disablement: USD 300,000 per person

72. Sabre entered into similar written contracts with Nepali and Indian guards, including some of the Security Guards, in the years 2012 through 2016. All of the contracts were written in English. Pay remained at \$950 a month in all of the contracts. In 2015, the required work hours increased to 8 to 12 hours a day. In 2016, the required work hours increased to 12 hours a day. The equivalent hourly pay was approximately USD 3.30 an hour.

73. Some of the written contracts specified that they were of indefinite duration. Others specified that they were only valid for one year. Sabre did not always renew expired contracts or require guards to sign new contracts when they expired. Sabre often continued to employ and pay guards whose written contracts had expired.

74. Some of the written contracts attached a page showing that there was USD 300,000 in life and disability insurance. Other written contracts did not include the attachment. Sabre made oral representations to all of the Security Guards that they were protected by a group insurance policy that provided USD 300,000 in life and disability insurance, whether or not there was an insurance attachment to their written contracts. These representations were made by, among other people:

- (a) Charlie Tourish, Sabre's country manager for Afghanistan;
- (b) Deuman Tamang, a labour broker, HR manager, and agent for Sabre;
- (c) Guard Force Commanders and supervisors who acted as liaisons between the Security Guards and Sabre's management, including Charlie Tourish.

75. All of the Security Guards relied on these representations made by Sabre, whether oral, in writing, or both. All of the Security Guards understood that they and their families were protected at all times by an insurance policy that provided USD 300,000 in life and disability benefits.

76. From time to time, guards complained to Sabre that their written contracts were not accurate because they had expired or because they did not include an insurance attachment. When these complaints were made, Sabre reassured the guards that there was no need for everything to be put in writing, that their jobs were secure, and they continued to be protected by USD 300,000 in insurance.

Canada's Interactions with the Guards

Work Arrangements

77. The Security Guards were 20 of over 100 Nepali and Indian guards at the embassy. Canada was directly involved in the employment of the guards, including the Security Guards, as a group and as individuals.

78. The Canada-Sabre Contract sets out detailed terms that governed the employment of the guards.

79. Canada required Sabre to hire guards who were employed by the previous private security company.

80. Canada reviewed personnel files for individual guards. Canada performed background checks and issued security clearances for individual guards, or instructed agents to do so on its behalf.

81. Canada communicated with the government of Nepal to:
- (a) confirm that individually named guards had positions as guards at the embassy;
 - (b) advise that the embassy would assist individually named guards with obtaining work permits and visas in Afghanistan;
 - (c) request that Nepal issue foreign employment permits for individually named guards.
82. Canada communicated with the government of Afghanistan to:
- (a) confirm that individually named guards had positions as guards at the embassy;
 - (b) provide any information about individually named guards that Afghanistan required;
 - (c) request that Afghanistan issue work permits and visas for individually named guards.

Ambassador's Award

83. In April 2012, there was an attack on the Canadian embassy involving rocket propelled grenades. The guards responded to the attack with calm professionalism and ensured that the occupants of the embassy were well protected. As a result of their exemplary performance throughout the year, including when responding to the attack, Canada awarded Sabre and individual guards, including some of the Security Guards, with the Ambassador's Award.

84. Ambassador Glenn Davidson presented awards at a ceremony and wrote individual letters to guards. He recognized the "tremendous work" the guards had done in ensuring the security of the embassy and commented that their performance in real emergencies, including the attack, was "most impressive".

Ambassador Communications

85. All embassy staff and visitors passed through checkpoints manned by the guards. As a result, there were frequent interactions between the guards and embassy staff, including ambassadors.

86. Ambassador Deborah Lyons regularly spoke to the guards when entering or leaving the embassy. She regularly advised the guards that she:

- (a) appreciated the hard work they did;
- (b) was glad that they were protecting her and the embassy;
- (c) considered them to be part of the “embassy family”;
- (d) “slept well at night” knowing that they were on duty.

87. Ambassador Lyons also frequently asked the guards if they had any complaints or if there was anything she could do for them. On one occasion, some guards advised her that they had concerns about Sabre, including that their written contracts were not accurate and up-to-date. Ambassador Lyons advised the guards that she would see what she could do.

88. Following this interaction, Sabre organized a meeting with all of the guards. The first thing the guards were advised was that they should not be speaking to the ambassador or other Canadians about their concerns. The guards were also advised that their jobs were secure and they were protected by USD 300,000 in insurance.

The Attack

89. The Taliban and Daesh were both active in Afghanistan in 2016. The Taliban was considered to be at its strongest since it had been driven from power by the NATO invasion in 2001. In April 2016, the Taliban had launched Operation Omari, its annual spring offensive.

90. On April 19, 2016, the Taliban attacked an Afghan government security building during a graduation ceremony for new recruits. The attack killed at least 64 people and injured more than 300. It was the most significant attack in Kabul since 2001, and it occurred in an area that was supposed to be relatively secure.

91. On May 8, 2016, the Afghan government executed six Taliban prisoners. According to President Ashraf Ghani, the executions signaled the end of a period of "unjustified amnesty". In response to the executions, the Taliban threatened a wave of suicide attacks.

92. In May and June 2016, Canada and Sabre were aware that conditions were ripe for an attack against foreigners in Kabul. They had received general and specific threats that foreign targets, including the Canadian embassy and people associated with it, may be attacked. They did not inform the guards about the general or specific threats they were aware of.

93. The conditions required heightened security when transporting the guards to and from the embassy. Sabre did not take reasonable steps to increase security. Canada was aware that Sabre was not increasing security, and took no steps to require Sabre to do so.

94. On the morning of June 20, 2016, the Security Guards were preparing for their shift at the embassy. They were ordered to rush because they would be departing at 5:25 a.m. instead of 6:05 a.m. as planned. As usual, they departed in an unarmoured minibus.

95. The bomb attack was launched as the minibus was driving through Kabul. The explosion killed many of the Security Guards instantly. Others suffered fatal injuries and died shortly after the attack or in the hospital. Five of the Security Guards suffered serious injuries that left them permanently disabled.

Aftermath

96. The injured Security Guards were taken to hospital in Kabul for emergency treatment. They were then flown to Delhi for surgeries and recovery. Canada's High Commissioner for India/Ambassador to Nepal visited the survivors in Delhi. He thanked those that were conscious for their service, assured them they would be taken care of, and handed out packets of biscuits. The survivors have not been contacted by a representative of Canada since that visit.

97. The day after the attack, the Afghan Ministry of Public Health examined the bodies of the deceased and issued death certificates. Arrangements were made for the bodies and some personal effects to be returned to Nepal and India. The widows and children of the deceased have never been contacted by a representative of Canada.

98. Canada issued numerous public statements following the attack referring to the Security Guards as members of the "embassy family". Canada installed a monument at the embassy dedicated "In Memory of Our Gurkha Guard Force". Canada did not invite the injured Security Guards or families of the deceased to the ceremony.

99. Without explanation, an insurer deposited USD 30,000 into the bank accounts that the deceased Security Guards had used to send money to their families. The injured Security Guards were advised that, if they were able to prove they were permanently disabled, they would receive USD 30,000. After some widows and injured Security Guards made inquiries, they were informed by agents acting for Sabre and its insurer that the Security Guards were only protected by a USD 30,000 policy.

100. After some time, copies of a previously undisclosed insurance policy were obtained by the widows and injured Security Guards. This new policy, dated only a few weeks prior to the attack, provided USD 300,000 in life and disability benefits to "expats" but only USD 30,000 for "third country nationals":

**LIMITS/
SUM INSURED:**

Category 1: Expatriates

Accidental Death: USD 300,000 Per person

Permanent Disablement: USD 300,000 Per person

Category 2: Third Country Nationals
Accidental Death: USD 30,000 Per person
Permanent Disability: USD 30,000 Per person

101. Many of the Security Guards had obtained their jobs through a labour broker who charged thousands of dollars to place them in their positions at the Canadian embassy. Widows have had to use life insurance proceeds and sell family assets to pay off loans that were used to pay the broker's fees.

Liability of Canada

102. Canada is directly liable to the plaintiffs in negligence and is directly or vicariously liable for the fault of Sabre.

103. Sabre was Canada's agent with respect to hiring the Security Guards and providing transport to the Canadian embassy.

104. The plaintiffs also seek declaratory relief and compensatory damages pursuant to s.24(1) of the *Charter of Rights and Freedoms* as a result of a breach of s. 15 of the *Charter*.

Negligence

105. Canada owed a duty of care to the Security Guards to:

- (a) ensure their work, commute, and lodging were reasonably safe;
- (b) impose reasonable conditions on Sabre through the Canada-Sabre Contract regarding the welfare of security personnel;
- (c) avoid exploitation of the Security Guards; and
- (d) prevent Sabre from exploiting the Security Guards.

106. Canada's duty of care arose out of its obligations under domestic and international law, the Canada-Sabre Contract, its close relationship with the Security Guards, its knowledge of their treatment by Sabre, its knowledge of Sabre's history as a

private security company, and its knowledge of the risks of attack. Particular facts supporting the existence of the duty include:

- (a) Canada has ratified the *Discrimination (Employment and Occupation) Convention, 1958*. This convention requires Canada to pursue a national policy of equal opportunity and treatment in respect of employment, with a view to eliminating any discrimination in respect thereof. Canada undertook to seek the cooperation of employers, such as Sabre, in promoting the acceptance of this policy, and to pursue the policy in respect of employment under its direct control.
- (b) Canada was required to avoid discrimination in accordance with the values embodied in the *Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, and the *Human Rights Code* of Ontario;
- (c) Canada participated in the drafting of the Montreux Document, supports its use when dealing with private security companies, and referenced the Montreux Document in the Canada-Sabre Contract. The Montreux Document sets out good practices that States should follow to ensure responsible conduct in their relationships with private security companies, including:
 - (i) taking into account past conduct when selecting a private security company;
 - (ii) taking into account whether a company maintains accurate and up to date personnel records;
 - (iii) considering the respect of a company for the welfare of its personnel, including whether it prevents unlawful discrimination in employment;
 - (iv) including contractual clauses that ensure respect for human rights law, including factors related to the welfare of security personnel;

- (d) Canada was aware that Sabre had a history of disreputable conduct, including:
- (i) Sabre ran a training camp in Sierra Leone in 2009 where it recruited former child soldiers to employ as security personnel in Iraq. Many of the recruits were paid less than promised, found the experience re-traumatizing, and likened their employment to slavery.
 - (ii) In 2009, Sabre recruited ex-combatants from the Liberian Anti-Terrorism Unit (“ATU”), Special Security Service, and various other war-era militias without proper vetting. This recruitment was an extreme concern to America’s ambassador to Liberia, in part because Chucky Taylor, son of warlord and president Charles Taylor, had been convicted in the United States for committing and overseeing torture while head of the ATU, and in part because Sabre’s recruitment efforts posed a threat to Liberia’s security.
 - (iii) Sabre attempted to avoid having to provide adequate compensation to Anthony Harty, an Irish security contractor who was injured in a road accident while working for Sabre in Iraq in 2008. In a 2011 decision of the English High Court of Justice, a principal of Sabre was found to be “wholly lacking in credibility” and the Master was satisfied that Sabre’s defence position “has been manufactured, shaped over a period of time, and is wholly disingenuous”.
- (e) Canada knew that Sabre did not become a member of the International Code of Conduct Association (ICoCA) when it was formed in 2013. ICoCA is a multi-stakeholder initiative with a membership made up of private security companies, civil society organizations, and States, including Canada. The purpose of ICoCA is to oversee implementation of the International Code of Conduct and to promote the responsible

provision of security services and respect for human rights in accordance with the Code. ICoCA monitors member compliance with the Code, which is intended to implement principles from the Montreux Document.

- (f) Canada exercised direct control over employment conditions by including terms in the Canada-Sabre Contract related to the welfare of security personnel;
- (g) Canada had a close and personal relationship with each of the Security Guards;
- (h) the Security Guards were in the position of dependent contractors with respect to Canada;
- (i) Canada received complaints from guards that Sabre was not keeping their written contracts accurate and up to date;
- (j) Canada was aware from a review of Sabre's personnel records that:
 - (i) written contracts were not accurate and up to date;
 - (ii) the Security Guards were risking their lives to defend Canada for approximately USD 3.30 an hour.
 - (iii) Sabre was exploiting Nepali and Indian labour;
- (k) Canada was aware that Sabre was taking inadequate security precautions when transporting the Security Guards;
- (l) Canada was aware that the risk of an attack was heightened in June 2016.

107. Canada did not meet the standard of care required of it in the circumstances. Particulars of its failure to meet the standard of care include:

- (a) Forcing the Security Guards to commute to the embassy when it could have made arrangements to lodge them on embassy grounds;
- (b) Contracting with Sabre for the provision of security services when it knew or ought to have known that Sabre was a disreputable organization that would not ensure the welfare of its security personnel;
- (c) Entering into a discriminatory contract with Sabre;
- (d) Including terms in the Canada-Sabre Contract that it knew or ought to have known would lead to the exploitation of Nepali and Indian security personnel;
- (e) Failing to include terms in the Canada-Sabre Contract that would have provided reasonable protection for the Security Guards when being transported, including requirements that Sabre:
 - (i) provide body armour and helmets to the Security Guards and require them to be worn during transport;
 - (ii) use an armed escort and scout vehicles to ensure that the route to the embassy was safe;
 - (iii) transport the guards in armored vehicles;
 - (iv) use a variety of different routes when transporting guards.
- (f) Failing to advise Sabre and the Security Guards of general and specific threats that Canada was aware of;
- (g) Failing to communicate to Sabre that the conditions in June 2016 required heightened security precautions to be taken when transporting the Security Guards;
- (h) Failing to properly investigate complaints made by Security Guards about Sabre.

108. The attack would not have occurred if Canada had lodged the Security Guards on embassy grounds.

109. None of the Security Guards would have been killed or seriously injured if Canada had required Sabre to take reasonable precautions when transporting the Security Guards.

110. The Security Guards and their families would have received USD 300,000 in life insurance or disability benefits if Canada had met the standard of care with respect to negotiating the Canada-Sabre Contract and overseeing Sabre's adherence to the contract.

Charter

111. Canada's conduct in entering and administering the Canada-Sabre Contract is subject to the *Charter of Rights and Freedoms*.

112. Canada entered the Canada-Sabre Contract pursuant to statutory authority. The Canada-Sabre Contract provides that it is to be construed pursuant to the laws of Ontario.

113. The Canada-Sabre Contract governs the employment relationship between Canada, Sabre, and the Security Guards. It does not infringe on the sovereignty of Afghanistan.

114. The Security Guards did not receive equal protection and benefit of the Canada-Sabre Contract in comparison to "expats" due to discrimination based on race and national and ethnic origin. There is no justification for the discriminatory treatment.

115. Pursuant to s. 24(1) of the Charter, the plaintiffs seek:

- (a) a declaration that Canada's conduct in entering and administering the Canada-Sabre Contract was a breach of section 15(1) of the *Charter*;
- (b) *Charter* damages.

Liability of Sabre

116. Sabre is liable to the Security Guards in contract and tort.

117. Sabre had a contract with each of the Security Guards. Each contract had an express or implied term that the Security Guard would be protected by an insurance policy that provided USD 300,000 in life and disability coverage.

118. Sabre breached the contract that it had with each of the Security Guards by failing to have in place an insurance policy that provided the promised coverage in June 2016.

119. Sabre owed a duty of care to the Security Guards to:

- (a) ensure their work, commute, and lodging were reasonably safe;
- (b) provide adequate protective equipment;
- (c) avoid exploitation and discrimination in their remuneration;
- (d) provide remuneration commensurate to their responsibilities;
- (e) provide accurate and up to date copies of contracts translated to Nepali.

120. Sabre's duty of care to the Security Guards arises out of:

- (a) the Canada-Sabre Contract;
- (b) the employment or contracting relationship between Sabre and the Security Guards;
- (c) Sabre's status as signatory to the International Code of Conduct for Private Security Service Providers before the ICoCA was formed;
- (d) Sabre's knowledge of and control over risks that the Security Guards were exposed to during transport;

- (e) representations made by Sabre to the Security Guards, and other guards employed at the Canadian embassy regarding life and disability insurance, which were reasonably relied on;
- (f) complaints made by the Security Guards about security and contract concerns.

121. Sabre did not meet the standard of care required of it in the circumstances. Particulars of its failure to meet the standard of care include:

- (a) Entering into a discriminatory contract with Canada;
- (b) Failing to provide reasonable protection for the Security Guards when being transported, including failing to:
 - (i) provide body armour and helmets and require them to be worn;
 - (ii) use an armed escort and scout vehicles to ensure that the route to the embassy was safe;
 - (iii) transport the guards in armored vehicles;
 - (iv) use a variety of different routes when transporting guards.
- (c) Failing to advise Canada and the Security Guards of general and specific threats that Sabre was aware of;
- (d) Failing to use heightened security precautions when transporting the Security Guards in June, 2016;
- (e) Failing to ensure that a policy was in place at all times that provided USD 300,000 in life and disability insurance;
- (f) Misrepresenting to the Security Guards that a policy was in place at all times that provided USD 300,000 in life and disability insurance.

122. None of the Security Guards would have been killed or seriously injured if Sabre had taken reasonable precautions when transporting the Security Guards.

123. The Security Guards and their families would have received USD 300,000 in life insurance or disability benefits if Sabre had maintained the insurance policy that had been promised to the Security Guards.

Statutes and other Authorities

124. The plaintiffs rely on the following statutes and authorities:

- (a) Rule 17.02(f)(ii) for service of the claim outside of Ontario.
- (b) Section 61 of the *Family Law Act*, RSO 1990 c. F.3, for the dependants' right to claim damages.
- (c) Section 15(1) and 24(1) of the *Charter of Rights and Freedoms*.

Date: 18/Jun/2018

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Bhagabati Adhikari et al. v. Attorney General of Canada et al.

Court File No.: CV-18-00599976-0000

ONTARIO SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT TORONTO

STATEMENT OF CLAIM

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