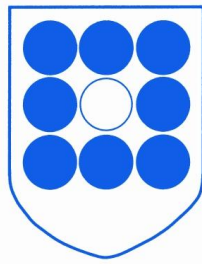


# CANADIAN CIVIL LIBERTIES ASSOCIATION

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# ASSOCIATION CANADIENNE DES LIBERTES CIVILES

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Hon. Lawrence Cannon  
Minister of Foreign Affairs  
House of Commons  
Ottawa, Ontario  
K1A 0A6

By e-mail: [Cannon.L@parl.gc.ca](mailto:Cannon.L@parl.gc.ca)  
June 1, 2010

Dear Sir:

Re: Canadian citizens: Nathalie Morin and her three minor children

Nathalie Morin is a 26 year-old Canadian woman. She has three minor children who are also Canadian citizens: Samir (age 7), Abdullah (age 3), and Sarah (age 1.5). Since March 2005, Nathalie Morin has been unable to leave Saudi Arabia with her children, because her male guardian and the father of her children, Saeed Al Bishi a.k.a. Saeed El Sharahni, will not consent to their departure. Under Saudi custom, women and children cannot travel without the consent of their male guardian. This custom is a violation of international human rights.

The CCLA has received information that Nathalie Morin has been physically and sexually abused, and there are also allegations that one of the children may have also been abused. In the past two days, the CCLA has received communication that suggest that Ms. Morin's life may be in danger because she is confined in a small locker in extreme heat, deprived of adequate food and water, and her children are suffering.

**The CCLA requests you to urgently intervene in this case to:**

- **(i) ensure immediate investigation of these allegations;**
- **(ii) immediately remove Nathalie Morin and her children to a place of safety within Saudi Arabia;**
- **(iii) procure independent legal advice to Ms. Morin in Saudi Arabia so that she can exercise her rights to protect herself and her children and eventually be in a position to exercise her mobility rights to enter Canada with her children.**

As co-signatories to the UN Charter, the Convention on the Rights of the Child, and the CEDAW, it is necessary and appropriate for Canada to request fellow-State party Saudi Arabia to uphold its public legal commitments to protect women and children against abuse, and to permit foreign women and their children to freely travel outside of Saudi Arabia without the necessity of a male guardian's consent. Any requests made of Saudi Arabia by Canada would also be compliant with Canada's legal obligations under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention).

The CCLA believes that Canada would be acting in accordance with its legal obligations pursuant to the Charter, and international law, if it asked Saudi Arabia to act to protect Nathalie Morin and her three children.

Such a request would not be contrary to Saudi Arabian domestic laws, nor would it be a violation of the principles of comity. To the contrary, Saudi Arabia has ratified the UN Charter, the Convention on the Rights of the Child, and CEDAW, thereby binding itself to uphold the international human rights of women and of children. Saudi Arabia has also stated, as set out below, that protecting the rights of women and of children is consistent with Islamic law. Accordingly, any request Canada makes of Saudi Arabia to assist Nathalie Morin and her three children is a request that would be consistent with Saudi Arabia's laws.

Further, even if Canada's request to assist Nathalie Morin and her children did, in some manner conflict with Saudi domestic laws or customs, Canada is legally bound to uphold international human rights law and cannot condone its violations.

#### 1. Canada's Obligations Pursuant to the Canadian Charter of Rights and Freedoms

Although principles of comity require respecting the domestic laws of other nations, the principles of comity do not oust international human rights norms.

(a) Indeed, the UN Charter provides that international human rights obligations, including gender equality and the human rights of children, prevail over any other bilateral considerations between Member states.<sup>1</sup> The foundational document of the United Nations is the UN Charter. Both Canada and Saudi Arabia are members of the United Nations, and both have ratified the UN Charter.

(b) The Supreme Court of Canada in *Khadr* (2008) held that the "principles of international law and comity of nations, which normally require that Canadian officials operating abroad comply with local law, do not extend to participation in processes that violate Canada's international human rights obligations."<sup>2</sup> Canada's

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<sup>1</sup> See UN Charter, Articles 55, 56 and 103. See also the UN Convention on the Rights of the Child which states in its preamble: "Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,"

<sup>2</sup> *Canada v. Omar Khadr*, [2008] 2 S.C.R. 125 at paragraph 2. The Court also referred to its decision in *Hape*, and stated: "In *Hape*, however, the Court stated an important exception to the principle of comity. While not unanimous on all the principles governing extraterritorial application of the *Charter*, the Court was united on the principle that comity cannot be used to justify Canadian participation in activities of a foreign state or its agents that are contrary to Canada's international obligations. It was held that the deference required by the principle of comity "ends where clear violations of international law and fundamental human rights begin" (*Hape*, at para. 52, *per* LeBel J.; see also paras. 51 and 101). The Court further held that in interpreting the scope and application of the Charter, the courts should seek to ensure compliance with Canada's binding obligations under international law (para. 56, *per* LeBel J.)."

requirement to comply with its human rights obligations supersedes the principle of comity.

(c) Section 6 of the Charter provides that every citizen has the right to “enter, remain in and leave Canada”. The Federal Court has held that Canada has a positive duty with respect to section 6 of the *Charter*. Failure to exercise a positive duty can be a breach of the Charter.<sup>3</sup>

(d) Canada has ratified the ICCPR. The right to freedom of movement including the right to leave any country and return to one’s own country – or to come to one’s country of citizenship for the first time if born elsewhere – is a fundamental human right enshrined in international law<sup>4</sup>, and protected by Article 12 of the ICCPR<sup>5</sup>. Article 12 protects women’s freedom of movement including the right to enter one’s own country, and that of children who may have been born outside of their country of nationality.

(e) Canada is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction.<sup>6</sup> A Canadian official wrote to Nathalie Morin’s mother that Canada cannot interfere in this case because it is bound by the Hague Convention and Saudi domestic law applies. However, the Hague Convention requires Canada to recognize Saudi domestic laws in protecting children in an international custody case between the two countries, it does not justify a failure to observe Saudi Arabia’s obligations pursuant to the Convention on the Rights of the Child nor CEDAW.

## 2. Canada must ask Saudi Arabia to enforce the Convention on the Rights of the Child (CRC) and the Convention on the Elimination Against Women (CEDAW)

Canada and Saudi Arabia have both signed and ratified the CRC and the CEDAW. As a fellow-State party, it is proper for Canada to request Saudi Arabia to enforce the CRC and CEDAW to protect Canadian citizens. **The need for an immediate investigation to determine the potential violations of the CRC and CEDAW in this case is heightened given the serious allegations of abuse.**

Because Canada would be asking Saudi Arabia to enforce the latter’s legal obligations pursuant to CEDAW and the CRC, the principles of comity are satisfied.

(a) Saudi Arabia has ratified the CRC. The CRC requires States to protect the best interests of the child, to protect a child against abuse, and in this context, to allow a child to leave any country and to enter their own country.<sup>7</sup>

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<sup>3</sup> *Ibid*, at para 150. At paragraph, the Court stated that “A breach of a Charter right does not require intent or bad faith. A series of actions or a pattern of **inaction**, even if taken in good faith, **can constitute a breach of a Charter right**.” (emphasis added).

<sup>4</sup> See the Universal Declaration of Human Rights, Article 13.

<sup>5</sup> UN Human Rights Committee, General Comment No. 27, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (1999), at paragraph 19: “The right of a person to enter his or her own country recognizes the special relationship of a person to that country. The right has various facets. It implies the right to remain in one’s own country. It includes not only the right to return after having left one’s own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person’s State of nationality)”.

<sup>6</sup> Saudi Arabia is not a party to this Hague Convention and is not bound by it.

<sup>7</sup> The Convention on the Rights of the Child in Article 9(1) provides: **Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance

(b) Saudi Arabia has noted that “Islamic law guarantees human rights in general and the rights of the child in particular, especially the child’s right to care and to the consideration of his or her best interests.”<sup>8</sup>

(c) Saudi Arabia has ratified the CEDAW which provides for protection and equality of women, including freedom of movement of women. Further Saudi Arabia has stated that male guardianship, the custom of “mahram”, is not a legal requirement and not part of Saudi’s domestic Basic Laws. Saudi Arabia has stated that ‘mahram’ is not a statutory requirement and iterated that Islam allows a woman to conduct her affairs and to enjoy her legal capacity.<sup>9</sup>

(d) Saudi Arabia issued on June 8, 2008 a regulation<sup>10</sup> which provides that any Saudi man wishing to marry a foreign woman must sign an “irrevocable document” that the foreign woman, and any of her children born of the marriage, will be able to leave and freely travel “unhindered” in and out of Saudi Arabia. Although the regulation is not retroactive, it seems to be an indication that Saudi Arabia wishes to recognize the human rights of women and children and their mobility rights.

The CCLA is concerned that Ms. Morin has on several occasions sought the assistance of Canadian consular officials in Riyadh – including shelter and safety -- and has been told to ‘work things out’ with her husband and sent away from the Canadian embassy. Apparently Canadian officials would have also told Ms. Morin that if she stayed in Saudi Arabia to give birth to a child, it would be easier for her to leave Saudi Arabia with her children. In the context of potential spousal abuse, the advice to “work things out” is highly inappropriate and may have precipitated the dangers to Ms. Morin’s life and security. In our opinion, it constitutes a participation in and endorsement of the discriminatory custom of “mahram”. Prevention of domestic violence should be a priority

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with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

The CRC in Article 10 (2) provides: “A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.”

<sup>8</sup> Second Periodic Reports of State Parties Due in 2003, SAUDI ARABIA, [November 12, 2004], CRC/C/136?add.1, 21 April 2005, paragraph 4. Further, in paragraphs 136 and 138, Saudi Arabia acknowledges that its Basic Law and Shariah law will withdraw the guardianship of one or both parents if it is in the child’s best interests, and if the child is being exploited, or subject to ill-treatment, or endangerment of health, safety or moral integrity.

<sup>9</sup> Please refer to CCLA’s letter of April 18<sup>th</sup>, 2010 to the Honourable Lawrence Cannon for more details on the subject of CEDAW and mahram in Saudi Arabia, regarding the case of Nazia Quazi, available online at <http://ccla.org/?p=5089>.

<sup>10</sup> US Department of State, Bureau of Consular Affairs on Saudi Arabia, which states this regulation went into effect on June 8<sup>th</sup>, 2008 but is not retroactive, at [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1012.html#children](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1012.html#children).

for consular officials and comes as an obligation under Canadian and international law. We would recommend that an investigation be done of the advice given by consular officials to Ms. Morin, of their failure to act, and that more generally prevention of domestic violence training be provided to all consular officials.

At present, the alleged deterioration in the living conditions to Nathalie Morin and her children, and the threats to their physical well-being are of immediate concern. We call upon the Canadian government to immediately request Saudi Arabia to conduct an investigation into the living conditions of Ms. Morin and her children, to immediately remove them from any harm to a safe location, and to provide local legal assistance to Ms. Morin so she can protect herself and her children and exercise her mobility rights.

We ask you to give the case of Nathalie Morin and her three children your urgent attention.

We look forward to hearing from you on this matter. We also wish to advise you that we will provide a copy of this letter to opposition critics in the next few days.

We would be happy to discuss the implications of this case with you or your officials at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Des Rosiers', with a long horizontal flourish extending to the right.

Nathalie Des Rosiers  
General Counsel