

Bil'in Seeks Justice in Canada

Taking Israeli War Crimes to the Canadian Court



اللجنة التنسيقية للمقاومة الشعبية
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Background on Bil'in

The West Bank village of Bil'in is located 12 kilometers west of Ramallah and 4 km east of the Green Line. It is an agricultural village, around 4,000 dunams (988 acres) in size, and populated by approximately 1,800 residents.

Starting in the early 1980's, and more significantly in 1991, approximately 56% of Bil'in's agricultural land was declared 'State Land' for the construction of the settlement bloc, Modi'in Illit. Modi'in Illit holds the largest settler population of any settlement bloc, with over 42,000 residents and plans to achieve a population of 150,000.

In 2004, the International Court of Justice ruled that the Wall in its entirety is illegal under international law, particularly under International Humanitarian Law. The Court went on to rule that Israel's settlements are illegal under the same laws, noting that the Wall's route is intimately connected to the settlements adjacent to the Green Line, further annexing 16% of the West Bank to Israel.

Despite the advisory opinion, early in 2005, Israel began constructing the separation Wall on Bil'in's land, cutting the village in half in order to place Modi'in Illit and its future growth on the "Israeli side" of the Wall.

In February 2005, Bil'in residents began to organize almost daily direct actions and demonstrations against the theft of their lands. Gaining the attention of the international community with their creativity and perseverance, Bil'in has become a symbol for popular civic resistance. Almost five years later, Bil'in continues to have weekly Friday protests.

Bil'in has held annual conferences on popular resistance since 2006, providing a forum for activists, intellectuals, and leaders to discuss strategies for the popular struggle against the Occupation.

Israeli forces have used stun grenades, water cannons, rubber-coated steel bullets, tear gas grenades, tear gas canisters and 0.22 caliber live ammunition against protesters.

On 17 April 2009, Bassem Abu Rahma was shot with a high-velocity tear gas projectile in the chest by Israeli forces and subsequently died from his wounds at a Ramallah hospital.

Recently, the army began staging frequent night raids on the village. Since the beginning of the night raid campaign on 23 June 2009, Israeli forces have been regularly evacuating homes and forcefully searching for demonstration participants, targeting the leaders of the Popular Committee Against the Wall and Settlements, as well as teenage boys accused of stone throwing. A total of 27 Bil'in residents have been arrested in relation to anti-Wall demonstrations in the village. Seventeen currently remain in detention, 10 of which are minors.

To date, 75 residents of Bil'in have been arrested in connection with demonstrations against the Wall.

In addition to its grassroots movement, Bil'in turned to the courts in the fall of 2005. In September 2007, 2 years after they initiated legal proceedings, the Israeli High Court of Justice ruled that due to illegal construction in part of Modi'in Illit, unfinished housing could not be completed and that the route of the Wall be moved several hundred meters west, returning 25% of Bil'in's lands to the village. To date, the high court ruling has not been implemented and construction continues.

In July 2008, Bil'in commenced legal proceedings before the Superior Court of Quebec against Green Park International Inc and Green Mount International Inc for their involvement in constructing, marketing and selling residential units in the Mattityahu East section of Modi'in Illit.

Mohammed Khatib's Statement

First, I would like to thank you for coming here today, even though I myself am barred from being here because of the Israeli policy of closure.

Recently, following the Goldstone report, there has been a lot of talk around Israel's refusal or inability to adhere to, and implement international law, and the resulting impunity.

For me, this is not an abstract matter. In February of 2005, Israel began building its so called separation wall on my village's lands. Israel has done so despite the International Court of Justice's advisory opinion the previous year deeming the wall - in its entirety - illegal.

My village has exhausted every option we could possibly come up with in fighting this unjust evil. Together with our Israeli and international partners, we have launched an ongoing campaign of civic resistance, for which we have paid dearly: dozens were and are jailed - I myself saw the inside of a prison cell. Hundreds were injured, and one, my friend Bassem Abu Rahmah was killed. He was killed for nothing more than demonstrating peacefully.

In our search for justice we have also turned to the Israeli High Court, which despite refusing to take on the issue of settlements, was willing to take on the issue of the wall. In its ruling, the court has pronounced the path of the wall on our land illegal, and pointed to the fact that it was planned to allow the expansion of the neighboring settlement, Modi'in Illit. It had also ordered the rerouting of this wall in a less harmful way, that will return **some** of our lands back.

It has been two years now since this ruling, and even this very partial change, had not yet materialized. The wall remains on our land, in its original path. Meanwhile, the settlement behind this wall continues to grow, in clear Israeli contempt of international law. Obama or no Obama the construction of 84 new residential units was approved just last month by Ehud Bark, the Israeli minister of defense.

In turning abroad, to the Canadian court today, and to others in the future, we hope to find a way to breach Israeli impunity; to find a way to realize justice and our rights. It is a way for us to sustain our belief in civic and grassroots action, and hope that our sacrifices have not been in vain.

Thank you all for coming here today

** Mohammed Khatib Bil'in is the secretary of Bil'in's Village Council and a leading member of Bil'in's Popular Committee Against the Wall and Settlements*

Al-Haq's statement

Al-Haq is disappointed that its representatives could not be here to join you in this press conference due to the policies of the Israeli occupation. While these policies impact us on a daily basis, we will never accept them, as the people of Bil'in will never accept the theft of their land.

Al-Haq is privileged to have the chance to fight for justice alongside the resilient villagers of Bil'in and the brave legal team of Mr. Sfar and Mr. Arnold. As long as we continue to pursue justice there will be hope for Bil'in, as well as all Palestinians struggling for their right to self-determination.

This case is another example of that pursuit for justice. We are confident in the appeal, as it is clear that the Israeli judicial system cannot serve as the forum for achieving justice for Palestinians.

We stand ready to raise the issue of corporate accountability and work with lawyers anywhere in the world to hold corporations accountable for their complicity in the policies of the Israeli occupation and the breaches of international humanitarian law in the occupied Palestinian territory.

** Al-Haq is a Palestinian human rights organization*

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank, which holds a special consultative status with the United Nations Economic and Social Council.

C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

NO : 500-17-044030-081

S U P E R I O R C O U R T

**BIL'IN (VILLAGE COUNCIL)
Plaintiff**

**THE LATE AHMED ISSA ABDALLAH
YASSIN
Plaintiff**

and

**BASEM AHMED ISSA YASSIN,
MAYSAA AHMED ISSA YASSIN ,
MAZIN AHMED ISSA YASSIN,
LAMYAA AHMED ISSA YASSIN,
NORA AHMED ISSA YASSIN,
TAGREED AHMED ISSA YASSIN,
MOHAMMED AHMED ISSA YASSIN,
ABDULLAH AHMED ISSA YASSIN,
ESRAA AHMED ISSA YASSIN,
YOSRA YOUSEF MOHAMMED YASSIN
AYESHA ALABED YASSIN DAR YASSIN**

**APPELLANTS - Plaintiffs in Continuance
of Suit**

-v.-

**GREEN PARK INTERNATIONAL INC.,
and
GREEN MOUNT INTERNATIONAL INC.
and
ANNETTE LAROCHE**

RESPONDENTS - Defendant

INSCRIPTION IN APPEAL

1. The Appellants appeal from a Judgment of the Quebec Superior Court rendered by The Honourable Louis-Paul Cullen on September 18, 2009, whereby in answer to the Defendants “Application to Decline Jurisdiction - *Forum Non Conveniens* (Article 3135 C.C.Q.)”, the court dismissed the plaintiff’s claim and held as follows:

MAINTAINS the Defendants’ Application to decline jurisdiction - forum non conveniens and **DISMISSES** the Second Further Amended and Particularized Motion Introducing a Suit dated June 12, 2009. With costs.

2. The hearing of the Defendants Motion for dismissal before the Quebec Superior Court took place on June 22, 23 and 25, 2009 and lasted for three days.
3. The grounds for the appeal are:
 - A. The Quebec Superior Court erred in law when it declined jurisdiction on the basis of *forum non conveniens* and held that the Israeli High Court of Justice (the “HCJ”) was the logical forum and the authority in a better position to decide, on the grounds that:

Jurisdiction of the Israeli High Court of Justice

- a. The Israeli HCJ is a court appointed under the *Israeli Basic Law of the Judiciary 1984*. There is no jurisdiction in the Israeli HCJ to hear this civil dispute between these parties.
- b. The Israeli HCJ only hears petitions against the State of Israel, its military and their agencies. The HCJ does not give civil remedies. The only remedies within the jurisdiction of the HCJ are declarations and orders in the nature of *mandamus*, *quo warranto*, *certiorari*, and *habeas corpus*. In addition, the HCJ is a branch of the Supreme Court of Israel, its final decisions bind all other Israeli Courts and there is no right of appeal. The HCJ would not hear a case that seeks civil remedies against Canadian corporations that are not registered or domiciled in its jurisdiction

Justiciability

- c. The Israeli HCJ would never take jurisdiction, even if it had jurisdiction over this case, having previously ruled that the issue of Israeli Settlements in the Occupied Palestinian Territories under International Humanitarian Law and Article 49(6) of the *Fourth Geneva Convention* is non-justiciable.
- d. After correctly stating at paragraph 288 of the Judgment, that the Israeli HCJ “has not applied Article 49(6)...because the HCJ considered that it was not customary international law...and that it had not been incorporated into the

domestic law of Israel through appropriate legislation”, then finding the Israeli HCJ to be *forum conveniens* knowing that the HCJ would not apply Article 49(6) of the *Fourth Geneva Convention*, which is the foundation of the Plaintiff’s claim, to this case.

- e. There is an obligation *erga omnes* (on all states) under the provisions of International Humanitarian Law, to not render assistance to any state that is in violation of the *Fourth Geneva Convention*. Denying jurisdiction, *forum non conveniens*, knowing that the Israeli HCJ will not apply the *Fourth Geneva Convention*, is contrary to this obligation under Article 1 which requires all “High Contracting Parties”, including Canada, to “undertake to respect and to ensure respect for the present Convention in all circumstances.”
- f. At paragraphs 242 - 289 of the Judgment, on the basis that the Judge preferred his own conclusion as to the state of the Law of Israel over that of the plaintiffs’ expert witness, Prof. Orna Ben-Naftali, who after detailed analysis of Israeli HCJ Decisions, stated that, *inter alia*, “there appears to be no legal redress before Israeli courts to the claims made by Bil’in in its Québec proceeding.”

Article 3135 C.C.Q. - Exceptionally

- g. The mere possibility that the Israeli HCJ might take jurisdiction over the parties and a civil dispute is not the type of exception provided for in Article 3135 C.C.Q. or in *Spar Aerospace v American Mobile Satellite Corp.*, [2002] 4 S.C.R. 205 at 238-244 and *Bourdon v Stelco Inc.*, [2005] 3 S.C.R. 279 at 37, that would permit the Quebec Superior Court to deny jurisdiction on the basis of *forum non conveniens*.
- h. The plaintiffs are entitled to rely on what the law actually is rather than be required to bring a claim before a foreign court seeking to effectively change the law of that jurisdiction before relief can be granted.
- i. At paragraphs 301 and 302 of the Judgment, by mis-apprehending the plaintiffs claim that pleads that the law that applies to the West Bank, as territory occupied as a result of a war, is the *Fourth Geneva Convention*. The fact that the Israeli HCJ will not apply that law to this dispute renders that court an inappropriate court and is thereby “inconsistent with public order as understood in international relations” Article 3155(5) C.C.Q.
- j. At paragraph 303 of the Judgment, by holding that the Quebec Superior Court “possesses no expertise in respect of the laws that apply in the West Bank”, thereby fundamentally mis-apprehending the plaintiffs claim. The plaintiffs plead and rely on Article 49(6) of the *Fourth Geneva Convention*, which states that “the Occupying Power shall not deport or transfer parts of

its own civilian population into the territory it occupies”, as the law that applies to the conduct of the defendants in the West Bank. That law is part of and identical to Canadian Domestic Law; *Geneva Conventions Act*, R.S.C. 1985, c. G-3, *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c.24. It is therefore an error of law for the court to hold that it has no expertise to apply the law of the West Bank, relied upon by the plaintiffs, when that law is identical to Canadian Domestic Law. The Motions Court Judge further erred in not applying Article 2809 C.C.Q., which provides that where foreign law has not been pleaded, as the defendants have not done, the court applies “the law in force in Quebec.”

- k. At paragraph 312 of the Judgment, by holding that the connection between the defendants and Quebec was “merely superficial” when the facts are that the defendants, who are all registered and domiciled in Quebec and subject to all of the laws of Quebec and Canada, have a real and substantial connection to Quebec. To hold that the connection between the defendants and Quebec is “merely superficial” is to create a damaging and unlawful corporate precedent that discounts registration and domicile in Quebec and will open up Quebec as a mere forum of convenience similar to that of Liberia, Turks and Caicos or the Cayman Islands.
- l. At paragraph 312 of the Judgment, in placing any weight on the hearsay statement of Mr. Badt who deposed “as far as I know, (Laroche) was totally and absolutely unaware of the activities taking place with respect to the development in question...” Rather, the court should have made an adverse inference based upon the failure of the Quebec domiciled director to provide any direct evidence as to her knowledge of the matters in issue.
- m. At paragraph 315 of the Judgment, based on the practicality of trying the Action in Israel, when the Israeli HCJ is not a court of competent jurisdiction pursuant to its authority under the *Israeli Basic Law - The Judiciary 1984*. The Judge further erred by failing to provide any reason “that the Defendants would be seriously prejudiced” by having the action tried in Quebec, the jurisdiction where they are all registered and domiciled.
- n. At paragraph 317 of the Judgment, by declining jurisdiction based on the plaintiffs’ choice of parties named as defendants, when that choice is within the absolute discretion of the plaintiff and is irrelevant to the issue of *forum non conveniens* and the application of the *Fourth Geneva Convention*.
- o. At paragraph 319 of the Judgment, by declining jurisdiction on the basis that “HCJ has jurisdiction over the Action insofar as the Plaintiffs allege that the defendants are agents of the State of Israel” thereby mis-apprehending the distinction between “agents” as pleaded and “State and local authorities and the officials and bodies thereof and other persons carrying out public functions under the law” of the State of Israel as provided for at Section 15(d)(2) of the *Israel Basic Law: The Judiciary (1984)*.

The Appeal

- p. By failing to apply a “forum of necessity doctrine” into Quebec law pursuant to Article 3136 C.C.Q., to the court’s analysis of Article 3135 C.C.Q.
 - q. As the *Fourth Geneva Convention* is part of “public order as understood in international relations (C.C.Q. 3081)” the application of Israeli law that does not consider the *Fourth Geneva Convention* as “customary international law” will result in an outcome “manifestly inconsistent” with Art. 3081.
 - r. By failing to apply Article 292 C.C.P. to any perceived gap in proof, as alluded to at paragraph 254 of the Judgment, with respect to the Israeli HCJ Case Law referred to in the expert opinion of Prof. Ben-Naftali.
 - s. At paragraph 235 of the Judgment, by speculating that the plaintiffs would be “obliged to have it (Superior Court Judgment) enforced overseas” and failing to consider the Enforcement provisions of the Quebec Code of Civil Procedure that would be applied against the defendants if they failed to obey a Judgment of the Superior Court.
 - t. At paragraph 235 of the Judgment, in holding that the United Nations Security Council has not “declared Article 49(6) of the *Fourth Geneva Convention* was (sic) part of customary international law”, when the Security Council in Resolution 827 (1993) approved the Report of the Secretary-General S/25704 (3 May 1993), which stated at paragraphs 35 and 37 that “the part of conventional humanitarian law which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War Victims...the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto...The Geneva Conventions constitute rules of international humanitarian law and provide the core of customary law applicable in international armed conflicts.”
- B. The Quebec Superior Court further made the following palpable and overriding factual errors that in their totality amount to an error of law on the issue of *forum non conveniens* as follows:
- a. At paragraph 213 of the Judgment, in speculating where “all expert witnesses likely reside” when there was neither a claim, a defence filed nor reliable evidence before the court to that effect.
 - b. Further at paragraph 213 of the Judgment, in speculating that witnesses would include “occupants of the buildings in dispute and probably their owners”, when there was neither a claim, a defence filed nor evidence before the court to that effect.

- c. At paragraph 216 of the Judgment, in speculating that “expert evidence will likely pertain to ownership of lands as well as to the laws and customs that apply in the West Bank”, when there was neither a claim, a defence filed nor evidence before the court to that effect.
- d. At paragraph 218 of the Judgment, in speculating that expert evidence may be required with respect to building inspection, valuation, appraisal and a court visit to the area, when there was neither a claim, a defence filed nor evidence before the court to that effect.
- e. At paragraph 220 of the Judgment, by speculating that there may be “relevant... contracts regarding the property of the lands as well as the construction of the buildings in dispute and their sale or rental. Most if not all of the relevant contracts are likely to be written in Hebrew or Arabic”, when there was neither a claim, a defence filed nor evidence before the court to that effect.
- f. At paragraph 223 of the Judgment, by stating “in light of the ...letter...dated January 6, 2009 and the undisputed evidence of Mr. Badt, the injurious act, if any, did not occur in Canada but rather in the West Bank or in Israel” when there was neither a claim, a defence filed nor evidence before the court that an injurious act occurred in Israel.
- g. At paragraph 222 of the Judgment, by correctly stating that “all injuries were allegedly suffered in the West Bank”, then contradicting that statement at paragraph 223 by holding that the injuries occurred in Israel. The conclusion at paragraph 224 of the judgment that “this factor favours the HCJ” is erroneous and has no evidentiary basis.
- h. At paragraph 225 of the Judgment, after correctly holding that there are no proceedings pending between the parties, then speculating that if there were, “it would therefore clearly favour referral to the HCJ”.
- i. At paragraphs 228 to 233 of the Judgment, after correctly holding that the assets of the defendant, Laroche, are in Quebec and the assets of the corporate defendants are in the West Bank, then erroneously concluding that the location of those assets (Quebec and West Bank) “clearly favours the HCJ.”
- j. At paragraph 8 of the Judgment, by erroneously stating that the plaintiffs “ask that their action be decided according to Canadian and Quebec laws, rather than the laws where the injurious acts and injuries allegedly occurred” when the claim seeks the application of International Humanitarian Law, as found in the *Fourth Geneva Convention* as domesticated under the Laws of Canada, to the injuries suffered by the plaintiffs in the West Bank which is not part of the sovereign lands of Israel.

The Appeal

For these reasons the Appellants will ask this honourable Court to:

GRANT the appeal with costs;

and proceed to render the judgment which should have been rendered:

DISMISS the defendants' Application to Decline Jurisdiction -
forum non conveniens, with costs

Notice of this appeal is hereby given to Me. Ronald Levy of the law firm of
De Grandpré Chait, counsel for the Defendants-RESPONDENTS.

Montreal, this 19th day of October 2009

Me. Mark H. Arnold
Gardiner, Miller, Arnold LLP
Me. Pierre-Yves Trudel
Archambault Adel Trudel s.n.d.
Counsel for APPELLANTS