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CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° 500-05-012098-958

**THE RIGHT HONOURABLE BRIAN
MULRONEY, P.C.**, Attorney domiciled
at 47 Forde Crescent, Westmount, District
of Montreal, Province of Québec,
H3Y 2Y5;

Plaintiff

v

**THE ATTORNEY GENERAL OF
CANADA**, representing Her Majesty The
Queen, in right of Canada, represented
by the minister of justice, The
Honourable Allan Rock, P.C., Q.C.,
Confederation Building, Suite 448, House
of Commons, Ottawa, Ontario, K1A 0A8;

-and-

KIMBERLEY PROST, Attorney, public
servant and agent of Her Majesty The
Queen, Justice Building, Kent and
Wellington Streets, Ottawa, Ontario,
K1A 0A8;

-and-

J.P.R. MURRAY, Commissioner of The
Royal Canadian Mounted Police, 1200
Vanier Parkway Ottawa, Ontario,
K1A 0R2;

-and-

FRASER FIEGENWALD, member of The
Royal Canadian Mounted Police, 1200
Vanier Parkway Ottawa, Ontario,
K1A 0R2;

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DECLARATION

1. Plaintiff was the Prime Minister of Canada for nearly nine (9) years;
2. He is a lawyer of international stature and a senior partner at one of the leading Canadian law firms;
3. As well, Plaintiff sits as a director on numerous corporate boards, holds various important posts and has received numerous honours, the whole as more fully appears from his **curriculum vitae**, produced herewith as **Exhibit P-1**,
4. Plaintiff, by virtue of his international stature, as a former statesman and lawyer of wide renown, has access to a select and highly exclusive circle of chiefs of state and decision-makers on a world-wide level and obtains a good number of important and prestigious mandates;
5. On September 29, 1995, defendant Kimberley Prost, as Senior Counsel and Director of the International Assistance Group for the Minister of Justice of Canada, signed a Request for Assistance addressed to the Minister of Justice of Switzerland, the whole as appears from the said Request for Assistance, a copy of which is produced herewith as **Exhibit P-2**, with a translation from German into English, produced "en liasse", under the same Exhibit number;
6. The said Request for Assistance was issued in connection with an investigation by the Royal Canadian Mounted Police concerning allegations, in the media, that secret commissions would have been received by Canadian officials in connection with a contract for the purchase, by Air Canada, of Airbus airplanes;
7. As appears from this Request for Assistance, the Canadian government, through its representative, asked the Swiss government to assist it in carrying out its investigation and requested access to certain bank accounts, the documentation used to open them and details of all activities carried out therein;
8. This Request for Assistance, addressed by the Canadian government to the Swiss government, contains very grave allegations against Plaintiff, all of which are totally false;
9. Without restricting the generality of the preceding paragraph, the most relevant passages of the Request for Assistance are the following: [TRANSLATION]
 1. All information, documentation and further evidence, which

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Switzerland offers to Canada, will be used exclusively in the investigation and criminal prosecution of alleged breaches of law committed by Martin Brian Mulroney and/or Frank Moores. (...)

- ii. In his position as Prime Minister Mr. Mulroney would have had the authority to control all transactions of the government of Canada unless such authority would have been cancelled by a statute.
- iii. Included was the authority to approve such transactions or to influence the Minister who was entitled to approve the transaction. He was entitled to appoint and to fire Ministers. It was his job to manage the government in the best interest of all Canadians. (...)
- iv. On March 13, 1985, Mr. Mulroney appointed Mr. Moores as a Member of the Board of Air Canada. The police are in possession of reliable information, that Mr. Schreiber got these commissions in order to pay off Mr. Mulroney and Mr. Moores to make sure that Airbus Industries could sell the planes.
- v. The police were informed that Mr. Moores travelled to Switzerland in 1986 and 1987 in order to establish two bank accounts with the numbers 34107 and 34117, the latter under the code word "Devon", with Swiss Bank Corporation in Zurich. Account No. 34117 was established to direct a part of these amounts to Mr. Mulroney.
- vi. After a long evaluation procedure, the Board of Air Canada approved the purchase of 34 planes, Airbus A320, of a total value of approx. Can \$1.8 Billions. This took place on March 30, 1988. The Treasury Board of Canada approved this transaction. The Treasury Board is appointed by the Prime Minister.
- vii. The German news magazine, Der Spiegel, and a CBC program, reported in March 1995 that IAL signed a contract with Airbus Industries after Airbus Industries has paid an amount of 2 to 2.5% of the total amount to IAL. IAL (SCHREIBER) was supposed to have paid commission to Frank Moores for every sale. The latter was supposed to have paid a commission to a Canadian politician. The CBC report made a connection between Mr. Mulroney and these payments.
- viii. It was alleged that Airbus Industries had paid the amounts to account No. 235 972 037 in Liechtenstein which is owned by IAL. The amounts were transferred to the account of IAL No. 18679 with Swiss Bank Corporation in Zurich. The reports point to the suspicion that these amounts were used for payment for the assistance of Mr.

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Moore and Mr Mulroney and were transferred to the accounts of these two gentlemen with the same bank.

- ix. The transfers were carried out in regular intervals when Air Canada received the planes and paid for [them].
- x. These payments could still be carried out since Air Canada has an option for the purchase of planes until 1996.
- xi. The police have seen copies of the documents which were used by CBC and Der Spiegel and believe that more than Can \$ 11 million were so channeled between 1988 and 1991 in the above described manner
- xii. There are no documents available regarding 1993. But it is believed that the payments continued until the resignation of Mr Mulroney. This would have led to an amount of approx. Can \$ 20 million. A confidential information says that 25% of all amounts were paid to Mr Mulroney
- xiii. A video of the CBC program and a copy of the Spiegel reports is enclosed as annex A.
- xiv. The police believe that Mr Schreiber and Mr Moore had a secret agreement with Mr Mulroney regarding the payments to make sure that Airbus Industries and Air Canada made the purchase agreement. Mr Mulroney appointed Mr Moore as a Member of the Board in order to increase the credibility of Air Canada regarding its ability to perform. The payments began after execution of the contract between Airbus Industries and IAL in March 1985 and went on until the end of the option in 1996.
- xv. The agreement is supposed to contain a clause which stipulates that the payments must be stopped when the political situation in Canada changes.
- xvi. Mr Mulroney resigned as Prime Minister shortly before the federal election of October 25, 1993, and it is believed that the agreement was denounced at the time of his resignation. (...)
- xvii. Mr Mulroney was in the position to influence as Prime Minister. The payments (commissions) increased the costs for the planes and, therefore, the people of Canada was defrauded in that amount.

UNOFFICIAL TRANSLATION

- xviii. Two more orders of the Federal Government of Canada led to commission payments to IAL and through this company to payments to Mr Moores and Mr Mulroney (...)
- xix. A confidential and reliable person communicated to the police that a part of this amount was paid to Mr Mulroney in order to make sure that MBB will get the contract. (...)
- xx. In the case of Bear Head Project and the MBB contract, Mr Moores acted as private counselor, in order to facilitate the money flow to Mr Mulroney. A confidential person says that IAL made monthly payments regarding the MBB contract until at least April 22, 1988. The person believes that a part of all the payments made to Mr Moores and Mr Schreiber was transferred to Mr Mulroney.
- xxi. The three above mentioned cases are proof of a persisting plot/conspiracy by Mr Mulroney, Mr Moores and Mr Schreiber who defrauded the Canadian Government in the amount of millions of dollars during the time when Mr Mulroney was in office until his resignation in June 1993. (...)
- xxii. In order to establish that Mr Mulroney committed a crime according to Section 121(1), it is absolutely required that all funds, which were transferred from the accounts No. 34107 and 34117 and from other accounts which Mr Mulroney owns, can be traced to him or to a place where he could personally use the funds. (...)
10. The said Request for Assistance ended with the following peroration:
- "The investigation is of special importance to the Canadian Government because criminal activities carried out by the former Prime Minister are involved."
11. All of the above-cited allegations concerning Plaintiff were made by Defendants who knew the allegations to be solely generated by media speculation, knowing that they were totally incapable of proving any of them, but made them nevertheless with utter disregard for the disastrous impact which they were bound to have on Plaintiff's reputation with the Swiss Government, the Swiss business community whose members would necessarily be informed thereof, and international opinion which would inevitably hear about them, given the circumstances set out below;

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12. Without restricting the generality of the foregoing, the above cited allegations are false in that:
- i. Plaintiff has never had, directly or indirectly any bank account either in Switzerland or in any other foreign country;
 - ii. Plaintiff has never received any of the alleged payments, in any form, from any person, whether named or not in the Request for Assistance, for any consideration whatsoever
 - iii. Plaintiff did not, directly or indirectly, influence or attempt to influence the decision of Air Canada, nor was he involved, in any other way whatsoever in Air Canada's decision-making process;
 - iv. Plaintiff has never been a party to any agreement alleged in the Request for Assistance to achieve any end therein alleged, whether with Messrs. Schreiber or Moores or with any other unnamed person;
 - v. Contrary to the affirmations made by the defendants in the Request for Assistance, CBC admitted, in the course of the abovementioned broadcast, that it was unable to link the Plaintiff to any of the transactions alleged;
13. A perusal of the text of the Request for Assistance indicates clearly that, in essence, the Defendants based their allegations strictly on reports appearing in the media, save for a reference to one unidentified source;
14. In the course of a declaration to the press on Tuesday, November 14, 1995, the defendant Fiegenwald, who is in charge of the investigation, admitted that the Force, of which he is a member, essentially relied on "media-noise" to make the allegations contained in the Request for Assistance and went on to explain that, under the circumstances, given the absence of evidence, he could not have obtained the cooperation of a foreign government without naming names. He was cited, as follows in the The Globe and Mail of Wednesday November 15, 1995, at page A-4

«Normally you would expect names to be included (...)

(...)

I can think of situations where you might not have to include a name... but there would have to be strong evidence to show that it (the money) did go

UNOFFICIAL TRANSLATION

to some government official... If you can't name him, you better have damn good evidence to justify the request otherwise.

(...)

Sgt. Fiegenwald said the RCMP had "little more than media reports" concerning allegations that money was funnelled from Airbus to I.A.L. Leasing Ltd., a shell company in Liechtenstein, and thence to numbered Swiss bank accounts.

If it is confirmed ... then we would have an investigation on our hands." he said.»

The whole as appears in a copy of said article which appeared in **The Globe and Mail** of Wednesday, November 15, 1995, at page A-4, herewith produced as **Exhibit P-3**;

15. In the course of another statement to the press, on Tuesday November 14, 1995, the defendant Fiegenwald even admitted that the Request for Assistance was based on media speculation. He was cited, as follows, in the **Ottawa Citizen** of Wednesday, November 15, 1995:

«There's a difference between information and evidence, Sgt. Fraser Fiegenwald, the only police officer now on the case, said Tuesday "We have to determine whether the allegations (reported by the media) are appropriate and whether they're based on fact.",»

the Defendant Fiegenwald admitted, by the above-cited statement, that the allegations, made by the Canadian government, that Plaintiff was involved in criminal activities were totally devoid of any factual basis, the whole as more fully appears from a copy of the aforementioned article which appeared in the **Ottawa Citizen** of Wednesday, November 15, 1995, filed herewith as **Exhibit P-4**

16. These allegations were made, in the Request for Assistance, by the Defendants, on behalf of the Canadian government, to a foreign government, without the Defendants having made any attempt to verify the truth of these media-generated rumours;
17. The Defendants even refused to meet with Plaintiff, who was offering his complete cooperation for the pursuit of their investigation;
18. Indeed, had this course of action been followed with Plaintiff, it would have enabled any investigator acting in good faith, to modify the nature of the allegations in the Request for Assistance;

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19. The description by the Defendants of the office of Prime Minister is false, misleading, without any basis in law and constitutes a distorted portrayal of the functioning of the Canadian government, leaving foreign readers with the impression that the individual, who holds the office of Prime Minister, in fact controls the entire government as well as every part thereof, which is in flagrant contradiction with the basic principles of the Canadian Constitution, the Financial Administration Act, the role, functions and constitution of the Federal cabinet, of the Treasury Board and of the other executive branches of the government of Canada;
20. The same misleading impression has been created concerning the decision-making process of Air Canada at the relevant times;
21. The defendant Kimberly Prost admitted to never having bothered to verify the truth of the allegations contained in the Request for Assistance which were submitted to her, adding that she had purported to fill no other role than that of a simple «mail box»
22. As far as Defendants Murray and Prost are concerned, it is under their authority and with their authorization that the said Request for Assistance was issued and forwarded to the Swiss government in order for it to be passed on to the Swiss banking industry setting in motion a process of publication which further exacerbated the original damage caused to Plaintiff's reputation;
23. It is through this process of dissemination of the Request for Assistance by the Swiss government that Plaintiff first got wind of its existence, at the beginning of the month of November 1995;
24. On November 8, 1995, Mr Roger Tasse, Q.C., on Plaintiff's behalf, addressed a letter to the Minister of Justice, The Honourable Allan Rock, advising him of Plaintiff's vehement objections to the manner in which the proceedings had been carried out and of the incalculable harm which this had caused to Plaintiff's reputation and to that of the members of his family;
25. Plaintiff, through his attorney called upon the Minister of Justice to withdraw the said Request for Assistance at once and to substitute one not containing the said allegations, the whole as appears from a copy of a letter dated November 8, 1995, from Mr Roger Tasse, Q.C. to The Honourable Allan Rock, produced herewith as **Exhibit P-5**;
26. Copies of the said letter were delivered to the Solicitor-General of Canada, The Honourable Herb Gray Q.C., and to the defendant Murray in the hope of achieving the same goal, the mitigation of damages, to no avail;

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27. It was not until six (6) days later, on November 14, 1995, that the Department of Justice, through Mr W.H. Corbett, Senior General Counsel, Criminal Law Section, replied to Plaintiff, attempting to minimize the contents of the Request for Assistance and to reassure him by invoking the «confidential nature» of the allegations contained therein;
28. The Canadian government refused, however, to accede to the request for withdrawal made by Plaintiffs attorney in the above-mentioned letter, substituting instead a reiteration, addressed to the Swiss government, of the delicate nature of the matter:

«In addition, as a result of the sensitive nature of this case, the necessity for confidentiality has been repeatedly stressed with the Swiss authorities. In response to the concerns you have expressed, we have reaffirmed with the Swiss that this request is based on allegations of criminal activity, the basis of which is outlined in the request, and that given the prominent individuals named in the document the request will be dealt with in confidence, subject to the need for disclosure in order to obtain the requested information in accordance with Swiss law »
(our emphasis)

The whole as appears from a copy of the letter dated November 14 1995 from Mr W.H. Corbett addressed to Mr Tassé, Q.C., produced herewith as **Exhibit P-6**;

29. In fact, on November 14, 1995, Plaintiff obtained a copy of the Order issued by the Federal Police Department of Switzerland, in response to the Request for Assistance, which Order had been served on the Swiss Bank Corporation in Zurich. This order included no admonition to the effect that care should be exercised with respect to the confidentiality of the contents of the Request for Assistance annexed to it, the whole as appears from a copy of the said Order, produced herewith as **Exhibit P-7**;
30. By the second week of November 1995, the international media got wind of the Canadian Request and started to spread rumours concerning allegations about Canadian politicians;
31. The said allegations were rapidly picked up by the media in Canada which now proceeded to echo the rumours initially disseminated by them, creating a story smacking of an international financial scandal;
32. On November 15, 1995, Mr Tasse asked Mr Corbett for a meeting in order to stress, once again, the urgent need to take corrective measures;

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33. Mr Corbett refused to meet with Mr Tassé, referring the latter, instead, to Defendant Flegewald without any result;
34. On the following day Mr Tasse wrote to Mr Flegewald submitting to him the text of a correction to be made to the Request for Assistance, the whole as appears from a copy of the said letter of November 16, 1995, by Mr Tassé to Mr Flegewald, produced herewith as **Exhibit P-8**;
35. On November 18, 1995, the Request for Assistance was published by the media, having been leaked by an unknown source, thereby causing considerable harm to Plaintiff's reputation, harm which could have been greatly mitigated had Defendants not demonstrated reckless disregard with regard to the dramatic impact caused by their refusal to withdraw the Request for Assistance and to retract the allegations in a timely fashion;
36. Defendants Prost and Flegewald acted wilfully and in concert, knowing full well that the Request for Assistance was bound to find its way into the media and without any concern for the drastic effect which such publication would have in the international press;
37. The above-mentioned behaviour of Defendants is a blatant departure from common decency and renders them liable for having acted so as to cause injury to Plaintiff;
38. The allegations constitute, on the part of Defendants, illicit and intentional breaches of Plaintiff's right to the safeguard of his dignity honour and reputation, as well as his right to respect for his private life;
39. The issuance of the Request for Assistance, in these circumstances, constituted a flagrant breach by the Canadian government, as well as its agents, of Plaintiff's fundamental rights, under the Quebec Charter of Human Rights and Freedoms and the Canadian Charter of Rights and Freedoms and Plaintiff is within his right to claim, inasmuch as it is possible, full and complete compensation for the damages which he has incurred, by way of a finding of joint and several liability on the part of the Defendants for all general damages suffered by Plaintiff as well as for the exemplary damages claimed;
40. Plaintiff estimates at TWENTY-FIVE MILLION DOLLARS the general damages incurred and claims another TWENTY-FIVE MILLION DOLLARS as exemplary damages;
41. Any amount awarded as exemplary damages by judgment to Intervene will be turned over to Foundations or Institutions for Education or for Medical Research, situated in Montreal;

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42. Plaintiff has suffered damages within the Province of Québec, several of the faults alleged took place in the Province of Québec and the Attorney General of Canada is a legal person having several establishments within the Province of Québec and the dispute relates to his activities in the Province of Québec;
43. The present action is well-founded in fact and in law;

FOR THESE REASONS, PLAINTIFF PRAYS THIS HONOURABLE COURT TO:

GRANT the present action;

CONDEMN the Defendants, the Attorney General of Canada, J.P.R. Murray Kimberly Prost, Fraser Fiegenwald, jointly and severally, to pay to Plaintiff the sum of FIFTY MILLION DOLLARS (50 000,000 \$) with interest and the additional indemnity provided for at article 1619 of the Civil Code of Québec;

ORDER any measure which this Court may deem appropriate and just with regard the circumstances in order to allow Plaintiff to obtain as complete a remedy as possible, including publication of a formal document containing the Defendants' retraction and apology as well as the reasons for judgment to intervene in the present suit, said retraction, apology and reasons for judgment to be published in the fifty (50) largest daily newspapers in the world;

ORDER that any amount awarded as exemplary damages in favour of Plaintiff be paid to Foundations or Institutions for Education or for Medical Research, situated in Montreal;

THE WHOLE WITH COSTS.

MONTREAL,
this 20th day of November 1995

(SGD) McCARTHY TETRAULT

ATTORNEYS FOR PLAINTIFF

TRUE COPY

ATTORNEYS FOR PLAINTIFF