Outrageous Lawsuits

Oh Canada!

Mr. Waddah Mustapha, a hairstylist from Windsor, native of Lebanon but residing in Ontario at the time of the alleged tort, claimed significant psychological damages after seeing a dead fly floating in his unopened water bottle.

At no time in the litigation was the assault upon the poor little fly's person acknowledged. Indeed, it seems that he drowned anonymously. The SPCA did not intervene. For the purposes of this article, we will refer to the deaf fly as "David".

As for Mustapha:

"In the course of replacing an empty bottle of drinking water with a full one, Mr. Mustapha saw a dead fly (David) and part of another dead fly in the unopened replacement bottle. He became obsessed with the event and its 'revolting implications' for the health of his family, which had been consuming water supplied by Culligan for the previous 15 years. The plaintiff developed a major depressive disorder with associated phobia and anxiety. He sued Culligan for damages."

On this basis, the perfect storm of an outrageous lawsuit began. First, the claim tied up the Court of Justice Brockenshire who (!) awarded Mustapha over $300K in damages, clearly breaking open Canada's reputation as a safe haven for these types of claims. The decision was appealed where, in a presumably hermetically sealed Courtroom, the Ontario Court of Appeal dismissed the claim. Mustapha then took his case to Ottawa where a full bench of nine judges heard about David. On May 22, 2008, after well over $1-million in lawyer and expert fees, Court time and judge's salary spent, the ruling came down: "the loss suffered by the plaintiff, Mr. Mustapha, was too remote to be reasonably foreseen and that consequently, he cannot recover damages from the defendant" and the pesky ghost of David, then resting on the back of Canadian justice, was finally brushed off.

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Let's Hope They're Kooks

Luis Sanchez has filed a claim in Hawaii's US District Court seeking to halt the construction of a particle accelerator in Geneva alleging that it would ignite a black hole and might swallow the entire earth into it. The 27km-long device, called LHC, short for Large Hadron Collider, runs across the France/Switzerland border and is set to start operations in late 2008. The claim is against the US Department of Energy and others alleging that:

"The LHC will very possibly produce 2 kinds of particles which are extremely dangerous for the safety of this planet, as they have been proven both theoretically to be able to swallow in a chain reaction the entire mass of planet Earth.

"A cosmological bomb billions of times more powerful than the A-Bomb ... might possibly be created... Black holes are, unlike normal Atomic Bombs, self-reproductive bombs; that is, substances, which actively attract and accumulate our normal matter and whose strength is such that once they become stable they cannot be controlled or destroyed by human beings, who are millions of times 'lighter' (less dense) than those substances. It is thus extremely dangerous to produce any quantities of Dark Matter (strange matter or black holes) of any form on Earth."

Source: www.duhaime.org

Impunity could derail peace process

The United Nations human rights chief warned that Nepal's peace process could be at risk unless justice is ensured for victims of past and ongoing abuses.

During her five-day visit to Nepal, High Commissioner for Human Rights Navi Pillay met several families whose loved ones were victims of serious rights violations, both during and after the decade-long civil war that claimed some 13,000 lives before it ended in 2006.

"Human rights were violated in these cases in Nepal, and under international law the State has a responsibility to ensure that the families obtain truth and justice," she told a news conference in the capital, Kathmandu.

"The demands of victims' families are not mere wishes they are supported by law," she stressed. "And until these demands for justice are fulfilled and accountability for past, and in particular ongoing, violations is ensured, a truly new Nepal will not emerge, and indeed, the peace process could be jeopardised."

The civil conflict came to an end in 2006 with the signing of a peace accord between the Government and Maoists, with the parties also agreeing to set up of a commission on disappearances and a truth and reconciliation commission.In voicing her support for the establishment of a disappearance commission, Ms. Pillay emphasized that it must not be a "token body." Rather, victims should be consulted in the process of setting it up and it should be given all the protection and powers by Parliament to make it meaningful.

The High Commissioner also voiced her alarm at the detention

and "arbitrary action" taken against many journalists in the South Asian nation. She urged the Government to take concrete steps to ensure the security of human rights defenders, including journalists, "who are the first line in defence of the human rights of all Nepalis."

In addition to victims of human rights violations and families of victims, Ms. Pillay also held discussions with Government officials, including the President and Prime Minister, as well as members of human rights bodies, civil society, the diplomatic corps and the UN system. She also travelled outside the capital to Janakpur in the central Terai region.

Source: UN News Centre.

Laws relating to mutiny

IN the previous issue the term mutiny had been illustrated using the Penal Law of Bangladesh and the Navy Ordinance. The following are legislations of the Bangladesh Army, Armed Police Battalion and the Bangladesh Rifles related to offences of mutiny.

THE ARMY ACT, 1952

Chapter V - Offences

Mutiny and insubordination

31. Any person subject to this Act who commits any of the following offences, that is to say,-

(a) begins, incites, causes, or conspires with any other person to cause, or joins in, any mutiny in the military, naval or air forces of Bangladesh or any forces co-operating therewith; or

(b) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(c) knowing or having reason to believe in the existence of any such mutiny or any intention to commit such mutiny, or of any such conspiracy, does not without reasonable delay give information thereof to his commanding or other superior officer; or

(d) attempts to seduce any person in the military, naval or air forces of Bangladesh from his duty or his allegiance to the Government of Bangladesh;

shall, on conviction by court martial, be punished with death or with such less punishment as is in this Act mentioned.

THE ARMED POLICE BATTALIONS ORDINANCE, 1979

Offences triable by Special Court

8. (1) An officer or an Armed Policeman, who-

(a) begins, excites, causes or joins in any mutiny or sedition or, being present at any mutiny or sedition, does not make his utmost endeavour to suppress it, or, knowing, or having reason to believe in the existence, of any mutiny or sedition, does not, without delay, give informa-

tion thereof to his Commanding Officer or superior officer; or

(b) uses or attempts to use, criminal force to commit an assault on his superior officer knowing or having reason to believe him to be such superior officer, whether on or off duty; or

(d) in the presence of an enemy or any person in arms against whom it is his duty to act, casts away his arms or his ammunition, or intentionally uses words or any other means to induce any other subordinate officer or Armed Policeman to abstain from acting against the enemy, or any such person or to discourage any such subordinate officer or Armed Policeman from acting against the enemy, or any such person; or

(f) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects any enemy or person in arms against the State; or

(i) uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to camp or quarters, or forces a safeguard, or without authority breaks into any house or any other place for plunder, or destroys or damages any property of any kind; or

(j) intentionally causes or spreads a false alarm in action, camp, battalion headquarters or barracks; or

(l) commits or attempts to commit rape on any woman;

shall, on conviction by a Special Court, be punished with,-

(a) in the case of an offence mentioned in clause (a) or (l), transportation for life, or rigorous imprisonment for a term of not less than ten years;

(b) in the case of an offence mentioned in clause (b), (c), (d), (e) or (f), rigorous imprisonment for a term which may extend to ten years; and

(c) in the case of an offence mentioned in clause (g), (h), (i), (j) or (k) rigorous imprisonment for a term which may extend to seven years.

(2) A Special Court may take cogni-

sance of any offence punishable under this section either of its own motion or on a complaint by any person and shall follow such procedure as may be prescribed.

(5) When a Special Court passes sentence of transportation for life, the proceedings of the case shall be submitted,-

(a) in the case of superior officer, to the President; and

(b) in the case of a subordinate officer or an Armed Policeman, to the Inspector General of Police,

and the sentence shall not be executed unless it is confirmed by the President or, as the case may be, by the Inspector General of Police.

(6) In any case submitted under subsection (5), the President or, as the case may be, the Inspector General of Police may-

(a) confirm the sentence, or pass any other sentence warranted by law, or

(b) annul the conviction, and convict the accused of any offence of which the Special Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused:

Provided that no order of confirmation shall be made under this sub-section until the period allowed for preferring an appeal has expired, or, if an appeal is preferred within such period, until such appeal is disposed of.

THE BANGLADESH RIFLES ORDER, 1972

10A. (1) A subordinate officer or a Rifleman or a Signalman, who-

(a) begins, excites, causes or joins in any mutiny or sedition or, being present at any mutiny or sedition, does not make his utmost endeavours to suppress it, or, knowing, or having reason to believe in the existence, of any mutiny or sedition, does not, without delay, give information thereof to his Commanding officer or superior officer; or

(b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, knowing or having reason to believe him to be such, whether on or off duty; or...

shall, on conviction by the Special Court, be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine which may extend to Taka one hundred.

(2) The Special Court may take cognisance of any offence punishable under this Article either of its own motion or on a complaint by any officer and shall follow such procedures as may be prescribed.

(3) A subordinate officer or a Rifleman or Signalman accused of an offence under this Order shall have the right to conduct his own defence or to have assistance of any officer of the Force or of any legal practitioner of his own choice.

– Compiled by Law Desk.

Racial discrimination

21-28 March is the Week of Solidarity with the Peoples Struggling against Racism and Racial Discrimination.

When discrimination can happen

Discrimination happens when someone is treated worse ('less favourably' in legal terms) than another person in the same or similar situation.

You may be discriminated against because of your:

- race;
- colour;
- nationality; or
- national or ethnic origin.

The words 'race' and 'racial' cover all these things.

People may suffer discrimination:

- at work;
- when buying or using goods and services;
- when trying to buy or rent somewhere to live;
- at a school or college; or
- when dealing with the authorities (for example, the police).

Discrimination

The law on equality talks about three types of discrimination:

- **Direct discrimination** when you are treated less favourably on racial grounds. This covers treating you less favourably because of your race and also treating you less favourably because of someone else's race. For example, if you refuse to follow an instruction by your employer to discriminate against someone from a different race and are then dismissed, you can claim racial discrimination.
- **Indirect discrimination** where rules or conditions apply without good reason and they have a worse effect on some
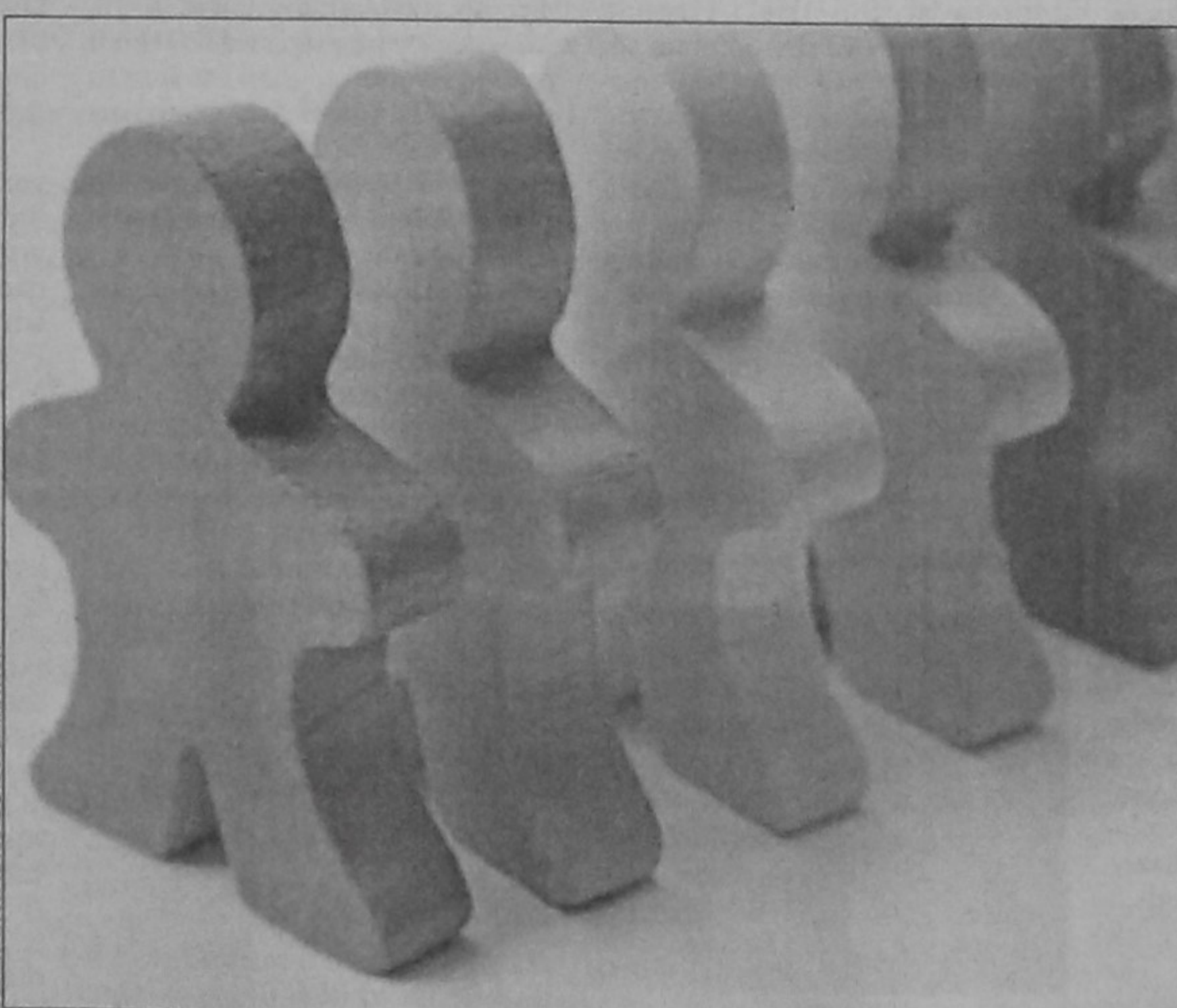
racial groups than on others. For example, there would be indirect discrimination if a job had a requirement to have 'English as a mother tongue', because it would exclude some racial groups whose first language is not English but who speak fluent English.

- **Victimisation** when you are treated less favourably because you complained of racial discrimination or helped a colleague who did so.

Discrimination at work

It is against the law for an employer to discriminate against you on grounds of race when choosing someone for a job and when deciding which staff will be:

- promoted;
- given benefits at work, such as training;
- disciplined;
- dismissed; or
- made redundant.

Discrimination at school or college

It is against the law for a school or college to discriminate against or harass you or your child:

- in the terms on which it offers to admit your child;
- when deciding whether to exclude your child; or
- in the way your child is taught.

The school or college must deal with any racial harassment or abuse by staff.

Source: Legal Services Commission & the Commission for Racial Equality, UK.

61pc driving licences obtained without test

Sixty-one percent drivers have got driving licences from Bangladesh Road Transport Authority (BRTA) without sitting for the required test while 54 percent of them drive vehicles on roads in the country with expired licences.

A report of the Transparency International Bangladesh (TIB) also reveals that a person has to bribe BRTA officials concerned Tk 100 to Tk 7,000 to get a driving licence and Tk 100-500 for passing a driving test. Drivers also use fake medical certificates to get licences.

Taking into cognisance the huge politicisation and corruption in the country's road transport sector, Communications Minister Syed Abul Hossain pledged to form a powerful committee within a week to root out the irregularities and modernise the sector. -The Daily Star, March 23, 2009.

Separation of judiciary spirit at stake

Empowering executive magistrates to take cognisance of offences for trial in any case is against the sprit of the constitution and separation of judiciary from the executive, barrister M Amir-Ul Islam told the Supreme Court (SC).

Amir, who has been fighting for long 14 years for separation of judiciary, made the comment when a full bench of appellate division headed by Chief Justice MM Ruhul Amin sought his expert opinion during the hearing of Masdar Hossain case, popularly known as judiciary separation case.

The Appellate Division was scheduled for holding the hearing on the government's progress in executing the separation of judiciary from executive, as the immediate-past caretaker government officially announced separation of judiciary on November 1, 2007.

The court adjourned hearing of the case until May 12 and asked the government to convey the court by this period the progress in implementing the recommendations of the judicial service pay commission for enhancing facilities of judicial officials. -The Daily Star, March 23, 2009.

Tk 1,200 crore left aside in govt coffer

The Bangladesh Bank and National Board of Revenue (NBR) have suggested the government take a decision on Tk 1,200 crore which was realised by the army-backed caretaker government during its anti-graft drives as both the bodies have no authority to determine legality of the money to use it.

During the drive in 2007 and 2008, the joint task forces realised the money from different businessmen and politicians in fines. Finance and planning adviser of the caretaker government Mirza Azizul Islam in his budget speech mentioned that the money was deposited with the Bangladesh Bank.

But sources at the finance ministry said the money remains unused, there being no clear-cut decision as to its legality. Recently the finance ministry had sent letters to the Bangladesh Bank and NBR to know about the money. -The Daily Star, March 22, 2009.

Feni gas field reels from writ petition

As a partner of the controversial Canadian oil company Niko, which developed and began selling gas from the marginal Feni Gas Field from late 2004, Bapex has been suffering financially by a four-year-old writ petition filed by Bangladesh Environment Lawyers' Association (Bela) and others with the High Court.

While the court is finally holding hearings on the petition, both Niko and Bapex's arrears with Petrobangla for sale of around 20 billion cubic feet of gas till date remain unpaid. Petrobangla owes Bapex around Tk 50 crore (more than $7 million) and Niko around $22 million.

A High Court order also suspended drilling of any development well in the Feni Gas Field. "Once the High Court clears the case, Niko would re-invest this money to drill two development wells in Feni to boost gas production by 40 million cubic feet per day from this formerly abandoned gas field," said a well-placed Petrobangla source, referring to an appeal of Niko to the court regarding this matter. -The Daily Star, March 22, 2009.

Tk 6,542cr revenue stuck in litigation

The National Board of Revenue (NBR) could not realise around Tk 6,542 crore in revenue because of 16,372 unresolved cases.

NBR sources said there might be a massive shortfall in revenue collection in the current fiscal year due to the global financial crisis and realisation of the arrears can help to achieve the target.

Sources said the tax administration has set a Tk 54,500 crore revenue collection target for the current fiscal year but the collection may not cross over Tk 51,000 crore.

Against the backdrop, the NBR has taken initiative to collect money through resolving the cases soon. In 2007-2008 FY, the NBR collected Tk 47,287 crore in revenue against a target of Tk 45,970 crore. - The Daily Star, March 22, 2009.

FBI smells conspiracy in BDR carnage

The visiting Federal Bureau of Investigation (FBI) team has said the carnage at Bangladesh Rifles (BDR) headquarters last month was a "conspiracy".

The FBI agents made the observation after comparing the BDR incident with mutinies staged by military and paramilitary forces in other countries, said officials of Criminal Investigation Department (CID) after a meeting with the team. The CID sources, however, declined to elaborate on the matter.

At the meeting the FBI team has also assured the local investigators of giving all kinds of assistance in finding out foreign links to the February 25-26 BDR massacre in which 73 people, including 56 army officers and their relatives, were killed.

The FBI agents said Bangladeshi investigators seriously lack modern equipment in probing such a grave incident but appreciated their skills. -The Daily Star, March 21, 2009.

Most stranded Bangladeshis get entry to Malaysia

Malaysia has taken in most of the 532 Bangladeshi workers who were stranded in Kuala Lumpur International Airport for around 12 days since the cancellation of 55,000 work visas.

On Thursday, employers and outsourcing companies received around 300 workers from the immigration section, said sources close to recruitment business. Earlier last week, 184 were allowed entry. They arrived in the KL airport on March 8 and 9.

"The immigration authorities are also allowing in those returning from vacation," said a Bangladeshi businessman in Malaysia. Following the Malaysian government's cancellation of 55,000 work visas to Bangladeshis, the immigration barred all workers including those who had been coming back to work after vacation at home.

In response, the Bangladesh government told its Southeast Asian counterpart that those who had already arrived there should be let in on humanitarian grounds. -The Daily Star, March 21, 2009.