

March 11, 2019

Nithyananda Meditation Academy

1960 Ellesmere Rd.

Scarborough, ON

M1H 2V9

Attn: Thushy Thiru

Dear Ms. Thiru,

Re: Opinion for His Divine Holiness

You have retained us as counsel for His Divine Holiness Pontiff Paramahansa Nithyananda ("His Divine Holiness"). In this regard, we have been asked to assess whether the charges and evidentiary process used in the State of Karnataka, India would meet the standards of a Crown prosecution in a Canadian jurisdiction. After reviewing the history of this matter and surrounding circumstances we are of the opinion that the events, evidence and circumstances surrounding the arrest, detention, incarceration and prosecution of His Divine Holiness would not meet Canadian legal standards.

His Divine Holiness is respected and worshipped as a living incarnation of Lord Shiva in the Shaivite sect of the Hindu religion. This is a minority sect in India. He has a worshipper base of millions of followers world-wide. His live spiritual discourses are viewed by people from countries all over the globe. His organization strongly believes in gender equity and has a large number of both male and female devotees and LGBTQ devotees. When the attacks commenced against our client (both physical and through the media and state authorities), the female and children devotees were also subjected to physical attacks and were forced to flee for their safety. Subsequently, there have been numerous assassination attempts on our client.

As a result, our client seeks exile and international protection in Canada or a similar mature democracy due to a fear of ongoing persecution as a result of his religion as a Shaivite Hindu.¹

Our client and his spiritual followers have faced unprecedented persecution over the last decade on identifiable grounds of being a minority religion and sect. The details of the persecution inflicted upon our client and his spiritual followers, which include burning of temples and places

¹ Our client has been subject to relentless persecution in the past 9 years including attempts on his life, numerous hate speech articles and telecasts, illegal arrests, illegal land expropriations by state and non-state elements, and religious persecution

of worship and expropriation of valuable lands without compensation was provided in a separate document along with a brief history of Shaivite Hinduism.

In particular, our client has faced numerous malicious and groundless criminal prosecutions over the years that have been dismissed, often on the basis that the cases were without merit. Such cases were used as a tool to not only harass our client, but to also disrupt the charitable activities that spread the ideology of Shaivite Hinduism.

A case commenced 8 years ago against our client based on a charge of rape and unnatural sex have indices that would undermine Canadian standards of prosecution and would likely not have proceeded to trial for, though not limited to, the following reasons:

1. The police charged His Holiness and only **subsequently** called for witnesses and complainant(s). In other words, there was no complainant(s) when the charges were laid;
2. Victims were solicited by police through mass and social media including Facebook;
3. The police interrogated His Holiness without a lawyer present; and subsequently released the interrogation tapes to the media, which went viral on the internet;
4. The Indian courts placed a ban on our client's right to publicly teach as a condition of his bail, thereby violating his fundamental right to free speech;
5. Transcripts are not produced in the same manner in a Karnataka state court as they would have been in the Canadian judicial system. There are no records of the proceedings;
6. Medical evidence that proves our client's innocence and shows that there was not even a *prima facie* case. This was not allowed to be presented to the judges and can only lead to the conclusion that it was suppressed;
7. The Canadian Supreme Court in *R. v. Askov* [1990] 2 S.C.R. 1199, clearly outlined that delays (in this case over 8 years) in bringing a matter to trial is prejudicial to the accused and as a result charges must be stayed. Failure to stay charges would result in a miscarriage of justice as memories have faded and witnesses have disappeared among other things. In this case the miscarriage of justice was even more egregious as the charges were laid only 8 years after our client was arrested;
8. Our client was ordered to submit to medical tests more than four years after the initial complaint was filed during which he was tortured;
9. Further, in 2014, there was another assassination attempt. This assassination attempt was live cast on Indian television networks, with commentary. The police did not take any action even though a police complaint was filed. As mentioned previously, this one of many assassination attempts on our client's life.

It is obvious that our client will not receive a fair trial in accordance with the three core Canadian values and principles which are discussed below.

Proceedings in the United States

Our client and non-profit corporate organizations on his behalf have been successful in obtaining judgment for damages in defamation actions and subsequent court orders related to collections in four separate states in the United States, specifically California, Michigan, Ohio and New York.

All these successful legal proceedings clearly indicate that there is a concerted action, not only to discredit him with the judiciary, media and society, but to ultimately subject our client and his followers to persecution.

Canadian Values and Principles

Judicial Independence

One of the fundamental tenets of Canadian values is judicial independence. As discussed by the Supreme Court of Canada in *Ref re Remuneration of Judges of the Prov. Court of P.E.I.*; *Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*

As the Court stated,

“Judicial independence is valued because it serves important societal goals — it is a means to secure those goals.

[10] One of these goals is the maintenance of public confidence in the impartiality of the judiciary, which is essential to the effectiveness of the court system. Independence contributes to the perception that justice will be done in individual cases. Another social goal served by judicial independence is the maintenance of the rule of law, one aspect of which is the constitutional principle that the exercise of all public power must find its ultimate source in a legal rule.”

The three core characteristics of judicial independence as defined by the Supreme Court of Canada are security of tenure, financial security and administrative independence. The judicial system in the State of Karnataka does not embody this fundamental tenet as discussed by the Supreme Court of Canada. Therefore, it is our client’s well-founded fear that he will not receive a fair trial and in fact he is of the strong belief that there is every likelihood that he is being prosecuted for political purposes without the safeguard of this core Canadian value.

Prosecutorial Independence

The Supreme Court of Canada in *Boucher v. The Queen* [1955] S.C.R. 16 set out the proper role of a prosecutor:

It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.

Our client has no confidence that this high level of dedication to Truth is maintained in the Karnataka state legal system. Unlike in Canada there is no recourse grounded in the tort of malicious prosecution against prosecutors who are wrongdoers. As a result, as discussed in *Nelles v. Ontario* [1989] 2 SCR 170, there is no accountability nor guarantee that there is a separation of State and the enforcement arm of the government. The separation of the State and independence of prosecutions again is a fundamental Canadian value.

Open Court Principle

The Court of Appeal (Ontario) in *Parsons v. Ontario* 2015 ONCA 158,

“Open courts allow Canadians to observe “that justice is administered in a non-arbitrary manner, according to the rule of law. An open court is more likely to be an independent and impartial court”

This again is a fundamental Canadian value. This is a principle that likely will not be followed by the courts in the State of Karnataka.

Conclusion

Our client is a spiritual leader with a very large worshipper following. He is a Shaivite Hindu. He and his followers have been systematically persecuted for their religious and political beliefs.

Given the absence of core Canadian values and protections such as judicial and prosecutorial independence, the open court principle and a commitment to Truth seeking, our client will not receive a fair trial in the State of Karnataka in accordance with Canadian standards.

In our view, due to the misconduct of the Indian police and lack of due process mentioned above it is not possible for our client to receive a fair and just trial. Further, we have reason to believe that our client's life is not safe in the hands of the Indian police if they were to convict him or arrest him for any other reason, as evidenced by the abuse he has already experienced under police custody and due to the other similar killings in such custody.²³ Nor is he safe or remotely protected as a citizen in his home country as evidenced by nearly 80 assassination attempts over the past 10 years, several of which were reported and ignored by police. It is for this and other reasons that the Special Rapporteur for Freedom of Religion and Belief of the United Nations Human Rights Commission has taken carriage of this matter.

For these reasons, and the reasons set out in the accompanying document, we request that our client be granted refuge and international protection as a religious leader.

Yours truly,



Malliha Wilson
Senior Partner, LLB
Encl.

² <https://www.hrw.org/report/2016/12/19/bound-brotherhood/indias-failure-end-killings-police-custody>

³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24066&LangID=E>

Ms. Malliha Wilson

Senior Partner, Nava Wilson LLP

Malliha is a litigator and currently the Senior Partner at Nava Wilson LLP heading up the Litigation department.

She served as the Assistant Deputy Attorney General of the Government of Ontario for over 8 years. She was Senior Appellate Litigation Counsel with the Ontario Government for more than 30 years, participating in over 20 notable cases at the Supreme Court of Canada and the Ontario Court of Appeal.

She was formerly Special Legal Advisor at the Investment Management Corporation of Ontario. She specializes in all areas of litigation, including International and domestic human rights, indigenous, constitutional, real estate, breach of contract, employment, and labour law.

Throughout her career she has been a champion of diversity and inclusion, demonstrating her steadfast commitment to community service and the legal community. Her significant accomplishments and work to promote diversity and inclusion, were recognized in 2009 by the South Asian Bar Association with a Distinguished Career Award, in 2012 by her Alma matter, Osgoode Hall Law School, with a Gold Key Award for Public Sector Service, in 2015 by the Federation of Asian Canadian Lawyers with a Lawyer of Distinction Award and most recently was awarded the Outstanding Achievement Award by the Tamil Mirror.

She continues to contribute to community and legal organizations by serving on boards including the Editorial Board of the Philippe Kirsch Institute, the Board of the Churchill Society for the Advancement of Parliamentary Democracy, and the Principal's Advisory Group at the University of Toronto Scarborough. She is also a member of the of the Mutual Funds Dealers Association of Canada's Hearing Panel and on the board of directors of the Toronto Foundation for Student Success.