**Canada (Applicant)**

**v.**

**United States (Respondent)**

**Case Concerning *The Oscar Wilde***

*This compromis was used in a previous IMCHS competition. It has been edited and shortened to one issue. Please do not feel intimidated by the compromis and do feel free to contact Lindon Bluth or Maureen Bitonio at imchs@kentlaw.iit.edu.*

**Jurisdiction**

1. This case has been jointly submitted by Canada (Applicant) and the United States of America (Respondent) under the International Court of Justice’s (ICJ) *ad hoc* jurisdiction pursuant to Article 36(1) of the ICJ Statute. In accordance with Articles 26-28 of the ICJ’s Statute, and following the precedent of the Canada -U.S. *Gulf of Maine Case*, the two sides have agreed that the case will be referred to a “special chamber” of the ICJ, consisting of three judges. This *Compromis* reflects the agreed facts as negotiated by the Parties.

**Facts**

2. In August 2003 Sudesh (“Sam”) Chandra, a Canadian citizen then living in Burnaby, British Columbia, decided to move to Portland, Oregon, to attend Portland State University (PSU), where he enrolled in a three-year bachelor’s degree program in Business Administration and Accounting. At that time Sam was 21 years old and was a gay man.

3. In September 2005 Sam met Bill Hayter, an American citizen, at Slush, a popular gay bar in Portland. Sam and Bill began dating and decided to move in together in November 2005. At that time Bill owned and managed a home renovation business, Hayter Homes Ltd., located in Portland, which only employed four people.

4. When Sam graduated from PSU in May 2006 Bill offered him a position as the finance officer with Hayter Homes Ltd.. The position involved keeping track of all financial records for the company; paying employees, sub-contractors and suppliers; keeping records of all inventory and accounts receivable; paying taxes and collecting payments from clients. Sam accepted Bill’s offer. Sam was paid $3,000 per month from Hayter Homes Ltd., from which Sam paid Bill $750 per month for Sam’s share of the food and other domestic expenses.

5. Sam and Bill enjoyed each other’s company. They hiked, biked and canoed together and, after moving in with one another, otherwise lived as a couple by sharing domestic chores. Sam did most of the cooking and laundry. Bill was responsible for shopping, car repairs and the yard work around their rented Arts & Crafts-style bungalow in the trendy Knob Hill district of Portland. On weekends they often went to see movies or visit coffee shops and had a mix of their gay and straight friends over for potluck dinners and parties.

6. On many weekends Sam and Bill also went sailing together on a 22-foot mono-hull sailboat called *Fly II*, which they initially rented from a Portland-area marina, but which they later purchased as a couple and rechristened *The Oscar Wilde*. Together, they sailed the waters of the Columbia River, which were challenging, but which taught both men much about sailing. *The Oscar Wilde* was registered and flagged as a U.S. vessel.

7. Hayter Homes Ltd. began to grow quickly during the property boom of the mid-2000s. By early 2007 the company had over 30 employees and was involved in several home renovations, “build-outs” and “build-downs” in the Portland area. Payroll and accounting issues for the company grew quickly. Sam had his hands full. He received no raises from Hayter Homes Ltd., but Bill assured Sam several times that he would look after him “if we ever get into trouble”.

8. Things were going well between Sam and Bill. They began to think about how they could make their relationship more permanent. At a fundraiser for the Portland Art Museum one evening in March 2007 Bill proposed to Sam and Sam immediately accepted. An immediate issue for them both was how to formalize their relationship.

9. Due to a successful ballot initiative in 2004 known as “Measure 36”, the Oregon Constitution was amended to read:

Policy regarding marriage. It is the policy of Oregon, and its political subdivisions, that only a marriage between one man and one woman shall be valid or legally recognized as a marriage.

A number of challenges brought in Oregon’s courts to the amendment were unsuccessful

at the time of its passage and afterwards. When Bill and Sam went to the Portland Courthouse in April 2007 seeking to marry, they were denied a marriage licence by the Clerk of Multnomah County, who cited the amended provision of the Oregon Constitution that effectively prohibited same-sex marriage.

10. Both Bill and Sam were devastated by the Clerk’s decision and contemplated moving away from Oregon. However, a local friend of the couple, Shandra LaPreece, was a family lawyer in Portland and confidant to both of them. One night over drinks at a local restaurant after the decision she told them to “wait it out in Oregon … Change is coming … I can *feel* it!”

11. What Shandra was referring to was the Oregon *Family Fairness Act*, which the Oregon state legislature passed in May 2007. The legislation created a status of “domestic partnership” in Oregon law in order to afford certain rights to same-sex couples who register under the *Act*. Oregon Governor Ted Kulongoski signed the bill on May 9, 2007. While January 1, 2008 was the date the statute would have taken effect, a court challenge delayed its implementation. The challenge was resolved on February 1, 2008, and the law went into effect that day, with registrations beginning on February 4, 2008.

12. The *Family Fairness Act* only applies to same-sex couples. It provides that two individuals of the same sex wishing to become partners in a domestic partnership may complete and file a Declaration of Domestic Partnership with the county clerk in any county of Oregon. Thereafter, they are recognized as “domestic partners”, which gives partners in such relationships the right to make medical decisions for a partner in crisis, to exercise rights and responsibilities related to property and inheritance, and to benefit from provisions to protect children and other dependents. However, s. 2(7) of the *Act* states:

The Legislative Assembly recognizes that the Oregon Constitution limits marriage to the union of one man and one woman. The Legislative Assembly does not seek to alter this definition of marriage in any way through the Oregon *Family Fairness Act* and recognizes that the Legislative Assembly cannot bestow the status of marriage on partners in a domestic partnership. The Legislative Assembly recognizes that numerous distinctions will exist between these two legally recognized relationships. The Legislative Assembly recognizes that the legal recognition of domestic partnerships under the laws of this state may not be effective beyond the borders of this state and cannot impact restrictions contained in federal law.

13. At Shandra LaPreece’s urging, Sam and Bill decided to register their relationship under the *Family Fairness Act* and do so before the Clerk of Multnomah County at the Portland Courthouse in March 2008. At the time of their registration the Clerk came out of his office, winked at both of them and said with a grin, “So you guys are back.” Bill retorted, “Listen, I didn’t ask him to ‘domestically partner’ me!” Sam and Bill completed the necessary paperwork and, a few minutes after their application was accepted, they

were informed by the Clerk that they were domestic partners under Oregon law. Afterwards, Shandra LaPreece hosted a reception for them at La Kreol, a popular soul food bistro in Knob Hill.

14. Sam and Bill remained deeply disappointed that they could not legally marry in Oregon, but there were more pressing issues on the horizon after they registered. By mid-2010, due to a steep decline in the Oregon economy, Hayter Homes Ltd. was in serious trouble. Sam and Bill began to contemplate their options. Bill decided to sell Hayter Homes Ltd. and move to Vancouver, British Columbia, with Sam. Bill believed he could re-employ quickly in the construction trades there since an influx of foreign money was priming the local real estate market there.

15. Sam and Bill moved to Vancouver in mid-2012. Sam got a job with an import-export firm, while Bill worked as a project manager for a construction company. On the weekends the couple continued to sail together on *The Oscar Wilde*, which they moored

at a slip in Vancouver’s False Creek. The couple hosted parties onboard and went sailing through the Gulf Islands and Straight of Juan de Fuca, often into international waters off the Canadian and U.S. coasts.

16. *The Oscar Wilde* was built with a stabilizer system, a ‘sea anchor’, that serves as adrag device and helps steady the sailboat in stormy seas. With use of the sea anchor, *The* *Oscar Wilde* could remain virtually stationary for several hours, meaning that Sam andBill could sleep aboard the vessel without worrying that the boat would crash into other boats, shallows, or the shore.

17. One evening in May 2013 while Sam and Bill were asleep on the vessel in international waters, Bill heard a knock on the hull and left the interior cabin to investigate. Bill thought that the sea anchor had somehow become detached and that the vessel had hit some rocks. Instead, Bill was abducted by masked men who had boarded and then left *The Oscar Wilde*, taking Bill with them. Sam remained asleep in the hold,

unaware of what was happening. Sam only discovered that Bill was missing several hours later when, at first daylight, he found that Bill was gone and radioed for help. In the beginning Sam did not know that Bill had been abducted and feared that Bill had fallen overboard. Subsequently, the Canadian Coast Guard conducted a four-day sweep of the area with ships and aircraft that yielded nothing. Sam returned to Vancouver distraught, thinking he had lost his life partner.

18. When Sam returned to Vancouver he gave interviews to the media and web-based news outlets about the sad story of Bill’s disappearance. Two weeks later, while at work, Sam received an email from “Moses Andrew”, an individual who identified himself as a member of the Namian Liberation Front (NLF). The NLF is an organization working for the creation of an independent state out of the Namian Islands, currently part of the Republic of Minasia, in the South Pacific. Moses Andrew’s message indicated that Bill was alive and healthy and was being held at an undisclosed location outside North America by the NLF guerillas, who demanded U.S. $5 million for Bill’s release. The NLF are known terrorists who have conducted a campaign of violence in Minasia,

blowing up bridges and buildings, and have been implicated in terrorist attacks in Hajuro, the Minasian capital. The NLF has been designated as a terrorist organization on lists maintained by Public Safety Canada and the U.S. State Department. Andrew’s email warned that if payment was not received soon by a certain bank in Funafuti, the capital of Tuvalu, “the worst consequences will follow for your friend”.

19. The NLF is known to be active in a wide area across several seas. It is particularly reviled because it has developed close ties with Somali pirate groups. NLF crews have met Somali counterparts on the Indian Ocean, where they have conducted training sessions and exchanges of information and ammunition. In several instances it appears that the NLF and Somali pirates have conducted joint attacks on vessels in that region and beyond. The NLF’s strategy of long-range attacks, now spanning the Pacific and including the Pacific Northwest coast of North America, is consciously modeled on the Somalis’ long-range experience off the coasts of Africa and India.

20. Back in Vancouver, Sam was deeply upset by Moses Andrew’s email and did not know how he would raise the necessary ransom funds. Sam started a web-based appeal for money, explaining his and Bill’s story. Sam hoped to crowd-source at least some of the cash, a fact he conveyed on the internet. One other option for ransom money was the sale of *The Oscar Wilde*, which remained flagged as a U.S. vessel but was moored in

False Creek.

21. News of Sam’s efforts to raise funds quickly came to the attention of the Office of Foreign Asset Control (OFAC), part of the U.S. Department of the Treasury, which took the position that payment of any part of the ransom to the NLF would “materially assist, sponsor or provide financial support” for terrorists, contrary to U.S. and international law. OFAC was particularly concerned that proceeds from the sale of *The Oscar Wilde* would end up funding terrorists. On June 1, 2013 OFAC therefore prohibited the sale of *The* *Oscar Wilde* to any party and issued a communiqué through the U.S. Treasury and StateDepartment websites about private efforts to contribute to the ransom for Bill Hayter as contrary to U.S. and international law.

**Dispute Resolution**

22. On learning of the OFAC freeze Sam approached his federal Member of Parliament, Karen Horst (Burnaby-New Westminister), for assistance. Horst’s office referred the matter to Canada’s Department of Foreign Affairs and International Trade (DFAIT), which took up the issue in a series of meetings held between Canadian diplomats and officials of the U.S. State Department on June 10-12, 2013 at the Canadian Embassy in Washington, D.C.. Canadian officials described the matter as an issue of serious concern between the two countries, particularly since Canadian Foreign Minister, the Hon. John Baird, had repeatedly expressed strong support for both same-sex rights and anti-terrorism efforts internationally. The meetings did not yield any satisfactory conclusion.

23. On July 8, 2013 Canada issued a Diplomatic Note to the United States asserting that the U.S. had incurred international responsibility because the State of Oregon had failed

to grant Sam and Bill a marriage licence. It also noted that the actions of OFAC were unwarranted in this instance since “the payment of a ransom is not contrary to international law.” The U.S. State Department conveyed the U.S. response, also in the form of a Diplomatic Note, to Canada on July 12, 2013 in which it rejected the Canadian position. The U.S. Note asserted that “every nation has the right under international law to establish pre-conditions for marriage as it sees fit”. The U.S. Note also observed that every country has the right to protect itself from terrorism and expressed the view that OFAC’s actions in this case were an appropriate response to this threat.

24. High-level diplomats from Canada and the United States met into late July 2013 in an effort to resolve the dispute. However, no agreement was forthcoming. Canadian officials then made it clear that Canada viewed the matters at issue as extremely serious and, accordingly, was prepared to take additional action, including blocking the conclusion of the Trans-Pacific Partnership talks (TPP), if the dispute was not adjudicated before a neutral tribunal. In light of both this threat and negative publicity surrounding Moses Andrew and the NLF’s demand, the two countries agreed in late August 2013 to submit this *Compromis* and the following legal questions to a special chamber of the ICJ for a binding decision:

25. Canada respectfully requests that this Court:

(a) DETERMINE that OFAC’s blocking of the sale of *The Oscar Wilde* constitutes a violation of international law.

26. The United States of America respectfully requests that this Court:

(a) DETERMINE that OFAC’s blocking of the sale of *The Oscar Wilde* is consistent with international law.

27. Both Canada and the United States agree that all standing and exhaustion requirements are met for the Court to proceed to the merits of this case. Canada and the United States further agree that the ICJ is a proper venue for resolving the above questions. In addition, Canada and the United States have agreed to take no further action to enforce their positions with respect to this dispute pending the outcome of this case. Finally, both Parties have agreed to fully and immediately implement whatever decision the ICJ renders in this case.

**Signed this 29th day of August 2013 in Washington, D.C., U.S.A.**

**/S/ John Baird**

**Minister of Foreign Affairs, for Canada**

**/S/ John Kerry**

**Secretary of State, for the United States of America**

\*. For the purposes of the moot, you may assume that Sam Chandra is at all times a Canadian citizen with authorization to remain in the U.S. for the period outlined in the *Compromis*. You may also assume that Bill Hayter is at all times a United States’ citizenwith authorization to remain in Canada for the period outlined in the *Compromis*.