

Federal Court



Cour fédérale

Date: 20201214

Docket: IMM-4802-20

Citation: 2020 FC 1149

Ottawa, Ontario, December 14, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

RH

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

ORDER AND REASONS

UPON MOTION in writing filed November 19, 2020, made pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (“*Rules*”), on behalf of the Applicant for an Order to replace the Applicant’s name on the style of cause with the initials “RH”;

AND UPON review of the motion record filed by the Applicant, including the Respondent’s correspondence with the Applicant, dated November 10, 2020, wherein the Respondent stated that it does not oppose the Applicant’s motion;

[1] I find that the Applicant's requested order warrants deviating from the *status quo* of referring to the parties by their names on the style of cause, as the Applicant's requested order is both: (i) necessary, in that it protects a legitimate interest; and (ii) proportionate, in that the salutary effects of the proposed restriction outweigh its deleterious effects upon the open court principle (*Adeleye v Canada (Citizenship and Immigration)*, 2020 FC 681 [*Adeleye*] at para 9, citing *R v Mentuck*, 2001 SCC 76 at para 32; *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835, [1994] SCJ No 104; *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 [*Sierra Club*]). The open court principle is constitutionally enshrined and generally requires that courts "do their business in public" (*Adeleye* at para 6).

[2] There are two categories of immigration and refugee cases in which this Court has been prepared to anonymize the style of cause: (i) cases in which anonymization aims at preventing prejudice that flows from the disclosure of certain kinds of intimate information; and (ii) cases in which anonymization seeks to avoid harm that might befall the applicants upon return to their countries of origin (*Adeleye* at paras 12-14).

[3] In my view, the case at hand fits the first category of cases enumerated in *Adeleye*. There is no doubt that a criminal conviction is an inherently prejudicial label, as it is capable of barring one's access to employment, housing, and benefits. The Applicant has received a record suspension with respect to his 2007 conviction, and that conviction should therefore no longer reflect adversely on his character, as is stated under section 2.3(a)(ii) of the *Criminal Records Act*, above. In seeking to reduce the risk of continued prejudice from a conviction for which the

Applicant was pardoned, I find that the Applicant raises a legitimate interest in making this motion.

[4] With respect to proportionality, I find that the salutary effects of the proposed order outweigh the deleterious effects it has on the open court principle. As noted above, such an order upholds the purposes of section 2.3 of the *Criminal Records Act*. In contrast, the anonymization of the style of cause is generally considered a minor restriction on the open court principle (*Adeleye* at para 17).

[5] For the sake of clarity, I do not make this order under Rule 151 of the *Rules*, but rather my inherent powers to impose such restrictions on a case-by-case basis. The Applicant does not seek to have the materials pertaining to his application for judicial review be treated as confidential by sealing them from the public. Rather, the Applicant requests only that he be referred to by his initials in the style of cause.

[6] As the requested motion seeks only anonymization and not confidentiality, the requirements of Rule 151 are not engaged (*AB v Canada (Citizenship and Immigration)*, 2017 FC 629 at paras 8-9). While the test for an order anonymizing the style of cause continues to draw from the principles enumerated in *Sierra Club*, it is a lower bar than the test for a confidentiality order (*EF v Canada (Citizenship and Immigration)*, 2015 FC 842 at para 8, citing *AC v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1452 at paras 18-19). I find that this conclusion is in keeping with the case law pertaining to anonymization orders, which often does not rely explicitly upon Rule 151 (see cases cited in *Adeleye* at paras 13-14).

ORDER

THIS COURT ORDERS that the Applicant's motion to anonymize the style of cause is granted. The style of cause in this motion and the application for judicial review shall be amended to refer to the Applicant as "RH."

"Shirzad A."

Judge