

Federal Court



Cour fédérale

**Date: 20210618**

**Docket: IMM-6497-18**

**Citation: 2021 FC 629**

**Ottawa, Ontario, June 18, 2021**

**PRESENT: The Honourable Mr. Justice Roy**

**BETWEEN:**

**ISSAM AL YAMANI**

**Applicant**

**and**

**MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**ORDER AND REASONS**

[1] The Minister of Public Safety and Emergency Preparedness (Minister) seeks an Order pursuant to Section 87 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], for non-disclosure of information contained in the Certified Tribunal Record (CTR) in this leave for application for judicial review. An order of this Court required that the CTR be made available before leave was to be granted. The CTR covers more than 950 pages. The Minister

maintains that disclosure of that information which the Minister seeks to redact would harm national security or endanger the safety of any person if released.

[2] Out of the considerable CTR, merely a few pages are sought to have passages redacted. In fact, the proposed redactions are at pages 156 to 160, 164, 173, 182, 187 and 204-205.

[3] The Respondent is not even asking that these 11 pages be redacted. It is rather that on some pages, some paragraphs are to be redacted, while on other pages, it is a brief mention that is redacted, such as names of witnesses before the Security Intelligence Review Committee (SIRC) some thirty years ago or a signature block of a document. It is only on pages 156 to 160 and pages 204-205 that redactions other than redactions in relation to identities of persons are brought. With respect to pages 156 to 160, it is a ministerial document signed in April and May 1992 that was part of the CTR. As for the second one, at pages 204 and 205, it is a document involving two officials dated September 4, 2007. Importantly, the Minister states that there will not be any reliance on the non-disclosed information in the CTR if leave is granted and there is a judicial review of the decision under consideration.

[4] The Applicant opposes the Minister's request on the basis that the Applicant's interests in these proceedings are significant and the Court should therefore reject any proposed redactions. Alternatively, the Applicant asks that if the Court was considering granting the motion for non-disclosure, it appoints a Special Advocate so that his interests can be represented in any *ex parte*, *in camera* proceeding.

[5] A classified affidavit was filed in support of the Minister's motion following which an *in camera, ex parte* hearing was held, where the affiant provided additional information and answered questions from the Court. At the start of the section 87 *in camera ex parte* hearing, counsel for the Attorney General of Canada informed me that they were not seeking any more that the first sentence of the last paragraph on page 156 be redacted. The sentence is: "On February 2nd...of the PFLP". Accordingly, I am directing the AGC to provide a replacement page for the public record reflecting the removed redaction at the bottom of p. 156.

[6] The hearing served also to determine whether, with additional information about the non-disclosed information, this was a matter for which a Special Advocate should be appointed. A subsequent *in camera, ex parte* hearing was held.

[7] In *A.B. v Canada (Citizenship and Immigration)*, 2012 FC 1140, Mr. Justice Simon Noël listed a number of considerations to be taken into account in determining if a special advocate ought to be appointed. The following summary, taken from the decision of our former colleague Justice René Leblanc in *Malikaimu v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1026, [2018] 3 FCR 512 [*Malikaimu*], is useful:

[22] In *A.B. v Canada (Citizenship and Immigration)*, 2012 FC 1140 [*A.B.*], Justice Simon Noël stated that in order to properly exercise his or her discretion to appoint or not a special advocate under section 87.1 of the Act, the presiding judge ought to (i) examine the redactions, (ii) keep in mind the whole record, (iii) preside, if required, over an *ex parte, in camera* hearing, (iv) ask for justification for the redactions, (v) question the relevancy as presented, (vi) suggest and, if necessary, order the unveiling of the information if it is not justified in law and fact and (vii) read the decision subject to the judicial review proceeding. It is only then, according to Justice Noël, that the standards of fairness and natural

justice will, in light of the knowledge gained from such approach, be better understood and applied to the case at bar (*A.B.*, at para 9).

I have scrupulously followed this guidance.

[8] As found in *Malikaimu*, other factors for consideration have been set out by this Court such as “the extent of non-disclosure, the materiality/probity of the information subject to non-disclosure and the Applicant’s ability to meet the case against him/her” (para 52).

[9] First, I am persuaded that this matter does not call for the appointment of a Special Advocate. I have considered fully and carefully the redactions and submissions and, in my view, they do not require the appointment of a special advocate. The redacted information does not have any bearing on fairness and natural justice. The information is contained in documents that are themselves dated (1992 and 2007). The interests of the Applicant do not “require that a special advocate be appointed to protect them” (s. 87.1 of the *Act*): the non-disclosure is minimal out of a CTR of 958 pages, the materiality of the information is also minimal (if not non-existent in view of the case before the Court) and it is clear that the ability of the Applicant to advance his case and meet that of the Respondent will not be jeopardized in any way whatsoever.

[10] Second, the information itself as well as the evidence presented by the Minister satisfied me that the disclosure of the redacted information would harm national security or endanger the safety of any person in view of the nature of the redacted information (*Henrie v Canada (Security Intelligence Review Committee)*, [1989] 2 FC 229 [*Henrie*]). That constitutes the basis for the redactions. As found by the Federal Court of Appeal in *Canada (Attorney General) v*

*Solitanizadeh*, 2019 FCA 202 at para 26, “section 87 of the IRPA does not contain a public interest balancing test like the one found in section 38 of the CEA”. It follows that once injury to national security or the safety of persons has been found, disclosure must be prohibited. There are numerous grounds which are reviewed in our case law that justify redactions, starting with *Henrie*. For instance, methods of operation or investigative techniques, or the identities of witnesses or Service Personnel, should generally be protected from disclosure. The same about investigations (duration, scope, intensity). Accordingly, I must prohibit the disclosure of the redacted information in this case.

[11] I am satisfied that a Special Advocate would not assist me further in determining whether the Court should uphold the redactions given the nature of the information. I am additionally satisfied that the redacted information would not assist the Applicant in his leave application for judicial review, nor in his judicial review should leave be granted.

[12] The fact that the redactions will not be relied on in the judicial review, if leave is granted, is of course a further element, although not dispositive, which the Court has considered.

[13] Accordingly, given the type of information to be redacted, the Court must prohibit the disclosure of the redacted information in this case. As a result, the motion for non-disclosure pursuant to s. 87 of the *Act* is granted.

**ORDER in IMM-6497-18**

**THIS COURT ORDERS:**

1. The motion for non-disclosure of the redacted information contained in the Certified Tribunal Record is granted.
  
2. The Attorney General of Canada is to provide a replacement page for the public record reflecting the removed redaction at the bottom of page 156 of the Certified Tribunal Record.

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"Yvan Roy"  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6497-18

**STYLE OF CAUSE:** ISSAM AL YAMANI v MINISTER OF PUBLIC  
SAFETY AND EMERGENCY PREPAREDNESS

**MOTION FOR NON-DISCLOSURE PURSUANT TO S. 87 OF THE *IMMIGRATION AND REFUGEE PROTECTION ACT*, AND S. 18.1 OF THE *CSIS ACT* CONSIDERED AT OTTAWA, ONTARIO**

**ORDER AND REASONS:** ROY J.

**DATED:** JUNE 18, 2021

**APPEARANCES:**

Barbara Jackman  
(written submissions)

FOR THE APPLICANT

James Todd  
Robert Reid  
Proja Filipovich

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE APPLICANT

Attorney General of Canada  
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FOR THE RESPONDENT