

Federal Court



Cour fédérale

**Date: 20100409**

**Docket: DES-7-08**

**Citation: 2010 FC 379**

**Ottawa, Ontario, April 09, 2010**

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

**BETWEEN:**

**IN THE MATTER OF a certificate signed pursuant to section 77(1) of the *Immigration and Refugee Protection Act (IRPA)*;**

**AND IN THE MATTER OF the referral of a certificate to the Federal Court pursuant to section 77(1) of the *IRPA*;**

**AND IN THE MATTER OF Mohamed Zeki Mahjoub.**

**REASONS FOR ORDER AND ORDER**

[1] Mr. Mahjoub proposes that Henry Garfield Pardy be qualified as an expert in the motion for the exclusion of evidence pursuant to section 83(1.1) of the *Immigration and Refugee Protection Act, 2001, c.27 (IRPA)*. Mr. Mahjoub seeks to have Mr. Pardy qualified as an expert on the following matters:

- (1) Consular services and the consular program in Canada.

(2) Flow of information from nation to nation through diplomatic policing and security channels.

- (3) The amount of sharing of information through those channels.
- (4) Factors affecting the reliability of the information.
- (5) The assessment of information, including intelligence information.
- (6) How intelligence information may have affected Canadian detainees held abroad.
- (7) The real culture of the Canadian Security Intelligence Service (Service) in respect of human rights of Canadian detainees held abroad in the period from 1998 through to 2003.

[2] With respect to the last proposed area of expertise, Counsel for Mr. Mahjoub amended the request for qualification during oral submissions. Counsel recognized that Mr. Pardy could not speak to the real culture of the Service, but argued that he could speak to the effect that he observed of the Service's conduct vis-à-vis sharing of information on Canadian detainees held abroad.

[3] In submissions, Counsel for Mr. Mahjoub also argued that Mr. Pardy be qualified to give opinion evidence about matters that relate to torture and mistreatment and how to make judgments about the likelihood of torture or mistreatment in relation to detainees held abroad.

[4] The Ministers agree that Mr. Pardy has expertise in the area of consular affairs and diplomatic relations. They accept that he may give opinion evidence on consular services and the consular program in Canada.

[5] The Ministers do not agree that Mr. Pardy has any expertise in relation to the flow of information from nation to nation through policing and security channels. They agree that Mr. Pardy may opine on the flow of information from nation to nation through diplomatic and consular

channels insofar as the information in question involves diplomatic and/or consular affairs. The Ministers acknowledge that Mr. Pardy did receive intelligence but maintain that it was ancillary to his mandate in Foreign Affairs. The Ministers therefore take issue with the ambit of expertise proposed in these areas.

[6] The Ministers further agree that Mr. Pardy may opine on the amount of information shared through diplomatic and consular channels and the factors affecting the reliability of such information. It is also agreed that Mr. Pardy may give opinion evidence on how one assesses information of a diplomatic or consular nature including intelligence information.

[7] The Ministers further argue that Mr. Pardy does not have any expertise with respect to how intelligence may have affected Canadian detainees held abroad or with respect to the effect of the Service sharing information on the detainees held abroad.

[8] The parties agree that the test for the admissibility of expert opinion evidence is set out in *R. v. Mohan*, [1994] 2 S.C.R. 9. Of the requisite criteria, the Ministers take issue, primarily, with whether Mr. Pardy is a properly qualified expert. The parties agree that, for a witness to be qualified to give opinion evidence on a particular subject, the witness must possess special knowledge or experience on the subject going beyond that of the trier of fact.

[9] The issue to be determined, therefore, is whether Mr. Pardy should be qualified as an expert to give evidence in this motion? And if so, what are the areas of expertise in which Mr. Pardy is qualified to give opinion evidence?

[10] The evidence shows that throughout his long and varied career at Foreign Affairs, Mr. Pardy was required to interact with foreign governments and different entities, including intelligence agencies, as a representative of the government of Canada. By reason of his employment at Foreign Affairs, he held many positions including liaison officer and Ambassador. In these functions, he received information and intelligence which he assessed and passed on to the government of Canada. The evidence demonstrates that Mr. Pardy, for example:

- Received information from foreign military entities for the purpose of analysing the build up of military forces towards conflict in the Indo-Pakistani War (1969 -1972 – *Second Secretary, Canadian High Commission, New Delhi, India.*)
- Obtained information on potential threats of terrorism, from Foreign Affairs missions overseas and domestic agencies, for the purpose of informing the Canadian government on such threats so that the appropriate security policies for the Montreal Olympics could be developed (1972-1978 *Ottawa. National Security Section, Security Liaison Division.*)
- Acted as a conduit to provide Canadian information to American agencies and to receive information from American agencies, including the Central Intelligence Agency (CIA), for the government of Canada, with respect to non-proliferation issues. In this role he reported on the information received, based on his understanding of American policy (1978-1982 *Counsellor, Canadian Embassy, Washington D.C. Intelligence Liaison Officer, Central Intelligence Agency; Non-Proliferation issues.*)
- Received information from foreign intelligence services for the purpose of determining the Canadian policy with respect to the insurgency in Sri Lanka (1985-89. *Ottawa. Director, Asia Pacific South Division.*)

[11] Mr. Pardy has never worked for the Service, nor has he worked for any other intelligence agency. He would have no basis upon which to give expert evidence on the flow or transmission of information and intelligence through security channels. While it is true he received and assessed information and intelligence from intelligence and policing agencies, including the CIA, this was done in his capacity as an official with Foreign Affairs. This experience does not make him an expert on policing nor on the flow of information and intelligence from nation to nation through security channels. Nor does it make him an expert on the amount of sharing of information and/or intelligence through those channels.

[12] I do find that Mr. Pardy has expertise with respect to the assessment of information, including intelligence information, and factors affecting the reliability of such information. This expertise, however, is limited to information received through diplomatic and/or consular channels, and is based on Mr. Pardy's experience of having assessed information and intelligence as part of his diplomatic and consular duties.

[13] Considering Mr. Pardy's background and experience, and in particular his limited knowledge of information sharing between intelligence agencies as well as his limited knowledge of the operations of the Service and other intelligence agencies, I find that he does not have the requisite expertise to give opinion evidence on the consequences or effect of the Service's sharing of information on Canadian detainees held abroad. Further, he does not have the expertise to speak to how information and/or intelligence shared between intelligence agencies may have affected Canadian detainees held abroad.

[14] I now turn to whether Mr. Pardy is qualified to give opinion evidence on the overarching issue of torture and mistreatment of Canadian detainees held abroad. Mr. Pardy's mandate, as the Director General of the Consular Affairs Bureau (1995-2003), included the protection of the rights of Canadian persons abroad. Through this mandate, he assessed the likelihood of mistreatment or torture of Canadian detainees held abroad. Mr. Pardy gave evidence that his assessments were based, for the most part, on public information provided by secondary sources, such as Amnesty International, and in certain cases, on information obtained directly from Canadian personnel. In my view, Mr. Pardy's experience provides a sufficient foundation for him to provide opinion evidence on the conditions of detention and treatment of detainees held abroad.

**ORDER**

**THIS COURT ORDERS that**

1. For the reasons set out above, I am satisfied that Mr. Pardy is qualified to give opinion evidence based on his experience in diplomatic and consular functions, with respect to:
  - a) Consular services and the consular program in Canada.
  - b) Flow of information from nation to nation through diplomatic and/or consular channels.
  - c) The amount of sharing of information through diplomatic and/or consular channels.
  - d) Factors affecting the reliability of the information, received through diplomatic and/or consular channels.
  - e) The assessment of information, including intelligence, received through diplomatic and/or consular channels.
  - f) The conditions of detention and treatment of detainees held abroad.

“Edmond P. Blanchard”

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Judge



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** DES-7-08

**STYLE OF CAUSE:** The Minister of Citizenship and Immigration  
and The Minister of Public Safety v.  
Mohamed Zeki Mahjoub

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 24 to April 1, 2010

**REASONS FOR ORDER:** BLANCHARD J.

**DATED:** April 9, 2010

**APPEARANCES:**

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