

IS #11 COPY

DES-3-17

BETWEEN: FEDERAL COURT

HASSAN ALMREI

and

THE ATTORNEY GENERAL OF CANADA

| | |
|--------------------------------|------------|
| Applicant | |
| FEDERAL COURT COUR FÉDÉRALE | |
| AVR 13 2017 | |
| KARINE TURGEON | |
| OTTAWA | Respondent |

APPLICATION UNDER section 38.04 (2) (c) of the Canada Evidence Act

NOTICE OF APPLICATION UNDER SECTION 38.04 (2) (c)

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date) April 13, 2017

Designated Registry Officer
KARINE TURGEON
Agente du greffe désignée

Issued by:

Karine Turgeon

Address of local office:

Ottawa, Ontario

TO: The Registrar
Federal Court of Appeal *← T.*

TO: Attorney General of Canada
C/o The Department of Justice
The Exchange Tower
Suite 3400, Box 36
2 First Canadian Place
Toronto, ON M5X 1K6

Tel: 416-973-0942

Fax: 416-954-8982

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the 13

day of April A.D. 2017

Dated this 20 day of April 2017

Karine Turgeon

Designated Registry Officer
KARINE TURGEON
Agente du greffe désignée

1. This is an application made pursuant to section 38.04 (2) (2) in respect of information regarding which the Attorney General of Canada ("Attorney General") has served notice claiming national security privilege pursuant to section 38.01 of the Canada Evidence Act (the "Act").
2. The applicant makes application for an order directing the disclosure of the information regarding which the Attorney General has claimed privilege (the "Subject Information"), or summaries of the Subject Information.
3. The grounds for the application are:
 - (i) The Subject Information is relevant to a proceeding in the Ontario Superior Court of Justice in which the applicant's rights will be determined;
 - (ii) The disclosure of the Subject Information would not be injurious to international relations or national security;
 - (iii) To the extent that the disclosure of the Subject Information would be injurious to international relations or national security, the public interest in disclosure outweighs the importance of the public interest in non-disclosure.

This application will be supported by the following material:

The affidavit of the applicant.

The application is based on the following facts:

1. The applicant was detained pursuant to a security certificate issued under the former Immigration Act in 2001. The certificate was subject to statutory review by this Court in proceedings ex parte the applicant and the public, and with those limitations on its review was found by this Court to be reasonable. The Applicant was ordered to be deported.
2. Despite attempts to deport the applicant, he was not deported. In 2007 the Supreme Court set aside the security certificate.
3. In 2008 the Immigration and Refugee Protection Act was amended to create the position of Special Advocates. A new security certificate naming the applicant was

issued (the "Certificate"), the statutory review of which by this Court included the participation of Special Advocates, who were given access to the classified information in relation to the applicant and were mandated to represent the interests of the applicant during the Court's review of the reasonableness of the Certificate.

4. On December 19, 2009 the Federal Court found that the Certificate was not reasonable and quashed it. The Court found that there were not reasonable grounds to believe that the Applicant was inadmissible to Canada pursuant to sections 34 of IRPA. In particular the Court found that the information that was provided to the Ministers by the Canadian Security Intelligence Service ("CSIS") in support of the Certificate was not reliable. The Court made findings of fact regarding the conduct of the investigation by CSIS and made adverse credibility findings in relation to an informant or informants relied on by CSIS.

5. As a result of the issuance of the first and second security certificates, the applicant was in detention in a maximum security detention facility from the date of his arrest in October 2001 and until December 19, 2009.

6. The applicant commenced a claim for damages against [Canada] in the Ontario Superior Court of Justice for, inter alia, breach of his rights under the Charter of Rights and Freedoms, negligent investigation and prosecutorial misconduct in 2010. (the "Civil Proceeding").

7. The parties have commenced the discovery process in the Civil Proceeding. Most of the documents provided to the applicant by the defendant have been heavily redacted. After several years of redacting documents relevant to the issues before the Court, the defendant informed the applicant on February 17, 2017 that it had provided notice pursuant to the Canada Evidence Act to the Attorney General on February 1, 2017.

8. Despite having been provided with the said notice, the Attorney General of Canada has not yet filed an application to the Federal Court pursuant to section 38.04 (1) of the Federal Court Act.

9. On April 5, 2017 the applicant inquired of counsel for the defendant as to when the section 38 application would be commenced. Counsel responded on April 7, 2017 that the Attorney General had not yet made a decision in relation to the Subject Information.

10. Paragraph 38.04 (2) (c) of the Act provides that "a person who is not required to disclose information in connection with a proceeding but who wishes to disclose it or to cause its disclosure may apply to the Federal Court for an order with respect to disclosure of the information." The applicant wishes to cause the disclosure of the Subject Information, and as such applies to the Court for a determination of the issues under section 38 of the Act.

11. Disclosure of the Subject Information is necessary so that the applicant can prosecute the Civil Proceeding. Disclosure is also in the public interest because it is essential that CSIS be held publicly accountable for its negligent conduct in this matter. The findings of the Court in its review of the Certificate indicate that CSIS carried out an incompetent investigation that led to the applicant being wrongfully accused of being a member of a terrorist group and a danger to the security of Canada, and for that reason being wrongfully detained for approximately eight years.

12. The Applicant seeks the appointment of an amicus curiae to assist the Court in this application. In particular the applicant seeks the appointment of Gordon Cameron as the amicus. Mr. Cameron acted as a special advocate in the Court's review of the Certificate and thus is familiar with the Subject Information. More recently, Mr. Cameron was appointed as the amicus in a judicial review proceeding brought by the applicant in a related matter and had the occasion to review the Subject Information once again. The appointment of Mr. Cameron is the most efficient and effective way to ensure a fair and expeditious determination of this application.

13. The applicant also seeks the appointment of a Case Management Judge so that this matter can proceed expeditiously and a schedule can be set for subsequent steps.

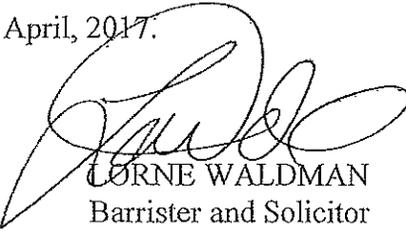
In the event that leave is granted, the Applicant proposes that the hearing be heard at Toronto, in the English language.

The Applicant's address for service in Canada is:

Lorne Waldman & David Baker
c/o Lorne Waldman P.C.
281 Eglinton Avenue East
Toronto, Ontario
M4P 1L3

Phone: 416 4826501
Facsimile: 416 4899618

All of which is submitted at Toronto Ontario this 13th day of April, 2017.



LORNE WALDMAN
Barrister and Solicitor

Counsels for the Applicant

DES-

FEDERAL COURT

BETWEEN:

HASSAN ALMREI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION UNDER
SECTION 38.04 (2) (c)

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