Federal Court  Cour fédérale

Date: 20211024

Docket: T-618-21

Citation: 2021 FC 1292

[ENGLISH TRANSLATION]

Toronto, Ontario, November 24, 2021

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

OUMANA AL KADDAH
SARI ALKANHOUCH

Applicants

and

HER MAJESTY THE QUEEN

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] This case has to do with two motions by the two parties regarding the disclosure of information in an action before the Federal Court. The applicants' motion involves their objection to the privilege not to disclose the name of the sender of an email sent by an international organization to an immigration officer (the officer). The respondent claimed this

privilege under subsection 37(1) of the *Canada Evidence Act*, RSC 1985, c C-5 [the Act]. The email in question was disclosed in its entirety, except for the redacted identity of the sender who, according to the applicants, has information essential to the case. The applicants submit that it is impossible to obtain by any other reasonable ways the identity of the third party, who is an employee of the international organization that sent the email.

[2] The respondent, whose motion is based on the same issue, is asking for authorization to redact the name of the third party on the grounds of a specified public interest.

[3] Having reviewed the two parties' respective positions and the relevant facts, I find, for the reasons that follow, that the respondent has established that disclosing the name of the International Organization for Migration (IOM) employee in these circumstances would encroach on a specified public interest that justifies confidentiality. I therefore confirm Ms. Leung's certificate and authorize maintaining the redacted parts of the IOM emails, since disclosure of the name of the IOM employee would be injurious. In this context, and in light of the particular and unusual circumstances, a weighing of the factors favours Canada.

I. FACTS

A. *Factual background of the action for damages*

[4] The motions are part of an action for damages against Her Majesty the Queen (the respondent) in which Joumana Al Kaddah and Sari Alkanhouch (the applicants), immigrants of Syrian nationality, cite the negligence of an officer or officers at Immigration, Refugees and

Citizenship Canada (IRCC) in the management of their departure from the United Arab Emirates (UAE) for Canada in February and March 2020.

[5] With no findings of fact based on verified evidence during a trial, I am limited to a summary of the facts on which the parties agree and which are necessary to shed light on the backdrop to these motions.

[6] In their action, the applicants allege that after applying for Quebec's Program for Refugees Abroad (Collective Sponsorship), they received a call from IOM on February 14, 2020. IOM, a related organization of the United Nations, is the leading intergovernmental organization in the field of migration and works closely with government partners, including Canada, in planning travel for resettlement applicants.

[7] A few days later, on February 18, 2020, an officer from the Embassy of Canada sent the applicants a procedural fairness letter to inform them of his concerns about their actual need for protection and their future intent to reside in Canada. He asked them to make submissions. The relevant excerpt from this letter, in which the officer raises his concerns, states the following:

> After carefully assessing your application, I have concerns that you do not meet these requirements. The Embassy of Canada in Abu Dhabi, United Arab Emirates (UAE) has been informed that you and your family intend to return to your current country of residence following your landing in Canada as refugees. Your application under [sic] has been approved by a migration officer who accepted your claim for protection as being credible. An individual who has either a well-founded fear of persecution, or who has been and continues to be seriously and personally affected by civil war, armed conflict or massive violations of their human rights, would not reasonably and voluntarily choose to depart a

> confirmed resettlement country shortly after landing in order to return to their current country of residence.
>
> You were provided with sufficient time for someone in need of protection to prepare for their relocation to Canada. Your intent to depart Canada soon after landing raises concerns regarding your need for protection and your intent to permanently establish yourself in Canada. Such a negative determination could lead to the refusal of your resettlement application.

The officer gave them a short deadline of 15 days to respond to this procedural fairness letter.

[8] On February 24, 2020, in response to a request for explanations by counsel for the applicants about what had motivated the procedural fairness letter, the officer replied that the information that the applicants intended to return to the UAE came from IOM, a source the Embassy considered to be credible.

[9] On February 25, 2020, in response to a request from the Embassy, IOM replied in writing that the information had been obtained during a telephone conversation with the applicants, but that confirmation had been received that same day indicating that the applicants would not return to the UAE after obtaining their status in Canada. Also on February 25, IOM confirmed the applicants' departure for Canada on a Lufthansa flight on March 25, 2020.

[10] On February 27, 2020, the Embassy of Canada sent a second letter acknowledging receipt of the applicants' replies, indicating that the officer was satisfied that the complainants had had sufficient time to prepare for their resettlement, reiterating the concern about residency, requiring that additional documents be provided to demonstrate the applicants' intent to definitively leave the UAE, and informing them that the March 25 departure date would not be postponed:

> I acknowledge the receipt of your responses to the PFL dated 2020/02/20 and 2020/02/24. After careful and thorough consideration of all aspects of your application, I am satisfied that you have been provided with sufficient notice to prepare for your relocation to Canada. Your confirmed departure travel itinerary for yourself and your family is scheduled for 2020/03/25. No further extension of your travel to Canada beyond 2020/03/25 will be authorized.

Again, the officer gave them a short period of 15 days to respond to this second procedural fairness letter.

[11] In response to this letter, the applicants submitted new documents on March 5, 2020, including a resignation letter by applicant Sari Alkanhouch (dated March 2, 2020) and the cancellation of UAE residence permits (dated March 3, 2020).

[12] Satisfied with the new evidence, the Embassy phoned the applicants on March 15, 2020, to advise them that they were authorized to travel on March 25, 2020, on the same Lufthansa flight for which copies of tickets had been sent with the response to the first letter.

[13] On March 18, 2020, with borders closing and flights being cancelled in response to the COVID-19 pandemic, the applicants' departure was postponed indefinitely. It was not until November 2020 that the applicants finally arrived in Montréal and obtained their permanent resident status in Canada.

[14] On April 14, 2021, the applicants filed an action in the Federal Court intending to establish that one or more IRCC officers had acted negligently in the management of their departure to Canada, causing them financial and moral harm.

[15] On May 31, 2021, the respondent filed its defence, arguing that IOM was not a servant or agent of Her Majesty and that the IRCC officers had shown due diligence in following up on the information provided by IOM regarding the applicants' intent not to settle in Canada permanently.

B. *Background to the motions*

[16] In the circumstances of this case, the respondent filed an affidavit of documents in which under section 37 of the Act, IRCC claimed privilege not to disclose several documents including a series of three emails exchanged over a two-week period—the first dated February 12, 2020, and the other two, February 25, 2020—between IOM and the Canadian embassy to the UAE. The respondent forwarded these emails to the applicants, but redacted the name and email address of the IOM employee.

[17] The first email contains a list of several refugee files and the "requested" travel dates in each file. For the applicants, the only thing appearing next to their file number is "G000207277 – end of March (possible to come back)".

[18] In response to a question by counsel for the applicants as to who had provided the information surrounding their alleged intent to return to the UAE, which, according to counsel,

had never been mentioned by his clients, the IRCC officer replied as follows in an email dated February 24, 2020:

> The concern related to your intent to permanently reside in Canada stems from information sent to our office by the International Organization for Migration (IOM). The IOM is an intergovernmental organization that has been tasked with arranging your and your family's travel to Canada. You allegedly informed the IOM of your intent to return to the United Arab Emirates (UAE) shortly after landing in Canada as refugees. On balance I find the IOM to be generally credible in their reporting.

[19] Babitha Balan, an administrative assistant at the Embassy's Immigration Section, wrote to the IOM employee on February 25, 2020, asking the following: "Do you have any proof of communication like an email from Applicant # G000207277 on their intention to return? or did he convey this information through a telephonic conversation? In case you have an email from the applicant we request you to forward it to us."

[20] Later that same day, the IOM lead replied, "we have first discussion over the phone a possible return but I have a confirmation with PA today and made it clear that he will not come back." The three redacted emails appear in Appendix A to these reasons.

[21] On August 4, 2021, the applicants filed a motion under subsection 37(4) of the Act (the relevant provisions of section 37 are reproduced in Appendix B to these reasons) to object to the non-disclosure privilege raised. They argue that the allegedly confidential information includes the identity of the IOM employee who holds information that is essential to the case and that it is impossible to obtain this information by any other reasonable ways.

[22] The respondent, meanwhile, filed a cross-motion to seek leave from this Court to keep the name and email address of the IOM employee redacted.

[23] The respondent's motion was filed with a certificate signed by Stephanie Leung, an IRCC director (the key excerpt of this certificate is included in Appendix C). In her certificate, Ms. Leung attests that the disclosure (1) would be injurious to the international relationship between IRCC and IOM which provide essential services in support of Canada's objectives to resettle refugees to Canada; (2) would jeopardize Canada's obligation to maintain IOM'S confidentiality requirements regarding personal information shared in the context of mutual cooperation; and (3) would identify confidential personal information regarding a third party employee of IOM as well as third party beneficiaries of IOM (Appendix C, paragraph 2, to these reasons).

II. ISSUES

[24] Although they do not agree on the desired outcome, the parties agree on the applicable legal tests in this case, which consist of determining whether disclosing the information in question would encroach on a specified public interest that justifies confidentiality and, if relevant, conducting a balancing of interests to determine whether the public interest that justifies disclosing the information outweighs the specified public interest that justifies confidentiality: *Canada (Attorney General) v Chad*, 2018 FC 319 [*Chad*] at para 12; *Wang v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 493 [*Wang*] at paras 36–37; *Khan v Canada*, 1996 CarswellNat 177, [1996] 2 FC 316 [*Khan*] at paras 24–25.

[25] In this case, the analysis therefore consists of answering the following three questions:

1. Would the disclosure of the information in question encroach on a specified public interest that justifies confidentiality, specifically the grounds mentioned and described in Ms. Leung's certificate?

If so, the next question would be:

2. Would the non-disclosure of the sought-after information affect the applicants' rights in this dispute?

If so, the Court would have to answer the next question, which involves weighing a series of criteria:

3. Do the grounds of specified public interest in favour of non-disclosure outweigh the grounds of public interest that support disclosure?

III. ANALYSIS

[26] As recently reiterated by the Supreme Court of Canada, there is a presumption in favour of open courts, the restriction of which is only justified in exceptional circumstances (*Sherman (Estate) v Donovan*, 2021 SCC 25 at paras 1–3).

[27] The Supreme Court of Canada also teaches that the goals of section 37 of the Act are derived from common law principles that recognize that, even though justice favours the

disclosure of all evidence, entitlement to disclosure is not without limits, and the disclosure of some information can be harmful to the public interest, such as in the case of informer-privileged information in criminal cases: *R v Basi*, 2009 SCC 52 at paras 1 and 12; *R v Brassington*, 2018 SCC 37at para 31.

[28] The Supreme Court also teaches that, despite its importance, informer privilege applies only to anonymous informers and not to state agents, and the courts should hesitate before extending class privilege to other sources of information, without Parliament enacting protections: *Canada (Citizenship and Immigration) v Harkat*, 2014 SCC 37 [*Harkat*] at paras 85–87; *R v National Post*, 2010 SCC 16 at para 42.

[29] Although this is clearly not a criminal case, these principles should still be kept in mind in reviewing the parties' respective positions in this case.

A. *Would the disclosure of the information in question encroach on a specified public interest that justifies confidentiality, specifically the grounds mentioned and described in Ms. Leung's certificate?*

(1) Parties' positions

[30] According to the respondent, IOM and Canada have a close collaborative relationship based on mutual cooperation and trust, which is why it is of primary importance to protect the personal and confidential information of IOM beneficiaries. To support its position, the respondent cites IOM's *Data Protection Manual*, which notes the need to provide for adequate

safeguards that third parties to which information is transferred are bound by strict confidentiality obligations.

[31] According to Stephanie Leung's certificate, these confidentiality expectations are reflected in the local cooperation agreements IOM enters into with the governments with which it operates, and IOM has indicated that the release of information, including personal data regarding IOM beneficiaries and employees, could pose security risks for IOM beneficiaries and employees as they could be identified and targeted on the basis of this information, with repercussions for their safety and security (see Appendix C, paragraphs 11 to 17, to these reasons). Furthermore, at the hearing and in response to a question, counsel for the respondent even stated that the cooperation agreement between Canada and IOM was also confidential.

[32] The respondent also notes that IOM enjoys the privileges and immunities set out in the *International Organization for Migration Privileges and Immunities Order*, SOR/2012-87, April 27, 2012) [Order], granted under the *Foreign Missions and International Organizations Act*, SC 1991, c 41. These privileges, which find their source in sections 2 to 5 of Article II and in Article III of the *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, 90 UNTS 327 [Convention], include immunity from every form of legal process for IOM representatives; the inviolability of archives; and immunity from search, requisition, confiscation, and expropriation of IOM property and assets. The Order is presented in its entirety in Appendix B to these reasons.

[33] Lastly, the respondent is relying on several provisions of the *Privacy Act*, RSC 1985, c P-21 [PA], (ss 3(i), 8, 12(1), and 19(1) and (2)), and the *Access to Information Act*, RSC 1985, c A-1 [AIA], (ss 4(1), 13(1)(b) and (2), and 19(1)), in support of the proposition that the IOM employee's name is private information that cannot be disclosed without consent. It also submits that, according to these two acts, a federal institution is required to refuse to disclose personal information obtained in confidence from international organizations or foreign states, or the institutions thereof unless the international organization or foreign state, or institution thereof consents to the disclosure.

[34] The respondent states that without consent from the third party, disclosure is expressly prohibited. As a result, it submits that privacy interests must outweigh access to information, and the protection of a third party's privacy is therefore a specified public interest that justifies non-disclosure.

[35] In light of the above, to support its objection to the disclosure, the respondent relies on the public interest of maintaining a relationship of cooperation and mutual trust with IOM when it comes to the confidentiality of personal information, and the respect of the privacy of third parties that are not parties to this dispute. According to the respondent, disclosure would be harmful to international collaboration and, in particular, to the relationship of mutual aid and trust between Canada and IOM.

[36] The applicants submit that the name (or identity) of a foreign official of an international organization with which the respondent denies any relationship of subordination cannot be seen

as a public interest privilege if the relationship with the organization and the contents of the correspondence between the organization and the respondent are not privileged.

[37] In their response to the respondent's motion, the applicants add that immunity from disclosure covering the identity of an individual who transferred information to state representatives is circumscribed and limited to the criminal context; it does not exist elsewhere. In the applicants' opinion, there is no evidence to suggest that there could be repercussions for the safety and security of the IOM employee. They add that the employee does not have any decision-making power, which, in their opinion, renders any potential danger to the IOM employee even more difficult to imagine.

[38] The applicants also submit that the IOM employee was acting as an agent of IRCC at the material time, and informer privilege therefore cannot apply since state agents do not enjoy this privilege. Citing *Harkat* at paragraphs 86 to 87, they submit that the Court should hesitate before extending these privileges.

[39] The applicants also question the overly narrow interpretation of the language in IOM's *Data Protection Manual*, which, in their opinion, primarily concerns IOM beneficiaries (refugees and migrants) and not its employees.

[40] The applicants also question the respondent's reliance on the PA and the AIA given that these acts do not apply directly to IOM. They submit that the respondent should have taken into consideration the applicable provisions in the *Personal Information Protection and Electronic*

Documents Act, SC 2000, c 5, which is just as relevant and specifically mentioned in IOM's *Data Protection Manual*.

[41] According to the applicants, the respondent failed to demonstrate that the sought-after information was obtained in confidence, and the respondent must establish that there is a formal agreement between Canada and IOM, if such an agreement exists.

[42] With regard to the Convention privileges and immunities, the applicants argue that immunity from every form of legal process limits the concept of IOM representative and excludes mere servants or employees, and the onus of proving that the employee is covered by immunity is on the person claiming it.

(2) Analysis and finding

[43] I feel that the respondent has established that disclosing the IOM employee's name would encroach on a specified public interest that justifies confidentiality. I note that in this case, at issue here is not the claim of a broad blanket privilege, bur rather grounds of specified public interests: the relationship of cooperation, mutual assistance and trust between Canada and IOM. While the applicants are right in maintaining that informer privilege does not apply here, the specified public interest raised in this case cannot be described as a stand-alone blanket privilege protecting from disclosure.

[44] As explained by Justice Beetz in *Bisaillon v Keable*, [1983] 2 SCR 60 at pages 96 to 97, 1983 CanLII 26 (SCC), informer privilege is often confused with Crown privilege, and this is a

mistake that can be explained by the fact that the two have several points in common, such as the exclusion of relevant evidence in the name of a public interest regarded as superior to that of the administration of justice:

> The reason for the mistake may be that the secrecy rule regarding police informers' identity and Crown privilege have several points in common: in both cases relevant evidence is excluded in the name of a public interest regarded as superior to that of the administration of justice; in both cases the secrecy cannot be waived; finally, in both cases it is illegal to present secondary proof of facts which in the public interest cannot be disclosed. However, these points in common should not be allowed to hide the specificity of the set of common law provisions applicable to secrecy regarding police informers' identity, which distinguishes it from the set of rules governing Crown privilege

[45] Indeed, police informer privilege is of such importance that once found, it is absolute and there is no balancing of interests by the court: *R v Leipert*, [1997] 1 SCR 281, 1997 CanLII 367 (SCC) at paras 12–14. The motions in question do not involve an absolute class privilege such as that discussed by the Supreme Court in *Harkat*, but rather a highly specific analysis of the particular facts, which the mechanism under section 37 of the Act allows the Court to adapt to each case.

[46] Indeed, in the third chapter of his treatise on privileges and immunities, in which he reviews a series of cases where privilege was claimed, assessed and either granted or denied in accordance with section 37, Robert Hubbard explains that, "[w]hen seeking s. 37 protection, context is everything. Each invocation of the section involves a weighing of the factors for and against disclosure in the unique circumstances of the case" (Robert W. Hubbard et al., *The Law of Privilege in Canada* (Thomson Reuters, 2021) at 3-12).

[47] I must also note that although it seems to be a source of great disagreement between the parties, it is the judge presiding over the trial and who will hear this case on its merits—and not me in respect of these interlocutory motions, in the absence of all the facts available—who will have the responsibility of drawing conclusions on the issue of whether the IOM employee was acting as an agent of the Government of Canada at the material time. My reasons should not in any way be interpreted as my taking a position on this issue.

[48] These caveats aside, the respondent has persuaded me that there is a specified public interest that justifies not disclosing the IOM employee's name. Even though it does not apply, police informer privilege is a useful analogy for explaining the reasons for this.

[49] IOM and Canada work closely together in circumstances that require mutual trust, confidentiality and discretion. Even if the risk of repercussions is not imminent or immediately apparent, reflection is necessary before allowing the disclosure of personal information of individuals with whom Canada works in carrying out its important international duties. Even if IOM employees do not participate in the decision-making process, I agree with the respondent that personal information, including names, could indeed be used against such individuals; this could have a deterrent effect on the transfer of timely and essential information between the organizations.

[50] As the Supreme Court wrote in *World Bank Group v Wallace*, 2016 SCC 15 [*World Bank*] at paragraphs 1 to 2:

> . . . When international financial organizations, such as the appellant World Bank Group, share information gathered from

> informants across the world with the law enforcement agencies of member states, they help achieve what neither could do on their own. As this Court recently affirmed, "International organizations are active and necessary actors on the international stage" (*Amaratunga v. Northwest Atlantic Fisheries Organization*, 2013 SCC 66, [2013] 3 S.C.R. 866, at para. 1).
>
> However, without any sovereign territory of their own, international organizations are vulnerable to state interference. In light of this, member states often agree to grant international organizations various immunities and privileges to preserve their orderly, independent operation. Commonly, an organization's archives are shielded from interference, and its personnel are made immune from legal process.

[51] I agree with the applicants that the provisions of the PA and the AIA cited by the respondent are not applicable or binding in this case, but they are nonetheless persuasive with regard to specified public interest concerns regarding the sharing, with Canada, of information from international organizations on which it depends for its important activities in relation to the resettlement of refugees, including facilitating travel and medical services (see, for example, pages 348–9, 472–3, 479–87, 499, 505 and 510, respondent's motion record).

[52] I note the same for the privileges and immunities invoked. In the context of this motion, it is not up to me to decide whether the potential witness, the IOM employee, is covered by the abovementioned privileges if their name were to be disclosed, but I must recognize the distinct possibility that the employee might not be a compellable witness because of these privileges.

[53] More importantly, the mere existence of these privileges and immunities and their application to IOM attest to the public interest concerns surrounding jurisdiction and the safeguarding of the information held and protected by these organizations. This could reasonably

extend to the personal information of IOM employees, and I recognize that there is at least a *prima facie* interest in not disclosing this information without their explicit consent.

[54] I also note that the public interest identified in the certificate is the international relationship between IRCC and IOM (at paragraph 2A of Ms. Leung's certificate). Section 37 of the Act does not speak of "international relationships," but section 38 does mention "international relations".

[55] In a recent decision by Justice Simon Noël in *Canada (Attorney General) v Tursunbayev*, 2021 FC 719 [*Tursunbayev*], the Court ruled that there is no definition of "international relations" or "injury to international relations". He cited Justice Richard Mosley in *Canada (Attorney General) v Almalki*, 2010 FC 1106 [*Almalki*] at paragraphs 79 to 80:

> The third national interest to be considered is the risk of injury to Canada's international relations. Again, this cannot be read as synonymous with either national defence or national security. Parliament deemed it necessary to protect sensitive information that would harm Canada's relations abroad if it were to be publicly disclosed, in keeping with the accepted conventions on diplomatic confidentiality..
>
> This protection extends to the free and frank exchanges of information and opinions between Canada's diplomats and other public officials and their foreign counterparts, without which Canada could not effectively participate in international affairs. Similar protection is contained in mandatory and discretionary terms in the *Access to Information Act*, R.S.C., 1985, c. A-1, ss.13, 15. Absent consent, the head of a government institution shall refuse to disclose any record that contains information that was obtained in confidence from the government of a foreign state or an institution thereof (s.13). The head of a government institution may also refuse to disclose any information which may reasonably be expected to be injurious to the conduct of international affairs (s.15).

[56] Despite the applicants' assertions, I am satisfied, on the basis of the documents presented in support of the certificate and the submissions made orally by counsel for the respondent that the cooperation agreement is also confidential, that the redacted information is confidential and should be treated as such. Ms. Leung's certificate and the *Data Protection Manual*, both of which mention cooperation agreements with governments, are sufficiently persuasive to satisfy the first step of my analysis, and requiring more would only raise additional, even trickier confidentiality concerns.

[57] As indicated in paragraph 49 of these reasons, above, IOM facilitates refugee resettlement in Canada in a number of situations, situations that require open communication channels between immigration officers and the beneficiaries of these services. Moreover, if IOM employees hear about or suspect any irregularities involving a beneficiary, they should be comfortable communicating this to an immigration officer, without having to fear or worry about repercussions for their safety or security.

[58] As a result, for the reasons set out above, the respondent's arguments have persuaded me that I can answer the first question in the affirmative: the disclosure of the information in question would encroach on a specified public interest that justifies confidentiality, specifically those raised and described in Ms. Leung's certificate. The public interest in maintaining the relationship of mutual cooperation and confidentiality between Canada and IOM argues against disclosing the sought-after information in these circumstances.

B. *Would the non-disclosure of the sought-after information affect the applicants' rights in this dispute ?*

(1) Parties' positions

[59] According to the applicants, as the respondent's agent, the IOM employee has a responsibility in the dispute and, at the very least, has information that is relevant to the dispute that they would not be able to obtain other than by examining the employee; leave for this examination could subsequently be granted under subsection 238(3) of the *Federal Courts Rules*, SOR/98-106.

[60] The applicants submit that the IOM employee is the only credible source and is necessarily in possession of facts that are essential to the dispute. They wish to examine the IOM employee as a [TRANSLATION] "third party that made an extra-judicial statement underlying this conflict" (applicants-respondents' respondent's record, at para 18). Moreover, the applicants suggest that a [TRANSLATION] "mere email recognizing the existence of this statement is not sufficient for an analysis of what the third party said versus what the IRCC officer understood in order to determine whether the officer reacted unreasonably to the information provided" (applicants-respondents' respondent's record, at para 19).

[61] The applicants add that the emails are hearsay and that they are therefore presumptively inadmissible. If the respondent wished to use the IOM employee's statement without providing the employee's identity or an opportunity to examine and cross-examine the employee on the

employee's perception of the events, it should have relied on the possible exceptions provided under the Act.

[62] According to the respondent, not disclosing the name of the IOM employee does not undermine the applicants' ability to support their application in regard to the government's alleged wrongdoing. Since the case relies on the allegation that an IRCC officer was negligent, the questions that should be asked involve the actions of the IRCC officer, and the correspondence in question already reveals the source and contents of the communications: the information that the applicants intended to return to the UAE came from IOM, and this information was based on a telephone conversation with one of the applicants. In this case, there is no public interest in disclosing the name.

[63] The respondent is relying on *Canada (National Inquiry into Missing and Murdered Indigenous Women and Girls) v Canada (Attorney General)*, 2019 FC 741, in which this Court was called on to rule on section 37 of the Act in a context where a royal commission's requests for evidence were competing with an objection to the disclosure of ongoing criminal investigations. At paragraph 71, Justice Mosley explained as follows:

> When encroachment on a specified public interest has been established, the test for relevancy requires that the information sought be of "critical importance" to the party seeking disclosure. It is insufficient for the Applicant to assert that the information may be relevant. It must be assessed in terms of "its relative importance in proving or disproving the claim or defending it"[.]
>
> [Citations omitted.]

[64] According to the respondent, the name of the IOM employee would not establish a fact of critical importance to the applicants' arguments. Additionally, the applicants did not show how questioning the IOM employee would be relevant, since the contents of the information concerning the case were already presented in the disclosed emails.

[65] The respondent goes further and also submits that the methods proposed by the applicants to question the IOM employee, once the employee's name is disclosed, are inappropriate, since the employee is not only outside Canada, but also protected from testimonial compulsion because of the abovementioned immunities.

[66] The probative value of disclosing the name of the IOM employee has therefore not been established, according to the respondent.

(2) Analysis and finding

[67] Although I agree with the respondent that the name of the employee would not in itself establish a critical fact and the contents of the disclosed emails seem to contain the elements underlying the applicants' action, there is no doubt that the IOM employee's testimony, if obtained, could contain critical facts to support the legal syllogism the applicants intend on presenting at the trial (that the IOM employee's negligence is causally connected to their harm).

[68] I would note, however, on the basis of the written statements, that this syllogism seems to depend entirely not only on the availability of the employee's testimony, which is far from

guaranteed, but also on the conclusion that the employee was at all times acting as an agent of the respondent, which also has not been established yet.

[69] The presumption of transparency in legal proceedings and the right to information, except in limited situations where exceptions apply, must nonetheless be kept in mind.

[70] In this case, the applicants have met their obligation to show that their rights could be affected by the non-disclosure of the sought-after information: without the disclosure of this information, they have no other way of learning the name of the IOM employee for a possible examination.

[71] Since public interests have been established by the two parties respectively—one in respect of confidentiality and the other, disclosure—it is the Court's responsibility to embark on the third step of the analysis, which is weighing the interests to determine which of the two interests prevails in these circumstances.

C. *Do the grounds of specified public interest in favour of non-disclosure outweigh the grounds of public interest that support disclosure?*

(1) Parties' positions

[72] As to the last issue to be considered, the respondent is simply arguing that not disclosing the name of the IOM employee does not impinge on the applicants' ability to support their claim of alleged government wrongdoing. Since it is clear to the respondent that disclosure would compromise the integrity of Canada's international activities, jeopardize Canada's cooperation

with IOM, and run counter to other Canadian citizens' privacy expectations, the Court can only reach one conclusion in the balancing exercise.

[73] According to the applicants, and as I mentioned above, the identity of a foreign official of an international organization with which the respondent denies any subordinate relationship cannot be perceived as a public interest privilege if the relationship with the organization and the contents of the correspondence with that organization are not privileged.

[74] As to the seriousness of the issues involved, the applicants argue that non-disclosure will make it impossible to verify the contents of the information underlying the dispute. This is also important for the admissibility and usefulness of the information, since the identity of the employee is necessary so that the applicants can question the employee about the facts which the employee alone witnessed. There is no other reasonable way to obtain the employee's identity and e-mail address. This is therefore not a fishing expedition since the identity of the third party is the only thing being sought so that the third party can be examined.

(2) Analysis and finding

[75] In *Wang*, Justice Anne Mactavish summarized the third step of the analysis as follows (at para 36):

> If the Court is satisfied that disclosure of the evidence in question would indeed encroach on a specified public interest, it must then consider whether the public interest in protecting an ongoing investigation is outweighed by the public interest in disclosure. If it is determined that the public interest in disclosure outweighs the public interest in protecting an ongoing investigation, then the Court may order the disclosure of all, part, or summaries of the

> information in question and may impose any conditions on that disclosure that the Court considers appropriate.
>
> [Citations omitted.]

[76] The following elements can be considered in the third step of the analysis, that of balancing the various interests for and against disclosure: (a) the nature of the public interest sought to be protected by confidentiality; (b) whether the evidence in question will probably establish a fact crucial to the defence; (c) the seriousness of the charge or issues involved; (d) the admissibility of the documentation and the usefulness of it; (e) whether the applicants have established that there are no other reasonable ways of obtaining the information; and (f) whether the disclosures sought amount to general discovery or a fishing expedition (*Chad* at para 37; *Wang* at para 37; *Khan* at para 25).

(a) *The nature of the public interest sought to be protected by confidentiality*

[77] The Supreme Court's warning at paragraph 64 of *Harkat* must be borne in mind:

> The judge is the gatekeeper against this type of overclaiming, which undermines the *IRPA* scheme's fragile equilibrium. Systematic overclaiming would infringe the named person's right to a fair process or undermine the integrity of the judicial system, requiring a remedy under s. 24(1) of the *Charter*.

[78] This is a civil litigation, where the search for the truth is undoubtedly paramount, but where the liberty or innocence of a person, and the rights protected by the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11 [*Charter*], are not at stake.

[79] In addition, the respondent is relying on Justice Noël's recent decision in *Tursunbayev*. While that case raises issues in respect of the proceedings designated in relation to section 38 of the Act, its comments apply to the balancing exercise in this case by analogy (at paras 104–106):

> The balancing exercise is not an easy task. It requires a complete understanding of the underlying matters, of the competing interests and of the international relations at play.
>
> . . . In these circumstances, a designated judge must be vigilant and ensure that the confidentiality claims are not used as a shield against disclosing material information. The process must be fair and cannot favour one litigant to the detriment of the other.
>
> While international relations are important to Canada, as detailed above, such relations cannot be protected to the detriment of legitimate public interest in disclosure. To achieve a proper balancing, the designated judge must find a way to ensure both fairness of the underlying proceedings and the protection of Canada's international relations. I must ask myself what information is pertinent or material to the ongoing litigation and whether there is a way to disclose this information in a way that would most likely limit and possibly neutralize any injury.

[80] I already discussed the importance of the issues related to the relationship with IOM in the area of refugee resettlement in the first step of my analysis. I have also already discussed the public interest in the confidentiality of personal data, including the name of the IOM employee, in the first part of these reasons.

[81] It should be noted, however, that in *World Bank Group*, the Supreme Court stood firmly in favour of the need to protect international organizations from interference with their operations and to protect their staff from prosecution, explaining as follows at paragraph 71:

> . . . immunities are extended to international organizations to protect them from intrusions into their operations and agenda by a member state or a member state's courts. Shielding an organization's entire collection of stored documents, including

> official records and correspondences, is integral to ensuring its proper, independent functioning. Without it, the "confidential character of communications between states and the organisation, or between officials within the organisation, would be less secure"[.]
>
> [Citations omitted.]

[82] This first factor weighs heavily in the balancing exercise.

(b) *Whether the evidence in question will probably establish a fact crucial to the defence*

[83] I have no doubt that, if obtained, the IOM employee's testimony would add to the factual record of the litigation, and I understand that there is no other way for the applicants to obtain it without the identity of that employee being revealed.

[84] However, the applicants have not persuaded the Court that the facts obtained would be crucial to the issue in dispute, particularly in light of what the emails already reveal. Moreover, the likelihood that disclosure of the employee's identity would not necessarily lead to the obtaining of the employee's testimony only further undermines the importance of that fact to the litigation.

[85] Without the IOM employee's testimony, the applicants can nonetheless testify about the relevant facts supporting the trial of their action. These facts include the phone call they had with IOM leading to the February 12, 2020, email. Without the testimony of the IOM employee, the judge hearing the case will have only the applicants' direct version.

[86] On the other hand, the respondent's position is also clear: the IRCC officer had an obligation to meet the statutory criteria for determining the applicants' admissibility to Canada. The officer ended the first procedural fairness letter by citing the relevant sections of the legislation, namely subsections 16(1) and 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Subsection 16(1) requires applicants to "answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires". As for obtaining a visa or ay other document required by the regulations, subsection 11(1) stipulates that the visa or document "may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible".

[87] The respondent submits that with the February 12, 2020, email from the IOM employee, which came from a source that the IRCC officer described to the applicants' counsel as being [TRANSLATION] "generally credible", the IRCC officer had evidence that the applicants intended to return to UAE. Even after the IOM employee's February 25, 2020, email stating that the applicants did not intend to return to the UAE, the IRCC officer was not persuaded of this, absent other evidence.

[88] The officer therefore sent the second letter, dated February 25, 2020, stating that he needed additional evidence to address this concern. As I mentioned above, the IRCC officer was well aware of the date set for the trip and therefore reduced the normal response time from 30 to 15 days to ensure that the flight scheduled for March 25, 2020, would not be postponed in the event of a satisfactory response.

[89] Here, only the name of the email sender, the IOM employee who spoke to the respondent before sending the February 12, 2020, email, is redacted. With the exception of the identity of the IOM employee, the government released the emails in full, including all the data, details, information, and names.

[90] Justice Noël noted the following in his decision in *Chad* at paragraph 15:

> Derogations to the open court principle must be done in manner [sic] that is sensitive to how fundamental it is. Such limited exceptions must be carefully guarded to ensure that they are use [sic] only used when the circumstances justify it. Thus, the Applicant must ground the section 37 application on specific and concrete assertions, rather than on vague and overly generalized statements. The Applicant must present sufficient evidence to convince the Court that the assertion of public interest privilege is legitimate in the circumstances.

[91] Taking into account all of the circumstances and the constellation of facts particular to this case, I do not find the name of the employee to be crucial. The applicants, who were present during the telephone calls in question, have direct knowledge of what they told the IOM employee and the employee's alleged misinterpretation of what they said, including their preferred dates of travel. It will be up to the presiding judge to hear the testimony, eliminate the hearsay, and make the appropriate findings.

[92] By way of comparison, I refer again to Justice Mosley's decision in *Almalki*, where he wrote the following at paragraph 108:

> It is clear that unnecessarily broad claims were advanced at the outset of this process as they have been in other proceedings. This is evidenced in this case by the fact that the Attorney General has now "lifted" or removed redactions in 92 documents, having made a determination that no injury would result from disclosure of the

> redacted information. Thus I continue to have the concern I have expressed in other cases about over-claiming. I attribute this in most instances to the exercise of excessive caution on the part of the officials who initially conduct the reviews and their legal advisors. This requires decisions to authorize disclosure or not to be continually revisited, which unnecessarily delays applications before this Court and the underlying proceedings. Much of that could be avoided by closer examination of the claims and supporting grounds at an earlier stage by senior officials. This is an important government responsibility that must be adequately resourced.

This quotation reflects the usual situation in cases involving claims of immunity and non-disclosure in the public interest. As in *Almalki* and in situations where this Court has ordered disclosure of some of the disputed documents (as in *Chad* and *Wang* and more recently, in the context of section 38, in *Tursunbayev*), there have been instances where the information did not meet the requirements of sections 37 or 38 of the Act, leading the Court to order disclosure.

[93] The case at bar is not an instance of over-claiming, in respect of both the information and the redaction. Even if the IOM employee were compelled to testify, which is far from certain because of potential privileges and immunities, all of the content, data and information from the three emails in question have already been provided by the respondent. Only the name of the IOM employee has been redacted. The applicants have all the other information and the contents of the communications.

[94] The applicants allege that the information in the first email of February 12, 2020 (at page 2 of Appendix A of these reasons), in respect of the travel dates indicated, such as “end of March (possible to come back)”, does not match what they told the IOM employee. They maintain that the two elements of this email were not consistent with what they said: the travel

date the employee wrote (end of March) and the intention to return to the UAE. They therefore want to examine the employee about this email and the allegedly incorrect information.

[95] During the hearing of the two motions, the parties informed me that the transcript of the cross-examination of the IRCC agent would be prepared and available shortly. I accepted their offer to receive this transcript, which was filed with the Court on October 5, 2021. A reading of this transcript reveals that the IRCC officer never spoke to the IOM officer or other IOM employees, as it was an administrative assistant (Babitha Balan) who was given the task of communicating with IOM by email. The IRCC officer admits that everything he learned was in the email.

(c) *The seriousness of the charge or issues involved*

[96] For the applicants, the issues involved are serious, as they allege in their statement of claim. However, we are not in a situation where an infringement of personal freedom or a *Charter* right is at issue. Therefore, the seriousness of the issue does not weigh very heavily in the balance.

(d) *The admissibility of the documentation and the usefulness of it*

[97] The documents are admissible. They can and will be useful, except for the redacted name.

(e) *Whether the applicants have established that there are no other reasonable ways of obtaining the information*

[98] According to the applicants, there are no other reasonable ways for them to obtain the name of the IOM employee. The respondent has not disputed this point.

(f) *Whether the disclosures sought amount to general discovery or a fishing expedition*

[99] It is clear that the request for disclosure is not a fishing expedition.

[100] In these circumstances, taking into account all the factors relating to section 37 of the Act, and particularly in view of the fact that the name of the unknown person is not crucial to the applicants' motion, but that if the name were disclosed, the consequences would be potentially serious for the respondent, I conclude that the balance favours the respondent.

IV. CONCLUSION

[101] In *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23, Chief Justice McLachlin and Justice Abella explained, at paragraph 1:

> Access to information in the hands of public institutions can increase transparency in government, contribute to an informed public, and enhance an open and democratic society. Some information in the hands of those institutions is, however, entitled to protection in order to prevent the impairment of those very principles and promote good governance.

[102] When weighed against the important public interest of preserving the personal information transferred between Canada and international organizations, the trust and discretion inherent in that relationship, and the mere possibility that an individual could suffer repercussions for the individual's actions, the applicants' arguments in these circumstances are not sufficient to outweigh these important concerns.

[103] For these reasons and others set out above, I allow the respondent's motion and deny the applicants' motion as disclosure of the IOM employee's name would be injurious in light of the grounds of specified public interest set out in Stephanie Leung's certificate of objection.

JUDGMENT in T-618-21

THE COURT:

1. ALLOWS the respondent's motion;

2. CONFIRMS Stephanie Leung's certificate of objection;

3. AUTHORIZES the redaction of the IOM employee's name in correspondence between IOM and IRCC (Exhibit D-6 of the respondent's motion record; Appendix A to these reasons);

4. HOLDS that disclosure of the IOM employee's name would be injurious in light of the grounds of specified public interest set out in Stephanie Leung's certificate of objection;

5. HOLDS that under subsection 37(5) of the *Canada Evidence Act*, there are no grounds of public interest for disclosure that outweigh the grounds of specified public interest set out in Stephanie Leung's certificate of objection;

6. DISMISSES the applicants' motion;

7. WITH COSTS.

"Alan S. Diner"
Judge

Certified true translation
Johanna Kratz

APPENDIX A

Redacted emails

De: [redacted] iom.int
Envoyé: 25 février 2020 01:08
À: Babitha.Balan@international.gc.ca
Cc: [redacted] iom.int; Maureen.Molina@international.gc.ca; Maria.Gatus@international.gc.ca; Aaron.Paquette@international.gc.ca
Objet: RE: UAE - PSR Travel Itinerary Requests - 10 FEB 2020

Indicateur de suivi: Follow up
État de l'indicateur: Avec indicateur

Hi Babitha,

Thanks for your email.

we have first discussion over the phone a possible to return but I have a confirmation with PA today and made it clear that he will not come back.

Thank you.

Regards,
[redacted]

From: Babitha.Balan@international.gc.ca [mailto:Babitha.Balan@international.gc.ca]
Sent: Tuesday, February 25, 2020 9:47 AM
To: IOM Dubai
Cc: [redacted]; Maureen.Molina@international.gc.ca; Maria.Gatus@international.gc.ca; Aaron.Paquette@international.gc.ca
Subject: RE: UAE - PSR Travel Itinerary Requests - 10 FEB 2020

Hi [redacted]

Do you have any proof of communication like an email from Applicant # G000207277 on their intention to return? or did he convey this information through a telephonic conversation?

In case you have an email from the applicant we request you to forward it to us.

Thanks
Babitha

From: IOM Dubai <[redacted]@iom.int>
Sent: February-12-20 2:05 PM
To: Balan, Babitha -ABDBI -IM <Babitha.Balan@international.gc.ca>; [redacted] <[redacted] iom.int>; [redacted] <[redacted] iom.int>; [redacted] Operations Cairo <[redacted] iom.int>
Cc: Molina, Maureen -ABDBI -IM <Maureen.Molina@international.gc.ca>; [redacted] <[redacted] iom.int>
Subject: RE: UAE - PSR Travel Itinerary Requests - 10 FEB 2020
Importance: High

Dear Colleagues,

Please note below requested travel dates.

G000[redacted] – 1st week of May
G000[redacted] – 1 to 15 of June (kids still in school)
G000[redacted] – 20th of April
G000[redacted] – 1st week of May
G000[redacted] - 1st week of March
G000[redacted] – mid of April before 20th (has intention to return)
G000[redacted] – mid of April
G000[redacted] – end of March
G000[redacted] – before 24 of April
G000[redacted] – end of March with the intention to return
G000[redacted] – 1st week of April
G000[redacted] – 2nd week of June related to G[redacted]
G000207277 – end of March (possible to come back)
G000[redacted] – month of May
G000[redacted] – 1st week of May
G000[redacted] – month of June (kids are in school)
G000[redacted] – June related case G000[redacted]
G000[redacted] – mid of March
G000[redacted] – 1st week of May (travel together with sons G000[redacted] / G00[redacted])
G0002[redacted] – 1st week of April
G000[redacted] – 21 of April related to G000[redacted] (requested a direct flight)
G000[redacted] – same as the above
G000[redacted] – 2nd week of June related to G000[redacted]
G000[redacted] – 21 of May (possible to return only the PA)
G000[redacted] – 3rd week of March
G000[redacted] – last week of April
G000[redacted] – 1st week of july (kids in school)
G000[redacted] – 1st week of May related to G000[redacted]
G000[redacted] - 1st week of May
G000[redacted] – 1st week of April
G000[redacted] – last week of March (related to G000[redacted], G00[redacted])
G000[redacted] – same as the above
G000[redacted] – same as the above
G000[redacted] – mid of April – related to G00[redacted], G000[redacted]
G000[redacted] – same as the above
G000[redacted] – same as the above
G000[redacted] – mid of March (requested direct flight)
G000[redacted] 1st week of April
G000[redacted] – Qatar (end of March)
G0001[redacted] – requested to travel April

G000[redacted] – Dependant child is in Italy . We have already informed our mission in Rome to request travel arrangement from IOM Italy only for the dependant son. Kindly coordinate with IOM Italy (copied in this email) before booking the rest of the family.

G000[redacted] - Qatar (We request that ABN for Qatar cases to be issued at least 30 days before travel considering the time required to send the documents to Qatar)

Please note that applicants should land to Canada within three months of this message. For applicants with children of school age, departures until July 2020 will be accepted if visa validity allows it. For any other requests for departure extension, please inform IRCC of the reason. IRCC will assess the requests.

Attached is the excel sheet with all information required.

For instructions regarding 2020 Holidays in Canada and restrictions regarding arrival and POE, please consult IOM Ottawa.
Travel itinerary must be submitted at least 20 days ahead from the date of departure.
Please also ensure that the spelling of names in the travel itinerary matches the names in the excel sheet.
Thank you for your on-going assistance
Hello IOM Dubai,
We will be sending you the documents soon.
Regards,
Babitha
Immigration Section | Section de l'immigration / BB
Canadian Embassy | Ambassade du Canada Abu Dhabi
Abou Dhabi United Arab Emirates | Émirats arabes unis
abdbi-im-enquiry@international.gc.ca
Websites/ Sites web:
www.uae.gc.ca
www.cic.gc.ca
www.goingtocanada.gc.ca

Government of Canada Gouvernement du Canada

Canada

APPENDIX B

Canada Evidence Act, RCL 1985, c C-5

Specified Public Interest	*Renseignements d'intérêt public*
Objection to disclosure of information	**Opposition à divulgation**
37 (1) Subject to sections 38 to 38.16, a Minister of the Crown in right of Canada or other official may object to the disclosure of information before a court, person or body with jurisdiction to compel the production of information by certifying orally or in writing to the court, person or body that the information should not be disclosed on the grounds of a specified public interest.	**37 (1)** Sous réserve des articles 38 à 38.16, tout ministre fédéral ou tout fonctionnaire peut s'opposer à la divulgation de renseignements auprès d'un tribunal, d'un organisme ou d'une personne ayant le pouvoir de contraindre à la production de renseignements, en attestant verbalement ou par écrit devant eux que, pour des raisons d'intérêt public déterminées, ces renseignements ne devraient pas être divulgués.
Obligation of court, person or body	**Mesure intérimaire**
(1.1) If an objection is made under subsection (1), the court, person or body shall ensure that the information is not disclosed other than in accordance with this Act.	**(1.1)** En cas d'opposition, le tribunal, l'organisme ou la personne veille à ce que les renseignements ne soient pas divulgués, sauf en conformité avec la présente loi.
Objection made to superior court	**Opposition devant une cour supérieure**
(2) If an objection to the disclosure of information is made before a superior court, that court may determine the objection.	**(2)** Si l'opposition est portée devant une cour supérieure, celle-ci peut décider la question.
Objection not made to superior court	**Opposition devant une autre instance**
(3) If an objection to the disclosure of information is	**(3)** Si l'opposition est portée devant un tribunal, un

made before a court, person or body other than a superior court, the objection may be determined, on application, by

(a) the Federal Court, in the case of a person or body vested with power to compel production by or under an Act of Parliament if the person or body is not a court established under a law of a province; or

organisme ou une personne qui ne constituent pas une cour supérieure, la question peut être décidée, sur demande, par :

a) la Cour fédérale, dans les cas où l'organisme ou la personne investis du pouvoir de contraindre à la production de renseignements sous le régime d'une loi fédérale ne constituent pas un tribunal régi par le droit d'une province;

. . .

. . .

Limitation period

(4) An application under subsection (3) shall be made within 10 days after the objection is made or within any further or lesser time that the court having jurisdiction to hear the application considers appropriate in the circumstances.

Délai

(4) Le délai dans lequel la demande visée au paragraphe (3) peut être faite est de dix jours suivant l'opposition, mais le tribunal saisi peut modifier ce délai s'il l'estime indiqué dans les circonstances.

Disclosure order

(4.1) Unless the court having jurisdiction to hear the application concludes that the disclosure of the information to which the objection was made under subsection (1) would encroach upon a specified public interest, the court may authorize by order the disclosure of the information.

Ordonnance de divulgation

(4.1) Le tribunal saisi peut rendre une ordonnance autorisant la divulgation des renseignements qui ont fait l'objet d'une opposition au titre du paragraphe (1), sauf s'il conclut que leur divulgation est préjudiciable au regard des raisons d'intérêt public déterminées.

Disclosure order

(5) If the court having jurisdiction to hear the application concludes that the disclosure of the information

Divulgation modifiée

(5) Si le tribunal saisi conclut que la divulgation des renseignements qui ont fait l'objet d'une opposition au

to which the objection was made under subsection (1) would encroach upon a specified public interest, but that the public interest in disclosure outweighs in importance the specified public interest, the court may, by order, after considering both the public interest in disclosure and the form of and conditions to disclosure that are most likely to limit any encroachment upon the specified public interest resulting from disclosure, authorize the disclosure, subject to any conditions that the court considers appropriate, of all of the information, a part or summary of the information, or a written admission of facts relating to the information.

titre du paragraphe (1) est préjudiciable au regard des raisons d'intérêt public déterminées, mais que les raisons d'intérêt public qui justifient la divulgation l'emportent sur les raisons d'intérêt public déterminées, il peut par ordonnance, compte tenu des raisons d'intérêt public qui justifient la divulgation ainsi que de la forme et des conditions de divulgation les plus susceptibles de limiter le préjudice au regard des raisons d'intérêt public déterminées, autoriser, sous réserve des conditions qu'il estime indiquées, la divulgation de tout ou partie des renseignements, d'un résumé de ceux-ci ou d'un aveu écrit des faits qui y sont liés.

Prohibition order

(6) If the court does not authorize disclosure under subsection (4.1) or (5), the court shall, by order, prohibit disclosure of the information.

Ordonnance d'interdiction

(6) Dans les cas où le tribunal n'autorise pas la divulgation au titre des paragraphes (4.1) ou (5), il rend une ordonnance interdisant la divulgation.

International Organization for Migration Privileges and Immunities Order, SOR/2012-87

Interpretation

1 The following definitions apply in this Order.

Convention means the Convention on the Privileges and Immunities of the United Nations set out in Schedule III to the *Foreign Missions and International Organizations Act*. (*Convention*)

Organization means the International Organization for Migration. (*Organization*)

Privileges and Immunities

2 (1) The Organization is to have in Canada the legal capacities of a body corporate and, to the extent necessary for the exercise of its functions and the fulfilment of its purposes in Canada, the privileges and immunities set out in sections 2 to 5 of Article II and in Article III of the Convention.

(2) The representatives of foreign states that are members of the Organization are to have in Canada, to the ex- tent necessary for the independent exercise of their functions in connection with the Organization, the privileges and immunities set out in paragraphs 11(a) to (f) and sections 12 and 14 to 16 of Article IV of the Convention.

(3) The Director General of the Organization, the Deputy Director General of the Organization and officials of the Organization are to have in Canada, to the extent necessary for the independent exercise of their functions in

Définitions

1 Les définitions qui suivent s'appliquent au présent décret.

Convention La Convention sur les privilèges et immunités des Nations Unies figurant à l'annexe III de la *Loi sur les missions étrangères et les organisations internationales*. (*Convention*)

Organisation L'Organisation internationale pour les migrations. (*Organization*)

Privilèges et immunités

2 (1) L'Organisation possède, au Canada, la capacité juridique d'une personne morale et y bénéficie, dans la mesure nécessaire à l'exercice de ses fonctions et à l'atteinte de ses objectifs au Canada, des privilèges et immunités énoncés aux sections 2 à 5 de l'article II et à l'article III de la Convention.

(2) Les représentants des États étrangers membres de l'Organisation bénéficient, au Canada, dans la mesure nécessaire au libre exercice au Canada de leurs fonctions en rapport avec l'Organisation, des privilèges et immunités énoncés aux sous-sections a) à f) de la section 11 de l'article IV de la Convention et aux sections 12 et 14 à 16 de l'article IV de la Convention.

(3) Les directeur général, directeur général adjoint et fonctionnaires de l'Organisation bénéficient, au Canada, dans la mesure nécessaire

connection with the Organization, the privileges and immunities set out in paragraphs 18(a) and (c) to (f) of Article V of the Convention.

(4) Experts performing missions for the Organization are to have in Canada, to the extent necessary for the independent exercise of their functions in connection with the Organization, the privileges and immunities set out in Article VI of the Convention.

Coming into Force

3 This Order comes into force on the day on which it is registered.

au libre exercice de leurs fonctions en rapport avec l'Organisation, des privilèges et immunités énoncés aux sous-sections a) et c) à f) de la section 18 de l'article V de la Convention.

(4) Les experts en mission pour l'Organisation bénéficient, au Canada, dans la mesure nécessaire au libre exercice de leurs fonctions en rapport avec l'Organisation des privilèges et immunités prévues à l'article VI de la Convention.

Entrée en vigueur

3 Le présent décret entre en vigueur à la date de son enregistrement.

APPENDIX C

Excerpt from Stephanie Leung's certificate

> 2. I certify to the Court that the redacted information should not be disclosed on the following public interest grounds and for the reasons set out in the remainder of this Certificate, namely:
>
> A) Disclosure would be injurious to the international relationship between IRCC and the IOM which provide essential services in support of Canada's objectives to resettle refugees to Canada;
>
> B) Disclosure would jeopardize Canada's obligation to maintain IOM'S confidentiality requirements regarding personal information shared in the context of mutual cooperation;
>
> C) Disclosure would identify confidential personal information regarding a third party employee of the IOM as well as third party beneficiaries of IOM.
>
> . . .
>
> 9. The IOM has an expectation that the governments with which it works will respect the confidentially of communications and personal information shared in the context of cooperation, this expectation is reflected in the local cooperation agreements it enters into with government with which it operates.
>
> 10. Information provided to IRCC by the IOM is submitted on a confidential basis in order to ensure a candid and complete exchange of information between the parties.
>
> 11. Information exchanged between Canada and the IOM is considered confidential by the IOM and consistently treated as such.
>
> 12. Maintaining the confidential nature of the information exchanged between IRCC and the IOM is an essential element in IOM's operations and IOM has indicated that its release could jeopardize IOM's operations, its relations with third parties, particularly Government counterparts as well as with beneficiaries.
>
> 13. The IOM considers that release of information treated as confidential can affect IOM's future project opportunities related to resettlement of refugees and similar activities in Canada.

14. In this case, the redacted elements contained in the correspondence between IRCC and IOM contain personal data regarding IOM beneficiaries as well as personal data regarding an IOM employee. This information is of no relevance to this lawsuit.

15. IOM has indicated that the release of such information could pose security risks for the beneficiaries and employees as they could be targeted based on this information. The personal data in the correspondence, if combined with other information that individuals or entities might have, could potentially lead to identification of the beneficiaries and staff members, with repercussions for their safety and security.

16. Disclosure of the redacted information would be injurious to the public interest in Canada's ability to maintain its operations with the IOM which are essential to the resettlement of refugees to Canada.

17. The confidentiality of information provided between international organizations and Governments is the cornerstone of international cooperation. This relationship of confidentiality and trust between Canada and the IOM should be honored and maintained to the greatest extent possible.

18. Furthermore, there is no identifiable public interest in disclosing the personal confidential information of third parties and is outweighed by the public interest in maintaining Canada's crucial relationship with the IOM.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-618-21
STYLE OF CAUSE:	JOUMANA AL KADDAH, SARI ALKANHOUCH v HER MAJESTY THE QUEEN
PLACE OF HEARING:	VIA VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 23, 2021
JUDGMENT AND REASONS:	DINER J.
DATED:	NOVEMBER XX, 2021

APPEARANCES:

Pierre-Luc Bouchard	FOR THE APPLICANTS
Andrea Shahin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT