

Federal Court



Cour fédérale

Date: 20060508

Docket: DES-04-01

Citation: 2006 FC 1058

Halifax, Nova Scotia, May 8, 2006

PRESENT: The Honourable Mr. Justice W. Andrew Mackay

BETWEEN:

IN THE MATTER OF a certificate pursuant to Section 40.1  
of the *Immigration Act*, R. S. C. 1985, c. 1-2, now deemed  
to be under s-s 77(1) of the *Immigration and Refugee Protection  
Act*, S. C. 2001, c.27;

AND IN THE MATTER OF the referral  
of that certificate to the Federal Court of Canada;

AND IN THE MATTER OF Mahmoud JABALLAH,

CERTIFICATE

This certifies that the attached transcript of Reasons delivered orally in the course of hearings on May 2, 2006, constitutes the essence of Reasons given for the order issued orally that day whereby I dismissed the application by Mr. Jaballah to postpone hearings on the reasonableness of the security certificate issued in August 2001, and I adjourned further hearings for receipt of his evidence to May 15, 2006.

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Deputy Judge

1 Toronto, Ontario  
2 Decision Rendered on Tuesday, May 2, 2006  
3 in Court File DES-4-01  
4 Minister of Citizenship and Immigration and  
5 Solicitor General v. Mahmoud Jaballah  
6

7 THE COURT: Good morning, all.  
8 I will give you my decision  
9 orally, if I may, and then we will spend a bit of  
10 time, not very much, on where we go from here.

11 So far as the Applicant seeks an  
12 order postponing the proceedings pending  
13 determination by the Supreme Court of Canada of  
14 three cases to be argued some six weeks hence, I am  
15 not allowing the motion. That said, in the  
16 circumstances of this week it seems to me that some  
17 arrangements have to be made for further hearings.

18 Let me talk a bit about the major  
19 motion.

20 Mr. Jaballah applies for an order  
21 to postpone hearings arranged some six weeks ago,  
22 with agreement of his counsel, first to meet his  
23 request for leave to adduce evidence and then  
24 hearings arranged for the week of May 15 for  
25 argument addressing the reasonableness of the

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1 security certificate issued in August 2001. That  
2 certificate certified the opinion of the Ministers  
3 of the Crown concerned that Mr. Jaballah is  
4 inadmissible to Canada on security grounds. The  
5 certificate was then referred to this Court for  
6 determination of its reasonableness.

7                                   You may not like it, but I express  
8 some disappointment. This is the second or third  
9 scheduled hearing date for Mr. Jaballah to respond  
10 to concerns underlying the Ministers' certificate.

11       It is at least the second time that his counsel  
12 has brought forward on less than appropriate notice  
13 motions that compel the Court in its concern for  
14 some fairness in the process to postpone hearing  
15 dates. It is at least the second occasion since  
16 last September, when counsel had in effect said,  
17 "Quite frankly, I am simply too busy with this and  
18 other responsibilities to properly serve my  
19 client's interest.'

20                                   I am disappointed as well, if I  
21 may note, that counsel, who were aware of the  
22 circumstances at least a week ago of Mr. jaballah's  
23 removal from Toronto to Kingston, did not then, so  
24 far as I can judge, seek to discuss the matter with  
25 counsel for the Crown. I am not certain that that





21 I turn to irreparable harm. As I  
22 read the decision in *YRI-York*, the principal  
23 concern there underlying the Court's decision to  
24 grant a stay of another tribunal's process, not the  
25 Court's own as is here sought, was its concern over

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1 the potential misuse of information obtained by  
2 investigatory processes that might later be found  
3 to be invalid.

4 Here the stay is sought to  
5 preclude testimony which Mr. Jaballah sought leave  
6 to adduce presumably to respond to the concerns of  
7 the Ministers as disclosed by the summaries  
8 released to Mr. **Jaballah**, b<sup>y</sup> numerous public  
9 documents on the record, by public testimon<sup>y</sup> of  
10 officers of **CSIS**, and not about other matters.  
11 There is much evidence in the public record of this  
12 proceeding to which **Mr. Jaballah simply has not yet**  
13 responded.

<sup>14</sup> If he does testify in this  
15 proceeding, he will have the benefit of section 13  
16 of the *Charter*, and you know that that provides  
17 protection for a witness testifying in proceedings.  
18 They then have the right not to have any  
19 incriminating evidence so given used to incriminate  
20 that witness in any other proceeding except in a  
21 prosecution for perjury or for the giving of  
22 contradictory evidence. Admittedly, that applies  
23 in the **criminal** processes only but, if necessary,  
24 this Court would order that any testimony given in  
25 **this** case by Mr. Jaballah not be used in any other



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1 proceedings, whether criminal, **civil** or  
2 immigration, apart from this **case** and apart **from**  
3 any prosecution for perjury in relation to the  
4 testimony **given**.

5                               In any event, I am not persuaded  
6 that in the circumstances of this case there is any  
7 irreparable harm if the proceedings to hear Mr.  
8 Jaballah are not postponed.

9                               In those circumstances and in  
10 light of the public interest, the speedy resolution  
11 of these proceedings, an interest that has been  
12 ignored by me until now, among others, I simply do  
13 not see that the balance of convenience **favours** Mr.  
14 Jaballah. Indeed, the balance favours the  
15 Ministers' position that the matter not be stayed.

16                               That is my decision in relation to  
17 the application to postpone the hearing essentially  
18 indefinitely.

19                               We are already in Tuesday of this  
20 week's scheduled hearing, and I have said that Mr.  
21 Jaballah would not be ordered to be present in the  
22 court except on at least two clear days' notice, so  
23 there is one day left at the end of this week.  
24 I am not sure, in light of **what I** know -- and it is  
25 very little -- about the arrangements made for

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