Federal Court Cour fédérale

**Date: 20180912**

**Docket: DES-2-18**

**Citation: 2018 FC 911**

**Winnipeg, Manitoba, September 12, 2018**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**AWSO PESHDARY**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

# ORDER AND REASONS

## I. Overview

[1] Mr Awso Peshdary challenges the validity of a warrant issued by this Court in 2012 authorizing the Canadian Security Intelligence Service to use certain powers of surveillance over him as a potential threat to Canada's security. The Service turned over some of the information it gathered about Mr Peshdary to the Royal Canadian Mounted Police. The RCMP used that information to obtain additional warrants under the *Criminal Code* to investigate Mr Peshdary

for terrorism-related offences, resulting in two criminal charges against Mr Peshdary, for which he faces trial in the Superior Court of Justice of Ontario.

[2] This is the second stage of Mr Peshdary's challenge. In the first stage, I heard the parties' submissions on the question whether the Federal Court has jurisdiction to quash the warrant. The parties also addressed the issue whether Mr Peshdary is entitled to further disclosure of materials in the possession of the Service. I concluded that the Federal Court has jurisdiction to review its own orders, including warrants issued to the Service. However, I did not grant Mr Peshdary further disclosure. Therefore, the remaining issue is whether Mr Peshdary has presented a sufficient basis for quashing the Service's warrant.

[3] For the reasons below, I find that the warrant should not be quashed. In short, Mr Peshdary has presented insufficient evidence showing that the warrant application would have been denied if the issuing judge had been made aware of all the relevant circumstances.

## II. The Basis on which the Warrant was Issued

[4] An experienced employee of the Service swore in an affidavit provided to the issuing judge that Mr Peshdary and others were engaged in activities that represented threats to the security of Canada, as defined in s 2(*c*) of the *CSIS Act* (see Annex for all provisions cited). The threat identified was "international Islamist terrorism." The affiant relied not just on personal knowledge, but on information obtained from human sources, physical surveillance, and intercepted communications (from previous warrants). The affidavit spanned 127 pages,

although many portions of it have been redacted on grounds of irrelevance or national security privilege before being disclosed to Mr Peshdary.

[5] I have separated the affiant's evidence into three categories. The first contains evidence that is essentially uncontroverted. The second comprises the evidence that Mr Peshdary claims is tainted. It consists almost entirely of evidence emanating from a human source named Milton. The third sets out the affiant's opinion. A limited amount of information in the affidavit derived from previous warrant applications. Unless otherwise specified, the evidence below is from 2012.

A. *Uncontroverted Evidence*

(1) Intercepted Communications

[6] From previous warrants, the Service intercepted a number of communications relating to Mr Peshdary:

- In a 2010 intercept, Mr Peshdary discussed an attack in Canada, referring to Parliament and the Embassy of the United States.
- A woman complained to Mr Peshdary's wife that Mr Peshdary was attempting to radicalize her husband.
- Mr Peshdary urged his associate, Yahia John Maguire, to listen to tapes of Anwar al-Awlaki, an American-born Islamist extremist, later killed, who urged attacks on non-Muslims.

- Mr Peshdary stated that he wanted to have weekly meetings with Maguire to teach him survival skills.
- A 2011 intercept revealed that Mr Peshdary wished to involve Maguire in Resurrection, a group of Muslim youth leaders.
- Mr Peshdary stated that he was interested in buying a home to be used as a youth centre.
- A conversation between Mr Peshdary and an associate appeared to be a discussion about a weapon resembling one that could be obtained at Walmart, possibly a pellet gun.
- Mr Peshdary asked Passport Canada about obtaining an emergency passport to visit his ailing grandmother, who died soon thereafter. Still, Mr Peshdary continued to try to obtain a Canadian passport.
- Mr Peshdary searched on the Internet information about performing "hijrah" (emigrating to an Islamic country from a non-Islamic one), despite the disapproval of one's parents.
- Mr Peshdary watched a video about the largest custom-made hunting rifle. He also searched videos about other weapons, including a grenade launcher and an assault rifle.
- Mr Peshdary listened to lectures by al-Awlaki.
- Mr Peshdary searched reports about the situation in Yemen, including one entitled "Al Qaeda in Yemen advertises for Western recruits" and another entitled "Is this al Qaeda's 'last chance' for a country?"

- While Mr Peshdary and Maguire engaged in a conversation in a public place, Mr Peshdary appeared to be checking whether other people were eavesdropping.
- Mr Peshdary worked as an instructor at a tutoring business called HLI, where the Resurrection group also meets.
- While Mr Peshdary no longer appeared to be a member of Resurrection, he continued to attend some events at HLI, including at its new location.

(2) Physical Surveillance

[7] The Service conducted physical surveillance of Mr Peshdary showing that:

- Mr Peshdary used various counter-surveillance techniques, including leaving a restaurant on foot and returning later to his car, driving his car home and then immediately back to the restaurant, and then leaving the restaurant again and parking on the street.
- Mr Peshdary and an associate parked on the street with the vehicle and the lights turned off.
- Mr Peshdary drove under the speed limit.
- Mr Peshdary used a circuitous route of travel.
- Mr Peshdary travelled in a vehicle to the HLI building, and briefly entered it.

(3) The RCMP

[8] The RCMP informed the Service that Mr Peshdary participated in jihadist training in Gatineau Park, using a pellet gun and bows and arrows, during which the participants were heard to say "Allah Akbar" (God is Great).

B. *The Milton Evidence*

[9] The Service obtained some information about Mr Peshdary from their source, Milton. The following is a summary of what Milton reported to the Service:

- Milton reported that Mr Peshdary believed that the Service was interested in Mr Peshdary because of his youth work.
- Milton overheard Mr Peshdary discussing news reports about attacks by Shia Houthi insurgents against the community of Darul-Hadeeth in Yemen, and proclaiming that he would financially support a Muslim who wanted to travel from Canada to fight the Houthis in Yemen.
- Milton reported that Mr Peshdary expressed the view that jihadist activities in Afghanistan and Iraq were legitimate because Muslims were acting in self-defence against the terrorist actions of the United States. Specifically, while Mr Peshdary generally opposed suicide bombings, he felt they were a legitimate means for the Taliban to fight the invading US forces.
- Similarly, Milton stated that Mr Peshdary believes that the conflict in Libya is a legitimate jihad.

C. *The Affiant's Opinion*

[10] Based on this evidence, the affiant opined that:

- Mr Peshdary's interactions with Maguire displayed an effort to radicalize Maguire.
- Mr Peshdary's interest in youth work was part of an ongoing effort to radicalize Muslim youths. The Resurrection group is, in part, a forum for discussing extremist interpretations of the Koran.
- Mr Peshdary's interests in weapons, overseas travel, and violent jihad show that he would likely engage in militant jihadist activities if he left Canada.
- Mr Peshdary has been an ideological guide for Ottawa youths and has spread an extremist vision of Islam, including violent jihad.
- While the Service had recently experienced "unique challenges" in collecting information about Mr Peshdary, and recent information about Mr Peshdary was not as compelling as earlier evidence, Mr Peshdary continued to be involved in activities that posed a threat to the security of Canada.

[11] The judge who issued the warrant was satisfied on this evidence that there were reasonable grounds to believe that the warrant was necessary to investigate a threat to the security of Canada and that the statutory conditions under s 21 of the *CSIS Act* had been met.

## III. Has Mr Peshdary presented sufficient grounds for quashing the Service's warrant?

[12] On the basis of the contents of various source documents, Mr Peshdary maintains that the Service provided a misleading picture to the judge who received the warrant application. For example, he says that the Service painted an unfairly negative portrait of him, and a seriously

deficient description of its main human source, Milton. This distorted picture, according to Mr Peshdary, provides sufficient grounds for quashing the warrant.

[13] Mr Peshdary relies on the test set out by Justice David Watt (now of the Court of Appeal for Ontario) in *R v Land*, [1990] OJ No 624. Justice Watt found that the affiant had failed to provide the authorizing judges a full and accurate picture of the circumstances leading to the warrant requests. He found that, in order to quash the warrants, the applicant had to show that the warrants had probably been obtained on the basis of a "tainting influence"(at p 18). The reviewing judge must consider whether there would remain a sufficient basis for granting the warrant if the impugned evidence were disregarded. On the facts before him, Justice Watt found that the applicant had shown that the authorizations had been obtained by material non-disclosure, misleading disclosure, a misrepresentation of the actual facts, and, possibly, fraud. The authorizations would not otherwise have been granted, so Justice Watt quashed them.

[14] Mr Peshdary submits that he has provided sufficient grounds on which to quash the Service's warrant. In particular, he alleges that:

i. The affiant provided an inaccurate and misleading version of certain facts.

ii. The affiant withheld crucial information regarding Milton's credibility, reliability, and motivation.

iii. The affiant withheld positive information about Mr Peshdary.

iv. The affiant failed to return to the Court after discovering new evidence about Milton's credibility.

[15] Mr Peshdary has presented a sufficient evidentiary basis for this application. The real issues are whether the grounds he has put forward are material in the sense that they could have had an impact on the issuance of the warrant, and, if so, whether the warrant would not have been granted if the issuing judge had been aware of them.

[16] As mentioned, Mr Peshdary's concerns relate almost entirely to Milton. However, before addressing those, I must point out that Mr Peshdary also maintains that the affiant's depiction of two of the intercepted communications is misleading, and that a statement included in the affiant's opinion is unsupported.

[17] Mr Peshdary notes that the sources he consulted about the situation in Yemen ("Al Qaeda in Yemen advertises for Western recruits" and "Is this al Qaeda's 'last chance' for a country?") were articles published by CNN, not extremist groups. The affiant did not explain this to the issuing judge, which may have left the impression that Mr Peshdary was a consumer of extremist literature.

[18] Mr Peshdary also cites the affiant's reference to there being "unique challenges" in the investigation of Mr Peshdary. He points out that the affiant's statement was not supported by any factual information.

[19] With respect to Milton, Mr Peshdary contends that the affiant did not provide the issuing judge with an accurate picture. Based on information known to the affiant at the time of the

warrant application, and information that came to light while the warrant was in force, Mr Peshdary submits there were strong reasons to doubt Milton's credibility and stated motivations.

[20] The following is a summary of the other grounds on which Mr Peshdary relies:

- The affiant omitted to mention that the "suspicious photographs" that brought Milton to the attention of the Service were altered pictures of Parliament with an extremist banner in place of the Canadian flag.
- The affiant stated that Milton's motivations were primarily loyalty to Canada and opposition to extremism, but a source document states that, in addition to those incentives, "financial remuneration will ultimately be a motivator for this source operation."
- The affiant mentioned the dropped charges of assault against Milton but failed to disclose that Milton had previously given a false address and had been the subject of a peace bond.
- Milton's claim that Mr Peshdary believed that the Service was interested in Mr Peshdary because of his youth work is not mentioned in any source documents.
- The affiant relies on Milton's report that Mr Peshdary proclaimed that he would financially support a Muslim who wanted to travel from Canada to fight the Houthis in Yemen, but fails to explain that this would not constitute a terrorist activity; the United States is also fighting the Houthis.
- The affiant reports Milton's observation that Mr Peshdary believes that the conflict in Libya is a legitimate jihad, but omits Mr Peshdary's additional comment that some scholars have taken Anwar al-Awlaki's words out of context.

- The affiant did not inform the issuing judge that some of Milton's reporting came from sub-sources, making some of Milton's statements double or triple hearsay.
- The affiant did not disclose that some of Milton's information contradicted reports from other sources.
- The affiant failed to mention that Mr Peshdary's views on attacks within Canada have "fluctuated" and, at times, he has stated that any attacks, including suicide bombings, would be wrong. Milton confirmed that Mr Peshdary's views seemed to be genuine.
- The affiant did not report Mr Peshdary's view that a war between China and the United States would be bad for Canada.
- The affiant did not disclose Mr Peshdary's characterization of Service employees as "good guys" or his opinion that Milton should not be afraid to talk to them.
- The affiant did not include Milton's October 2012 assessment that Mr Peshdary was "mellowing."

[21] Mr Peshdary also points to a 2013 evaluation of Milton. He says that the basis of that evaluation may have been known to Milton's Service contacts in advance. The evaluation included the following information about Milton:

- Milton had been married seven times, twice before his conversion to Islam and five times thereafter; his wives initiated the terminations. His current marriage was also on the verge of collapse.
- The Service was concerned that Milton posed a risk to himself.
- Milton posted descriptions of his depression and suicidal feelings on Facebook.
- Milton's childhood was chaotic, unstable, and abusive.

- Milton's parents experienced mental health issues; they divorced when he was 10.
- Milton's father and step-mother abused him physically.
- Milton entered foster care at age 14; he returned to live with his father six months later.
- Milton's father expelled him from the house in his late teens after he had threatened his father and fought with his sister.
- In his teens, Milton associated with an antisocial crowd, which he described as a "gang."
- In high school, Milton used drugs and alcohol and eventually dropped out. His girlfriend became pregnant twice.
- Milton has four children; two from his ex-girlfriend, one from his second wife, and one from his third wife. He does not provide financial support.
- Milton has an unstable work history. At the time of the assessment, he was receiving social benefits.
- Milton claims to be unable to save money. He has significant debt in the form of student loans, credit card balances, and Rogers bills.
- Milton was considering declaring bankruptcy but the Service was concerned that this would draw attention to his financial circumstances.
- Milton seems to have few friends.
- While he finds pornography repellent on moral and religious grounds, he struggles with an addiction to it.
- The author describes Milton variously as "deceitful," "parasitic," "selfish," "callous," and "impulsive."

- The author also questioned the genuineness of Milton's professed loyalty to Canada.

[22] On the strength of this evidence, Mr Peshdary maintains that the affidavit presented to the issuing judge contained material omissions, as well as incomplete or inaccurate representations. Further, he contends that the Service failed to discharge its duty to return to the Court after it obtained new evidence showing that the facts presented to the judge had changed. These circumstances, according to Mr Peshdary, justify quashing the warrant.

[23] I agree with Mr Peshdary that some of the evidence on which he relies is material as it potentially affects the completeness and the reliability of the information provided to the issuing judge. In particular, the affiant relied on the credibility of Milton both as a direct source of information about Mr Peshdary, and as the basis for some of the affiant's opinions about the threat posed by Mr Peshdary's activities. To the extent that any non-disclosures, misleading representations, or new evidence cast doubt on Milton's credibility as a source, the question whether the warrant would have been issued without Milton's evidence is a live one.

[24] I will deal first with the suggestion that the affiant should have told the judge that the articles Mr Peshdary retrieved about the situation in Yemen came from a reasonably reliable and objective news source, CNN, not an extremist organization. I agree that this information was relevant and ought to have been provided. However, I do not agree with Mr Peshdary that the omission was intended to suggest that he was seeking out extremist information on the Internet. As I read them, the references to the articles in question were meant to underscore the depth of Mr Peshdary's interests in the region and his willingness personally to support Muslims wanting

to join the fray, even though there would have been nothing terrorism-related about his views or potential actions.

[25] As to Milton's credibility, I must consider the various alleged omissions, misleading representations, and new evidence.

[26] Mr Peshdary points out that the affiant failed to specify what was suspicious about the photographs Milton had posted on Facebook. In my view, this would have added little if anything of value to the issuing judge. I do not see the failure to mention explicitly the substitution of an extremist flag for the Canadian flag as material. How Milton originally came to the attention of the Service was purely a peripheral issue.

[27] The affiant downplayed the significance of Milton's financial motivation, focussing instead on his loyalty to Canada and his aversion to extremism. This was obviously a relevant factor relating to his credibility. However, the affiant did not fail to mention a financial motive, but simply indicated that the other motivations were paramount. This was not a true omission, simply a matter of emphasis. As discussed below, new evidence later showed that the financial motivation may have grown in significance, but that may not have been apparent to the affiant at the time.

[28] Mr Peshdary suggests that the affiant failed to disclose that Milton had previously provided a false address and had been subject to a peace bond. I do not consider this to be a material omission. The affiant mentioned the assault charges against Milton, but not the false

address or the peace bond. In fact, it was unclear whether Milton had given a false address or was merely mistaken about it. He gave the correct location and street name, but the number was slightly off.

[29] The fact that there is no source document supporting the affiant's assertion that Mr Peshdary thought that the Service was interested in him because of his youth work is not a material omission. Obviously, there were a number of other reasons why the Service was interested in Mr Peshdary that were supported by the evidence put before the judge, particularly as disclosed in the intercepted communications.

[30] The affiant's failure to mention Mr Peshdary's observation that some scholars had taken the words of al-Awlaki out of context was also not a material omission. The upshot of that observation was that some of the criticisms of the extremist views of al-Awlaki were unjustified, which may have actually underscored the degree of support Mr Peshdary gave to those views.

[31] I agree with Mr Peshdary that the affiant should have explained to the issuing judge that some of Milton's disclosures actually came from sub-sources, even though the majority of his reports were based on direct access. This information would have assisted the judge in evaluating the evidence emanating from Milton. This was a material omission.

[32] On the question whether the affiant should have mentioned discrepancies in Milton's information, I note that the discrepancies at issue were related solely to the circumstances surrounding the first meetings between Milton and Mr Peshdary, and when Milton may have first

learned about Mr Peshdary's arrest in 2010. In general, discrepancies in a human source's information will be material because the issuing judge will be concerned about the source's credibility on matters relating to the nature of the threat and the target of the warrant. Here, however, the discrepancies went to peripheral matters unrelated to the actual threat and the beliefs and actions of Mr Peshdary. I do not regard the affiant's failure to mention them as a material omission.

[33] I do not see any material omission in the affiant's failure to mention Mr Peshdary's views on the impact on Canada of a war between the United States and China.

[34] While the assessment of Mr Peshdary's views as "fluctuating" appears material, that assessment was not made until 2014 after the expiry of the warrant in issue and was made in the context of a statement attributed to Mr Peshdary about the legitimacy of attacks within Canada. Milton's opinion that Mr Peshdary's stated opposition to attacks within Canada was genuine was expressed alongside his view that Mr Peshdary's views on suicide bombings were unclear, and that Mr Peshdary may not have been expressing his true beliefs when he said he opposed them. These statements cannot fairly be characterized as positive statements about Mr Peshdary. Further, they were not available until well after the expiry of the warrant. They are not material.

[35] On the other hand, Mr Peshdary's views that Service employees are "good guys" and his encouragement to Milton to talk to them were material and should have been provided to the issuing judge. They were relevant to Mr Peshdary's inclinations, if any, to carry out threat-related activities against Canada.

[36] In a similar vein, Milton's view that Mr Peshdary was "mellowing" might, on first impression, appear to be material. However, I note that Milton made that statement in the context of questioning his objectivity about Mr Peshdary, whom he considered a close friend. On balance, I do not see the omission as material.

[37] In terms of the 2013 assessment of Milton, I note that the interviews on which that assessment was based were conducted in late October 2012, after the warrant had been issued. Milton's Service contacts did not receive feedback from the author until November 7, 2012. Therefore, the assessment did not contain information that could have been placed before the issuing judge. It may, however, raise three other questions. First, is the evidence material? Second, did the Service fail to discharge its duty to bring that evidence to the Court's attention after the warrant had been issued? Third, is it likely that the issuing judge would not have issued the warrant if the tainted evidence (*ie*, Milton's reporting) had not been considered?

[38] Those questions arise only if I find that Mr Peshdary has failed to present sufficient grounds for quashing the warrant based on the affidavit itself and the other material evidence that could have been given to the issuing judge.

[39] I have found only three material omissions in the affidavit provided to the issuing judge:

- The source of the articles Mr Peshdary retrieved about Yemen and al Qaeda.
- Milton's reliance on sub-sources.
- Mr Peshdary's views about the Service and his encouragement to Milton to talk to Service employees.

[40] However, viewed in the context of the whole of the evidence placed before the issuing judge, these omissions are relatively minor. The bulk of the evidence the affiant provided the issuing judge, including the affiant's opinion about the threat to national security, remains uncontroverted. Even if the issuing judge had been informed of the material evidence left out of the affidavit, it is highly unlikely it would have had any affect on the decision to issue the requested warrant. It follows that Mr Peshdary has failed, on this evidence, to show that the warrant should be quashed.

[41] As for the 2013 assessment of Milton, given that it goes directly to his overall credibility as a source of information about Mr Peshdary, it is clearly material. Had it been available prior to the October 2012 request for a warrant, its contents, or at least a summary of it, should have been brought to the attention of the issuing judge. The fact that it was not available until later makes it no less material.

[42] The Service is aware of its obligation to return to the Court if it becomes aware of material information after a warrant has been issued, and even if the warrant is spent (*Re X*, 2013 FC 1275 at para 83, 89). This forms part of the Service's duty of candour, and extends to all relevant information about the credibility of a source, such as "the source's motivation, evaluation, payment and background" (*Re Harkat*, 2009 FC 1050 at para 20).

[43] The Service should have returned to the Court with the 2013 Milton assessment. The source information it had previously provided the issuing judge consisted solely of the following:

- Milton is a Canadian citizen and resident of Ottawa.

- Milton came to the attention of the Service after posting suspicious photographs of Ottawa landmarks.
- Milton provided useful information to the Service about Mr Peshdary and his activities and became a directed source in 2011.
- Milton was unemployed, but he encountered Mr Peshdary when they worked together at a previous job.
- Milton's reports were mainly unconfirmed, but some information was corroborated by intercepts.
- Milton received financial remuneration from the Service but his motives were mainly loyalty to Canada and opposition to Islamist extremism.
- Milton was charged with assault in 2001 and 2010, but the charges were withdrawn.
- Milton was never the subject of a Service investigation.

[44] This information would not have raised any red flags about the reliability of Milton's reports. However, had the judge been provided the contents of the 2013 assessment, it is likely that the judge would have formed an entirely different impression of Milton. The assessment showed that Milton's personal life was unstable, he experienced mental health issues, he was likely desperate for the financial remuneration he received from the Service, he probably valued highly the attention the Service gave him by treating him as a respected source, and his loyalty to Canada may not have been genuine. These factors would surely have caused the issuing judge at least to question the veracity of the information provided by Milton as disclosed by the affiant.

[45] However, even if the information emanating from Milton were disregarded entirely, the affiant supplied ample other evidence to the issuing judge supporting the affiant's reasonable grounds – the intercepted communications, the information provided by the RCMP, and the physical surveillance. Again, I think it is highly unlikely that the issuing judge would have found that reasonable grounds for the issuance of the warrant were no longer present if the tainted evidence were disregarded.

[46] Accordingly, there is no basis for quashing the warrant.

## IV. Conclusion and Disposition

[47] There were some material omissions in the information provided to the judge who issued a warrant to the Service to investigate Mr Peshdary. In addition, evidence obtained after the warrant was issued was also material and should have been presented to the issuing judge as part of the Service's duty of candour. However, even if the issuing judge had been aware of the omissions and the new evidence, it is highly unlikely the judge would have failed to grant the warrant. There was substantial uncontroverted evidence before the judge justifying the granting of a warrant to the Service in the circumstances. Mr Peshdary has not persuaded me that the warrant should be quashed.

**ORDER in DES-2-18**

**THIS COURT ORDERS that** Mr Peshdary's application to quash the warrant issued to the Service is dismissed.

"James W. O'Reilly"
Judge

Annex

| *Canadian Security Intelligence Service Act*, RSC, 1985, c C-23 | *Loi sur le Service canadien du renseignement de sécurité*, LRC (1985), ch C-23 |
|---|---|
| **2**. In this Act | **2.** Les définitions qui suivent s'appliquent à la présente loi. |
| **threats to the security of Canada means** | **menaces envers la sécurité du Canada Constituent des menaces envers la sécurité du Canada les activités suivantes :** |
| … | […] |
| (*c*) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and | *c*) les activités qui touchent le Canada ou s'y déroulent et visent à favoriser l'usage de la violence grave ou de menaces de violence contre des personnes ou des biens dans le but d'atteindre un objectif politique, religieux ou idéologique au Canada ou dans un État étranger; |
| **Application for warrant** | **Demande de mandat** |
| **21** (1) If the Director or any employee designated by the Minister for the purpose believes, on reasonable grounds, that a warrant under this section is required to enable the Service to investigate, within or outside Canada, a threat to the security of Canada or to perform its duties and functions under section 16, the Director or employee may, after having obtained the Minister's approval, make an application in accordance with subsection (2) to a judge for a warrant under this section. | **21** (1) Le directeur ou un employé désigné à cette fin par le ministre peut, après avoir obtenu l'approbation du ministre, demander à un juge de décerner un mandat en conformité avec le présent article s'il a des motifs raisonnables de croire que le mandat est nécessaire pour permettre au Service de faire enquête, au Canada ou à l'extérieur du Canada, sur des menaces envers la sécurité du Canada ou d'exercer les fonctions qui lui sont conférées en vertu de |

l’article 16.

**Matters to be specified in application for warrant**

(2) An application to a judge under subsection (1) shall be made in writing and be accompanied by an affidavit of the applicant deposing to the following matters, namely,

(*a*) the facts relied on to justify the belief, on reasonable grounds, that a warrant under this section is required to enable the Service to investigate a threat to the security of Canada or to perform its duties and functions under section 16;

(*b*) that other investigative procedures have been tried and have failed or why it appears that they are unlikely to succeed, that the urgency of the matter is such that it would be impractical to carry out the investigation using only other investigative procedures or that without a warrant under this section it is likely that information of importance with respect to the threat to the security of Canada or the performance of the duties and functions under section 16 referred to in paragraph (a) would not be obtained;

…

**Issuance of warrant**

(3) Notwithstanding any other law but subject to the Statistics Act,

**Contenu de la demande**

(2) La demande visée au paragraphe (1) est présentée par écrit et accompagnée de l’affidavit du demandeur portant sur les points suivants :

*a*) les faits sur lesquels le demandeur s’appuie pour avoir des motifs raisonnables de croire que le mandat est nécessaire aux fins visées au paragraphe (1);

*b*) le fait que d’autres méthodes d’enquête ont été essayées en vain, ou la raison pour laquelle elles semblent avoir peu de chances de succès, le fait que l’urgence de l’affaire est telle qu’il serait très difficile de mener l’enquête sans mandat ou le fait que, sans mandat, il est probable que des informations importantes concernant les menaces ou les fonctions visées au paragraphe (1) ne pourraient être acquises;

[…]

**Délivrance du mandat**

(3) Par dérogation à toute autre règle de droit mais sous

where the judge to whom an application under subsection (1) is made is satisfied of the matters referred to in paragraphs (2)(*a*) and (*b*) set out in the affidavit accompanying the application, the judge may issue a warrant authorizing the persons to whom it is directed to intercept any communication or obtain any information, record, document or thing and, for that purpose,

réserve de la Loi sur la statistique, le juge à qui est présentée la demande visée au paragraphe (1) peut décerner le mandat s'il est convaincu de l'existence des faits mentionnés aux alinéas (2)*a*) et *b*) et dans l'affidavit qui accompagne la demande; le mandat autorise ses destinataires à intercepter des communications ou à acquérir des informations, documents ou objets. À cette fin, il peut autoriser aussi, de leur part :

(*a*) to enter any place or open or obtain access to any thing;

*a*) l'accès à un lieu ou un objet ou l'ouverture d'un objet;

(*b*) to search for, remove or return, or examine, take extracts from or make copies of or record in any other manner the information, record, document or thing; or

*b*) la recherche, l'enlèvement ou la remise en place de tout document ou objet, leur examen, le prélèvement des informations qui s'y trouvent, ainsi que leur enregistrement et l'établissement de copies ou d'extraits par tout procédé;

(*c*) to install, maintain or remove any thing.

*c*) l'installation, l'entretien et l'enlèvement d'objets.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | DES-2-18 |
| **STYLE OF CAUSE:** | ASWO PESHDARY v ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | AUGUST 13, 2018 |
| **ORDER AND REASONS:** | O'REILLY J. |
| **ORDER AND REASONS ISSUED:** | SEPTEMBER 12, 2018 |

**APPEARANCES:**

| | |
|---|---|
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| Mr Andre Seguin<br>Mr Marc Edmunds | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
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