Federal Court  Cour fédérale

Date: 20250516

Docket: T-1272-22 & DES-7-23

Citation: 2024 FC 2072

Ottawa, Ontario, December 20, 2024

PRESENT: THE CHIEF JUSTICE

Court File No: T-1272-22

BETWEEN:

MOHAMMAD JAHAZI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Court File No: DES-7-23

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MOHAMMAD JAHAZI

Respondent

AMENDED ORDER AND REASONS

I. Introduction

[1] These reasons concern a motion brought by Mr. Jahazi for costs in two proceedings.

[2] In the first of those proceedings (T-1272-22), filed in June 2022, Mr. Jahazi applied to the Court for a writ of *mandamus* requiring the Minister of Citizenship and Immigration (the "**Minister**") to render a decision in relation to his application for citizenship, which had been pending since 2014 (the "**Mandamus Proceeding**").

[3] In the second proceeding (DES-7-23), filed in December 2023 (the "**Section 38 Proceeding**"), the Attorney General of Canada (the "**AGC**") applied under section 38 of the *Canada Evidence Act*, RSC 1985, c C-5 (the "**CEA**") to prevent the disclosure of sensitive or potentially injurious information relating to national security in the Mandamus Proceeding.

[4] Ultimately, the parties agreed that the Mandamus Proceeding was rendered moot after they learned in April of this year that Mr. Jahazi would be granted Citizenship imminently. Shortly thereafter, the AGC filed a Notice of Discontinuance in the Section 38 Proceeding.

[5] For the reasons that follow, I will partially grant this Motion for costs. More specifically, I consider that it would be appropriate to order lump sum costs in an amount of (i) $2,000.00, plus HST, in connection with the Mandamus Proceeding, and (ii) $1,250, plus HST, in connection with the Section 38 proceeding. The former amount would provide recovery of

approximately 50% of the fees actually incurred by Mr. Jahazi, plus HST, in the Mandamus Proceeding. The latter amount would represent recovery of approximately 33% of the fees incurred in preparing a contested motion for an order appointing an *amicus curiae* in the Section 38 Proceeding (the "**Amicus Motion**"). Mr. Jahazi failed to demonstrate that any award of costs should be made in his favour in connection with the other aspects of the Section 38 Proceeding.

II. Background

[6] Mr. Jahazi is a citizen of Iran. He also recently became a citizen of Canada. He has lived in Canada for extended periods of time since doing his PhD at McGill University ("**McGill**") in the 1980s.

[7] Shortly after completing his PhD in 1989, he returned to Tehran to work as an assistant professor and then as an associate professor at Tarbiat Modares University ("**TMU**"). He also worked part-time at the Iranian Research Organization for Science and Technology ("**IROST**").

[8] In 2001, Mr. Jahazi returned to Canada on a work permit, after being offered a research position at McGill. He was then offered a senior research position with the National Research Council. Later that year, he applied for permanent residence. However, in 2005, his application was refused on security grounds, pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "**IRPA**"). After the Minister agreed to reconsider his application, it was refused a second time in August 2008, again pursuant to paragraph 34(1)(f). On both of those occasions, the Minister's refusal was based to a significant degree on security grounds related to Mr. Jahazi's work and involvement with TMU and IROST.

[9] This Court granted judicial review of the Minister's second refusal in 2010, after finding that the conclusions reached by the Minister's delegate were unreasonable and not supported by the evidence: *Jahazi v Canada (Citizenship and Immigration)*, 2010 FC 242 (the "**2010 Judicial Review**") at paras 62–77. On redetermination, Mr. Jahazi was granted permanent residence. Since 2011, he has been employed in Canada as a university professor.

[10] In 2014, Mr. Jahazi applied for Canadian citizenship. In the course of considering his application, Immigration, Refugees and Citizenship Canada (the "**IRCC**") requested a security assessment from its security partners.

[11] In 2016, during the course of that assessment, the Minister suspended Mr. Jahazi's application under section 13.1 of the *Citizenship Act*, RSC 1985, c C-29 (the "***Citizenship Act***").

[12] In May 2019, Mr. Jahazi filed an initial Application for Leave and for Judicial Review seeking a writ of *mandamus* in relation to his request for citizenship. Shortly thereafter, he was interviewed by the IRCC. In September 2019, his Application for Leave and for Judicial Review was dismissed.

[13] In June 2022, Mr. Jahazi filed a second application to this Court for a writ of *mandamus*. That is the Mandamus Proceeding in respect of which he now seeks costs. In November 2022, after the Minister consented to leave being granted, the Court ordered IRCC to serve and file its certified tribunal record ("**CTR**") within 21 days of the receipt of that order. As a result of delays associated with the redaction process, the Minister did not file the CTR until February 2024.

[14] In the meantime, the AGC filed the Section 38 Proceeding to prevent the disclosure of sensitive or potentially injurious information related to national security in the Mandamus Proceeding. Initially, that proceeding concerned information contained in 24 documents. After the AGC subsequently determined that one of those documents did not contain sensitive or potentially injurious information, the scope of the Mandamus Proceeding was narrowed to information contained in 23 redacted documents in the CTR.

[15] Mr. Jahazi then requested during a case management conference that an *amicus curiae* be appointed in the Section 38 Proceeding. After the AGC verbally opposed that request, Mr. Jahazi brought the Amicus Motion. The AGC opposed that motion. Despite that opposition, the Court granted Mr. Jahazi's motion and appointed an *amicus curiae* in February of this year.

[16] In late April 2024, Mr. Jahazi's citizenship application was granted. The AGC discontinued the Section 38 Proceeding two days later.

[17] Mr. Jahazi then filed the present motion and requested that it be dealt with in writing.

[18] On May 9, 2024, the Minister filed a cross-motion to dismiss the Mandamus Proceeding for mootness. Mr. Jahazi consented to the cross-motion. Accordingly, the sole remaining issue to be determined is the question of costs.

[19] In the first sentence of his Notice of Motion, Mr. Jahazi appears to seek substantial indemnity costs in respect of both the Mandamus Proceeding and the Section 38 Proceeding. However, in the following sentence, he appears to confine his request for substantial indemnity

costs to the Mandamus Proceeding. Then, in Part III of his written submissions, he requests substantial indemnity costs solely in respect of the Section 38 Proceeding. In the course of doing so, he appears to conflate the AGC and the Minister, and in any event, he focuses largely on conduct related to the Mandamus Proceeding.

[20] In brief, that conduct consists of the Minister's delay of approximately ten years in making a decision on his citizenship application, despite the apparent absence of significant new evidence of security concerns since the 2010 Judicial Review, and despite the fact that Mr. Jahazi was permitted to remain and work in Canada in a sensitive area since 2011.

[21] Having regard to the foregoing, I will treat Mr. Jahazi's requests as being for substantial indemnity costs in respect of the Mandamus Proceeding and ordinary, i.e., party-and-party, costs in respect of the Section 38 Proceeding. Nothing turns on this, because for the reasons set forth below, I find that Mr. Jahazi has not demonstrated that the circumstances are such that substantial indemnity costs ought to be awarded in the Section 38 Proceeding.

III. Guiding Principles

[22] Mr. Jahazi's request for costs in the Mandamus Proceeding is subject to Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 (the "**FCCIRPR**"). Pursuant to that Rule, no costs may be awarded to or payable by any party unless there are "special reasons" for ordering such an award or payment.

[23] The threshold to establish "special reasons" is high: *Saeed v Canada (Citizenship and Immigration)*, 2024 FC 129 [***Saeed***] at para 60; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1643 [***Singh***] at para 45. Such "special reasons" may include the nature of the case, and the behaviour of the parties or their counsel: *Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 [***Ndungu***] at para 7; *Singh* at para 45. For present purposes, it will suffice to state that "special reasons" for ordering costs against the Minister can exist where the Minister, or an immigration or citizenship official, issues a decision only after an unreasonable and unjustifiable delay: *Ngungu* at para 7(6)(iv); *Jama v Canada (Attorney General)*, 2022 FC 285 at para 31; *Tameh v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 288 [***Tameh***] at para 78; *John Doe v Canada (Citizenship and Immigration)*, 2006 FC 535 [***John Doe***] at para 5; *Nalbandian v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1128 [***Nalbandian***] at para 19; and *Jaballah v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1182 [***Jaballah***] at para 10. Essentially the same approach has been followed in cases involving an application for *mandamus*: *Mamut v Canada (Citizenship and Immigration)*, 2024 FC 1593 at para 129.

[24] Turning to Mr. Jahazi's request for costs in the Section 38 Proceeding, he relies on Rule 402 of the *Federal Courts Rules*, SOR/98-106 (the "**FC Rules**"), which provides as follows:

402 Unless otherwise ordered by the Court or agreed by the parties, a party against whom an action, application or appeal has been discontinued or against whom a motion has been abandoned is entitled to costs forthwith, which may be assessed and the payment of which may be enforced as if judgment for the amount of the costs	**402** Sauf ordonnance contraire de la Cour ou entente entre les parties, lorsqu'une action, une demande ou un appel fait l'objet d'un désistement ou qu'une requête est abandonnée, la partie contre laquelle l'action, la demande ou l'appel a été engagé ou la requête présentée a droit aux dépens sans délai. Les dépens peuvent être taxés et le paiement

had been given in favour of that party.	peut en être poursuivi par exécution forcée comme s'ils avaient été adjugés par jugement rendu en faveur de la partie.

[25] However, it appears that this Court has never awarded costs against the AGC in a proceeding under section 38 of the CEA, even where the matter ended by a notice of discontinuance filed by the AGC: *Canada (Attorney General) v Attaran*, 2022 FC 353 [***Attaran***] at para 28. This is because, in filing an application under section 38, the AGC performs a statutory duty to protect "sensitive information" or "potentially injurious information," as those terms are defined in that provision: see, e.g., *Attaran* at paras 24 and 29.

[26] Insofar as respondents in section 38 proceedings are concerned, I am not aware of costs ever having been sought against them.

[27] Notwithstanding the foregoing, there may be circumstances when it might be appropriate to award costs against either the AGC or a respondent in a section 38 proceeding. In the absence of any established principles for conducting this assessment, I consider the "special reasons" test discussed above to be a helpful point of departure. As in the context of Rule 22 of the FCCIRPR, the threshold for establishing such "special reasons" in the section 38 context ought to be high. Circumstances in which this threshold might be met include poor behaviour on the part of either the AGC or a respondent. Such behaviour could include unnecessarily or unreasonably prolonging a proceeding, or acting in a manner that rises to the level of being unfair, oppressive or improper, or acting in bad faith: *Saeed* at para 60, quoting *Johnson v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1262 [***Johnson***] at para 26.

[28] This approach aligns well with one of the fundamental purposes of costs rules, namely, to sanction behaviour that increases the duration and expense of litigation, or is otherwise unreasonable or vexatious*: British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 [***Okanagan Indian Band***] at para 25.

[29] Once the Court determines that it is appropriate to award costs in favour of a party in a proceeding under section 38 of the CEA or pursuant to Rule 22 of the FCCIRPR, the Court has broad discretion as to the amount to award: Rule 400(1), *FC Rules*. However, that discretion must be exercised in accordance with established principles, including the specific principles applicable in the section 38 or FCCIRPR context, as the case may be: *Okanagan Indian Band* at para 22; *Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 [***Allergan***] at para 21. As the Federal Court of Appeal recently reiterated, "predictability and consistency in the award of costs allows counsel to properly advise their clients so that they, in turn, may make informed decisions about litigation risks": *Apotex Inc v Shire LLC*, 2021 FCA 54 [***Shire***] at para 24.

[30] In this Court, costs may be fixed by reference to Tariff B of the *FC Rules* or by way of a lump sum: Rule 400(4), *FC Rules*. In recent years, the granting of a lump sum award has become increasingly common. Indeed, it is being done "wherever possible": *Philip Morris Products SA v Marlboro Canada Limited*, 2015 FCA 9 at para 4. To a significant degree, this is explainable by the Court's desire to reduce the significant time and effort typically associated with preparing and reviewing the type of detailed bill of costs that is required for the purposes of an assessment under Tariff B: *Shire* at para 18; *Allergan* at para 22; *Catalyst Pharmaceuticals, Inc v Canada (Attorney General)*, 2022 FC 1669 at para 21.

[31] The “default” level of costs in this Court is the mid-point of Column III in Tariff B, which is intended to provide partial indemnification for “cases of average or usual complexity”: *Allergan* at para 25. Such costs, as well as any costs that may be awarded under the other columns of Tariff B, are known as “party-and-party” costs: *Canada (Attorney General) v Chrétien*, 2011 FCA 53 [***Chrétien***] at para 3.

[32] Full indemnification, also known as “solicitor-client” costs, is only awarded “in exceptional circumstances such as where a party has shown bad faith or inappropriate, reprehensible, scandalous or outrageous conduct,” or where it is in the public interest: *Chrétien* at para 3. See also *Mackin v New Brunswick (Minister of Finance); Rice v New Brunswick*, 2002 SCC 13 at para 86; and *Teva Canada Limited v Pfizer Canada Inc*, 2017 FC 610 at para 6. This principle also applies to proceedings brought under section 38 of the CEA as well as to proceedings to which the FCCIRPR applies. In other words, in the absence of a demonstration of such exceptional circumstances, any costs awarded in such proceedings (based on the existence of “special reasons”) ought to be on a partial indemnity, i.e., party-and-party, basis.

[33] Substantial indemnification that is short of full indemnification but significantly above the partial indemnification contemplated by the *FC Rules*, also requires a demonstration of circumstances that justify an award beyond what is contemplated by the columns in Tariff B: *Shoan v Canada (Attorney General)*, 2016 FCA 26 at para 11; *Jagadeesh v Canadian Imperial Bank of Commerce (CIBC)*, 2019 FC 1445 at paras 6–7. See also *Red Pheasant First Nation v Whitford*, 2023 FCA 29 at paras 56–59.

[34] Insofar as lump sum cost awards are concerned, the jurisprudence indicates that "awards of between one-quarter and one-third of fees are the norm": *Shire* at para 22.

IV. Analysis

A. *The Mandamus Proceeding*

(1) Mr. Jahazi's submissions

[35] As discussed at paragraphs 19-21 above, Mr. Jahazi seeks an award of costs on a substantial indemnity basis in the Mandamus Proceeding. This request is based on the conduct of the Minister. At its core, that conduct consisted in the Minister's delay of approximately ten years in making a decision on his citizenship application. Mr. Jahazi maintains that this delay was reprehensible for the following reasons:

1. The delay was attributable to an investigation into largely the same security grounds that this Court determined in 2010 to be unreasonable and not supported by the evidence: 2010 Judicial Review at paras 62–77.

2. He was granted permanent residence shortly after the 2010 Judicial Review, and has been permitted to work in Canada in a sensitive field since 2011.

3. In the intervening period, the Minister obtained no new evidence that would justify a further investigation into whether:

a) he meets the requirements of the *Citizenship Act*, or should be subject to an admissibility hearing or a removal order under the IRPA, as contemplated by paragraph 13.1(a) of the *Citizenship Act*, or

b) there are reasonable grounds to believe that he constitutes a threat to the security of Canada, as contemplated by paragraph 19(2)(a) of the *Citizenship Act*;

4. An email from the Canada Border Services Agency (the "**CBSA**") dated April 28, 2016, that is included in the redacted CTR, indicates that he was not under investigation by that agency and that his citizenship application "may proceed."

5. A further delay then ensued until 2019, when he was invited to an interview by the Canadian Security Intelligence Service ("**CSIS**") and questioned primarily about matters that were addressed in the 2010 Judicial Review. The only two exceptions concerned (i) whether he attended a military conference in 2009, and (ii) his role in a paper published in 2014, which identified him as having been a co-author. During the interview, Mr. Jahazi explained that the 2009 conference was a public North Atlantic Treaty Organization ("**NATO**") conference that he did not attend, and that a paper presented at that conference was on a non-military related topic and was the result of a collaborative effort by more than five authors. He also explained that his name was on the 2014 paper as a sign of recognition rather than authorship, because he provided input to a student who was the principal author and whose main supervisor worked at another university.

6. An additional delay of five more years then occurred before the Minister finally approved his application for citizenship in April of this year.

[36] Mr. Jahazi adds that the foregoing is also “scandalous” because it is conduct that would enrage the public.

(2) The Minister’s submissions

[37] The Minister submits that Mr. Jahazi has not demonstrated the existence of “special reasons” for awarding costs, as required by Rule 22 of the FCCIRPR.

[38] More specifically, the Minister maintains that the evidence does not demonstrate that immigration officials behaved in a manner that was “unfair, oppressive, improper or actuated by bad faith”: *Johnson* at para 26.

[39] The Minister adds that Mr. Jahazi’s application for citizenship was validly suspended pursuant to section 13.1 of the *Citizenship Act* because there was an ongoing security investigation by IRCC’s partner agencies. The Minister states that one such partner agency continued to investigate Mr. Jahazi until April 2024, and that IRCC continually followed up with that agency to ascertain whether the investigation had been completed. The Minister asserts that a decision on Mr. Jahazi’s application could not be made until that investigation had been completed.

(3) Assessment

[40] I agree with the Minister that the evidence does not demonstrate that any immigration or citizenship officials behaved in a manner that was "unfair, oppressive, improper or actuated by bad faith." However, "special reasons" for awarding costs under Rule 22 can also exist where the Minister, or an immigration or citizenship official, issues a decision only after an unreasonable and unjustifiable delay: see paragraph 23 above.

[41] In my view, the delay of approximately ten years that occurred before the Minister made a decision on Mr. Jahazi's citizenship application was unreasonable and unjustified. In the face of such a long delay, the decision was *prima facie* unreasonable and required a cogent explanation by the Minister. The simple fact that one or more partner agencies continued to investigate Mr. Jahazi, without a justification for the continuance of these investigations, does not constitute an acceptable explanation. If it were otherwise, the Minister could rely on this basis for failing to make a decision for much longer than ten years in other files. This would undermine public confidence in the administration of justice in this country. The courts' power to award costs is an important tool to maintain this public confidence and to ensure that "the justice system works fairly and efficiently": *Okanagan Indian Band* at para 26.

[42] Given the foregoing, I consider that the unjustified ten-year delay in processing Mr. Jahazi's citizenship application constitutes a "special reason" for awarding costs.

[43] Ordinarily, such a finding warrants an award of costs on a party-and-party basis: *John Doe* at para 5; *Nalbandian* at para 22; *Tameh* at paras 76–78; *Jaballah* at para 18.

[44] In my view, there is no sound reason to depart from this approach, despite the very long delay of ten years and the circumstances described in paragraph 35 above. These facts do not demonstrate "bad faith or inappropriate, reprehensible, scandalous or outrageous conduct" on the part of the Minister or immigration/citizenship officials. Nor do they constitute "reasons of public interest" that might justify an award of solicitor-and-client costs: see paragraph 32 above.

[45] In *Microsoft Corp v 9038-3746 Quebec Inc*, 2007 FC 659 at para 16, the Court defined the terms "reprehensible," "scandalous" and "outrageous" behaviour as follows [citations omitted]:

> "Reprehensible" behaviour is that deserving of censure or rebuke; blameworthy. "Scandalous" comes from scandal which may describe a person, thing, event or circumstance causing general public outrage or indignation. Among other things, "outrageous" behaviour is deeply shocking, unacceptable, immoral and offensive.

[46] The conduct of IRCC officials in this case plainly lacked diligence, reflected a lackadaisical approach, and fell well short of what Mr. Jahazi or any other member of the public might reasonably expect. However, that conduct did not rise to the level of being reprehensible, scandalous or outrageous, as those terms have been interpreted in connection with the test for awarding costs on a solicitor-client basis. In this regard, the Supreme Court of Canada has noted that awards of solicitor-client costs "are very rarely granted": *Quebec (Attorney General) v Lacombe*, 2010 SCC 38 at para 67. In my view, the conduct of IRCC officials was not such as to bring it within the "very rare" type of behaviour that warrants the sanction of solicitor-client costs.

[47] Nevertheless, the extent of the delay, considered together with the particular circumstances of this case, justifies an award of costs at the highest end of the party-and-party costs scale. Those circumstances are such that it is difficult to fathom why it took so many years for a decision to be made on Mr. Jahazi's citizenship application. This is particularly so given (i) the findings made by this Court in the 2010 Judicial Review, in relation to essentially the same security concerns that appear to have been at the root of the subsequent long delay; and (ii) the absence of any material additional evidence that might reasonably explain the need for the ongoing, and prolonged, additional review conducted by the IRCC and its security partners.

[48] In *Shire*, the Federal Court of Appeal observed that, "[a]lthough the case law indicates that lump sum awards range from 10% to 50% of actual fees," cases that merit cost awards above one-third of fees are "exceptional": *Shire* at para 22.

[49] I consider that the circumstances of this case rise to the level of exceptional. In brief, the delay in making a decision on Mr. Jahazi's citizenship application was very long (ten years) and unexplained, beyond the simple statements that (i) "security checks needed to be conducted," (ii) "the file was still under investigation by security partners", (iii) the IRCC continued to wait "for authorization from one of their security partners to process the application to the next steps," and (iv) the application "was pending security screening until April 2024": Affidavit of Janet Forbes, dated May 8, 2024 at paras 4–16.

[50] Having regard to the foregoing, I find that it would be appropriate to award lump sum costs approximately equivalent to 50% of the fees actually incurred by Mr. Jahazi in relation to

the Mandamus Proceeding. This is still within the range of what is considered to be partial indemnity: *Air Canada v Toronto Port Authority*, 2010 FC 1335 at para 18.

[51] Consequently, and given that the Bill of Costs filed in this Motion reflects that Mr. Jahazi incurred fees of $4,087.50 in relation to the Mandamus Proceeding, he will be awarded lump sum "party-and-party" costs of $2,000 in that proceeding.

B. *The Section 38 Proceeding*

(1) Mr. Jahazi's submissions

[52] As discussed at paragraphs 19-21 above, it is unclear from Mr. Jahazi's submissions whether he seeks an award of party-and-party costs or an award of costs on a substantial indemnity basis. I interpret those submissions to request the former. However, nothing turns on this. This is because, apart from a portion of the fees he incurred in connection with his contested Amicus Motion, Mr. Jahazi failed to demonstrate that any award of costs should be made in his favour in the Section 38 Proceeding.

[53] Mr. Jahazi acknowledges that costs are not generally awarded in a proceeding initiated under section 38 of the CEA. However, he maintains that the Court nevertheless has discretion under the *FC Rules* to award costs in his favour, particularly given that the AGC discontinued the Section 38 Proceeding. Mr. Jahazi maintains that, as a result of that discontinuance, the present case falls within the purview of Rule 402, which is reproduced at paragraph 24 above. In addition, Mr. Jahazi asserts that the conduct of the Minister in the underlying Mandamus

Proceeding provides a further basis for awarding costs against the AGC in the Section 38 Proceeding.

(2) The AGC's submissions

[54] In brief, the AGC maintains that the Court should not award costs in favour of Mr. Jahazi in the Section 38 Proceeding because that proceeding was brought in furtherance of the AGC's duty to protect sensitive or potentially injurious information related to national security, and the AGC followed customary procedure at every stage of the process. The AGC adds that he discontinued the proceeding promptly upon becoming aware that Mr. Jahazi was granted citizenship, rendering the underlying Mandamus Proceeding moot.

(3) Assessment

[55] I agree that the Court has the discretion to award costs in section 38 proceedings. As previously discussed, I consider that this discretion should only be exercised where there are special reasons for doing so: see paragraph 27 above. For the reasons set forth below, and with one exception, I consider that no such "special reasons" exist in the present circumstances. The one exception relates to the costs incurred by Mr. Jahazi in connection with the Amicus Motion.

[56] In the particular circumstances of this case, the mere fact that the Section 38 Proceeding was discontinued is not a sufficient basis upon which to award costs to Mr. Jahazi in connection with that proceeding.

[57] Among other things, in filing the Section 38 Proceeding, the AGC acted pursuant to a statutory duty to protect sensitive or potentially injurious information.

[58] With the exception of the Amicus Motion, discussed below, I agree with the AGC that he acted entirely in accordance with customary procedure in the section 38 application process. In brief, after receiving notice from the Minister pursuant to section 38.01 of the CEA that 24 documents in the CTR contained "sensitive information" or "potentially injurious information," as those terms are defined in section 38, the AGC reviewed those documents. Upon determining that one of them did not contain such information, the AGC prohibited disclosure of the information in question contained in the remaining 23 documents, pursuant to section 38.03. The AGC then initiated the Section 38 Proceeding in this Court pursuant to section 38.04 to confirm that prohibition, as contemplated by subsection 38.06(3) of the CEA.

[59] Furthermore, the AGC moved swiftly to discontinue the Section 38 Proceeding once the granting of Mr. Jahazi's citizenship rendered the underlying Mandamus Proceeding moot.

[60] With the exception of his opposition to the Amicus Motion, there is no evidence that the AGC engaged in any type of objectionable behaviour in the Section 38 Proceeding, let alone behaviour that might rise to the level of providing special reasons for an award of costs in Mr. Jahazi's favour.

[61] I will now turn to Mr. Jahazi's second principal reason for requesting costs against the AGC in the Section 38 Proceeding, namely, the conduct of the Minister in the underlying

Mandamus Proceeding. That behaviour by the Minister has already been taken into account in my decision to award Mr. Jahazi costs in that proceeding. In my view, it would not be appropriate to also sanction the AGC for essentially the same conduct, namely, the delay on the part of the Minister and other officials in connection with Mr. Jahazi's application for citizenship. Beyond the fact that the Minister will be sanctioned for that conduct, there is no evidence that the AGC had anything to do with any conduct in the Mandamus Proceeding.

[62] I will now turn to the AGC's opposition to the Amicus Motion.

[63] This position on the part of the AGC was very unusual and difficult to understand. It also unnecessarily lengthened an already delayed proceeding and increased the time and effort required of Mr. Jahazi.

[64] The AGC submits that, given the discretionary nature of the appointment of *amicus curiae*, it was entirely "part and parcel of the s[ection] 38 application process" for him to take the position that such an appointment was not necessary in this case.

[65] The AGC also justified his opposition to the Amicus Motion on the basis that (i) five of the redacted documents were already considered in the 2010 Judicial Review, and therefore did not need to be reconsidered, (ii) eleven of the redacted documents were "brief emails," and (iii) although four of the other documents included "significant redactions," these redactions amounted to only ten pages. The AGC further argued that since the issue in the underlying

Mandamus Proceeding was delay, the redacted information was not required for Mr. Jahazi to make his case.

[66] I disagree that the foregoing considerations provided a legitimate justification for opposing Mr. Jahazi's request for the appointment of an *amicus curiae*. Although five of the documents had been previously considered in the 2010 Judicial Review, eighteen other documents remained to be considered, four of which had significant redactions. Contrary to the AGC's position, it is entirely possible that some of the redactions in these documents could have been relevant to the issue of delay. What's more, the 2010 Judicial Review involved an application under section 87 of the IRPA, rather than section 38 of the CEA. Consequently, the redactions in the five documents previously considered by the Court were not subject to the balancing exercise contemplated by section 38, namely, the weighing of the consequences of disclosing sensitive or injurious information against the public interest in disclosure: *Canada (Attorney General) v Soltanizadeh*, 2019 FCA 202 at para 26.

[67] Considering that the redactions in the CTR were significant and none had been subject to such a balancing analysis, the AGC's decision to challenge the Amicus Motion effectively forced Mr. Jahazi to incur unnecessary time and expense associated with bringing a formal motion, in which he was ultimately successful.

[68] I pause to add that it is customary for the Court to appoint an *amicus curiae* in all but the most straightforward of proceedings under section 38 of the CEA. In other words, there was nothing "customary" about this aspect of the AGC's conduct in the Section 38 Proceeding.

[69] In the particular circumstances of this case, the AGC's opposition to Mr. Jahazi's request for the appointment of an *amicus curiae* constitutes special reasons to award ordinary party-and-party costs to Mr. Jahazi in connection with the Amicus Motion.

[70] Notwithstanding the foregoing, there was nothing about the AGC's opposition to that motion that involved the type of reprehensible, scandalous or outrageous conduct that must be demonstrated to obtain an award of costs on a more elevated scale.

[71] Mr. Jahazi's Bill of Costs indicates that his counsel spent a total of 5.00 hours preparing and finalizing the Amicus Motion, and in preparing a reply to the AGC's opposition to the motion. At an hourly rate of $750, this totals $3,750. I consider it appropriate to award Mr. Jahazi 33% of that amount, namely $1,250.

[72] In summary, for the reasons set forth above, I will grant Mr. Jahazi's motion for costs in the Section 38 Proceeding solely as it relates to a portion of the costs he incurred in bringing the Amicus Motion.

V. Conclusion

[73] For the reasons provided in part IV.A.(3) above, Mr. Jahazi's Motion for costs in connection with the Mandamus Proceeding will be partially granted. That is to say, he will be granted costs, but only at the high end of the party-and-party scale, namely, 50% of the fees he incurred in connection with that proceeding. Mr. Jahazi has not demonstrated that he ought to be awarded costs on a "substantial indemnification" basis.

[74] For the reasons provided in part IV.B.(3) above, Mr. Jahazi's Motion for costs in connection with the Section 38 Proceeding will be partially granted. That is to say, he will only be granted ordinary party-and-party costs of 33% of the fees he incurred in connection with the Amicus Motion. He has not demonstrated that he ought to be awarded costs in connection with any other aspect of the Section 38 Proceeding.

ORDER IN T-1272-22

THIS COURT ORDERS that:

1. Mr. Jahazi's Motion for costs in respect of each of the Mandamus Proceeding and the Section 38 Proceeding is partially granted.

2. The ~~AGC~~ Minister shall pay to Mr. Jahazi lump sum costs of $2,000, plus HST, in the Mandamus Proceeding.

3. The ~~Minister~~ AGC shall pay to Mr. Jahazi lump sum costs of $1,250, plus HST, in the Section 38 Proceeding.

4. For greater certainty, this Motion is dismissed as it relates to (i) Mr. Jahazi's request for costs on a "substantial indemnity" basis, and (ii) costs in the Section 38 Proceeding, other than in relation to the Amicus Motion.

"Paul S. Crampton"
Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	DES-7-23 and T-1272-22
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA v MOHAMMAD JAHAZI MOHAMMAD JAHAZI v MINISTER OF CITIZENSHIP AND IMMIGRATION

MOTION IN WRITING DATED MAY 10, 2024, CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES.*

~~**REASONS FOR ORDER AND RREASON**~~ **AMENDED ORDER AND REASONS:**	CRAMPTON C.J.
DATED:	MAY 16, 2025

WRITTEN REPRESENTATIONS BY:

Andre Seguin	FOR THE APPLICANT IN DES-7-23
Nimanthika Kaneira	FOR THE RESPONDENT IN T-1272-22
Lorne Waldman	FOR THE RESPONDENT IN DES-7-23 AND FOR THE APPLICANT IN T-1272-22 MOHAMMAD JAHAZI
Anne Tardif	AMICUS CURIAE IN DES-7-23

SOLICITORS OF RECORD:

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Gowling WLG Ottawa, Ontario	AMICUS CURIAE