**Date: 20080118**

**Docket: DES-3-03**

**Citation: 2008 FC 61**

**Ottawa, Ontario, January 18, 2008**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**IN THE MATTER OF a certificate**
**pursuant to subsection 77(1) of the *Immigration and Refugee Protection Act***
**signed by the Minister of Immigration**
**and the Solicitor General of Canada (Ministers)**
**S.C. 2001, c. 27 (IRPA);**

**IN THE MATTER OF the referral of this certificate to**
**the Federal Court of Canada pursuant to subsection 77(1)**
**and sections 78 and 80 of the IRPA;**

**IN THE MATTER OF a motion**
**to quash subpoenas *duces tecum* filed by**
**Joël-Denis Bellavance and Gilles Toupin (the interveners)**
**and objections arising from questions asked during an examination on affidavit;**

**AND IN THE MATTER OF**
**Mr. Adil Charkaoui.**

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## REASONS FOR JUDGMENT AND JUDGMENT

## INTRODUCTION

[1] This is a motion to quash subpoenas *duces tecum* (motion to quash) filed by the interveners, Joël-Denis Bellavance (Mr. Bellavance) and Gilles Toupin (Mr. Toupin) (collectively, the interveners), reporters for the newspaper *La Presse*. Subpoenas *duces tecum* were served on the interveners, compelling them to come testify and bring with them

(1) A top secret report entitled *Former Terrorist Training Camps in Afghanistan: Major Sites and Assessment*; and

(2) Any and all other documents of the Canadian Security Intelligence Service (CSIS) used as sources for the article entitled "Charkaoui a-t-il discuté d'un attentat?" (Did Charkaoui discuss an attack?), published in *La Presse* on June 22, 2007.

[2] Owing to the affidavits the interveners submitted in support of the motion, an examination on affidavit of Mr. Bellavance was held, and many objections to the questions were raised. In this case, the Court is called upon to rule on the motion to quash and on the validity of the objections.

[3] The subpoenas were issued in connection with a motion filed by Adil Charkaoui (Mr. Charkaoui) to set aside the certificate proceedings initiated under sections 76 *et seq.* of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (IRPA) against him on May 23, 2003, following the publication of articles in the dailies *La Presse* and *Le Droit* on June 22, 2007. The articles revealed that Mr. Charkaoui had discussed with someone else hijacking a commercial aircraft and crashing it into target in a foreign country, according to a plan that was similar to what happened on September 11, 2001. According to the articles, the document, entitled *Former Terrorist Training Camps in Afghanistan: Major Sites and Assessment*, dated April 12, 2003, contained top secret intelligence of the Canadian Security Intelligence Service (CSIS).
Mr. Charkaoui essentially argues that the Canadian government and CSIS leaked the top secret document; that the leak constitutes an interference with the administration of justice, thereby

unlawfully and wrongfully interfering with the judicial process; that it compromises the independence and objectivity of the judiciary, thus bringing the administration of justice into disrepute; and that it damages his reputation and constitutes a serious violation of his constitutional rights protected by sections 7, 9 and 10 and paragraphs 11(*a*), (*b*) and (*c*) of the *Canadian Charter of Rights and Freedoms*, *Constitution Act, 1982* (U.K.), being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the Charter).

[4] To make it easier to read this judgment, I am including hereafter the work plan used in coming to the appropriate determinations:

## (A) BACKGROUND

[5] As mentioned above, the reporters signed affidavits in support of the motion to quash the subpoenas. One of the reporters, Mr. Bellavance, gave testimony on examination by counsel for Mr. Charkaoui. The parties agreed that Mr. Toupin would testify afterwards. They suggested that the examination on affidavit be a public hearing before a judge owing to the principles involved and objections arising from the questions. The parties were authorized to proceed this way, and, as a result, a number of objections were raised; a few of them were resolved during the examination on affidavit and some others were taken under advisement. In this judgment, I will be ruling on the objections while taking the principles involved into consideration. The motion to quash the

subpoenas has now become a forum for dealing with the objections arising from the examination on affidavit of Mr. Bellavance for the purposes of evidence for the principal motion. The order to be made will rule on the motion to quash the subpoenas *duces tecum* and on the objections.

[6] The certificate proceedings were initiated against Mr. Charkaoui in late May 2003, and he was imprisoned until February 17, 2005, when he was released under preventive conditions. Although the conditions have been amended a number of times, several of them are still in effect today.

[7] Still no determination has been made as to whether the certificate is reasonable. There are many reasons for this state of affairs: the numerous legal proceedings to which this case gave rise, the applications for protection made under subsection 112(1) of the IRPA and the suspension of the certificate proceedings (see subsections 79(1) of the IRPA, etc.).

[8] Since the beginning of the proceedings in May 2003, the Court has reviewed and examined the case on a number of occasions. With a view to keeping Mr. Charkaoui reasonably informed of the circumstances giving rise to the certificate and without disclosing anything that might, under the IRPA, be injurious to national security or to the safety of any person, the Court has provided him with a few summaries of the evidence. The information reported in the press was inserted at paragraph 35 of a summary dated May 23, 2003, and was general enough in nature, so that it would not be injurious to national security or to the safety of any person. Since the information has become

public, in this judgment the Court intends to issue a new summary in order to keep Mr. Charkaoui reasonably informed in the wake of the June 22, 2007 article.

[9] As provided for in the IRPA, the designated judge "shall ensure" the confidentiality of the information on which the certificate proceedings are based (see paragraph 78(*b*)). The judge may not disclose information if it would be injurious to national security or to the safety of any person. If the judge concludes that the information is relevant to the person concerned, but the Ministers are of the opinion that its disclosure would be injurious to national security or to the safety of any person, they may request that the information not be part of the Court's record (see paragraph 78(*f*) of the IRPA). Basically, Parliament compels the judge to protect and "ensure" the confidentiality of information on which the certificate is based and keep the person concerned reasonably informed through a summary of evidence. This is a delicate procedure that requires in-depth knowledge of the case and issues.

[10] This is a unique procedure in and of itself, requiring the designated judge to constantly ensure compliance with the legislative component. This goes beyond classic procedures that are usually followed.

[11] The information in the newspaper articles is secret, and few people in the government have the clearance to receive this kind of information. Without going into detail, the information's very existence tells the person concerned a great deal. The information concerns two people conversing about hijacking an aircraft in order to strike a target in Europe. This information is private, its

contents are worrisome and it is classified for obvious reasons which need not be dealt with further in this judgment. In accordance with the duties imposed by Parliament, this information, in detailed form, could not have been part of a summary of evidence. At most, it could have been conveyed only in general terms, which was done on May 23, 2003, in the summary of evidence at paragraph 35.

**(B) Case update**

[12] When the Court learned of the *La Presse* articles, it held a hearing by teleconference with counsel for the parties. The objective was to allow the Court to express its concern over the publication, determine whether the information came from a document in the Court's confidential record and indicate that the Court was required to "ensure" the confidentiality of the information, in keeping with paragraph 78(*b*) of the IRPA. Subsequently, on June 29, 2007, counsel for the Ministers asked that a hearing be held without Mr. Charkaoui or his counsel, in accordance with paragraph 78(*e*) of the IRPA. The Court granted the request, taking Mr. Charkaoui's objection into account. Following the *ex parte* hearing on July 5, 2007, the Court decided to provide Mr. Charkaoui with more information. A summary of additional evidence was prepared. The Court held another hearing via teleconference and read the summary to counsel, with Mr. Charkaoui in attendance. After the summary was read, Mr. Charkaoui's counsel asked for and were granted a recess. After the recess, counsel asked that the summary of evidence not be entered into the record, the reason being that Mr. Charkaoui had suffered considerable damage to his reputation following the publication of the articles and that making the summary of evidence public would aggravate his situation. The Ministers objected to this request on the ground that Mr. Charkaoui had always

maintained that the procedure followed had never given him access to sufficient information and that this new position contradicted what he had always maintained. The Court took Mr. Charkaoui's request under advisement.

[13] Given the state of the case so far; the motion to set aside Mr. Charkaoui's certificate proceeding; the motion to quash the subpoenas served on the reporters, Mr. Bellavance and Mr. Toupin; the interpretation of the information on which the newspaper articles are based; the situation arising from the publication of the information involving Mr. Charkaoui on June 22, 2007; the undersigned's duty to keep Mr. Charkaoui reasonably informed; and the fact that Mr. Charkaoui and his counsel are aware of the information, the Court concludes that the summary of additional evidence must be officially entered into the Court's public record.

[14] Briefly, the summary reveals the following information:

- At an *ex parte* hearing lasting about two and a half hours on July 5, 2007, counsel for the Ministers summoned two people to testify. The first witness testified about CSIS's internal investigation (it is public knowledge that police and administrative investigations have since been launched). The second witness testified about his or her knowledge of the secret document filed in Court;
- In my view, the Court's primary objective is to give Mr. Charkaoui as much information as possible to give him an opportunity to respond to the allegations against him;

- The Court can now confirm the existence and contents of the document on which the news articles were based, but adds that the document is not part of the evidence before the Court. However, the Court has unproven information concerning Mr. Charkaoui to the effect that, at a meeting in June 2000, he discussed with two people hijacking a commercial aircraft for violent purposes. General information in this regard is already included in the summary of evidence of May 23, 2003, at paragraph 35. In addition, the Court has unproven information to the effect that Mr. Charkaoui allegedly went to Afghanistan in early 1998 to take military and religious training at Camp Khalden.

[15] The summary of additional evidence is reproduced in its entirety in Schedule A to this judgment. As a separate point, following a request by the Court, counsel for the reporters agreed to provide the Court with a copy of the document on which the articles published in *La Presse* and *Le Droit* are based, entitled *Former Terrorist Training Camps in Afghanistan: Major Sites and Assessment*. The document was given to the registry for designated proceedings in a brown envelope to be opened only by myself, which was done in the presence of counsel for the Ministers at the *ex parte* hearing on November 14, 2007. The Court treated the document as if it were top secret, as indicated in the articles, as per paragraph 78(*b*) of the IRPA.

[16] Through his counsel, Mr. Charkaoui submits that, since the document had been mentioned in the newspaper articles, it was part of the public domain and therefore should be disclosed. In the

alternative, they ask the Court to answer the following questions as part of the motion to set aside the certificate proceeding:

(1) Was the document top secret when it was leaked and made public by *La Presse*?

(2) Had the document been declassified when it was leaked and made public by *La Presse*?

(3) Is CSIS the source of the document?

(4) Should the document not have been disclosed, in accordance with the Act?

(5) What is the name, title and function of the document's author?

(6) What is the name, title and function of the source and recipient of the document?

(7) What was the goal (objective) of the document?

[17] In view of the arguments heard in public on October 25, 2007, and the submissions dated September 7, 2007, it seems the Ministers agreed with the procedure for handing over the document through the registry for designated proceedings, subsequently submitting it to the Court and opening the envelope in the presence of counsel for the Ministers. However, the Court notes that, according to a letter dated September 21, 2007, from the Ministers' counsel, the Attorney General of Canada had been notified, in accordance with subsection 38.03(3) of the *Canada Evidence Act*, R.S.C. 1985, c. C-5, (*Evidence Act*) concerning the information related to Mr. Charkaoui's certificate proceeding. The Court has held the hearings since that date. Under subsection 38.03(3) of the *Evidence Act*, the Attorney General is required to provide a written decision within ten days after

the day on which he first received the notice. No decision was received. On November 25, 2007, counsel for the Ministers informed the Court that, since the document was being treated confidentially in accordance with section 78 of the IRPA, the notice to the Attorney General of Canada would be withdrawn.

[18] After reading, in the presence of counsel for the Ministers, the contents of the envelope, that is, the document on which the June 22, 2007 articles are based, the Court is ready to respond to Mr. Charkaoui's attorneys' questions, while taking into account its duty not to disclose information that would be injurious to national security or to the safety of any person. In the light of the exceptional nature of this case, however, special attention needs to be paid to the public interest, the judicial system, the administration of justice and Mr. Charkaoui's rights. All the issues at stake must therefore be weighed in providing reasonable answers to the questions. First of all, the document cannot be disclosed. It is a protected document and is described in the definition of "information" in section 76 of the IRPA, which reads as follows:

> [M]eans security or criminal intelligence information and information that is obtained in confidence from a source in Canada, from the government of a foreign state, from an international organization of states or from an institution of either of them.

[19] The document addresses many topics and mentions a number of people. The information concerning Mr. Charkaoui is disclosed in this judgment. The answers to Mr. Charkaoui's questions are as follows:

**Table 1 Mr. Charkaoui's questions and answers**

| **Questions from Mr. Charkaoui** | **Answers to Mr. Charkaoui's questions** |
|---|---|
| 1. Was the document top secret when it was leaked and made public by *La Presse*? | No, the document was secret when the newspaper articles were published on June 22, 2007, and it is still secret. It addresses many topics and people, as well as Mr. Charkaoui, albeit briefly. |
| 2. Had the document been declassified when it was leaked and made public by *La Presse*? | The answer to the first question answers this one. |
| 3. Is CSIS the source of the document? | Yes, the document is from CSIS's Intelligence Assessment Branch, formerly known as Research, Analysis and Production. |
| 4. Should the document not have been disclosed, in accordance with the Act? | Information gathered by CSIS as part of its duties and functions can be disclosed only in accordance with section 19 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23. In addition, according to sections 76 *et seq.* of the IRPA, the information could not be disclosed. |
| 5. What is the name, title and function of the document's author? | There is no author indicated on the document, except that there is a reference to CSIS's Intelligence Assessment Branch. |
| 6. What is the name, title and function of the source and recipient of the document? | CSIS sent the information and analysis document to several Government of Canada departments and a number of national and international agencies in the intelligence community, which are all cleared to receive this type of document. |
| 7. What was the goal (objective) of the document? | It is an information and analysis document that discusses a form of threat to Canada at a certain point in time. A few training camps in Afghanistan are identified. Many people are mentioned. Mr. Charkaoui is mentioned in text referring to certain training camps. Most of the document deals with other topics and/or people. |

**(C) Articles published in *La Presse* and *Le Droit***

[20] On Friday, June 22, 2007, the newspapers *La Presse* and *Le Droit* gave front-page coverage to two articles entitled:

- "Charkaoui a-t-il discuté d'un attentat?" (Did Charkaoui discuss an attack?) on pages A2 and A3 of *La Presse*.
- "Charkaoui voulait être kamikaze selon le SCRS" (CSIS: Charkaoui wanted to be a suicide attacker) on the front page of *Le Droit* and, on a full page (3), "Les services secrets soupçonnent Charkaoui d'un scénario similaire au « onze septembre »" (Spy agency suspects Charkaoui of plot similar to September 11) and "En février, Adil Charkaoui gagnait une bataille" (Adil Charkaoui won battle in February).

[21] These articles were written jointly by *La Presse* reporters Joël-Denis Bellavance and Gilles Toupin.

[22] The articles report that on June 25, 2000, Hashim Tahir, who had spent six months in Pakistan in 1999, had a conversation with Mr. Charkaoui and that they allegedly discussed a terrorist attack by hijacking an aircraft flying from Montreal to an unknown foreign destination, possibly in Europe, with a plan that was similar to the one involving multiple terrorist attacks on September 11, 2001.

[23] This [TRANSLATION] “top secret” information, according to the reporters, was based on a CSIS document entitled *Former Terrorist Training Camps in Afghanistan: Major Sites and Assessment*, dated April 12, 2003. It was provided by an anonymous source. The information in the document, which has not been proven in court, was used by the Canadian authorities to obtain from a Federal Court judge a security certificate naming Mr. Charkaoui, according to a [TRANSLATION] “government source”.

[24] The document also indicates that Mr. Charkaoui trained at two Afghan terrorist camps in 1998, camps Khalden and Derunia, both under the control of Al Qaeda. According to the reporters, the confidential information used as a basis for the published articles provides an overview of the terrorist training camps based on information obtained from intelligence agencies in the U.S., Great Britain, New Zealand, Australia and Canada.

[25] In those articles, Mr. Charkaoui vehemently and categorically denied the information, adding that it seriously damaged his reputation. According to him, the leak, in breach of the rules of the Federal Court and the Information Commissioner, shows that CSIS is plugging gaps to draw attention away from its incompetence and the initial error it made in launching an investigation into his activities.

[26] The other article that was published is limited to a summary decision in *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, a decision of the Supreme Court where it determined that the certificate procedure was unconstitutional because the evidence heard

while the person concerned was not present had not been adequately tested. Section 7 of the Charter had therefore been infringed. In conclusion, the article states that it was now up to the government to respond to the Supreme Court's decision.

[27] The evidence shows that the contents of these articles were repeatedly reported by many press agencies, in both official languages.

**Summary of Joël-Denis Bellavance's testimony**

[28] As mentioned above, Joël-Denis Bellavance and Gilles Toupin drafted articles published in *La Presse* and *Le Droit* on June 22, 2007. Mr. Bellavance testified. I will summarize what he has testified to so far. Mr. Toupin's testimony will be heard when the hearing resumes, after the parties come to an agreement.

[29] The titles "Charkaoui a-t-il discuté d'un attentat?" (*La Presse*) and "Charkaoui voulait être un kamikaze selon le SCRS" (*Le Droit*) were not thought up by the reporters, but rather by the dailies' News Desk Editor.

[30] Mr. Bellavance has 17 years of experience in journalism. He has worked for the Canadian Press, *Le Droit* and *Le Soleil* and has been a reporter at *La Presse* since September 2001.

[31] There are no policies or guidelines concerning anonymity and how to treat sources at *La Presse*.

[32] In general, at *La Presse* and other newspapers, when reporters make a commitment to a source to protect his or her identity, they honour to it [TRANSLATION] “to the bitter end”.

[33] Mr. Bellavance was aware of article 6 (Protection of sources and reporteric material) of the Professional Code of Ethic for Quebec Journalists and adhered to the rules when he spoke with his sources. The guidelines are included in Schedule C, article 6 of the Professional Code of Ethics.

[34] The reporters relied on both human and documentary sources for their reporting. The newspaper article states that it is based on [TRANSLATION] “human sources”.

[35] According to Mr. Bellavance, the sources are confidential because he promised them he would protect their identities, and this promise was made [TRANSLATION] “formally, solemnly and unequivocally”. The promise was given at the request of the sources. Although the sources’ potential concerns were not discussed, it was [TRANSLATION] “obvious” to the reporter, in the light of the person concerned, that the source did not have to explain why he or she wanted to remain anonymous. [TRANSLATION] “The source didn’t have to spell it out for me”, he said.

[36] The reporter started preparing his article in March 2007.

[37] According to the reporter, the genuineness of the information [TRANSLATION] “used by the Canadian authorities to obtain from a Federal Court judge a security certificate naming

Mr. Charkaoui" was confirmed by a [TRANSLATION] "government source" five days before the articles were published. The government source also confirmed the genuineness of the document on which the article was based. After the source provided this latest information, a decision was made to publish the article.

[38] Both reporters spoke to Mr. Charkaoui before the article was published. Mr. Toupin led the interview. He told Mr. Charkaoui that he was concerned that, in the light of the nature of the document, a search would be carried out following the publication of the article.

[39] The Vice President of News and Editor in Chief of *La Presse* authorized the article's publication. He was aware of the contents of the document but did not know the name of the source who gave it to the reporter. However, he knew the name of the government source.

[40] According to the reporter, the June 22, 2007 article was based on information from a confidential document of the Canadian Security Intelligence Service dated April 12, 2003, entitled *Former Terrorist Training Camps in Afghanistan: Major Sites and Assessment*, and the information about Mr. Charkaoui in the document was [TRANSLATION] "top secret".

[41] Mr. Bellavance acknowledges he does not have the required security clearance to have this document in his possession. In fact, he has no security clearance.

[42] Counsel for the parties agreed that the summons to appear should remain valid for future dates for both reporters.

**Positions of the parties**

**(I) The interveners**

[43] Given that the reporters had signed affidavits in support of their motion to quash the subpoenas, their counsel does not object to their each being examined, provided that the examination is limited to the content of the affidavit. However, counsel objects to any questions that could directly or indirectly identify the human sources who supplied the document and who confirmed that this information was used to obtain a certificate against Mr. Charkaoui. As regards the subpoena *duces tecum* concerning the document on which the newspaper articles are based, it was submitted to the Court, as noted above.

[44] The interveners object to the disclosure of the human sources, because the right to freedom of expression guaranteed by paragraph 2(*b*) of the Charter encompasses freedom of the press and, incidentally, the protection of reporters' sources.

[45] Underlying this protection is the notion that the relationship between reporters and their sources is founded on the condition of anonymity required by the source and offered by the reporter. This relationship is in the public interest, as it makes an important contribution to the exercise of

freedom of expression. If this protection were not offered, the ability of reporters to collect and release information would be jeopardized, resulting in an infringement of freedom of expression and freedom of the press.

[46] It is argued that the reporters are covered by a privilege in this Court and therefore have the right not to disclose their sources.

[47] For this reason, it is argued that the objections to the questions should be upheld.

[48] Furthermore, it is argued that the information sought from the reporters, that is, the names of the sources for the articles, is not relevant to the motion to quash the certificate proceeding. According to the reporters, Mr. Charkaoui has not demonstrated how the requested information is relevant to his motion.

[49] They add that the newspaper articles reveal all that should be revealed and that, for the purposes of the motion to quash the certificate proceeding, disclosure of the human sources of these articles is not essential.

[50] Moreover, should the Court decide that it must weigh Mr. Charkaoui's fundamental rights against those of the reporters, this balancing must be based on the particular circumstances of the case. Revealing the names of the reporters' sources would undoubtedly imperil press freedom, especially since the requested information is not essential to Mr. Charkaoui's motion.

[51] Finally, it is argued that there are other means of obtaining the requested information. The document on which the newspaper articles were based has been disclosed. Consequently, the reporters are under no obligation to explain the circumstances of the disclosure.

**(II) Mr. Charkaoui**

[52] Counsel for Mr. Charkaoui, meanwhile, raise the following arguments:

- The reporters signed affidavits touching on facts relevant to their motion to quash the subpoenas; for this reason, they have opened the door to their being examined and can be compelled to do so;
- For the purposes of their testimony, the reporters are ordinary witnesses;
- The exceptions to the duty to testify do not apply to the reporters' situation as described in the case at bar; and
- The Charter and the common law do not exempt the reporters from testifying or from answering questions.

[53] In support of these arguments, counsel for Mr. Charkaoui submit that the reporters' testimony is relevant to the motion to quash the certificate proceeding. The reporters signed an affidavit in which Mr. Bellavance states that he received the information from [TRANSLATION] "confidential sources" after having made a [TRANSLATION] "promise of confidentiality". Both Mr. Bellavance and Mr. Toupin deny having told Mr. Charkaoui in a telephone conversation that the document had been obtained from a retired member of CSIS and having contacted CSIS before

calling him. They jointly wrote the newspaper articles reporting the information implicating Mr. Charkaoui. These facts should be subject to an examination.

[54] The reporters' testimony concerning the circumstances surrounding the leak of the document and the confirmation of the top-secret information as having been used to obtain the security certificate against Mr. Charkaoui is highly relevant to showing abuse of process, fault and consequently the magnitude of the violation of Mr. Charkaoui's constitutional rights. Their testimonies are needed to complement the evidence in Mr. Charkaoui's case because there are no other means to prove the circumstances surrounding the document's leak and the confirmation of the top-secret information. Their testimonies are thus crucial to the motion to quash the security certificate.

[55] The reporters cannot invoke any privilege exempting them from testifying or answering certain questions. They are compellable.

[56] In order to invoke a privilege to avoid answering certain questions, the reporters must show that they meet the four tests outlined by John Henry Wigmore in *Evidence in Trials at Common Law*, Vol. 8, revised by John T. McNaughton, Boston: Little, Brown & Co., 1961, at page 527:

> (1) The communications must originate in a confidence that they will not be disclosed;
>
> (2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;

(3) The relation must be one which in the opinion of the community ought to be sedulously fostered; and

(4) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

[57] In Mr. Charkaoui's view, the reporters do not meet the first two tests, because the information was disclosed to the public through the publication of the newspaper articles.

[58] The same argument applies to the other two tests, since a secret document was leaked in violation of the Act. Moreover, a reporter–source relationship allowing the disclosure of a secret document and the dissemination of confidential information is not the sort of relationship that society should encourage as a social value.

[59] The identity of the sources is important, because the person holding this secret document decided to hand it over to a reporter knowing that such a leak would have a profoundly negative impact on Mr. Charkaoui's reputation, safety and freedom by depriving him of protection under the Act. A parallel was drawn with Mr. Arar, who also paid a heavy price when police or government sources leaked information to reporters. The Court was referred to the report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar*, Factual Background, Volume II, page 490, Section 9.2.7, final paragraph.

[60] As regards balancing the rights at stake, Mr. Charkaoui submits his rights should prevail. These rights are not limited to the right to disclosure of information for the purposes of the motion to quash the certificate proceeding, but should also include his rights to life, liberty and security of the person, the right to privacy and the right to enforcement of and respect for the law. All this militates in favour of revealing the sources.

**(III) The Ministers**

[61] The Ministers take no position with regard to the dispute between Mr. Charkaoui and the interveners and defer to the decision of the Court.

**(F) Analysis**

[62] To adequately answer to the question of whether or not to uphold the objections to the questions put to the reporter Bellavance, I intend to address the following points in my analysis:

- The motion to quash the certificate proceeding for abuse of process arising from the publication of confidential information in the daily newspapers *La Presse* and *Le Droit* on June 22, 2007;
- The relevance of the requested information to the motion to quash the certificate proceeding;
- The impact that the publication of the confidential information will have on the judicial system, the administration of justice, the current proceeding and Mr. Charkaoui;
- The reporteric decision to publish the confidential information;

- The Charter, freedom of expression, freedom of the press and our democratic system of government;
- The compellability of the reporters as witnesses and the application of the Wigmore tests; and
- The decisions concerning the objections to the questions.

**(I) <u>Motion to quash the certificate proceeding for abuse of process arising from the publication of confidential information in the daily newspapers *La Presse* and *Le Droit* on June 22, 2007</u>**

[63] In the light of the circumstances surrounding this case; the certificate proceeding in progress, its history, its extraordinary characteristics and its cumbersome and informative process; the current stage of the proceedings (before hearing on the reasonableness of the certificate); the legislative amendments to come; the publication of top-secret information from the record; the rights of Mr. Charkaoui, the motion to quash the certificate proceeding for abuse of process is serious and is certainly not an example of frivolous litigation.

[64] At this stage in the proceedings, the Court has no intention of ruling on the merits of the case. When it hands down that judgment will depend on how the case progresses. At any rate, it is important to determine the rationale behind this proceeding, bearing in mind the circumstances surrounding this case since its commencement.

**(II) Relevance of the sought information to the motion to quash the certificate proceeding**

[65] Schedule B to this judgment is a document reproducing the wording of 25 questions to which objections were raised. Several of these questions, as we shall see, have been answered. These questions may be grouped into three categories: those related to the document, those concerning the reporteric work done and those regarding the human sources. Schedule B arranges the questions according to the same categories.

[66] With regard to the first category, it was noted above that the document was submitted to the Court. The objections with respect to questions 3, 10, 16, 18, 19, 21 and 23 decided taking into account the objections raised, the duty imposed on the undersigned by paragraphs 78(*b*), (*e*) and (*h*) of the IRPA, Mr. Charkaoui's submissions and the questions which he asked regarding the document and which the Court has answered at paragraph 19 of this judgment.

[67] The objections with respect to questions 1, 13, 14, 20 and 25 concern the reporteric work done.

[68] The third category, the questions related to the human sources, includes questions 2, 4, 5, 6, 7, 8, 9, 11, 12, 15, 17, 22 and 24.

[69] For the purposes of this judgment, the questions are numbered according to the document filed in Schedule B hereto. The objections to the questions will be dealt with later.

[70] To assess the relevance of the questions and the sought information for evidentiary purposes, it is important to understand the purpose of the questions. As was stated above, the questions concerning the document will be addressed separately, given that this document has been submitted to the Court. As for the questions involving the reporters' work in preparing the articles and those related to the human sources for the articles, these are all intrinsically related. The main article is based on the information in the document concerning Mr. Charkaoui, which was leaked by the source to the reporter, and on the confirmation that this information was used for the certificate proceeding. This is part of the reporters' work.

[71] As was noted by counsel for Mr. Charkaoui, the examinations of the reporters are essential for the motion to quash. The information can only be secured through the reporters. Counsel are seeking to prove that the leaked information came from government sources in a position to hold this documentation or such information. To this end, they argue that the decision to leak this document and confirm certain information amounts to an abuse of process warranting the quashing of the certificate proceeding. Without evidence of this, it will be difficult for them to fully argue their theory regarding the motion.

[72] Let us now turn to what the case law and the doctrine tell us about the concept of relevance in such a situation. Sopinka J., writing on behalf of the Supreme Court in *R. v. Zealkowski*, [1989] 1 S.C.R. 1378, at page 1386, defined the expression "all relevant evidence" as follows:

> In my opinion, this expression means all facts which are logically probative of the issue. The general rule of evidence is that all relevant evidence is admissible.

[73] In *Cloutier v. The Queen*, [1979] 2 S.C.R. 709, at page 733, Pratte J. stated the following:

> The relevance of a fact that is sought to be introduced in evidence must of course be determined in accordance with the nature of the case and the various questions at issue.

[74] In the case at bar, given that fundamental freedoms such as freedom of expression and freedom of the press, on the one hand, must be weighed against Mr. Charkaoui's freedoms, on the other, the relevance of the information sought for the purposes of the proceeding is not the only criterion to be considered. It must also be asked whether it is appropriate and necessary to seek out information that is in the best interests of justice. It is therefore important to ask ourselves whether there are other means by which the information could be obtained. It must be established that knowledge of the information might have an impact on the ultimate result of the proceedings in progress. In other words, the information must be essential to and necessary for the ultimate proceedings. This must not be used as an opportunity to collect information, a fishing expedition, and must not be based on conjecture. Relevance alone is not enough; the best interests of justice must be at stake.

[75] The certificate proceedings are exceptional. The so-called top-secret information revealed by the newspapers is what would be classified as secret by government standards. The allegations against Mr. Charkaoui are unusual. Not just anyone could have leaked the document and confirmed the information. The involvement of the judicial system, the interests of justice and the reporteric

decision to publish this information make this a highly unusual situation. A reading of the questions reveals their nexus with the objectives of the motion and the motivation underlying the content of those questions, which is to ensure that the truth comes out. Given the nature of the case and the issues at stake, all of the questions are highly relevant.

**(III) Impact of the publication of the confidential information on the judicial system, the administration of justice, Mr. Charkaoui and the current proceedings**

[76] Part of the information forming the basis for the newspaper articles in question was held by the Ministers (at the time the decision to co-sign the certificate was made) and the Court, for the purpose of assessing the reasonableness of the certificate and, incidentally, the detention. However, the document given by the source to the reporter was not.

[77] The information is classified as "secret", since it was collected during investigations by the use of operational methods that must not be disclosed. In theory, in the light of the sources involved, the publication of this information could endanger the safety of others. For the informed reader, this type of information discloses a great deal more than it would appear to disclose on the surface.

[78] The Court was neither allowed nor able to disclose this information, given the obligations imposed by law on the designated judge sitting in such matters (see section 76 (information) and paragraphs 78(*b*) and 78(*e*) of the IRPA). Moreover, the designated judge shall disclose information in the form of a summary of the evidence that is designed to inform interested parties adequately of the circumstances giving rise to the certificate but that does not contain anything that would be

injurious to national security or to the safety of any person if disclosed (see paragraph 78(*h*) of the IRPA). This is what the Court did when it prepared the first summary of the evidence on May 23, 2003, at paragraph 35, which reads as follows:

> [TRANSLATION]
> **Air France**
>
> An individual of Sudanese origin who lives in Montréal was suspected, with other individuals, of preparing a terrorist attack against an Air France aircraft.[64]

It should be noted that the footnote number 64 leads the reader to the *La Presse* article dated September 25, 2001, under the byline of reporter André Noël, the title of which is "Le FBI interroge encore Ressam" (FBI still questioning Ressam). In that report, we learn that:

> [TRANSLATION]
> the FBI, the Royal Canadian Mounted Police, the Canadian Security Intelligence Service (CSIS) and the French police are interested in several people who were allegedly linked with Ressam and, indirectly, with Bin Laden. Among these people is a former citizen of Sudan who lives in Montréal and is suspected of having participated in a group that allegedly conspired recently to blow up an Air France jet.

[79] An informed reader who examined this information would know how to read this description of the situation, including the reference, and understand the intended message. Obviously, for an ordinary reader, this kind of information is merely descriptive. The advantage of such an approach is that it protects the investigators, their methods of operation and the safety of others, as appropriate. However, an informed reader will understand the situation described and

what he or she is supposed to obtain from it, albeit without being informed of other details, which might disclose too much.

[80] Thus, the decision to publish the secret information constituted a contravention of section 78 of the IRPA. If the judge could not disclose this information for the reasons given earlier, it goes without saying that a third party could not do so. Furthermore, the publication of the information seriously blemishes the duty of the judge to "ensure" the confidentiality of the information on which the certificate is based (see paragraph 78(*b*) of the IRPA).

[81] The certificate procedure is one that is out of the ordinary, if we compare it with traditional court proceedings. The designated judge who presides over such proceedings must comply with the strict obligations imposed by law, such as preparing a summary of the evidence, carefully examining the evidence, hearing testimony, reviewing detentions or imposing preventive conditions for release. In *Charkaoui v. Canada (Citizenship and Immigration)* (*supra*), at paragraph 34, the Chief Justice, writing for the Supreme Court, recognized that the designated judge has been aptly described as the "cornerstone" of the procedure described in the IRPA.

[82] In performing this role, the judge has an obligation to "ensure" the confidentiality of the information (paragraph 78(*b*) of the IRPA) while keeping the named person sufficiently informed through a summary of the evidence and not disclosing any information that is injurious to national security or to the safety of any person. When secret information is disclosed, the judicial system suffers the harmful consequences. The administration of justice is directly affected, and the

certificate proceeding suffers the repercussions thereof. The interests of justice are not served in any way by such publication of information.

[83] Moreover, confirmation by a government source that top-secret information had been used earlier by the Canadian authorities in order to persuade a Federal Court judge to issue a security certificate respecting Mr. Charkaoui gives credit to the report, although this information is not accurate. It is not the judge who issues the certificate but rather the Ministers who co-sign it in order to file it with the Registry of the Court so that the designated judge may determine whether the certificate is reasonable. It is true, however, that the information is part of the Court record. It is also interesting to note that the evidence indicates that, following this confirmation, the decision was made by the newspaper to publish the information; in accordance with standard reporteric practice, information must be corroborated before it can be published.

[84] The leak of the document to the reporter Bellavance, the confirmation of the information by a government source and the publication of the information had a deleterious impact on the entire judicial system and the administration of justice.

[85] Furthermore, the publication of this information can have only harmful consequences for Mr. Charkaoui. His fundamental rights may be affected.

**(IV) Journalistic decision to publish the information**

[86] The evidence indicates that the CSIS document entitled *Former Terrorist Training Camps in Afghanistan: Major Sites and Assessment*, completed on April 12, 2003, was given to the reporter Bellavance by a human source in March 2007, at the time when the reporter was beginning to prepare the report. On or about June 17, 2007, five days before the report was published, the government source confirmed that the document obtained and the information concerning Mr. Charkaoui were genuine. In the days leading up to the publication, the reporters contacted Mr. Charkaoui and one of his lawyers, Ms. Doyon. In a memorandum, the reporter Toupin indicated on June 21, 2007, that [TRANSLATION] "for the time being, our lawyers were studying the matter". The Vice-President of News and Editor-in-Chief of *La Presse* at the time the decision was made to permit publication of the reports was informed about the contents of the document but did not know the name of the source behind the leak. However, he did know the name of the government source.

[87] In the June 22, 2007 editions of both *La Presse* and *Le Droit*, which have the same owner, the articles appeared with bold titles in order to capture the attention of the reader.

[88] In *La Presse*, we find the articles published with titles and accompanying photographs on pages A2 and A3 of the June 22, 2007 edition. We also find an article on CSIS there, and another on the case of Maher Arar.

[89] On the first page of the June 22, 2007 edition of *Le Droit*, we find the title "Charkaoui voulait être kamikaze, selon le SCRS" (Charkaoui wanted to be a kamikaze, according to CSIS),

with a reference to articles inside the newspaper on page 3 under the title “Les Services secret soupçonnent Charkaoui d’un scenario similaire au onze septembre” (The Secret Services suspect Charkaoui of having planned a scenario similar to September 11), with accompanying photographs.

[90] Given the objections raised against the questions, which are essential to the motion, the evidence has not to date indicated in a general way the reporteric work that formed the basis of the report and does not explain in what way the disclosure of this information is in the public interest. In this regard, counsel for the reporters stated the following during oral arguments in response to a question from the Court concerning the public interest:

> [TRANSLATION]
> The public interest is simple. There is a security certificate proceeding; people want to know what is happening, want to know how we are handling . . . (see page 43 of the transcripts)
>
> . . . but a distinction must be made in terms of the public interest; I discuss an article I am going to write and where my information comes from with my superiors. He did not disclose his source because he had a duty of confidentiality, in his mind, but at *La Presse* they analyzed; it’s his testimony, the article in terms of the public interest (see page 48 of the transcripts).

According to this reasoning, there must be disclosure as soon as the public’s curiosity is aroused, regardless of national security interests.

## (V) The Charter, freedom of expression, freedom of the press and our democratic system

[91] At this stage, the dispute involves individuals (the reporters and Mr. Charkaoui). If there were government action, it would fall within the scope of the motion to quash the certificate proceeding for abuse of process, but here again, for now, this is merely hypothetical.

[92] That said, the fact remains that the Charter and the principles set out in paragraph 2(*b*) must be taken into consideration when ruling on the objections to the questions.

> 2. Everyone has the following fundamental freedoms:
> (*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

[93] In *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, at paragraph 3, Cory J., writing on behalf of the Court, made the following observations concerning these fundamental rights:

> It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and uninhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasized.

[94] In a subsequent decision of the Supreme Court, *Canadian Broadcasting Corp. v. Lessard*, [1991] 3 S.C.R. 421, at paragraph 2, Laforest J. added to the concept advanced earlier by including the idea that freedom of the press and other media is essential in a democratic society and includes "the right to disseminate news, information and beliefs. This was the manner in which the right was originally worded, in the first draft of s. 2(*b*) of the *Canadian Charter of Rights and Freedoms* before its expansion to its present form". In the view of Laforest J., the right to disseminate news also includes the right to collect it.

[95] In that decision, although McLachlin J. (as she then was) was in the minority, she placed such importance on freedom of the press that, in her opinion, this fundamental right had to be interpreted "in a generous and liberal fashion having regard to the history of the guarantee and focusing on the purpose of the guarantee". She invoked the observations of Lord Denning M.R., in England, in *Senior v. Holdsworth, ex parte Independent Television News Ltd*,.[1976] 1 Q.R. 23 (C.A.), at page 34:

> [T]here is the special position of the reporter or reporter who gathers news of public concern. The courts respect his work and will not hamper it more than necessary.

[96] The Supreme Court has clearly recognized the essential importance of freedom of the press in a democratic society, but this freedom is not absolute. The press is protected against state interference, but not against all other interference. In this connection, L'Heureux-Dubé J. summarized the situation as follows in *Lessard, supra*, at page 15:

> Important as the constitutional protection of the freedom of the press is, it does not go as far as guaranteeing the press special privileges which ordinary citizens, also innocent third parties, would not enjoy in a search for evidence of a crime. The law does not make such a distinction and the *Charter* does not warrant it. In fact, the press itself does not generally request special privileges.

[97] These fundamental freedoms do not go so far as to provide a reporter with complete immunity. In this area, the Court must assess the facts and the fundamental freedoms at issue on a case-by-case basis in order to be able to balance them.

**(VI) Compellability of reporters as witnesses and application of the Wigmore tests**

[98] For the reasons indicated hereinabove, the reporters are called upon to testify in the current proceeding. They signed affidavits in support of the motion to quash the subpoenas and pleaded facts. The reporter Bellavance testified, and a number of objections were raised against the questions asked. At paragraphs 65, 66, 67 and 68, I have grouped the questions in relation to which objections were raised into three categories: the document, the reporteric work and the sources. The questions referring to the document will be considered differently, at the very end, since this a protected document in accordance with the dictates of national security. As far as the other two categories are concerned, they will follow this decision.

[99] In principle, reporters do not enjoy an immunity that would relieve them of the duty to testify when they have put their name to an article. They are compellable in the same way as any other person. Under the common law, they may enjoy a specific privilege that could relieve them of the duty to answer certain questions in certain circumstances.

[100] In *Moysa v. Alberta (Labour Relations Board)*, [1989] 1 S.C.R. 1572, the Supreme Court hesitated to express an opinion on the existence of such a privilege for reporters. It clarified its position later in *R. v. McClure*, [2001] 1 S.C.R. 445, which involved solicitor–client privilege.

[101] In that decision, Major J., writing for the Court, recognized at paragraphs 27 and 28 that it was necessary to maintain the confidentiality of certain communications; he invoked a class privilege and a privilege that could be protected on a case-by-case basis. The class privilege is one

that is recognized by the common law; there is a presumption of inadmissibility in principle if it is established that the relationship falls within such a category. One example is that of communications between a solicitor and his or her client. With respect to the second type of privilege, he made the following observations:

> Other confidential relationships are not protected by a class privilege, but may be protected on a case-by-case basis. Examples of such relationships include doctor–patient, psychologist–patient, reporter–informant and religious communications (see paragraph 29 of the decision).

[102] He added that, in order to assess this, it was necessary to make use of the tests set out by John Henry Wigmore in *Evidence in Trials at Common Law*, *supra*, at paragraph 56, where the four tests are stated.

**Test #1: The communications must originate in a confidence that they will not be disclosed**

[103] This test must be tailored to the circumstances of this case and militates in favour recognition of the privilege. According to the evidence, the two sources (the government source and the source of the document) required anonymity and confidentiality as a condition for disclosing the information. This is what emerges from the testimony of the reporter Bellavance, who was in contact with these persons. The communication was aimed at publication of the information disclosed, on condition that the identity of the sources not be divulged. This is what the sources wanted.

**Test #2: This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties**

[104] Wigmore's Test #2 relates to the first test and appears to militate in favour of recognition of a privilege. As has been indicated, anonymity and confidentiality characterize the relations between a reporter and his or her sources. Without an assurance from the reporter in this regard, the relationship would not have taken on concrete form such that the document was sent and the information verified. Thus, Test #2 militates in favour of the privilege.

**Test #3: The relation must be one which in the opinion of the community ought to be sedulously fostered**

[105] Test #3 may generally militate in favour of recognition of the privilege. In daily life, it is desirable that a reporter, for the purposes of his or her work, should maintain ties with well-placed people so that they can inform him of facts of public concern. Society encourages ties of this kind. However, given the facts in this case, it is not certain that public opinion encourages relationships in which secret information is passed on to a reporter and confirmed by people in a position to do so to. This same public opinion also wishes that the interests and the administration of justice should be maintained and respected and that proceedings under way might unfold in accordance with recognized rules, without inappropriate intervention from third parties protected by anonymity and confidentiality under the cover of a press protected by freedom of expression. If the Court disclosed this information, contrary to section 78 of the IRPA, would this same public opinion view the matter

with a favourable eye? The answer is obvious. The relationship between the source and the reporter forming the basis of the June 22, 2007 report runs counter to certain social values: respect for the laws governing society, respect for our judicial system, the proper functioning of the judicial system and respect for individual rights.

[106] However, it may be argued that disclosure of the identity of the sources would jeopardize reporteric sources for the future and that the sources would consequently dry up. Given the state of the record, I do not think I can accept this argument. Social values do not go so far as to endorse the leak of a secret document by a source to a reporter or its confirmation in violation of the law and their own undertaking not to disclose this kind of information, thus substantially harming the interests of justice, its administration, the proceedings under way and individual rights.

[107] Moreover, it is not necessarily true that all of the values associated with freedom of the press are protected by the Charter. The unlawfulness of a report has in the past drawn the eye of the courts. In *Lessard, supra*, in the analysis of paragraph 2(*b)* of the Charter in her dissenting opinion at page 30, McLachlin J. (as she then was) made the following observations:

> I add that it is not every state restriction on the press which infringes s. 2(*b*). Press activities which are not related to the values fundamental to freedom of the press may not merit *Charter* protection: see *Irwin Toy Ltd. v. Quebec (Attorney General*), *supra*. For example, the press might not be entitled to *Charter* protection with respect to documents relating to an alleged offence by the press itself.

[108] In *The Law of Evidence in Canada*, Second Edition, published by Butterworths, Sopinka, Lederman and Bryant made observations regarding the Wigmore tests. Reference is made to an

English case, *"X" Ltd. v. Morgan Grampian Publishers Ltd.* (1990), 110 N.R. 367 (H.L.), which quoted Lord Bridge at paragraph 19, page 375, where he weighed different public interests, in particular the manner in which the information was obtained:

> But another and perhaps more significant factor which will very much affect the importance of protecting the source will be the manner in which the information was itself obtained by the source. If it appears to the Court that the information was obtained legitimately this will enhance the importance of protecting the source. Conversely by, if it appears that the information was obtained illegally, this will diminish the importance of protecting the source unless, of course, this factor is counter balanced by a clear public interest in publication of the information, as in the classic case where the source has acted for the purpose of exposing iniquity.

[109] Regarding the argument that sources would dry up in the future if reporters were to reveal their sources, I note that the relationship between source and reporter is a very special one and that, when secret information is involved, social values are such that public opinion does not hold it in high regard. Moreover, the evidence, in particular the reporters' affidavits, does not reveal facts which clearly tend to confirm this theory. There is nothing more than general allegations.

[110] The Supreme Court decisions in *Moysa* and *Lessard, supra,* state that the "chilling effect" must be proven with supporting evidence. Simply put, it is not enough to invoke the possibility of sources drying up. Evidence must be put forward. In the interest of clarifying this point, I quote from the following excerpts from those decisions:

> Sopinka J.
>
> Even if I assume for the moment that the right to gather the news is constitutionally enshrined in s. 2(*b*) the appellant has not demonstrated that compelling reporters to testify before bodies such

> as the Labour Relations Board would detrimentally affect reporters' ability to gather information. No evidence was placed before the Court suggesting that such a direct link exists. While judicial notice may be taken of self-evident facts, I am not convinced that it is indisputable that there is a direct relationship between testimonial compulsion and a "drying-up" of news sources as alleged by the appellant.
> (*Moysa, supra*, at page 10)

Laforest J., writing for the majority in *Lessard, supra*, had this to say at page 12 in response to the argument that a general prohibition against searches of media premises is necessary to prevent the drying-up of sources:

> . . . I am, on the whole, of the opinion that this connection is simply too attenuated; see *Moysa v. Alberta (Labour Relations Board)*, [1989] 1 S.C.R. 1572, at p. 1581, where compulsion of testimony from a reporter was held not to violate s. 2(*b*) in the absence of evidence that such compulsion would detrimentally affect the reporter's ability to gather information. Should there be evidence in a future case that this does indeed give rise to a real problem, the issue can be addressed at that time.

[111] The application of Test #3 to the facts of this case does not militate in favour of the recognition of a privilege.

**Test #4: The injury that would be caused to the relationship by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation**

[112] Test #4 entails a balancing of two conflicting imperatives where one must prevail over the other. In other words, it must be shown that if the confidentiality of the sources is removed, there will be permanent injury to the source- reporter relationship that will outweigh the resulting benefit.

[113] Will the source–reporter relationship sustain permanent injury if the names of the sources are revealed? There is no doubt that, in the case at bar, the relationship between the sources and reporter Bellavance would be irrevocably broken. However, other existing and future source-reporter relationships would not necessarily be broken. The difference between these relationships is that the relationship between Bellavance and his sources is based on the unlawful disclosure and confirmation of a secret document and information for publication, which directly affects the justice system, the administration of justice, the current proceeding and some of Mr. Charkaoui's basic rights, whereas the other relationships have a different basis. The relationships underlying the articles and the publication of information on June 22, 2007, are at odds with the duties imposed by the IRPA. In the field of journalism, it is normal to have contacts in the realms of politics, labour relations, government and so on. Such contacts promote freedom of expression and thus ensure the exchange of ideas and opinions in the interests of a free and democratic society. Reporters' contacts would not be affected by disclosure of the names of the

sources that the reporter Bellavance used for the articles that appeared in the daily newspapers *La Presse* and *Le Droit* on June 22, 2007.

[114] In contrast, Mr. Charkaoui is entitled to produce the necessary evidence related to his motion to quash the certificate proceeding for abuse of process. Of course, he has to produce or endeavour to obtain relevant evidence for his motion. He has the right to do so using traditional evidentiary means. He is trying to show that disclosure of the information in the reports is unlawful, abusive, prejudicial and attributable to a government body. To get to the bottom of the matter, he needs reporteric information to demonstrate the provenance of the information and the reasons for this action. Mr. Charkaoui likens his situation to that of Maher Arar, who was the subject of disturbing leaks. In his *Report of the Events Relating to Maher Arar* (*supra*), Factual Background, Volume II, page 490, O'Connor J. made the following observation about one of the leaks:

> This leak has troubling implications. It is very disturbing that a government official or officials chose to breach the confidentiality that was essential in conducting the Inquiry's *in camera* hearings.

The same is true in the case at bar, which, moreover, involves judicial proceedings.

[115] The result for Mr. Charkaoui was that the press portrayed him as a suicide attacker, according to CSIS, and implicated him in an terrorist plot, which is extremely serious.

[116] Mr. Charkaoui has no other way to get to the bottom of things and produce the evidence he believes is essential to his motion to quash the certificate proceeding for abuse of process. Upholding the objection and not revealing the information could hinder the case.

[117] With regard to Wigmore's fourth test, I therefore hold that the identification of press sources will not cause permanent injury to source–reporter relationships because of the very specific circumstances of the case. Far more importantly, the information sought by Mr. Charkaoui goes straight to the heart of the objectives of his motion.

**(VII) Decisions concerning the objections to the questions**

[118] Before moving on to the final stage, which is to rule on the objections to more than 20 questions put to reporter Bellavance, I would like to point out that I had considered proceeding in stages, that is, by dealing with the questions related to the secret document, followed by those related to the reporteric work, and suspending the objections raised against the questions asking that the sources be revealed. The objective of such an approach would have been to determine whether the answers to the questions about the secret document and the reporteric work would be sufficient to establish relevant evidence for the motion to quash the certificate proceeding for abuse of process. After careful consideration and taking into account the parties' and the Court's knowledge of the proceeding and the issues, I chose otherwise. The questions related to the document, the Court's knowledge of its content and the limits on disclosure imposed by the IRPA will not provide the clarifications needed for the motion to quash the certificate proceedings. Journalism is intrinsically linked to the sources on which reports are based. For that reason, it is impossible to separate one from the other. That is abundantly clear in reading the questions in Schedule B. However, disclosure of the names of the sources is more important for Mr. Charkaoui's motion, and

he currently has no other way to obtain that information. The administrative and police investigations now under way are of no use to him

[119] The Court is fully aware of the importance of this decision, knowing full well what journalism entails and the position reporter Bellavance is in. The Court also bears in mind the comments made by McLachlin C.J. quoted at paragraph 95 of this decision concerning journalism and the fact that "[t]he courts respect his [the reporter's] work and will not hamper it more than is necessary". This is an extraordinary case that calls for an extraordinary solution.

[120] However, in view of the facts and all the issues, the greater public interest demands that the truth be told as to the origin of the leak of a secret document, its confirmation and the significant impact on the justice system, the administration of justice and Mr. Charkaoui's fundamental rights. That public interest trumps the other interests at stake. Given the unique circumstances of this case, the justice system must be able to get to the root of the matter for the purposes of the motion if justice is to be served. Preventing the system from doing its work for reasons of freedom of expression, freedom of the press or a public interest associated with the articles published in June 2007 would not serve the interests of justice. It would seem to me that the justice system cannot be shackled in such circumstances.

[121] It should be noted that the Court, at paragraphs 65, 66, 67 and 68 of this decision, consolidated the questions to which objections were raised into three categories: questions related to

the secret document, questions related to journalism and questions related to sources. I will therefore rule in three stages in the paragraphs that follow.

**Questions related to the secret document: 10, 16, 18 and 19 (3, 21 and 23 in Schedule B)**

[122] At paragraphs 16 and 19 of this decision, the Court answered the seven questions asked by counsel for Mr. Charkaoui regarding the secret document and included a summary of additional evidence (see Schedule "A"), taking into account the obligations set out in paragraph 78(*h*) of the IRPA. The Court also stated that because the document was classified secret and the Court's reading confirmed the accuracy of that classification for the document as a whole (although some of the information in the document should have been classified top secret), the secret document will be treated confidentially by the Court in accordance with paragraph 78(*b*) of the IRPA, which authorizes the designated judge to act upon receiving "any other evidence".

[123] For these three categories, the Court notes that several questions were answered during the cross examination of reporter Bellavance. To be more specific, the following is a list of the questions answered, with references to the pages of the transcript of the examination containing the answers or to the relevant paragraphs of this decision: question 1 (see page 68), question 10 (see pages 101, 102, 103 and 104), question 13 (see pages 125, 126 and 127), question 14 (see pages 125, 126 and 127), question 15 (see pages 134, 191 and 192), question 16 (see paragraph 19 of this decision), question 17 (see page 192), question 18 (see page 159) and question 19 (see paragraph 19 of this decision).

[124] Regarding the questions in the document category, the only questions on which a ruling still has to be made are questions 3, 21 and 23. I direct the reader to Schedule B for the text of the questions. Question 3 deals in part with the secret document and pertains to the reporteric work involved. Initially, the objection was based on the possibility of revealing the reporter's source, section 38 of the *Canada Evidence Act* and section 78 of the IRPA. The Court has already decided to deal with the secret document in accordance with the requirements of section 78 of the IRPA. Relevance was not the basis of the objection. It bears noting that Mr. Bellavance's affidavit in support of the motion to quash the subpoenas refers to the reporteric work underlying the June 22, 2007 reports. The objection is dismissed, and question 3 will be allowed. The same holds true for question 23. The aim of the question was not to verify the reporter's work, but rather the work done to verify the trustworthiness and authenticity of the document and the accuracy of the information prior to June 22, 2007. The question will be allowed if the objectives of the motion to quash and the procedural issues are taken into consideration.

[125] The purpose of question 21 is to obtain information about the content of the secret document. According to the confidentiality requirements imposed on the designated judge by paragraph 78(*b*) of the IRPA, the objection is upheld. The Court has already revealed what it can.

**Questions related to the journalism (1, 13, 14, 20 and 25 in Schedule B)**

[126] As I stated at paragraph 123, questions 1, 13 and 14 have been answered. The only remaining objections are those relating to questions 20 and 25. The reporteric work is addressed in the affidavits from reporters Bellavance and Toupin. There is a contradiction between the reporters'

versions and that of Mr. Charkaoui with regard to some of the facts arising from telephone conversations. Moreover, for the purpose of the motion to quash the certificate proceeding, the objections to the questions are related to issues associated with the principal motion and are relevant. The same is true for question 25. The objections are dismissed, and the questions will be allowed.

**Questions related to the sources (2, 4, 5, 6, 7, 8, 9, 11, 12, 15, 17, 22 and 24 in Schedule B)**

[127] As we saw earlier, questions 15 and 17 have been answered. Regarding the objections related to the other questions about sources, for the reasons stated in this decision, the objections to those questions are dismissed, and the questions will be allowed. The questions are relevant to the motion to quash the certificate proceeding, and, in balancing all the interests at stake, it is possible to hold that the interests of justice, the administration of justice, the proceedings under way and Mr. Charkaoui's fundamental rights outweigh freedom of the press and the protection of sources. It is in the interests of justice that the matter be brought into the light of day and that the examination of Mr. Bellavance continue, with the examination of Mr. Toupin to follow.

## (G) Conclusion

[128] Having noted that answers have been given to many of the questions to which objections were raised during the examination on affidavit of Mr. Bellavance, the Court upholds the objection concerning question 21 but dismisses the other objections. The other questions will therefore be allowed. The parties are asked to propose a schedule for the resumption of the hearings.

**(H) Costs**

[129] In view of my decision, costs in this motion are allowed in favour of Mr. Charkaoui and against the interveners.

**(I) JUDGMENT**

**FOR ALL THESE REASONS, THE COURT:**

- Dismisses the motion to quash the subpoenas *duces tecum*;
- Upholds, in accordance with Schedule B hereto, the objection concerning question 21;

  and
- Dismisses the other objections and allows the questions.
- Allows costs in favour of Mr. Charkaoui and against the interveners.
- Invites the parties to contact the Registry of this Court to reschedule the hearing.

**"Simon Noël"**

**Judge**

Certified true translation
François Brunet, LL.B., BCL

## Schedule A

- Summary of additional evidence following publication of reports in daily newspapers *La Presse* and *Le Droit* on June 22, 2007;

## Schedule B

- List of questions with reasons for objection and summary of decision;

## Schedule C

- Article 6 of the *Professional Code of Ethics for Quebec Journalists*, regarding reporters' sources;

**SCHEDULE A**

Docket: DES-3-03

**FEDERAL COURT**

**IN THE MATTER OF** a certificate pursuant to subsection 77(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), signed by the Minister of Immigration and the Solicitor General of Canada (Ministers);

**IN THE MATTER OF** the referral of this certificate to the Federal Court of Canada pursuant to subsection 77(1) and sections 78 and 80 of the IRPA**;**

**IN THE MATTER OF** the publication of articles in the daily newspapers *La Presse* and *Le Droit* on June 22, 2007;

**CONCERNING:**

**ADIL CHARKAOUI**

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**SUMMARY OF ADDITIONAL INFORMATION IN ACCORDANCE WITH PARAGRAPH 78(*h*) OF THE *IMMIGRATION AND REFUGEE PROTECTION ACT***

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January 18, 2008

**INTRODUCTION**

1. The Canadian Security Intelligence Service (the Service) believes that Adil CHARKAOUI, a permanent resident born July 3, 1973, in Mohammedia, Morocco, and residing at _____, should be inadmissible on security grounds under section 33 and paragraphs 34(1)(*c*), 34(1)(*d*) and 34(1)(*f*) of the *Immigration and Refugee Protection Act* (the Act). On May 16, 2003, the Minister of Citizenship and Immigration and the Solicitor General of Canada, now Minister of Public Safety and Emergency Preparedness (the Ministers) signed a certificate attesting that CHARKAOUI is inadmissible on security grounds under subsection 77(1) of the Act, and a warrant for arrest and detention under subsection 82(1).

2. The Federal Court has since ordered Mr. CHARKAOUI released. In reasons dated February 17, 2005,[1] the Federal Court stated that it had reasonable grounds to believe that the danger associated with Mr. CHARKAOUI had been neutralized and that he would likely not fail to appear at a proceeding or for removal, if applicable. As it had not heard all of the evidence, and to ensure continued neutralization of the danger, the Court imposed preventive conditions of release, set out in the judgment dated February 17. The conditions were later amended.

3. On June 29, 2007, following the publication of the article entitled “Exclusif une enquête de La Presse Charkaoui a-t-il discuté d’un attentat?” in the newspaper *La Presse* on June 22, 2007, the Ministers requested a hearing in the absence of Mr. Charkaoui and his counsel under paragraph 78(*e*) of the Act. Ms. LaRochelle objected verbally and in writing to the holding of such a

hearing. On June 29, 2007, the Court granted the Ministers' request. On July 5, 2007, the Court held a hearing in the absence of Mr. Charkaoui and his counsel.

**Hearing of July 5, 2007**

4. At the hearing, which lasted approximately two and a half hours, counsel for the Ministers submitted the following newspaper articles: an article from *La Presse* dated June 22, 2007, entitled "Exclusif une enquête de La Presse Charkaoui a-t-il discuté d'un attentat?"; the transcript of Mr. Charkaoui's press conference with television station RDI, dated June 22, 2007; and an article from *The Globe and Mail* dated July 5, 2007, entitled "CSIS, RCMP tracing leak of terrorism allegations against Charkaoui".

5. Counsel for the Ministers summoned two persons to testify. The first witness is an employee of the Service, a manager. The witness testified about his/her experience, as well as his/her expertise and participation in the Service's internal investigation. The witness testified about the timeline of events. He or she also stated that the Service's internal investigation had not been completed and that the Service had asked the Royal Canadian Mounted Police (RCMP) to open a criminal investigation. The Court asked this manager several questions related to the allegations against Mr. Charkaoui that had appeared in the media. The Court also asked several questions regarding the Service's internal investigation. The Court intends to monitor the progress of the investigations currently under way, given its duties under paragraph 78(*b*) of the Act.

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[1] *Re Charkaoui*, [2005] 3 F.C.R. 389

6. Counsel for the Ministers then summoned a second person to testify. The second witness is an employee of the Service, also a manager. The witness testified about his/her experience, as well as his/her expertise and involvement in the case. This individual commented on certain aspects of the case before the Court. More specifically, the witness referred to certain documents in the secret documentation files already filed in Federal Court in connection with the certificate proceeding. The Court asked the manager several questions, in particular about the origins and trustworthiness of certain documents in the secret files. The Court also questioned the manager about the allegations made in the *La Presse* article, *supra*.

**Summary of information that may be disclosed to Mr. Charkaoui**

7. In accordance with paragraph 78(*b*) of the Act, counsel for the Ministers made oral submissions to the Court regarding the non-disclosure of classified information. At issue were the reasons why a detailed summary of this information could not be prepared. According to counsel for the Ministers, the disclosure of this information would be injurious not only to national security, but also to the safety of a person or persons.

8. Following the Court's instructions, counsel for the Ministers prepared a draft summary and filed it on July 10, 2007, in accordance with paragraph 78(*h*) of the Act. The Court subsequently made substantial amendments to the draft summary following the hearing in the absence of Mr. Charkaoui and his counsel which took place on July 13, 2007.

**Conclusion**

9. The Court is of the opinion that its first objective is to give Mr. Charkaoui as much information as possible so that he is able to answer the allegations made against him in the certificate. While mindful of its duty to ensure the confidentiality of information affecting national security or the safety of any person, the Court held that it was in the interests of justice to disclose a summary of information to Mr. Charkaoui. The Court drafted a summary and disclosed it orally to Mr. Charkaoui's counsel on July 16, 2007. Through his counsel, Mr. Charkaoui asked that the summary not be made public, given the motion to quash the proceeding for abuse of process, and because publication could compound the harm done to him by the *La Presse* article.

10. It is in the interests of justice and of Mr. Charkaoui that a summary of additional evidence be filed on the public record of this proceeding. The Federal Court took note of the allegations made against Mr. Charkaoui in the newspaper *La Presse* on June 22, 2007. The Court confirms the existence of the document mentioned in the newspaper articles. In July 2007, the Court was not in a position to confirm the authenticity of the document. Since then, the Court has taken cognizance of the document, which was submitted by the reporter Bellavance. This document was not part of the secret documentation submitted to the Court in May 2003. However, the information revealed in the June 2007 newspaper articles was. The Federal Court confirms that is has unproven information in its possession that correspond in large part to the information related in the *La Presse* article concerning Mr. Charkaoui. According to this information, at a June 2000 meeting in the presence of two individuals, Mr. Charkaoui discussed hijacking a commercial airliner for an attack. This

information is already included, in a general way, in the public summary of information dated May 20, 2003, at paragraph 35. The Court notes that the information in its possession was not assessed in terms of the reasonableness of the certificate. To date, this information remains unproven. The Court also confirms that it has unproven information alleging that Mr. Charkaoui travelled to Afghanistan in early 1998 to receive military and theological training at the Khalden camp.

# Schedule B

- List of questions with reasons for objection and summary of decision;

# SCHEDULE B

[TRANSLATION]

**EXAMINATION ON AFFIDAVIT OF JOËL-DENIS BELLAVANCE, SEPTEMBER 24, 2007**
**QUESTIONS RELATED TO THE SECRET DOCUMENT**

| OBJ. # (x) | Question | Page of Transcript (xx) | Reasons for Objection (xxx) | Decision (xxxx) |
|---|---|---|---|---|
| 3 | What are the documentary sources? | 81 | Privileged communication: question likely to disclose reporter's source; AND section 38 of *Evidence Act*; section 78 of *Immigration and Refugee Protection Act;* | Objection overruled |
| 10 | And when you say, "This information, including the document, was used by Canadian authorities to obtain a security certificate from a Federal Court judge", does this come from the disclosed information or the document, or is it your own interpretation? Therefore, information from the source? | 102 | Privileged communication: question likely to reveal source. | Answer: Pages 101, 102, 103, 104 |
| 16 | Regarding the document in your possession, is it because of its format that it was identified as "classified top secret" or "classified secret", or was there a note leading you to say at some point in your newspaper article that it was top secret? | 137 | Objection by Ministers: section 38 of the *Evidence Act.* | Answer: Paragraph 19 of decision |
| 18 | Were you yourself, at any rate, the phrase will perhaps seem obvious to you, but you were not authorized to have that document, as I understand it? | 157 | Question of law. Answer could incriminate witness. Objection withdrawn after rephrasing. | Answer: Page 159 |
| 19 | Who had signed that document? | 165 | Objection by Ministers: paragraph 38.01(*c*) of the *Evidence Act.* | Answer: Paragraph 19 of the decision |
| 21 | Did the document concern Mr. Arar? | 186 | Objection by Ministers: paragraph 38.01(*c*) of the *Evidence Act.* | Objection upheld |
| 23 | How did you go about verifying the trustworthiness, authenticity and truth of the information and the document before publishing it? | 194 | Relevance: The purpose of the examination is not to assess the quality of his work as a reporter. | Objection overruled |

*(x) The numbers associated with the questions are in the order the objections were made in the course of the examination on affidavit of J. Denis Bellavance.*
*(xx) The number indicates the page of the transcript where the question, the objection and the beginning of the submissions are found.*
*(xxx) The Reasons for Objection column contains a brief summary of the grounds on which the objection is based.*
*(xxxx) Several objections were resolved at the examination. This column contains the decision.*

## QUESTIONS RELATED TO THE JOURNALISTIC WORK

| OBJ. # (x) | Question | Page of Transcript (xx) | Reasons for Objection (xxx) | Decision (xxxx) |
|---|---|---|---|---|
| 1 | Does *La Presse* have any specific policy regarding the anonymity of sources or, if not, a general one? | 59 | Objection withdrawn | Answer: Page 68 |
| 13 | You had a discussion over the telephone. Is it true to say that, at that time, you were afraid that there would be a search? | 112 | Relevance | Answer: Pages 125, 126, 127 |
| 14 | Is it true that, when you talked to Mr. Charkaoui, you were afraid that there would be a search? | 119 | Relevance | Answer: Pages 125, 126, 127 |
| 20 | Did you also contact, apart from Mr. Charkaoui, the other person? Did you contact this person to verify the authenticity or truth? | 181 | Privileged communication: question likely to reveal source, verification of sources' trustworthiness; and Relevance: The purpose of the examination is not to assess the quality of the witness' work as a reporter. | Objection overruled |
| 25 | Are you aware of the reason for the publication timing here? | 219 | Relevance; and This is not the appropriate witness. | Objection overruled |

## QUESTIONS RELATED TO THE SOURCES

| OBJ. # (x) | Question | Page of Transcript (xx) | Grounds of Objection (xxx) | Decision (xxxx) |
|---|---|---|---|---|
| 2 | So, the question is, the sources you mention as being confidential at paragraph 3 of your affidavit, were they sources known to you before the article on Mr. Charkaoui was prepared? | 77 | Privileged communication: question likely to disclose reporter's source; | Objection overruled |
| 4 | Do they work for the Canadian government? | 82 | Privileged communication: question likely to disclose reporter's source; and Section 38 of the *Evidence Act*; section 78 of the *Immigration and Refugee Protection Act*; | Objection overruled |
| 5 | Can we know whether the sources are, I will ask the question, but whether they work, at the time they made the disclosure to you, whether they worked for the government? | 82 | Privileged communication: question likely to disclose reporter's source; and Section 38 of the *Evidence Act*; section 78 of the *Immigration and Refugee Protection Act;* | Objection overruled |
| 6 | What were the source's motivations in asking for anonymity? | 84 | Privileged communication: question likely to disclose reporter's source. | Objection overruled |
| 7 | At the very least, did he or she give you any reasons? Did he or she give you any reasons for needing anonymity? | 86 | Question rephrased and objection withdrawn. | Objection overruled |
| 8 | Were you interested in the source's motives? | 91 | Privileged communication: question likely to disclose reporter's source and Relevance | Objection overruled |

| OBJ. # (x) | Question | Page of Transcript (xx) | Ground of Objection (xxx) | Decision (xxxx) |
|---|---|---|---|---|
| 9 | So, could you perhaps tell us, when you say, let us begin by finding out when he or she confirmed it for you? When? | 93 | Privileged communication: question likely to reveal source;<br>and<br>Relevance | Answer:<br>Page 100 |
| 11 | Is this government source the same one who leaked the document to you? | 104 | Privileged communication: question likely to reveal source. | Answer:<br>Page 192 |
| 12 | Were you in contact, in any way whatsoever, while preparing your article, were you in contact with officials, with officers of the Canadian Service, CSIS? | 112<br>(page 119) | Privileged communication: question likely to reveal source. | Objection overruled |
| 15 | You are not answering the question. Did they know your sources? | 134 | Relevance | Answer:<br>Pages, 134, 191, 192 |
| 17 | This information comes from another human source? | 146 | Privileged communication: question likely to reveal source. | Answer:<br>Page 192 |
| 22 | And the government source, did he or she… did he or she… which department is the government source from? | 192 | Privileged communication: question likely to reveal source, verification of trustworthiness of source. | Objection overruled |
| 24 | What is the source of the document leak? What is the name of the source? What is the title of the source who leaked the document? What is the department where the source works, or worked, and does the source still work there? | 202 | Privileged communication: question likely to reveal source. | Objection overruled |

# Schedule C

- Article 6 of the *Professional Code of Ethics for Quebec Journalists*, regarding reporters' sources;

| | |
|---|---|
| 6. Protection of sources and reporteric material<br>Journalists must identity their sources so that the public can best evaluate their competence, credibility and interests. | 6. Protection des sources et du matériel<br>Les reporteres doivent identifier leurs sources d'information afin de permettre au public d'évaluer le mieux possible la compétence, la crédibilité et les intérêts défendus par les personnes dont ils diffusent les propos. |
| 6(a) Anonymity | 6 a) Anonymat |
| In some cases reporters cannot gather and disseminate important information without guaranteeing their sources complete anonymity. Yet some people may use this anonymity to manipulate public opinion with impunity or to cause harm to individuals without assuming responsibility. | Des informations importantes ne pourraient cependant être recueillies et diffusées sans que les reporteres ne garantissent l'anonymat à certaines sources. Cet anonymat peut toutefois servir aux sources pour manipuler impunément l'opinion publique ou causer du tort à autrui sans assumer la responsabilité de leurs propos. |
| Anonymity should be granted only as a last resort and in exceptional circumstances: | Il ne sera donc accordé, en dernier recours, que dans des situations exceptionnelles: |
| | * L'information est importante |

* when the information is important and there are no other identifiable sources to provide it;

* when the information is of public interest;

* when the sources seeking anonymity could suffer prejudice if their identities were revealed.

In these cases, reporters should explain the justification for anonymity, and without identifying the sources, provide a sufficient description so that the public can appreciate the sources' skills, interests and credibility.

6(b) Promise of confidentiality

Unless they have been intentionally deceived by their sources, reporters must always respect a promise of anonymity. Journalists can reveal the identity of a confidential source to their superiors, but only if the latter also agree to respect the promise of confidentiality.

6(c) Journalistic material

Whether published or not, reporteric material (notes,

et il n'existe pas d'autres sources identifiables pour l'obtenir;

* L'information sert l'intérêt public;

* La source qui désire l'anonymat pourrait encourir des préjudices si son identité était dévoilée.

Les reporteres expliqueront la préservation de l'anonymat et décriront suffisamment la source, sans conduire à son identification, pour que le public puisse apprécier sa compétence, ses intérêts et sa crédibilité.

6 b) Promesse de confidentialité

Les reporteres qui ont promis l'anonymat à une source doivent tenir leur promesse, devant quelque instance que ce soit, sauf si la source a volontairement trompé le reportere. Un reportere peut cependant informer son supérieur de l'identité d'une source confidentielle si celui-ci respecte également la promesse de confidentialité faite par le reportere.

6 c) Matériel reporterique

Le matériel reporterique publié ou non (notes, photos, bandes vidéo etc) n'est destiné qu'à l'information du public. Il

photographs, videos, etc.) should only be used to inform the public. Journalists should not provide material for any other purposes.

6(d) Journalists as witnesses

Journalists must not act as police informers. In court, they should only reveal information that has already been made public in the media.

6e) Paying sources

Journalists and news organizations must not pay people who act as information sources.

ne saurait être transmis par les reporteres aux instances qui veulent l'utiliser à d'autres fins.

6 d) Témoignage des reporteres

Les reporteres ne sont pas des informateurs de la police. Ils ne dévoilent en cour que les informations qu'ils ont déjà rendues publiques dans leur média.

6 e) Rémunération des sources

Les reporteres et les entreprises de presse ne versent aucune rémunération aux personnes qui acceptent d'être leurs sources d'information.

**FEDERAL COURT**
**SOLICITORS OF RECORD**

**DOCKET:** **DES-3-03**
**STYLE OF CAUSE:**

**IN THE MATTER OF** a certificate pursuant to subsection 77(1) of the *Immigration and Refugee Protection Act,* signed by the Minister of Immigration and the Solicitor General of Canada (Ministers) S.C. 2001, c. 27 (IRPA);

**IN THE MATTER OF** the referral of this certificate to the Federal Court of Canada pursuant to subsection 77(1) and sections 78 and 80 of the IRPA;

**IN THE MATTER OF** a motion to quash subpoenas *duces tecum* filed by Joël-Denis Bellavance and Gilles Toupin ("the interveners") and objections arising from questions asked at an examination on affidavit

**AND IN THE MATTER OF**
Mr. Adil Charkaoui

**DATE OF HEARING:** Montréal, September 11 and 25, 2007, and October 25, 2007

**REASONS BY:** The Honourable Mr. Justice Simon Noël

**DATED:** January 18, 2008

**APPEARANCES:**

| | |
|---|---|
| Daniel Roussy<br>Luc Cadieux | FOR THE SOLICITOR GENERAL OF CANADA |
| Daniel Latulippe | FOR THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| Dominique Larochelle<br>Johanne Doyon | FOR ADIL CHARKAOUI |
| Christian Leblanc | FOR THE INTERVENERS JOËL BELLAVANCE |

| | |
|---|---|
| Chloé Latulippe | GILLES TOUPIN |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| John H. Sims<br>Deputy Attorney General of Canada | FOR THE SOLICITOR GENERAL OF CANADA AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
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