

No. DES-7-08

FEDERAL COURT OF CANADA

IN THE MATTER OF a certificate signed pursuant to subsection 77(1) of the *Immigration and Refugee Protection Act (IRPA)*;

AND IN THE MATTER OF the referral of a certificate to the Federal Court of Canada pursuant to subsection 77(1) of the *IRPA*;

AND IN THE MATTER OF Mohamed Zeki MAHJOUB

AFFIDAVIT

I, Mohamed Zeki Mahjoub, of the city of Toronto, province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Applicant herein;
2. All the facts stated in the notice of motion for a permanent stay of proceedings & other remedies prepared by my public counsel are true;
3. In July 2011, the documents in public counsel's break-out room at the Federal Court in Toronto were constituted of confidential and privileged material, notably:
  - procedures annotated by Public counsels and by me;
  - hand-written and/or computerized notes on legal strategy and other privileged information by public counsel and by me;
  - public counsel's preparation of cross-examinations of past and future witnesses;
  - all exhibits with handwritten annotations, underlining and marginal notes;
4. Many of public counsel's documents in the break-out room contained, on their front page, pasted notes written by my counsel and me that can easily be read by DOJ and that will advantage them;

5. The documents in public counsel's break-out room were clearly privileged, as they were subject to solicitor-client privilege and litigation privilege, and contained strategic information sensitive to the preparation of my case and the allegations at issue;
6. In July 2011, public counsel had left the equivalent of approximately a dozen boxes of their documents in the break-out room at the Federal Court;
7. In July 2011, before the Department of Justice (hereafter: DOJ) took possession of our documents, the majority of public counsel's documents were not already in boxes in the break-out room but were loose on the table and on the floor, while some other of public counsel's documents were already packed in 2 or 3 boxes approximately;
8. I believe that the seizure and/or possession by DOJ of the entirety of my confidential and privileged documents that were originally in the Court break-out room has violated my right to retain and communicate in private with my lawyers;
9. My right to retain and communicate in private with my lawyers has repeatedly been violated by CSIS and/or CBSA since 1996 until 2010 during the investigation as well as during the Court proceedings;
10. Indeed, my right to solicitor-client privileged communications has been systematically violated by CSIS for years, from approximately 1996 to 2006, as a result of the application of OPS-211, as established by Ted Flanigan's testimony in December 2010, among others;
11. My right to solicitor-client privileged communications has also been violated following the April 2007 Order where CSIS and CBSA unlawfully intercepted, recorded, listened to, analysed and gained advantage by intercepting privileged conversations between me, my wife or my step-son and my lawyers;

12. Moreover, by application of OPS-211, evidence and/or information have been unconstitutionally collected from the interception of solicitor-client privileged conversations between Mr. Jaballah and his lawyers and other individuals and used in the CSIS investigation and/or the Court proceedings against me;

13. I attach as Exhibit "A" to this affidavit the Order dated November 26, 2010 in *Re Jaballah*, DES-6-08, with the attached summaries of warrants and affidavits;

14. All the facts stated herein are true.

IN WITNESS WHEREOF, I HAVE SIGNED,

In Toronto,

On this 20<sup>th</sup> September, 2011

Mohamed Zeki Mahjoub

Mohamed Zeki Mahjoub

Sworn before me,

In Toronto,

On this Sept 20, 2011

William E Naylor

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L.S.U.C.

William E Naylor