

Federal Court



Cour fédérale

Ottawa, February 17, 2017 – In an application before the Honourable Simon Noël, a designated judge, the Court issued confidential reasons for judgment. Redactions were then proposed by counsel for review by the Court to allow for issuance of public reasons. A public version of the confidential Judgment and Reasons with citation 2017 FC 136 was issued today.

Summary: The question before the Court was whether the CSIS human source privilege contained in section 18.1 of the *Canadian Security Intelligence Service Act* [the “Act”] was applicable to designated judges.

Based on a reading of the Act as a whole and on the practical context in which it is applied, the Court concluded that the section 18.1 human source privilege is not applicable to designated judges.

Accordingly, the Court concluded that designated judges can bring up issues regarding disclosure of CSIS human source information *de facto*. An application under subsection 18.1(4) of the Act is a mechanism available to the parties allowing them to raise the issue of disclosure if necessary and the matter will be referred to a designated judge. The legislator did not intend to restrict the designated judges’ abilities to properly fulfil their duties of ensuring fairness and maintaining the proper administration of justice by limiting their power to question and address the appropriateness of communicated information over the course of *ex parte*, *in camera* proceedings. Furthermore, given the designated judges’ overriding responsibility to ensure fairness and the proper administration of justice, this conclusion applies to all relevant situations in the field of national security where confidential information and CSIS human source issues can arise.

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The public version of the judgment and reasons can be obtained via the Web site of the Federal Court:
http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Index

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