



Ottawa, February 4, 2022 – A public version of the confidential decision in file 2021 FC 541 was issued today by the Honourable Justice Catherine Kane of the Federal Court:

**IN THE MATTER OF AN APPLICATION BY XXX FOR WARRANTS
PURSUANT TO SECTIONS 12 AND 21 OF THE CANADIAN SECURITY
INTELLIGENCE SERVICE ACT, RSC 1985, c C-23 AND IN THE MATTER OF
ISLAMIST TERRORISM, XXX**

Summary: The Canadian Security Intelligence Service (CSIS or the Service) had obtained warrants from the Federal Court with respect to the target pursuant to the *Canadian Security Intelligence Act (CSIS Act)*. The warrants were issued by Justice Mosley in 2017 and by Justice Kane in 2018. The warrants expired in 2019. In 2019, pursuant to its duty of candour, the Service informed the Court that it had become aware that activities of sources, whose information had been relied on in support of the 2017 and 2018 applications for the warrants, were contrary to the terrorist financing provisions of the *Criminal Code*. Justice Kane proceeded to examine the effects of this newly disclosed information on the issued warrants, including whether the Service could retain the information gathered as a result of the execution of the warrants.

The Court adopted the analytical framework previously outlined by Justice Gleeson in *Sections 12 and 21 of the Canadian Security Intelligence Service Act, RSC 1985, c C-23 (Re)*, 2020 FC 616. This framework provides that when faced with the review of a previously issued warrant, a designated judge may commence with a sufficiency assessment after automatically excluding the impugned information as an initial procedural step. If automatic excision leads to the conclusion that the warrant could not have issued, then the designated judge must engage in a full balancing analysis prior to reaching a final conclusion on the question of whether the warrant could have issued. This balancing exercise should take into account the (1) seriousness of the illegal activity, (2) fairness, and (3) societal interest.

The Court proceeded with a sufficiency assessment. With respect to the 2017 warrants, the Court concluded that there was sufficient information in support of the application for warrants that was derived from activities of the sources that did not contravene the terrorist financing provisions. The Court noted that at the time of those activities, the target's conduct had not yet risen to the level of terrorist activity. As a result, the 2017 warrants could have issued.

With respect to the 2018 warrants, the Court concluded that even if the information derived from illegal activities of the sources were excised, sufficient information remained to support the issuance of the warrants.

The Court noted that following recommendations in Justice Gleeson's decision in 2020 FC 616, the National Security and Intelligence Review Agency is conducting a review to identify systemic, governance and cultural shortcomings that have resulted in CSIS engaging in operational activity that it has conceded was illegal and in breach of its duty of candour. The Court further noted that this review will address institutional challenges that contributed to the failure to disclose relevant information to the Court in these warrant applications.

A copy of the decision can be obtained via the [website](#) of the Federal Court:

<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/520803/index.do>.