



Anonymity and confidentiality before the Federal Court

Notice to NGOs and lawyers

Summary

All refugees, refugee claimants and other vulnerable migrants applying to the Federal Court should ask their lawyer to request anonymity or confidentiality, unless they are comfortable with their name and details of their claim or application being public. Sensitive information from court cases is routinely republished by various internet sites, so that a simple Google search of the person's name often yields results from the decision.

- “Anonymity” means that the court record does not give the name of the person.
- “Confidentiality” means that some parts of the documents, or all the documents in the court file cannot be disclosed to the public.

Recommendations

The CCR recommends that:

- Lawyers discuss this issue with their clients before any application to the Federal Court.
- NGOs serving refugee claimants and other vulnerable migrants raise awareness of this issue, since not all lawyers discuss this issue with their clients.

Background

At the Federal Court, judgments, hearings and records are completely **open and public** by default, unlike the Immigration and Refugee Board where proceedings for refugee claimants are private by default. This means that unless the person's lawyer makes a motion requesting anonymity or confidentiality, the decision with the person's name will likely appear on the internet, and anyone (including a journalist, or someone from the person's home country) could go to the Federal Court and get access to all the documents filed in the case.

Protecting the identity of refugees

There are two ways to seek to protect the identity of a refugee or other litigant before the Federal Court:

- a new, simplified motion for an Anonymity Order, or
- a request for a more complete Confidentiality Order.

Seeking anonymity

- It is easy for the person's lawyer to ask the Federal Court to replace the person's name with their initials or unrelated letters. This is called an **Anonymity Order**. Some lawyers will do this systematically with refugee clients, but **some do not**. Anyone with concerns about their identity being made public should therefore make sure to raise the matter with their lawyer.
- The request for anonymity should be made in the initial Notice of Application for leave and for judicial review, and should explain the basis for the request.
- In November 2018, the Federal Court published new **Practice Guidelines for Citizenship, Immigration, and Refugee Law Proceedings**. These guidelines include information about a Simplified Motion Procedure for Anonymity Order, and a Model Anonymity Order Request. The Guidelines also set out how to seek anonymity when the Minister is the party launching the application for leave and for judicial review.

Seeking confidentiality

- In some cases, making the case anonymous may not be enough to protect the person's identity. The anonymization order only removes the person's name from documents produced by the Court (the name of the case, the online docket, any orders or reasons issued by the court). However, all documents in the court file remain fully available, with identifying information, such as:
 - The Basis of Claim form
 - Affidavits
 - Medical reports
 - This means that the person's identity can be revealed if someone consults the court record. For example, if a decision published by the Court catches the interest of a journalist, a consular official, or an agent of persecution, all they need to do is get the Court file number (which is included in the published, anonymized decision) and go to the Courthouse to view all the materials in the record. There could be concerns about disclosure of information in the court file, such as:
 - details and addresses of family members and friends in Canada and abroad who could be targeted based on allegations in a refugee claim;
 - details of assaults sustained by the refugee as well as unproven allegations made against the person.
 - personal, stigmatized health information such as mental health or HIV status.
- Example of cases where confidentiality rather than anonymity orders should be sought**
- Some cases attract a lot of media interest, in which case it is much more likely that a journalist will consult the court file, and might publish the person's name and other details in the record. National security cases are among those of most interest to journalists.
- If a litigant has reason to believe that anonymity alone is insufficient to protect them from the risks that they would face if their case became public, and that someone could be interested in obtaining their information from the Court record, they should ask their lawyer to bring a motion for confidentiality. A confidentiality motion could simply request that the litigant's name be redacted (in other words, removed) from all the

documents in the Court record. Another option would be to request redaction (or removal) of all information that *could* be used to identify the litigant (e.g. names of their family members and friends, past addresses and workplaces, etc). A request can be made that some or all the documents in the record be sealed and made unavailable to the public.

- A request can also be made to the Federal Court to restrict access to the hearing, which by default is open to the public.
- Although more work than simple anonymity motions and frequently opposed by government lawyers, confidentiality motions are not especially complicated and when good reasons and evidence are provided for the request they are frequently granted.

If the Federal Court decision is already published

If a person did not seek anonymity before the Federal Court made its decision, they may be shocked later to find that the decision comes up when they search their name on the internet. The Federal Court and [Canlii](#) have requested that their records not appear in Google results. However, other websites which re-publish certain Federal Court decisions (including UNHCR's Refworld database, www.refworld.org) do appear in Google searches.

- UNHCR will consider requests from individuals to remove from [Refworld](#) a Federal Court decision concerning their application for international protection.
- In very exceptional circumstances a motion could be brought to the Federal Court to amend and anonymize the style of cause of a decision. However, even if this motion was successful, the litigant would then also have to bring the new Court order to the attention of caselaw databases such as [Canlii](#), [Quicklaw](#) and [Refworld](#).

