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Public excluded from sentencing hearing

Aggravated Assault; Judge did not give reason for unusual move

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TORONTO - A Toronto man convicted of aggravated assault was granted a request this week to exclude the public from his sentencing hearing, for reasons that are still unexplained.

Ontario Superior Court Justice Anne Molloy issued the extraordinary order to close the court on Monday at the trial of Abdisalam Sheik-Qasim.

Judge Molloy did not release any ruling that explained why she excluded the public from the sentencing hearing. The only note in the court file at the downtown Toronto courthouse was that it was an "in camera" proceeding.

The Supreme Court of Canada has repeatedly stressed that open courts are a "hallmark" of a democratic society. "Openness is a principal component of the legitimacy of the judicial process and why the parties and the public at large abide by the decisions of courts," said the Supreme Court in a 2004 ruling that found a B. C. judge was wrong to have a closed-door hearing related to the Air India bombing prosecution.

A note was sent through court security to Judge Molloy by the media to ask why the court was closed. The judge did not respond to the note.

Defence lawyer Stephen Hebscher explained that he could not comment other than to confirm he requested the hearing be closed to the public under Section 486 of the Criminal Code.

The section permits judges to exclude the public for "all or part of the proceedings" for various reasons, such as "the maintenance of order," "to prevent injury to international relations" or to protect "participants" in the justice system. Any side seeking to close the court must present evidence of a "real and substantial risk" if it is open, the Supreme Court has stated.

While the courtroom was locked, the public could look in through a window and there did not appear to be additional security inside.

The Supreme Court has also made clear that the media are to be given advance notice of requests for bans or sealing orders, to decide whether it is in the public interest to challenge the request. No advance notice was given to the media before Judge Molloy ruled that the public would be excluded.

Ontario is one of the only provinces without an electronic notification system to alert the media and the public about requests for bans or sealing orders.

The decision by Judge Molloy to bar the public from the courtroom comes as defence lawyers in two upcoming proceedings are asking judges to ban the media from reporting on the entire trial.

Nicholas Finelli, who will be tried on sexual assault charges this spring, wants a ban on reporting of his trial. The alleged leader of the Galloway Boys street gang in Toronto is also seeking to ban the media from reporting on his murder trial later this year.

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