

CANADA / JUDGMENT

Canada (Attorney General) v. Al Jabri

2025 FC 1940

COURT

Federal Court

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Citation: 2025 FC 1940

Ottawa, Ontario, December 8, 2025

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

SAAD KHALID AL JABRI

Respondent

and

SAKAB SAUDI HOLDING COMPANY, ALPHA STAR AVIATION SERVICES COMPANY, ENMA AL
ARED REAL ESTATE INVESTMENT AND DEVELOPMENT COMPANY, KAFA'AT BUSINESS
SOLUTIONS COMPANY, SECURITY CONTROL COMPANY, ARMOUR SECURITY INDUSTRIAL
MANUFACTURING COMPANY, SAUDI TECHNOLOGY & SECURITY COMPREHENSIVE CONTROL
COMPANY, TECHNOLOGY CONTROL COMPANY, NEW DAWN CONTRACTING COMPANY and
SKY PRIME INVESTMENT COMPANY

Respondents

ORDER AND REASONS

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I. Overview [1] The Attorney General of Canada [AGC] filed a Notice of Application (as amended) on June 2, 2022, pursuant to subsection 38.04(1) of the Canada Evidence Act, RSC 1985, c C-5 [CEA] seeking an order confirming the statutory prohibition on the disclosure of certain potentially injurious information, as this term is defined in the CEA, contained in 23 documents, described below [the Section 38 Application]. The AGC submits that these documents include information that, if disclosed in the underlying proceeding, would be injurious to Canada's national security.

- [2] More specifically, on June 2, 2022, the AGC filed the initial Section 38 Application in this Court seeking an order with respect to the disclosure of information about which notice was given to the AGC in two notices (the First Notice and Second Notice as described below). On December 15, 2022, the AGC filed a Further Amended Notice of Application pursuant to Section 38.04 to specifically add the information covered by the Third Notice (which is identical to the information covered by the Second Notice).
- [3] The AGC seeks to have the prohibition on the disclosure of the redacted information confirmed by the Court, with the exception of the information in some documents that are already in the hands of both Respondents. The AGC suggests that these documents may be provided to the parties and the Ontario Superior Court of Justice, but should not be publicly disclosed. The AGC proposes to seek a confidentiality order to protect these documents.
- [4] The Court's findings are summarized at paragraphs 32-37. A Confidential Order filed in the Court's Designated Proceedings Registry sets out the Court's specific findings regarding the redacted information. The Court's reasons are unusually lengthy, which reflects the unusually lengthy proceedings. The reasons describe the background, process, preliminary issues raised by the amicus, legal principles governing a section 38 application, and the Court's application of the principles in determining whether the redactions should be confirmed.

II. Background A. The underlying proceeding [5] The underlying proceeding is an action by the Respondent Sakab Saudi Holding Company [Sakab] (and other corporate respondents) in the Ontario Superior Court of Justice, launched in January 2021, which alleges fraud and seeks damages of over \$5 billion from Saad Khalid Al Jabri [Al Jabri].

- [6] Al Jabri describes himself as a former Minister of State, Major General and Senior Security Official and Advisor to the Minister of the Interior of the Kingdom of Saudi Arabia [KSA]. Al Jabri was responsible (to a great extent) for the establishment, development and oversight of the Sakab companies. Al Jabri was relieved of his duties as Minister of State and to the Council of Ministers in 2015. Al Jabri contends that he continued to provide similar support to the KSA Government—and to Mohammed bin Nayef [MBN], the former Crown Prince, in particular—in an informal capacity after 2015. Al Jabri relocated to Canada in 2017.
- [7] In the underlying proceeding Sakab alleges that Al Jabri orchestrated a massive international fraud, including by misappropriating funds from Sakab and the other corporate respondents, and that although these funds were established to pursue counterterrorism activities for the KSA, which Al Jabri was engaged in, Al Jabri amassed massive amounts that were not authorized and far exceeded his salary.
- [8] Sakab points to transactions without any supporting records, Al Jabri's purchase of properties in several countries, the establishment of offshore companies to hold property, the nomination of Al Jabri's family members as shareholders of various companies established by Al Jabri, gifts to Al Jabri's children, and other activities, all as indicators of a fraudulent scheme against his former employers, including the KSA Government and its

rulers. Sakab also points to the forensic accounting report prepared by Deloitte in January 2021 [the Deloitte Report] that identifies payments made by various companies and payments received by Al Jabri and seeks to trace the source, the authority or record for the payment, and Al Jabri's use of those funds.

- [9] Sakab acknowledges that Al Jabri was engaged in high risk and sensitive counterterrorism projects, but argues that despite Al Jabri's success leading the projects, Al Jabri was not authorized to receive the payments at issue. Sakab submits, among other things, that the law of the KSA prohibits bonuses, profit sharing, and other extraordinary payments that Al Jabri claims to have received for his work. Sakab also alleges that the majority of Al Jabri's misappropriation of assets occurred after he was relieved of his duties in 2015.
- [10] Al Jabri disputes that he engaged in fraud; he explains that the funds received and property obtained, albeit of enormous amounts, were compensation, profit shares, or bonuses for his services and for the risks he took in providing his services and expertise and for the success of his endeavours on behalf of KSA. Al Jabri points to the Royal Instruction in 2007 and a "Compensation Letter" as the origin of the authorization for the payments made to him and as support for his contention that any funds or payments he received were authorized by MBN, acting on the King's delegated authority, and were compensation for his duties and reward for the success of the many counterterrorism projects he initiated and led.
- [11] Al Jabri contends that the fraud allegations are politically motivated because he has information that the KSA does not want shared and because of his alignment with the previous Crown Prince, MBN.
- [12] The documents at issue in the Section 38 Application were generated or provided by Al Jabri for the underlying proceeding—for example, attachments to his Public Affidavit and his "Proffer" (described below), which remains subject to litigation privilege.
- [13] Al Jabri claims that in order to defend the fraud allegations he needs the information that is redacted in the documents that are the subject of the Section 38 Application.
- [14] Sakab, on the other hand, suggests that Al Jabri is disingenuous in claiming that he needs to disclose the redacted information to defend himself. Sakab suggests that Al Jabri would prefer that this information remain prohibited from disclosure so that Al Jabri can continue to argue that the fraud action should be stayed because he cannot defend it without revealing information injurious to national security.

B. Sakab and Al Jabri differ on what is relevant [15] Sakab argues that, although they have not seen the redacted information (except for some documents that Sakab already possessed), overall, the information subject to the Section 38 Application is not relevant to Al Jabri's defence. Sakab submits that the only issue in the fraud litigation is whether Al Jabri was authorized to receive the bonuses, profit shares and other extraordinary payments (the "impugned payments") rather than receiving only his salary in accordance with the law of KSA. Sakab submits that there is no dispute that Al Jabri conducted the various counterterrorism projects and, therefore,

information about the details of these projects or their success is not relevant. Sakab submits that Al Jabri does not need to rely on this information in his defence to the fraud allegations.

- [16] Al Jabri argues that contextual information and further details about his various responsibilities, projects, and relationships is relevant, including to demonstrate that the lack of records and obfuscation of payments was common, the risks he took, and that rewards for success—even of massive amounts—were not questioned and are justified.
- [17] The relevance of the redacted information is considered at two different points in the determination of a section 38 application. The three-part “Ribic test”, as explained below, guides the determination. The threshold for relevance at the first step of the Ribic test is low. Although Sakab initially argued, without any knowledge of the information at issue, that the redacted information was not relevant at all, if this were so, the prohibition on disclosure of the redacted information would be confirmed without further assessment (i.e., no disclosure at all). All parties now agree that the information meets the low threshold of relevance at the first step of the Ribic test.
- [18] Sakab’s current submissions regarding the relevance of the redacted information relate to the third step of the Ribic test, where—if the court finds that disclosure of the information would be injurious—the court then considers the materiality, probative value or the degree of relevance or importance of the information as one of several factors in balancing the public interest in disclosure against the public interest in non-disclosure of the information.
- [19] This Court notes that both Sakab and Al Jabri agree that the relevance of the information at issue is framed by the pleadings, but disagree about the scope of their own pleadings and the issues raised therein.
- [20] The amicus and AGC share the view that the materiality, probative value or degree of relevance of the information at issue should be framed as proposed by Sakab: i.e., that the authority to receive the impugned payments is the only issue in the fraud action and other contextual information, including why or how Al Jabri conducted certain activities for which he claims to have received profit shares, bonuses, gifts or other “off book” payments is not relevant or alternatively, that to a great extent, the contextual information and explanations are already in the public domain via Al Jabri’s own pleadings and public affidavit or are in other non-redacted parts of the documents also subject to the Section 38 Notices.
- [21] As explained below, the Court does not agree that in considering the third step of the Ribic test, and the applicable factors, the Court should focus only on whether the redacted information is relevant, probative, important or “crucial” to demonstrating that Al Jabri was or was not authorized to receive the payments. The trial judge will determine the relevance of the information in the context of the fraud action. Sakab’s suggestion that they will “live with” the consequences of conceding—for the purpose of the Section 38 Application—that the relevant information is only that which speaks to the authority to receive the impugned payments does not assist the Court or the parties and does not reflect the jurisprudence governing section 38 determinations.

- [22] In the Court's view, the pleadings raise issues that extend beyond the authority to pay or receive or otherwise account for the impugned payments as identified by Sakab from the Deloitte Report. The Deloitte Report is about payments and records for payments or the absence of records, without additional context. The Deloitte Report notes the challenges in tracing funds due to the lack of record keeping, and also notes that some payments are supported by handwritten notes, and other payments not at all. Of course, this Court does not determine what is relevant for the purpose of the underlying litigation; that is for the trial judge. However, this Court must consider what may be relevant in that proceeding for the purpose of determining the Section 38 Application. The submissions of both Al Jabri and Sakab have raised issues other than the authority to receive payments.
- [23] Al Jabri must defend against broad allegations of fraud, including the source of the funds he received and what these were attributed to, his relationship with MBN both before and after 2015, and whether this litigation is motivated by more than money. Among other things, Al Jabri asserts that other individuals received similar funds, also without proper accounting, but these individuals cannot be located. Al Jabri disputes that he installed his family members as shareholders and directors of companies he established and asserts that all such appointments were authorized by MBN. The redacted information includes references to numerous "off book" payments and payments resulting from funds "flowing through" the accounts of both Al Jabri and Sakab. This information suggests that the practice of obfuscating payments, as alleged by Al Jabri, was widespread and accepted. (The Court notes that there are also several references to "off book" payments, obfuscation of financial records, and flow through payments in the unredacted documents.)
- [24] In the Court's view, whether the prohibition on disclosure of the redacted information should be confirmed requires the Court to assess each group of documents and each paragraph or line to determine whether injury would result from disclosure of the redacted parts and, if so, whether the balancing factors support disclosure or non-disclosure. Predetermining that the only information of significant relevance or probative value is that which speaks to the authorization to be paid or to receive payments is not the starting point. Other information may also be relevant to either Sakab or Al Jabri. The Court cannot ignore this other redacted information, which appears to be the suggestion. All the redacted information must be assessed.
- [25] The Court notes that Justice Cavanaugh, who is the case management judge for the underlying litigation in the Ontario Superior Court of Justice, conveyed a broader view of the relevant issues in the litigation in his Order dated April 25, 2025 (Sakab Saudi Holding Company v Al Jabri, 2025 ONSC 2524). In that Order, which determined Al Jabri's motion for leave to issue a commission and letters of request seeking the assistance of foreign courts to take evidence from witnesses outside of Ontario for use at the trial of the action, Justice Cavanaugh set out the background and summarized Al Jabri's pleadings as set out in his Statement of Defence. Justice Cavanaugh noted that the issues in the action are determined by the pleadings, just as the Respondents submit on this Application.

[26] At para 57, Justice Cavanaugh states:

Dr. Aljabri has pleaded as a central allegation in his defence that MBS is using the plaintiffs [Sakab] to extend his campaign of political persecution of Dr. Aljabri through this action. He alleges as a defence to this action that it is illegitimate and an abuse of the process of the court. Based on the pleadings, the question of whether MBS is engaged in a campaign of political persecution of Dr. Aljabri and is using this action to further this campaign, such that it is an abuse of process, is an issue in the action.

[Emphasis added].

[27] Justice Cavanaugh clarified at para 58 that the trial judge would determine the admissibility of evidence, make factual findings, and decide legal questions, and that Justice Cavanaugh was not determining whether Al Jabri could successfully defend the action if able to prove the facts alleged in his pleading.

[28] Justice Cavanaugh's findings, as noted above, and his conclusion that the anticipated evidence of the witnesses identified by Al Jabri is material to relevant issues in the fraud action further supports the Court's view that a broader view of what is relevant and probative is called for when assessing the redacted information than that advanced by Sakab, the amicus, and the AGC.

[29] The Court also notes that the Sakab Respondents have attempted to stretch the Ribic test to reach a desired outcome. The Sakab Respondents propose a "Decision Tree" that does not reflect the law governing section 38 determinations. Sakab argues that the Court should provide summaries of all the redacted information, even that for which the Court may find to be injurious, but not relevant. This does not reflect the state of section 38 jurisprudence. If the Court finds that the public interest in disclosure outweighs the public interest in non-disclosure of the information, then and only then does the Court consider whether non-injurious summaries are appropriate to permit the disclosure while mitigating any injury, and/or whether disclosure should be provided to the trial judge on terms and conditions. If the Court finds that the public interest in non-disclosure prevails, the Court need not consider whether summaries should be provided and can order that information remain prohibited from disclosure.

[30] Sakab and the amicus also propose that the Court provide a confidential memorandum to the trial judge to explain in detail why certain information must remain redacted and why other information has been replaced with a non-injurious summary. The Court favours other options to ensure the trial judge is aware of the Court's determination of the Section 38 Application.

C. Summary of the Court's findings [31] The Court notes that Al Jabri has provided information in his detailed Public Affidavit about his roles and responsibilities and payments received for many projects. While the documents that are subject to the Section 38 Application elaborate on information in the Public Affidavit, if Sakab is primarily interested in the information regarding

the impugned payments, Sakab already has a significant amount of information. Al Jabri also provided Sakab with a summary of non-redacted and non-litigation privileged information contained in Al Jabri's Proffer, which also includes details of various projects and related payments. The Court acknowledges that Al Jabri has provided similar information to some of the information that remains protected in documents subject to the Section 38 Application. This includes information in his Statement of Defence and in documents filed in other court proceedings and in interviews to the media.

- [32] Contrary to the position of the amicus, the documents and information at issue fall within the section 38 regime of "information of a type...." and can be prohibited from disclosure if the Court finds that the disclosure of the information would be injurious to national security and that the public interest in non-disclosure outweighs the public interest in disclosure.
- [33] The AGC has established that injury to national security would result from the disclosure of certain information. Some information is injurious because it would reveal |||||
|||||||directly related to Canada's national security. Other information is injurious to the interests of foreign governments and intelligence agencies and this disclosure would injure Canada's relationship with the foreign partners upon whom Canada depends, as a net importer of intelligence, which in turn protects Canada's national security.
- [34] Taking into account the relevant factors, the public interest in the disclosure of some information outweighs the public interest in non-disclosure of that information, and any injury arising from that disclosure can be mitigated by replacing the information with a non-injurious summary. Other injurious information must remain redacted because the injury cannot be mitigated by a summary. Classified Annex A sets out the Court's determination regarding all the redacted information and, where applicable, identifies a non-injurious summary.
- [35] In addition to non-injurious summaries of redacted information that should otherwise be disclosed, a general description of information that Al Jabri may rely on related to projects he has been engaged in may be disclosed. The AGC and amicus undertake to draft these descriptions in accordance with the Court's Order and Reasons and if authorized by the Court, the descriptions may, in some instances be in lieu of specific non-injurious summaries and, in other instances, be in addition to non-injurious summaries.
- [36] Although the amicus and the Sakab Respondents submit that – for the benefit of the trial judge – the Court should provide a detailed account of what is and is not confirmed as prohibited from disclosure and why, the Court finds that this is not required or necessary. Al Jabri will have sufficient guidance via the non-injurious summaries and what remains redacted to guide his defence. Al Jabri previously provided non-litigation privileged information to Sakab derived from the proffer, excluding redacted information. In addition, the Court will permit the trial judge to receive additional documents from this Court – on strict terms and conditions – in order to provide further context; this includes the Order and

Reasons (although some redactions related to the litigation privileged proffer may be required), and the unredacted documents at issue (although the litigation privileged proffer can only be provided by Al Jabri).

- [37] The Court's determination of whether the redacted information in the proffer is confirmed or authorized does not govern the ultimate use of the proffer given its litigation privileged status. The Court's determination only permits the information in the proffer—whether it remains redacted, redactions are lifted or summaries are provided—to be disclosed; it is not this Court's role to order disclosure.

III. The Documents at Issue [38] AGC 0001 is Confidential Appendix A; an appendix to the 100-page Public Affidavit of Al Jabri (prepared for a motion in the Ontario Superior Court of Justice in June 2021). The Appendix is 11 pages, with redactions to parts of six pages. The Appendix elaborates on projects that Al Jabri orchestrated and/or was engaged in with other foreign partners.

- [39] AGC 0004 is Exhibit 1 to Confidential Appendix A (to the Public Affidavit of Al Jabri, as described in AGC 0001). Exhibit 1 contains three short documents which are telegrams and an acknowledgement of receipt related to tasks and expenditures.
- [40] AGC 0005 is the so-called Proffer, which is Al Jabri's account of his role, relationship with leaders of the KSA, leadership and involvement in various projects, financial compensation, profit sharing, bonuses etc. The Proffer was initially described by counsel for Al Jabri as a document to "cover the waterfront", similar to a "will say", in order for the AGC to review and identify the potentially injurious information that the AGC would seek to protect pursuant to a section 38 application. The goal, as described by counsel for Al Jabri, was to guide Al Jabri about what he could disclose in his defence and to guard against disclosing any injurious information. Al Jabri asserts litigation privilege on the Proffer.
- [41] Al Jabri has more recently provided a non-injurious summary of non-litigation privileged facts in the Proffer to Sakab, pursuant to an undertaking in the underlying litigation. As a result, Sakab has further information regarding Al Jabri's role, projects, payments, and more generally, his position. The Court was advised that Al Jabri made an undertaking to the Ontario Superior Court of Justice regarding the Proffer, to the effect that any summaries of redacted facts in the proffer would be provided to Sakab following the Court's determination of the Section 38 Application.
- [42] AGC 0006–AGC 0023 is the Confidential Brief of Documents. These 17 documents include a cover page created by the AGC (AGC 0006) and an Index (AGC 0007). AGC 0008–AGC 0023 include payment instructions, wire transfer instructions, reports seeking approval for expenditures, and other short messages.
- [43] The AGC has most recently confirmed that Exhibit 1 to Confidential Appendix A (AGC 0004) and the Confidential Brief of Documents (AGC 0006–AGC 0023), with the exception of AGC 0018 and item 11 of AGC 0007, may be disclosed to the parties and trial judge. The AGC

acknowledges that Sakab already possesses most of these documents, albeit in a slightly different format, and further protection from disclosure to the parties is not justified. The AGC proposes to seek a confidentiality order or a sealing order in the Ontario Superior Court of Justice to prevent further public disclosure.

- [44] The AGC has also recently advised that further documents will be subject to this Section 38 Application. The AGC has received additional Notices with respect to documents filed by Al Jabri in the context of a motion in the Ontario Superior Court of Justice seeking commission evidence from named persons in the United States [US]. The AGC notes that the documents include sensitive information. The Court intends to address the documents covered by Notices 1, 2, and 3, which have been the subject of lengthy litigation, and will separately determine the additional information that is the subject of Notices 4 and 5.

IV. The Process and the Proceedings in this Court [45] The following chronology is not exhaustive; it highlights the key proceedings in the Section 38 Application. (The extensive proceedings to date in the Ontario Superior Court of Justice, including case management conferences and motions, are not described, except where necessary for additional context).

A. Notices to the AGC [46] In January 2021, Sakab filed their Statement of Claim in the Ontario Superior Court of Justice. (The Statement of Claim was subsequently amended).

- [47] On April 20, 2021, Al Jabri brought a motion in the Ontario Superior Court of Justice seeking to stay the fraud action claiming state immunity and the non-justiciability of the issues.
- [48] On June 30, 2021, the former counsel for Al Jabri gave notice to the AGC in accordance with subsection 38.01(1) of the CEA with respect to the anticipated disclosure of sensitive or potentially injurious information. This First Notice relates to a Confidential Appendix A to Al Jabri's 100-page Public Affidavit and Exhibit 1 to Confidential Appendix A that Al Jabri was required to file on his motion for a stay of proceedings [Stay Motion] in the Ontario Superior Court of Justice [First CEA Notice].
- [49] In December 2021, the United States District Court of Massachusetts dismissed a similar fraud action against Al Jabri finding that Al Jabri could not defend the allegations without reference to information protected by state secrets privilege.
- [50] On May 24, 2022, the AGC advised Al Jabri that he could not file certain documents in the fraud action in the Ontario Superior Court of Justice (as he intended at that time) and that Al Jabri was required to give notice to the AGC pursuant to section 38.01 of the CEA regarding the potentially injurious information contained in those documents. Counsel for Al Jabri initially disputed this obligation but later complied.

- [51] On May 31, 2022, a Canadian Security Intelligence Service [CSIS] official gave notice to the AGC pursuant to subsection 38.01(3) stating their belief that potentially injurious information was about to be disclosed. This information was in Al Jabri's Notice of Motion and supporting affidavit in the Ontario Superior Court of Justice (related to the renewal of Al Jabri's Stay Motion, which had been adjourned) [Second CEA Notice].
- [52] On June 2, 2022, the AGC filed the Section 38 Application in this Court seeking an order with respect to the disclosure of information about which notice was given to the AGC in the First CEA Notice and Second CEA Notice. The AGC also sought an injunction prohibiting Al Jabri from disclosing sensitive or potentially injurious information in connection with proceedings in the Ontario Superior Court of Justice. The AGC subsequently requested that the motion for an injunction be held in abeyance pending further discussion with Al Jabri regarding his obligations under section 38.

B. Amicus appointed [53] On August 15, 2022, the Court issued an Order appointing Mr. Colin Baxter, a security cleared lawyer, bound to secrecy in perpetuity in accordance with the Security of Information Act (which is now the Foreign Interference and Security of Information Act, RSC 1985, c O-5), as amicus curiae [amicus] to assist the Court in performing its statutory obligations under section 38 of the CEA. The Order provided, among other things, that the amicus shall have access to the confidential information in this Application (i.e., the redacted information, once available); that until such time as the amicus had access to the confidential information and documents, he could communicate with the Respondents for the purpose of understanding the information and documents to be reviewed; that once the amicus had access to the confidential information and documents he could not have any further communication with the Respondents; and that the amicus shall maintain the confidentiality of any information communicated to him in confidence by the Respondents or any other person in connection with his role as amicus in this proceeding and that solicitor-client or litigation privilege will not be lost by virtue of its communication to the amicus. The Order further provided that the amicus may participate in any public hearing and shall participate in any in camera, ex parte hearing in this proceeding, including by cross-examining any witness and presenting written and oral submissions.

- [54] On March 12, 2025, the Court appointed Ms. Siobhan Morris to assist Mr. Baxter, on the same terms and conditions.

C. Proceedings in this Court (1) Notices, Case Management Conferences and Hearings [55] The Court convened many Case Management Conferences [CMCs] at the Court's own initiative to move the section 38 process forward and at the initiative of the Sakab Respondents, who expressed concerns and alleged abuse of the process by Al Jabri, delay by the AGC in reviewing the documents, and unfairness to Sakab due to their inability to access the documents in order to respond to the Section 38 Application. The Court determined two motions brought by Sakab and convened public and ex parte hearings. The Court also issued many Directions, including to confirm the outcome of the CMCs and to confirm the parties' agreement to proceed pending Sakab's appeal of the Court's Orders.

- [56] On September 28, 2022, the Court convened a CMC. Among other information shared, the AGC noted that the AGC was in the process of reviewing the Exhibit to Confidential Appendix A (part of the First CEA Notice) and expected additional documents to be provided pursuant to the Second CEA Notice. Al Jabri noted that the document provided to the AGC for review pursuant to the Second Notice was a solicitor's brief that included a great deal of information (describing it as "covering the waterfront"). Al Jabri asserted litigation privilege on this document, referred to as the "Proffer". Sakab expressed concern about the packaging of the document as subject to litigation privilege. The Respondents jointly proposed that the public hearing—to permit submissions on the relevance of the information in the Proffer and other documents—be scheduled, despite that the AGC had not completed reviewing the documents. The public hearing was scheduled to take place on December 6 and 7, 2022.
- [57] On October 19, 2022, Sakab filed their first Notice of Motion (described more fully below).
- [58] On November 3, 2022, the Court convened a CMC to discuss the scheduling of Sakab's motion and its impact on the dates scheduled for the public hearing. The Court concluded that the dates for the public hearing (December 6 and 7, 2022) should be set aside and instead used for the hearing of the Sakab motion. The timetable for the exchange of memoranda, responding memoranda, and reply submissions on the Sakab motion was established.
- [59] On November 15, 2022, the Court again convened a CMC to canvass the next steps in light of the need to first determine the Sakab motion and the scheduling of the hearings. The public hearing was adjourned to February 13, 14, and 15, 2023, and the ex parte hearing to February 16, 2023.
- [60] On November 25, 2022, counsel for Al Jabri provided a Third CEA Notice to the AGC pursuant to subsection 38.01(1) regarding the disclosure of potentially injurious information included in the Proffer. The information at issue was the same information subject to the Second CEA Notice, but in a different format. The AGC confirmed in correspondence to Sakab that the Second and Third CEA Notices related to identical information. The AGC subsequently filed a Further Amended Notice of Application pursuant to section 38.04 to specifically add the information covered by the Third CEA Notice.
- [61] On December 6 and 7, 2022, the Court heard Sakab's first motion [Sakab #1].
- [62] On January 17, 2023, the Court convened a CMC to seek an update from the AGC on the status of the review of the documents subject to the Section 38 CEA Notices and to canvas whether the dates previously scheduled for the public and in camera, ex parte hearings should be adjourned given that the AGC was awaiting responses from partner agencies and had not yet completed the review of the documents and given that Sakab had filed a second motion. The Court confirmed by Direction, as agreed by the parties, that the in camera, ex parte hearing would be adjourned, and a public hearing would proceed in two stages, with the first stage to be held on February 13–15 (as originally scheduled) and with a second stage to be scheduled after the AGC had completed the review of the documents and identified

potentially injurious information and after further steps to resolve whether or how the redacted Proffer might be provided to Sakab by Al Jabri.

- [63] On January 31, 2023, the Court invited the parties to advise the Court of their positions with respect to the scheduled public hearing in light of Sakab's Notice of Appeal of Sakab #1, which alleged that this Court's determination of the Section 38 process was being conducted in an unprecedented manner and contrary to the statutory provisions and procedural fairness.
- [64] Sakab confirmed that the public hearing should proceed as scheduled (despite that their Notice of Motion sought to stay the Section 38 Application vis-à-vis the Proffer until a redacted version had been produced to Sakab). The AGC and Al Jabri agreed. The parties then filed their written public submissions, attended on February 13 and 14, 2023, and made oral submissions, including about the potential relevance of information to the issues in the underlying litigation in the Ontario Superior Court of Justice.
- [65] On April 5, 2023, the Court convened a CMC to receive an update on the underlying litigation and on the status of the AGC's review of the documents subject to the Section 38 CEA Notices.
- [66] On June 5, 2023, the AGC advised the Court that the documents had been reviewed and redacted and would be provided to "the notifier" and filed with the Court.
- [67] In June 2023, the AGC filed a supplementary affidavit of documents in the Court.
- [68] On August 17, 2023, the Court heard the second Sakab motion [Sakab #2].
- [69] The Court's Orders in Sakab #1 and Sakab #2 are described below.
- [70] In February 2024, examinations for discovery in the underlying litigation (fraud action) commenced. Al Jabri refused to answer several questions on the basis that he was prohibited from providing the information pending the determination of the Section 38 Application.
- [71] On April 24, 2024, the Court convened an in camera, ex parte hearing to receive the AGC's evidence on the injury to national security.
- [72] On June 7, 2024, the Court convened a CMC and noted the Court's intention to schedule the continuation of the in camera, ex parte hearing of the AGC's evidence on injury, further public hearings as promised to Sakab, if desired, and the final ex parte hearing.
- [73] The Court subsequently convened CMCs in June, October, November, and December 2024 and in February 2025 to obtain updates from the AGC regarding their ongoing consultation with foreign partners regarding the protection of information related to those foreign partners, and to schedule dates for the ex parte hearings of Sakab and Al Jabri and the ultimate ex parte hearing for final submissions of the AGC and amicus.

- [74] On March 4, 2025, the Court heard the ex parte submissions of Al Jabri.
- [75] On March 5, 2025, the Court heard the ex parte submissions of Sakab.
- [76] On May 27 and 28 and June 2, 2025, the Court convened the hearing for the ex parte submissions of the AGC and amicus. The amicus raised preliminary issues for the Court's determination.
- [77] The amicus submitted a detailed chart [the amicus' chart] comparing the information redacted in the Proffer and Confidential Appendix A to similar information already in public documents (including Al Jabri's Public Affidavit, Statement of Defence, and other unredacted documents—such as documents provided to the amicus by Sakab, proceedings in other courts, and media articles).
- [78] Counsel for the AGC and the amicus undertook to collaborate further with respect to potential proposals for the provision of non-injurious summaries of information in the event that the Court dismissed the amicus' preliminary challenge, found that the AGC had established that injury would result from disclosure of the redacted information, and further found that the public interest in disclosure outweighed the public interest in non-disclosure and that mitigation of the injury from disclosure of some information could be addressed by providing non-injurious summaries of information.
- [79] On August 20, 2025, the AGC responded to the amicus' chart and proposals regarding the disclosure of information similar to information already publicly disclosed, including in other documents subject to the Section 38 Application. The AGC reiterated that many of the redactions must remain due to the injury that would arise from disclosure in a particular context and the limited relevance to either Al Jabri or Sakab.
- [80] On October 28, 2025, the Court convened an in camera, ex parte CMC to seek confirmation from the AGC with respect to their position given some perceived inconsistencies in the AGC's response to the amicus' chart. On November 14, 2025, the AGC clarified and confirmed their position with respect to some information in Exhibit 1 to Confidential Appendix A and in the Confidential Brief of Documents.
- (2) Sakab's Motions [81] The Court's determination of the two Sakab motions are set out in *Canada (Attorney General) v Al Jabri*, 2023 FC 40 [Sakab #1] and *Canada (Attorney General) v Al Jabri*, 2023 FC 1338 [Sakab #2].
- (a) Sakab's First Motion [82] In brief, on October 19, 2022, Sakab filed a motion challenging whether the document provided pursuant to the Second and Third CEA Notices to the AGC (first described as a "solicitor's brief", and subsequently as "the Proffer"), for which Al Jabri asserts litigation privilege, can be the subject of a section 38 application. The motion also challenged whether Sakab should receive the Proffer, once redacted—despite that litigation privilege is asserted by Al Jabri and despite that the Proffer has not been filed in the context of the underlying litigation and is not required to be filed—in order for Sakab to make submissions about its relevance or irrelevance on the Section 38 Application. Sakab later

characterised Sakab #1 as the “jurisdiction motion”. Sakab argued that the process would be unfair if Sakab were not provided with the redacted Proffer in order to make their submissions.

- [83] Alternatively, Sakab sought an order dismissing or staying the Section 38 Application as it related to the Proffer.
- [84] On January 10, 2023, the Court dismissed the motion (see Sakab #1).
- [85] The Court found that the Proffer was specifically the subject of the Third CEA Notice (and was the same information described in the Second CEA Notice), and the Court was seized with determining the Section 38 Application with respect to this information. The Court noted, among other things, that many of Sakab’s allegations, including regarding unfairness and “secret evidence” were based on speculation. The Court rejected the contention that the process would be unfair to Sakab or would curtail their participation unless the redacted Proffer was provided. The Court noted the steps that could be taken to guard against the allegations of unfairness in the Section 38 process, which was in its early stages.
- [86] At the conclusion of the hearing of the first motion on December 6 and 7, 2022, Sakab indicated their intention to bring a second motion. Sakab did so on January 4, 2023, prior to the Court’s dismissal of the motion in Sakab #1.
- [87] On January 20, 2023, Sakab filed a Notice of Appeal of Sakab #1. Sakab subsequently requested that the Federal Court of Appeal [FCA] hold the appeal in abeyance pending other steps in the determination of the Section 38 Application and pending the determination of their second motion.
- [88] As noted above, the parties agreed that some of the steps in the determination of the Section 38 Application could proceed despite Sakab’s pending appeal and second motion, including that the public hearings would proceed in two stages and that the AGC would continue to review the documents pursuant to the three Notices and would consult as needed with partner agencies.
- (b) Sakab’s Second Motion [89] In the second motion, which Sakab characterised as the “privilege motion”, Sakab sought a declaration that the Proffer is not protected by any form of privilege and/or that any such privilege had been waived. Sakab sought an order directing the AGC or Al Jabri to produce a copy of the Proffer to Sakab once redacted by the AGC.
- [90] The motion was heard on August 17, 2023.
- [91] On October 6, 2023, the Court dismissed the motion, finding that the Proffer is the subject of a Section 38 CEA Notice and that the Court must determine whether to confirm the prohibition on the non-disclosure of the information identified by the AGC as potentially injurious in the Proffer and in the other documents at issue (see Sakab #2).

- [92] The Court further found that it could not determine litigation privilege in a document purportedly prepared for litigation in the Ontario Superior Court of Justice. The Court also noted that it could not order production to Sakab of the redacted proffer whether or not it is litigation privileged, or even if the parts over which Al Jabri claims litigation privilege were deleted because the production and/or disclosure of information in the fraud litigation is governed by the Ontario Rules of Civil Procedure, RRO 1990, Reg 194.
- (c) Sakab's Appeal [93] On May 9, 2024, the FCA dismissed Sakab's appeal of the Court's Orders in Sakab #1 and #2 in *Sakab Saudi Holding Company v Canada (Attorney General)*, 2024 FCA 92 [Sakab FCA]. The Court of Appeal found that this Court did not err in concluding that the Proffer could be the subject of an application pursuant to section 38 of the CEA. The FCA did not address whether this Court erred in finding that it did not have the jurisdiction to adjudicate the privilege claim or to order production of the Proffer given this Court's conclusions on how it could address concerns about fairness and abuse of process.
- (3) Al Jabri's undertakings regarding the Proffer [94] The Court notes that among the several motions of both parties in the Ontario Superior Court of Justice, Sakab pursued a motion to challenge whether the Proffer was protected by litigation privilege. In that context, Al Jabri undertook to provide Sakab with any non-injurious summaries that this Court may authorize to protect any injurious factual information redacted in the Proffer (depending on the outcome of the Section 38 Application).
- [95] The Court is also aware that Al Jabri has more recently provided Sakab with information included in the Proffer that is not litigation privileged and not potentially injurious to national security. This 15-page document recounts Al Jabri's roles, projects he led, compensation he received, and related information. The AGC vetted this document before it was shared with Sakab to ensure that it did not include any injurious information redacted in the Proffer. This document is not covered by the Section 38 Application. This document provides information to Sakab to shed some light on the contents of the Proffer, in response to Sakab's concern that they were "in the dark".
- V. Section 38 Applications Generally [96] Sections 38 to 38.15 (collectively section 38) of the CEA set out a procedure whereby information relating to international relations, national defence, and national security may be protected from disclosure before a court, person, or body with the jurisdiction to compel the production of information.
- [97] Where information is otherwise required to be disclosed by a participant, or is about to be disclosed, or may be disclosed in connection with a proceeding or in the course of a proceeding and that participant, or other person, believes that the information relates to international relations, national defence, or national security (i.e., is sensitive or potentially injurious information as those terms are defined in the CEA), that person must give notice to the AGC (section 38.01). The AGC, upon review of the information, may authorize disclosure of all or part of the information (section 38.03). However, where the AGC does not authorize disclosure or does not enter into an agreement to permit disclosure of some facts or

information subject to conditions (section 38.031), the AGC may apply to the Federal Court for an order confirming the prohibition on disclosure (section 38.04). In the present case, the AGC did so—the AGC’s Notices of Application identify information included in documents identified as AGC 0001– AGC 00023.

- [98] Upon receipt of an application by the AGC, the Court must then determine whether the prohibition on disclosure should be confirmed pursuant to subsection 38.06(3), or whether the information, or parts of it, should be disclosed pursuant to subsection 38.06(1) or, alternatively, whether the information, or parts of it, should be disclosed subject to conditions pursuant to subsection 38.06(2). The jurisprudence has established that the Court has several options to permit some disclosure, where the balancing favours disclosure, on terms and conditions to mitigate any injury that would otherwise occur, including, for example, by providing non-injurious summaries of the redacted information or by providing the information at issue only to the judge presiding at the underlying proceeding.
- [99] The test to be applied by the Court in determining the Section 38 Application was established by the FCA in *Canada (Attorney General) v Ribic*, 2003 FCA 246 [Ribic] and has been reiterated and applied in subsequent section 38 applications—for example, *Canada (Attorney General) v Telbani*, 2014 FC 1050 at para 22 [Telbani]; *Canada (Attorney General) v Ader*, 2017 FC 838 at para 22; *Huang v Canada (Attorney General)*, 2017 FC 662 at paras 41–46; *Canada (Attorney General) v Meng*, 2020 FC 844 at para 38.
- [100] In *Canada (Attorney General) v Khawaja*, 2007 FCA 388 at para 8, the FCA reiterated the same three-part test in the form of questions.
- [101] In Telbani at para 22, Justice de Montigny described the “Ribic test”:

In the exercise of his or her powers under sections 38 et seq of the CEA, the designated judge applies the tests developed by the Federal Court of Appeal in *Canada (Attorney General) v Ribic*, 2003 FCA 246. The judge must first determine whether or not the information sought to be disclosed is relevant to the proceedings in which it is intended to be used. The applicant for disclosure bears that burden. If the judge is satisfied that the information is relevant, the judge must then determine whether disclosure of that information would be injurious to international relations, national defence or national security. At this stage, the Attorney General must prove the potential injury if disclosure of the information were to be ordered. Finally, if satisfied that disclosure of the sensitive information would result in injury, the judge must determine whether the public interest in disclosure outweighs in importance the public interest in non-disclosure. The burden of proving that the public interest scale is tipped in favour of disclosure rests with the party seeking it. This three-step test was adopted by this Court in a number of cases (see, *inter alia*, *Canada (Attorney General) v Khawaja*, 2007 FC 490, [2008] 1 FCR 547; *Canada (Attorney General) v Canada (Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar)*, 2007 FC 766, [2008] 3 FCR 248; *Khadr v Canada (Attorney General)*, 2008 FC 549), and the parties agree on its application in the present application.

- [102] In a nutshell, the party seeking the disclosure of the information (which is generally the respondent, although in the present case there are two respondents with opposing views) must demonstrate that the redacted information is relevant (Ribic at para 17). If relevance to an issue or issues in the underlying proceeding is demonstrated, the onus then shifts to the AGC to demonstrate that injury would result from disclosure of the information (Ribic at para 20). If both relevance and injury are established, the party seeking disclosure must then demonstrate that the public interest in disclosure of this information is greater than (i.e., outweighs) the public interest in the non-disclosure (i.e., protection) of the injurious information (Ribic at para 21).
- [103] The threshold for determining relevance at the first stage of the Ribic test is low and relevance must be considered in relation to the underlying proceeding (Canada (Attorney General) v Almalki, 2010 FC 1106 at para 60 (reversed on other grounds, 2011 FCA 199) [Almalki]).
- [104] With respect to the second step in the Ribic test, the AGC's claim of injury is owed deference, but the Court must still scrutinize such claims (Almalki at para 70).
- [105] In Canada (Attorney General) v Tursunbayev, 2021 FC 719 at paras 82–86 [Tursunbayev], Justice Noël emphasized that although a degree of deference is owed to the AGC's assessment of injury given their expertise and access to the information, the Court must still ensure that the redactions proposed by the AGC are justified and supported by evidence that injury from disclosure of the redacted information is probable, not simply possible.
- [106] At the third step of the Ribic test, once injury from disclosure of the information has been established, the Court must conduct a case by case (i.e., by piece of information) assessment of whether the public interest in disclosure of the information outweighs the public interest in non-disclosure. The Court considers any public written or oral submissions of the parties, the ex parte submissions of the AGC and amicus, other ex parte submissions where provided, and the relevant factors established in the jurisprudence that guide the balancing exercise (see for example, Canada (Attorney General) v Khawaja, 2007 FC 490 at paras 74 and 93; Tursunbayev at paras 88–89). The applicable factors will vary from case to case, and include: the extent of the injury arising from disclosure; the nature of the public interest sought to be protected by prohibiting disclosure; the importance of the information in the context of the underlying proceeding (also described as the degree of relevance or the materiality or probative value of the information in the underlying proceeding or whether the information will probably establish a fact crucial to the case to be made); the seriousness of the issues; whether the redacted information is already known to the public, and if so, how; the importance of the open court principle; and whether higher interests are at stake.
- [107] As noted in Tursunbayev at para 88, “[t]he judge must not do this balancing exercise in a vacuum. He or she must evaluate factors rooted in the reality of the file.”

- [108] Where the Court concludes that the public interest favours disclosure of all or some information, the Court may authorize the disclosure of that information in a form and under conditions that are most likely to mitigate any injury that would otherwise result from disclosure (subsection 38.06(2) of the CEA).
- [109] As noted by the Supreme Court of Canada [SCC] in *R v Ahmad*, 2011 SCC 6 at para 44 [Ahmad], section 38 is designed to operate flexibly:
- [144] Section 38 creates a scheme that is designed to operate flexibly. It permits conditional, partial and restricted disclosure in various sections. Section 38.06(1) affirmatively requires the Federal Court judge to consider the public interest in making disclosure along with what conditions are “most likely to limit any injury to international relations or national defence or national security” (s. 38.06(2)). In making this determination, the Federal Court judge may authorize partial or conditional disclosure to the trial judge, provide a summary of the information, or advise the trial judge that certain facts sought to be established by an accused may be assumed to be true for the purposes of the criminal proceeding. [...]
- [110] Although the underlying proceeding in *Ahmad* was a criminal prosecution, the SCC’s guidance about the flexibility of section 38 applies more broadly.
- VI. The Issues in this Section 38 Application [111] As a preliminary issue, the amicus submits that the Court must determine whether the information the AGC seeks to protect from disclosure—all of which is generated by Al Jabri—can be the subject of a section 38 application.
- [112] The amicus argues that sections 38.01 and 38.04 do not apply to the type of information at issue and that the Court should dismiss the AGC’s Section 38 Application (i.e., decline to confirm the prohibition on the disclosure of the information covered by the three CEA Notices). The amicus submits that the AGC can instead issue a certificate pursuant to section 38.13 of the CEA to protect the same information, without the need to establish any injury, if it is the AGC’s intention to prohibit the disclosure of information in the “head of an individual” to protect only foreign interests.
- [113] In the event the Court finds that the information at issue is properly the subject of the Section 38 Application, the issue is whether the prohibition on disclosure of the potentially injurious information in the documents at issue (i.e., Confidential Appendix A to Al Jabri’s Public Affidavit, Exhibit 1 to Confidential Appendix A, the Proffer, and the Confidential Brief of Documents (17 short documents)) pursuant to three notices provided to the AGC should be confirmed by this Court pursuant to subsection 38.06(3), or whether disclosure of all or part of the information should be authorized, and if so, whether any disclosure should be subject to conditions, pursuant to subsections 38.06(1) or (2).

VII. Overview of the Positions of the Parties A. The AGC [114] The AGC’s general position is that disclosure of most of the information in Confidential Appendix A and the Proffer would be significantly injurious to national security (as noted, the AGC has relaxed their position to some extent with respect to the other documents). The AGC submits that in considering the applicable

factors at the balancing stage, the information, for the most part, is not relevant, probative, or material to Al Jabri's defence of the fraud allegations, in particular to whether Al Jabri was authorized to receive the impugned payments (as identified by Sakab and the Deloitte Report). The AGC submits that as a result, in the balancing, the prohibition on disclosure of information that is injurious yet not relevant should be confirmed.

B. Al Jabri [115] The Respondent, Al Jabri, submits that the information is highly relevant to his defence of the fraud action and asserts that without this information he cannot defend the action. In Al Jabri's public and ex parte submissions he provided context and pointed to linkages in the pleadings and the redacted documents to explain why the redacted information—and not only information regarding authorization to receive payments—would be essential to his defence.

[116] Unlike some other section 38 applications, Al Jabri is aware of the information that is redacted because he provided the information. His ex parte submissions focused on why the redacted information is essential to his defence and in the public interest to be disclosed.

[117] Al Jabri submits that given the questions raised by Sakab on discovery, information that would respond to the questions would be relevant, but is redacted (i.e., not limited to impugned payments).

[118] For example, Al Jabri submits that he needs to be able to explain who suggested the incorporation of private companies and why, and his own role in setting up these companies, including the role of foreign partners |||

[119] Al Jabri adds that he needs to be able to rely on information to explain the financing of many specific projects as it was common for payments to be obfuscated and opaque.

[120] Al Jabri further submits that, although he has provided more generic information in his public documents about the various forms of his compensation, he needs to provide the details of how the funds he received were related to his role in specific projects. Other redacted information would support Al Jabri's claim that specific payments cannot be linked to specific projects with records. Al Jabri argues, for example, that the information regarding the profits from the Technology Control Company [TCC] and Metaj Arabia for General Contracting Company [Metaj] received by Al Jabri and the ||| is essential to his defence.

[121] Al Jabri also submits that disclosure of various references to "flow through" payments and the use of his own personal accounts is essential to counter the allegations that he pocketed funds without authority and that were unrelated to KSA projects.

[122] With respect to the sale of the farm property at a large profit, Al Jabri submits that he must be able to explain the purpose of obtaining and developing this property, the improvements he made and why, and that he was compelled to sell it.

[123] Al Jabri also argues that disclosure of specific information regarding his continued role on behalf of the KSA after September 2015 is essential to his defence given that Sakab argues that he collected significant payments after he was dismissed.

C. Sakab [124] The Respondent, Sakab, in public and ex parte submissions emphasized that they do not dispute Al Jabri's role and involvement in many successful projects. Sakab submits that the information about the details of Al Jabri's involvement in various projects in the KSA is not injurious (although they have not seen the redacted information in the Proffer) and is also not relevant. Sakab's view is that this information is not probative or material to the issues as framed in the pleadings in the fraud action; the only relevant issue is whether the payments received by Al Jabri were authorized. Sakab emphasizes that the law of the KSA does not permit an official like Al Jabri to receive payments above and beyond their authorized salary. Sakab submits that nothing prevents Al Jabri from showing that he was authorized to receive the payments if he has such evidence, but this does not require him to explain the details of the projects.

[125] Sakab submits that despite their view that the redacted information is not injurious and not relevant, the redacted information should nonetheless be disclosed in the public interest. Sakab more generally submits that Al Jabri has abused the section 38 process in his attempt to support an ultimate motion to stay the underlying proceeding. Among other things, Sakab points to Al Jabri's refusal to answer several questions on discovery by asserting that he is prohibited from disclosing the information, which Sakab disputes.

[126] Sakab later provided an Excel document derived from the Deloitte Report identifying the "impugned payments"; i.e., those which Sakab alleges were received by Al Jabri but not legally authorized. Sakab notes that the trial judge in the fraud litigation could view other information as relevant, but for the purpose of the Section 38 Application, redacted information not related to the impugned payments is not of importance when balancing public interest in disclosure against non-disclosure. But as noted, Sakab still argues that summaries of all redacted information should be provided.

D. The Amicus [127] The amicus suggests that Al Jabri has engaged in a strategy to delay the underlying fraud action by deliberately including information in his Proffer and Confidential Appendix A to his Public Affidavit that Canada's foreign partners do not want disclosed, which, in turn, led the AGC to claim that the disclosure of the information would be injurious. The amicus submits that Al Jabri's goal is for this Court to confirm the prohibition on disclosure of the redacted information so that Al Jabri can again pursue a motion to stay the fraud action in the Ontario Superior Court of Justice.

[128] The amicus argues that that if the Court finds that the information at issue—which is all generated by Al Jabri—falls within the scope of section 38, the AGC has not established that disclosure would cause injury to Canada's national security.

[129] The amicus alternatively argues that if the Court finds that disclosure of the redacted information would cause injury to Canada's national security, at the balancing stage the Court should focus on the information regarding the impugned payments, as suggested by

Sakab, because information about the details of Al Jabri's work is not relevant to the pleadings. The amicus submits that in any event, the Court should permit disclosure of the redacted information to the fullest extent possible and provide non-injurious summaries of the remaining redacted information.

[130] The amicus has conducted a detailed comparison of the redacted information to similar information in the public domain (set out in the amicus' chart). The amicus submits that the extent of the public information supports first, that there is no injury from disclosing the same redacted information and, second, that at the balancing stage, this supports disclosure.

VIII. The Evidence of Injury to National Security [131] The affiant's evidence regarding injury was heard on April 24, 2024. The AGC subsequently engaged in further discussions with foreign partners to clarify their positions given some inconsistency and given that some similar information was already public.

[132] The AGC's affiant described his background and experience, particularly related to counterterrorism and the Middle East.

[133] The affiant noted the documents subject to the Section 38 Application. The affiant described his understanding of Al Jabri's defence—that the payments Al Jabri received were authorized by MBN through a Royal Order as compensation for Al Jabri's national security work, and that funds were provided for Al Jabri's family's personal security and also for other national security operations where the records for such operations are deliberately vague to obfuscate the work being conducted by the various companies.

[134] The affiant explained that based on his review of the documents, disclosure of the sensitive information would injure national security in two ways.

[135] First, this disclosure would reveal [REDACTED] which is not publicly known. [REDACTED] The affiant notes that [REDACTED]

[136] The affiant explained that related information in Confidential Appendix A about [REDACTED] should also remain redacted [REDACTED]

- [137] Second, the disclosure of the redacted information relating to the national security interests of [REDACTED] foreign allies would injure Canada's national security by harming relationships between CSIS and those foreign [REDACTED]
- [138] The affiant noted that foreign intelligence agencies reviewed the documents at issue and identified the need to protect particular information.
- [139] The affiant explained that CSIS does not question the assessment of the foreign intelligence agencies, adding that CSIS's own review confirmed that disclosure of the information would be harmful, noting as examples the references to [REDACTED] joint operations, covert operations [REDACTED] classified projects.
- [140] The affiant also explained that in addition to the harm to the national security interests of foreign allies, it is the impact on the national security interests of Canada that require protection of the sensitive information. The affiant noted that disclosure of this information would harm important relationships with foreign intelligence agencies that regularly share information with Canada as it would lead to diminished information sharing.
- [141] The affiant acknowledged that the information at issue (for which notices were provided to the AGC) was provided by Al Jabri and did not come into CSIS's hands from a foreign agency or government. He explained that despite how CSIS was aware of the information, CSIS identified information that should not be disclosed because disclosure would be injurious, including to Canada's relationship with the foreign partners identified in the documents. The affiant noted that while Canada participates in the Five Eyes community, Canada contributes to a lesser extent than others for various reasons, including financing and legal limitations. Canada depends greatly on other members for information and other members depend on Canada to protect their information. The affiant also noted that Canada depends more on some partners than others. The specifics of Canada's cooperation in various initiatives are not public in order to protect national security.
- [142] In his oral evidence, the affiant explained that Canada sought to protect information related to or from the [REDACTED]
- [143] The affiant acknowledged that the "third-party rule" did not apply, but the impact would be the same if Canada disclosed the information as Canada may not be trusted with other information.
- [144] The affiant explained [REDACTED]
[REDACTED]
[REDACTED] The affiant noted [REDACTED]
[REDACTED]
[REDACTED]

- [145] The affiant also explained ||||| The affiant noted that |||||
- [146] The affiant noted that if the Court were to determine that the sensitive information should be disclosed, although CSIS would explain to its partners that this result was due to Canada's law and the Court's assessment, there would nonetheless be an impact on Canada's relationship with its Five Eyes partners and allies. He indicated that the partners would "turn down the tap" of information otherwise shared because Canada would be regarded as not able to protect sensitive information. In addition, Canada would not know the extent of what information was not shared.
- [147] The affiant added that even if Canada does its "level best" to protect the information, which foreign partners might acknowledge, if the information were disclosed, "it doesn't change anything. It's that they can't share information with us because Canada as a country cannot protect that information."
- [148] The affiant noted the information in Confidential Appendix A, the Confidential Brief of Documents, the Proffer||||| regarding the redacted parts of those documents. The affiant acknowledged that there was some inconsistency in the responses.
- [149] The amicus cross-examined the affiant extensively, directing the affiant to specific redactions in the documents and pointing to unredacted information that is similar or the same in the same or in other public documents.
- [150] The amicus questioned the affiant regarding the process for identifying the redacted information. The affiant advised that the Litigation Branch within CSIS reviewed the documents and the affiant was not aware of the documents at issue before this review was underway. The affiant indicated that he could explain the need for protecting the information identified.
- [151] The amicus probed the affiant's awareness of other public documents, including the Deloitte Report, Al Jabri's Statement of Defence, and documents related to litigation in the US. The affiant acknowledged that he did not review other documents not subject to the Section 38 Application.
- [152] The affiant agreed with the amicus that Al Jabri could have publicly disclosed the information now redacted before the Section 38 Notices were provided. The affiant explained that where such leaks of injurious information occur, the intelligence community still takes measures, where possible, to limit the damage.

- [153] The amicus pointed to specific redactions in the documents and probed how Canada's national security interests would be injured by not protecting the information requested to be protected by foreign partners. In response, the affiant agreed that for some information there was no direct link to Canada's national security, but explained that the injury to national security would be due to the impact on the relationship with
|||||
- [154] Among other responses, the affiant noted |||||
|||||
- [155] The amicus probed the affiant about the inconsistent responses from ||||| regarding the need to protect information that is not protected in the same documents or in other public material. The affiant noted that there were "back and forth" discussions with ||||| over time.
- [156] With respect to redacted information regarding ||||| the affiant responded that disclosure would be harmful despite that the payment and instructions in question were made in 2007 |||||
- [157] The amicus pointed the affiant to a Wikipedia page that provided logistical information for |||||
- [158] The amicus also directed the affiant to the Deloitte Report, noting that it refers to | kl |||||
||||| yet some of this information is redacted in other documents (Confidential Appendix A and the Proffer). The affiant acknowledged that with respect to the particular redactions, the injury would be to foreign partners and not directly to Canada's national security, but reiterated that there would be injury to the relationship because the foreign partner requested Canada to protect the information.
- [159] In the absence of the affiant, the amicus noted that it was not the amicus' role to identify the inconsistent redactions, although he had discovered several. The amicus noted that the AGC should have identified the inconsistently redacted information.
- [160] The AGC acknowledged that there may be some inconsistencies, but noted that the affiant is not responsible for addressing them, rather the AGC undertook to consult again with foreign partners to seek clarity. The AGC did so and in June 2024, advised the Court that some redactions had been lifted.
- [161] Also in the absence of the affiant, the amicus previewed other arguments subsequently made, including that: the evidence did not establish an injury; this is not the type of information intended to be protected pursuant to section 38; and, much effort is being expended by the amicus, AGC, and Court to pour over the information in the Proffer, which Al Jabri need not disclose in any event given the assertion of litigation privilege.

[162] The AGC subsequently reconsidered their position regarding Exhibit 1 to Confidential Appendix A and the Confidential Brief of Documents. On October 28, 2025, the AGC advised the Court of their position, but subsequently clarified that while most of these documents were already in the hands of Sakab and foreign partners had been made aware of this, some were not. The AGC agrees that with the exception of AGC 0018 and a small part of AGC 0007, the disclosure of the documents in unredacted form would not cause injury and may be provided to the parties and the Ontario Superior Court of Justice, but not publicly disclosed. The AGC submits that the redactions to AGC 0018 and part of AGC 0007 should remain.

IX. The Preliminary Issue Raised by the Amicus A. Overview; Sections 38.01–38.04 do not apply to the documents at issue [163] The amicus disputes the AGC’s submission that section 38 is engaged by the three Notices provided to the AGC and by the AGC’s Section 38 Application.

[164] The amicus suggests that the AGC’s and the Court’s reputations will be tarnished by rewarding Al Jabri’s strategic use of this process and by finding that national security is at risk unless information generated by a private individual is prohibited from disclosure.

[165] The amicus suggests that the Section 38 Application has provided a strategic vehicle for Al Jabri to delay the underlying proceeding and to achieve a particular outcome.

[166] The amicus argues that section 38 was not intended to prohibit the disclosure of the type of information at issue, which is information in the head of an individual or created by an individual (in this case, Al Jabri).

[167] The amicus also argues that the AGC’s reliance on section 38 to prohibit disclosure of information at the behest of a foreign partner is not sufficient grounds to do so. Foreign partners cannot be the arbiters of Canada’s national security interests.

[168] The amicus raises several arguments in support of their position that section 38 does not apply to prohibit the disclosure of information redacted by the AGC in the documents at issue. The amicus points to the principles of statutory interpretation, including the need to consider Charter values, Parliament’s intent, and the lack of logic, effectiveness, and practicality of prohibiting disclosure in these circumstances.

(1) Statutory interpretation; CEA refers to “potentially injurious” and “sensitive information” [169] The amicus asserts that applying the established principles of statutory interpretation, sections 38.01–38.04 do not apply to the information at issue (i.e., the requirements to provide notice to the AGC and for the AGC to apply to the Court for a determination regarding the prohibition on disclosure of sensitive or potentially injurious information).

- [170] The amicus notes the definition of “potentially injurious information” as “information of a type that, if it were disclosed to the public, could injure international relations or national defence or national security.” The amicus argues that “international relations”, “national defence”, and “national security” all refer to Canada’s international relations, national defence, and national security, not those of other countries.
- [171] The amicus argues that the information at issue is not “potentially injurious information” because it does not engage Canada’s national security. The amicus further argues that prohibiting disclosure of this information would not enhance the national security of Canadians.
- [172] The amicus notes that the information at issue in this Section 38 Application does not come from a foreign partner, does not belong to Canada, and was not subject to any caveats when provided to the AGC by Al Jabri.
- [173] The amicus contends that the AGC’s Section 38 Application seeks to prohibit the disclosure of the redacted information only because foreign partners have so requested and only because of the impact on the future sharing of information if Canada does not oppose disclosure. The amicus disputes the AGC’s position that disclosure would injure relationships between Canada and its partners with a resulting impact on the sharing of national security information with Canada. The amicus submits that the AGC’s position is flawed because Canada’s national security interests should not be dictated by the desires of a foreign partner to protect their own interests.
- [174] The amicus submits that Parliament did not intend that section 38 would permit foreign partners to “enlist Canada to do their bidding” to protect information under the guise of national security, while undermining freedom of expression in the process.
- (2) The interpretation of section 38 and its application should align with Charter values [175] The amicus submits that Parliament did not intend that section 38 could be used to muzzle anyone who suggests that their information touches on national security, national defence, or international relations.
- [176] The amicus submits that Al Jabri’s right to freely express and share his information is infringed by the Section 38 Application. The amicus notes that the information at issue was created by Al Jabri without any verification and belongs to Al Jabri, not the government, police, or a security agency.
- [177] The amicus therefore argues that section 38 should be interpreted in accordance with Charter values.
- [178] The amicus submits that if section 38 is interpreted to apply to the musings of a person, the prohibition on disclosure could violate that person’s freedom of expression guaranteed by paragraph 2(b) of the Charter.

- (3) Parliament did not intend that section 38 apply to the information and documents at issue, but only to information provided to Canada by foreign allies [179] The amicus submits that Parliament intended that section 38 protect only Canadian interests and only based on the “third-party rule” where information has been provided to Canada (e.g., a government or other agency) by a foreign partner with the expectation of confidentiality.
- [180] The amicus points to excerpts of statements by Members of Parliament [MPs] in the context of Parliamentary debates and Legislative Committee proceedings regarding the Anti-Terrorism Act, SC 2001, c 41 [Anti-Terrorism Act] (referred to as Bill C-36 prior to enactment), regarding the amendments to section 38 of the CEA. The amicus notes that MPs stated that section 38 was intended to assure Canada’s allies that “sensitive information that they provide to us can be protected from release” and “to provide our citizens with security for themselves, their families and their communities” and to achieve “an appropriate legislative balance to reflect Canadian values.”
- [181] The amicus adds that MPs stated that section 38 was aimed at ensuring that Canada could meet its obligations when information is provided to Canada on the condition that it not be released without the consent of the originating country.
- (4) It is not logical or effective to prohibit disclosure of information possessed by Al Jabri [182] The amicus submits that there is no rationale to prevent Al Jabri from sharing his own information.
- [183] The amicus notes that the information at issue would not be prohibited from disclosure except for the Section 38 Application. The information created by Al Jabri is not subject to any other restrictions; i.e., Al Jabri is not otherwise prohibited from disclosing this information as he is not bound to secrecy or other such obligations. Al Jabri could have published the information in a variety of ways prior to the litigation and prior to the Section 38 Application and he could disclose this information at the conclusion of the litigation; he is not bound by any other confidentiality order or obligation to maintain secrecy. The amicus notes that Al Jabri has provided media interviews, including to the BBC and an American network.
- [184] The amicus submits that practically, even if section 38 applies to the information at issue, it will be ineffective because the prohibition applies only to information to be disclosed in a “proceeding”; nothing prevents that same information being made public in another context or before or after the proceeding, unless some other obligation to maintain confidentiality exists.
- [185] The amicus argues that section 38 only applies where there is a pre-existing obligation of secrecy or confidentiality. The amicus submits that it is the compulsion to disclose information otherwise required to be kept secret that requires the section 38 prohibition. The amicus submits that if section 38 is intended to protect national security type information, it cannot do so if the prohibition on disclosure is limited to the context of an underlying proceeding; therefore, another obligation to maintain secrecy must be a

precondition.

- (5) The AGC should issue a section 38.13 certificate to prohibit the disclosure of the information [186] As noted, the amicus submits that the Court should dismiss the Section 38 Application because the information at issue does not fall within the section 38 regime. This would then permit the AGC to resort to section 38.13 to prohibit disclosure of the same information. The amicus submits that section 38.13 gives the AGC the discretion to prohibit disclosure of any information in connection with a proceeding, not only “potentially injurious information” by way of issuing a certificate. The amicus suggests that section 38.13 is the only provision available to address the unusual circumstances and origin of the information at issue.

- [187] The amicus suggests that this option would permit the AGC to demonstrate to Canada’s foreign partners that it will protect the information as requested by foreign partners, without the need to establish that the disclosure of the information would be injurious to Canada’s national security.

B. Section 38 applies to the documents in the Section 38 Application [188] The amicus was appointed in August 2022 at the early stage of the Section 38 Application. Although the amicus was placed in a unique position given that the two Respondents are adversaries in the underlying litigation and take very different positions in the Section 38 Application, the amicus was appointed to assist the Court (and there is no doubt that he has assisted the Court). The amicus was included in all CMCs, received all the documents filed (for example, many case management briefs submitted by Sakab and Al Jabri, notices of motion, memoranda, etc.), and attended (or was represented at) the hearing of Sakab #1 and Sakab #2 and at the public and ex parte hearings. The amicus did not raise the specific legal issue now raised regarding the applicability of the section 38 regime to the documents at issue, although the amicus emphasized that this is not a typical section 38 application. The Court notes that similar issues were raised by Sakab in Sakab #1 regarding whether the Proffer could be the subject of the Section 38 Application. The amicus, in the Court’s recollection, did not take any position on this issue.

- [189] The Court acknowledges that the amicus noted concerns about the strategies being employed by both Respondents, alluded to possible abuse of the Court’s section 38 process, noted that the amicus would raise legal issues, and mentioned a “preview” of the legal issues at the April 2024 hearing of the AGC’s evidence regarding injury. However, the Court did not anticipate the issues now raised regarding the Court’s jurisdiction; the amicus articulated the arguments for the first time in their submissions for the May 2025 in camera, ex parte hearing convened to receive the submissions of the AGC and amicus on the issue of whether injury has been established and whether disclosure should be prohibited or permitted and to what extent. The current challenge to the applicability of section 38 is a bit late in this very long process.

- [190] The Court has, nonetheless, carefully considered the amicus’ arguments.

- [191] Although the Court acknowledges that the Section 38 Application is not typical, the Court does not agree that the redacted information the AGC seeks to prohibit from disclosure is not the type of information contemplated by Parliament when first enacting or subsequently amending the section 38 regime to protect the disclosure of sensitive or potentially injurious information.
- (1) The FCA decision [192] The Court notes that the FCA dismissed Sakab's appeal of Sakab #1 and Sakab #2 (see Sakab FCA). The FCA found that this Court did not err in concluding that the Proffer could be the subject of an application pursuant to section 38 of the CEA. This finding is determinative vis-à-vis the Proffer. If the Proffer—which the amicus describes as Al Jabri's "musings" or information "in his head"—can be the subject of the Section 38 Application, there is no rationale to distinguish the information in the other documents, which is also information generated by Al Jabri (and is not information provided to Canada by another country).
- [193] In any event, the Court is not persuaded that the information that is the subject of the Notices provided to the AGC cannot be the subject of the Section 38 Application.
- (2) The scope of sensitive and potentially injurious information should not be further limited [194] The Court will not foreclose the categories or type of information that can be protected in the context of a proceeding. Section 38 sets out the definitions and section 38.06 sets out the "test", as informed by the jurisprudence (Ribic test), governing whether the information can be disclosed. The information must be either sensitive or potentially injurious, as those terms are defined. The AGC must provide evidence of the injury and satisfy the Court that there would be injury if the information were disclosed. There is no need to unnecessarily limit the scope of potentially injurious or sensitive information. Other elements of the section 38 regime and determination sufficiently weed out information that does not meet the test for prohibiting or limiting disclosure. The statutory provisions, including the procedural aspects, and the governing jurisprudence guards against protecting information that does not meet the definition or the test.
- [195] The Court rejects the notion that by finding that the information falls within section 38, the Court would be rewarding the strategic use of section 38. The determination of a section 38 application, whatever the determination, is not a "reward" and the Court questions how any party can strategically engage the section 38 process given that the AGC, upon receipt of a notice, must review the information and determine whether sensitive or injurious information requires protection, and if so, the AGC is obliged to bring a section 38 application.
- [196] The Court does not agree with the amicus' suggestion that the Court's reputation is at stake because the parties are "playing the section 38 card" to their advantage and the Court is permitting this. The Court is required to determine the application before it. As described above, the Court has engaged in countless CMCs and received and considered many case conference briefs, provided the parties with ample opportunity to provide submissions,

issued Directions, determined motions, held public and ex parte hearings, and made every attempt to move the Section 38 Application forward for determination. This does not reflect a process that impugns the Court's reputation. However, the Court shares the amicus' concern that both Respondents have made choices that have contributed to the complexity and duration of this application and have engaged the Court's resources extensively, and that more consistency in the AGC's approach to identifying the injurious information would have been beneficial.

- (3) The principles of statutory interpretation do not support the narrow interpretation of "sensitive" and "potentially injurious" information advocated by the amicus [197] The established principles of statutory interpretation are not in dispute; the principles require that the words of an enactment "are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intentions of Parliament" (*Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21, 154 DLR (4th) 193 [Rizzo]).

[198] In *BNSF Railway v Greater Vancouver Water District*, 2025 FCA 13, the Court of Appeal recently reiterated the Rizzo principles and elaborated on the modern principles of statutory interpretation at paras 56–60:

[56] The Supreme Court of Canada has recently reminded us that legislation must "be given a large and liberal interpretation that will ensure the attainment of its object and the carrying out of its provisions according to their true intent, meaning and spirit": *Quebec* at para. 24 in reference to *Interpretation Act*, C.Q.L.R., c. I-16, s. 41; see also *Interpretation Act*, R.S.C. 1985, c. I-21, s. 12.

[57] Thus, the modern principle of statutory interpretation asks us to examine the text, context and purpose of the legislation to discern its meaning. The text, which is the starting point in any interpretive exercise, always must be given close attention: *Quebec* at para. 24.

[58] However, the relative effects of the ordinary meaning, context and purpose in the interpretive process vary. Where the words of a provision are precise and unequivocal, their ordinary meaning plays a dominant role; where the words are capable of more than one reasonable meaning, the ordinary meaning plays a lesser role: *Canada Trustco* at para. 10.

[59] In *Vavilov*, the Supreme Court explained why it adopted this approach to statutory interpretation:

[118] This Court has adopted the "modern principle" as the proper approach to statutory interpretation because legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context: [R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014)], at pp. 7-8. ...

And, more recently, “the goal of the interpretive exercise is to find harmony between the words of the statute and the intended objective”: *R. v. Breault*, 2023 SCC 9 at para. 26, citing *MediaQMI inc. v. Kamel*, 2021 SCC 23 at para. 39; *Quebec* at para. 24.

[60] Thus, the fundamental objective of statutory interpretation is to determine what Parliament meant.

[199] The ordinary meaning, in the relevant context, coupled with the purpose of the statutory provisions, all support the Court’s finding that the section 38 regime does not exclude the information at issue.

[200] Beginning with the text—and giving close attention to it—there is nothing unclear about the definitions of “sensitive information” and “potentially injurious information” as set out in section 38.

potentially injurious information means information of a type that, if it were disclosed to the public, could injure international relations or national defence or national security.

(renseignements potentiellement préjudiciables)

sensitive information means information relating to international relations or national defence or national security that is in the possession of the Government of Canada, whether originating from inside or outside Canada, and is of a type that the Government of Canada is taking measures to safeguard. (renseignements sensibles)

[Emphasis added].

[201] The definition of “potentially injurious information”, which is the AGC’s claim in the Section 38 Application, is not limited to only information “that is in the possession of the Government of Canada” as provided in the definition of “sensitive information”. The two categories describe information “of a type”, which signals a broad range of information, but only “sensitive information” is restricted to that which is “in the possession of the Government of Canada”.

[202] Limiting the definition of “potentially injurious information” to information provided by a foreign partner to Canada, as submitted by the amicus, does not reflect the language of the definition. There is no ambiguity in the wording, which is broad—i.e., “information of a type”. If Parliament sought to restrict the “type” of information, it could have done so.

[203] The Court also does not agree that the information at issue is not “potentially injurious information” because it does not engage Canada’s national security. The amicus’ submission does not relate to statutory interpretation, but to whether the AGC can establish that the information does engage Canada’s national security and more specifically, that its disclosure would be injurious to national security.

[204] In any event, the amicus’ argument that the definitions apply only to Canada’s national defence, national security, and international relations overlook that in such matters Canada depends on other countries and works with them. The notion of “international

relations” clearly contemplates engagement with other countries. Similarly, national defence and national security contemplate that Canada acts with, relies on, and responds to other countries: Canada cannot act alone. The term “potentially injurious information” includes information that could injure international relations, national defence, or national security.

- [205] The amicus argues that section 38 does not contemplate that a foreign country can simply ask Canada to rely on section 38 to prohibit disclosure of information that the foreign country does not want made public to protect their own interests. However, this did not occur, nor could it occur. A section 38 application requires an underlying proceeding, the potential disclosure of information in that proceeding, and notice to the AGC of such potential disclosure. In the present circumstances, an early notice of potential disclosure was provided by counsel for the US in accordance with section 38.01 because information was about to be disclosed in the context of Al Jabri’s June 2021 motion, which is a “proceeding”. However, the foreign country does not decide whether or how the AGC will seek to prohibit the disclosure of information; the AGC first reviews the information and then determines whether to seek to protect the information.
- [206] The Court questions how litigants could strategically “game the system” to engage a foreign government to request that Canada protect their information and trigger a section 38 application. Section 38 is engaged only where sensitive or potentially injurious information may or will be disclosed in a “proceeding”.
- [207] The context of section 38 must be considered, which is the CEA governing the treatment and use of evidence in proceedings before a court. Although the amicus notes that Al Jabri could have disclosed information before the litigation began and perhaps can do so after, the CEA applies to the treatment of evidence in the proceeding. Other measures may apply to prevent disclosure subsequently, such as confidentiality orders and sealing orders, if the requisite criteria are met.
- [208] At the time the AGC filed the Section 38 Application, “proceeding” was defined in the CEA as “a proceeding before a court, person or body with jurisdiction to compel the production of information. (instance)”.
- [209] The definition was subsequently amended in 2024 in Bill C-70, which added the secure administrative review proceedings to the CEA at section 38.2. The applicable definition now states that “proceeding” means “a proceeding before a court, person or body with jurisdiction to compel the production of information, but does not include a federal proceeding, as defined in section 38.2. (instance)”. The amendment has no impact on this Application or to the amicus’ argument.

- [210] Section 38.01 sets out the requirement to give notice to the AGC and uses terminology including “in connection with a proceeding” and “in the course of a proceeding”. The context of the regime to protect sensitive and potentially injurious information arises in the proceeding, not before or after the proceeding.
- [211] In this Application, three Notices were provided to the AGC regarding the possible disclosure of injurious information in the underlying “proceeding”. (Two further Notices were more recently provided to the AGC and will be the subject of a separate Order.)
- [212] Subsection 38.01(6) sets out exceptions to the requirement to provide notice to the AGC, including at paragraph 38.01(6)(a), where “the information is disclosed by a person to their solicitor in connection with a proceeding, if the information is relevant to that proceeding”.
- [213] If Parliament intended to exclude information held by a private individual from the notice requirements, they could have provided an exception, but they did not.
- [214] The amicus’ submission that in *Tursunbayev* at paras 73–82, the court stated that section 38 protects information received from other governments and Canada’s own assessment of information regarding foreign governments and their officials, overlooks that in *Tursunbayev* the AGC claimed that injury to international relations would result from the disclosure of “sensitive information”.
- [215] Justice Noël’s statement at para 81 that “only information that would be injurious to Canada’s international relations if disclosed can be redacted” responds to the issue before him and is not a broader pronouncement to limit what can be protected from disclosure in other circumstances.
- [216] The statutory provisions also do not limit the scope or origin of information that may be subject of a section 38 notice to information held by a person otherwise bound by secrecy to protect the information. Had Parliament wanted to limit the scope of section 38 to information that is subject to a pre-existing obligation to maintain secrecy, it would have so indicated, and it did not.
- [217] Limiting the type of information would render the section 38 regime inapplicable to a wide range of information that would be injurious if disclosed in connection with a proceeding.
- [218] There are many examples of section 38 applications that have sought to protect potentially injurious information that was not possessed by the Government of Canada or was not provided to the Government of Canada or some official by a foreign partner. For example, in a criminal prosecution, information from many sources, including individuals, may come into the hands of the Crown, and if so, must be disclosed, but for prohibitions on such disclosure due to a privilege, including section 38. In addition, where an application is brought for third-party records in the context of a criminal prosecution or a civil action and following the determination regarding the production of that information, the third-party records holder may be required to give notice to the AGC that the records contain injurious or sensitive information.

- (4) A prohibition on disclosure of information pursuant to section 38 is not illogical or ineffective [219] The amicus argues that only information that should or can be the subject of a section 38 notice or application is information for which some other obligation exists to prohibit it from disclosure and that it is not logical that information possessed by a person with no obligation to keep that information secret should be subject to a section 38 application. The amicus notes that where a statute, such as the Foreign Interference and Security of Information Act, or a confidentiality order or some oath of secrecy associated with employment applies, then a person must keep certain information confidential and cannot be compelled to disclose it, and that these requirements must exist in order for section 38 to apply and to potentially override that obligation. The amicus submits that otherwise, that same information can be disclosed both before and after the proceeding, which defeats the purpose of an order made pursuant to section 38 to prohibit disclosure.

[220] This novel argument overlooks that, as noted above, section 38 is one of many provisions in the CEA, which bears the long title “An Act respecting witnesses and evidence”. Section 38 governs certain types of evidence in a court proceeding and not for other purposes.

- (5) Charter values do not impact the interpretation of the section 38 regime (or specific provisions noted by amicus) [221] The Court is also not persuaded by the amicus’ argument that the section 38 provisions should be interpreted to reflect the Charter value of freedom of expression (which is a right pursuant to paragraph 2(b) of the Charter) and should not impair a person’s right to disclose their own information.

[222] Charter values are considered in statutory interpretation when the statutory language is ambiguous. There is nothing ambiguous about the definitions of “sensitive information”, “potentially injurious information” or “proceeding”. The SCC found that genuine ambiguity exists only when a provision has two equally plausible interpretations (*Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 29).

[223] As noted in *Sullivan v Canada (Attorney General)*, 2024 FCA 7 at para 11:

And everything in the Charter is subject to reasonable limits prescribed by law under section 1. As well, it must also be remembered that section 1 of the Charter, in binding words that cannot be ignored, says that the Charter protects the “rights and freedoms set out in it”, not other things such as “values”. [...]

[224] The amicus’ submission that section 38 infringes Al Jabri’s right to share his information overlooks that section 38 is a type of privilege and, like all privileges, other rights may be impacted. There is a balancing process built into section 38. Charter rights are also subject “to such reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society”. The Charter right to freedom of expression cannot automatically trump the section 38 determination as this would undermine the protection of injurious or sensitive information where necessary to protect that information and where the criteria to do so are established. The approach to Charter values arises in different contexts. The amicus has not articulated how the Charter value differs from the same Charter right.

- [225] In any event, Al Jabri has not raised any concern that his Charter right to freedom of expression is infringed and it is not the role of the amicus to do so on his behalf in the context of this Section 38 Application.
- (6) Parliament did not intend to restrict the scope of section 38 [226] Although the intention of Parliament is an important consideration in statutory interpretation, it does not support the narrow interpretation proposed by the amicus. Nor can the intention of Parliament be gleaned from brief remarks made in 2001. Section 38 has a much longer history than 2001.
- [227] As noted above, the amicus points to comments made by MPs in the context of the 2001 Anti-Terrorism Act (referred to as Bill C-36 prior to enactment). The amicus submits that MPs described the intention of section 38 as assuring Canada's allies that "sensitive information that they provide to us can be protected from release". The amicus argues that there was no intention to protect information that was not provided by foreign partners to Canada, such as the information possessed by Al Jabri.
- [228] Statements by MPs regarding section 38 were in the context of a large package of legislative reforms to address terrorism. The amendments to section 38 in Bill C-36 did not change the scope of the information that may be the subject of a section 38 application. The brief comments about section 38 were intended to highlight how the particular amendments fit in that overall package. These MPs were not describing or limiting all the circumstances where section 38 applies.
- [229] In Robert W Hubbard & Katie Doherty, *The Law of Privilege in Canada* (Toronto: Thomson Reuters Canada, 2025) in Chapter 4, the authors describe what is now in section 38 as "long and established". The common law privilege for the protection of information injurious to national security and related interests was first codified in 1970 in section 41 of the Federal Court Act, RSC 1970, c 10 (2nd Supp) [the Act]. Subsection 41(2) provided that a Minister of the Crown could attest that the production or discovery of a document would be injurious to international relations, national defence, or national security or to federal provincial relations or that it would disclose a cabinet confidence, and if so, the discovery or production "shall be refused without any examination by the court". Subsection 41(2) did not permit any judicial oversight or balancing of interests. Section 41 of the Act was repealed in 1982 and replaced by the provisions in the CEA, including what is now the section 38 regime, and which, among other things, ensures judicial oversight and the balancing of competing interests.
- [230] The CEA amendments responded to recommendations of the McDonald Commission, established in 1977 to explore the adequacy of Canada's laws regarding national security. The Commission issued three reports between 1979 and 1981, with recommendations, including to reform the law regarding the disclosure of certain types of information in court proceedings.

- [231] In *Almalki* at para 58, Justice Mosley described the 2001 amendments as part of the evolution of section 38 to permit greater disclosure while ensuring oversight and balancing:
- [58] The amendments enacted by Parliament in 2001, (Anti-terrorism Act, S.C. 2001 c. 41) and the subsequent jurisprudence of the Federal Court reflect a continuing evolution of the s. 38 process towards greater disclosure of sensitive information under judicial supervision. The Court now closely examines the content of the information which the Attorney General seeks to protect, unlike in the past, and makes an independent and impartial assessment of the claims. The legislation explicitly provides for a balancing of the public interests involved and, even where injury has been established, authorizes release of the information or a suitable alternative where the judge finds that the public interest in disclosure outweighs the interests in security, defence or international relations.
- (7) The Attorney General has the discretion to consider section 38.13; but this does not appear to be a preferable option [232] Section 38.13 is rarely used and whether the AGC would do so is entirely within the discretion of the AGC, which must be exercised personally. In any event, the Court does not regard the use of a certificate as a preferable or more efficient approach to protect the information that the amicus characterizes as falling outside the definition of “potentially injurious information”. Moreover, section 38.13 cannot be relied on until the Court has first determined the AGC’s Section 38 Application, and, in any event, reliance of section 38.13 would not address the amicus’ concerns.

[233] Subsection 38.13(1) states:

38.13 (1) The Attorney General of Canada may personally issue a certificate that prohibits the disclosure of information in connection with a proceeding for the purpose of protecting information obtained in confidence from, or in relation to, a foreign entity as defined in subsection 2(1) of the Foreign Interference and Security of Information Act or for the purpose of protecting national defence or national security. The certificate may only be issued after an order or decision that would result in the disclosure of the information to be subject to the certificate has been made under this or any other Act of Parliament.

[Emphasis added].

- [234] The amicus notes that the information at issue is not from a foreign partner and argues that its disclosure would not protect Canada’s national security. Therefore, the amicus’ suggestion to rely on a certificate is inconsistent with their position and overlooks the requirements of subsection 38.13(1).
- [235] The amicus’ submission that a section 38.13 certificate is a better option—or the only option—to prohibit the disclosure of the information at issue is also inconsistent with their general submission that maximum disclosure of the information should be permitted.

C. Conclusion regarding the amicus' challenge [236] The Court is not persuaded by the amicus' arguments and finds that the documents at issue and the redacted information therein is the "type of information" contemplated by the section 38 regime. The Court must determine the merits of the Section 38 Application in accordance with the applicable tests.

X. Submissions of the AGC [237] The AGC submits that the redacted documents, [REDACTED] (more detail than any similar public documents). These operations involved the [REDACTED] The AGC acknowledges that the information regarding the national security interests of Canada's foreign partners comes from a litigant, rather than from the foreign partner directly to Canada, but submits that regardless, the disclosure of the information would still be harmful to the national security of Canada.

[238] The AGC notes that the Court's determination of whether injury has been established is based on the reasonableness standard. The AGC also notes that the AGC's assessment of injury is owed deference, given its role and expertise, but acknowledges the need to provide evidence to support the claim that injury would be probable.

[239] The AGC submits that their affiant provided evidence to support finding that disclosure of the redacted information would injure Canada's national security [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The AGC submits that this information
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[240] Disclosure of the redacted information would also harm Canada's relationships with foreign intelligence agencies, upon which Canada relies for intelligence. The AGC notes that foreign intelligence agencies share information with Canada trusting that Canada will protect the information.

[241] The AGC notes the specific responses and concerns of foreign agencies who reviewed the documents and identified injurious information.

[242] The AGC submits that although their affiant could not point to an example where a foreign partner had "turned off the tap" of information, this remains probable and moreover, Canada would not necessarily know whether a foreign partner had withheld information.

[243] The concern remains that Canada will not be regarded as a trusted partner to protect injurious information—whether it is shared by a foreign partner with Canada or whether it has come from Al Jabri.

- [244] With respect to the balancing stage, the AGC notes that Al Jabri, who argues that he needs the redacted information, has the onus to show that public interest favours disclosure. The AGC submits that whether the information will establish a fact “crucial to the defence” is an important factor, but is only one of several factors to guide the balancing, which in this case should include the nature and extent of the injury to national security and whether the information is otherwise available.
- [245] The AGC submits that information about the details of the highly secret national security operations Al Jabri was engaged in for the KSA does not address whether Al Jabri was authorized to receive the payments in issue. Specific organizations and the names of those with whom Al Jabri engaged are also not relevant to this issue. The AGC submits that some information about specific payments received by Al Jabri is relevant, but the disclosure of this information in the context of other related information would be injurious. The AGC notes that Al Jabri’s Public Affidavit, the summary of non-litigation privileged information in the Proffer already provided to Sakab, and other public information includes information about many other payments.
- [246] The AGC has made submissions with respect to the specific redactions in the documents identifying whether and how the information would be relevant to the issue of the authorization for Al Jabri to be paid or to receive the impugned payments and the injury from disclosure of the information. The AGC has also made submissions about the redactions of information that recurs in the documents, by general topic.
- [247] The AGC provided their response to the amicus’ chart, which compares redacted information to similar information in the public domain. The AGC generally submits that although some public information aligns with redacted information, the redacted information is injurious because of the greater details provided, links within the documents and references to other foreign agencies, and other contextual factors. The AGC proposes that recurring information, for example regarding ||| could be addressed by providing more general guidance to Al Jabri about what he can and cannot disclose.
- [248] The AGC suggests that the Court could redraft or summarize the Proffer to guide what Al Jabri may address in his defence and to avoid injury that would result from making linkages from public information to details in the Proffer.
- [249] The AGC notes that ||| are in public documents, but these references are redacted in the other documents due to the additional details ||| The AGC submits ||| must remain redacted. This includes references in the Proffer (including its Table of Contents) and Confidential Appendix A.

- [250] The AGC submits that if the Court determines that the importance of the information ||| outweighs the injury, a summary of facts ||| is an option rather than lifting the redactions.
- [251] The AGC submits that information disclosing details ||| that the media articles noted by the amicus reveal more general information. The AGC notes that media articles are not confirmation ||| disclosure would be injurious to their national security, and this in turn would harm the relationship and Canada's national security.
- [252] With respect to KSA ||| the AGC now agrees that this information in the Confidential Brief of Documents and in Exhibit 1 to Confidential Appendix A can be used by the Respondents because the information is already in the hands of Sakab.
- [253] However, the AGC submits that related information in the Proffer should not be disclosed as it reveals much more detail,
||| The AGC notes the media articles provided by the amicus but submits that these do not constitute government confirmation (and one media report cites another media report). The AGC submits that the ||| disclosure would be injurious to their national security, and failure to protect the information would in turn harm the relationship and Canada's national security.
- [254] With respect to references to ||| but noted in other documents, including Al Jabri's Public Affidavit, the AGC submits that lifting the references to the roles of both companies would not cause injury, but any
|||
- [255] With respect to Al Jabri's relationship with the US intelligence community, the AGC acknowledges that public documents, including Al Jabri's Statement of Defence, refer to his cooperation with and assistance to western intelligence agencies, including the US. However, |||

[256] With respect to [REDACTED] the AGC submits that although there is some general information [REDACTED] in the public documents, [REDACTED] The AGC notes that

[REDACTED]
[REDACTED]

[257] The AGC acknowledges that [REDACTED] [REDACTED] is publicly known, but only at a general level. The AGC submits that disclosure of specific information would be injurious, is not relevant to Al Jabri's defence, and should remain redacted.

A. Confidential Appendix A (AGC 0001) [258] The AGC notes that the redacted information pertains to the [REDACTED]

[259] The AGC generally submits that the redacted information is injurious to national security and is, for the most part, not relevant to Al Jabri's defence. The AGC submits that references to funding from foreign governments are not related to the impugned payments received by Al Jabri and are not relevant.

[260] The AGC made submissions regarding the specific redactions.

[261] For example, the AGC submits that the redacted information in paras 19–27 is injurious. To the extent there are references to payments, similar information is in Al Jabri's Public Affidavit. However, if the redacted information were disclosed, it would link these payments to a particular project [REDACTED] which is injurious information. The AGC suggests that a general description [REDACTED] be drafted, which could be a replacement for the redacted text.

[262] The AGC submits that the disclosure of the information in para 35 (at page 8 of AGC 0001), which is heavily redacted, would be directly injurious to Canada's national security. The AGC notes that this relates [REDACTED] and is not about any payments and not relevant to Al Jabri's defence.

[263] The AGC further submits that the disclosure of the redacted information in paras 32–36 (misnumbered paras at pages 9-10 of AGC 0001) would be injurious [REDACTED]
[REDACTED]

B. Exhibit 1 to Confidential Appendix A (AGC 0004) [264] Subsequent to filing their written submissions and to the May 2025 hearing, the AGC confirmed that the information that is minimally redacted in Exhibit 1 to Confidential Appendix A can be disclosed. The AGC reconfirmed their position on November 14, 2025. The AGC notes that these documents are already in the hands of Sakab and agrees that these documents, unredacted, may be disclosed and used by both Respondents, but the redacted information should not be disclosed to the public. The AGC may pursue a confidentiality order or sealing order.

[265] The AGC notes that the documents refer to payments, but do not indicate to whom or when the payments were made.

C. Confidential Brief of Documents (AGC 0006—AGC 0023) [266] Subsequent to filing their written submissions and to the May 2025 hearing, the AGC confirmed that, with some exceptions, the redacted information in the Confidential Brief of Documents may be used by both Respondents but should not be disclosed to the public. The AGC notes that most of these documents are already in the hands of Sakab and foreign partners are aware of this. The AGC may pursue a confidentiality order or sealing order to ensure no further disclosure. On November 14, 2025, the AGC clarified that AGC 0018 and item 11 in AGC 0007 (an Index) should not be disclosed.

D. The Proffer (AGC 0005) [267] The AGC submits that the Proffer includes extremely sensitive information that would harm national security if disclosed. The AGC submits that the injury to national security outweighs the importance of this information to issues in the fraud litigation. The AGC acknowledges that some information in the Proffer has some relevance to whether Al Jabri was authorized to receive the amounts he received, but other information does not.

[268] The AGC acknowledges Al Jabri's submissions regarding why he needs specific information currently redacted to respond to the fraud allegations, but argues that the redacted information in the Proffer is too harmful to national security to be disclosed. The AGC also argues that the specific details of Al Jabri's role in specific projects and his relationships with particular agencies and persons do not address the payments, except generally that he was paid very well for successful projects. The AGC further notes that there is other information about payments received in the unredacted parts of the Proffer and in other documents.

[269] The AGC suggests that the Court could redraft the Proffer to set out what Al Jabri may disclose.

[270] The AGC alternatively submits that the Court could issue a direction to advise Al Jabri what he can and cannot say about certain information, ||| and the various compensation he received, |||

[271] Similarly, the AGC suggests that the Court could direct Al Jabri with respect to what he may disclose ||| ||| Although general information may be disclosed, ||| or any information that could be so linked.

XI. Submissions of the Amicus [272] As noted above, the amicus characterizes Al Jabri's assertion that the redacted information must be disclosed to permit him to defend himself as disingenuous; rather, Al Jabri would prefer that the information be prohibited from disclosure so that he can pursue a motion to stay the fraud action in the Ontario Superior Court of Justice on the basis that he cannot defend himself.

[273] The amicus submits that despite Al Jabri's contention that he needs to be able to disclose the information, he prepared a long "Proffer", which deliberately included potentially injurious information, and then asserted litigation privilege, with the result that the Proffer cannot be shared until the Section 38 Application is determined and then, only if he waives the litigation privilege.

A. Remedy sought by amicus [274] The amicus first submits that the Court should dismiss the Section 38 Application on the basis that section 38 does not apply to the information at issue. As noted above, the Court does not agree.

[275] In the alternative, the amicus submits that the AGC has failed to establish that any injury to national security would arise from disclosure of the information.

[276] In the further alternative, the amicus submits that if the Court finds that the AGC has established injury to national security, the Court should find that the public interest in disclosure of much of the information prevails and order that maximum disclosure be permitted and that any injury that would be caused by disclosure of some information be mitigated by the provision of non-injurious summaries.

B. No injury [277] The amicus submits that the AGC's evidence does not establish that disclosure of the information would injure Canada's national security.

[278] The amicus submits that the AGC's affiant was not sufficiently familiar with the information at issue or the facts. The affiant's evidence was generic and speculative, particularly with respect to how disclosure could impact Canada's national security.

[279] The amicus notes that the AGC's affiant was not aware that the same or similar information redacted in some documents is not redacted in other documents that are also subject to the Section 38 Application and in public documents, or that Al Jabri has given interviews to the media which reveal similar information.

[280] The amicus suggests that the affiant's view that CSIS does not "second guess" the responses provided by their partners shows a lack of review and diligence by CSIS.

[281] The amicus disputes the affiant's evidence and the AGC's submission that disclosure of the information contrary to a foreign partner's request would result in curtailing information sharing with Canada by those and other foreign partners. The amicus submits that a sophisticated foreign partner would accept that disclosure is determined by the Court in accordance with Canada's legal system and would also appreciate that the information at issue belongs to a private individual—not to Canada—and was not provided by a foreign

partner. The amicus doubts that a foreign partner would blame Canada for not prohibiting an individual from sharing their own information.

[282] The amicus further submits that the affiant did not confirm that Canada's foreign partners would or ever had curtailed information sharing or would regard Canada as an untrustworthy partner.

[283] The amicus submits that the third-party rule, referred to by the affiant, is not applicable because the information at issue was not provided to Canada by a foreign partner but rather belongs to Al Jabri.

C. The public interest in disclosure outweighs public interest in non-disclosure [284] More generally, the amicus submits that with respect to most of the information, several factors support finding that the public interest in disclosure outweighs the public interest in non-disclosure, including the seriousness of the injury, if any, and the degree of relevance, materiality, or probative value of the information.

[285] The amicus reiterates that there is no evidence of injury to Canada's national security from the disclosure of most of the information, and little injury from the disclosure of the remaining information.

[286] The amicus submits that most of the redacted information is not relevant, probative, or important. The amicus adopts Sakab's view that information about Al Jabri's role in counterterrorism and other projects is not at issue and not relevant; the only relevant information is that which addresses Al Jabri's authority or legal entitlement to receive the impugned payments. The amicus submits that the list of the impugned payments prepared by Sakab as derived from the Deloitte Report identifies the relevant information. The amicus also notes that Al Jabri repeatedly stated that he cannot explain the financial information or the payments made.

[287] The amicus argues that other factors supporting disclosure include that much of the redacted information is already in the public domain due to Al Jabri's public affidavits, other court proceedings and interviews, and that the information is dated and based only on Al Jabri's recollection.

[288] The amicus notes that Al Jabri has given media interviews that disclose similar information about the KSA and the intelligence relationships he developed with other countries that he now asserts he is prohibited from disclosing.

[289] The amicus submits that the Court's balancing of the public interest in disclosure of the information against non-disclosure should consider, among other factors, that if the redacted information does not address the authorization for the impugned payments, the information is not relevant, probative, or material. The amicus further submits that the Court should nonetheless provide a summary stating that the redacted information is not about the impugned payments and/or that the description of the projects does not address the authorization for payment.

[290] The amicus further submits that Al Jabri’s “manipulation” of the section 38 process should encourage the Court to permit maximum disclosure while mitigating any potential injury that would otherwise arise.

D. The documents [291] The amicus submits that each group of documents (and each document within the group) should be assessed separately to determine whether the redacted information meets the Ribic test because different considerations apply—in particular, the injury from disclosure and the probative value or importance of the information—and the balancing will differ for each category or each document.

- (1) Confidential Appendix A (AGC 0001) [292] With respect to Confidential Appendix A (AGC 0001), the amicus submits that the information is relevant only to the extent it is linked to an impugned payment. The amicus submits that very few paragraphs in AGC 0001 refer to payments. The amicus notes that the redacted references to payments ||| are described in more detail in Al Jabri’s Public Affidavit and there is no need to redact this information in Appendix A. The amicus submits that it is not possible to determine if other redacted information is linked to the impugned payments or to other payments.
- (2) The Proffer (AGC 0005) [293] The amicus submits that the Proffer (AGC 0005) is the most contentious and significant document in this Application. The amicus submits that ||| and if the information does not relate to Al Jabri’s authority to receive the impugned payments, it is not relevant. The amicus submits that the details of Al Jabri’s counterterrorism projects and relationships with foreign partners is not relevant to his defence.

[294] The amicus suggests that the Court indicate in a text box over redacted information that is not relevant, for example, “the information is not related to an impugned payment.”

E. Maximum disclosure is warranted [295] The amicus submits that if the Court finds that disclosure of the information would cause injury, maximum disclosure of the injurious information should nonetheless be provided.

[296] The amicus more generally argues that the Court should permit maximum disclosure for information that is old and untested, information that is already public, and for Exhibit 5 (the Excel sheet prepared by Sakab setting out the impugned payments. [Exhibit 5 is not part of the Section 38 Application].

[297] The amicus also argues that, regardless of the Court’s determination, summaries of all of the redacted information should be provided even if the Court determines that it is not in the public interest to disclose the redacted information.

[298] The amicus also appears to endorse Sakab’s proposed “Decision Tree”, although this does not reflect the statutory section 38 regime, the Ribic test, or the subsequent jurisprudence.

- [299] The amicus encourages the Court to “enlighten” the trial judge to the greatest extent possible and submits that the Court should provide a confidential memorandum for the trial judge to provide further details of the redacted information.
- [300] The amicus also submits that they should have a further opportunity to propose any non-injurious summaries as the Court may authorise.
- [301] As noted, the amicus provided a chart to the AGC and the Court at the May 2025 hearing noting information redacted in one document that is unredacted in other documents, including Al Jabri’s pleadings and affidavits and US court proceedings, or otherwise publicly disclosed in media and interviews.

XII. Analysis – Application of the Ribic Test [302] The Court has considered the public and ex parte submissions of both Respondents and the detailed submissions of the AGC and amicus with respect to particular redactions in Confidential Appendix A and the Proffer (and has considered the information already public and the information in the Confidential Brief of Documents and in Exhibit 1, most of which will be disclosed) in applying the Ribic test.

- [303] The amicus proposed summaries of the redacted parts of the documents to the AGC in May 2024, although there were subsequent submissions and the Court had not made any determination. Where the Court has determined that the public interest in disclosure outweighs that of non-disclosure and that the injury can be mitigated by a non-injurious summary, the Court has considered the amicus’ proposals for summaries.

A. Relevance [304] The parties agree, as does the Court, that the redacted information meets the threshold of relevance at the first stage of the Ribic test, which is a relatively low threshold (Almalki at para 60).

B. Injury [305] As noted, the AGC bears the onus of establishing that injury would result from disclosure of the information. A mere assertion is not enough—there must be evidence with a factual basis. The Court determines whether the AGC has so established based on a reasonableness standard—i.e., absolute proof is not the standard. While the AGC’s assessment of injury is owed deference, the Court must carefully scrutinize the evidence of injury.

- [306] As noted, the amicus submits that the AGC’s evidence does not demonstrate that the disclosure of the redacted information “would” cause injury to national security or that injury is probable. The amicus submits that the evidence of injury is speculative and that “parroting” the “wish list” of a foreign partner is not sufficient to demonstrate that injury would be caused to Canada’s national security.
- (1) The AGC’s assessment of injury is owed deference [307] The amicus’ criticism of the affiant’s evidence as speculative and uninformed is not shared by the Court. The affiant did not suggest that CSIS simply acted in response to the request of foreign partners. The affiant stated that on CSIS’s own review, the need for redactions was also obvious. The affiant did not mistakenly rely on the third-party rule; rather, he acknowledged that it did not apply, but noted that by analogy the harm would be the same. The affiant explained that Canada relies

extensively on intelligence from its Five Eyes Partners and other allies and that some relationships are of higher importance than others. The affiant acknowledged that he was not aware of other documents that were not covered by the Section 38 Notices; his evidence focused on the injury arising from disclosure of the redacted information based on his experience.

- [308] In *Almalki*, Justice Mosley explained that while the AGC's claim of injury is owed deference, the court must scrutinize such claims, noting at para 70:
- [70] The judge presiding over a s.38 review must give considerable weight to the Attorney General's submissions on the injury that would be caused by disclosure given the access that office has to special information and expertise. Mere assertions of injury are insufficient: *Khadr* April 2008, above at paras. 31-32. The judge must be satisfied that executive opinions as to potential injury have a factual basis which has been established by evidence: *Ribic*, above at para. 18, citing *Home Secretary v. Rehman*, [2001] H.L.J. No. 47, [2001] 3 WLR 877, at page 895 (HL(E)). The burden of persuasion rests with the Attorney General and probable injury is assessed on a reasonableness standard: *Ribic*, para.19. While the authority to order disclosure is expressed in the statute in discretionary terms, the Federal Court of Appeal has held that an authorization to disclose will issue if no injury would result to the protected interests: *Ribic*, above, at paragraph 20; see also *Khadr* June 2008, above at paragraph 52.
- [309] Justice Mosley reiterated this point at para 95, noting that the jurisprudence has established that the court must give "considerable weight to the Attorney General's submissions given the access that officeholder has to special information and expertise" and the AGC's "protective role vis-à-vis the security and safety of the public".
- [310] In *Tursunbayev* at paras 82–86 Justice Noël reiterated that while "a degree of deference" is owed to the AGC's assessment of injury, the court must ensure that the redactions are justified and supported by evidence that injury from disclosure is probable.
- [311] In *Almalki* at paras 76–78, Justice Mosely explained that in assessing the injury or danger to national security, a flexible interpretation is called for and requiring direct proof of a specific threat sets the bar too high.
- [312] In the present case, the AGC's claim of injury to national security is owed deference. Although the evidence has some weaknesses and does not provide proof that injury to national security will occur, proof is not the standard. The AGC's assessment of injury is reasonable. The disclosure of the information that must remain redacted would injure Canada's national security in the two ways noted by the AGC's affiant. As recognized in the jurisprudence, the AGC's claim of injury arising from harm to the relationship with foreign partners is not idle speculation (*Almalki* at para 136).

[313] The amicus points to similar information already in public documents or in other documents subject to the Section 38 Application yet not redacted and submits that there would not be any injury from disclosing the parallel redacted information. However, the presumption that disclosure of information already in the public domain would not cause injury is rebuttable (Almalki at para 82).

[314] In *Canada (Attorney General) v Canada (Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar)*, 2007 FC 766 at para 56 [Arar], Justice Noël noted:

There are many circumstances which would justify protecting information available in the public domain, for instance: where only a limited part of the information was disclosed to the public; information is not widely known or accessible; the authenticity of the information is neither confirmed nor denied; and where the information was inadvertently disclosed.

[315] The list is not closed.

[316] In the present case, while similar information to some of the redacted injurious information is public, in some instances that “public” is only Sakab, and in some instances, the similar information is general in nature and not linked to activities of the foreign partners who seek to have the information protected.

[317] In Almalki at para 87, Justice Mosley cited *Harkat (Re)*, 2005 FC 393 at para 89 [Harkat], a security certificate case, where the court provided examples of the type of information that the court considered must remain confidential. One such example identified in Harkat at para 89, is “[s]ecrets obtained from foreign countries or foreign intelligence agencies where unauthorized disclosure would cause other countries or agencies to decline to entrust their own secret information to an insecure or untrustworthy recipient.”

[318] While the information at issue in this Application was not obtained from foreign countries, which the affiant and AGC have clearly acknowledged, the affiant’s evidence is that the same harm would result; disclosure would cause foreign countries who seek to keep information from public disclosure wary to share other intelligence with Canada. The trust will erode and, as also noted by the affiant, Canada will not know whether the foreign partner has withheld information.

(2) Sophisticated partners and Canada as a net importer of intelligence [319] The amicus’ submission that Canada’s foreign partners are sophisticated and would understand that the Court determines whether the redacted information should be disclosed and, therefore, the impact on information sharing described by the AGC’s affiant is speculative and not persuasive, has been addressed and rejected. In Almalki at paras 135 and 136, Justice Mosley refuted a similar submission, albeit in the context of a claim of injury to international relations:

- [135] The respondents submit that this Court should keep in mind the acknowledgement of the DFAIT witness that Canada's intelligence partners are well aware of Canada's legislation regarding disclosure. Even knowing that this Court has the power to authorize disclosure of information notwithstanding that it has been found to be injurious to international relations, Canada's intelligence partners still maintain information sharing relationships. Accordingly, the respondents argue that this Court should not give undue weight to speculation that foreign sources will, as a result, no longer communicate information to Canada.
- [136] This is not idle speculation. Relationships will continue where the partners consider it in their mutual interest to maintain them, but the nature and extent of the information provided may be affected for some time. Examples of this may be found in the history of the intelligence sharing arrangements in which Canada has participated with its principal allies since World War II: see for example, Richard J. Aldrich, *GCHQ: The Uncensored Story of Britain's Most Secret Intelligence Agency*, (London: Harper Press, 2010); Richard Aldrich, "Allied code-breakers Co-operate – but not always" *The Guardian* (24 June 2010). The respondents are correct to suggest that these arrangements work to the benefit of all of the countries involved but Canada is, unquestionably, a junior partner in contributing and receiving intelligence.
- [Emphasis added].
- [320] The third-party rule or principle was described in *Almalki* at para 132 as applying "when there is a sharing or exchange of information between police forces or intelligence agencies, particularly between those in different countries. By agreement between the agencies, express or implied, the agency receiving information is neither to attribute the source nor to disclose its content without the permission of the originating agency: *Ottawa Citizen Group v. Canada (Attorney General)*, 2006 FC 1552 at para. 25, 306 F.T.R. 222."
- [321] Although the third-party rule is not at play in the Section 38 Application, given that the documents at issue were not provided by a foreign partner to Canada, the same concern exists regarding the need for Canada to preserve relationships to ensure information sharing from the Five Eyes and other allies. The AGC's affiant acknowledged that the third-party rule was not the issue in this case, but explained that the harm to the relationship with foreign partners would be the same if Canada did not protect the information that foreign partners identified and asked to be protected given their own national security interests.
- [322] The jurisprudence has emphasized Canada's dependence on foreign partners to protect Canada's national security given that Canada is a "net importer" of intelligence and that Canada is a "junior partner" (*Almalki* at paras 131 and 136).
- [323] In *Almalki* at para 150, Justice Mosley also emphasized that some relationships are of higher importance:

I would also note that all countries and agencies are not equally important to Canada in terms of intelligence sharing. It is obvious that the consequences of a breach of an arrangement with Canada's major allies such as the United States and the United Kingdom would be far greater than those which may result from disclosure of information received from a country or agency not so closely linked to our national interests. [...]

[324] In Arar at para 80, Justice Noël expressed the same view, noting that “certain agencies are of greater importance to Canada and thus that more must be done to protect our relationship with them.”

[325] Although Justice Noël was referring to the third-party rule, the importance of relationships with certain agencies is equally applicable to this Application. As the affiant noted, Canada's relationship |
|
|

C. Balancing [326] In balancing the public interest in disclosure against the public interest in non-disclosure, the factors to be considered vary from case to case. The factors considered in the present circumstances include: the extent of the injury to national security arising from disclosure; the nature of the public interest sought to be protected by prohibiting disclosure (which focuses on national security); the degree of relevance or importance, or the materiality or probative value of the information in the underlying proceeding (also described as whether the information will probably establish a crucial fact in the case to be made), which relates to the issues raised in the pleadings and are not limited to Al Jabri's authority to receive various payments, but also include Al Jabri's claim that he was rewarded for the risk and success of projects and that payments were obfuscated and deliberately not documented; and, whether and to what extent the redacted information is already known to the public, and if so, how.

[327] The Court is guided by the statutory provisions, the Ribic test, and the jurisprudence that has interpreted the test.

[328] Subsection 38.06(2) states:

If the judge concludes that the disclosure of the information or facts would be injurious to international relations or national defence or national security but that the public interest in disclosure outweighs in importance the public interest in non-disclosure, the judge may by order, after considering both the public interest in disclosure and the form of and conditions to disclosure that are more likely to limit any injury to international relations or national defence or national security resulting from disclosure, authorize the disclosure, subject to any conditions that the judge considers appropriate, of all or part of the information or facts, a summary of the information or a written admission of facts relating to the information.

[329] The Court must first find that the public interest in disclosure outweighs the public interest in non-disclosure before considering whether any conditions or summaries are an option to mitigate any lingering injury, although the Court may also consider whether a summary is feasible in conducting the balancing. In some instances, the public interest in disclosure

more greatly outweighs non-disclosure or vice versa. In other instances, the two interests are more evenly balanced, and in these instances, the option of providing non-injurious summaries to mitigate any injury that would otherwise arise may be preferable.

- [330] As noted, in practice, the consideration of possible non-injurious summaries may occur within the balancing test, as in some cases there is an option to provide a non-injurious summary and in others, there is no way to convey the injurious information in a non-injurious manner.
- [331] In Ahmad, the SCC noted, at para 44, that section 38 is designed to operate flexibly and the Court has endeavoured to reflect this.
- [332] Although the Court accepts that any information regarding the impugned payments would be relatively more relevant and important, the Court does not share the view that only the information about the authority to pay or receive the impugned payments is relevant, probative, or material to the fraud allegations or that this information should be attributed a very high degree of relevance compared to other redacted information. The pleadings raise other issues. Moreover, the parties do not dictate how the Court weighs the applicable factors.
- [333] With respect to the amicus' submission that in their discussions, Sakab conceded that if the trial judge wants the other contextual information—e.g., regarding the details of Al Jabri's missions—Sakab will "live with the consequences", the Court is of the view that this is not a concession. The Court is required to assess all the redacted information. Sakab's position is also inconsistent with their submission that the Court should provide a detailed memorandum to the trial judge to explain all the redactions and is inconsistent with the amicus' submission that maximum disclosure be provided.
- [334] The Court acknowledges that there are references to some of the redacted information in public documents; however, that information is, for the most part, more general. The details of specific activities and the linkages to Canada and to other foreign partners in the redacted documents cannot be disclosed due to the nature and extent of the injury. Disclosure would, in some instances, impact Canada's national security directly and in other (and more) instances, would impact Canada's relationship with the foreign partners upon which Canada depends for intelligence.
- [335] In balancing the public interest in disclosure against the public interest in non-disclosure, the Court finds that the seriousness of the injury arising from disclosure, and the limited or lack of relevance of the information supports non-disclosure of certain redacted information. The public interest in the disclosure of other injurious information, which has more relevance, supports the provision of non-injurious summaries to indicate the nature of the information that remains redacted, while mitigating the injury from disclosure. However, some non-injurious summaries may not be very useful.

D. The documents at issue; the prohibition on disclosure of some information (as identified in ANNEX A) is confirmed (1) AGC 0004: Exhibit 1 to Confidential Appendix A [336] Exhibit 1 contains reports or receipts or telegrams related to tasks and expenditures. As noted, the AGC now confirms that these documents may be disclosed and used by both Respondents unredacted, but not disclosed to the public. The AGC notes that the documents refer to payments, but do not indicate to whom or when the payments were made, were minimally redacted, and are already in the hands of Sakab.

[337] The AGC is no longer asserting an injury from this disclosure, and therefore, the documents are not prohibited from disclosure to the parties. The AGC will determine whether and how to protect the documents from further public disclosure and will seek the appropriate order in the Ontario Superior Court of Justice in the context of the underlying proceeding.

(2) AGC 0006–AGC 0023: Confidential Brief of Documents [338] The AGC also now confirms that with the exception of AGC 0018 and item 11 in AGC 0007 (an Index), the Confidential Brief of Documents may be disclosed unredacted and may be used by both Respondents. The AGC notes that, apart from the exceptions noted, these documents are already in the hands of Sakab, and foreign partners are aware of this. The AGC is no longer asserting an injury from this disclosure, and therefore, with the exception of AGC 0018 and item 11 in AGC 0007, the documents are not prohibited from disclosure to the parties. The AGC will determine whether and how to protect the documents from further public disclosure and will seek the appropriate order in the Ontario Superior Court of Justice in the context of the underlying proceeding.

[339] The redacted information in AGC 0018 and one redacted item in AGC 0007 is personal information which is injurious and not relevant to AL Jabri's defence.

(3) Confidential Appendix A and the Proffer [340] With respect to all the redacted information in Confidential Appendix A and the Proffer, the Court has considered whether: a) the information is relevant to the underlying fraud action; and b) the AGC has demonstrated that disclosure of the information would cause injury to national security based on the evidence and on a reasonableness standard.

[341] Where the Court has found that injury has been established, the Court has considered whether the public interest in disclosure outweighs the public interest in non-disclosure.

[342] There is no dispute that the redacted information is relevant to the underlying fraud action.

[343] Where the AGC has established injury to national security, the Court has considered whether the public interest in that information favours disclosure. In making this assessment, the Court has considered the written and oral public and ex parte submissions of both Respondents, the amicus, and the AGC. Where the Court has concluded that public interest in disclosure prevails, the Court has considered whether the injury that would otherwise arise can be mitigated by providing replacement text or a summary that does not

reveal the injurious information, such as information identifying foreign partners, agencies, names, and details of operations and projects.

[344] The extent of the injury and the degree of relevance or importance of the redacted information in Confidential Appendix A and the Proffer varies. In some instances, the information is injurious and not relevant, and therefore, no disclosure should be permitted (according to the Ribic test and despite Sakab's and the amicus' request to provide summaries regardless). In other instances, the information is injurious and relevant to varying degrees and the other factors at the balancing stage support public disclosure with conditions to mitigate the injury, and in other instances, while the information may be relevant to varying degrees, the injury is serious and a non-injurious summary is not feasible.

(a) AGC 0001: Confidential Appendix A [345] As noted, the AGC submits that the redacted information in Confidential Appendix A, which pertains
||||| and not of much
relevance, although there are some general references to payments.

[346] The amicus submits that the information in Confidential Appendix A is not relevant unless it is linked to an impugned payment and notes that there are very few paragraphs that refer to payments.

[347] The amicus submits that most of the redacted information is in other public documents.

[348] Although the Court accepts that information regarding the impugned payments is relatively more relevant and important, as noted, this is not the only relevant information.

[349] Confidential Appendix A includes injurious information that is relevant to Al Jabri's role and relationships with foreign partners, which relates to his claim that his role and his relationships resulted in successful projects and justified his compensation. The public interest in disclosure outweighs that of non-disclosure. A non-injurious summary is warranted.

[350] Some redacted information is to a few words, the disclosure of which would be injurious, but which is not relevant. Where information is injurious and not relevant, no summary is warranted.

[351] The AGC submits that redacted information regarding some payments remains injurious, although similar information may be in Al Jabri's Public Affidavit|||||
|||||

[352] The amicus notes that information included in other documents (e.g., the Confidential Brief of Documents)
|||||
||||| off book payments, and uncertainty about
whether funds or assets were from the KSA or MBN.

- [353] The Court finds that this redacted information (at paras 19–25) is injurious, but it is of some relevance to Al Jabri regarding the projects he was tasked with, the compensation he received, and why. The information in the public documents is more generic. A non-injurious summary is warranted to mitigate the injury from disclosure.
- [354] The AGC and amicus may suggest a more general non-injurious description of Al Jabri’s role in Metaj and other initiatives ||||| This description, once authorized by the Court, can be included as a summary where applicable or in a footnote.
- [355] Other redacted information in Confidential Appendix A has some relevance to Al Jabri’s submissions about the roles of MBN and Al Jabri and the deliberately obscure funding of many projects without documentation. The information is injurious and must remain redacted. Where the Court has found that the public interest in disclosure of the injurious information outweighs the public interest in non-disclosure, a non-injurious summary is warranted to mitigate the injury from disclosure.
- [356] In other paragraphs, the redacted information describing specific projects is also injurious. Although the funding described is not related to impugned payments, it is of some relevance to Al Jabri as it demonstrates that MBN instructed Sakab to fund the project. The public interest in disclosure prevails and a non-injurious summary is warranted.
- [357] The Court notes that para 35 (at page 8 of AGC 0001) is extensively redacted; this information relates directly to ||||| Disclosure would be very injurious directly to Canada’s national security. This information has no relevance to Al Jabri’s receipt of the “impugned payments” or to any other aspect of Al Jabri’s defence. The public interest in non-disclosure prevails.
- [358] Disclosure of information referring to ||||| would be injurious to Canada’s national security because it would disclose ||||| (As noted, the disclosure of other similar information would cause the same injury).
- [359] The identification of specific foreign agencies is not relevant to Al Jabri’s defence. No summary is warranted. The redaction ||||| although public elsewhere, must remain redacted
|||||
- [360] The general statement by Al Jabri that his compensation from TCC was for his work on the project is not injurious if the other references in paras ||||| remain. It is relevant to a source of compensation. The redacted information should be disclosed; the redaction should be lifted.

- [361] As noted, a more general description of Al Jabri's role in TCC may be crafted by the AGC and amicus and if authorized by the Court can be provided in addition to a non-injurious summary (or cross referenced to a non-injurious summary).
- [362] Paragraphs that include redacted information regarding certain projects ||| must remain redacted. References to Al Jabri's role in the covert projects is injurious because ||| because of links that can be made with other information. The media report noted by the amicus does not refer to these links or the KSA as the source of funds. The relevance to Al Jabri's own compensation is not linked to a particular impugned payment, but is relevant to Al Jabri's contention that funds flowed from Sakab to him which he then paid out of his personal accounts for other projects (in this case, to informants) and to Al Jabri's submissions that the KSA obfuscated the source of funds for various initiatives. The public interest in disclosure prevails.
- [363] A non-injurious summary will mitigate the injury from disclosure, for example: "Al Jabri notes that he participated in other projects where funds for the projects passed from Sakab through Al Jabri's personal accounts." The redactions also cover Al Jabri's more general statement of his intention, which is peppered throughout Confidential Appendix A, and should be replaced with a summary stating "Al Jabri states that he will provide more details in other documents if permitted to do so."
- [364] The Court's determination of all the redacted information in Confidential Appendix A is set out in Annex A.
- (b) AGC 0005: the Proffer [365] The Proffer is a 44-page document, plus a Table of Contents, prepared by Al Jabri for the purpose of litigation, not for filing with the Ontario Superior Court of Justice. Al Jabri asserts litigation privilege over the document. However, Al Jabri has provided a non-injurious version of the non-litigation privileged parts of the Proffer to Sakab and has given other undertakings in the context of the fraud litigation regarding the Proffer once the Court has determined the Section 38 Application. The Court's determination of whether the redacted information in the Proffer is confirmed as prohibited or not prohibited does not govern the ultimate use of the Proffer given its litigation privileged status. The Court's determination only permits the information in the Proffer—whether it remains redacted, redactions are lifted or summaries are provided—to be disclosed; it is not this Court's role to order disclosure.
- [366] The Court finds that much of the redacted information in the Proffer is injurious. Where the Court has found that the injurious information is relevant and that the public interest in disclosure prevails, the Court has identified a non-injurious summary to mitigate the injury from disclosure, where such a summary is feasible.
- [367] As repeatedly noted, the Court has taken a broader view of relevance in considering the factors at the balancing stage than that advanced by the amicus or AGC.

- [368] Although the amicus has very helpfully identified similar information in the public domain to some of the injurious information that remains redacted, in some instances the redacted information is more specific and detailed, in other instances the redacted information is linked to the role of Canada or to Canada's foreign partners, and in other instances, it is both.
- [369] Some information in the Proffer is highly injurious and the public interest in non-disclosure prevails; in such instances, a non-injurious summary is not warranted or feasible.
- [370] As noted, a non-injurious general description of Al Jabri's role in TCC, Metaj, the airports, Sky Prime, and Alpha Star, as the AGC and amicus have agreed to craft, and once authorized by the Court, can be provided or cross-referenced to the redacted information. The Court assumes that this general information is already well known by Sakab, but nonetheless should be publicly disclosed.
- [371] The Court's determination of all the redacted information in the proffer is set out in Annex A.
- (4) AGC 0007 and AGC 0018 (in the Confidential Brief of Documents) [372] The redacted information in AGC 0018 and in item 11 in AGC 0007 is personal information which is injurious and of no relevance to Al Jabri's defence. The public interest in non-disclosure prevails. No summary is warranted.

XIII. Next Steps and Conclusion [373] The Court does not agree with the AGC's suggestion that the Court should redraft the Proffer to guide Al Jabri with respect to the information he can and cannot disclose. This is not the Court's role. The Proffer was apparently drafted for the purpose of review to determine what Al Jabri may publicly disclose; however, Al Jabri asserts litigation privilege on the Proffer. Moreover, the Proffer is the subject of one of the Notices provided to the AGC and it is the subject of the Section 38 Application.

- [374] The Court also does not agree with the amicus' and Sakab's request that a detailed memorandum be prepared for the trial judge. The Court instead proposes to permit that the trial judge to receive an unredacted copy (to the extent possible) of the Court's Order and Reasons and a see-through redacted version of the documents that are subject to the Section 38 Application, upon terms and conditions to guard against disclosure to any other person or further publication. The Court acknowledges that the Proffer remains litigation privileged and therefore, the Court cannot order that the trial judge be provided with the Proffer, but can authorize that the trial judge may be provided with the Proffer if Al Jabri agrees to do so. Similarly, references to the Proffer in this Order and Reasons cannot be provided to the trial judge unless and until Al Jabri resolves its status or agrees that the Proffer can be provided to the trial judge.

- [375] In the interim, the Court will provide the Order and Reasons to the trial judge, subject to terms and conditions, once the Court has considered the submissions of the AGC and amicus on the need for redactions in this Order and Reasons.
- [376] The Court's determination with respect to all of the redacted information along with the non-injurious summaries, where applicable, is set out in Classified Annex A to this Order and has been released to the AGC pursuant to paragraph 38.02(2)(b) of the CEA.
- [377] As only the Court has the authority to provide non-injurious summaries of the redacted information to mitigate any injury that would otherwise result from disclosure, the Court awaits the general descriptions of Al Jabri's role in several projects, which the AGC and amicus have undertaken to jointly prepare as guided by the Court's Order and Reasons.
- [378] The information which is ordered to be disclosed will be provided to the Respondent Al Jabri on the expiry of the applicable periods for appeal (accorded the applicant in section 38.09 and, if any application for leave to appeal is made to the Supreme Court of Canada, in 38.1 of the Act.)
- [379] The Court thanks the amici and Counsel for the AGC for their diligence in raising and responding to many unique issues over the course of the last three and a half years.

ORDER IN DES-5-22

THIS COURT ORDERS that:

The Application is granted in part.

This Order includes Confidential Annex A, which sets out the Court's determination regarding the redacted information; in particular the redactions that are to be lifted, the redactions that remain and the non-injurious summaries to replace certain redacted text. Annex A is accessible only by the AGC and amici unless otherwise authorized by a Designated Judge of this Court.

The AGC shall provide replacement pages for AGC 001, AGC 0004, AGC 0005, and AGC 0006-AGC 00023 in accordance with this Order to the party that provided the documents to the AGC.

A copy of this Order and Reasons may be provided to the trial judge in the underlying proceeding subject to terms and conditions to ensure no further disclosure and subject to the resolution of the status of information derived from AGC 0005.

The AGC and amicus shall submit the general descriptions they have undertaken to prepare to the Court for the Court's review and authorization within 21 days of the Court's Order and Reasons.

The AGC and amicus shall provide their submissions to this Court regarding the need for any redactions to the Court's Order and Reasons to permit publication within 30 days.

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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DES-5-22

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ORDER AND REASons:

KANE J.

DATED:

December 8, 2025

APPEARANCES:

Andre Seguin

Christine Arcari

Olivia Koneval-Brown

For The Applicant

Munaf Mohamed KC

Jonathan G. Bell

Douglas Fenton

FOR THE RESPONDENTS, SAKAB SAUDI HOLDING COMPANY ET AL

John Adair

Anil Kapoor

Sean Pierce

FOR THE RESPONDENT, SAAD AL JABRI

Colin Baxter

Siobhan Morris

AMICUS CURIAE

SOLICITORS OF RECORD:

Attorney General of Canada

Ottawa, Ontario

For The Applicant

Bennett Jones LLP

Toronto, Ontario

FOR THE RESPONDENTS, SAKAB SAUDI HOLDING COMPANY ET AL.

Adair Goldblatt Bieber LLP

Toronto, Ontario

FOR THE RESPONDENT, SAAD KHALID S AL JABRI

Kapoor Barristers

Toronto, Ontario

Colin Baxter

Ottawa, Ontario

AMICUS CURIAE

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