

CANADA / JUDGMENT

Canada (Attorney General) v. El Didi

2026 FC 37

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Canada (Attorney General) v. El Didi Court (s) Database Federal Court Decisions Date 2026-01-12 Neutral citation 2026 FC 37 File numbers DES-5-25, DES-6-25 Decision Content Date: 20260112 Dockets: DES-5-25 DES-6-25 Citation: 2026 FC 37 Ottawa, Ontario, January 12, 2026 PRESENT: Mr. Justice Norris Docket: DES-5-25 BETWEEN: ATTORNEY GENERAL OF CANADA Applicant and AHMED FOUAD MOSTAFA EL DIDI, MOSTAFA EL DIDI Respondents and THE DIRECTOR OF PUBLIC PROSECUTIONS Respondent and HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO Respondent Docket: DES-6-25 AND BETWEEN: ATTORNEY GENERAL OF CANADA Applicant and AHMED FOUAD MOSTAFA EL DIDI Respondent and THE DIRECTOR OF PUBLIC PROSECUTIONS Respondent ORDER AND REASONS I. OVERVIEW [1] Ahmed Fouad Mostafa El Didi and Mostafa El Didi are father and son. They are jointly charged with terrorism offences under the Criminal Code, RSC 1985, c C-46. Ahmed El Didi is also charged separately with war crimes offences under the Crimes Against Humanity and War Crimes Act, SC 2000, c 24. All of the charges are proceeding by indictment before the Ontario Superior Court of Justice in Newmarket.

[2] After receiving notices under section 38 of the Canada Evidence Act, RSC 1985, c C-5 (CEA) in relation to these matters, the Attorney General of Canada (AGC) decided to prohibit disclosure of certain information in the criminal proceedings to prevent an injury to national security. As required, the AGC then brought applications to this Court under subsection 38.04(1) of the CEA for orders confirming the prohibition of disclosure of this information – one application in relation to the joint prosecution (DES-5-25), the other in relation to the prosecution of Ahmed El Didi alone (DES-6-25). In addition to the two accused, the Director of Public Prosecutions (DPP) and the provincial Crown are respondents.

[3] Given the common elements between the two applications, they have been ordered joined and will be heard together. Currently, I am case managing the applications.

[4] This Order concerns a request from a journalist, Mr. Christopher Nardi, for access to emails the parties sent to the Court concerning the potential appointment of an amicus curiae in the CEA section 38 applications. On July 30, 2025, I directed that these emails not be made available to the public. On learning of this direction, Mr. Nardi asked the Court to reconsider the matter in light of the open court principle and to grant him access to the emails in

question. Counsel for Ahmed El Didi and for the Public Prosecution Service of Canada (PPSC) submit that the emails should remain confidential. The other parties did not take a position on the matter.

- [5] Despite Mr. Nardi's able submissions, I am persuaded that the public interest in maintaining the confidentiality of the emails outweighs the public interest in the emails being accessible to the public. Accordingly, I am confirming the July 30, 2025, direction that the emails in question shall not be made available to the public. II. BACKGROUND [6] Among the preliminary matters to be determined in the CEA section 38 applications was the appointment of an amicus curiae to assist the Court in the discharge of its responsibilities. In a direction issued to the parties on July 8, 2025, the Court advised that it intended to appoint Mr. Solomon Friedman as amicus curiae unless there were any objections. The parties were given a deadline by which to raise their objections, if any, to this appointment.
- [7] The Court's Registry received five emails in response to this direction: (1) at 9:17 AM on July 8, counsel for the PPSC wrote to provide its position concerning the appointment of Mr. Friedman as amicus curiae; (2) at 9:32 AM on July 8, counsel for the AGC wrote to provide its position concerning the appointment; (3) at 2:05 PM on July 8, counsel for Ahmed El Didi wrote to object to the appointment of Mr. Friedman as amicus curiae but did not offer any rationale for this position; (4) at 1:16 PM on July 9, counsel for Ahmed El Didi wrote to explain the basis for their objection to the appointment; and (5) at 2:44 PM on July 9, counsel for the PPSC wrote to provide some additional background information for the Court's consideration. The latter two emails were received after the Court issued a further direction on July 8 offering counsel for Ahmed El Didi an opportunity to explain why they objected to the appointment of Mr. Friedman.
- [8] Despite Ahmed El Didi's objection to the appointment, on July 10, 2025, the Court issued Orders in both applications appointing Mr. Friedman as amicus curiae.
- [9] Generally, information relating to proceedings before the Federal Court is available to the public through the Court's online docket. Broadly speaking, as steps are taken in a matter before the Court, they are noted or summarized in entries on the Court's docket.
- [10] The recorded entries relating to the present applications set out in full the Court's July 8, 2025, direction concerning the potential appointment of Mr. Friedman as amicus curiae. While subsequent entries note that responses to the Court's direction were received from the AGC, counsel for the PPSC, and counsel for Ahmed El Didi, they do not disclose what positions, if any, the parties took regarding the proposed appointment. However, the subsequent direction providing counsel for Ahmed El Didi with an opportunity to explain the basis for their objection to the appointment, which is quoted in full in a recorded entry dated July 8, 2025, disclosed that Ahmed El Didi opposed the proposed appointment.
- [11] Beginning on July 9, 2025, Christopher Nardi, a reporter with the National Post, contacted the Court's Registry requesting copies of emails received by the Court concerning the potential appointment of Mr. Friedman as amicus curiae. Mr. Nardi was particularly

interested in obtaining copies of the July 9 email from counsel for Ahmed El Didi (item 4, above) and the email of the same date from counsel for the PPSC (item 5, above). On my direction, the Registry did not provide Mr. Nardi with copies of the emails pending an opportunity to obtain the positions of the parties concerning the request.

- [12] On July 16, 2025, the Court issued a direction scheduling a case management conference (CMC) by videoconference on July 30, 2025. On July 28, 2025, the Court issued a further direction stating: “The Court directs that the first 15 minutes of the CMC scheduled for July 30, 2025 will be held in camera to discuss the correspondence provided by Mr. Ahmed El Didi’s counsel and PPSC counsel on July 9, 2025, regarding the appointment of Mr. Solomon Friedman as amicus curiae, but thereafter the CMC will be opened up to the public.”
- [13] The July 16 and July 28 directions were publicly available through the online recorded entries for both CEA section 38 applications. Despite this, neither Mr. Nardi nor any other member of the public (including members of the media) requested the opportunity to attend the public part of the July 30 CMC.
- [14] After hearing from the parties at the CMC concerning Mr. Nardi’s request for access to the July 9, emails, I directed that the emails should not be made available to the public.
- [15] Upon learning of this direction, Mr. Nardi contacted the Registry to ask that I reconsider my decision that the emails should remain confidential. Ideally, Mr. Nardi should have asked to attend the public part of the July 30 CMC and raised his objection to the confidentiality of the emails then. Nevertheless, given his timely request for reconsideration, his demonstrated journalistic interest in the matter, the fact that what is at issue is a direction as opposed to an order, and the absence of any prejudice to the parties, I granted Mr. Nardi limited standing to pursue this request by way of written submissions (c.f. *Canadian Broadcasting Corp v Manitoba*, 2021 SCC 33 at paras 47-48). Counsel for Ahmed El Didi and for the PPSC provided written submissions in response to Mr. Nardi’s submissions. Mr. Nardi then provided written submissions in reply.
- [16] Briefly, relying on the open court principle and *Sherman Estate v Donovan*, 2021 SCC 25, Mr. Nardi submits that “there must be a real, legitimate interest in confidentiality that outweighs the always compelling interest in openness of court proceedings and the constitutional right of the press to access them.” In his submission, no such interest in maintaining the confidentiality of the emails has been demonstrated. Furthermore, Mr. Nardi submits, “when the press is covering a court case, how judicial proceedings unfold and how parties conduct themselves is just as important to the story as the outcome. What may seem like trivial filings or comments to some could be a key detail for a reporter trying to paint a picture of a case for the public.”

- [17] In response, counsel for Ahmed El Didi submit that, when they were responding to the Court's directions concerning the appointment of an amicus curiae, they reasonably expected that their responses were and would remain confidential. They further submit that, in any event, making public the information in the July 9 emails would pose a risk to Ahmed El Didi's right to a fair trial on serious criminal charges.
- [18] For their part, counsel for the PPSC submit that, while other options may be available to the Court (e.g. releasing redacted versions of the emails or releasing the emails in whole or in part but subject to a ban on publication of their contents), applying the Sherman Estate test, the direction maintaining the confidentiality of the emails should be confirmed. III.
- ANALYSIS A. The Open Court Principle [19] The open court principle has two aspects: one is the public nature of court hearings and court records; the other is the right to report on court proceedings (*Canadian Broadcasting Corp v Named Person*, 2024 SCC 21 at para 28).
- [20] The general rule is that justice should be carried out in the open and not in private. This helps to ensure the integrity of court proceedings, facilitates the accountability of the judiciary, enhances the legitimacy of decisions, fosters public confidence in the court system, and promotes public understanding of the administration of justice. For all these reasons, open courts are a fundamental component of the rule of law. They are also essential to the proper functioning of democratic forms of government. As well, because the news media often act as the eyes and ears of the public, the open court principle has an important constitutional dimension, engaging the right to freedom of expression, "including freedom of the press and other media of communication," guaranteed by section 2(b) of the Canadian Charter of Rights and Freedoms. These weighty considerations have given rise to a strong presumption that court proceedings and records should be open to the public and can be reported on by the news media without delay. See *Sherman Estate* at paras 30 and 37-39, *Named Person* at paras 27-31, and the numerous cases cited therein.
- [21] Federal Court proceedings are generally open to the public and, as noted above, the Court's docket is generally accessible online. The open court principle is reflected in the Federal Courts Rules, SOR/98-106 (FCR). Rule 26(1) provides that, if the necessary facilities are available, "a person may, with supervision and without interfering with the business of the Court, inspect a Court file or annex that is available to the public." Less formally, in accordance with the Court's Policy on Public and Media access (Federal Court - Policy on Public and Media Access), and to the extent that limited resources permit, on request, the Court's Registry readily provides members of the public (including members of the news media) with copies of non-confidential documents in court files. Rule 29(1) provides that, subject to the Court's authority to order that a matter proceed in camera (Rule 29(2)) and to make orders on motions without a hearing (Rule 30), "hearings of the Court, other than pre-trial or dispute resolution conferences, shall be open and accessible to the public." Under Rule 151(1), a party may move for an order that material to be filed shall be treated as confidential. However, under Rule 151(2), before making such an order, "the Court must be satisfied that the material should be treated as confidential, notwithstanding the public

interest in open and accessible court proceedings.”

- [22] It is indisputable that the open court principle is of fundamental importance; however, it is neither limitless nor absolute. The principle applies to court proceedings and records but it does not encompass everything a court does. Many aspects of a court’s work – such as anything protected by deliberative privilege or that is inherently connected to judicial independence – are beyond the principle’s reach. As well, Parliament has enacted many limitations on court openness, including by identifying certain types of proceedings that either may or must take place in camera and in the absence of the public (including, as discussed below, proceedings under CEA section 38). Particularly in relation to criminal proceedings, Parliament has also enacted limitations on how court proceedings can be reported to the public such as bans on publication of information, whether indefinitely or for a limited time, in order to protect the privacy of complainants, the identity of young persons, the accused’s right to a fair trial, and other important interests. Some of these limitations on publication are mandatory (when requested by a party), others are discretionary, and still others are automatic (i.e. they apply by operation of statute) (*La Presse inc v Quebec*, 2023 SCC 22 at para 37). Such measures have been found to be reasonable limits on the right to freedom of expression: see, for example, *Toronto Star Newspapers Ltd v Canada*, 2010 SCC 21 (concerning the mandatory, time-limited ban on publication of bail proceedings under section 517 of the Criminal Code). Furthermore, separate and apart from any statutory grant of authority, as an aspect of its jurisdiction to control its own process and records, a court may make orders limiting public access to court proceedings or records (*R v TWW*, 2024 SCC 19 at para 68; *R v Kinamore*, 2025 SCC 19 at para 50). Indeed, in some cases – such as those where police informer privilege is implicated – such limitations are mandatory (*Named Person*, at paras 37-42).
- [23] In *Sherman Estate*, the Supreme Court of Canada recast the test a party must meet when asking a court to exercise discretion in a way that limits the open court principle. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Sherman Estate*, at para 38). The revised test preserves the essence of the test established in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, while clarifying the burden on a party seeking an exception to the open court principle (*Sherman Estate*, at para 38).
- [24] The test is as follows: In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:
- (1) court openness poses a serious risk to an important public interest;
 - (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
 - (3) as a matter of proportionality, the benefits of the order outweigh its negative effects. (*Sherman Estate*, at para 38)

- [25] In applying this test, a court must bear in mind that the discretion to limit court openness “is not to be exercised lightly” (TWW, at para 69). Covertness in court proceedings “must be exceptional” (Sherman Estate, at para 63) and courts can make confidentiality orders limiting court openness “only in rare circumstances” (Named Person, at para 32). Nevertheless, “while court openness is the rule, it is not an absolute or overriding principle” (TWW, at para 69). It must be balanced against other interests that are worth protecting (ibid.). B. The Principle Applied [26] While the matter is not entirely free of doubt, I will assume without deciding that the open court principle applies to the parties’ exchanges with the Court concerning the appointment of Mr. Friedman as *amicus curiae*. For the sake of efficiency, the parties’ positions were solicited informally via emails between the Registry and counsel for the parties rather than formally in a hearing or case management conference. Strictly speaking, the exchange of emails was not a “proceeding”, nor were the parties’ emails formally filed on the Court’s “record”. Still, form should not triumph over substance. Given the important issues raised by Mr. Nardi’s request, I will proceed on the basis that the emails in question are presumptively available to the public. The determinative question, then, is whether, under the Sherman Estate test, this presumption has been rebutted.
- [27] To satisfy the first step of the Sherman Estate test, court openness must pose a serious risk to an important public interest. To explain why I am satisfied that this is the case here, it is necessary to say something more about the subject of the emails in question – the Court’s selection of an *amicus curiae* for the CEA section 38 applications.
- [28] The Court’s authority to appoint an *amicus curiae* flows from its inherent jurisdiction to manage its own process and to function as a court of law so as to ensure a fair proceeding and the just adjudication of a matter (R v Kahsai, 2023 SCC 20 at paras 36-39; Ontario v Criminal Lawyers’ Association, 2013 SCC 43 at para 46; Gaya v Canada (Public Safety and Emergency Preparedness), 2020 FC 731 at paras 37-40). The adjudication of the AGC’s claims for the protection of information from disclosure in the underlying criminal proceedings will necessarily involve in camera and ex parte proceedings from which Ahmed El Didi, Mostafa El Didi, and their counsel are excluded. In such circumstances, the usual benefits of an adversarial hearing in which all interested parties participate in every aspect of a case may be lost (Kahsai, at paras 51-52; see also Charkaoui v Canada (Citizenship and Immigration), 2007 SCC 9 at paras 48-52). I therefore considered it appropriate to appoint an *amicus curiae* to assist the Court in the discharge of its responsibilities, specifically in relation to those parts of the CEA section 38 applications that must be conducted in camera and ex parte.
- [29] While a judge has wide discretion to define the responsibilities or functions of an *amicus curiae* in ways that are responsive to the needs of a case, the role of the *amicus* is to assist the Court; it is not to protect or promote the interests of an excluded party in the closed proceeding in the manner of counsel for the excluded party. In other words, an *amicus* does not “represent” the excluded party in the closed proceeding (c.f. Kahsai, at para 41). In this

respect, the role of an amicus may be contrasted with that of a special advocate appointed under the Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA) as well as that of a special counsel appointed in relation to a secure administrative review proceeding: see, respectively, IRPA subsection 85.1(1) and CEA subsection 38.35(1).

- [30] That said, there is still an important sense in which the contribution of an amicus curiae serves not only the interests of justice but also the interests of the excluded party by advancing those interests when the excluded party cannot (Kahsai, at para 37). Especially where, as is the case under CEA section 38, a party's absence from part of the proceeding is required by law, having an amicus with adversarial functions can be "necessary to permit a particular proceeding to be successfully and justly adjudicated" (Criminal Lawyers' Association, at para 44; Kahsai, at para 33). Thus, an amicus may advance the perspective of the excluded party for the Court's consideration, may challenge the AGC's evidence, and may respond to the AGC's legal submissions, just as the excluded party might have done had they been present. All this can assist the Court in the discharge of its responsibilities (Canada (Attorney General) v Telbani, 2014 FC 1050 at para 27). For this reason, orders appointing an amicus curiae in CEA section 38 proceedings now commonly make provision for the excluded party to inform the amicus on a confidential basis of their interests, perspectives, and strategies in the CEA section 38 application as well as in the underlying proceeding (should they choose to do so). But it remains the case that, fundamentally, the amicus curiae is there to serve the Court, not the excluded party. As Justice Fish observed in Criminal Lawyers' Association, "once appointed, the amicus is bound by a duty of loyalty and integrity to the court and not to any of the parties to the proceedings" (at para 87, dissenting but not on this point, emphasis in original; see also Kahsai, at paras 41-42). Consequently, when deciding who to appoint as amicus curiae, a judge is unlikely to give the preferences of the parties much, if any, weight.
- [31] Nevertheless, the parties may be aware of information unknown to the Court that bears on whether a potential amicus curiae will be able to provide the assistance that is sought. For example, the appointment of a particular lawyer as amicus could put him or her in a conflict of interest or there may be some other circumstance that places ethical or practical limits on the ability of the amicus to assist the Court. It is even possible that a party may be aware of such circumstances but the potential amicus is not because, at this preliminary stage, he or she may know little, if anything, about the CEA section 38 application or the underlying matter. As a result, in addition to confirming with a potential amicus whether they are willing and able to accept the mandate, the Court may canvass with the parties whether they have any objections to the appointment of a particular lawyer as amicus.
- [32] This all relates to the first part of the Sherman Estate test in the following way. To make a fully informed decision appointing an amicus curiae, the Court must be able to obtain all relevant information from the parties. To feel free to share all relevant information with the Court, the parties must be confident that the information they share will not become a matter of public knowledge. The relevant information could itself be inherently confidential

but, even if it is not, the parties should not have to worry that their responses might one day become public. The same is true of a prospective amicus who is asked whether they are willing and able to take on the mandate. Conversely, if, in a given case, information shared with the Court concerning the potential appointment of an amicus were to become public, this would have a chilling effect on similar communications in future cases. It almost goes without saying that the need to ensure that relevant information is shared fully and candidly has been found to be a compelling rationale for protecting the confidentiality of communications (in whole or in part) in many legal contexts, including solicitor-client privilege (*Smith v Jones*, [1999] 1 SCR 455 at para 46), Cabinet deliberations (*Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 at para 3), and journalist-source privilege (*R v National Post*, 2010 SCC 16 at paras 33-34 and 56-57).

- [33] To sum up, given the interests at stake in a CEA section 38 application and the rationale for appointing an amicus curiae, anything that interferes with the Court's ability to make a fully informed decision about the appointment of an amicus poses a serious risk to important public interests. As a result, I am satisfied that making public the parties' communications with the Court concerning the potential appointment of Mr. Friedman as amicus would pose a serious risk to an important public interest. The first step of the Sherman Estate test is, therefore, met.
- [34] Before leaving this part of the test, I should address three other considerations.
- [35] First, while the foregoing analysis holds in every case where the appointment of an amicus curiae is being considered, it has added force here. This is because counsel for Ahmed El Didi believed their communications with the Court regarding the appointment of an amicus were and would remain confidential. They explain that these expectations were based, at least in part, on the fact that, in the Ontario Superior Court of Justice, pre-trial conference reports and any other materials filed for use at a pre-trial conference are confidential: see *Ontario Superior Court of Justice Criminal Proceeding Rules* (May 27, 2024), Rule 28.04(27). As they underscore, the proceedings that have given rise to the CEA section 38 applications are taking place in the Ontario Superior Court of Justice. Given the close connections between the proceedings in the two courts, counsel assumed that this pre-trial proceeding in the Federal Court was not public, just like pre-trial proceedings in the trial court would not be.
- [36] Counsel for Mr. El Didi candidly admit that they may have been mistaken in thinking this but I am not sure that is the case. As set out above, under Rule 29 of the FCR, pre-trial conferences (which are conducted pursuant to Rules 258 to 267) do not take place in open court. While the present matters are applications rather than actions, under Rule 315, the Court may order a pre-hearing conference in connection with an application (with such modifications to Rules 258 to 267 as may be required). Presumably, that pre-hearing conference would not take place in open court, either.

- [37] On the other hand, a potential flaw in the parallel counsel drew between practice in the Ontario Superior Court and practice in the Federal Court is their assumption that the exchange of information with the Court concerning the appointment of an *amicus curiae* constituted a “pre-trial” or “pre-hearing” conference. Whether this exchange of information amounted to such a proceeding is debatable. At the very least, the process followed certainly did not have the formalities of a pre-hearing conference as set out in the FCR (or a pre-trial conference in the Ontario Superior Court, for that matter).
- [38] Be that as it may, this is all beside the point. Whether resting on a misunderstanding or not, for the reasons set out above, I am satisfied that counsel’s expectation that their communications with the Court were and would remain confidential was altogether reasonable. It would therefore be unfair to undermine that reasonable expectation now by ordering that their communications be made public.
- [39] Second, with the benefit of hindsight, it may well be that the Court’s second communication to the parties on July 8, 2025, which stated that Ahmed El Didi objected to the appointment of Mr. Friedman as *amicus curiae*, should not have been made public (as described above, it was included in the online recorded entries for both applications). But even if this is so, this cannot realistically be undone now. The important point for present purposes is that, while the fact that Mr. El Didi objected to the appointment had become a matter of public knowledge, in my view, it was still reasonable for his counsel to expect that their explanation for why he took that position was and would remain confidential.
- [40] Third, on the other hand, I am not persuaded that court openness regarding the emails in question would pose a serious risk to Ahmed El Didi’s right to a fair trial. While the fairness of the criminal proceedings against Mr. El Didi is undoubtedly an important public interest, it has not been established that public knowledge of the contents of the emails would pose a serious risk to that interest. It is difficult to say more about this without revealing the information in issue. In any event, it is not necessary to do so because, as I have explained, I am satisfied on other grounds that the first step of the Sherman Estate test is met.
- [41] Turning to the second step of the test, this requires the Court to consider whether reasonably alternative measures would prevent the risk to an important public interest posed by court openness. In my view, there are no reasonably alternative measures that would prevent the risk discussed above. Only an assurance of confidentiality will encourage the candid sharing of information with the Court that is required for a fully-informed decision appointing an *amicus curiae*. A ban on publication of the contents of the emails from counsel (whether temporary or permanent) is not a reasonable alternative because what is required is a measure that protects confidentiality, and not simply one that prevents the wider dissemination of the contents of the emails. (The analysis may well have been different if the only important public interest requiring protection was Mr. El Didi’s right to a fair trial. In that case, a time-limited ban on publication of the contents of the emails could well have been an effective alternative measure.) Furthermore, while in theory the Court could order the release of redacted versions of the emails, in the present case, this would be

a pointless exercise. Since the substance of the emails must be protected, nothing more than is already known about the emails (whether from the recorded entries or from these reasons) would be made available to the public by proceeding in this way.

- [42] For these reasons, the second step of the test is met: a confidentiality order is necessary to prevent a serious risk to an important public interest because reasonably alternative measures will not prevent that risk.
- [43] Finally, I am satisfied that, as a matter of proportionality, the benefits of an order maintaining the confidentiality of the July 9, 2025, emails outweigh its negative effects. For the reasons already discussed, the benefits of a confidentiality order are substantial; the interests of justice weigh heavily in favour of confidentiality. On the other hand, the impairment to the public's understanding of the CEA section 38 applications is minimal. While part of the Court's file is effectively being sealed, it is only a very limited part. The orders appointing Mr. Friedman as amicus curiae are public documents. The fact that they were made and the terms of the appointments can be gleaned from the recorded entries. As well, the appointment of an amicus is but one preliminary step in the determination of the CEA section 38 applications. It has nothing to do with the merits of the applications (or the underlying criminal charges, for that matter). While I accept, as Mr. Nardi submits, that even small details can be important to the public's understanding of a court case, in my view, the information at issue here would add little to that understanding. Therefore, the third step of the Sherman Estate test is also met.
- [44] All three parts of the Sherman Estate test having been met, I am satisfied that the July 9, 2025, emails from the parties should remain confidential. The same analysis applies to the July 8, 2025, emails from the parties. IV. CONCLUSION [45] For the foregoing reasons, Mr. Nardi's request for access to the July 9, 2025, emails is refused. An Order will issue confirming the confidentiality of those emails and all other emails from the parties concerning the potential appointment of an amicus curiae in these matters. ORDER IN DES-5-25 AND DES-6-25 THIS COURT ORDERS that The request by Christopher Nardi for copies of emails dated July 9, 2025, concerning the appointment of an amicus curiae is refused. These emails and all other emails from the parties concerning the appointment of an amicus curiae shall remain confidential and shall not be made available to the public. A copy of this Order and Reasons will be placed in both court files. "John Norris" Judge
FEDERAL COURT SOLICITORS OF RECORD DOCKET: des-5-25 STYLE OF CAUSE:
ATTORNEY GENERAL OF CANADA v EL DIDI et al AND DOCKET: DES-6-25 STYLE OF
CAUSE: ATTORNEY GENERAL OF CANADA v EL DIDI ET AL MOTION IN WRITING
CONSIDERED AT OTTAWA , ONTARIO PURSUANT TO RULE 369 OF THE FEDERAL COURTS
RULES ORDER AND REASONS: NORRIS J. DATED: January 12, 2026 WRITTEN
REPRESENTATIONS BY: Christopher Nardi On His own behalf Kabir Sharma Joel Hechter
For The Respondent, AHMED FOUAD MOSTAFA EL DIDI Marie Comiskey Chris Walsh Ildiko
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