A-224-24

FEDERAL COURT OF APPEAL

BETWEEN:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Appellant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

RESPONDENT'S MEMORANDUM OF FACT AND LAW

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PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. Section 38 of the *Canada Evidence Act* (CEA) creates a procedure that governs the disclosure of sensitive or potentially injurious information (hereafter the "sensitive information") in legal proceedings[1]. More specifically, subsection 38.06.(2) grants a broad discretion to a Federal Court judge to authorize disclosure of sensitive information to a judge in the underlying proceedings when it is in the public interest. This disclosure authority applies to all types of

[1] R.S.C. 1985, c. C-5.

proceedings – criminal, civil, administrative – and includes disclosure of a classified Certified Tribunal Record (CTR) to a judge conducting a judicial review. This authority to tailor disclosure under section 38 in the public interests enhances, rather than diminishes, procedural fairness.

2. In the decision under appeal, the section 38 judge authorized disclosure of a classified CTR to the judge conducting a judicial review of a decision of the Security Intelligence Review Committee (SIRC) that dismissed a complaint by the appellant, the British Columbia Civil Liberties Association (BCCLA). The section 38 judge, however, only authorized disclosure of the classified CTR; he did not compel the judicial review judge to accept it. All the section 38 judge did in authorizing disclosure of the classified CTR was to remove a legal impediment to its potential acceptance in the judicial review.

3. Even though the appellant is not deprived from challenging the use of the classified CTR in the judicial review itself, BCCLA challenges that the jurisdiction of the Federal Court to even authorize this first step in the disclosure process. This challenge to misses the mark.

4. First, section 38 empowers a judge to rely upon the flexibility of the statute to meet the ends of justice which is this case is the fair determination of the judicial review based on the complete record before the original decision maker. And contrary to BCCLA's assertions, this flexibility or discretion to authorize disclosure to a judge in an underlying proceeding is not restricted to criminal cases. There is nothing in subsection 38.06(2) - or any barrier in section 38 as a whole - that restricts the disclosure authority of a judge to just criminal cases. Based on a purposive analysis of the provision, and clear guidance from the Supreme Court of

Canada, the section 38 judge was correct in finding that his disclosure authority under subsection 38.06(2) included disclosure to a judicial review judge.

5. Second, there is no procedural unfairness in authorizing disclosure of the classified CTR to the judicial review judge, particularly when the appellant can still challenge whether such disclosure should be accepted. Procedural fairness in legal proceedings varies depending on the nature of the interests at stake. In the context of an authorization of the section 38 application to a judicial review of a SIRC decision, the section 38 judge's decision was procedurally fair and will allow for procedural fairness in the judicial review application.

B. Statement of Facts

1) The SIRC Complaint

6. In 2014, BCCLA filed a complaint with SIRC[2] against the Canadian Security Intelligence Service (CSIS) in relation to the National Energy Board's hearings on the Northern Gateway Pipeline Project. BCCLA alleged that CSIS acted unlawfully in collecting information about several public interest advocacy groups opposed to the pipeline and then sharing that information with the National Energy Board and the private sector.[3]

7. In the resulting investigation, SIRC had access to all information and intelligence held by CSIS in relation to the complaint.[4] The investigation was conducted in private in accordance with the *Canadian Security Intelligence Service Act*.[5] The presiding Member Fortier held both *in*

[2] The Security Intelligence Review Committee was an external, independent body that reviewed CSIS activities and investigated complaints against CSIS. In July 2019, SIRC was superseded by the National Security Intelligence Review Agency: http://www.sirc-csars.gc.ca/index-eng.html.
[3] BCCLA Complaint, Appeal Book, Tab 3, pg. 61.
[4] *Canadian Security Intelligence Service Act,* RSC 1985, c. C-23, s. 39 (repealed).
[5] *Canadian Security Intelligence Service Act,* RSC 1985, c. C-23, s. 48 (repealed).

camera hearings (where BCCLA could attend) and *in camera ex parte* hearings (where BCCLA was excluded).[6]

8. Member Fortier found that CSIS's actions were lawful and dismissed the complaint. SIRC's decision was provided to BCCLA in a redacted report ("Fortier Report").[7] In his report, Member Fortier wrote that the "confidentiality of SIRC's proceedings is the cornerstone of its investigations" and, in accordance with the *CSIS Act*, ordered that all documents created or obtained by SIRC during the investigation be kept from the public.[8]

9. In October 2017, BCCLA filed an application for judicial review, asking that the Fortier Report be set aside and sent back to SIRC for re-determination.[9]

10. Under Rule 317 of the *Federal Courts Rules* BCCLA requested that SIRC prepare all relevant documents in its possession - the CTR- and provide it to the court and the BCCLA. The CTR consists of the Fortier Report, classified Books of Documents filed with on the complaint, transcripts of the proceedings before Member Fortier, and various procedural documents relating to SIRC's adjudication of the complaint.[10] SIRC objected under Rule 318(2) to disclosing the classified parts of the CTR as it would injure national security.[11]

2) The Section 38 Application

11. SIRC's objection triggered a s. 38 notice to the Attorney General of Canada (AGC). After reviewing the CTR, the AGC, pursuant to his authority under section 38.03, prohibited

[6] Fortier Report paras 31-32, 88-89, Appeal Book, Tab 4, pgs. 113 and 127.
[7] Fortier Report, Appeal Book, Tab 4, pg. 103.
[8] Fortier Report, paras 238-239, Appeal Book, Tab 4, pg. 158.
[9] Application for Judicial Review, T-1492-17, Appeal Book, Tab 5, pg. 160.
[10] Reasons, DES-1-19, para 12, Appeal Book, Tab 2, pg. 15.
[11] Reasons, DES-1-19, para 13, Appeal Book, Tab 2, pg. 16.

disclosure of certain sensitive information in the CTR to prevent an injury to national security. A redacted version of the CTR was disclosed to BCCLA.

12. The AGC then brought an application before the Federal Court under section 38.04 to confirm the redactions. In addition, the AGC sought an order that the unredacted or classified CTR be disclosed to the judicial review judge (but not to BCCLA) so that the judicial review could be decided on the full record before SIRC. BCCLA opposed this request on the basis of procedural fairness and the open-court principle, arguing that subsection 38.06(2) does not confer jurisdiction to authorize disclosure of the classified CTR to the judicial review judge while withholding it from one of the parties.

13. The AGC's application was granted in part. After balancing the public interest in secrecy against the public interest in the effective administration of justice in the judicial review, the section 38 judge, Justice Norris ordered the removal of several redactions from the Fortier Report and approved summaries of other sensitive information. This aspect of the section 38 decision is not under appeal.

14. Further, Justice Norris ordered that,"[p]ursuant to subsection 38.06(2) of the *Canada Evidence Act*, disclosure of the complete, unredacted Certified Tribunal Record to the judge seized with the underlying judicial review application…is authorized."[12] The court found that subsection 38.06(2) provides the jurisdiction to authorize disclosure of the classified CTR to the judicial review judge so that the review is done on the basis of the entire record, even where parts of the record are withheld from a party.

[12] Order, DES-1-19, Appeal Book, Tab 2, pg. 49.

15. Justice Norris emphasized that he was merely making the classified information available. Whether it would be necessary or appropriate for the judicial review judge to make use of the classified CTR should be determined later in the judicial review itself.[13]

16. Although Justice Norris is also assigned to be the judicial review judge – and thus has already seen the classified CTR – he found that the authorization was no mere formality. The issue of whether the judicial review judge should access and consider the complete CTR still needed to be decided and the appropriate forum for that decision was the judicial review application.

PART II – POINTS IN ISSUE

17. There is one issue for the Court to decide:

- Does subsection 38.06(2) of the *CEA* authorize a judge to order disclosure of a classified CTR to a judicial review judge but withhold it from the party that brought the judicial review?

PART III – SUBMISSIONS

A. Standard of Review

18. BCCLA challenges the jurisdiction of the Federal Court to authorize disclosure to a judicial review judge under subsection 38.06(2) of the *CEA*. Whether subsection 38.06(2) authorizes such disclosure is a question of law and is thus reviewable on a standard of correctness.[14]

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[13] Reasons, DES-1-19, para 102, Appeal Book, Tab 2, pg. 47.
[14] *Canada (Attorney General) v. Almalki*, 2011 FCA 199 at paras 5-6, overturned on appeal for other grounds; *Canada (Attorney General) v. Ribic,* 2003 FCA 246.

B. The correct interpretation of subsection 38.06(2) is that the Federal Court is granted a broad discretion to authorize disclosure in the public interest

19. It is subsection 38.06(2) that confers the authority for a Federal Court judge to authorize (or prohibit) disclosure of the information that is the subject of the section 38 application. The provision reads as follows:

38.06 (2) 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 most 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.	**38.06 (2) Si le juge conclut que** la divulgation des renseignements ou des faits porterait préjudice aux relations internationales ou à la défense ou à la sécurité nationales, mais que **les raisons d'intérêt public qui justifient la divulgation l'emportent sur les raisons d'intérêt public qui justifient la non-divulgation, il peut par ordonnance,** compte tenu des raisons d'intérêt public qui justifient la divulgation ainsi que de la forme et des conditions de divulgation les plus susceptibles de limiter le préjudice porté aux relations internationales ou à la défense ou à la sécurité nationales, **autoriser, sous réserve des conditions qu'il estime indiquées**, **la divulgation** de tout ou partie des renseignements ou des faits, d'un résumé des renseignements ou d'un aveu écrit des faits qui y sont liés.

20. Keeping in mind the Supreme Court's guidance that "the words of an Act 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 intention of Parliament",[15] the following key principles emerge from a plain reading of subsection 38.06(2):

[15] *R. v. Ahmad*, 2011 SCC 6, at para 28 (*Ahmad*).

- The provision grants a broad discretion to the judge to order disclosure when it is in the public interest.

- The judge may order disclosure of all or part of the sensitive information or facts, a summary of the information, or written admissions of facts relating to the information.

- The judge must consider the form and conditions of a disclosure order that would limit injury to national security, national defence, or international relations, and is empowered impose any conditions on the disclosure order that are appropriate.[16]

21. On a plain reading of the provision, the judge has the discretion to authorize disclosure, under appropriate conditions, when it is in the public interest to do so. The flexibility of the section 38 scheme permits such disclosure when it is in the interest of justice, such as providing a judicial review judge with the complete record before the decision maker.

22. As noted by the Supreme Court of Canada in *Ahmad*,[17] section 38 confers this broad discretion so that the judge in the underlying proceedings can carry out their duties in an informed manner:

> The broad discretion conferred by s. 38 must be interpreted in accordance with the purpose of the legislation, which is to balance the public interest in secrecy against the public interest in the effective administration of a fair system of justice. This

[16] For instance, the Supreme Court of Canada in *Ahmad*, para 50 noted the distinction between the flexible procedures under section 38 and the inflexible treatment of Cabinet confidences under subsection 39(1). Subsection 39 CEA provides that disclosure of information shall be refused without examination or hearing of the information by the court, person or body with jurisdiction to compel production. One would expect Parliament to have used similar language if it had intended to preclude any underlying judge's access to information that is subject to a section 38 challenge.

[17] *Ahmad*, *supra* note 15 at para 41.

purpose requires that trial judges have the information required to discharge their duties under the *CEA* and the *Charter* in an informed and judicial manner.

23. The Court in *Ahmad* was considering disclosure to a judge in a criminal matter to determine whether non-disclosure of the sensitive information affected the fairness of the trial for the accused. However, nothing in subsection 38.06(2), or in the entirety of section 38, limits this discretion to disclose the sensitive information just to criminal judges. If Parliament's intention was to impose such a limit, then presumably it would have said so. It did not.

24. Further, if the Supreme Court held that it was fair to authorize disclosure of section 38 information in criminal proceedings (where procedural fairness concerns are at their highest), then it is surely fair to authorize disclosure in a judicial review, where procedural fairness concerns are less acute.

25. As well, the Federal Court of Appeal recently confirmed that section 38 disclosure need not be limited to criminal matters. In *Sakab Saudi Holding Company v. Canada (Attorney General)*, this court stated that "[w]hile *Ahmad* involved disclosure of information in the context of a criminal prosecution, I see no reason why the same reasoning would not apply in the context of civil proceedings, as the Federal Court held in *Canada (Attorney General) v. Telbani*..."[18] Similarly, there is no reason why the same reasoning would not apply in the context of a judicial review. The section 38 judge's discretion to authorize disclosure applies when it is in the public interest in the effective administration of justice and does not depend on the nature of the underlying proceeding.

[18] *Sakab Saudi Holding Company v. Canada (Attorney General),* 2024 FCA 92 at para 35, citing *Canada (Attorney General) v. Telbani*, 2014 FC 1050 at para 110.

26. Justice Norris correctly found that subsection 38.06(2) authorizes disclosure to a judicial review judge so that judge could carry out their duties in an informed and judicial manner. As the judge noted, the "fundamental principle that judicial review of a decision should be conducted in light of the record before the decision-maker…only reinforces this conclusion." Thus, disclosure of the classified CTR to the judicial review judge was permitted under subsection 38.06(2) in the public interest, even if the public interest also withheld it from a party to the judicial review.

C. Procedural fairness varies depending on the interests at stake and the decision to authorize disclosure to the judicial review judge did not undermine procedural fairness

27. Procedural fairness is enhanced when a reviewing court has the entire record. Parliament gave responsibility for the review of the SIRC decisions to the Federal Court. The point of this judicial review process is to assess the reasonableness of the SIRC decision and to ensure an administrative body is making good decisions (a tenet of procedural fairness).[19] Having the benefit of the same information that was before SIRC in rendering its decision, before the Court serves to assist the judicial review judge in making that important determination. In their role as "gatekeepers" in matters of national security, designated judges of the Federal Court should have access to the entire record if necessary.[20]

28. Justice Norris authorized disclosure of the unredacted CTR so that it would be possible for that judicial review judge to have the entire unredacted CTR. He did not compel the judicial

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[19] *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 at para 82.
[20] *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, paras 46, 63-64; *X (Re)*, 2017 FC 136, para 31. The BCCLA is relying on a UK case, which is not binding on this Honourable Court.

review judge to accept it but made it available if it is later determined that it is necessary or appropriate for the judge to make use of the unredacted CTR in deciding the judicial review application.[21]

29. The determination of whether the judge in the underlying proceeding will exercise the option to rely on the unredacted CTR should occur within the judicial review itself, by the judge hearing the judicial review application.[22]

30. Although full disclosure is an important aspect of procedural fairness, it is not an absolute or overriding principle that applies uniformly to all proceedings.[23] Procedural fairness does not always require complete disclosure of the evidence and the principles of fundamental justice do not require that the applicant have the most favourable proceedings that can be imagined.[24] There is necessarily some give and take inherent in fashioning a process that accommodates national security concerns.[25]

31. The Supreme Court of Canada in *Canada (Citizenship and Immigration) v. Harkat* discussed the right to know and meet the case within the context of national security.[26] The Court confirmed that the named person must be informed of the case against him or her and be permitted to respond to that case. However, the Court also recognized the legitimate need to protect information and evidence that is critical to national security. While the Court in *Harkat*

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[21] Reasons, DES-1-19, para 102, Appeal Book, Tab 2 at pg. 47.
[22] Reasons, DES-1-19, para 95, Appeal Book, Tab 2 at pg. 44
[23] *R. v. TWW*, 2024 SCC 19, para 69.
[24] See for instance *Ruby v. Canada (Solicitor General),* 2002 SCC 75 at paras 39 et seq. and *Brar v. Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1168 at para 216, upheld on appeal.
[25] *Harkat, supra* note 20 at para 43, citing *Ruby*. The Federal Court of Appeal also recently confirmed this approach to procedural fairness in *Singh Brar v. Canada (Public Safety and Emergency Preparedness)*, 2024 FCA 114 at para 42, leave to appeal to SCC pending.
[26] *Harkat*, paras 41-43.

was addressing a scheme under the *Immigration and Refugee Protection Act* (IRPA),[27] the principles can apply to the section 38 scheme as well. The need to protect information that is sensitive to or potentially injurious to national security is reflected in the purpose of section 38 scheme, which balances the public interest in secrecy against the public interest in the effective administration of a fair system of justice.[28] The basic requirements of procedural justice must instead be met in an alternative fashion.[29]

32. In *Brar v. Canada (Attorney General)*, the Federal Court of Appeal confirmed that the involvement of an *amicus curiae* "ensures the protection of the appellants' right to know the case against them and their right to answer it".[30] While this case concerns the *Secure Air Travel Act*,[31] the logic behind that conclusion can also apply here. In *Brar*, the Court was weighing whether this statute and the Minister's "listing" decisions unjustifiably violated individuals' rights under the *Charter* to mobility, liberty, and security of the person. The Federal Court of Appeal found that the Federal Court had played a robust and active role in ensuring the appellants had been treated in a procedurally fair way, including through the appointment of *amici curiae*.[32] If the appointment of *amici curiae* was an appropriate measure to help ensure procedural fairness where Charter violations are being alleged by individuals, then it should be an appropriate measure in a judicial review application brought by an entity.

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[27] S.C. 2001, c. 27.
[28] *Ahmad*, para 41.
[29] *Harkat*, para 43.
[30] *Brar, supra* note 25 at para 39, citing *Harkat* at paras 34-37, 46-47, and 67-73.
[31] S.C. 2015, c.20.
[32] *Brar*, para 39. The AGC acknowledges that in *Brar*, the Federal Court had specifically granted the *amici curiae* a broad mandate, nearly identical to "special advocates" in the security certificate proceedings under the *IRPA*. To be clear, the AGC is not suggesting that the same powers necessarily be granted in this instance.

33. An *amicus curiae* has already been appointed for the judicial review, albeit only to carry out a watching brief. It is still possible for the role of the *amicus curiae* to expand to address BCCLA's procedural fairness concerns.[33]

34. In *Moumdjian v. Canada*, the Federal Court considered an application for judicial review of a SIRC decision[34]. The Court confirmed that the state's interest in confidentiality is paramount in national security cases and that the applicant had received sufficient information to know the substance of the allegations against him and be able to respond. The AGC submits that is true for BCCLA in this instance.

35. BCCLA was an active party to the section 38 application, in which the judge went through the information on the section 38 application and ensured that what information could be provided to BCCLA was provided to it[35]. Justice Norris confirmed that the Fortier Report is of the utmost importance for the underlying judicial review application. Justice Norris consequently ordered that portions of the redacted information in the Fortier Report be lifted because they were central to the judicial review application and ordered a global summary be produced that "goes as far as the section 38 scheme permits in informing BCCLA about the contested redacted information in the Books of Documents."[36]

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[33] Order and Reasons, DES-1-19, para 33, Appeal Book, Tab 2, pg. 15. See also *Gaya v. Canada (Public Safety and Emergency Preparedness)*, 2020 FC 731 at paras 35-43.
[34] *Moumdjian v. Canada (Security Intelligence Review Committee)(C.A.),* [1999] 4 FC 624, 1999 CanLII 9364 (FCA).
[35] Justice Norris considered the use of the information at issue on the judicial review application and lifted some of the redactions. See for instance: Reasons, DES-1-19, paras 64-66, 75-77, 79-80, Appeal Book, Tab 2 at pgs. 32-33, 37-39.
[36] Reasons, DES-1-19, para 80, Appeal Book, Tab 2 at pg. 39.

36. BCCLA also took part in the originating SIRC investigation process. BCCLA was able to call witnesses who testified before SIRC. Counsel cross-examined witnesses and received transcripts of *in camera* hearings. Also, BCCLA received summaries of the *ex parte* evidence. According to its Notice of Application in the underlying proceeding, BCCLA was able to deliver to SIRC "comprehensive submissions [that] were over 70 pages long, and included a review of the evidence and extensive legal submissions."[37] Respectfully, in the circumstances, BCCLA has sufficient information to know the case to meet even in the absence of the classified CTR.

37. Dismissing BCCLA's appeal will not prejudice its ability to advance its judicial review application. BCCLA will still be able to raise any procedural fairness concerns it may have with the judge hearing that proceeding. That judge can order an expanded role for the *amicus curiae* to challenge the unredacted CTR (which the judge may or may not rely on). Even if BCCLA maintains that it does not know the case to meet, then the case law confirms that an *amicus curiae* is an appropriate solution to that issue.

D. BCCLA's reliance on United Kingdom case law is not persuasive

38. BCCLA refers extensively to case law from the United Kingdom to support their argument that disclosure of the redacted CTR to the judicial review judge is contrary to natural justice, procedural fairness, and the open court principle. However, foreign law is not binding, and has limited persuasive power, as noted by the Supreme Court in *R. v. Kirkpatrick*:[38]

[37] Application for Judicial Review, T-1492-17, Appeal Book, Tab 5, pgs. 163-164.
[38] *R. v. Kirkpatrick*, 2022 SCC 33 at para 250.

> The fact that a precedent is inconsistent with foreign jurisprudence is not a reason to overturn it. Foreign jurisprudence is not binding and its persuasive significance needs to be considered in a structured, careful way.

39. Moreover, BCCLA has not developed the principles referred to in the British case law so there submissions on this point are of little persuasive significance. Instead, as set out above, there is substantial Canadian law, including law directly on point on jurisdictional issues, which support the AGC's position that disclosure of the redacted CTR is authorized under section 38.

E. The new "SARP" provisions codify the existing jurisdiction of a designated judge to authorize disclosure to the judicial review judge

40. It is only by matter of circumstance that the underlying judicial review proceeding does not fall under the new "Secure Administrative Review Proceedings" (SARP) sections 38.21 to 38.45 of the *CEA*. Because SARP was not in effect at the time of the order, the section 38 judge instead relied on his broad discretion pursuant to subsection 38.06(2) of the *CEA* to facilitate access to the unredacted CTR.

41. If BCCLA's judicial review application were commenced today, then:

    a. the judge presiding over the section 38 hearing would automatically be seized of all matters in the judicial review application.

    b. in considering the merits of the judicial review application, the judge would be able to receive into evidence, and to base their decision on, any information prohibited from disclosure; and

c. the judicial review judge would be required to receive *ex parte* representations and conduct a hearing in the absence of the BCCLA and its counsel, if the AGC so requested.[39]

42. The implementation of a dual role for a Federal Court judge under SARP:

a. is indicative of the existing reality of judicial review judges also being assigned to the section 38 applications (as happened in this case) and having access to the sensitive information, [40]

b. addresses and overcomes the bifurcation concerns already raised by the judiciary in other matters, and,

c. reflects the intention of Parliament for the judge hearing a judicial review application to have *access* to the sensitive information.

43. The introduction of SARP, however, does not mean that the section 38 judge in this case did not already have the jurisdiction to authorize disclosure of the classified CTR.

44. Prior to the introduction of these new provisions, the Courts had ordered that the judge in the underlying proceeding could have (and should have) access to the full record[41]. Justice Norris, given the precedent set in earlier cases, considered it appropriate to allow the judicial review judge to access the unredacted CTR.

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[39] CEA, ss. 38.32-38.33(1), (2).
[40] The BCCLA agreed that the judge hearing the section 38 application could be the same judge hearing the judicial review application on its merits. See: Recorded Entry Information for DES-1-19, 2019-02-11.
[41] *Canada (Attorney General) v. Telbani*, 2014 FC 1050; *Canada (Attorney General) v. Turp*, 2016 FC 795.

45. The SARP provisions represent a codification of the existing ability of a judge on a section 38 application to authorize disclosure to a judge in an underlying proceeding. The existing section 38 scheme was not changed by Bill C-70 because it would not be possible to introduce these same provisions given the definition of "proceedings" (i.e., those which involve courts and ruling bodies other than the Federal Court)[42].

46. The approach taken by Justice Norris is standard under the new SARP provisions. The impugned order aligns with the goals of the SARP provisions. It should not be overturned simply because the underlying proceeding arose before their implementation.

Conclusion

47. On the section 38 application, the court was removing an impediment to accessing the classified CTR; it was not deciding the ultimate issue. The order below allows for – but does not dictate that -- the underlying judicial review application be adjudicated on the entire record, which is in the public interest[43]. If BCCLA takes issue with *ex parte* and *in camera* proceedings within the judicial review application, then it remains open to BCCLA to challenge those processes at that time.

[42] CEA, s. 38.
[43] *Telbani*, *supra* note 41 at para 113.

PART IV – ORDER SOUGHT

48. For these reasons, the AGC respectfully requests an order dismissing this appeal.

49. The AGC does not seek costs on this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 12th day of December, 2024 at Ottawa, Ontario.

Andre Seguin
Natalie Scott

Counsel for the Attorney General of Canada

PART V – LIST OF AUTHORITIES

Legislation

Canada Evidence Act, R.S.C. 1985, c. C-5.

Immigration and Refugee Protection Act, S.C. 2001, c. 27.

Secure Air Travel Act, S.C. 2015, c.20.

Jurisprudence

Brar v. Canada (Public Safety and Emergency Preparedness), 2022 FC 1168.

Canada (Attorney General) v. Almalki, 2011 FCA 199.

Canada (Citizenship and Immigration) v. Harkat, 2014 SCC 37.

Canada (Attorney General) v. Ribic, 2003 FCA 246.

Canada (Attorney General) v. Telbani, 2014 FC 1050.

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65.

Canada (Attorney General) v. Turp, 2016 FC 795.

Moumdjian v. Canada (Security Intelligence Review Committee)(C.A.), [1999] 4 FC 624.

R. v. Ahmad, 2011 SCC 6.

R. v. Kirkpatrick, 2022 SCC 33.

R. v. TWW, 2024 SCC 19.

Ruby v. Canada (Solicitor General), 2002 SCC 75.

Sakab Saudi Holding Company v. Canada (Attorney General), 2024 FCA 92.

Singh Brar v. Canada (Public Safety and Emergency Preparedness), 2024 FCA 114.

X (Re), 2017 FC 136.