



EVIDENCE

Application by Attorney General of Canada (AGC) pursuant to *Canada Evidence Act*, R.S.C., 1985, c. C-5 (Act), s. 38.04(1) for order with respect to disclosure of information following notice given pursuant to Act, s. 38.01(1) to (4) — AGC requesting that redactions made in documents originating from Global Affairs Canada (GAC) be confirmed as information that if disclosed would be injurious to Canada's international relations — Proceeding arising in context of civil procedures issued by respondent for stay of proceedings based on alleged abuse of process by Government of Canada — Respondent permanent resident of Canada, citizen of Republic of Kazakhstan — Wanted in Kazakhstan for expropriation or embezzlement of trust property, money laundering, forgery, association with criminal organization — Inadmissibility reports pursuant to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 44 issued in 2012 — Respondent arrested, detained — Referred to admissibility hearing — Between 2012-2020, several underlying proceedings, decisions rendered — Section 38 proceedings initiated by AGC in 2014 — Department of Justice identifying redacted documents disclosed to respondent containing information injurious to international relations if disclosed — *Amicus curiae* appointed — AGC arguing that Court should maintain prohibition from disclosure of all information subject to application — *Amicus* arguing that some redacted information should be disclosed, or summarized, subject to terms, conditions — Respondent submitting that redacted information should be considered presumptively relevant because included in material to be disclosed for discovery — Also believing information would allow respondent to understand reason for delay in proceedings, may go to heart of abuse of process allegations — Asserting disclosure of redacted information not injurious to international relations — Whether prohibition on disclosure of information should be confirmed pursuant to Act, s. 38.06(1); if so, whether disclosure of information should be subject to any conditions pursuant to s. 38.06 — Three-pronged test to be met established in *Canada (Attorney General) v. Ribic*, 2003 FCA 246, [2005] 1 F.C.R. 33 — Present application for order confirming non-disclosure of information that would be injurious to international relations pursuant to Act, s. 38.06(1) — Legislation, case law not clearly defining concept of “international relations” — International relations encompassing exchange of information between foreign nations, ability to conduct such exchanges in atmosphere of trust to ensure information is as complete, accurate as possible — Challenging to define concept of international relations in definitive way — Only information injurious to Canada's international relations if disclosed can be redacted — As such, judge must test redactions, with assistance of *amicus*, to ensure redactions justified, i.e. that disclosure of information injurious — Evidence of injury presented must satisfy judge of probability (as opposed to possibility) of injury to international relations — Cannot be speculative — Designated judge must determine whether public interest in disclosure outweighing in importance public interest in non-disclosure — Here disclosure of redacted information would be injurious to Canada's international relations — Extent of such injury varying for each redaction — Degree of importance of Canada's relations with Kazakhstan taken in consideration — While international relations important to Canada, such relations cannot be protected to detriment of legitimate public interest in disclosure — In

present case, for most redactions, public interest in disclosure outweighing, to differing degrees, public interest in non-disclosure — Full disclosure not necessary to achieve fairness of proceedings — Summaries of material information identified providing sufficient information to respondent — Therefore, redactions proposed by AGC to remain — Application allowed in part.

CANADA (ATTORNEY GENERAL) V. TURSUNBAYEV (DES-2-14, 2021 FC 719, Noël J., amended reasons for order dated July 20, 2021, 53 pp.)