Federal Court Cour fédérale

Date: 20210106

Docket: DES-3-20

Citation: 2021 FC 22

Ottawa, Ontario, January 6, 2021

PRESENT: Mr. Justice Norris

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAHMOUD SHARAFALDIN

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] Mahmoud Sharafaldin, the respondent in this proceeding, has applied for an order in the nature of *mandamus* to require the Minister of Citizenship and Immigration ("the Minister") to make a decision on his application for Canadian citizenship (Federal Court File No. T-64-19). The citizenship application has been outstanding for over twenty years.

[2] When the Certified Tribunal Record ("CTR") for the *mandamus* application was prepared in accordance with Rule 317 of the *Federal Courts Rules*, SOR/98-106, certain information was withheld on the basis that it was sensitive or potentially injurious information as this is defined in section 38 of the *Canada Evidence Act*, RSC 1985, c C-5 ("*CEA*"). (For the sake of concision, generally I will refer to the protected information simply as sensitive information. As well, I will refer to the statutory scheme set out in sections 38 through 38.17 of the *CEA* generically as "section 38.") As required under the section 38 scheme, notice was given to the Attorney General of Canada ("AGC") that this information had been withheld so that he could consider whether to authorize the disclosure of any of the information or, instead, to apply to this Court for an order confirming the prohibition on disclosure. The AGC now brings this application under section 38.04 of the *CEA* for an order confirming the prohibition of disclosure of information withheld from the CTR.

[3] Over the course of this application, the AGC has agreed to lift some of the redactions originally applied to the CTR. Further, the AGC has agreed to the disclosure of summaries of certain information that has been withheld. Finally, the AGC has agreed to the stipulation of certain facts that are relevant to the underlying application for *mandamus*. Otherwise, the AGC seeks to maintain the remaining redactions of sensitive information.

[4] For the reasons that follow, after applying the test in *Canada (Attorney General) v Ribic*, 2003 FCA 246, I accept the AGC's proposed lifts, summaries and stipulation of facts. Further, I am satisfied that all the remaining redactions in the CTR should be upheld. I would therefore

confirm the prohibition on disclosure of the information underlying the remaining redactions that are the subject of this application.

[5] I have chosen to provide entirely unclassified reasons for my conclusions. This was possible in this case because of the relatively narrow points in issue in this proceeding and because Mr. Sharafaldin is already aware of a significant amount of relevant information. As a result, I will not address the details of the injury the AGC maintains would be caused by disclosure of the sensitive information. In view of the outcome, I do not believe this leaves the AGC – the only party who would have been privy to reasons addressing this issue in any event – at a disadvantage. Equally, I am hopeful that these reasons will give Mr. Sharafaldin a sufficient understanding of how I arrived at the conclusions that I did even though, because of the statutory requirement to protect sensitive information, I cannot discuss the information that has been withheld or the injury that its disclosure would cause.

II. BACKGROUND

[6] Mr. Sharafaldin is a citizen of Iran. He was born there in October 1961. He left Iran for Romania in 1991 and remained there until 1995.

[7] Mr. Sharafaldin arrived in Canada on a visitor's visa on February 4, 1995, with his spouse, Elisabeta Tudor, a Romanian citizen.

[8] On March 16, 1995, Mr. Sharafaldin made a claim for refugee protection in Canada on the basis of his fear of persecution in Iran and Romania. By a decision dated July 19, 1995, the

Convention Refugee Determination Division of the Immigration and Refugee Board of Canada ("IRB") found him to be a Convention refugee.

[9] Mr. Sharafaldin became a permanent resident of Canada on November 13, 1996.

[10] On December 23, 1999, Mr. Sharafaldin submitted an application for Canadian citizenship. The history of this application over the following years – indeed, decades – is charted in the documents contained in the CTR. Notably, significant amounts of time were spent awaiting the results of security and immigration clearances.

[11] On October 24, 2014, the citizenship application was suspended under section 13.1 of the *Citizenship Act*, RSC 1985, c C-29 ("*Citizenship Act*"), on the basis that Mr. Sharafaldin was a subject of interest in a Canada Border Services Agency ("CBSA") investigation. (Section 13.1 had come into force a short time earlier, on August 1, 2014. Mr. Sharafaldin only learned of this suspension when he received an affidavit – affirmed on March 25, 2019 – that was filed by the Minister in response to the *mandamus* application.)

[12] On June 24, 2015, the Minister of Public Safety and Emergency Preparedness filed an application with the Refugee Protection Division ("RPD") of the IRB for cessation of Mr. Sharafaldin's refugee protection under section 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). The application alleged that Mr. Sharafaldin had reavailed himself of the protection of Iran by returning to that country for some 18 months

between May 2007 and February 2009. The application was not served on Mr. Sharafaldin until April 23, 2018.

[13] As a result of amendments to the *IRPA* that came into force on December 15, 2012, if the application for cessation is granted, Mr. Sharafaldin will lose not only his status as a Convention refugee but also his status as a permanent resident of Canada: see sections 40.1 and 46(1)(c.1) of the *IRPA*. If he loses his permanent resident status, he will no longer be eligible for Canadian citizenship. However, at the time he returned to Iran, he would only have been at risk of losing his Convention refugee status if he were found to have reavailed himself of the protection of that country; his status as a permanent resident of Canada – and therefore his right to seek Canadian citizenship, for which he had already applied – would have been unaffected.

[14] The RPD adjourned the cessation application at Mr. Sharafaldin's request on July 25, 2018.

[15] On January 9, 2019, Mr. Sharafaldin filed an application for leave and judicial review under section 22.1 of the *Citizenship Act* seeking an order in the nature of *mandamus* to require the Minister to make a decision on his citizenship application. Mr. Sharafaldin maintains that he is entitled to this relief despite the fact that an application for cessation of his refugee status has been made and is still pending.

[16] On January 30, 2019, the RPD adjourned the cessation application again at Mr. Sharafaldin's request to afford him the opportunity to pursue the relief he is seeking in this Court.

[17] The Minister of Public Safety and Emergency Preparedness brought an application for leave and judicial review challenging the second decision to adjourn the cessation application but that application was dismissed by Justice Grammond on September 11, 2019: see *Canada (Public Safety and Emergency Preparedness) v Sharafaldin*, 2019 FC 1168.

[18] Leave to proceed with the underlying judicial review application was granted on April 18, 2019. The hearing of the application was originally scheduled for July 4, 2019, but it was adjourned on consent and the matter continued as a specially managed proceeding for which a Case Management Judge was appointed. Initially, Justice Mactavish was the Case Management Judge. I took over that role following her elevation to the Federal Court of Appeal. It is anticipated that I will hear the judicial review application.

[19] The judicial review application was eventually rescheduled for December 2, 2019. However, when it became apparent that relevant documents were missing from the CTR that had been filed on August 30, 2019, the hearing was adjourned.

[20] A replacement CTR was filed on February 21, 2020. It contained the documents that were in the original CTR along with a number of additional documents. Subsequently, a few more potentially relevant documents were located and produced by the Minister in connection

with the *mandamus* application. It is the information that has been redacted from this collection of documents (the February 21, 2020, CTR and the additional documents produced subsequently) that is the subject of this application under section 38 of the *CEA.*

III. THE PROCEDURE FOLLOWED IN THIS APPLICATION

[21] As noted above, when the original CTR for the *mandamus* application was prepared, certain information was withheld from it on the basis that it was sensitive or potentially injurious information. Mr. Sharafaldin agreed not to require the AGC to justify any of the redactions under section 38 of the *CEA* as long as the judge who heard the *mandamus* application would have access to the information that had been withheld. The AGC was content to proceed on this basis.

[22] However, in early March 2020, following the filing of the replacement CTR, the AGC concluded that it was necessary to bring an application to the Federal Court under section 38.04(1) of the *CEA*. As counsel for the AGC explained in a letter to Mr. Sharafaldin's counsel dated March 2, 2020 (a copy of which was provided to the Court), the AGC had concluded that the application was required "because some of the redacted information in the current CTR is relevant to the issues raised in the underlying judicial review."

[23] Regrettably, as a result of the COVID-19 pandemic and the ensuing lockdowns, this is where matters had to stand for the next several months. The AGC was only able to file the application under section 38.04(1) of the *CEA* in early July 2020. Similarly, a case management conference concerning the *mandamus* application that had been scheduled for March 24, 2020,

was adjourned *sine die*. That case management conference eventually went ahead on July 16, 2020. Matters pertaining to both the *mandamus* application and the *CEA* section 38 application were discussed at the case management conference.

[24] Among the case management determinations to be made was whether to appoint an *amicus curiae* to assist the Court in the *CEA* section 38 application. Mr. Sharafaldin requested that one be appointed. As his counsel expressed his position in informal submissions to the Court dated August 11, 2020, it was important for the *mandamus* application that "the chronology of investigative events is fully disclosed even where the details of such events may be redacted." As he pointed out, it had "only been through a very detailed comparison of multiple file sources that the record that has been produced to date has been possible." In his submission, an *amicus curiae* "will complement the judge's role to ensure that the Court is fully informed of all relevant facts and issues where Mr. Sharafaldin cannot do so." The AGC took no position on whether an *amicus curiae* should be appointed.

[25] In the particular circumstances of this case, I was satisfied that the appointment of an *amicus curiae* was not required. As a result of my role as case management judge with respect to the *mandamus* application, I was already very familiar with the chronology of the citizenship application and the documents pertaining to that application that are found in the two versions of the CTR as well as in Mr. Sharafaldin's application record in T-64-19. The *corpus* of redacted documents is not large and the number and scope of the redactions are relatively modest. As well, I did not foresee any complex or unusual factual or legal issues arising in the closed part of the section 38 proceeding. I was therefore satisfied that I could discharge my responsibilities

under the section 38 scheme efficiently and effectively without the assistance of an *amicus curiae* and that this would not cause any unfairness to Mr. Sharafaldin. I stress that this determination reflects the particular circumstances of this case. It should in no way be seen as casting doubt on the valuable assistance that can be provided by *amici curiae* in *CEA* section 38 proceedings.

[26] I pause at this point to note that, as Mr. Sharafaldin is already aware, certain information was withheld from the CTR on the basis of section 18.1 of the *Canadian Security Intelligence Service Act*, RSC 1985, c C-23 ("*CSIS Act*"). Mr. Sharafaldin has not challenged this confidential human source privilege claim. Nevertheless, following the approach suggested by the Federal Court of Appeal in *Section 18.1 of the Canadian Security Intelligence Service Act, R.S.C. 1985, c. C-23, as Amended (Re)*, 2018 FCA 161 at paras 41-59, I considered whether there was any basis for appointing an *amicus curiae* whose mandate would be to determine whether a challenge to the privilege claim under section 18.1(4) of the *CSIS Act* was warranted. On the basis of my review of the record in this proceeding, including the unredacted section 18.1 information, I was satisfied that there was not.

[27] The *CEA* section 38 application was heard in both open and closed proceedings. In the open proceeding, Mr. Sharafaldin waived any requirement for the AGC to call public evidence relating to the injury that would be caused by disclosure of the sensitive information, as alleged by the AGC. (It was anticipated that, as is standard practice in these proceedings, such evidence would have been at a high level of generality in any event.) As a result, the open part of the

proceeding was limited to submissions from Mr. Sharafaldin's counsel and from counsel for the Minister concerning the relevance of the withheld information.

[28] The principal focus of the closed proceeding, which was conducted *ex parte* and *in camera*, was the injury the AGC alleged would be caused by the disclosure of the information it was seeking to protect and the balancing of that injury against the value of the information for Mr. Sharafaldin in the underlying judicial review application. The AGC tendered affidavits from a witness on behalf of CSIS and from a witness on behalf of the CBSA on the issue of potential injury. Both witnesses testified in the closed proceeding. They were examined in chief by counsel for the AGC. The Court also posed a number of questions. As well, counsel for the AGC provided oral submissions in the closed proceeding.

IV. THE *RIBIC* TEST

[29] In *Ribic*, the Federal Court of Appeal established a three step test for determining under section 38.06 of the *CEA* whether to confirm the prohibition on disclosure of sensitive information or, alternatively, whether some form of disclosure should be ordered. This test has been applied consistently ever since: see, for example, *Canada (Attorney General) v Telbani*, 2014 FC 1051 at para 22; *Canada (Attorney General) v Huang*, 2018 FCA 109 at para 13; and *Canada (Attorney General) v Meng*, 2020 FC 844 at para 39. While it has not commented directly on the *Ribic* test, the Supreme Court of Canada has noted both the flexibility of the section 38 scheme and the "considerable discretion" it confers on designated judges: see *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 77; and *R v Ahmad*, 2011 SCC 6 at para 44.

[30] Under the *Ribic* test, the designated judge must first determine whether or not the information in issue is relevant to the proceeding in which it is sought to be used. The Court held in *Ribic* (where the underlying proceeding was a criminal prosecution) that relevance should be determined under the "usual and common sense" meaning given to it in *R v Stinchcombe*, [1991] 3 SCR 326 – namely, information, whether inculpatory or exculpatory, that may reasonably be useful to the defence. See also *R v Chaplin*, [1995] 1 SCR 727 at 740. This broad conception of relevant information as information that is potentially useful to the party from whom it has been withheld is easily extendable to a civil as opposed to a criminal proceeding (although, as discussed below, this still requires a case by case determination based on the legal and factual questions at issue in the underlying proceeding). Further, as the Federal Court of Appeal stated, the test of relevance is "undoubtedly a low threshold" (*Ribic* at para 17).

[31] The onus is on the party seeking disclosure "to establish that the information is in all likelihood relevant evidence" (*ibid.*). That being said, the designated judge cannot insist on a demonstration of the precise manner in which the information could be used in the underlying proceeding. The imposition of such a stringent burden would put the party seeking disclosure in an impossible Catch-22 position: see *R v McNeil*, 2009 SCC 3 at para 33. It is not uncommon – and entirely understandable – that the party seeking disclosure will need to make assumptions about the nature of the information that has been withheld and will have to cast its submissions broadly in terms of the potential usefulness of certain types of information, as opposed to the usefulness of the specific information that has been withheld – information which that party has not seen: see, for example, *Meng* at para 77.

[32] If the designated judge is not satisfied that the withheld information is relevant, this is sufficient to uphold the prohibition on disclosure. If, on the other hand, the designated judge is satisfied that the withheld information is relevant, it is necessary to proceed to the second step of the test.

[33] At the second step, the designated judge must determine whether disclosure of the information would be injurious to international relations, national defence or national security. At this stage, the burden rests on the AGC to establish that injury *would* result from disclosure. This requires demonstrating a probability of injury, not merely its possibility (*Canada (Attorney General) v Canada (Commission of Inquiry into the Actions of Canadian Officials)*, 2007 FC 766 at para 49). The AGC's position with respect to potential injury must "have a factual basis which has been established by evidence" (*Ribic* at para 18). If there is a reasonable basis for the AGC's position, the designated judge should accept it and turn to the third step of the test (*Ribic* at para 19; *Huang* at para 13). If, on the other hand, the designated judge is not satisfied that there is a reasonable basis for concluding that the alleged injury would result from disclosure, he or she may authorize the disclosure of the information in question: see *CEA* section 38.06(1).

[34] At the third step of the test, the designated judge must determine whether the public interest in disclosure of the information outweighs in importance the public interest in non-disclosure. On the one hand, there is a public interest in ensuring that justice is done in the underlying proceeding, whether this is a matter of making full answer and defence to a criminal charge or having meaningful access to a legal remedy in a civil proceeding. On the other hand, there is also a public interest in avoiding the injury that would be caused by the disclosure of

sensitive information. The burden of demonstrating that the public interest balance is tipped in favour of disclosure rests with the party seeking disclosure. The designated judge must weigh and balance, among other things, the importance of avoiding the injury that would be caused by disclosure, the interests at stake in the underlying proceeding, and the importance of the withheld information to the party seeking disclosure (*Ribic* at para 22). The designated judge must also consider whether there are ways to limit the injury that would be caused by disclosure while still making the information available (whether in whole or in part) for use in the underlying proceeding: see *CEA* section 38.06(2). As with the first step of the test, in determining whether the party seeking disclosure has discharged its burden at this final stage, the designated judge must bear in mind that that party has not been privy to the information in question. If the designated judge does not authorize disclosure in any form, he or she shall confirm the prohibition of disclosure: see *CEA* section 38.06(3).

V. THE TEST APPLIED

A. *Relevance*

[35] In the present case, the relevance of the withheld information must be determined in light of the legal and factual issues that are engaged in the underlying *mandamus* application. Before discussing the legal framework that pertains to that proceeding, however, it may be convenient to record the Court's summary determination with respect to three discrete documents.

[36] First, document AGC0053 (CTR pp 173-76) concerns Elisabeta Tudor, Mr. Sharafaldin's spouse, and not Mr. Sharafaldin himself. The withheld information is clearly irrelevant to any issue in the underlying *mandamus* application.

[37] Second, document ACG0100 (CTR p 338), which concerns a third party, appears to have been misfiled in Mr. Sharafaldin's citizenship application file. The withheld information is clearly irrelevant to any issue in the underlying *mandamus* application.

[38] Third, document AGC0115 (CTR pp 372-73) was originally included in the CTR with only discrete pieces of information redacted under section 38 of the *CEA*. Subsequently, counsel for the Minister alerted Mr. Sharafaldin's counsel as well as the Court that a claim of solicitor/client privilege should have been made over this document when the CTR was prepared but, due to an oversight, this did not happen. On consent, a fully-redacted version of this document was substituted for the original version in the CTR. Mr. Sharafaldin has not challenged the claim of solicitor/client privilege. Consequently, I have not made any determination with respect to either that privilege claim or the national security privilege claims in the original version of the document.

[39] Turning now to the legal framework governing the underlying application for judicial review, as has already been noted, Mr. Sharafaldin seeks an order from this Court requiring the Minister to make a decision on his citizenship application. As I understand his position, at a minimum, he seeks an order setting a timeframe within which the Minister must make a

decision, one way or the other. This is a common remedy when the reviewing Court is satisfied that an administrative decision has been delayed unreasonably.

[40] Mr. Sharafaldin's counsel has signalled that he may also ask the Court to give directions to the Minister concerning, among other things, the applicable criteria for determining the citizenship application (they have changed several times over the life of the application), whether Mr. Sharafaldin has satisfied them, and perhaps even how the Minister should decide the application. These exceptional sorts of mandatory orders can be warranted when no other outcome is reasonably available or when they are necessary to avoid bringing the administration of justice into disrepute: see *Canada (Public Safety and Emergency Preparedness) v LeBon*, 2013 FCA 55 at para 14; *D'Errico v Canada (Attorney General)*, 2014 FCA 95 at para 16; *Canada (Attorney General) v Allard*, 2018 FCA 85 at paras 44-45; *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 at para 72; *Canada (Attorney General) v Philps*, 2019 FCA 240 at para 42; and *Wilkinson v Canada (Attorney General)*, 2020 FCA 223 at para 64. While there is a clear jurisprudential foundation for such remedies, the Court has not yet received full submissions concerning how they might apply in this case, something I anticipate to be a matter of controversy between the parties.

[41] For present purposes, it will suffice to frame the issue of relevance in terms of the minimum remedy Mr. Sharafaldin seeks – namely, an order that the Minister make a decision on his citizenship application, one way or the other, within a specified timeframe. Information that is relevant to this issue will also potentially be relevant to the merits of Mr. Sharafaldin's claim

for any additional legal remedies. Conversely, there is nothing that would be relevant to those other remedies that would not also be relevant to the minimum remedy Mr. Sharafaldin seeks.

[42] The route to this remedy in the jurisprudence is the well-known test for *mandamus* established by the Federal Court of Appeal in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742. As recently stated by that Court in *Lukacs v Canada (Transportation Agency)*, 2016 FCA 202 at para 29, this test stipulates the following eight requirements that must be satisfied before an order of *mandamus* is to be issued:

(1) there must be a legal duty to act;

(2) the duty must be owed to the applicant;

(3) there must be a clear right to performance of that duty;

(4) where the duty sought to be enforced is discretionary, certain additional principles apply;

(5) no adequate remedy is available to the applicant;

(6) the order sought will have some practical value or effect;

(7) the Court finds no equitable bar to the relief sought; and

(8) on a balance of convenience an order of *mandamus* should be issued.

[43] In view of the submissions of the parties, I anticipate that the principal issues to be joined in the underlying application for judicial review will arise under some combination of the first three parts of the *Apotex* test. Central among these issues will be the question of whether the Minister owes a duty to Mr. Sharafaldin to make a decision on his citizenship application notwithstanding the fact that the application was suspended in October 2014 under section 13.1 of the *Citizenship Act*. Answering this question will require an assessment of whether the

discretion to suspend the citizenship application was exercised lawfully or, as Mr. Sharafaldin contends, that it was an abuse of process. Further, even if that discretion was exercised lawfully, it only suspended the application as of October 2014. It would still be an open question whether the failure to make a decision on the application before then entitles Mr. Sharafaldin to a remedy. More broadly, the determination of whether Mr. Sharafaldin is entitled to the remedy (or remedies) he seeks will require an assessment of whether the Minister has taken unreasonably long to make a decision.

[44] Against this backdrop, I judge as relevant any information in the CTR that pertains to the processing of Mr. Sharafaldin's application for citizenship by the Minister and by any agency that has provided information or advice to the Minister in relation to that application. More specifically, I consider anything in the CTR that pertains to the chronology of investigative events and to why a decision on the application has still not been made to be relevant. This includes the various steps taken in the processing of the application, the parties who took those steps, why those particular steps were taken, any explanation for why a given step took as long as it did to complete, and why some steps have still not been completed. While they disagree about whether a legal remedy is warranted in the underlying proceeding, I do not understand either Mr. Sharafaldin or the Minister to take a different view of how to apply the relevance test in the present application.

[45] Finally, I note the confirmation from counsel for Mr. Sharafaldin that he does not seek disclosure of any information such as classified phone or fax numbers, email addresses, file numbers and the like that may relate (broadly speaking) to the processing of his citizenship

application but which could not realistically assist him in advancing his case in the underlying application. While in theory such matters could be filtered out at either the first or the third stage of the *Ribic* test, for simplicity's sake I do so in this case at the first stage. I also note that, apart from such matters, the AGC has acknowledged that relevant information had been redacted from the CTR.

B. *Injury*

[46] I am satisfied that there is a reasonable basis for the AGC's position that injury would result from disclosure of relevant information that the AGC wishes to withhold.

[47] As noted above, in the *ex parte* and *in camera* part of this application, the AGC presented evidence, in both affidavit and *viva voce* form, from two witnesses: one on behalf of CSIS, the other on behalf of the CBSA. I was impressed with both of the AGC's witnesses. Their evidence was well-organized and presented clearly. Both were well-qualified to state and to explain the positions of their respective agencies. Both witnesses grounded their evidence in the specific factual circumstances of this case.

[48] An important consideration for me in finding their evidence persuasive was that neither witness simply adhered to "the party line" on injury. Both witnesses took any concerns raised by the Court seriously, both provided evidence that was responsive to those concerns and, when appropriate, both demonstrated a willingness to consult further with their respective agencies about whether some additional disclosure might be warranted. Sometimes the AGC ended up agreeing that further disclosure could be made; other times the AGC maintained the original

position and explained the basis for this. In the end, any doubts I had about particular redactions in the CTR were met either by the AGC adjusting its original position and agreeing to more disclosure or by further explanations of the rationale for the redactions. Consequently, on the basis of the evidence presented and the AGC's submissions in the closed part of this proceeding, I am satisfied that the AGC has discharged its burden of demonstrating that any further disclosure beyond what has been agreed to would be injurious to interests that ought to be protected.

C. *Balancing*

[49] Balancing the public interest in disclosure against the public interest in non-disclosure, I accept the AGC's position that additional disclosure should be provided to the respondent by lifting certain redactions, summarizing certain withheld information, and stipulating certain facts. I have also concluded, however, that no additional disclosure beyond that which the AGC proposes is warranted.

[50] Considered together, the information already available to Mr. Sharafaldin (in the CTR, in the documents he has compiled in his application record, and in the respondent's record in the underlying judicial review application), the additional lifts proposed by the AGC, the summaries proposed by the AGC, and the stipulation of facts proposed by the AGC all give Mr. Sharafaldin a clear understanding of the narrative of events relating to his citizenship application. He is aware of the nature of each relevant step in the processing of his application. He is aware of the consultations between the Minister and the agencies that advised him and his predecessors in relation to the citizenship application. The progress (or lack thereof) of the application is clear.

While some details of the information considered in the processing of his citizenship application have been withheld from Mr. Sharafaldin, I find that this will not unduly impair his ability to contest the reasonableness of the delay or to advance his abuse of process arguments. Importantly, Mr. Sharafaldin and the Minister will be on a level playing field when it comes to assessing the reasons for the delay and the overall reasonableness of the Minister's failure to make a decision on the application.

[51] In sum, on the basis of my understanding at this time of the live issues in the underlying application for judicial review and the positions of the parties, Mr. Sharafaldin will be well-equipped to advance his case in that application once he receives the additional disclosure proposed by the Minister and endorsed by this Court. The added marginal value of the information that remains withheld does not outweigh the injury that would be caused by the disclosure of that information.

VI. CONCLUSION

[52] For these reasons, the Court accepts the AGC's proposals for additional disclosure to the respondent by way of lifts, summaries of redacted information, and the stipulation of facts. Otherwise the non-disclosure of sensitive information in the CTR filed on February 21, 2020 (as supplemented subsequently) is confirmed pursuant to section 38.06(3) of the *CEA*.

JUDGMENT IN DES-3-20

THIS COURT'S JUDGMENT is that

1. The Attorney General of Canada shall provide the respondent and the Minister of Citizenship and Immigration with replacement pages for the documents that are the subject of this application that reflect the lifts and summaries proposed by the Attorney General of Canada in this proceeding.

2. The Attorney General of Canada shall provide the respondent and the Minister of Citizenship and Immigration with the stipulation of facts proposed by the Attorney General of Canada in this proceeding.

3. The prohibition on the disclosure of the redacted information in the documents contained in the Certified Tribunal Record filed in *Mahmoud Sharafaldin v Minister of Citizenship and Immigration* (Court File No. T-64-19) on February 21, 2020 (as supplemented subsequently) that are the subject of this application and which has not been lifted or summarized as proposed by the Attorney General of Canada is confirmed in accordance with section 38.06(3) of the *Canada Evidence Act*.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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