Federal Court of Appeal | Cour d'appel fédérale

Date: 20230215

Docket: A-203-21

Citation: 2023 FCA 45

CORAM: **DE MONTIGNY J.A.**
LASKIN J.A.
LEBLANC J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

and

KRISTIN ERNEST HUTTON

Respondent

Heard at Ottawa, Ontario, on January 30, 2023.

Judgment delivered at Ottawa, Ontario, on February 15, 2023.

REASONS FOR JUDGMENT BY: LEBLANC J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
LASKIN J.A.

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PUBLIC REASONS FOR JUDGMENT

This is a public version of confidential reasons for judgment issued to the parties. The two are identical, there being no confidential information disclosed in the confidential reasons.

LEBLANC J.A.

[1] This is an appeal of a judgment of the Federal Court (*per* Justice Fothergill) (the application judge), dated July 16, 2021, dismissing in part applications by the Attorney General of Canada (the AGC), made pursuant to section 38.04 of the *Canada Evidence Act*, R.S.C. 1985,

c. C-5 (the Act) for an order prohibiting disclosure of potentially injurious information in relation to two proceedings currently before the Federal Court.

[2] The relevant proceedings are those related to Files Nos. T-268-17 and T-1143-19. They were described as follows by the application judge:

i) "Court File No. T-268-17 is a civil action commenced by Mr. Hutton [the respondent] in which he alleges that two named Defendants are, or were previously, undisclosed intelligence agents of [His] Majesty the [King] and have caused him harm";

ii) "Court File No. T-1143-19 is an application for judicial review commenced by Mr. Hutton of the [Office of the Communications Security Establishment Commissioner]'s dismissal of his complaint that the Communications Security Establishment [CSE] intercepted and manipulated his electronic communications".

[3] Applying the tripartite test set out in *Canada (Attorney General) v. Ribic*, 2003 FCA 246, [2005] 1 F.C.R. 33 (*Ribic*) to determine whether he should maintain the confidentiality of the information the AGC seeks to protect, the application judge found that the information was relevant to the underlying proceedings and that its disclosure would be injurious to national security. However, applying the third branch of the *Ribic* test, he concluded that the public interest in disclosure in the form of a public summary (the Public Summary) outweighed the public interest in non-disclosure of the information. He also concluded that the balancing of these interests favoured the disclosure of the redacted portions of the conclusion of a Note to

File, dated May 30, 2019, prepared by the Office of the Communications Security Establishment Commissioner (the OCSEC) regarding Mr. Hutton's complaint against the CSE (the OCSEC Note).

[4] In support of his conclusion, the application judge held that the public interest in disclosure encompassed "the value of providing the parties with accurate information regarding Mr. Hutton's unfounded and harmful allegations". Further, he was satisfied that the disclosure of the Public Summary and of the conclusion of the OCSEC Note (together, the Information at Issue) would not serve as a general precedent in other cases due to the unique circumstances of the case. In all other respects, he granted the AGC's applications and declined disclosure.

[5] The AGC contends that the application judge failed to consider and balance the proper public interests in the third step of the *Ribic* test. He also submits that the application judge failed to appreciate that the Information at Issue would be of little, if any, assistance to the parties, including Mr. Hutton. In particular, he claims that the application judge did not provide any analysis of whether the Information at Issue would establish a fact crucial to either of the underlying proceedings. This, according to the AGC, led to the application judge's failure to limit the injury to national security resulting from the disclosure of the Information at Issue, contrary to what was required of him by subsection 38.06(2) of the Act.

[6] Although he agrees with the "summary disclosure" ordered by the application judge and recognizes that he did not file a cross-appeal against that part of the application judge's decision allowing the AGC's applications, Mr. Hutton nevertheless requests from this Court "as much and

bona fide disclosure” of the remaining redacted information to support his claims in both underlying proceedings. In addition, although he understands that as a general rule, one can only appeal from the impugned judgment itself, not from the reasons for judgment, Mr. Hutton urges the Court “to fix the "reasons"” for the application judge’s decision, which he finds “overtly miscast, chaotic, contrary to law and not supported on a balance and pragmatic review of the evidence”.

[7] This appeal is brought on both a public and a confidential record. It was heard on January 30, 2023. The hearing proceeded first in public, with the Court hearing oral submissions from both sides. Then, the Court moved to its secure location to hold an *ex-parte, in camera* hearing where it heard oral submissions from the AGC as well as from Mr. Anil Kapoor, the *amicus curiae* (the Amicus) appointed by Order of this Court dated November 18, 2021 (the Appointing Order). Both the AGC and the Amicus had previously filed confidential written submissions. The Amicus did not file public written submissions nor make oral submissions at the public phase of the hearing.

[8] Before addressing the merits of this appeal, the Court must address two motions brought by Mr. Hutton ahead of the hearing of the appeal.

I. The two preliminary motions

[9] The first motion is a motion to vary the terms of the Appointing Order to permit the production and disclosure of all the classified material filed by the AGC in this appeal, or of a summary thereof (the Motion for Disclosure).

[10] The second motion is a motion for leave to file fresh evidence (the Motion for Fresh Evidence). This evidence originally consisted of two documents, namely: (i) the transcript of the hearing held before the application judge on April 29, 2021 and (ii) a letter dated September 25, 2022 “that encloses a "consent" to the disclosure of specifically tailored and limited "personal information" from fellow licenced lawyers (and allegedly self-admitted undisclosed employees of the Security Apparatus) […] under the Privacy Act […] and a sworn Affirmation that these lawyers are not subject to any provisions of the Security Information Act […] or hold any "security clearances" with any Institution or Department with the Government” (the September 25 Letter). Mr. Hutton is now only seeking production of the September 25 Letter as the transcript is already on record and accessible to him.

[11] These motions were heard orally at the outset of the public phase of the hearing of this appeal. After considering the parties’ motion records and oral submissions, the Court dismissed the motions from the bench, with reasons to follow. These are the reasons.

[12] The Motion for Disclosure, to the extent it seeks disclosure of the classified record filed by the AGC in this appeal, denotes a profound misunderstanding of the scheme set out in section

38 of the Act and must therefore be dismissed. As is well settled, that scheme was designed to protect from disclosure information that would, if disclosed, pose a threat to national security, national defence or international relations, while at the same time permitting conditional, partial and restricted disclosure in appropriate circumstances (*R. v. Ahmad*, 2011 SCC 6, [2011] 1 S.C.R. 110 at para. 44; *Canada (Attorney General) v. Khawaja*, 2007 FCA 388, [2008] 4 F.C.R 3 at para. 4 (*Khawaja*)).

[13] The task of striking the proper balance, in any given case, between the public interest in secrecy and the public interest in disclosure, when a section 38.04 application is being considered, has been entrusted to designated judges of the Federal Court and is subject to special rules intended to protect potentially injurious information filed in the course of such proceedings from being disclosed. In particular, according to subsections 38.11(1) and (2) of the Act, *ex-parte* and private hearings are to be held by the designated judge whenever the AGC so requests. As for the records relating to *ex-parte* hearings held in connection with a section 38.04 application, they contain documents and information explaining why the information that is the subject of said application would, if disclosed, cause injury to national security. Pursuant to subsection 38.12(2), these records are confidential. As the AGC appropriately points out, he provides the documents and information that are to form part of these records on the understanding that they will be kept confidential.

[14] I agree with the AGC that the disclosure of the classified material, as sought by Mr. Hutton, would result in the disclosure of additional sensitive or potentially injurious information, including the Information at Issue. This would not only run contrary to the purpose of section 38

of the Act, which is to protect that material from disclosure, but it could also defeat the very purpose of the present appeal, which is to determine whether the application judge erred in ordering the disclosure of the Information at Issue. In other words, if this information were to be disclosed by the Court through the Motion for Disclosure, then there would be nothing left to be decided on appeal.

[15] Neither the Appointing Order nor the Court's plenary powers provide a valid basis for the Motion for Disclosure, contrary to Mr. Hutton's claims. The Appointing Order is just that: an Order appointing Mr. Kapoor as the Amicus in this appeal and providing case-management directions to the parties in this respect. The Appointing Order's last paragraph, indicating that the parties "may apply to the Court, on notice to the other parties and the *amicus curiae*, to vary the terms of this Order", cannot possibly have meant what Mr. Hutton suggests: that is, to allow the parties to seek variation of said Order in a manner that would run contrary to the elaborate scheme set out in section 38 of the Act and defeat the purpose of the present appeal.

[16] Mr. Hutton's reliance on this Court's plenary powers is also entirely misplaced. These powers are meant to assist the Court in managing its own proceedings, such as to summarily dismiss, of its own motion, proceedings that are doomed to fail or are an abuse of the process of the Court (*Dugré v. Canada (Attorney General)*, 2021 FCA 8 at para. 20; *Coote v. Canada (Human Rights Commission)*, 2021 FCA 150 at para. 16). These powers were never intended to provide a party before the Court with a remedy that is not legally available.

[17] Mr. Hutton relies heavily on *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 (*CBC*) for the proposition that this Court retains the authority to order disclosure of the classified material filed by the AGC in this appeal so as to ensure compliance with the constitutionally protected open court principle. That case raised the issue of whether a court retains jurisdiction to render, vary or vacate ancillary orders, such as sealing orders or publication bans, after it has decided the merits of a case and entered its formal judgment. It is of no assistance to Mr. Hutton as it was decided in a wholly different context.

[18] The relevant context is different here. It is informed by the provisions of section 38 of the Act allowing for *ex-parte* hearings and ensuring the confidentiality of the material filed for the purposes of such hearings. These provisions have been found to strike a proper balance between the need to ensure compliance with the open court principle and the public interest in secrecy and were held, therefore, to be constitutionally valid (*Khawaja* at 4; *Toronto Star Newspapers Ltd. v. Canada*, 2007 FC 128, [2007] 4 F.C.R. 434 at paras. 83, 86 and 90-91).

[19] It is appropriate at this stage to recall that the Supreme Court of Canada has "repeatedly recognized that national security considerations can limit the extent of disclosure of information to the affected individual" (*Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350 at para. 58).

[20] Again, the *CBC* matter is of no assistance whatsoever to Mr. Hutton. The same is true of the analogy Mr. Hutton is attempting to make with the confidentiality regime set out in sections 151 and 152 of the *Federal Courts Rules*, SOR/98-106 (the Rules). This regime is entirely

different than the one set out in section 38 of the Act, which was designed to deal specifically with the protection and disclosure of information that is potentially injurious to national security, national defence and international relations and which sets out, to that end, its own - and unique - procedural and analysis frameworks. The Rules' confidentiality regime has no application to this type of information and is therefore not a valid comparator.

[21] In sum, Mr. Hutton's Motion for Disclosure has no basis in law and, as the Court indicated at the public phase of the hearing of this appeal, it is dismissed.

[22] The Motion for Fresh Evidence, which seeks the production of the September 25 Letter, is based on subsection 38.06(3.1) of the Act. Alternatively, production is being sought through a variation of the Appointing Order. Neither has any traction in law and both can be briefly disposed of.

[23] First, subsection 38.06(3.1) is of no assistance to Mr. Hutton in this Court. That provision empowers the designated judge seized of an application under section 38.04 of the Act to "receive into evidence anything that, in the opinion of the judge, is reliable and appropriate, even if it would not otherwise be admissible under Canadian law, and may base his or her decision on that evidence". For the purposes of that provision, the term "judge" is defined in the definitions' provision of section 38 as "the Chief Justice of the Federal Court or a judge of that Court designated by the Chief Justice to conduct hearings under section 38.04". This Court, therefore, has no authority under subsection 38.06(3.1) to receive evidence in the context of an appeal of a disclosure order issued in relation to an application made pursuant to section 38.04 of the Act.

This authority is vested solely in the Chief Justice of the Federal Court or in designated judges of that Court.

[24] As the AGC correctly points out, this Court's authority to grant leave to a party to file fresh evidence on appeal rests with section 351 of the Rules. However, one of the conditions to be satisfied in order for such leave to be granted is that the fresh evidence sought to be adduced be relevant, in that it bears on a decisive or potentially decisive issue on appeal (*Coady v. Canada (Royal Mounted Police)*, 2019 FCA 102 at para. 3; *Palmer v. The Queen*, 1979 CanLII 8 (SCC), [1980] 1 S.C.R. 759 at 775).

[25] Even assuming, without deciding it, that the September 25 Letter is relevant to the merits of the underlying two proceedings, Mr. Hutton has failed to establish that the September 25 Letter bears on a decisive or potentially decisive issue on appeal. In other words, nothing in this appeal turns on it.

[26] Adducing the September 25 Letter through a request for the variation of the Appointing Order is not an avenue open to Mr. Hutton either. I have already discussed the limited and very specific nature of that Order but even if there was such an avenue, then Mr. Hutton would still face the insurmountable problem of the September 25 Letter's total lack of relevancy for the disposition of the issues on appeal in this matter.

[27] These are the reasons supporting the dismissal of the Motion for Fresh Evidence.

[28] Both parties are seeking their costs on these motions. As is generally the case, I would award costs to the successful party.

II. The merits of the AGC appeal

[29] As indicated at the outset of these reasons, the AGC filed an application under subsection 38.04 of the Act in each of the two underlying proceedings, the civil action (Court File No. T-268-17) and the judicial review application of the OCSEC decision dismissing Mr. Hutton's complaint that the CSE intercepted and manipulated his electronic communications (Court File No. T-1143-19).

[30] Both applications relate to concerns regarding the same document, the OCSEC Note, which, according to the AGC, contains information that ought to be protected from disclosure pursuant to section 38 of the Act. Because they are so closely related, the two applications were consolidated and continued as a single proceeding by Order of the application judge dated March 25, 2021.

[31] As is well settled, such applications are determined on the basis of the *Ribic* test, which is further detailed by subsection 38.06(2) of the Act. This test requires the designated judge to address the following three questions:

(a) Is the information sought to be protected relevant to the underlying proceeding?

(b) If so, is that information injurious to national security, national defence or international relations?

(c) If the answer to (a) and (b) are both "yes", does the public interest in non-disclosure outweigh the public interest in disclosure?

[32] If the designated judge concludes that the public interest in disclosure outweighs the public interest in secrecy, he or she must, before ordering disclosure, consider, as required by subsection 38.06(2) of the Act, the form of, and any potential conditions on, the disclosure that are most likely to limit the injury to national security, national defence or international relations. A public summary of the information sought to be kept secret is one such form contemplated by that provision.

[33] I recall that the application judge concluded, based on *Ribic*, that the information the AGC sought to protect from disclosure was relevant to the two underlying proceedings and that its disclosure would be injurious to national security, "insofar as it tends to reveal: (i) subjects of investigative interest to CSE; (ii) confidential techniques and capabilities; and (iii) confidential procedures, methodologies and employees' names".

[34] However, when considering the third and final component of the *Ribic* test – the balancing component -, he held that the pubic interest in disclosure of a public summary of the information and of the redacted portions of the conclusion to the OCSEC Note outweighed the public interest in secrecy, as he was satisfied that this information would "provide meaningful

disclosure to the parties while limiting or minimizing the injury to national security that would result from full disclosure of the information the AGC seeks to protect".

[35] The application judge's finding that CSE and the Canadian Security Intelligence Service (the CSIS) had made an "unusual" public confirmation of their lack of investigative interest in Mr. Hutton (the Confirmation finding) was key to this determination. This finding stemmed from correspondence to Mr. Hutton from the OCSEC, CSIS and CSE where they respectively informed Mr. Hutton:

a) In the case of the OCSEC, that it independently investigated the matters raised in this complaint, verified CSE's holdings, questioned CSE employees and concluded that CSE's activities were lawful;

b) In the case of CSE, that it never employed the individuals named in his complaint and never directed its activities at Canadians or any persons in Canada; and

c) In the case of CSIS, that it carefully reviewed his allegations, conducted the appropriate internal inquiries and concluded that it was not involved in the circumstances alleged by Mr. Hutton and that none of the individual alleged by Mr. Hutton to work for it were in fact employees or contractors of CSIS.

[36] The application judge then opined that any disclosure resulting from the AGC's applications would therefore "occur in the unique circumstances of this case" and would not

"serve as a general precedent for disclosure in other cases". The circumstances of this case were also unique because of the application judge's view that the pubic interest in disclosure encompassed "the value of providing the parties with accurate information regarding Mr. Hutton's unfounded and harmful allegations".

[37] The AGC contends that the application judge erred in applying the third step of the *Ribic* test. He claims that the disclosure of the Information at Issue would undermine the "never confirm or deny principle" which has been consistently applied by Canadian intelligence agencies in the course of their investigating work (the Investigation principle) and would do so in a context where the disclosure of that information would not establish a meaningful fact or otherwise impact the outcome of the two underlying proceedings. He insists that preserving that principle "is important and should not be easily discarded".

[38] The AGC further contends that the application judge erred in issuing a public summary that does not limit the injury to national security, as mandated by subsection 38.06(2) of the Act.

[39] It is not disputed that the appellate standard of review set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 (*Housen*) applies to this appeal as it involves either the application of a legal test to a set of facts or the exercise of discretion (*Ader v. Canada (Attorney General)*, 2018 FCA 105 at para. 14). This engages, as conceded by the AGC, the standard of palpable and overriding error.

[40] This standard is a demanding one in that "[a]n error is *palpable* if it is plainly seen and if all the evidence need not be reconsidered in order to identify it, and is *overriding* if it has affected the result" (*Hydro-Québec v. Matta*, 2020 SCC 37 at para. 33; *Housen* at paras. 4-6 and 27-28). As this Court eloquently stated in *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at para. 46, "[w]hen arguing palpable and overriding error, it is not enough to pull all leaves and branches and leave the tree standing. The entire tree must fall."

[41] In *Nelson (City) v. Mowatt*, 2017 SCC 8, [2017] 1 S.C.R. 138 at para. 38, the Supreme Court of Canada reaffirmed that "[t]he standard of palpable and overriding error applies with respect to the underlying facts relied upon by the trial judge to draw an inference, and to the inference-drawing process itself", and cautioned appellate courts from "second-guess[ing] the weight to be assigned to the various items of evidence" and making "alternative findings based on different ascriptions of weight".

[42] With this in mind, and after having carefully considered the submissions of the parties and the Amicus at both the public and private phases of the hearing of this appeal, I see no basis upon which to interfere with the application judge's decision.

[43] Having determined that the information the AGC sought to prevent disclosure of was relevant to the underlying proceedings and that disclosure would injure national security, the application judge was then required to balance the public interest in secrecy with the public interest in disclosure. In so doing, he appeared to be largely influenced by the Confirmation

finding. In the application judge's view, this particular fact made this case unique and therefore of little precedential value. The AGC disputes that crucial finding.

[44] Here, I agree with the Amicus that the Confirmation finding could be inferred from the entire record that was before the application judge. In other words, this inference was, in my view, available to the application judge.

[45] I pause to underscore the fact that the Investigation principle the AGC seeks to protect in preventing disclosure of the Information at Issue does not benefit from a class protection as does, for example, the human sources privilege set out in section 18.1 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23 (*Canada (Attorney General) v. Almrei*, 2022 FCA 206 at para. 21). Weighing the interest in respecting the Investigation principle against the public interest in disclosure therefore remains a case-by-case exercise of discretion (*Canada (Attorney General) v. Almalki*, 2011 FCA 199, [2012] 2 F.C.R. 594 at paras. 24-25). The AGC does not appear to dispute this, but insists that the principle itself "should not be easily discarded".

[46] This is not to say that alternative findings based on a different weighing of the evidence would not have been available to this Court – or to another designated judge - in this case. However, as we have seen, this is not the test applicable in a palpable and overriding error analysis, as our role as an appellate court is not to reassess the evidence and come up with our own findings. Ultimately, this is what the AGC is urging this Court to do, and we therefore must decline that invitation and leave the application judge's Confirmation finding undisturbed.

[47] The AGC also takes issue with the application judge's determination that this disclosure order, given its uniqueness, "will not serve as a general precedent for future cases". The AGC claims that the application judge failed to articulate sufficient reasons in support of that conclusion.

[48] I have some difficulty with this argument. In his reasons for judgment, the application judge noted the AGC's proposal that "if the Court orders disclosure despite the AGC's objections, then the injury may be minimized by disclosure of a public summary and the imposition of strict conditions upon Mr. Hutton's use of that summary". The application judge then referred to "the public summary prepared by the AGC".

[49] The public summary prepared by the AGC included these paragraphs:

> […]
>
> CSE's consistent practice is to never disclose information that would identify or tend to identify CSE techniques, targets, and capabilities, as such disclosure would be injurious both to CSE's operations and national security.
>
> CSE, however, recognizes the uniqueness of the instant case before the Court, and the fact that the uniqueness of this matter would not present a precedent going forward. […]
>
> […]
>
> [My emphasis]

[50] These paragraphs were included in the Public Summary, which is the "summary prepared by the AGC, as amended in the manner proposed by the [Amicus]".

[51] I am therefore of the view that the application judge can hardly be faulted for not expanding further on this point as he appears to have simply endorsed the AGC's (and the Amicus') position.

[52] The AGC further claims that the application judge erred in ordering disclosure of the Information at Issue because that information, if made public, would not establish a meaningful fact or otherwise impact the outcome of the two underlying proceedings. I disagree.

[53] Here, the application judge considered that the public interest in disclosure related to both of the underlying proceedings and encompassed the value of providing the parties with accurate information regarding Mr. Hutton's allegations.

[54] With respect to the judicial review proceeding in particular, the application judge noted the Amicus' position that the public interest required disclosure of the answers to the following questions, in order "to permit the fair and just resolution [of that proceeding]":

(a) what did OCSEC do to investigate Mr. Hutton's complaint?

(b) what did OCSEC learn about the matters complained of?

(c) what is OCSEC's particular response to the matters raised by Mr. Hutton, as reflected in the conclusion to the [OCSEC Note]?

[55] A reviewing court performing a reasonableness analysis is interested in both the reasoning process and the outcome (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 87). Given the uniqueness of this case, as discussed above, I see no palpable and overriding error on the part of the application judge in ordering disclosure of the Information at Issue to the extent that he was satisfied that this information:

(i) would go some distance in answering these three questions;

(ii) would therefore provide meaningful disclosure to the parties; and

(iii) would ensure, as a result, that the judicial review application proceeds with accurate information, which could impact the outcome of the case.

[56] I reach the same conclusion regarding the civil action, since many of the same allegations form the basis of both proceedings, with CSE's alleged conduct – and OCSEC's investigation thereof – being central to both.

[57] Again, one could have concluded otherwise on this point, but the AGC, despite his best efforts, has not succeeded in bringing the "tree" down.

[58] Finally, the AGC submits that the Public Summary does not minimize injury to national security. Again, given the uniqueness of this case, I see no palpable and overriding error in the

application judge's conclusion that the Information at Issue "will provide meaningful disclosure to the parties while limiting or minimizing the injury to national security that would result from full disclosure of the information the AGC seeks to protect", that injury being, as indicated above, the lack of preservation of the Investigation principle.

[59] I see no such error either with respect to the application judge's conclusion that there was no need to impose conditions upon Mr. Hutton regarding the disclosure of the Information at Issue since the correspondence from OCSEC, CSE and CSIS referred to above, which underlies the Confirmation finding, was all disclosed to Mr. Hutton without conditions. This determination, I find, was also available to the application judge in light of the particular circumstances of the case.

[60] A word on Mr. Hutton's position regarding the merits of this appeal. As mentioned previously, he asks this Court to "fix the reasons" of the application judge's decision and to order "as much and bona fide disclosure" of the remaining redacted information as possible. Mr. Hutton has conceded that "fixing the reasons for judgment" is not a stand alone ground of appeal and he did not also cross-appeal the application judge's decision. This appeal is therefore confined to determining whether the application judge committed a palpable and overriding error in ordering disclosure of the Information at Issue. Nothing less but nothing more. There is, as a result, no basis upon which this Court can entertain these two requests.

[61] I would therefore dismiss the appeal. Neither side has sought costs, as is usually the case in such matters. There will be, as a result, no order as to costs with respect to the merits of the appeal.

[62] These public reasons were first released on a classified basis on February 15, 2023 to ensure compliance with national security requirements prior to public release.

"René LeBlanc"
J.A.

"I agree.
Yves de Montigny J.A."

"I agree.
J.B. Laskin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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