

**CONFIDENTIAL**

Court File No.: DES-11-24

**FEDERAL COURT**

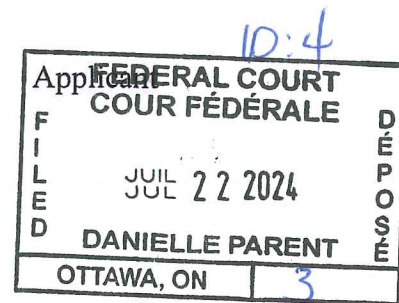
BETWEEN:

**ATTORNEY GENERAL OF CANADA**

and

**THE CANADIAN TRANSIT COMPANY**

**~~RESPONDENT(S) TO BE NAMED BY THE COURT PURUANT TO  
SUBSECTION 38.04(5) OF THE CANADA EVIDENCE ACT~~**



Respondent

**AMENDED NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED** by the applicant. The relief claimed by the applicant appears on the following page.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed

by the *Federal Courts Rules* and serve it on the applicant's solicitor, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

JUL 22 2024

Date: \_\_\_\_\_ Issued by: \_\_\_\_\_  
*(Registry Officer)*

ORIGINAL SIGNED BY  
DANIELLE PARENT  
A SIGNÉ L'ORIGINAL

**Amended:**

90 Sparks Street Ottawa,  
ON K1P 5B4

**TO: The Canadian Transit Company**

**Per: TORYS LLP**  
**79 Wellington Street West, 30<sup>th</sup> Floor**  
**Box 270, TD South Tower**  
**Toronto ON M5K 1N2**

**Tel: (416) 865-7319**  
**Fax: (416) 865-7380**

**Sheila R. Block (LSUC#14089)**  
**Nicole Mantini (LSUC#58356Q)**  
**Emily Sherkey (LSUC#67932D)**

I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au dossier de la Cour.

Filing date 22-Jul-2024  
Date de dépôt

22-Jul-2024  
Dated  
Fait le

**Designated Registry Officer**  
**DANIELLE PARENT**  
**Agente du greffe désignée**

## APPLICATION

**THIS IS AN APPLICATION** under ss. 38.04(1) of the *Canada Evidence Act*, RSC 1985, c C-5 (*CEA*), for an order regarding disclosure of information referred to in two notices under ss. 38.01(1) of the *CEA* that were provided to the Attorney General of Canada (AGC) on June 12, 2018 by Counsel with Lenczner Slaght Royce Smith Griffin LLP (Notice 1) and on May 1, 2024 by Manager and Senior counsel with Transport and Infrastructure Legal Services at the Department of Justice Canada (Notice 2). In each notice, the notifier advised that they believed that sensitive or potentially injurious information may be disclosed in the civil proceeding before the Superior Court of Justice in Court File No CV-12-446428 (the “Underlying Proceeding”).

### **THE APPLICANT MAKES APPLICATION FOR:**

- a) An order under s. 38.06(3) of the *CEA* confirming the prohibition of disclosure of the information referred to in the notice, except as previously authorized by the AGC under s. 38.03(1) of the *CEA*; and
- b) Such further and other relief as the Applicant may request and the Court deems just.

### **THE GROUNDS FOR THE APPLICATION ARE:**

- a) The Canadian Transit Company (CTC) owns and operates the Canadian portion of the Ambassador Bridge, an international structure stretching between Windsor, Ontario and Detroit, Michigan;
- b) In the Underlying Proceeding, the CTC brought a civil action against the AGC in relation to settlement agreements reached in the context of litigation in the 1980s and 1990s concerning the Ambassador Bridge. Specifically, the CTC argues that Canada, in the course of negotiating and executing the settlement agreements, entered into an implied agreement granting them a perpetual and exclusive right to build, operate, maintain and collect tolls from any border

crossing in the vicinity of the Ambassador Bridge. CTC claims their perpetual and exclusive rights are being violated by the construction of the Gordie Howe International Bridge;

- c) On June 12, 2018, the AGC received notice under ss. 38.01(1) of the *CEA*, stating that documents required to be disclosed in the Underlying Proceeding may contain sensitive or potentially injurious information;
- d) On May 1, 2024, the AGC received a second notice under ss. 38.01(1) of the *CEA* stating that documents required to be disclosed in the Underlying Proceeding may contain sensitive or potentially injurious information;
- e) The AGC, through his delegate, did not authorize the disclosure of some of the information redacted in the documents covered by the notices. This information that was not authorized to be disclosed is the subject of this Application;
- f) Disclosure of the information subject to this Application would be injurious to international relations;
- g) The public interest in non-disclosure of the information outweighs the public interest in its disclosure;
- h) The AGC may receive subsequent notices in the following months pursuant to s. 38 of the *CEA* covering additional documents in connection with the Underlying Proceeding that will become part of this application; and
- i) Further and other grounds as the Applicant may advise and this Honourable Court may permit.

**THE APPLICANT MAKES THE FOLLOWING REPRESENTATIONS  
UNDER SUBSECTION 38.04(5) OF THE CEA:**

- a) The Canadian Transit Company is a party whose interests are affected by the information contained in the documents subject to this Application and must be named as the Respondent;
- b) A copy of the Notice of Application amended to include The Canadian Transit Company as the Respondent, should be served on the Canadian Transit Company or its counsel in the Underlying Proceeding;
- c) The Notice of Application must remain confidential until it is amended to name The Canadian Transit Company as the Respondent, and is served on the Respondent or its counsel in the Underlying Proceeding;
- d) A hearing pursuant to paragraphs 38.04(5)(a) or (a.2) of the *CEA* is not required;
- e) A public hearing may be necessary;
- f) An *ex parte in camera* hearing will be necessary; and
- g) Further and other representations as the Applicant may advise and this Honourable Court may permit.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING  
MATERIAL:**

- a) Affidavits and other material as counsel may advise and this Honourable court may permit.

July 19, 2024

Amended:



**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
National Security Group  
284 Wellington Street, Ottawa, ON, K1A 0H8  
Fax number: 613-941-4063

**Michelle Lutfy**

Telephone number: 613-957-1215  
E-mail: [Michelle.Lutfy@justice.gc.ca](mailto:Michelle.Lutfy@justice.gc.ca)

**Natalie Scott**

Telephone number: 613-946-7952  
E-mail: [Natalie.Scott@justice.gc.ca](mailto:Natalie.Scott@justice.gc.ca)

**Counsel for the Applicant**