



SECURITY INTELLIGENCE

Motion by *amici curiae* for determination of question of law in application pursuant to *Federal Courts Rules*, SOR/98-106 (Rules), rr. 3, 4 and, by analogy, to r. 220 pertaining to such motion brought in an action — Question to be determined in motion whether judge may order disclosure of summary where, *inter alia*, claim of privilege made pursuant to *Canadian Security Intelligence Act*, R.S.C., 1985, c. C-23 (CSIS Act), s. 18.1; where application made pursuant to s. 18.1(4)(a) for order declaring that certain information that may come from privileged information (summary) not information identifying human source — Applicant plaintiff in civil action before Ontario Superior Court of Justice against Government of Canada seeking damages for breaches of his rights under *Canadian Charter of Rights and Freedoms* — Several Government departments, agencies in possession of documents/information provided to applicant in redacted form on ongoing basis — Parallel applications filed in Court, including one pursuant to s. 18.1(4)(a) for disclosure of information currently subject to claims of human source privilege by Attorney General of Canada — Applicant requesting relief in form of summaries of information that can be derived from information over which s 18.1 privilege claimed — Not seeking information that would identify human sources — Issue whether s. 18.1 allowing issuance of summaries — Present motion arising in context of preparations for adjudication of underlying application under CSIS Act, s. 18.1 prior to related application under *Canada Evidence Act*, R.S.C., 1985, c. C-5 (CEA), s. 38 — CEA containing code of procedure for dealing with disclosure of sensitive or potentially injurious information in court or tribunal proceedings — No similar provision in s. 18.1 — While s. 18.1 on its face appearing to impose absolute prohibition on disclosure in court or tribunal proceedings, subject to innocence at stake exception in criminal matters, it has to be read in context of CSIS Act as whole — Other legislative schemes provide for issuance of summaries not containing sensitive information — Only CEA, s. 38, CSIS Act, s. 18.1 extending to proceedings before other tribunals or courts such as Ontario Superior Court of Justice — Fact these two schemes extend Court's jurisdiction to external courts meaning that summaries may be more critical in providing those courts as much information as possible to ensure appropriate outcome — Application of class privilege in s. 18.1 dependent upon finding that information at issue provided by human source, would, if disclosed, identify or tend to identify that human source — Because any decision by Court not upholding application of s. 18.1 to information that CSIS has redacted from documents produced to applicant on discovery may lead to claim for protection of same information under CEA, s. 38, in interests of judicial economy to encourage counsel for Attorney General, *amici* to explore whether identifying information could be severed to protect human sources — Agreement on this obviating need to review information again during CEA, s. 38 proceedings — Court may thus authorize disclosure of information summarized from information protected by s 18.1 where application made to judge pursuant to CSIS Act, s. 18.1(4)(a) and judge determines that information is not information disclosing identity of human source — Motion allowed.

ALMREI V. CANADA (ATTORNEY GENERAL) (DES-1-18, 2021 FC 1153, Mosley J., reasons for

order dated October 28, 2021, 27 pp.)