

Federal Court



Cour fédérale

Date: 20240220

Docket: T-1245-23

Citation: 2024 FC 277

Ottawa, Ontario, February 20, 2024

PRESENT: Madam Justice Walker

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

**ANIMAL JUSTICE CANADA AND
SOI DOG CANADA**

Respondents

AMENDED ORDER AND REASONS

I. Overview

[1] On June 15, 2023, the Attorney General of Canada (the Applicant or AGC) filed an application requesting an order pursuant to subsection 37(6) of the *Canada Evidence Act*, RSC 1985, c C-5 (the *CEA*), prohibiting the disclosure of certain information over which it claims public interest immunity. The Respondents, Animal Justice Canada and Soi Dog Canada, argue that the Applicant has not met the stringent requirements of section 37 and request disclosure of

the redacted information pursuant to subsection 37(4.1) of the *CEA*. In the alternative, the Respondents request that the Court authorize disclosure of the Redacted Information on a confidential basis to be made accessible only to a solicitor of record or a solicitor assisting in the proceeding in reliance on subsection 37(5) of the *CEA* and Rules 151 and 152 of the *Federal Courts Rules*, SOR/98-106 (the Rules).

[2] The AGC makes this application in the context of three applications for judicial review filed by the Respondents on October 27, 2022 (Court files: T-2260-22, T-2261-22 and T-2262-22, consolidated by the Court on December 8, 2023 (the Consolidated Judicial Review)). The Consolidated Judicial Review challenges a series of three orders made by delegates of the Minister of Agriculture and Agri-Food pursuant to the *Health of Animals Act*, SC 1990, c 21: a Secondary Control Zone Order dated June 28, 2022 (T-2262-22); a Prohibition Order dated September 28, 2022 (T-2260-22) and a Designation Order dated September 28, 2022 (T-2261-22) (collectively, the Orders). The combined effect of the Orders is to prohibit the entry into Canada of “commercial dogs” from 109 countries at risk for rabies caused by canine-variant viruses.

[3] In December 2022, the Canadian Food Inspection Agency (the CFIA) sent a redacted certified tribunal record (CTR) for the Consolidated Judicial Review to the Respondents and the Court. The CFIA relied on Rule 318(2) in making the redactions asserting that, among other concerns, portions of the information under redaction were communications between Canada and provincial or foreign governments made with the expectation of confidence. The Respondents

challenged the redactions and the Court directed the parties to file affidavit evidence and written submissions.

[4] On May 8, 2023, the Applicant filed an unredacted CTR with the Court together with a certificate (the Certificate) of Dr. Mary Jane Ireland certifying for purposes of subsection 37(1) of the *CEA* that certain redacted information in the CTR should not be disclosed on the grounds of a specified public interest. Dr. Ireland is the Executive Director of the Animal Health Directorate, Policy and Programs Branch of the CFIA and is the Chief Veterinary Officer of Canada (CVO). Dr. Ireland was directly involved in the making of the contested Orders.

[5] This application was filed in June 2023 to address the section 37 redactions. The Case Management Judge for the Consolidated Judicial Review has carriage of the remaining Rule 318(2) redactions.

[6] The Applicant filed confidential and public versions of an affidavit (the Affidavit) affirmed by Dr. Ireland on August 24, 2023. In the Affidavit, Dr. Ireland stated that one of the section 37 redactions was rescinded. Counsel for the Applicant informed the Court at the public hearing of this application that a second redaction has been lifted (Second Lifted Redaction). The term “Redacted Information” in this order means the redacted information identified by Dr. Ireland in the May 8, 2023 Certificate excluding the information under the two lifted redactions.

[7] The Respondents elected not to cross-examine Dr. Ireland on her affidavit and did not file an affidavit as part of their responding record.

[8] The parties agreed that there was no need for the appointment of an *amicus curiae* or for an *in camera* hearing in this matter. A public hearing took place on January 23, 2024. I have prepared a single set of reasons rather than separate public and confidential reasons.

II. Issues

[9] In her Certificate, Dr. Ireland identified the specified public interest (the SPI) at stake as information communicated to Canada in confidence by provincial and foreign governments and government entities which, if publicly disclosed could harm:

- (a) The CFIA's relationships with partner foreign government entities;
- (b) Information sharing between the CFIA and partner foreign government entities;
- (c) The CFIA's relationships with provincial and territorial governments; and
- (d) Information sharing between the CFIA and provincial and territorial governments.

[10] As a preliminary matter, the Court raised with the Applicant whether the SPI identified by Dr. Ireland is a specified public interest within the meaning of section 37.

[11] The AGC submits that the application is properly brought in reliance on section 37. They argue that the interests that may be recognised within the ambit of the section are not closed and must be considered by the Court in each case (*Canadian Human Rights Commission v Northwest*

Territories, 2001 FCA 259 at para 8). The Applicant references the recent case of *Al Kaddah v Canada*, 2021 FC 1292, (*Al Kaddah*) in which Justice Diner recognized a section 37 public interest in maintaining a relationship of trust and cooperation between Canada and partner intergovernmental organizations (*Al Kaddah* at paras 43 and 58).

[12] The Respondents assume in their written materials that the SPI falls within the parameters of section 37. They acknowledge that this type of interest has previously been recognized by the Court as a specified public interest and emphasize the need to move forward with the Consolidated Judicial Review rather than risk the conversion of this proceeding into a section 38 application with attendant delays. At the hearing, the Respondents spoke to the significant passage of time since they first challenged the Orders and the serious, adverse effects the Orders have had on their ability to operate.

[13] In the absence of substantive submissions from the parties on this issue, it is not advisable to undertake an examination of the scope of the term “specified public interest” for purposes of section 37. As importantly, I find that the parties’ concerns and submissions regarding disclosure of the Redacted Information can be fully resolved in this application. The determinative issues before me centre on the evidence filed by the Applicant in support of non-disclosure and the need to balance the Applicant’s request for confidentiality against the Respondents’ interests and the public interest in full and open disclosure.

[14] The three issues in this application are:

1. Would disclosure of the Redacted Information encroach on the SPI identified by Dr. Ireland?

2. If so, does the public interest in favour of disclosure outweigh the Applicant's interest in maintaining the confidentiality of the Redacted Information?

(Canada (Attorney General) v Chad, 2018 FC 319 at para 12 (*Chad #1*); *Wang v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 493 at paras 36-37 (*Wang*)).

3. If an order pursuant to subsection 37(6) of the CEA is not warranted, should the Redacted Information be disclosed on a confidential basis only and made accessible to a solicitor of record or a solicitor assisting in the proceeding in reliance on Rules 151 and 152, and subsection 37(5) of the CEA?

III. Analysis – Section 37 application

[15] The parties agree that the test for determining whether an order prohibiting disclosure of information under section 37 should be made is three-pronged:

- a) Is there an apparent case for disclosure?
- b) If so, would disclosure of the information encroach on a specified public interest?
- c) If so, does the specified public interest at stake outweigh the public interest in disclosure?

[16] The parties also agree that the first prong of the test is satisfied in this case. In the context of an application for judicial review, an applicant is entitled to disclosure of the complete certified tribunal record to fully exercise their right to judicial review. This consideration is sufficient to meet the test for an apparent case for disclosure (*Chad #1* at para 39).

[17] Central to my application of the three-pronged test to the Applicant's request for an order preventing disclosure of the Redacted Information is the open court principle; a principle that is fundamental to the Canadian legal system (*Al Kaddah* at para 26, citing *Sherman (Estate) v Donovan*, 2021 SCC 25 at paras 1-3 (*Sherman Estate*); *Chad #1* at paras 13-14, citing *Toronto Star Newspaper Ltd. v Ontario*, 2005 SCC 41). While a party's entitlement to full disclosure of

all relevant information is not absolute, all derogations from disclosure of information require the Court's close consideration: "[s]uch limited exceptions must be carefully guarded to ensure that they are use [sic] only used when the circumstances justify it" (*Chad #1* at para 15). Consistent with the desire to minimize any limitation on the Respondents' interest in full disclosure, I have considered whether Dr. Ireland's concerns regarding public disclosure can be addressed by way of an order for limited disclosure of the Redacted Information.

A. *Would disclosure of the Redacted Information encroach on a specified public interest that justifies confidentiality?*

[18] The onus is on the Applicant to establish that disclosure of the Redacted Information would have a "concrete deleterious effect" on the SPI identified by Dr. Ireland (*Wang* at para 35). Further, the Applicant must base its application "on specific and concrete assertions" and "must present sufficient evidence to convince the Court that the assertion of public interest privilege is legitimate in the circumstances" (*Chad #1* at para 15).

[19] The parties each made submissions regarding the standard against which the Applicant's evidence must be assessed. In their written submissions, the Applicant argued that they need not demonstrate that disclosure will necessarily have an adverse impact on the public interest but that they "should establish a 'genuine, reasonably-based concern' that disclosure might have adverse effects", citing *Canada (National Inquiry into Missing and Murdered Indigenous Women and Girls) v Canada (Attorney General)*, 2019 FC 741 at paragraphs 57-59 (*MMIWG*). The Respondents disagree. They submit that the Applicant is attempting to lessen its burden and dilute the text of subsections 37(4.1) and (5) that require the Court to assess whether disclosure of the information at issue "would encroach on a specified public interest". They note that the

redacted information in *MMIWG* related to the protection of ongoing police investigations, recognized by the Supreme Court of Canada as a compelling interest and materially different, they argue, from that in the present case. The Respondents distinguish the more stringent requirement in section 37 from that set out in subsection 38.01(1) of the *CEA* that refers to a party's 'belief' the information at issue is sensitive information or potentially injurious information.

[20] At the hearing, the Applicant clarified their written argument, stating they do not seek to lower the standard but to emphasize that certainty of encroachment is not required. They essentially agreed with the Respondents that this second prong of the test requires the Applicant to establish, on a balance of probabilities, that disclosure of the Redacted Information would encroach on a specified public interest. To do so, the Applicant relies on Dr. Ireland's affidavit evidence regarding the importance of the CFIA's relationships with provincial and international governments and organizations, the circumstances in which the Redacted Information was provided to the CFIA and the substance of the Redacted Information.

[21] In her affidavit, Dr. Ireland sets out background information regarding her role as CVO in ensuring Canada's animal health community and veterinarian infrastructure have the capacity and competency to respond to foreign and emerging animal and zoonotic diseases. She speaks to the importance of national and international early warning intelligence and the necessity for the CFIA to develop and maintain collaborative relationships nationally and internationally. To this end, Dr. Ireland engages with her provincial and territorial counterparts at the Canadian Council of Chief Veterinary Officers (CCVO); the World Organisation for Animal Health (WOAH); and

the Animal Health Quads Alliance (Quads Alliance) (the competent authorities for animal health in the United States, Australia, New Zealand, the United Kingdom and Canada). Dr. Ireland emphasizes that her receipt of advance intelligence of transboundary animal and zoonotic diseases from her counterparts is critical to the CFIA's ability to respond to emerging risks.

[22] Rabies poses one such serious risk and is endemic in many countries. Canine-variant rabies virus is a serious public health risk in countries that have a high number of unvaccinated dogs living in close proximity to humans. Canada, in contrast, does not have any active cases of canine-variant rabies virus.

[23] Dr. Ireland states that her ability to treat information shared by provincial, territorial and foreign government entities as confidential is essential to the maintenance of those relationships, the exchange of information, and brainstorming. If information is communicated with no explicit statement of confidentiality, Dr. Ireland judges an expectation of confidence based on the nature of the information, the implications of its disclosure, her past interactions with the particular entity, timing of the information and whether the information has been made public. She states that disclosure to the public of confidential communications from government partners would diminish the CFIA's credibility:

Disclosing information provided with an expectation of confidence would amount to a breach of trust, and unduly risks causing harm to our collaborative relationships with provincial, territorial and foreign government entities. Any resulting reduction to the flow of information in the future is to the detriment of Canada's public interest and the CFIA's ability to manage risks to animal and human health.

[24] Dr. Ireland then describes the nature of each segment of the Redacted Information and the likely consequences to the CFIA of its disclosure. The following summaries are taken from the public version of the affidavit:

- (a) Email from Dr. Ireland to federal government colleagues regarding information provided to her during a CCVO meeting on February 7, 2022: Dr. Ireland updated her CCVO counterparts about the CFIA's proposed measure to control the entry of dogs into Canada from high-risk countries. Dr. Ireland states that she informed the other CVOs that the CFIA was sharing its information in confidence. During the meeting, certain participants indicated their support for the CFIA's initiative. Dr. Ireland states that the redacted information was provided with an expectation of confidence and that it is very important for the CFIA to understand provincial and territorial perspectives on CFIA-led initiatives.
- (b) Two sets of redactions of information provided by the Australian CVO to Quads Alliance colleagues and contained in: (a) a memorandum dated August 7, 2021 and (b) an email dated July 23, 2021: Dr. Ireland refers to the redacted information as an early warning signal that relates to a risk that had been identified and assessed by Australia. Dr. Ireland considers the information confidential because it was shared government to government in advance of the information becoming public and alerted her to a global rather than a local matter. In her view, release of the information would harm the CFIA's collaborative relationship with the Australian CVO and mean that they would be unlikely to share similar information with the CFIA going forward.

- (c) Information note for a meeting with Deputy Ministers on March 7, 2022: The note sets out an update on Canada's proposed measure to control the entry of dogs into Canada from countries at high risk for rabies. Dr. Ireland states that her concerns about this redacted information "are identical to" those she described in her affidavit in relation to the information under the Second Lifted Redaction. The redacted information is a subset of information under the Second Lifted Redaction but Dr. Ireland provides no explanation as to why the redaction in the March 7, 2022 information note has been maintained.
- (d) Email exchanges by experts in the international regulatory community and WOAH: The redacted information was sent by the director of the WOA H Reference Laboratory for Rabies at the U.S. Center for Disease Control (CDC). Dr. Ireland affirms that the information is sensitive because it concerns action the CDC might take in the future and that the information was provided with an expectation of confidence. She states that it is critical to the work of the CFIA that this type of frank discussion be protected and that disclosure of the information may jeopardize the CDC's credibility, in turn hurting the CFIA's relationship with the CDC.

[25] I have also reviewed the Redacted Information and the confidential version of Dr. Ireland's affidavit. I confirm the accuracy of Dr. Ireland's description of each redacted segment.

[26] The Applicant submits that Dr. Ireland's evidence establishes encroachment on the SPI identified in this proceeding, placing considerable reliance on the Court's decision in *Al Kaddah*. The Applicant argues that they need not establish an imminent risk of repercussions if disclosure of the Redacted Information could have a deterrent effect on the timely transfer of essential information between Canada and international government entities (*Al Kaddah* at para 49).

[27] For the following reasons, I find that the Applicant has not established that disclosure of the Redacted Information would have "a concrete deleterious effect" on the CFIA's relationships and frank discussions with provincial, territorial and international governmental organizations involved in the protection of animal and human health (*Wang* at para 35).

[28] Dr. Ireland's evidence in support of non-disclosure is her affirmation that the Redacted Information was provided with an expectation of confidence and that its public disclosure would cause a loss of trust in the CFIA. Consequently, confidential information would be shared with the CFIA less frequently, adversely impacting its ability to manage risks to animal and human health.

[29] Dr. Ireland's concern regarding the harm that could result from disclosure of the Redacted Information is set out in one paragraph of her affidavit and largely repeated in the course of her review of each redaction:

If confidential communications from other government partners are disclosed to the public, I am of the view that the CFIA would lose credibility amongst its provincial, territorial and foreign partners and would be seen as an untrusted regulatory partner. I would expect confidential information to be shared less frequently with the CFIA, if at all.

[30] The Applicant's evidence of the risk of harm resulting from public disclosure of the Redacted Information is limited to Dr. Ireland's subjective evaluation of the expectations of her provincial and international counterparts based on her expertise and experience. She does not rely on any explicit statements of confidentiality from the organizations and individuals providing the Redacted Information, or confidential stamps, designations or notations on or referencing the Redacted Information, nor are there any such statements, stamps, designations or notations in the record. The only statement of confidentiality among the redacted pages appears in the first redaction and is a proviso given by Dr. Ireland concerning the provision of CFIA's own information. With respect to the first redaction (CCVO teleconference on February 7, 2022), Dr. Ireland provides no evidence or information as to the attendees at the teleconference nor as to any individuals that had access to the information (e.g. support staff of the CCVA members). There is no basis on which the Court can infer from the circumstances and individuals present that the information was provided in confidence (see, *Canada Constitution Foundation v Canada (Attorney General)*, 2022 FC 1233 at para 94, where the presence of lawyers at a meeting suggested the provision of confidential legal advice).

[31] Dr. Ireland does not reference past practices or discussions with provincial and/or international partners regarding the treatment of shared information or any past breaches of confidentiality and ensuing loss of trust or diminution in communications. She provides little concrete detail as to, where relevant, by whom the information was amassed or the memo drafted, to whom it was disclosed, and whether there was discussion of any privilege or confidentiality limitations. As the Respondents note, there are also no indications in the record that the CFIA itself treated the Redacted Information as confidential.

[32] In contrast, in *Al Kaddah*, Justice Diner referred to evidence from the respondent's affiant regarding the expectation of confidentiality (at paras 31-33). The section 37 application addressed one redaction: the name of an individual employed by the International Organization for Migration (IOM), an internationally recognized organization in the field of refugee migration. The employee had sent an email relevant to the applicant's claim and the content of the email had been disclosed in the proceeding. The affiant stated that the IOM's expectation of confidentiality of the names of its employees was reflected in the local cooperation agreements it enters into with governments with which it operates. Further, the IOM had indicated that the release of personal data relating to IOM beneficiaries and employees could pose security risks for those individuals with repercussions for their safety and security. The affiant also noted that the IOM enjoys certain privileges and immunities granted under the *Foreign Missions and International Organizations Act*, SC 1991, c 41. These privileges included immunity for IOM representatives from all forms of legal process. Dr. Ireland refers to no similar documentation, policies or precedents in her affidavit.

[33] In granting the respondent's section 37 application and maintaining strict confidentiality of the employee's name, Justice Diner drew an analogy to police informer privilege. He emphasized that careful reflection is required before permitting disclosure of personal information of individuals employed by international partners (*Al Kaddah* at paras 48-49; see also *MMIWG* at paragraphs 56-57 regarding the importance of safeguarding ongoing police investigations).

[34] The nature of the redacted information in *Al Kaddah* was materially different from the Redacted Information. On its face, the Redacted Information does not appear to be inherently confidential. It is not information relating to police or other government investigations or to investigative techniques (see *Chad #1* and *Canada (Attorney General) v Chad*, 2018 FC 556 (*Chad #2*)), informer identity or other sensitive information that might injure state or individual interests. The Redacted Information consists of references to issues in the importation of dogs outside of Canada and possible courses of action in the United States, and to provincial and territorial input into the CFIA's proposed measures.

[35] I have carefully considered the information in Dr. Ireland's affidavit, her obvious expertise and experience, and the AGC's submission that Dr. Ireland's experience militates in favour of the Court accepting her assessment of the necessity of maintaining confidentiality of the Redacted Information. However, I find that the Applicant has not grounded its application on specific and concrete assertions supported by evidence establishing that disclosure would encroach on the SPI. Dr. Ireland's evidence does not establish, on a balance of probabilities, that a reduction of information sharing would occur should the Court order limited non-public disclosure.

[36] Dr. Ireland's concern centres on release of the Redacted Information into the public domain. The Applicant has not satisfied me that a confidentiality order, limiting disclosure to counsel, would not meet these concerns in a less restrictive manner than an order pursuant to subsection 37(6) prohibiting any disclosure of the Redacted Information.

B. *Does the public interest in favour of disclosure outweigh the Applicant's interest in maintaining the confidentiality of the Redacted Information?*

[37] The third prong of the test for determining whether an order pursuant to subsection 37(6) should be made requires the Court to balance the competing public interest in full disclosure and the Applicant's interest in maintaining confidentiality of the Redacted Information (*Al Kaddah* at para 71). This balancing exercise is akin to the analysis to be undertaken to determine whether to issue a confidentiality order in response to the parties' alternative request for limited disclosure of the Redacted Information. I will address the parties' submissions regarding their competing interests in this section, recognizing that my finding in the foregoing section is sufficient to dispose of the application.

[38] The jurisprudence has identified a number of factors that a court should consider in balancing the two interests (*Wang* at para 37, citing Justice Rothstein in *Khan v Canada (Minister of Citizenship and Immigration)*, [1996] 2 FC 316 at para 25; see also, *Chad #2* at para 54, *Al Kaddah* at para 76). The context of the particular case informs the Court's consideration (*MMIWG* at para 64, *Al Kaddah* at para 46).

[39] In this case, the determinative factors are the nature of the public interest identified by Dr. Ireland and the Redacted Information itself, and the probative value of the Redacted Information to the Consolidated Judicial Review.

[40] The Applicant submits that (1) the CFIA's ability to exchange information with provincial, territorial and foreign governments and government entities directly impacts the

broader public interest in protecting animal and human health in Canada; and (2) the Redacted Information is not of critical importance to the Respondents' ability to fairly argue its position in the Consolidated Judicial Review (*Chad #2* at para 68).

[41] Dr. Ireland persuasively establishes in her affidavit the importance of CFIA's role in protecting animal and human health in Canada and the importance of the free flow of information among governments and government entities regarding emergent zoonotic diseases. She makes clear the ease with which canine-variant rabies may enter Canada in the absence of effective regulation and vaccination protocols for imported dogs. Nevertheless, the Redacted Information differs from that in other section 37 cases in which informer identity, ongoing investigations or investigative techniques, or Canada's national security are at stake. Here, the Redacted Information relates to possible risks and threats identified, anticipated or experienced in other countries and, in respect of provincial/territorial partners within Canada, their reactions to the proposed CFIA measures. I find that the nature and content of the Redacted Information is not such that the need for absolute confidentiality is evident.

[42] I now turn to the relevance and importance of the Redacted Information to the issues raised by the Respondents in the Consolidated Judicial Review. I have reviewed the Respondents' arguments in their Notices of Application contesting the Orders and the memoranda in the CTR sent to the Minister of Health setting out the CFIA's reasons for the Orders, against the substance of the Redacted Information.

[43] The Applicant acknowledges the Respondents' allegation in the Consolidated Judicial Review that the Orders were unreasonable because a blanket import ban of dogs from certain countries was unnecessary and was "inconsistent with global best practices and measures adopted in other similar countries". The Applicant asserts that this claim will not be enhanced by access to the Redacted Information and that the importance of the Redacted Information to the Respondents' unreasonableness arguments is negligible.

[44] I agree with the Applicant that not all of the Redacted Information can be characterized as critical to the Respondents' arguments in the Consolidated Judicial Review. I do not agree that its importance is negligible, particularly in the case of the redaction of information furnished by the CDC.

[45] The memoranda to the Minister rely at length on the then recently implemented US-CDC import rules banning the importation of dogs from countries considered at high risk for rabies. The memoranda state that the CFIA is proposing similar measures and that the Public Health Agency of Canada and public health authorities in Ontario have asked the CFIA to take parallel action for dogs entering Canada. The memoranda also speak to the CDC's discovery in 2020 of 450 dogs arriving in the US with fraudulent rabies certificates and confirm that the CFIA is adopting a similar approach to that of the CDC using the US list of high-risk countries. The Respondents fairly state that the central justification for the Canadian Orders was the CDC's restrictive import rules.

[46] On balance, the content of the Redacted Information when considered against other, disclosed information in the CTR, is relevant and helpful to the Respondents' ability to fairly argue the Consolidated Judicial Review. However, it is not of critical importance. I find that the Respondents' interest in disclosure can be met by the less restrictive measure of limited disclosure on a confidential, counsel only basis. This approach also responds to the CFIA's desire to safeguard the willingness of its national and international partners to exchange early warning information concerning transboundary diseases that impact animal and human health.

IV. Confidentiality Order

[47] Both parties have requested, in the alternative, an order pursuant to subsection 37(5) of the *CEA* disclosing the Redacted Information on a confidential basis in accordance with Rules 151 and 152 solely to a solicitor of record or a solicitor assisting in this application. As my analysis in the previous sections makes clear, I will grant the parties' alternative request.

[48] Briefly, the test for a confidentiality order remains the test set out by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 SCR 522 at para 53 (*Sherman Estate* at para 43):

A confidentiality order under Rule 151 should only be granted when:

- (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression,

which in this context includes the public interest in open and accessible court proceedings.

[49] The test is directed at maintaining the presumption of openness while offering sufficient flexibility for courts to protect other public interests as they arise (*Sherman Estate* at para 30).

[50] In the present case, Dr. Ireland describes the importance of confidentiality in safeguarding the exchange of early risk identification and intelligence information about zoonotic diseases among the CFIA, the CCVO and its international counterparts. The concerns expressed in her affidavit centre on public disclosure of the Redacted Information. Although the Applicant's evidence does not warrant a blanket order of non-disclosure, I accept that public disclosure of early, non-public information by Dr. Ireland's CCVO colleagues and international partners may lead to reticence on those partners' future willingness to share such information.

[51] In summary, the public interest does not favour a complete suppression of the Redacted Information. I am satisfied that disclosure of the Redacted Information on a confidential basis to counsel adequately balances the Applicant's concerns regarding disclosure and the Respondents' ability to craft their arguments in the Consolidated Judicial Review.

V. Costs

[52] Neither party have requested costs in this application and no costs are awarded.

ORDER IN T-1245-23

THIS COURT ORDERS that:

1. The Attorney General of Canada's application requesting an order pursuant to subsection 37(6) of the *Canada Evidence Act (CEA)* is dismissed.
2. Pursuant to subsection 37(5) of the *CEA*, the Redacted Information shall be treated as confidential and made accessible only to a solicitor of record or a solicitor assisting in three applications for judicial review filed by Animal Justice Canada and Soi Dog Canada on October 27, 2022 (Court files: T-2260-22, T-2261-22 and T 2262 22, consolidated by the Court on December 8, 2023), ~~this application~~ in accordance with Rules 151 and 152 of the *Federal Courts Rules*.
3. No costs are awarded.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1245-23

STYLE OF CAUSE: ATTORNEY GENERAL OF CANADA v ANIMAL
JUSTICE CANADA AND SOI DOG CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 23, 2024

ORDER AND REASONS: WALKER J.

DATED: FEBRUARY 20, 2024

AMENDED: FEBRUARY 20, 2024

APPEARANCES:

Kelly Keenan
Sheldon Leung

FOR THE APPLICANT

Marc McLaren-Caux
Jan M. Nitoslawski

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE APPLICANT

Cassidy Levy Kent (Canada) LLP
Barristers and Solicitors
Ottawa, Ontario

FOR THE RESPONDENTS