

Federal Court



Cour fédérale

~~SUBJECT TO A PUBLICATION BAN~~

Date: 20230830

Docket: DES-5-20

Citation: 2023 FC 1172

Ottawa, Ontario, August 30, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

CAMERON JAY ORTIS

Respondent

and

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

ORDER AND REASONS

[1] The background to this matter is set out in previous Orders and Reasons: see *Canada (Attorney General) v Ortis*, 2022 FC 142 (*Ortis #1*); and *Canada (Attorney General) v Ortis*, 2022 FC 477; and *Canada (Attorney General) v Ortis*, 2022 FC 617 (*Ortis #3*).

[2] Briefly, Cameron Jay Ortis is a former civilian member of the Royal Canadian Mounted Police who has been charged with offences under the *Security of Information Act*, RSC 1985, c O-5 (*SOIA*) and the *Criminal Code*, RSC 1985, c C-46. His trial before a judge and jury in the Ontario Superior Court of Justice is now scheduled to begin on October 2, 2023.

[3] Crown disclosure provided to Mr. Ortis has been redacted to protect certain information on the basis that it is sensitive or potentially injurious information as this is defined in section 38 of the *Canada Evidence Act*, RSC 1985, c C-5 (“*CEA*”). The Attorney General of Canada (AGC) has applied under section 38.04 of the *CEA* for an order confirming the prohibition on disclosure of information on the basis that its release would be injurious to international relations, national defence or national security.

[4] The legal framework governing this application is summarized in the Court’s previous Orders and Reasons. There is no need to repeat it here.

[5] As additional information in Crown disclosure subject to section 38 claims was identified, it was incorporated into the AGC’s application. As well, a summary of the evidence Mr. Ortis wishes to rely on in his defence at trial was vetted for section 38 claims and incorporated into the application. Of course, the purpose of the latter exercise was not to

withhold the information from Mr. Ortis; rather, it served to identify in advance those areas to which the AGC would object on section 38 grounds if Mr. Ortis were to testify about them at his trial. Recently, Mr. Ortis prepared another defence summary (the 2023 defence summary). It has also been vetted for section 38 claims and incorporated into the AGC's application.

[6] The Court's adjudication of the AGC's section 38 claims over information in Crown disclosure and in the original defence summary has proceeded in stages. It had been anticipated that claims relating to additional information in Crown disclosure relevant to counts 5 to 8 would have to be considered (some claims relating to those counts having been dealt with in *Ortis #1* and *Ortis #3*). Since then, counts 5 to 8 have been stayed by the trial judge under section 38.14 of the *CEA*. As a result, it is no longer necessary to deal with the remaining claims relating to those counts (at least, not at this time).

[7] This Order and Reasons addresses outstanding claims over information in Crown disclosure relating to the charges that will be proceeding to trial – namely, the *SOIA* charges in counts 1 to 4 and the *Criminal Code* charges in counts 9 and 10. It also addresses the claims over information in the 2023 defence summary. The documents in issue and the Court's determinations are listed in the unclassified chart attached hereto as Appendix A.

[8] None of the redactions currently in issue are opposed by the *amicus*. The AGC and the *amicus* advance the joint position that (a) the proposed redactions are similar to and, in some cases, identical to redactions confirmed in previous Orders and Reasons; (b) evidence already before the Court in this matter is sufficient to conclude that disclosure of the sensitive

information included in the documents listed in Appendix A would be injurious to national security; and (c) the public interest in non-disclosure outweighs the public interest in disclosure. The AGC and the *amicus* therefore both submit that the AGC's prohibition on disclosure should be confirmed pursuant to subsection 38.06(3) of the *CEA*.

[9] Having given careful consideration to the joint position of the AGC and the *amicus*, the applicable legal test, the evidence already before the Court, and the information itself, I am satisfied that the AGC's prohibition on disclosure of the information redacted from the documents listed in Appendix A should be confirmed.

ORDER IN DES-5-20

THIS COURT ORDERS that

1. Pursuant to subsection 38.06(3) of the *Canada Evidence Act*, the claims of the Attorney General of Canada for the prohibition on disclosure with respect to information in the documents listed in Annex A are confirmed.
2. For the reasons stated in *Canada (Attorney General) v Ortis*, 2021 FC 737, this Order and Reasons shall not be published in any document, or broadcast or transmitted in any way before the criminal trial of Cameron Jay Ortis in the Ontario Superior Court of Justice has concluded.
3. For greater certainty, the foregoing term does not apply to the filing of this Order and Reasons or any part thereof at the Ontario Superior Court of Justice.
4. Subject to further Order of the Court, the Registry shall not make this Order and Reasons available to any member of the public before the criminal trial of Cameron Jay Ortis in the Ontario Superior Court of Justice has concluded.

“John Norris”

Judge

**ANNEX A – TABLE OF DOCUMENTS
SUMMARY OF COURT’S DETERMINATIONS UNDER CEA SECTION 38.06**

AGC No.	Determination re AGC’s claims	Comments
1512	Confirmed	
1513	Confirmed	
1514	Confirmed	
1515	Confirmed	
1516	Confirmed	
1520	Confirmed	
1522	Confirmed	
1523	Confirmed	
1524	Confirmed	
1527	Confirmed	
1530	Confirmed	
1531	Confirmed	
1532	Confirmed	
1540	Confirmed	
1542	Confirmed	
1543	Confirmed	
1544	Confirmed	
1547	Confirmed	
Defence_0002	Confirmed	

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: DES-5-20

STYLE OF CAUSE: THE ATTORNEY GENERAL OF CANADA V
CAMERON JAY ORTIS ET AL

PUBLIC HEARING DATES: SEPTEMBER 20, 21, 2021

***EX PARTE IN CAMERA*
HEARING DATES:** OCTOBER 4, 5, 6, 21, 2021
NOVEMBER 2, 3, 2021
DECEMBER 1, 2, 3, 13, 2021
JANUARY 20, 21, 2022

ORDER AND REASONS: NORRIS J.

DATED: AUGUST 30, 2023

APPEARANCES:

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