

Federal Court



Cour fédérale

~~TOP SECRET~~

Date: 20220719

Docket: DES-4-22

Citation: 2022 FC 1175

Ottawa, Ontario, July 19, 2022

PRESENT: Mr. Justice Mosley

BETWEEN:

**IN THE MATTER OF AN APPLICATION  
BY THE ATTORNEY GENERAL OF CANADA  
PURSUANT TO SECTION 38.04(1) OF THE  
CANADA EVIDENCE ACT, RSC 1985, c C-5**

**ORDER**

**UPON** an application by Attorney General of Canada pursuant to s. 38.04 of the *Canada Evidence Act*, RSC 1985, c. C-5 [CEA] for an Order regarding information that may be disclosed in connection with the release of the public version of a Federal Court of Appeal decision issued in a classified version on August 6, 2021;

**AND UPON** the Order of the Federal Court of Appeal issued on March 4, 2022 regarding redactions, substitutions and summaries to be made to portions of the classified version of the decision further to written submissions received from the Attorney General and *amici curiae*;

**AND UPON** considering that the Federal Court of Appeal did not have the benefit of evidence regarding the injury to national security that may be caused by the disclosure of information subject to the March 4, 2022 Order;

**AND UPON** an Order issued on March 25, 2022 that this application be made public and a public Order issued on April 1, 2022 appointing two security cleared counsel from the private bar as *amici curiae* to assist the Court in considering the application;

**AND UPON** the Attorney General filing an *ex parte* affidavit with exhibits on April 4, 2022, two additional *ex parte* affidavits with exhibits on May 5, 2022 and Supplementary Materials on June 10, 2022, copies of which were provided to the *amici*;

**AND CONSIDERING** the evidence filed and the oral submissions of counsel for the Attorney General and an *amicus* on June 14, 2022;

**AND UPON** being satisfied that this Court has the jurisdiction to hear the application pursuant to s. 38 of the *CEA*;

**AND CONSIDERING** that the information subject to the application relates to an application for warrants pursuant to sections 16 and 21 of the *Canadian Security Intelligence Service Act*;

**AND CONSIDERING** the importance of the open court principle;

**AND CONSIDERING** the evidence of two employees of the Canadian Security Intelligence Service (CSIS) regarding the injury to national security that would result from the disclosure of certain information in the public version of the Federal Court of Appeal decision;

**AND CONSIDERING** that the *amicus curiae* and the Attorney General have come to an agreement on proposed summaries in relation to the information prohibited from disclosure;

**AND CONSIDERING** that the evidence before this Court and the summaries proposed by the *amicus curiae* and the Attorney General were not before the Federal Court of Appeal when it issued its Order of March 4, 2022;

**AND UPON** being satisfied that

- (1) The information the Attorney General seeks to protect is relevant to the Reasons for Decision of the Federal Court of Appeal;
- (2) Disclosure of the information the Attorney General seeks to protect would be injurious to national security, insofar as it would reveal (i) subjects of investigative interest of CSIS and (ii) confidential techniques and capabilities of CSIS;
- (3) The public interest favors the disclosure of summaries that limit the injury to national security; and
- (4) The proposed summaries would not alter the meaning of the Reasons for Decision of the Federal Court of Appeal in any material way.

**THIS COURT ORDERS THAT:**

1. The Application is granted, the Court confirms the prohibition of the information subject to the Application and authorizes the disclosure of the summaries set out in Annex A to this Order.
2. Counsel for the Attorney General of Canada shall inform the Federal Court of Appeal of the specific information which is prohibited from disclosure in the public version of the reasons for judgement in the underlying Appeal (A-243-20).
3. A classified version of this Order shall be released only to the Attorney General of Canada and the Federal Court of Appeal, including the summaries in Annex A to this Order authorized to be disclosed by this Court pursuant to section 38.06(2) *CEA*.
4. An unclassified version of this Order shall be placed on the public file after consideration of any redactions that may be necessary.
5. The *amici curiae* may have access to the classified version of the Order at the Court's secure facility.

“Richard G. Mosley”

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Judge

Annex A

Reference	Original Wording	Original text in Reasons or summary	Information or summary prohibited from disclosure highlighted in Yellow	Summary authorized disclosed by the Federal Court
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Reference	Original Wording	Original text in Reasons or summary	Information or summary prohibited from disclosure highlighted in Yellow	Summary authorized disclosed by the Federal Court
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Reference	Original Wording	Original text in Reasons or summary	Information or summary prohibited from disclosure highlighted in Yellow	Summary authorized disclosed by the Federal Court
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]