is**CITATION:** *R. v. Cameron Ortis*, 2024 ONSC 831
COURT FILE NO.: CR-19-20044
DATE: 2024/02/07

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
HIS MAJESTY THE KING	
– and –	Judy Kliewer and John MacFarlane for the Public Prosecution Service of Canada
Cameron Ortis	Mark Ertel and Jon Doody for Cameron Ortis.
	HEARD: January 11, 2024.

REASONS FOR SENTENCE

MARANGER J.

Overview:

[1] On November 23, 2023, following an eight-week trial, a jury convicted Cameron Ortis on four counts contrary to s. 14(1) of the *Security of Information Act*, R.S.C. 1985, c. O-5 (the *SOIA*), one count of breach of trust and one count of unauthorized use of a computer contrary to the *Criminal Code of Canada*, R.S.C. 1985, c. C-46.

[2] This is the first case in the history of the *SOIA* to have resulted in a conviction after the completion of a trial. The journey to a verdict was a long and complex one, particularly as it related to what evidence could and could not be presented at trial for reasons of national security. Those

issues and others, including what I have decided here, will no doubt be revisited by higher courts than this one. That likelihood is always amplified when something in the law has never been done before.

[3] The task of sentencing an individual is a heavy burden on a trial judge, even in matters where the road is well-travelled. The Cameron Ortis case is without precedent; the sentence under these specific *SOIA* counts will be the first. To compound the problem Cameron Ortis is somewhat of an enigma. In my time as a trial judge, I have never encountered an accused described by Crown witnesses in the manner that they described Cameron Ortis. He was praised in no uncertain terms by his coworkers for his work ethic and intelligence. Retired Deputy Commissioner Todd Shean's once high regard for Cameron Ortis while testifying was unequivocal. That said, his sense of betrayal and raw emotion were palpable when shown examples of what Cameron Ortis had done.

[4] While there were suggestions that a possible financial incentive was the reason for these crimes, in truth there was no tangible evidence of a motive for what Cameron Ortis did. He was never paid anything by anyone. The why here in my mind remains a mystery.

Relevant facts:

[5] The following are some of the essential facts I considered in arriving at the sentence imposed:

- At the time of the commission of the offences Cameron Ortis held a high position in the national security division of the RCMP. He was the Director of Operations Research, a unit or division of the RCMP that he in fact created. At the time of his arrest in September 2019 he held the position of the Director of the National Intelligence Coordination Centre.

- The Operations Research unit had unrestricted access to the most classified top-secret information available to the RCMP, information that was shared by other domestic and international agencies. The members of Operations Research would access very highly classified information from Canada's top-secret network, take this information, analyze it, and prepare briefing materials. The briefs or materials would then be shared with senior decision makers in the RCMP with a view to addressing threats to Canada's national security. Retired former Deputy

Commissioner Todd Shean described the work of Operations Research as cutting edge, particularly in the field of counterterrorism.

- Part of the work of Operations Research included Transnational Organized Crime. In 2014-2015 the RCMP, as well as their counterparts in Australia and the United States, were investigating a company called Phantom Secure. This was because of the predominant use of encrypted cell phones or PGP devices by organized crime in their respective jurisdictions. Phantom Secure was supplying these devices on an international scale. Vincent Ramos was the head of Phantom Secure and one of his known associates was Kapil Judge.

- Count one specified that Cameron Ortis communicated special operational information intentionally and without authority to Vincent Ramos. Some of the information he communicated to Ramos included:

    i. That Phantom Secure was the subject of international investigations.

    ii. That a person who approached Kapil Judge at the Vancouver International Airport was an undercover operator.

    iii. Information the RCMP had learned about Phantom Secure's technical infrastructure.

    iv. That Ramos was going to be under surveillance by the RCMP out of British Columbia.

    v. That law enforcement knew about his servers in Florida.

    vi. That his financial transactions were being monitored by FINTRAC.

- Count two specified that Cameron Ortis communicated special operational information intentionally and without authority to Salim Henareh. Count three specified that he communicated special operational information to Muhammad Ashraf. Count four specified that he attempted to communicate special operational information to Farzam Mehdizadeh.

- Counts two, three, and four were interrelated in that Henareh, Ashraf, and Mehdizadeh were being investigated in connection with their possible involvement with Altaf Khanani who was the head of an international large-scale money laundering network based in Dubai. It was believed that they were involved in money

service businesses connected to the Khanani international money laundering network.

- On Count two, some of the special operational information communicated to Salem Henareh included:

    i. That FINTRAC had an ongoing probe targeting his business activities and partners.

    ii. The RCMP was engaged in an intelligence operation (project Oryx) concerning his business activities, using FINTRAC data.

    iii. He was provided a FINTRAC disclosure summary and over 300 pages of FINTRAC reporting.

- On Count three, some of the special operational information communicated to Muhammad Ashraf included:

    i. An excerpt from a CIAG report disclosing that the Five Eyes were working together to target the Khanani money laundering network.

    ii. That Ashraf and Mohammad Yousef were of particular interest to RCMP agents in Canada.

    iii. An excerpt of a project Oryx investigation report disclosing that Khanani, Ashraf and his son were the subjects of an investigation.

    iv. A covering letter advising Ashraf that the information Ortis had would be useful – to him and several others including Khanani and that he would like to get in touch with Khanani.

- Count four was an attempt to communicate special operational information to Farzam Mehdizadeh through his son Masih Mehdizadeh. Some of the information that Cameron Ortis proposed to communicate included:

    i. That a named person in Montréal was working at the DEA as an informant.

    ii. That the DEA and RCMP were targeting Mehdizadeh and his company with the goal of getting Khanani.

- The *Criminal Code* counts, being the breach of trust and unauthorized use of computer charges, stem from Cameron Ortis's use of the computer and the actions he took while being a highly ranked civilian member of the RCMP.

- The convictions on the *Criminal Code* counts necessitated the jury's rejecting Cameron Ortis's evidence concerning his belief that he had the authority to do what he did.

Position of the parties:

[6] Counsel have offered starkly different positions as to what constitutes a fit and just sentence in this case.

[7] The prosecution is seeking a penalty of 22 to 25 years in prison less credit of a little over 5 years for pre-trial custody. The warrant of committal would require a further 17 to 20 years to be served.

[8] Counsel representing Cameron Ortis propose a total term of incarceration of seven years. Furthermore, they propose that the entire sentence be credited as time served on account of pre-trial custody and the stringent bail conditions that were in place leading up to the trial.

Principles of sentencing:

[9] Given how far apart counsel were on their sentencing positions, I borrow from the words of Paciocco J.A., who as a trial judge wrote the following in *R. v. P.V.*, 2016 ONCJ 64, at paras. 13-15:

> [13] My task in arriving at a fit sentence is not to choose between these two polarized positions, nor is it a simple exercise in mathematics. Sentencing is a complex exercise that is to be guided by settled principles of law, and precedents.
>
> [14] Specifically, I am to gain a measure of the gravity of the offences, and [the offender's] degree of responsibility, including any personal factors that might aggravate or mitigate [his] sentence. Having done so, I am to identify the appropriate priorities the sentence is to be given among the purposes of sentencing identified in section 718 of the *Criminal Code*. I am then to craft a fit sentence in light of those objectives and the guiding principles of sentencing, with careful regard to the range of sentencing approved in the case law.
>
> [15] This is not a precise exercise, but it is a systematic one that is meant to lead to a fair, just, and humane but purposeful outcome.

[10] Section 718 of the *Code* provides as follows:

> The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> **(a)** to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
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> **(b)** to deter the offender and other persons from committing offences;
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> **(c)** to separate offenders from society, where necessary;
>
> **(d)** to assist in rehabilitating offenders;
>
> **(e)** to provide reparations for harm done to victims or to the community; and
>
> **(f)** to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[11] Section 718.1 of the *Code* further provides that "[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

[12] With respect to the principle of proportionality the Supreme Court of Canada in *R. v. Hills*, 2023 SCC 2, 477 D.L.R. (4th) 1, at paras. 56-59, set out the following:

> [56] Proportionality is a "central tenet" of Canada's sentencing regime, with roots that predate the recognition of it as the fundamental principle of sentencing in s. 718.1 of the *Criminal Code*. Indeed, "whatever weight a judge may wish to accord to the objectives, the resulting sentence *must* respect the fundamental principle of proportionality".
>
> [57] The purpose of proportionality is founded in "fairness and justice". It is to prevent unjust punishment for the "sake of the common good" and it serves as a limiting function to ensure that there is "justice for the offender". As the "*sine qua non* of a just sanction", the concept expresses that the amount of punishment an offender receives must be proportionate to the gravity of the offence and the offender's moral blameworthiness.
>
> [58] The "gravity of the offence" refers to the seriousness of the offence in a general sense and is reflected in the potential penalty imposed by Parliament and in any specific features of the commission of the crime. The gravity of the offence

> should be measured by taking into account the consequences of the offender's actions on victims and public safety, and the physical and psychological harms that flowed from the offence. In some cases where there is bias, prejudice or hatred, the motivation of the offender may also be relevant. The offender's moral culpability or degree of responsibility should be measured by gauging the essential substantive elements of the offence including the offence's *mens rea*, the offender's conduct in the commission of the offence, the offender's motive for committing the offence, and aspects of the offender's background that increase or decrease the offender's individual responsibility for the crime, including the offender's personal circumstances and mental capacity.
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> [59] Further, the sentence imposed must be commensurate with the responsibility and "moral blameworthiness of the offender". The sentence must be no greater than the offender's moral culpability and blameworthiness. [Citations omitted.]

[13] Section 718.2 of the *Code* codifies certain specific aggravating and mitigating factors.

[14] In terms of the overarching principles of sentencing applicable to the case at hand, they are deterrence and denunciation. The jurisprudence concerning cases of breach of trust overwhelmingly support this proposition.

Aggravating and mitigating factors:

[15] Counsel did not agree on what constituted an aggravating factor in the circumstances of this case. The Crown in their factum provided a long list of aggravating factors. Counsel for Cameron Ortis suggested that many of the proposed factors were subsumed within the elements of the offence. To some extent I agree with that proposition.

[16] In any event, I considered the following to be the aggravating factors:

- Cameron Ortis was in a position of extreme trust. He was the man in charge of Operations Research. He, more than most, knew the potential consequences of what he was doing. The testimony of his coworkers, and of former Deputy Commissioner Shean, and their reactions to what he did support the heightened level of betrayal.

- His actions potentially put lives at risk. The evidence at trial in my estimation demonstrated that in his communications to Vincent Ramos he disclosed the existence of an undercover officer/operator.

- His actions undermined Canada's reputation in the intelligence community internationally. This is especially so given the position he was in as he was the Director, one of the highest-ranking civilian members. Our reputation among Five Eyes partners may never be the same.

- He committed this offence for the benefit of a criminal organization, a codified aggravating factor pursuant to s. 718.2(iv).

[17] The principal mitigating factor in this case is the historically good character of Cameron Ortis. Exhibit 2 contains 26 different letters attesting to his qualities as a person and to his exceptionally good character, many pleading with the court to show leniency. The sincerity of the authors of the letters, and their strongly held belief concerning his good character is undeniable and compelling. His long-time friend said, "I appeal for fair consideration of the person Cameron has proven to be to his friends and family."

[18] As to Cameron Ortis's personal circumstances, the consequences of his decisions resulted in the destruction of a very promising career and of his reputation. He is a middle-aged, highly intelligent man; he holds a PhD in cybersecurity. He is not married. He has the unfaltering and unequivocal support of his family.

[19] When I consider the aggravating and mitigating factors in this case, his moral blameworthiness was at the higher end of the spectrum.

The *Ratkai* and *Delisle* decisions:

[20] As indicated at the commencement of this decision, there is no direct sentencing precedent for s. 14 of the *SOIA*. However, I was referred to two decisions. In *R. v. Ratkai*, [1989] N.J. No. 334 (N.F.S.C. (T.D.)), Aylward J. of the Supreme Court of Newfoundland imposed a sentence of ten years' imprisonment (when factoring presentence custody) concurrent, on two counts of

offences under the former *Official Secrets Act* (now the *SOIA*). In that case the accused pleaded guilty to two counts of having obtained and attempted to obtain documents intended to be useful to the Soviet Union for a purpose prejudicial to the safety and interests of Canada. The maximum sentence available was 14 years' imprisonment for the specific offences. He was a 26-year-old Canadian citizen. He was a Russian agent directed by the USSR to meet with an American undercover operator in Canada to collect secret documents offered in a reverse sting and he attempted to obtain further information. He was motivated by money.

[21] In *R. v. Delisle* (8 February 2013), Halifax (N.S. Prov. Ct.), a sentence of 20 years' imprisonment was imposed for disclosing safeguarded information to Russia contrary to s. 16 of the *SOIA*. Life imprisonment was the maximum available sentence under that section. The accused pleaded guilty and gave a full confession. The offence in that case involved Jeffrey Delisle, a member of the Canadian Armed Forces working in intelligence attending the Russian embassy in Ottawa and offering classified information to Russia in exchange for payment. He was doing this monthly between 2007 and 2011. He received over $100,000. He was doing it at the direction of Russian intelligence (the GRU).

[22] Neither of these cases can be considered precedent-setting jurisprudence that I am obliged to follow. They are from trial courts. They are both factually distinguishable. In each case they involved different offences than those committed by Cameron Ortis. In the case of *Delisle* the maximum available penalty was life imprisonment. Nonetheless, the cases offer guidance from the perspective of the of gravity of these types of offences, and the severity of the penalties involved.

[23] I did take note of and agree with the following from the *Delisle* decision:

> It has been stated in at least one of the British cases that national security charges are in a class by themselves when it comes to sentencing. They can't really be compared with other criminal charges. No doubt there is some truth to that, but since 1996, all sentencing in Canada has been … governed by the purposes and principles of sentencing set out in part 23 of the *Criminal Code*.
>
> …

> In all the cases I have considered, the courts have stated that denunciation and deterrence must be the goals of sentencing in cases of this kind. Surely those courts are correct.
>
> Society is justifiably outraged in the face of betrayal, especially by someone employed by the State for many years precisely to protect the national interests and State secrets. Society is also entitled to expect that those who betray State secrets will be punished harshly enough to deter others from doing the same thing, or at least to make it clear to those who consider doing so what the price will be if they do and are caught.

[24] While I agree with the Crown that there were more mitigating factors in the *Delisle* case, the crimes committed in that case were at least arguably more serious. The offender there was for all intents and purposes a spy on Russia's payroll, acting under their direction. The damage there was real, the motive categorical as it was for money. I do not for one moment, suggest in any way that what Cameron Ortis did was not a serious crime; it is just that the circumstances and nature of the offences were different. And measuring one against the other is somewhat difficult.

Maximum, consecutive and concurrent sentences:

[25] Section 14(1) of the *SOIA* provides for a maximum sentence of 14 years' imprisonment. Part of the Crown's argument for imposing the 22 to 25-year sentence is that the court ought to impose the maximum sentence of 14 years for Counts one and two consecutively, with all other sentences on the four remaining counts to run concurrently. The 28 years is then reduced to allow for the application of the principle of totality.

[26] With respect to the imposition of a maximum sentence, in *R. v. L.M.*, 2008 SCC 31, [2008] 2 S.C.R. 163, the Supreme Court of Canada provided the following at paras. 20 and 22:

> [20] In *R. v. Cheddesingh*, [2004] 1 S.C.R. 433, 2004 SCC 16, the Court acknowledged the exceptional nature of the maximum sentence, but firmly rejected the argument that it must be reserved for the worst crimes committed in the worst circumstances. Instead, all the relevant factors provided for in the *Criminal Code* must be considered on a case-by-case basis, and if the circumstances warrant imposing the maximum sentence, the judge must impose it and must, in so doing, avoid drawing comparisons with hypothetical cases:

> . . . terms such as "stark horror", "worst offence" and "worst offender" add nothing to the analysis and should be avoided. All relevant factors under the *Criminal Code* . . . must be considered. A maximum penalty of any kind will by its very nature be imposed only rarely . . . and is only appropriate if the offence is of sufficient gravity and the offender displays sufficient blameworthiness. As is always the case with sentencing, the inquiry must proceed on a case-by-case basis. [para. 1]
>
> …
>
> [22] Thus, the maximum sentence cannot be reserved for the abstract case of the worst crime committed in the worst circumstances. The trial judge's decision will continue to be dictated by the fundamental principle that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender" (s. 718.1 *Cr. C.*).

[27] The Crown submits that the degree of gravity and blameworthiness in the case at bar warrants the imposition of the maximum sentence. Further, consecutive terms are warranted because Count one and Counts two to four involved separate and distinct transactions.

[28] Counsel representing Cameron Ortis argued that the imposition of maximum sentences is rare, and that they are reserved for circumstances where the gravity of the offence and the moral blameworthiness of the offender are at the further end of the spectrum. It was submitted that the gravity of the offence and degree of moral blameworthiness in this case do not remotely justify the imposition of the maximum sentence. They suggest, and not unreasonably, that there are conceivably situations where those two considerations would be much higher. For instance, if actual harm had occurred because of the offender's actions. Or, had there been clear overwhelming evidence of a financial motive. Defence counsel argued that a seven-year term of incarceration is a severe penalty that, having regard to the degree of moral blameworthiness and gravity of the offence, is a just and fit sentence in the circumstances of Cameron Ortis.

Calculation of credit for pre-trial custody:

[29] Cameron Ortis as of today has spent a total of 1267 days in pre-trial custody. On December 24, 2022, he was granted judicial interim release with house arrest and other strict conditions. He was under house arrest for a total of 334 days.

[30] In arriving at the appropriate credit for pre-trial custody, I have taken into consideration the following:

- Exhibit 1 and the reports from the Ottawa Carleton Detention Centre, particularly with regards to the number of Covid-related lockdowns, and the amount of time Cameron Ortis was in isolation. In his case I have also considered the number of times he would have been X-rayed and strip-searched because of the requirement for him to review disclosure at a secure facility.

- The principles set out in the Ontario Court of Appeal decisions of *R. v. Duncan*, 2016 ONCA 754, and *R. v. Marshall*, 2021 ONCA 344. Specifically, particularly harsh pre-trial custody conditions that are punitive and go well beyond normal, can mitigate what constitutes the appropriate sentence. This is a consideration beyond the statutorily capped *Summers* credit of 1.5:1. As the court indicated in *Marshall*, at para. 52:

> The "*Duncan*" credit is not a deduction from the otherwise appropriate sentence, but is one of the factors to be taken into account in determining the appropriate sentence. Particularly punitive pretrial incarceration conditions can be a mitigating factor to be taken into account with the other mitigating and aggravating factors in arriving at the appropriate sentence from which the "*Summers*" credit will be deducted.

- The decision of *R. v. Downes* (2006), 79 O.R. (3d) 321 (C.A.), where the Court of Appeal held the time spent on strict bail conditions, especially house arrest, can be credited towards the sentence imposed.

[31] I conclude that the pre-trial conditions endured by Cameron Ortis were particularly harsh and punitive. They act as a mitigating factor in terms of the overall sentence imposed. Ultimately, for reasons of expediency I chose to quantify this mitigating factor by providing a specified number of days of credit. I did so as it was directly related to his time in custody prior to trial.

[32] With respect to the *Downes* credit, I would allow 50 percent of the time under house arrest to be credited towards the sentence to be served.

[33] Therefore, in terms of pre-trial custody and the credit to be applied in this case, I come to the following: *Summers* credit (1267 times 1.5) is 1900 days, *Downes* credit is 167 days, and for *Duncan* credit I would add a further 333 days in mitigation of the sentence imposed. The total pre-trial custody credit I arrived at is 2400 days.

The appropriate disposition:

[34] When all is considered, I find myself in disagreement with both Crown and defence counsel as to what constitutes a fit and just sentence in the case of Cameron Ortis. The prosecution's arguments, while valid, in my estimation ask for a penalty that is unduly harsh and disproportionate to the crimes committed and the circumstances in which they were committed. Having regard to the principles of proportionality and totality, a period of incarceration of 22 to 25 years is in my estimation excessive. That said, counsel for the defence's position of time served or seven years' imprisonment is inadequate. It fails to properly address the principles of deterrence and denunciation and does not sufficiently address the gravity of the offence and the blameworthiness of the offender.

[35] The sentence I am going to impose is by any objective measure a severe penalty in Canadian criminal law. It in my view is a fit and just sentence that addresses both the gravity of the offences and Cameron Ortis's moral responsibility for their commission. I have concluded that a total period of imprisonment of 14 years is the appropriate disposition. With pre-trial custody credit of 2400 days, there remains 7 years and 155 days to be served.

[36] I would apportion the sentence as follows:

i. Count one (communicating special operational information to Vincent Ramos): seven years' imprisonment.

ii. Count two (communicating special operational information to Salim Henareh): seven years' imprisonment consecutive to Count one.

iii. On each of Counts three and four: seven years concurrent.

iv. On Count five (breach of trust): five years concurrent.

v. On Count six (unauthorized use of computer): five years concurrent.

[37] The 2400 days of pre-trial credit can be subtracted from Count one leaving 155 days to be served on that count and 7 years to be served on Count two. The warrant of committal will thus indicate 7 years and 155 days to be served.

[38] There was a written request I noted in exhibit 2 provided by one of the close friends on behalf of the family members, that Cameron Ortis be permitted to serve his sentence nearer to where they live, in the province of British Columbia. I hereby make that recommendation to Correctional Service of Canada.

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Maranger J.

Date: February 7, 2024

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COUNSEL: Judy Kliewer and John MacFarlane, for the Public Prosecution Service of Canada

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REASONS FOR SENTENCE

Maranger J.

Released: February 7, 2024