

10/15.

CONFIDENTIAL

Court File No.: DES- 5 -23

FEDERAL COURT

BETWEEN:

FILED	FEDERAL COURT COUR FÉDÉRALE		DEPOSE
	OCT 11 2023		
	KATHY CRAIGIE		
OTTAWA, ON		<u>4</u>	

ATTORNEY GENERAL OF CANADA

Applicant

and

**~~RESPONDENT(S) TO BE NAMED BY THE COURT UNDER
SUBSECTION 38.04(5) OF THE CANADA EVIDENCE ACT~~**

PATRICK GORDON MACDONALD

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondents

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant.
The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: _____ Issued by: _____
(Registry Officer)

Amended: _____, 2023

TO: MR. DOUGLAS BAUM
Addelman Baum Gilbert Robinson LLP
85 Albert Street, Suite 800
Ottawa, Ontario
K1P 6A4
Counsel for Patrick Gordon Macdonald

AND TO: THE DIRECTOR OF PUBLIC PROSECUTIONS
160 Elgin Street - 12th Floor
Ottawa, Ontario
K1A 0H8

APPLICATION

THIS IS AN APPLICATION under ss. 38.04(1) of the *Canada Evidence Act*, RSC 1985, c C-5 (*CEA*), for an order regarding disclosure of information referred to in a notice under ss. 38.01(1) of the *CEA* that was provided to the Attorney General of Canada (AGC) on September 14, 2023. In the notice, counsel for the Public Prosecution Service of Canada advised that they are required to disclose sensitive or potentially injurious information in criminal proceedings against Patrick Gordon Macdonald before the Ontario Court of Justice (Court File: 4011 998 23 1140453500) (the Underlying Proceeding).

THE APPLICANT MAKES APPLICATION FOR:

- a) An order under ss. 38.06(3) of the *CEA* confirming the prohibition of disclosure of the information referred to in the notice, except as previously authorized by the AGC under ss. 38.03(1) of the *CEA*;
- b) An order authorizing the disclosure of a summary of the information or a written admission of facts relating to the information; and
- c) Such further and other relief as the Applicant may request and the Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

- a) On July 4, 2023, charges were laid against Mr. Patrick Gordon Macdonald pursuant to ss. 83.18, 83.19 and 83.02 of the *Criminal Code*;
- b) On September 14, 2023, counsel for the Public Prosecution Service of Canada provided notice to the AGC under subsection 38.01(1) of the *CEA*, stating that she believed that sensitive or potentially injurious information may be disclosed in connection with the criminal proceedings against Mr. Macdonald. The notice is with respect to 16 documents;
- c) On September 14, 2023, the AGC authorized disclosure of the fact that notice had been given;
- d) On September 15, 2023, the AGC, through his delegate, did not authorize the disclosure of information contained in all 16 documents that were the subject of the notice;
- e) Disclosure of the information in question would be injurious to national security and national defence;

- f) The public interest in non-disclosure outweighs the public interest in disclosure;
- g) The AGC may receive future notices pursuant to s. 38 of the *CEA* covering additional documents in connection with the Underlying Proceeding that will become part of this application; and
- h) Further and other grounds as the Applicant may advise and this Honourable Court may permit.

**THE APPLICANT MAKES THE FOLLOWING REPRESENTATIONS
UNDER SUBSECTION 38.04(5) OF THE CEA:**

- a) Mr. Patrick Gordon Macdonald and the Director of Public Prosecutions are parties whose interests are affected by the information contained in the documents subject to these proceedings and must be named as Respondents;
- b) A copy of the Notice of Application, amended to include Mr. Macdonald and the Director of Public Prosecutions as Respondents, should be served on Mr. Macdonald and the Director of Public Prosecutions;
- c) The Notice of Application must remain confidential until it is amended to name Mr. Macdonald and the Director of Public Prosecutions as the Respondents, and is served on Mr. Macdonald or his counsel and on the Director of Public Prosecutions;
- d) A hearing under paragraphs 38.04(5)(a) or (a.2) of the *CEA* is not required;
- e) A public hearing may be necessary;
- f) An *ex parte in camera* hearing will be necessary;
- g) This application should be conducted as a specially managed proceeding; and
- h) Further and other grounds as the Applicant may advise and this Honourable Court may permit.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING
MATERIAL:**

- a) The Amended Notice of Application; and

- b) Affidavits and other material as counsel may advise and this Honourable Court may permit.

Date: October 11, 2023



ATTORNEY GENERAL OF CANADA

Department of Justice Canada

National Security Group

284 Wellington Street, Ottawa, ON, K1A 0H8

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Counsel for the Applicant

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

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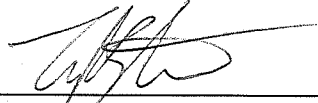
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Counsel for the Applicant