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**CONFIDENTIAL**

Court File No.: DES- 10 -23

**FEDERAL COURT**

BETWEEN:

**ATTORNEY GENERAL OF CANADA**

FILED	FEDERAL COURT COUR FÉDÉRALE	DÉPOSÉ
	DEC 08 2023	
	KATHY CRAIGIE	
OTTAWA, ON		3

Applicant

and

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

JARRETT MACKENZIE

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondents

**APPLICATION UNDER SUBSECTION 38.04(1) OF THE  
CANADA EVIDENCE ACT**

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AMENDED NOTICE OF APPLICATION

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**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 **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:** **Gavin Wolch**  
**Rodin Law Firm**  
**1405 – 2<sup>nd</sup> Street SW**  
**Calgary, Alberta**  
**T2R OW7**  
**Counsel for Jarrett Mackenzie**

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

## APPLICATION

**THIS IS AN APPLICATION** under s. 38.04(1) of the *Canada Evidence Act*, RSC 1985, c C-5 (*CEA*), for an order regarding disclosure of information referred to in two notices under s. 38.01(1) of the *CEA* that were provided to the Attorney General of Canada (AGC) on September 12, 2023 and October 23, 2023. In the notices, counsel for the Public Prosecution Service of Canada (PPSC) advised that they believe that sensitive or potentially injurious information contained in a total of 206 documents may be disclosed in connection with proceedings under the *Criminal Code* against Jarrett MACKENZIE (Alberta Court of King's Bench file 220478978Q1 – this matter was scheduled to return to court on December 1, 2023 to set a trial date).

### **THE APPLICANT MAKES APPLICATION FOR:**

- a) An order under s. 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 s. 38.03(1) of the *CEA*, but subject to conditions that the judge considers appropriate such as a summary of the information or an order permitting disclosure of the information to the judge in the underlying proceeding; and
- b) Such further and other relief as the Applicant may request and this Honourable Court deems just.

### **THE GROUNDS FOR THE APPLICATION ARE:**

- a) In 2019, a joint task force of RCMP and Alberta municipal police began an investigation into drug-trafficking and organized crime. The investigation targeted a number of people including Elias ADE. Mr. Jarrett MACKENZIE was ultimately arrested as police had evidence that he conspired with ADE regarding transport of drugs into Canada. Mr. MACKENZIE has been charged with six related drug and weapon offences under the *Criminal Code*;
- b) Mr. MACKENZIE was released on bail pending his trial;

- c) On September 12, 2023, PPSC counsel provided notice pursuant to s. 38.01(1) of the *CEA* that they expect to disclose sensitive or potentially injurious information in connection with the underlying proceeding. This notice covers 204 documents;
- d) On September 12, 2023, the AGC authorized disclosure of the fact that notice had been given;
- e) On September 19, 2023, the AGC, through its delegate, did not authorize the disclosure of certain information contained in all 204 documents that were the subject of the notice;
- f) On October 23, 2023, counsel for PPSC provided a second notice, pursuant to s. 38.01(1) of the *CEA* that they expect to disclose sensitive or potentially injurious information in connection with the underlying proceeding. This notice covers 2 additional documents;
- g) On October 23, 2023, the AGC authorized disclosure of the fact that notice had been given;
- h) On October 24, 2023, the AGC, through its delegate, did not authorize the disclosure of certain information contained in the 2 documents that were the subject of the notice;
- i) The information that is the subject of this Application that has not been authorized disclosed by the AGC would, if disclosed, be injurious to national security;
- j) 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
- k) 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. Jarrett MACKENZIE 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 to these proceedings;
- b) A copy of the Notice of Application, amended to include Mr. Jarrett MACKENZIE and the Director of Public Prosecutions as Respondents, should be served on Mr. Jarrett MACKENZIE and the Director of Public Prosecutions;
- c) The Notice of Application must remain confidential until it is amended to name the Respondents in the style of cause and is served on the Respondents or their counsel;
- d) A hearing pursuant to s. 38.04(5)(a) or (a.2) is not required;
- e) The AGC takes the view that this Application does not need to be kept confidential and can be made public in accordance with s. 38.04(5)(a) of the CEA;
- f) A public hearing may be necessary;
- g) An *ex parte, in camera* hearing will be necessary;
- h) The next steps in these proceedings must be decided by the judge seized of the matter including the naming of an *amicus curiae*; and
- i) 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.

December 05, 2023



**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada

National Security Group

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Counsel for Applicant