

CONFIDENTIAL

Court File No.: DES- 8 -24

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

F I L E D	FEDERAL COURT COUR FÉDÉRALE		D E P O S É
	JUN JUN	04 2024	
OTTAWA, ON		-9-	

Applicant

and

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

MATTHEW ALTHORPE

and

KRISTOFFER NIPPAK

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondents

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENT(S):

A PROCEEDING HAS BEEN COMMENCED 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 prepare 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, 1998*, 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, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated: June 9, 2024.

Issued by:

ORIGINAL SIGNED BY
VICTORIA BELL
A SIGNÉ D'ORIGINAL
(Registry Officer)

Amended: June 9, 2024

TO: MR. ANTHONY MOUSTACALIS
Anthony Moustacalis & Associate
1000 – 121 Richmond Street West
Toronto, Ontario
M5H 2K1
Counsel for Matthew Althorpe

AND TO: MR. PETER LINDSAY
Lindsay Law
233 Sheppard Avenue West
North York, Ontario
M2N 1N2
Counsel for Kristoffer Nippak

AND TO: THE DIRECTOR OF PUBLIC PROSECUTIONS
160 Elgin Street – 12th 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 a Notice under s. 38.01(1) of the *CEA* that was provided to the Attorney General of Canada (AGC) on February 19, 2024. 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 Matthew Althorpe and Kristoffer Nippak before the Ontario Court of Justice (Court File No: 4810-998-23-48120168) (the Underlying Proceeding).

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*;
- (b) An order authorizing the disclosure of a summary of the information or 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 December 5, 2023 charges were laid against Mr. Matthew Althorpe and Mr. Kristoffer Nippak pursuant to s. 83.18(1) of the *Criminal Code*. Mr. Althorpe was further charged pursuant to ss. 83.19(1), 83.2, 83.22 and 83.221 of the *Criminal Code*.
- (b) On February 19, 2024, counsel for the Public Prosecution Service of Canada provided notice to the AGC pursuant to s. 38.01(1) of the *CEA*, stating that they believed that sensitive or potentially injurious information may be disclosed in connection with the criminal proceedings against Mr. Althorpe and Mr. Nippak. The Notice is with respect to 22 documents;

- (c) On February 19, 2024, the AGC authorized disclosure of the fact that notice had been given;
- (d) On February 22, 2024, the AGC, through his delegate, did not authorize the disclosure of information contained in all 22 documents that were 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 the 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 ATTORNEY GENERAL MAKES THE FOLLOWING REPRESENTATIONS
UNDER SECTION 38.04(5) OF THE *CEA*:**

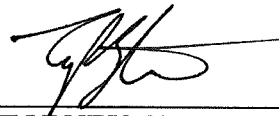
- (a) Mr. Matthew Althorpe, Mr. Kristoffer Nippak and the Director of Public Prosecutions are parties whose interests are affected by the information contained in the documents subject to these proceedings and must be named as Respondents;
- (b) A copy of the Notice of Application, amended to include Mr. Althorpe, Mr. Nippak and the Director of Public Prosecutions as the Respondents, should be served on Mr. Althorpe and Mr. Nippak, or their respective counsel, and the Director of Public Prosecutions;

- (c) The Notice of Application must remain confidential until it is amended to name Mr. Althorpe, Mr. Nippak and 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 grounds as the Applicant may advise and this Honourable Court may permit.

THE 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: June 3, 2024



ATTORNEY GENERAL OF CANADA
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