

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

Court File No.:	
FEDERAL COURT COUR FÉDÉRALE	
OCT 24 2024	
FILED	DEPOSE
OTTAWA, ON	10-5

Applicant

and

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

ABDUL AZIZ KAWAM AND THE DIRECTOR OF PUBLIC PROSECTIONS

Respondents

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

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENT(S):

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 in 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: Oct 23 - 2024

Issued by: 
(Registry Officer)

Amended: 24-Oct-2024

DESIGNATED REGISTRY
OFFICER
AGENT(E) DU GREFFE
DÉSIGNÉ(E)

TO: KEVIN B. WESTELL
Pender Litigation
Suite 1175-510 Burrard Street
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Counsel for the Respondent, Abdul Aziz Kawam

TO: ANDREW COCHRANE
Johnson Doyle Nelson & Anderson
601-325 Howe Street
Vancouver, BC V6C 1Z7
Counsel for the Respondent, Abdul Aziz Kawam

TO: DIRECTOR OF PUBLIC PROSECUTIONS
Public Prosecution of Canada
160 Elgin Street – 12th Floor
Ottawa, ON K1A 0H8
Per: Sharon Steele and Oren Bick
Counsel for the Respondent, Director of Public Prosecutions

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 notices under ss. 38.01(1) of the *CEA* that was provided to the Attorney General of Canada (AGC) on September 23rd, 2024, and on October 16th, 2024. In the notices, counsel for the Public Prosecution Service of Canada advised that they are required to disclose sensitive or potentially injurious information in a criminal proceeding against Mr. Abdul Aziz Kawam before the Supreme Court of British Columbia (Court File 85367-2).

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 notices, except as previously authorized by the AGC under ss. 38.03(1) of the *CEA*; and
- b) Such further and other relief as the Applicant may request and the Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

- a) Abdul Aziz Kawam is charged with four counts of terrorism in that the following four offences were each done for the benefit of, at the direction of, or in association with a terrorist group, namely the Islamic State, thereby committing offences contrary to s.83.2 of the *Criminal Code*: (1) attempted murder, contrary to s.239(1)(b) of the *Criminal Code*; (2) assault causing bodily harm, contrary to s.267 of the *Criminal Code*; (3) aggravated assault, contrary to s.268(1) of the *Criminal Code*; and (4) assault with a weapon, contrary to s.267 of the *Criminal Code*.
- b) According to the Crown's allegations, on the morning of April 1, 2023, Mr. Kawam attacked a man with a knife on a public bus in Surrey, B.C., and brandished the knife at another man at a bus stop. After the attack, Mr. Kawam called 9-1-1 and stated his actions were done on behalf of the Islamic State.
- c) On September 23, 2024, and on October 16, 2024, Sharon Steele, counsel for the Public Prosecution Service of Canada (PPSC) provided notice to the AGC under ss. 38.01(1) of the *CEA* that the PPSC was required to disclose information in connection with the criminal proceeding against Mr. Kawam that

Ms. Steele believed was sensitive or potentially injurious information, as defined under s.38 of the *CEA* (hereafter the “sensitive information”).

- d) The AGC, through his delegate, prohibited disclosure of the sensitive information referred to in the notices, as disclosure of this information would be injurious to national security.
- e) The AGC may receive future s.38 notices referring to additional disclosure in the underlying criminal proceeding that will become part of this Application.
- f) Mr. Kawam has a trial date set for February 4 to 14, 2025, in New Westminster before the Supreme Court of British Columbia. The next judicial pre-trial in the criminal proceeding is on November 19, 2024. It is anticipated that at trial Mr. Kawam will raise a defence under s.16(1) of the *Criminal Code* that he is not criminally responsible for his actions on account of mental disorder.
- g) 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. Kawam 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. Kawam and the Director of Public Prosecutions as Respondents, should be served on Mr. Kawam or his counsel, and on the Director of Public Prosecutions;
- c) The Notice of Application must remain confidential until it is amended to name Mr. Kawam and the Director of Public Prosecutions as the Respondents, and is served on Mr. Kawam 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 not be necessary;
- f) An *ex parte* in camera hearing will be necessary;
- g) The appointment of an *amicus curiae* may be necessary; 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) Amended Notice of Application; and
- b) Affidavits and other material as counsel may advise and this Honourable Court may permit.

October 22, 2024



ATTORNEY GENERAL OF CANADA
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