

Court File No.: DES-14-24 IDY

FEDERAL COURT

FILED	FEDERAL COURT COUR FÉDÉRALE	DEPOSE
	OCT 07 2024	
	M. Chartrand	
OTTAWA, ON		5

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

ABDIRAHMAAN WARSSAMA and  
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

~~RESPONDENTS TO BE NAMED BY THE COURT PURSUANT~~  
~~TO SUBSECTION 38.04(5) OF THE CANADA EVIDENCE ACT~~

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 Rule*, 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: October 1, 2024

Issued by: Murielle Chartrand  
(Registry Officer)

Amended: October 7, 2024

TO: Abdirahmaan Warssama

MURIELLE CHARTRAND  
REGISTRY OFFICER  
AGENT DU GREFFE

**Per: Subodh S. Bharati LS #56187P**  
Barristers and Solicitor  
20 Maitland Street  
Toronto, ON M47 1C5

Telephone Number: 416-645-8855  
Fax Number: 416-645-8856

Counsel for Respondent

Her Majesty the Queen in Right of the Province of Ontario

**Attorney General of Ontario**  
720 Bay Street  
Toronto, ON M7A 2S9

**Per: Roseanna Ansell-Vaughan LS #47015K**  
Telephone Number: 647-299-3568  
Fax Number: 416-326-4181

**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 Notice given on April 16, 2024, to the Attorney General of Canada (AGC) under ss. 38.01(1) of the *CEA*. In the Notice, Judy Michaely, counsel for the AGC, advised that Canada was required to disclose sensitive or potentially injurious information in the context of the discovery process in *Abdirahmaan Warssama v. AGC* (Court File Number CV-17-583584) currently before the Ontario Superior Court of Justice.

**THE APPLICANT MAKES APPLICATION FOR:**

- (a) An order under ss. 38.06(3) of the *CEA* confirming the prohibition from disclosure of the information referred to in the Notice, 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 this Court deems just.

**THE GROUNDS FOR THE APPLICATION ARE:**

- (a) A class action was brought against the AGC and the province of Ontario regarding the administration of immigration detention in provincially-run facilities on behalf of individuals held in immigration detention in provincial correctional institutions;
- (b) The action alleges damages for breach of a common law duty in relation to the funding, operation, management, administration, supervision and control of the provincial institutions where detainees are held pending the determination of their status under federal immigration legislation. It also alleges violations of the rights of immigration detainees protected under s. 7 and 12 of the *Charter*;

- (c) On April 16, 2024, Judy Michaely gave Notice to the AGC under ss. 38.01(1) of the *CEA* that she will be required to disclose sensitive or potentially injurious information in the above-mentioned action;
- (d) The AGC, through his delegate, did not authorize the disclosure of certain information contained in the documents subject to this application;
- (e) Disclosure of information covered by the Notice would be injurious to international relations or national security;
- (f) The public interest in non-disclosure of the information outweighs the public interest in its disclosure;
- (g) Should the AGC receive additional notices under s. 38.01 of the *CEA*, the information covered by these notices will become part of this application;
- (h) Such further and other grounds as the Applicant may advise and this Court may permit.

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

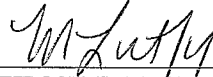
- (a) A public hearing may be necessary;
- (b) An *in camera ex parte* hearing will be necessary;
- (c) Abdirahmaan Warssama and Her Majesty the Queen in Right of the Province of Ontario (Ontario) are parties whose interests are affected by the disclosure of the information subject to this proceeding and shall be named as the Respondents in this proceeding;

- (d) A copy of the Notice of Application, amended to include Abdirahmaan Warssama and Ontario as Respondents, shall be served on the Respondents;
- (e) The Notice of Application should remain confidential until such time as it is amended to include the names of the Respondents in the style of cause and is served on the Respondents;
- (f) A hearing pursuant to paragraphs 38.04(5)(a) or (a.2) of the *CEA* is not required;
- (g) The next steps in these proceedings must be decided by the judge seized of the matter, including the naming of an *amicus curiae*, if necessary; and
- (h) Further and other representations as the Applicant may advise and this Court may permit.

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

- (a) Affidavits and other material as counsel may advise and this Court may permit.

Date: October 1, 2024



**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
National Security Group  
284 Wellington Street  
Ottawa, Ontario, K1A 0H8  
Fax: 613-941-4064

**Per: Michelle Lutfy**  
Tel: 613-957-1215  
Email: michelle.lutfy@justice.gc.ca

**Per: Tara-Marie Andronek**  
Tel : 613-941-9288  
Email: tara-marie.andronek@justice.gc.ca

**Per: Natalie Scott**  
Tel: 613-946-7952  
Email: natalie.scott@justice.gc.ca

Counsel for the Applicant