

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE QUÉBEC COURT OF APPEAL)**

BETWEEN:

**CANADIAN BROADCASTING CORPORATION, LA PRESSE INC., COOPÉRATIVE
NATIONALE DE L'INFORMATION INDÉPENDANTE (CN2I), CANADIAN PRESS
ENTERPRISES INC., MEDIAQMI INC., GROUPE TVA INC.**

**APPELLANTS
(Applicants)**

-and-

HIS MAJESTY THE KING and NAMED PERSON

**RESPONDENTS
(Respondents)**

-and-

LUCIE RONDEAU, in her capacity as Chief Justice of the Court of Quebec

**INTERVENER
(Applicant)**

(Style of cause continued on following page)

**MOTION RECORD OF THE PROPOSED INTERVENER,
ATTORNEY GENERAL OF ALBERTA
(Pursuant to Rules 47 AND 55 of the *Rules of the Supreme Court of Canada*)**

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(Style of cause continued)

AND BETWEEN:

ATTORNEY GENERAL OF QUÉBEC

APPELLANT
(Applicant)

-and-

NAMED PERSON and HIS MAJESTY THE KING

RESPONDENTS
(Respondents)

-and-

**CANADIAN BROADCASTING CORPORATION
LA PRESSE INC., COOPÉRATIVE NATIONALE DE L'INFORMATION
INDÉPENDANTE (CN2I), LA PRESSE CANADIENNE, and LUCIE RONDEAU, in her
capacity as Chief Justice of the Court of Quebec**

INTERVENERS
(Applicants)

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LUCIE RONDEAU, in her capacity as Chief Justice of the Court of Quebec

**INTERVENER
(Applicant)**

(Style of cause continued on following page)

NOTICE OF MOTION FOR LEAVE TO INTERVENE
ATTORNEY GENERAL OF ALBERTA, APPLICANT (PROPOSED INTERVENER)
PURSUANT TO RULE 55 OF THE *RULES OF THE SUPREME COURT OF CANADA*

ATTORNEY GENERAL OF ALBERTA
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Attorney General of Alberta

(Style of cause continued)

AND BETWEEN:

ATTORNEY GENERAL OF QUÉBEC

APPELLANT
(Applicant)

-and-

NAMED PERSON and HIS MAJESTY THE KING

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-and-

**CANADIAN BROADCASTING CORPORATION
LA PRESSE INC., COOPÉRATIVE NATIONALE DE L'INFORMATION
INDÉPENDANTE (CN2I), LA PRESSE CANADIENNE, and LUCIE RONDEAU, in her
capacity as Chief Justice of the Court of Quebec**

INTERVENERS
(Applicants)

TAKE NOTICE that the Attorney General of Alberta hereby applies to a Judge of the Court, pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*, for an order permitting the Attorney General of Alberta:

- 1) To intervene in this appeal;
- 2) To file a factum not exceeding 10 pages and book of authorities if necessary;
- 3) To make oral submissions not exceeding 5 minutes in duration, or such longer period as the Court may permit;
- 4) Such other order as may be deemed appropriate.

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of the said motion:

1) The Affidavit of Deborah Alford, dated July 7, 2023;

and such further or other material as counsel may advise and may be permitted.


AND FURTHER TAKE NOTICE that the said motion shall be made on the following grounds:

- 1) The Attorney General of Alberta has an important interest in the case.
- 2) The Attorney General of Alberta has submissions to make that would be useful to the Court and different than those of the parties.

NOTICE TO THE RESPONDING PARTIES TO THE MOTION: A response to the motion shall be filed by July 21, 2023 pursuant to the Order of the Court April 26, 2023. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

DATED at the City of Edmonton, in the Province of Alberta, this 7th day of July, 2023.

SIGNED BY:


DEBORAH ALFORD
Counsel for the Proposed Intervener,
Attorney General of Alberta

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(Respondents)**

-and-

LUCIE RONDEAU, in her capacity as Chief Justice of the Court of Quebec

**INTERVENER
(Applicant)**

(Style of cause continued on following page)

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE
ATTORNEY GENERAL OF ALBERTA, APPLICANT (PROPOSED INTERVENER)
PURSUANT TO RULE 57 OF THE *RULES OF THE SUPREME COURT OF CANADA*

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Counsel for the Proposed Intervener, Attorney
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Ottawa Agent for Counsel for the Proposed Intervener,
Attorney General of Alberta

(Style of cause continued)

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ATTORNEY GENERAL OF QUÉBEC

APPELLANT
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-and-

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LA PRESSE INC., COOPÉRATIVE NATIONALE DE L'INFORMATION INDÉPENDANTE
(CN2I), LA PRESSE CANADIENNE, and LUCIE RONDEAU, in her capacity as Chief Justice
of the Court of Quebec**

INTERVENERS
(Applicants)

I, Deborah Alford, of the City of Edmonton, in the Province of Alberta, MAKE OATH AND STATE AS FOLLOWS:

1. I am an Agent of the Attorney General of Alberta and appellate counsel with the Appeals Unit within the Appeals and Specialized Prosecutions Office of Alberta Justice and Solicitor General. As such, I have personal knowledge of the matters herein deposed to except where stated to be based on information, in which case I believe the information to be true.
2. I have been instructed to seek leave to intervene in this appeal on behalf of the Attorney General of Alberta and, if granted, to file all necessary materials and make all necessary appearances on his behalf.
3. Given that the record of this matter is sealed, the proposed intervener is not able to comment on the facts of this case. Rather, the proposed intervener's arguments will focus on the interface between the two principles at issue: informant privilege and the open court principle.

Issues on Appeal

4. This appeal deals with the interface between informant privilege and the principle that judicial proceedings must be open to the public. At the Court of Appeal, the media appellants argued that the record of the trial and the appeal be accessible. Although the Court of Appeal assigned a court file

number and provided redacted versions of its judgments, it denied the appellants' request to set aside the sealing orders and allow access to the trial and appeal records. The appellants were then granted leave to appeal to this Court.

5. In their factum, the appellants raise the following issues:

- (1) Can a trial judge proceed outside the justice system, *in camera*, without creating a record or revealing the very existence of proceedings before the courts, contrary to the open court principle, protected by s. 2(b) of the *Charter*?
- (2) Granted that informer privilege is absolute, can its interpretation set aside the constitutional principle of open court proceedings as proposed by the Court of Appeal?
- (3) In addition to identity and a list of protected information that would automatically identify an informant, what tests and framework should be applied to allow for adversarial debate on what other information would be likely to identify the informant?
- (4) In determining the facts that may nevertheless be published while protecting the identity of the police informer, should the judge hearing the application order that interested third parties be notified and be given a hearing on these issues?¹

6. The appellants further submit that this Court should endorse:

- (a) a systematic notice to all interested third parties whenever an order restricting publicity of the court process is sought,
- (b) allow interested third parties to participate in the debate on what is required to be redacted or subject of *in camera* proceedings in order to protect the informant,
- (c) take appropriate measures to allow for meaningful adversarial debate as part of the application of the *Dagenais*²/*Mentuck*³ test as reformulated in *Sherman Estate*⁴ and ensure confidentiality of information that could identify a police informer.⁵

¹ *Memoire des Appelantes Societe Radio-Canada/Canadian Broadcasting Corporation, La Press Inc., Cooperative Nationale de l'Information Independante (CN2i), La Presse Canadienne et MediaQMI Inc., Groupe TVA Inc.*, filed June 12, 2023, at para 33

² *Dagenais v CBC*, [\[1994\] 3 SCR 835](#)

³ *R v Mentuck*, [2001 SCC 76](#)

⁴ *Sherman Estate v Donovan*, [2021 SCC 25](#)

⁵ Factum of Appellants, *supra* n 1 at para 32

The Attorney General of Alberta's Interest in this Appeal

7. The Attorney General of Alberta has a direct interest in this appeal. The Attorney General of Alberta is responsible for all prosecutions in Alberta under the *Criminal Code* and *Youth Criminal Justice Act*, as well as provincial regulatory legislation. The Appeals Unit is responsible for all indictable appeals within the jurisdiction of the Provincial Crown in the Alberta Court of Appeal and the Supreme Court of Canada. The Appeals Unit, in conjunction with the Policy Unit, also develops criminal law policy for the province and provides advice and direction on criminal law matters to Crown prosecutors and law enforcement agencies. The outcome of this case will affect the conduct of all criminal and regulatory prosecutions which involve informant privilege throughout Canada.

A summary of Alberta's anticipated legal arguments

8. Should the Attorney General of Alberta be granted leave to intervene on this appeal, I anticipate our submissions will include the following:

- Informant privilege is a sacrosanct common-law principle which is critical to the prevention, detection, and prosecution of crimes. There can be no restriction on the privilege other than the recognized exception of an accused's innocence at stake.
- Any extension of participants in the circle of informant privilege must be cautiously considered as the risk of inadvertent disclosure of facts that may tend to identify an informant expands with each addition to the circle of privilege.
- This Court's vast jurisprudence on informant privilege⁶ and specifically the procedure advanced in *Vancouver Sun v Named Person*⁷ answer the questions posed by the appellants.
- Contrary to the assertion by the appellants, the *Dagenais/Mentuck* test does not apply to criminal prosecutions that involve informant privilege. The appellants conflate the *Dagenais/Mentuck* test with the directions of this Court in *Vancouver Sun*.

⁶ *R v Leipert*, [1997 1 SCR 281](#), *R v Basi*, [2009 SCC 52](#), *R v Barros*, [2011 SCC 51](#) and others

⁷ *Vancouver Sun v Named Person*, [2007 SCC 43](#)

- Mandatory notice to interested parties in informant privilege cases must not become the rule. It is critical that the discretion of the courts in the provision and timing of notice be maintained.

9. If granted leave to intervene, the Attorney General of Alberta will make every effort not to duplicate the submissions of any other party or intervener. I believe that the submissions of the Attorney General of Alberta will differ from other participants, will address legal policy beyond the specific facts of the case, and will be of assistance to this Court.

10. I make this Affidavit in support of the application of the Attorney General of Alberta for:

- (a) intervener status in this appeal;
- (b) permission to file a factum no longer than 10 pages and a book of authorities if necessary; and,
- (c) permission to make oral submissions not exceeding 5 minutes in duration, or such longer period as the Court may permit.

SWORN BEFORE ME at)
 the City of Edmonton)
 in the Province of Alberta,)
 this 7th day of July, 2023.)



 A Commissioner for Oaths
ELAINE GAFKA
MY COMMISSION EXPIRES
SEPTEMBER 30, 2024



 DEBORAH ALFORD

Printed/Stamped Name and Expiry Date