

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

BETWEEN:

**CANADIAN BROADCASTING CORPORATION : LA PRESSE INC., COOPÉRATIVE  
NATIONALE DE L'INFORMATION INDÉPENDANTE (CN21), CANADIAN PRESS  
ENTERPRISES INC.; MEDIAQMI INC., GROUPE TVA INC.**

Appellants

- and -

**HIS MAJESTY THE KING; NAMED PERSON**

Respondents

(Title of proceedings continued on next page)

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**MOTION FOR INTERVENTION  
OF THE ATTORNEY GENERAL OF CANADA  
(Pursuant to Rules 55-57 of the *Rules of the Supreme Court of Canada*)**

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Attorney General of Canada**

AND BETWEEN:

**ATTORNEY GENERAL OF QUEBEC**

Appellants

- and -

**HIS MAJESTY THE KING; NAMED PERSON**

Respondents

- and -

**CANADIAN BROADCASTING CORPORATION; LA PRESSE INC., COOPÉRATIVE  
NATIONALE DE L'INFORMATION INDÉPENDANTE (CN21), CANADIAN PRESS  
ENTERPRISES INC.; LUCIE RONDEAU, IN HER CAPACITY AS CHIEF JUSTICE OF  
THE COURT OF QUEBEC**

Intervenors

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ENTERPRISES INC.; LUCIE RONDEAU, IN HER CAPACITY AS CHIEF JUSTICE OF  
THE COURT OF QUEBEC**

Interveners

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**NOTICE OF MOTION**

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**TAKE NOTICE** that the Attorney General of Canada (AGC) applies to the Court, pursuant to Rules 55 to 57 of the *Rules of the Supreme Court of Canada* for an order granting the AGC:

- a) leave to intervene in this appeal;

- b) permission to file a factum of not more than 20 pages;
- c) permission to make oral submissions at the hearing of this appeal not exceeding 10 minutes;
- d) any further or other order that the Court may deem appropriate.

**AND FURTHER TAKE NOTICE** that the following documentary evidence will be relied on in support of this motion:

- a) the Affidavit of Greg Koster, affirmed July 7, 2023.

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

1. The Attorney General of Canada has a unique perspective on the interplay of the two fundamental principles at issue in this appeal, the need for an open and transparent court system and the need to protect and apply informer privilege, given the dual role as Minister of Justice.
2. The Attorney General of Canada is the chief law officer of the Crown, and has responsibility to regulate and conduct all litigation for or against the federal Crown or any federal department, in respect of any subject within Canada's authority or jurisdiction. This may include at times advising on the law of informer privilege. The Attorney General acts in the public interest, including upholding the Constitution, the rule of law and respect for the independence of the courts. These issues are all alive in the present appeal.
3. The Attorney General of Canada's perspective is also informed by the various federal legislative schemes which seek to protect information while at the same time provide for fair processes, and the Attorney General of Canada's role in related litigation – principally in the Federal Court of Canada (see *Canada Evidence Act*, s. 38; *Charities Registration (Security of Information) Act*, (2001) ss. 6, 11(2); *Criminal Code*, (2001) ss. 83.05(6), 83.06; *Prevention of Terrorist Travel Act*, (2015) ss. 4(4), 6(2) and the *Secure Air Travel Act*, (2015) ss. 16(6), 17)).

4. The AGC's has a unique role and perspective in relation to claims of national security privilege under section 38 of the Canada Evidence Act, and through the National Security Group undertakes the review of sensitive information; challenges the claims of privilege; prepares the redacted documents for disclosure; and prepares recommendations for the Attorney General of Canada – including the authorization of disclosure of all or parts of the information, with appropriate conditions.
5. The AGC proposes to make the following submissions, which would be useful to the Court and different from the arguments the parties are likely to advance:
  - a) the open court principle is protected by the constitutional guarantee of freedom of expression and is essential to the proper functioning of Canadian democracy;
  - b) the open court principle is engaged by all judicial proceedings, whatever their nature;
  - c) competing interests such as informer privilege justify a restriction on the open court principle, are rare and must be determined and applied only to the extent necessary to protect the relevant informer information;
  - d) the court must apply the open court principle to as great an extent possible without risking a breach of the informer privilege, and;
  - e) the judge retains discretion as to whether to provide to the media notice of the in camera proceeding involving informer privilege but is not obliged to do so.
6. The Attorney General of Canada is uniquely placed to provide the Court submissions on the various ways federal laws seek to both protect information while adhere to the open court principle as well as the broad impact that this decision could have on the federal Crown. Neither of the main parties will provide this perspective to the Court.
7. If granted leave to intervene, the AGC would not take a position on the proper disposition of this appeal.

8. The AGC would also not seek costs, and would not take any steps to expand the issues or record before the Court, or take any steps that would unduly lengthen or prolong the proceeding.

**DATED** at Ottawa, Ontario this 10<sup>th</sup> day of July, 2023.



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THE COURT OF QUEBEC**

Intervener

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**AFFIDAVIT OF GREGORY KOSTER**

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I, Gregory Koster, of the City of Gatineau, in the Province of Quebec, MAKE OATH AND AFFIRM THAT:

1. I am Director and General Counsel in the Criminal Law Policy Section of the federal Department of Justice's Policy Sector, and have been employed with the Department of Justice since 2003. My current practice focuses on criminal law and national security law.

2. The Criminal Law Policy Section advises the Minister of Justice and assists the Attorney General of Canada by providing specialized legal and policy advice on a range of criminal law matters, including in relation to criminal procedure and the law of evidence and privileges.
3. The Criminal Law Policy Section regularly provides advice and opinions in the litigation context, and works closely with counsel from other centres of expertise within the Department of Justice, including the Human Rights Law Section and the Constitutional, Administrative and International Law Section of the Public Law and Legislative Services Sector on issues impacting criminal procedure, trial fairness and the law of evidence.
4. I have reviewed the appellant's factum filed in this appeal.
5. I have personal knowledge of the matters deposed to in this affidavit, except where otherwise stated.

#### **The Interest of the Attorney General of Canada in this Appeal**

6. This appeal raises the interplay between two fundamental principles: the need for an open and transparent court system and the need to protect and apply informer privilege.
7. The Attorney General of Canada has a unique perspective on the interplay of these fundamental principles given the dual role as Minister of Justice.
8. The Attorney General of Canada is the chief law officer of the Crown, and has responsibility to regulate and conduct all litigation for or against the federal Crown or any federal department, in respect of any subject within Canada's authority or jurisdiction. This may include at times advising on the law of informer privilege. The Attorney General acts in the public interest, including upholding the Constitution, the rule of law and respect for the independence of the courts. These issues are all alive in the present appeal.
9. The Attorney General of Canada's perspective is also informed by the various federal legislative schemes which seek to protect information while at the same time provide for fair processes, and the Attorney General of Canada's role in related litigation principally in the Federal Court of Canada (see *Canada Evidence Act*, s. 38; *Charities Registration*

*(Security of Information) Act*, (2001) ss. 6, 11(2); *Criminal Code*, (2001) ss. 83.05(6), 83.06; *Prevention of Terrorist Travel Act*, (2015) ss. 4(4), 6(2); and the *Secure Air Travel Act*, (2015) ss. 16(6), 17)).

10. The Attorney General of Canada also has a unique role, and perspective, in relation to claims of national security privilege under section 38 of the *Canada Evidence Act*, and through the National Security Group undertakes the review of sensitive information; challenges the claims of privilege; prepares the redacted documents for disclosure; and prepares recommendations for the Attorney General of Canada – including the authorization of disclosure of all or parts of the information, with appropriate conditions.

### Submissions the Attorney General of Canada Would Make

11. If granted leave to intervene, the Attorney General of Canada would make the following submissions which, in my opinion, would be different from the arguments the parties are likely to advance and would be useful to the Court:
  - a) the open court principle is protected by the constitutional guarantee of freedom of expression and is essential to the proper functioning of Canadian democracy;
  - b) the open court principle is engaged by all judicial proceedings, whatever their nature;
  - c) competing interests such as informer privilege justify a restriction on the open court principle, are rare and must be determined and applied only to the extent necessary to protect the relevant informer information;
  - d) the court must apply the open court principle to as great an extent possible without risking a breach of the informer privilege
  - e) pursuant to this Court's decision in *Vancouver Sun*<sup>1</sup>, a completely *in camera* proceeding is justified on the basis that only an *in camera* proceeding will properly protect the informer privilege, and
  - f) the judge retains discretion as to whether to provide to the media notice of the *in camera* proceeding involving informer privilege but is not obliged to do so.
12. More importantly, in providing these submissions, the Attorney General of Canada is uniquely placed to provide the Court submissions on the various ways federal laws seek to both protect information while adhere to the open court principle as well as the broad impact that this decision could have on the federal Crown. Neither of the main parties will provide this perspective to the Court.
13. If granted leave to intervene, the Attorney General of Canada would not take a position on the proper disposition of this appeal.

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<sup>1</sup>*Named Person v Vancouver Sun*, 2007 SCC 43 at para 55.

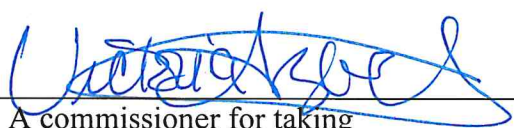
14. If granted leave to intervene, the Attorney General of Canada would not seek costs, and would not take any steps to expand the issues or record before the Court, or take any steps that would unduly lengthen or prolong the proceeding.

**Order Requested**

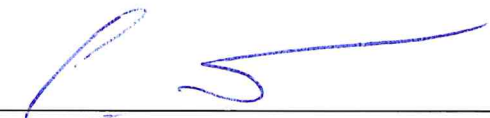
15. In order to explain the foregoing points in adequate detail, the Attorney General of Canada requests that if leave to intervene is granted, counsel on his behalf be permitted to file a factum of no more than 20 pages and to present oral argument for no more than 10 minutes.

16. I make this affidavit in support of the Attorney General of Canada’s motion for intervention in this appeal and for no other or improper purpose.

AFFIRMED BEFORE ME )  
at Ottawa, Ontario, )  
on July 7, 2023. )

 )  
A commissioner for taking )  
Affidavits within the Province )  
of Ontario )

P10334

  
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Gregory Koster