

Federal Court



Cour fédérale

**Date: 20220830**

**Docket: DES-2-21**

**Citation: 2022 FC 1377**

**Ottawa, Ontario, August 30, 2022**

**PRESENT: Mr. Justice Norris**

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**W.H.**

**Respondent**

**ORDER**

**UPON** the filing of an Amended Notice of Application on February 8, 2021 under subsection 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 given to the Attorney General of Canada (“AGC”) on November 4, 2020 under subsection 38.01(3) of the *CEA*, advising the AGC that sensitive information or potentially injurious information (as defined in the *CEA*) may be disclosed in connection with criminal proceedings pending against W.H., the Respondent;

**AND UPON** the Court thereby being called upon to determine whether, under section 38.06 of the *CEA* and the test established by the Federal Court of Appeal in *Canada (Attorney*

*General) v Ribic*, 2003 FCA 246, the AGC's objections to disclosure of the information in question should be confirmed or, instead, additional disclosure should be authorized;

**AND UPON** the AGC filing with the Court redacted versions of the documents containing the information in question reflecting the AGC's initial objections to disclosure of the sensitive or potentially injurious information;

**AND UPON** the AGC filing affidavit evidence providing the basis for its initial position regarding non-disclosure of the information in question;

**AND UPON** the Court appointing an *amicus curiae*, Mr. Solomon Friedman, to assist the Court in the discharge of its responsibilities under the *CEA* section 38 scheme – in particular, in the application of the *Ribic* test;

**AND UPON** the Respondent confirming through his counsel that he waived any requirement for a public hearing in this matter, including his right to make submissions on the application of the *Ribic* test to the redacted information;

**AND UPON** being advised on May 31, 2021, that a witness in the underlying criminal proceeding requested the opportunity to make representations in connection with the *CEA* section 38 proceeding but then subsequently being advised that this request was no longer being pursued;

**AND UPON** convening an *ex parte in camera* hearing on May 20, 2022, and receiving the submissions of the AGC and the *amicus*;

**AND UPON** considering that, since the *amicus* and the AGC had reached a joint position regarding the information in issue, the *amicus* waived the right to cross-examine the AGC's affiant;

**AND UPON** having considered the AGC's affidavit evidence and being satisfied that it was not necessary to hear from the affiant;

**AND UPON** considering the joint proposal submitted by the AGC and the *amicus* that: (1) identifies information in the redacted documents that the AGC now agrees can be disclosed through lifts of redactions; (2) suggests word substitutions or summaries for certain information that otherwise ought not to be disclosed; and (3) agrees that the remaining redactions are warranted under the *Ribic* test;

**AND UPON** noting that, subsequent to the *in camera ex parte* hearing, the AGC confirmed that redactions over certain information in Document AGC0001 (p. 96) and Document AGC0002 (p. 2) would also be lifted;

**AND UPON** considering that, notwithstanding the joint proposal of the *amicus* and AGC, the Court must determine — in accordance with the statutory provisions and the governing jurisprudence — whether the prohibition on disclosure of the remaining redacted information should be confirmed: see *Canada (Attorney General) v Meng*, 2020 FC 844 at para 71;

**AND UPON** agreeing with and adopting the joint position of the AGC and the *amicus* — more particularly, agreeing with and adopting their position concerning additional disclosure that should be authorized in the form of word substitutions or summaries (as set out in Annex A to

this Order) and with respect to the claims for non-disclosure by the AGC that the *amicus* does not contest (as set out in Annex B to this Order);

**THIS COURT ORDERS that:**

1. Pursuant to subsection 38.06(2) of the *CEA*, the additional disclosure as set out in Annex A is authorized;
2. Pursuant to subsection 38.06(3) of the *CEA*, the prohibition of disclosure of the remaining redacted information itemized in Annex B is confirmed;
3. Counsel for the AGC and the *amicus* shall consult with one another with a view to identifying any necessary redactions to the public version of Annexes A and B to this Order.

“John Norris”

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Judge

## ANNEX "A"

~~TOP SECRET~~

AGC No	AGC and <i>amicus curiae</i> 's jointly-proposed lifts and summaries
AGC0001 (Exhibits 1A to 1L)	Page 23 <b>Lift</b> "for various organizations"
	Page 95 <b>Lift</b> "who was then a target in a national security investigation" [REDACTED]
	Page 96 <b>Replace</b> "[REDACTED]" with "related to a matter which had come to the attention of CSIS"
	Page 96 <b>Replace</b> "[REDACTED]" with "a CSIS official"
	p.96 <b>Lift</b> "who was one of the targets mentioned in the report" [REDACTED]
	Page 211 <b>Replace</b> "[REDACTED]" with "To a person at CSIS"
	Page 223 <b>Lift</b> "She believes that CSIS became aware of their relationship in August"
	Page 223 <b>Replace</b> "[REDACTED]" with "She stated that she provided information to CSIS"
	Page 223 <b>Replace</b> "[REDACTED]" with "She stated that she provided information to CSIS"

ANNEX "A"

~~TOP SECRET~~

AGC No	AGC and <i>amicus curiae</i> 's jointly-proposed lifts and summaries
	<p>Page 358  <b>Lift</b> "In September 2015...them in and"</p>
	<p>Page 358  <b>Lift</b> ""they were there"</p>
	<p>Page 358  <b>Lift</b> the redaction on the "A".</p>
	<p>Page 358  <b>Replace</b> the redacted information ("██████████") <b>with</b> "He came back and shared confidential information with me regarding my son, who had come to the attention of CSIS"</p>
	<p>Page 830  <b>Replace</b> the redacted information ("██████") <b>with</b> "other organization".</p>
	<p>Page 940  <b>Replace</b> "██████████" <b>with</b> "to a person at CSIS"</p>
	<p>Page 950  <b>Lift</b> "CSIS...she came home" ██████████</p>
	<p>Page 950  <b>Lift</b> "she felt she had to let them in" ██████████</p>

AGC No	AGC and <i>amicus curiae</i> 's jointly-proposed lifts and summaries
	Page 950 <b>Replace</b> "[REDACTED]" with "She stated that she provided information to CSIS"
	Page 950 <b>Lift</b> "they had been surveillaing (sic) Tevis" [REDACTED]
	Page 950 <b>Lift</b> "the surveillance conducted on Tevis" [REDACTED]
	Page 950 <b>Lift.</b> "... to get additional info for CSIS".
	Page 950 <b>Lift</b> "does Tevis have knives, yes." [REDACTED]
	Page 960 <b>Lift</b> "She believed that...relationship in August"
	Page 960 <b>Replace</b> "[REDACTED]" with "She provided information to CSIS"
	Page 960 <b>Replace</b> "[REDACTED]" with "She provided information to CSIS"
	Page 1214 <b>Replace</b> "[REDACTED]" with "a person who had come to the attention of CSIS."
	Page 1274

## ANNEX "A"

~~TOP SECRET~~

AGC No	AGC and <i>amicus curiae</i> 's jointly-proposed lifts and summaries
	<p>Replace "[REDACTED]" with "informing OPS of a person who had come to their attention"</p> <p>Page 1274 Replace "[REDACTED]" with "a CSIS official"</p> <p>Page 1274 Lift redaction over "2016" [REDACTED]</p> <p>Page 1282 Replace with "She provided information to CSIS"</p>
AGC0002 (Exhibit 2)	<p>Page 1 Replace "[REDACTED]" with "who had come to the attention of CSIS."</p> <p>Page 2 Replace "[REDACTED]" with "related to a matter which had come to the attention of CSIS"</p> <p>Page 2 Replace "[REDACTED]" with "a CSIS official".</p> <p>Page 2 Replace "[REDACTED]" with "who has mentioned"</p>
AGC 0003 (Exhibit 8)	<p>Page 4 Lift "And CSIS...she came home" [REDACTED]</p>



ANNEX "A"

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AGC No	AGC and <i>amicus curiae</i> 's jointly-proposed lifts and summaries
	<p>Page 4 Lift "she felt she had to let them in" [REDACTED]</p> <p>Page 4 Replace "[REDACTED]" with "She provided information to CSIS"</p> <p>Page 4 Lift "they had been surveilling Tevis" [REDACTED]</p> <p>Page 4 Lift "the surveillance conducted on Tevis" [REDACTED]</p> <p>Page 4 Lift. " ... to get additional info for CSIS".</p> <p>Page 4 Lift "does Tevis have knives, yes." [REDACTED]</p>
AGC0004 (Exhibit 9A to 9F))	<p>Page 9 Lift "for various organizations"</p>
AGC0006 (Exhibit 12)	<p>Page 158 Lift [REDACTED] "2016" [REDACTED]</p> <p>Page 176 Lift "Canadian Security Intelligence Service" [REDACTED]</p>
AGC 0007 (Exhibit 13)	<p>Page 41 Lift "GONYOU-MCLEAN" [REDACTED]</p>

ANNEX "A"

~~TOP SECRET~~

AGC No	AGC and <i>amicus curiae</i> 's jointly-proposed lifts and summaries
AGC0012 (Exhibit 18)	Page 45 <b>Replace</b> "[REDACTED]" <b>with</b> "'According to Tamara, she provided information to CSIS'"
	Page 45 <b>Replace</b> "[REDACTED]" <b>with</b> "William was aware that Tamara spoke to CSIS"
	Page 45 <b>Lift</b> "CSIS was not aware of Willi and Tamara's romantic relationship and they were not aware that Willi had shared confidential documents with Tamara"
AGC 0015 (Exhibit 5)	02:24:40 – 02:24:43 <b>Lift</b> everything here <b>except</b> "[REDACTED]".
	41:50 – 42:35 <b>Lift</b> redaction over "two investigators".
	41:50 – 42:35 <b>Replace</b> "[REDACTED]" <b>with</b> "they were outside my house."
	42:38 – 42:40 <b>Lift.</b>
	43:01-43:09 <b>(1) Replace with</b> "She stated that she provided information to CSIS"
	02:12:51-02:12:54 <b>Replace with</b> "She stated that she provided information to CSIS"

AGC No	AGC and <i>amicus curiae</i> 's jointly-proposed lifts and summaries
	02:24:16 – 02:24:51 <b>Lift</b> everything here except " [REDACTED]".
	43:33-45:43 " [REDACTED] " <b>Replace</b> with, "I provided information to CSIS"
	43:16-43:30 <b>Replace with</b> "I believe that Friday there was a golf tournament and Will was invited."
	45:05-45:21 " [REDACTED] " <b>Replace</b> with "I provided information to CSIS for a time"
	02:25:47-02:25:48 <b>Lift</b>
	02:25:56-02:26:00 <b>Replace with</b> "CSIS found out about Tamara's relationship with William"
	02:26:14-02:27:16 <b>Replace with</b> "- [...] you provided information to CSIS"
	02:27:22-02:27:33 <b>Replace with</b> " You provided info to CSIS for a time"

ANNEX "A"

~~TOP SECRET~~

AGC No	AGC and <i>amicus curiae</i> 's jointly-proposed lifts and summaries
	<p>02:29:03-02:29:25  <b>Replace</b> "[REDACTED]" with                      "(...) that those two things are separate that the CSIS Letter had nothing to do with you providing information to CSIS"</p> <p><b>Lift</b> "-No they never knew that uh, uh they didn't know that I was involved with Will in the first place. and they only, They laughed a few times when we'd be out that how shy I was the day they showed up and I didn't want to let them in.                      -That's cause Will was at the back                      -yep [...]"</p> <p>02:27:50-02:28:14  <b>Replace with:</b>                      "- [ ... ] while you provided information to CSIS"                      -the Letter is dated 2016.                      -ok, and so they don't know that you had that letter[...]"</p>
AGC 0016 (Exhibit 6)	<p>11:08-11:12  <b>Replace</b> with "to a person at CSIS"</p> <p>11:16-11:20  <b>Lift.</b></p>
AGC0017 (Exhibit 7)	<b>Lift all.</b>

ANNEX "B"

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AGC No	Non-contested redactions
AGC 0001 (Exhibits 1A to 1L)	Page 108 All redactions.
	Page 147 All redactions.
	Page 259 All redactions.
	Page 264 All redactions.
	Page 358 " [REDACTED] "
	Page 844 All redactions.
	Page 950 " [REDACTED] "
	Page 950 " [REDACTED] "
	Page 950 " [REDACTED] "
	Page 950 " [REDACTED] "
AGC0002 (Exhibit 2)	Page 14 All redactions.
AGC 0003 (Exhibit 8)	Page 4 " [REDACTED] "

ANNEX "B"

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AGC No	Non-contested redactions
	<p>Page 4                      " [REDACTED] "</p> <p>Page 4                      " [REDACTED] "</p> <p>Page 4                      " [REDACTED] "</p> <p>Page 4                      " [REDACTED] "</p>
AGC 0004 (Exhibit 9A to 9F))	<p>Page 19 All redactions.</p> <p>Page 20 All redactions.</p> <p>Page 24 All redactions.</p> <p>Page 48 All redactions.</p> <p>Page 86 All redactions.</p> <p>Page 361 All redactions.</p>
AGC 0005 (Exhibit 11)	All redactions.
AGC 0006 (Exhibit 12)	All except those listed in Chart of Joint Position of AGC and Amicus Curiae.

ANNEX “B”

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AGC No	Non-contested redactions
AGC 0007 (Exhibit 13)	All except those listed in Chart of Joint Position of AGC and Amicus Curiae.
AGC 0008 (Exhibit 14)	All redactions.
AGC0009 (Exhibit 15)	All redactions.
AGC0010 (Exhibit 16)	All redactions.
AGC0011 (Exhibit 17)	All redactions.
AGC0013 (Exhibit 3)	All redactions.
AGC0014 (Exhibit 4)	All redactions.
AGC0015 (Exhibit 5)	44:00 – 44:44 All redactions.
	43:36 – 43:49 All redactions.
	43:53 All redactions.
	49:24-49:26 All redactions.
	2:21:51-2:21:52 All redactions.
	02:24:16 – 02:24:51 " [REDACTED] "

ANNEX "B"

~~TOP SECRET~~

AGC No	Non-contested redactions
	47:48-48:21 All redactions.
	48:28-48:38 All redactions.
AGC0018 (Exhibit 10)	All redactions.