

Court File No. T-1492-17

FEDERAL COURT

BETWEEN:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent
(Moving Party)**NOTICE OF MOTION**
(Motion for Confidentiality Order)

TAKE NOTICE THAT the Respondent will make a motion to the Court on September 27, 2018.

THE MOTION IS FOR:

1. A Confidentiality Order, pending the Application Judge's decision on the scope of subsection 48(1) of the *Canadian Security Intelligence Service Act* ("CSIS Act"), with the following terms:
 - a) the unclassified Certified Tribunal Record ("CTR") in this proceeding shall be treated as confidential and shall not be disclosed or used other than in compliance with the Court's Order;
 - b) the unclassified CTR shall be filed with the Registry on a confidential basis, on a schedule to be set by the Court at a future case conference;

- c) a solicitor of record in the proceeding shall provide a written undertaking in accordance with Rule 152 in order to access the unclassified CTR;
 - d) a party who files with the Registry a document that contains or references material from the unclassified CTR shall file the document on a confidential basis;
 - e) the confidentiality Order is without prejudice to any party's position on the merits of the application regarding SIRC's interpretation of subsection 48(1) of the *CSIS Act*;
 - f) oral argument at the hearing of the application regarding information contained in the unclassified CTR shall be heard *in camera*;
 - g) The question of whether public versions of the parties' written argument can be prepared and whether any portion of the oral argument for the hearing of the application can be made in public is to be determined by the Court at a future case conference; and,
 - h) the confidentiality Order shall be subject to further direction of the Court and any party may bring a motion to vary the Order.
2. Such further and other relief as is deemed just and necessary by this Honourable Court.

THE GROUNDS FOR THE MOTION ARE:

1. In its Report dated May 30, 2017, the Security Intelligence Review Committee ("SIRC") dismissed the Applicant's complaint. As part of its Report, SIRC interpreted subsection 48(1) of the *CSIS Act* as prohibiting the public disclosure of the Applicant's evidence given during the *in camera* hearing before SIRC, Applicant's counsel's submissions during the SIRC hearing, the transcript of the

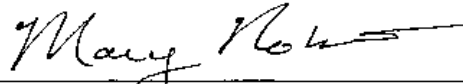
hearing, and all documents created or obtained by the Committee in the course of its investigation.

2. The test for a confidentiality Order set out in *Sierra Club* is satisfied in the circumstances of this case. A confidentiality Order with respect to any material contained in the unclassified CTR is necessary until this Court has an opportunity to determine the merits of SIRC's interpretation of subsection 48(1) of the *CSIS Act*.
3. A confidentiality Order is necessary in this case to prevent a serious risk to an important interest, namely, the proper interpretation to be given to subsection 48(1). Were any material from the unclassified CTR to be made public, the subsection 48(1) interpretation issue would be rendered moot by effectively granting the Applicant the remedy it is seeking before the hearing of the merits of the application. There is no reasonable alternative to the proposed confidentiality Order that would protect the information that SIRC deemed confidential until the Court has had an opportunity to review SIRC's interpretation on its merits.
4. The salutary effects of the proposed confidentiality Order outweigh its deleterious effects. The proposed confidentiality Order would be limited in its duration: it would apply only until such time as the Application Judge has considered and decided the statutory interpretation issue.
5. The Applicant would not be prejudiced if the proposed confidentiality Order was granted as the Court, the Applicant and the *amicus* would have access to the unclassified CTR throughout the proceeding.
6. Rules 29(1) and 151 of the *Federal Courts Rules*, SOR/98-106;
7. Subsection 48(1) of the *Canadian Security Intelligence Service Act*, RSC 1985 c C-23.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated at Ottawa, August 31st, 2018



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