



**FEDERAL COURT**

**THE ATTORNEY GENERAL OF CANADA**

Applicant

– and –

**THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

Respondent

**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 RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED** by the Applicant. The relief claimed by the Applicant appears on the following pages.

**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 prepare a notice of appearance in Form 305 prescribed by the *Federal Courts*

Rules, 1998 and serve it on the Applicant's solicitor WITHIN 10 DAYS after being served with this Notice of Application.

Copies of the *Federal Courts Rules, 1998*, 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, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

Dated: February 4, 2019  
Amended: February 4, 2019

Issued by:

**ORIGINAL SIGNED BY  
VICTORIA BELL  
~~A SIGNÉ L'ORIGINAL~~  
Federal Court**

**TO: THE BRITISH COLUMBIA CIVIL  
LIBERTIES ASSOCIATION  
c/o Paul Champ  
CHAMP & ASSOCIATES  
43 Florence Street  
Ottawa, ON K2P 0W6  
Tel: 613-237-4740  
Fax: 613-232-2680**

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the 4th

day of February A.D. 20 19

Dated this 4th day of February 2019

Victoria Bell

**VICTORIA BELL  
REGISTRY OFFICER  
AGENT DU GREFFE**

## APPLICATION

**THIS IS AN APPLICATION** 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 notices under subsection 38.01(3) of the CEA that were provided to the Attorney General of Canada (Attorney General) on June 15, 2018, July 4, 2018, September 7, 2018, November 6, 2018 and January 4, 2019. In the notices, Department of Justice counsel advised that she believed that sensitive or potentially injurious information, contained in a total of 662 documents, may be disclosed in connection with an application for judicial review filed by the British Columbia Civil Liberties Association (BCCLA) in this Court concerning a decision by the Security Intelligence Review Committee (SIRC).

### THE APPLICANT MAKES APPLICATION FOR:

- (a) an order under subsection 38.06(3) of the CEA confirming the prohibition of disclosure of the information referred to in the notices, except as previously authorized by the Attorney General under subsection 38.03(1);
- (b) such further and other relief as the Applicant may request and the Court deem just.

### THE GROUNDS FOR THE APPLICATION ARE:

- (a) On February 6, 2014, the BCCLA filed a complaint with the SIRC, alleging that the Canadian Security Intelligence Service (Service) had engaged in improper and unlawful actions by collecting information about Canadian citizens and groups engaging in peaceful and lawful expressive activities, and by sharing it with other bodies and private sector actors;
- (b) On May 30, 2017, SIRC dismissed the complaint finding that BCCLA's allegations were not supported by the evidence. A classified report was issued on May 30, 2017, and an unclassified version was provided to the BCCLA on September 1, 2017;

- (c) On October 4, 2017, the BCCLA filed an application for judicial review of SIRC's decision before this Court (Court file T-1492-17);
- (d) On January 26, 2017, the Federal Court ordered SIRC to provide the Certified Tribunal Record (CTR) to the Service and the Attorney General to conduct a review and redact any privileged information;
- (e) Given the large volume of documents contained in the CTR, counsel for the Department of Justice gave notice to the Attorney General pursuant to subsection 38.01(3) of the CEA in several tranches. The Attorney General authorized disclosure of redacted portions of the CTR on the following dates :
  - a. On June 20, 2018, the Attorney General authorized the disclosure of a redacted version of 40 documents, pursuant to subsection 38.03(1) of the CEA;
  - b. On July 9, 2018, the Attorney General authorized the disclosure of a redacted version of 79 documents, pursuant to subsection 38.03(1) of the CEA;
  - c. On September 11, 2018, the Attorney General authorized the disclosure of a redacted version of 200 documents, pursuant to subsection 38.03(1) of the CEA;
  - d. On November 8, 2018, the Attorney General authorized the disclosure of a redacted version of 197 documents, pursuant to subsection 38.03(1) of the CEA;
  - e. On January 11, 2019, the Attorney General authorized the disclosure of a redacted version of 146 documents, pursuant to subsection 38.03(1) of the CEA;
- (f) It is expected that two more notices will be received in March and May 2019;
- (g) The information in the documents at issue in this Application of which the Attorney General has not authorized disclosure is sensitive or potentially injurious information which if disclosed would be injurious to international relations, national security, or national defence;

- (h) The Attorney General has authorized the disclosure of the sensitive or potentially injurious information to the designated Judge seized of the application for judicial review (Court file T-1492-17);
- (i) Any additional documents that are subject to a notice and contain section 38 *CEA* claims will become the subject of this Application.

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


- (a) A hearing pursuant to subsections 38.04(5)(a) and (a.2) is not required;
- (b) A public hearing may be necessary;
- (c) An *ex parte* hearing will be necessary;
- (d) The BCCLA is a party whose interests are affected by the information contained in the documents subject to these proceedings and it must be named as Respondent to these proceedings;
- (e) A copy of the Notice of Application, in amended form, should be served on the BCCLA, or its counsel;
- (f) The next steps in these proceedings must be decided by the judge seized of the matter;  
and;
- (g) Further and other grounds as the Applicant may advise and this Honourable Court may permit.

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

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

Date: February 1, 2019

Amended: February 4, 2019



**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada

National Security Group

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Counsel for the Applicant

Federal Court



Cour fédérale

Date: 20190204

Docket: DES-1-19

Ottawa, Ontario, February 4, 2019

**PRESENT:** The Honourable Mr. Justice Mosley

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

and

**THE BRITISH COLUMBIA CIVIL  
LIBERTIES ASSOCIATION**

**Respondent**



**ORDER**

**UPON** the filing of a Notice of Application on February 1, 2019 under subsection 38.04(1) of the *Canada Evidence Act*, RSC 1985, c C-5 (the CEA) for an Order regarding the disclosure of information referred to in notices provided to the Attorney General of Canada (Attorney General) under section 38.01(3) of the CEA by counsel for the Department of Justice, that they believe sensitive or potentially injurious information would be disclosed in relation to the application for judicial review filed by the British Columbia Civil Liberties Association (BCCLA) before the Federal Court (Court file T-1492-17);

**UPON** taking notice of the written representations made by the Attorney General;

**THIS COURT ORDERS THAT:**

1. The Notice of Application is amended in order to identify BCCLA as Respondent;
2. The amended Notice of Application filed by the Attorney General pursuant to subsection 38.04(1) of the CEA be made public;
3. Counsel for the Applicant will serve the amended Notice of Application and this Order to Counsel for the BCCLA;
4. Counsel for the Applicant will provide a copy of this Order and the amended Notice of Application to the Honourable Mr. Justice Barnes of this Court;
5. An *ex parte* hearing will be required;
6. A public hearing may be required;
7. As the Attorney General receives notices on additional documents that contain section 38 claims, these can be added to this Application, subject to any further order of the Court or direction by the judge designated for the purpose of this application.

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the 4th

day of February A.D. 20 19

Dated this 4th day of February 2019

Victoria Bell

**VICTORIA BELL  
REGISTRY OFFICER  
AGENT DU GREFFE**

"Richard G. Mosley"

Judge



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CAS-SATJ  
OTTAWA, ON