Translated from the original French

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| Groupe TVA Inc. v. Sûreté du Québec | | | | | | 2021 QCCQ 4924 |
| COURT OF QUÉBEC | | | | | | |
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| CANADA | | | | | | |
| PROVINCE OF QUEBEC | | | | | | |
| DISTRICT OF | | | | MONTREAL | | |
| “Criminal and Penal Division” | | | | | | |
| No: | | 500-26-121035-202 | | | | |
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| DATE: | June 10, 2021 | | | | | |
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| PRESIDING: | | | THE HONOURABLE | | ALEXANDRE DALMAU, J.C.Q. | |
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| GROUPE TVA INC. | | | | | | |
| Applicant-Garnishee | | | | | | |
| v. | | | | | | |
| SÛRETÉ DU QUÉBEC | | | | | | |
| Respondent-Garnishing Authority | | | | | | |
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| **DECISION ON AN APPLICATION FOR NON-PRODUCTION AND**  **NON-DISCLOSURE OF DOCUMENTS (subsection 488.02(3) *Cr. C.*)** | | | | | | |
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1. On November 17, 2020, on an *ex parte* application by a peace officer of the Sûreté du Québec, the Court, acting as a “judge” within the meaning of section 487.011 of the *Criminal* *Code*, rendered a general production order (section 487.014 *Cr. C.*) against Groupe TVA Inc.
2. The documents submitted in support of this application and the general production order itself are the subject of an order denying access to information under section 487.3 *Cr. C.* To comply with this order and avoid identifying confidential journalistic sources, the hearings on the application presented by Groupe TVA Inc. were held *in camera*, and this decision deliberately avoids referring to certain aspects.
3. The elements sought in the production order are [translation] “the original or, failing that, a true copy of the audio recordings/video interviews featuring the complete conversations” between the team members of a news program broadcast by Groupe TVA Inc. and three persons who, for the purposes of this decision, the Court will refer to as A, B, and C.
4. Because the elements sought seem to stem from journalistic work, two special conditions were provided in the production order.
5. The first one reads as follows: [translation] “The recordings saved on computer media shall be kept in a sealed packet and delivered to a judge of the Court of Québec as soon as possible and may not be listened to or viewed before being duly authorized to do so by a J.C.Q. (488.02) *Cr. C.*”
6. The judge added the following condition: [translation] “To allow the media to make submissions, if appropriate, about the protection of the confidentiality of journalistic sources and to allow the media to supply information relevant to balancing the interests at stake if it wants to (*R.* *v*. *Vice Media Canada Inc.*, 2018 SCC 53), I order that the documents or data obtained through the execution of this order be dealt with pursuant to section 488.02 *Cr. C.*, including the obligation to give notice under subsection 488.02(2) *Cr. C.*”
7. The parties complied with these conditions, and Groupe TVA Inc. filed the content sought with the Court, which sealed it.
8. Groupe TVA Inc. also filed an [translation] “Application for an order of non-production and non-disclosure of documents (subsections 488.02(3) *Cr. C.* and 39.1(2) *Canada Evidence Act*)”.It invoked essentially the protection of the confidentiality of journalistic sources as the basis for its objection to disclose the elements sought to theSûreté du Québec.
9. What is unusual in this case is that two of the three individuals (A and C), now claimed to be journalistic sources by Groupe TVA Inc., are clearly identified, including their complete names and photographs, in the report that was broadcast. The individual B, even though his name was not mentioned and his picture was blurred in the broadcast, is easily identifiable by the information supplied about him during the program that was aired.
10. In this context, does the public interest in undertaking investigations and prosecutions of criminal offences override a journalist’s right to confidentiality in the process of gathering and disseminating information?

**CONTEXT**

1. Without delving into details, it should be noted that the production order at issue was obtained by the Sûreté du Québec in a complex investigation dealing with serious offences.
2. When he rendered the production order on November 17, 2020, the judge was satisfied by the information on oath by the peace officer that the conditions under subsections 487.014(2) and 488.01(3) *Cr. C.* were met.
3. Some of the information supplied by the peace officer at the time was excerpted from a public broadcast of the report in question.
4. During the broadcast, the individuals A and C were presented as suspects in certain offences investigated by the Sûreté du Québec, regarding which the production order against Groupe TVA Inc. was applied for. As stated, the full identity of the individuals A and C was revealed in the news bulletin.
5. The individual B is linked to A. The images broadcast show them together at the location where the journalist went to interview them. In the report, his full identity was not revealed, but some of the content broadcast easily allowed the police and the persons about whom he provided information to identify him. Among the reasons making it easy to establish his identity was the fact that his connection to the individual A was revealed, as was the connection he had with the persons he identified as accomplices.
6. The portions of the journalist’s interview with A, B, and C that were broadcast and the comments made by the narrator in the report make it possible to conclude that these persons possess and to a certain extent are revealing relevant information about the commission of crimes that were being investigated by the Sûreté du Québec.
7. More specifically regarding the individuals A, B, and C, the narrator implies that the journalist’s interview with them was much longer than the excerpts broadcast and that during their meeting they provided information about several persons that led A to commit some of the offences.
8. It was partially on the basis of these facts that it was determined when issuing the production order that “there is no other way by which the information can reasonably be obtained”.[[1]](#footnote-1) The police officers, who had access only to the broadcast excerpts, wanted to see and hear the complete recordings to obtain all of the information disclosed by these individuals.
9. On the other hand, nothing in the report that was broadcast suggests that either of the individuals concerned is a “journalistic source” whose identity must be protected within the meaning of the law and the case law.
10. In support of its application for non-production and non-disclosure, Groupe TVA Inc. requested that the Court examine the contents of the sealed package, as permitted under subsection 488.02(6) *Cr. C.*, which it has done *ex parte* at its office.
11. Groupe TVA Inc. did not submit any other evidence. The journalist(s) concerned did not testify.
12. It is therefore solely on the basis of the complete recordings of the journalist’s interviews of individuals A, B, and C that Groupe TVA Inc. claims that this material is likely to reveal the identity of one or more journalistic sources.
13. A viewing of the recording of the journalist’s interview with individual C absolutely does not allow this conclusion to be reached.
14. The journalist called the individual and simply asked him questions. The individual provided partial answers. As stated, this person was clearly identified in the report broadcast. Nothing in the evidence justifies the conclusion that individual C was “a source that confidentially transmits information to a journalist on the journalist’s undertaking not to divulge the identity of the source, whose anonymity is essential to the relationship between the journalist and the source”.[[2]](#footnote-2)
15. Groupe TVA Inc. submitted no arguments to the contrary. Accordingly, its application for “non-production and non-disclosure” of the interview with individual C is unfounded,[[3]](#footnote-3) and its disclosure to the Sûreté du Québec will therefore be ordered.
16. What is unusual is that, although the general production order concerns the recording of the [translation] “complete conversations” between the journalist and individual C, Groupe TVA Inc. disclosed only the portion that was broadcast. It is clear from merely listening to the recording that the conversation is not “complete”. Is there no recording of the complete interview? Has the recording of the complete interview been destroyed? The Court does not know. In an affidavit appended to the recordings given by Xavier Brassard-Bédard, managing editor for the Groupe TVA Inc., he assures that they respect the production order.
17. The situation of the journalist’s interview with individuals A and B is different.
18. A viewing of the whole interview shows quite a different situation from what was presented when the report was broadcast.
19. Contrary to what the report suggested, individuals A and B revealed important information when they did not know they were being filmed and recorded, and the journalist lied about this subject and assured them that he was gathering their statements in confidence.
20. The journalist went to where the individuals A and B were located. He identified himself to B as a journalist. He told him that he wanted to speak with A [translation] “confidentially”.
21. He repeated twice that he wanted to speak with A or with them (A and B) [translation] “confidentially”.
22. B asked him if he was wearing a microphone. The journalist answered “no” but that that was false, as he was covertly filming and recording audio.
23. A finally introduced himself to the journalist and held out a telephone. He asked the journalist to speak with his lawyer. The journalist repeated to the lawyer that he wanted to have a [translation] “confidential” discussion with A.
24. After the call with the lawyer, A and B were reluctant to speak to the journalist. B asked the journalist if it could be done [translation] “in *total* anonymity.” The journalist answered “yes”. After receiving this last confidentiality undertaking, A and B provided relevant information about the commission of offences that the Sûreté du Québec is investigating and that are the subject of the general production order at issue.
25. In addition, contrary to what the narrator of the report suggested, almost all of the information given during the interview about the alleged conspirators in the commission of the offences was revealed in the broadcast.
26. A and B were clearly identified as the source of this information. As stated, A’s image and name were broadcast. Although B’s image was blurred and his name was omitted, there is no doubt in the Court’s mind that B can be identified by the alleged conspirators in question because of the nature of the information provided and broadcast.
27. The very small remainder of the content revealed by A and B that was not broadcast consists of information already in the possession of the Sûreté du Québec or that it is able to obtain using other investigation methods.
28. The program in question is still available on Groupe TVA Inc.’s websites.
29. Nevertheless, Groupe TVA Inc. maintains that disclosure of the content to the Sûreté du Québec would reveal the identity of the journalistic sources, even though it did not treat these individuals as journalistic sources itself, when it allowed the program in question to be broadcast.
30. At the hearing, the Court asked counsel for Groupe TVA Inc. if his client still considers the individuals A and B to be “journalistic sources” within the meaning of the *Canada Evidence Act*, clearly opening the door to the possibility of, *inter alia*, Groupe TVA Inc. adducing evidence that individuals A and B waived confidentiality, which could explain the airing of the report and the fact that it is still available for viewing online.
31. Counsel for Groupe TVA Inc. answered that it still considered these individuals to be journalistic sources.
32. Because of this position, the Court has no choice but to find that Groupe TVA Inc. did not comply with the confidentiality undertaking made by its journalist by broadcasting and still permitting this report to be viewed, when it clearly identifies individuals A and B as the source of the extensive information revealed in the program.

**ANALYSIS**

**The Law**

1. The analytical framework to be applied to this dispute is different from what it would be if the situation involved the breach of a confidentiality undertaking to a source by a police informant’s handler who revealed the source’s identity or details allowing for their identification.
2. Unlike police informant’s privilege, the protection of the identity of journalistic sources is not a “class” privilege that must be maintained in all circumstances, saving rare exceptions such as when the innocence of an accused is at stake.
3. Neither the Supreme Court nor Parliament has raised the protection of journalistic sources up to the same level as “class” privilege. In *National Post*, Binnie J., writing for the majority of the Supreme Court, identified several reasons to explain this refusal.[[4]](#footnote-4)
4. The Court notes two of them that certainly shine a light on the analysis that must be conducted here.
5. First, Binnie J. identified one of the reasons the Supreme Court does not recognize the secrecy of journalistic sources as a “class” privilege by referring to the “immense variety and “degrees of professionalism (or the lack of it) of persons who now “gather” and “publish” news said to be based on secret sources. In contrast to the legal profession, there is no formal accreditation process to “licence” the practice of journalism, and no professional organization (such as a law society) to regulate its members and attempt to maintain professional standards”.[[5]](#footnote-5)
6. He then described another reason: “A second problem arises in determining the respective rights and immunities of the journalist and the source to whom confidentiality has been promised. In the past, secret sources have voluntarily stepped out from the shadows to reveal themselves (as in the *St. Elizabeth Home* case) with or without the journalist’s consent. Is the journalist now to be given the right to object because, for example, disclosure might reveal “journalist methods” and “journalistic networks”? I do not think such a restriction would in general serve the public interest in the search for truth. On the other hand, the source cannot be said to be the holder of the privilege if, as here, the journalist reserves the right to “out” the secret source unilaterally if, in the journalist’s personal view, the conditions on which anonymity were offered have not been met. In the case of solicitors and their clients, the privilege clearly belongs to the client. Are we to say that journalistic privilege attaches both to the journalist and the secret source? If so, what happens if they fall into disagreement? It is particularly important in the case of class privilege that the rules be clear in advance to all participants so that they may govern themselves accordingly”.[[6]](#footnote-6)
7. Accordingly, the Supreme Court, still in *National Post*, determined that the existence of a privilege attached to journalistic sources must be constituted “on a case-by-case basis” by applying the “*Wigmore* criteria” adapted to the circumstances, that is to say:
8. The communication must originate in a confidence that the identity of the informant will not be disclosed;
9. The confidence must be essential to the relationship in which the communication arises;
10. The relationship must be one which should be “sedulously fostered” in the public good;
11. The public interest served by protecting the identity of the informant from disclosure outweighs the public interest in getting at the truth.
12. The coming into force of the *Journalistic Sources Protection Act*,[[7]](#footnote-7) which added, *inter alia*, sections 488.01 and 488.02 to the *Criminal Code*, which are in play here, partially codified this test. In *Denis v. Côté*, the Chief Justice of the Supreme Court wrote that the definitions of “journalist” and “journalistic sources” specified therein “overlap the first three criteria of the *Wigmore* test”.[[8]](#footnote-8)
13. Regarding the third criterion of the test, Wagner J. specified that although “the existence of a relationship that was “sedulously fostered” ... was based on the premise that the maintenance of constant relationships between “journalist[s]” and “journalistic source[s]” is generally in the public interest”, there is nothing barring a court “from assessing the importance of this relationship in the context of the actual facts of a specific case, especially where a clear attempt has been made to divert journalism from its legitimate purposes”.[[9]](#footnote-9)
14. A few years earlier, in *National Post*, Binnie J. had written on the same subject that, “In a test of balancing the public interest in disclosure versus the public interest in confidentiality neither the journalist nor the secret source “owns” the privilege. Thus, where a secret source decides for whatever reason to cast aside the cloak of anonymity the public interest no longer “sedulously fosters” the continuation of the confidential relationship in preference to openness and the search for the truth. ... On the other hand, where a journalist decides that the confidentiality arrangement no longer binds... the balance would again tilt in favour of disclosure. The role and function of the privilege is to facilitate the freedom of expression of the media and their readers and listeners. Where the journalist concludes that the relationship in a particular case should no longer be “sedulously” fostered, the substratum of the claimed privilege is eliminated. The public interest would no longer be served in the particular case by suppression of the identity, but of course in the event of such disclosure, the source might have some sort of *private* law claim for breach of contract or breach of confidence”.[[10]](#footnote-10)
15. Last, the balance of interests specified in the fourth *Wigmore* criterion is codified and adapted in paragraphs 488.01(3)(b) and 488.02(5)(b) *Cr. C.*, which provide that a judge may not order disclosure if he is convinced that “the public interest in the investigation and prosecution of a criminal offence outweighs the journalist’s right to privacy in gathering and disseminating information”.
16. In *Vice Media*,[[11]](#footnote-11) Moldaver J., writing for the majority, enumerated the circumstances a judge may take into consideration when balancing the interests of the state and the rights of the media:
17. The likelihood and extent of any potential chilling effects;
18. The scope of the materials sought by the police and whether the order sought is narrowly tailored;
19. The likely probative value of the materials;
20. Whether there are alternative sources from which the information may reasonably be obtained;
21. The effect of prior partial publication, assessed on a case-by-case basis;
22. The vital role that the media plays in the functioning of a democratic society and the fact that the media will generally be an innocent third party.

**The Balancing Exercise in this Case**

**The first three criteria of the *Wigmore* test**

1. Whatever might be thought of the degree of professionalism shown by the Groupe TVA Inc. journalist(s) in this case, and without approving the methods they used to gather and disseminate the information, the fact remains that the elements sought by the Sûreté du Québec are the fruits of journalistic work that triggers the procedure under sections 488.01 and 488.02 *Cr. C.* and the application of the principles set out by the Supreme Court, described above.
2. Indeed, all indications are that the person who conducted the interviews with individuals A, B and C is “a person whose main occupation is to contribute directly, either regularly or occasionally, for consideration, to the collection, writing or production of information for dissemination by the media”.[[12]](#footnote-12)
3. As stated earlier, however, nothing in the evidence shows that individual C is a “journalistic source”.
4. On the other hand, individuals A and B partially meet the definition of “journalistic source” as they “confidentially transmit information to a journalist on his undertaking not to divulge the identity of the source.” The second part of this definition is at issue here. It reads: “whose anonymity is essential to the relationship between the journalist and the source”. This part of the definition refers to the second and third criteria of the *Wigmore* test (confidentiality must be essential to the relationship between the journalist and his source and such relationship must, in the public interest, be “sedulously fostered”).
5. Keeping in mind what Binnie J. wrote in *National* Post[[13]](#footnote-13) and what Wagner C.J. wrote in *Denis v*. *Côté*,[[14]](#footnote-14) the Court finds that the conduct in this case of Groupe TVA Inc., which did not fully respect the confidentiality agreement made by its journalist and deliberately chose to identify A and B as the source of some of the information broadcast, tilts the balance in favour of disclosure of the content sought, since anonymity is obviously not “essential to the relationship between the journalist and the source”. In addition, this type of relationship between a journalist and his sources, in which one of the protagonists unilaterally terminates confidentiality, is not one that should in the public interest, be “sedulously fostered”.

**The fourth criterion of the *Wigmore* test, or the public interest in the investigation and prosecution of a criminal offence versus the journalist’s right to privacy in gathering and disseminating information**

1. It is useful at this point to consider the list of circumstances that Moldaver J. in *Vice Media* proposes should be taken into consideration.[[15]](#footnote-15)

**The likelihood and extent of any potential chilling effects**

1. Moldaver J. described chilling effects as “the stifling or discouragement of the media’s legitimate activities in gathering and disseminating the news for fear of legal repercussions such as compelled disclosure”.[[16]](#footnote-16)
2. If this case has had chilling effects so far, they have been caused entirely by Groupe TVA Inc., which did not fully respect the undertakings made by its journalist. The Court can very well understand that potential journalistic sources may be hesitant to provide information, knowing that the press does not respect its confidentiality undertakings and that police authorities and the persons they denounce are therefore fully able to identify them as the source of this information.
3. That said, considered from a general perspective, the Court is of the view that ordering disclosure to the Sûreté du Québec of the complete recording of the interview with A and B, when they believed they were giving the journalist information in confidence, may engender additional chilling effects. Confidential sources could “dry up” for fear of not only being “betrayed” by the journalist who publicly identified them, but also because the journalist would in a way become an “arm of the state”.
4. The idea is not to approve or punish the conduct of Groupe TVA Inc., but rather not to hinder legitimate activities of media and journalists who, because of their level of professionalism, genuinely protect the identity of their sources.

**The scope of the materials sought and whether the order sought is narrowly tailored**

1. The scope of the materials sought is very limited. The Sûreté du Québec want only the complete recordings of the journalist’s interviews of the individuals concerned, part of which has been broadcast.
2. It does not seek the journalists’ notes or any other information they obtained in their information-gathering efforts. It does not seek to know what steps they took either before or after the interviews.
3. This circumstance favours the disclosure of the facts to the Sûreté du Québec.

**The likely probative value of the materials, whether there are alternative sources from which the information may reasonably be obtained, and the effect of prior partial publication**

1. The Court is aware of what Moldaver J. wrote in *Vice Media*[[17]](#footnote-17) when he noted that it is perilous at the stage of the police investigation to establish the probative value that information or evidence sought may have. The public interest “requires prompt and thorough investigation of potential offences” and therefore “all relevant information and evidence should be located and preserved as soon as possible”, especially in cases of serious offences, such as the case at bar.
2. At the time the production order was issued, neither the Sûreté du Québec nor the authorizing judge was aware of the full content of the journalist’s interview with A and B. At the time, only the content of the broadcast program, in which portions of the interview were shown, was known.
3. As stated above, the narrator of the program suggests that A and B spoke with the journalist at length and provided considerable information, thereby establishing reasonable grounds to believe that the complete recording would supply relevant information about the commission of the offences that were the subject of the investigation.
4. However, the Court’s viewing of the complete recording suggests instead that the narrator’s comments, which were somewhat sensationalistic, were self-congratulatory regarding the scope of the “investigation” work accomplished and the methods he had used to obtain the information.
5. In fact, almost all the information A and B provided during the interview was in the report that was broadcast. The Court reaches this conclusion by comparing the relevant information identified during its viewings of the complete recording with the information disclosed during the broadcast of the program, the transcript of which was submitted by the representatives of the Sûreté du Québec.
6. The Sûreté du Québec has in hand the report as broadcast and may accordingly use the information disclosed therein for the purposes of its investigation. It therefore does not need the complete recordings to obtain that information.
7. The balance of the information given by A and B that is not in the report remains. There is very little of this information. Its probative value is low. The Sûreté du Québec already knows this information[[18]](#footnote-18) or it may be reasonably obtained by other means.[[19]](#footnote-19)
8. Accordingly, while the previous partial publication may strongly support disclosure of the content sought by the Sûreté du Québec, since the identity of the sources was revealed when the program was aired and the sources provided information about the commission of serious offences, the situation is such that the “unpublished” portion contains facts that have almost no probative value and are of such little use to the investigation that the need to apply for an order for disclosure becomes practically non-existent.

**The vital role that the media plays in the functioning of a democratic society**

1. “The media have a vitally important role to play in a democratic society. It is the media that, by gathering and disseminating news, enable members of our society to make an informed assessment of the issues which may significantly affect their lives and well-being.... The importance of that role and the manner in which it must be fulfilled give rise to special concerns when a warrant is sought to search media premises”.[[20]](#footnote-20)
2. As noted above in this judgment, the Supreme Court also teaches us that the media’s important role is played by actors with a highly variable degree of professionalism, who are not supervised by a genuine professional order capable of sanctioning them in the event of a violation of a code of ethics. Hence the lack of absolute protection of journalistic sources.
3. In this case, we would probably not be where we are if Groupe TVA Inc. had respected the confidentiality undertaking made by its journalist and protected the identity of its sources. In its program, it could have identified A as a suspect in the commission of the offences being investigated while not revealing that he, along with B, was the source of the information that led the journalists to other accomplices.
4. In the circumstances, it would have been that much more onerous for the Sûreté du Québec to establish that the public interest in conducting investigations exceeds the journalist’s right to the confidentiality of his sources when presenting the application to obtain the general production order at issue.
5. This was not the approach that Groupe TVA Inc. used, for its own reasons.
6. However, the Court is far from convinced that this is the type of journalism and relationship between journalists and their sources that the Supreme Court and legislation aim to protect.

**CONCLUSION**

1. As explained earlier, the recording of the interview with individual C should be disclosed**.**
2. Regarding the interview with individuals A and B, the Court is in an unusual situation, where, to use a popular expression, “the damage is done”.
3. The identity of the sources to whom the journalist promised confidentiality was revealed and publicly known, not because of an application made by the Sûreté du Québec, but entirely because of the choices made by Groupe TVA Inc.
4. On the other hand, although the very existence of the privilege attached to journalistic sources may be contested here, the situation before the Court is one where the Sûreté du Québec already has access to almost all of the information given by these persons. The information that was not broadcast is of little probative value, is already known to the police, or may be obtained by them otherwise.
5. The issuing of general production orders and search warrants against the media must remain exceptional, so as to not hinder their essential work of gathering and disseminating information in a democratic society.
6. For these reasons, on the matter of the complete recording of the interview with individuals A and B, the Court is not convinced that the public interest in investigations being conducted and in prosecutions being undertaken for criminal offences should take precedence over the right of a journalist to confidentiality in the process of gathering and disseminating information.

**FOR THESE REASONS THE COURT:**

**ORDERS** that the USB stick containing the recording of the complete conversation between the journalist and individuals A and B, along with the appended affidavit, be delivered to Groupe TVA Inc.;

**ORDERS** Groupe TVA Inc. to deliver to managing sergeant Geneviève Guérin of the Sûreté du Québec, within 30 days, the original or, failing that, a true copy of the audio recordings/video interviews featuring the complete conversations between the journalist(s) and individual C, as specified in the general production order bearing number 500-26-121035-202;

**ORDERS** Groupe TVA Inc. to deliver to managing sergeant Geneviève Guérin of the Sûreté du Québec, within 30 days, an affidavit pursuant to the *Canada Evidence Act* confirming that the audio recordings/video interviews featuring the complete conversations between the journalist(s) and individual C that are delivered to her are in compliance with the terms and conditions of the general production order bearing number 500-26-121035-202.

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| Mtre René Verret  Counsel for the applicant | | |
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| Mtre Amanda Santache  Counsel for the respondent | | |
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| Hearing dates: | January 14, April 19, and May 3, 2021 | |

1. Criteria for the issuance of a warrant or an order under paragraph 488.01(3)(a) *Cr. C*. when the application concerns “a journalist’s communications.” [↑](#footnote-ref-1)
2. Definition of “journalistic source” in subsection 39.1(1) *Canada Evidence Act*. Subsection 488.01(1) *Cr. C*., which governs this proceeding, refers to this definition. [↑](#footnote-ref-2)
3. Subsection 488.02(3) *Cr. C*. [↑](#footnote-ref-3)
4. *R. v. National Post*, 2010 SCC 16 at paras. 43–49. [↑](#footnote-ref-4)
5. *Ibid.* at para. 43. [↑](#footnote-ref-5)
6. *Ibid.* at para. 44. [↑](#footnote-ref-6)
7. S.C. 2017, c. 22. [↑](#footnote-ref-7)
8. 2019 SCC 44 at para. 37. [↑](#footnote-ref-8)
9. *Ibid.* [↑](#footnote-ref-9)
10. *Supra* note 3 at para. 63. [↑](#footnote-ref-10)
11. *R. v. Vice Media Canada Inc.*, 2018 SCC 53 at para. 82. [↑](#footnote-ref-11)
12. Definition of “journalist” in subsection 39.1(1) *Canada Evidence Act*. Subsection 488.01(1) *Cr. C*., which governs this procedure, refers to this definition. [↑](#footnote-ref-12)
13. *Supra* note 4 at paras. 43–49 and 63. [↑](#footnote-ref-13)
14. *Supra* note 8. [↑](#footnote-ref-14)
15. *Supra* note 11. [↑](#footnote-ref-15)
16. *Ibid.* at para. 26. [↑](#footnote-ref-16)
17. *Ibid.* at paras. 47, 56. [↑](#footnote-ref-17)
18. The Court relies on the grounds submitted in support of the application for the general production order at issue to reach this conclusion. [↑](#footnote-ref-18)
19. Paragraph 488.01(3)(a) *Cr. C*. provides that a judge must be convinced “there is no other way by which the information can reasonably be obtained” to order production. [↑](#footnote-ref-19)
20. *Canadian Broadcasting Corp. v*. *New-Brunswick (Attorney General)*, [1991] 3 S.C.R. 459 at 475. [↑](#footnote-ref-20)