Translated from the original French

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Corps de police désigné c. Personnes désignées | | | | | | 2024 QCCQ 2869 |
| COURT OF QUÉBEC | | | | | | |
|  | | | | | | |
| CANADA | | | | | | |
| PROVINCE OF QUEBEC | | | | | | |
| DISTRICT OF | | | MONTREAL | | | |
| “Criminal and Penal Division” | | | | | | |
| No.: | 500-26-13xxxx-xxx; 505-26-02xxxx-xxx; 505-26-02xxxx-xxx;  505-26-02xxxx-xxx; 500-26-13xxxx-xxx; 500-26-13xxxx-xxx;  500-26-14xxxx-xxx; 500-26-14xxxx-xxx; 500-26-14xxxx-xxx;  500-26-14xxxx-xxx; 500-26-14xxxx-xxx; 500-26-14xxxx-xxx;  500-26-14xxxx-xxx; 500-26-14xxxx-xxx | | | | | |
|  | | | | | | |
| DATE: | | June 20, 2024 | | | | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | | | |
|  | | | | | | |
| PRESIDING: | | | | THE HONOURABLE | **ANNE-MARIE MANOUKIAN, J.C.Q.** | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | | | |
|  | | | | | | |
| NAMed police force | | | | | | |
| Applicant–seizing party | | | | | | |
| v. | | | | | | |
| NAMed persons | | | | | | |
| Respondents–Persons from whom the property was seized  -and-  **CBC / SOCIÉTÉ RADIO-CANADA**  -and-  **LA PRESSE INC.**  -and-  **GROUPE TVA INC.**  -and-  **MÉDIAQMI INC.**  Intervenors | | | | | | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | | | |
|  | | | | | | |
| **DECISION ON AN APPLICATION FOR AN *IN CAMERA***  ***EX PARTE* HEARING IN CHAMBERS** | | | | | | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | | | |
|  | | | | | | |

# I. OVERVIEW

1. The seizing police force, represented by the Director of Criminal and Penal Prosecutions (DCPP), asks the Court for leave to proceed with an *in camera* *ex parte* hearing in chambers of a motion for further detention of property seized.[[1]](#footnote-1)
2. The DCPP asks to be exempted from serving the notice under sections 490(2) and 490(3) *C.C.* because the persons from whom the property was seized are unaware of the seizures, the investigation is still ongoing, and it would prejudice the investigation if they were to be informed. For the same reasons, the DCPP asks that the hearing be conducted *in camera* in chambers, using a separate mechanical recording from the Court system which will be filed under seal.
3. In support of its requests, the DCPP contends that the ongoing investigative privilege must take precedence at this preliminary stage of the proceedings.
4. The intervenors ask the Court to give the public as much access as possible and to determine the terms that will maximize openness.

# II. ISSUES

1. **Can and should the hearing on the motion for further detention of property proceed *ex parte and without notice to the persons from whom the property was seized*?**
2. **Should the hearing on the motion for further detention of property proceed *in chambers* *and* *in camera*?**
3. **Should the Court’s file numbers remain redacted?**

# II. PROCEDURAL CONTEXT

1. To ensure that these reasons are clearly understood, a brief description of the procedural context is required.
2. On March 11, 2024, the Director of Criminal and Penal Prosecutions (DCPP) signed a motion for further detention of property under sections 490(2), (3), and (9.1) *C.C.* On that date, a police officer signed an affidavit in support of this motion.
3. This motion, which seeks to be filed under seal, asks that the hearing be conducted *ex parte* and for an exemption from notifying the persons from whom the property was seized of the hearing because they are unaware that their property has been seized due to the ongoing investigation.
4. The motion also seeks leave to conduct an *in camera* hearing in chambers.
5. On June 13, 2024, the DCPP sent the Court an additional affidavit and a draft judicial summary. The DCPP asked that the affidavit also be filed under seal.
6. In an effort to give the public access to the courtroom, during a public hearing held on March 14, 2024,[[2]](#footnote-2) the Court asked the Crown to make submissions on its failure to notify the press, while emphasizing that an *in camera* could be ordered if the Crown would require to disclose privileged information during its submissions. Only the Crown was present at that hearing.
7. Following the hearing, the Court ordered the Crown to send a notice to the press with the file numbers partially redacted given the real concerns about access by a member of the public in possession of the court file numbers to information that could identify the ongoing investigation. The hearing on the motion was postponed to April 3, 2024, so the notices could be sent.
8. On April 3, 2024, the intervenors attended the hearing and asked for a copy of the motion and supporting affidavit. The Crown objected to this request. The Court ordered that a redacted copy and a judicial summary[[3]](#footnote-3) of the redacted passages be prepared and submitted to it. The files were postponed to April 23, 2024.
9. On April 12, 2024, following email exchanges between the Court and the Crown concerning the review of the redacted documents and written notes in the margins of the redacted excerpts that served as a judicial summary, the intervenors were provided with a redacted version.
10. On April 23, 2024, the intervenors asked the Court to provide an unredacted version of the documents to their counsel and to a lawyer from each of their legal departments (“counsel’s eyes only”). On April 29, 2024, the Court rendered a written decision denying that request.
11. On June 7, 2024, a hearing was held to determine the terms of the hearing “on the merits” on the motion for further detention of property, that is, whether the hearing would be *ex parte* and/or in chambers and *in camera*.
12. At the hearing, counsel for the intervenors asked the Court whether the court numbers needed to remain sealed. In this regard, the Court questioned the parties on whether the investigative privilege could be sufficiently protected by (1) publication bans regarding the file numbers and the year in which the judicial authorizations were granted; and (2) an order to Deputy Sheriff Andrée-Anne Petit, her team, and the court office employees prohibiting them from giving anyone access to the Court files or Form SJ-960.[[4]](#footnote-4)

# III. ANALYSIS

1. A brief review of the notion of investigative privilege is required.

## Investigative privilege (ongoing investigation)

1. It is well-settled in our law that there are several situations when it is justified not to disclose information likely to jeopardize the nature and scope of an ongoing investigation.[[5]](#footnote-5)
2. The Court reproduces paragraphs 27 to 32 of its judgment dated April 29, 2024, (counsel’s eyes only) concerning investive privilege for an ongoing investigation:

[translation]

[27] This privilege protects the nature and scope of ongoing investigations. It is part of the proper administration of justice.[14] Its purpose is to protect the integrity of the investigation and prevent interference with the collection of evidence and the State’s ability to complete an investigation and repress crime to protect society.

[28] Contrary to informer privilege, it is not a class privilege but rather a privilege that arises on a case-by-case basis.[15] Consequently, the Court has discretion on whether to apply the privilege.

[29] In *Toronto Star*,[16] the Supreme Court established that after a search warrant has been executed, the burden falls on the Crown to prove that disclosure would subvert the ends of justice.

[30] Of course, depending on the stage of the investigation, its nature, and the type of judicial authorizations granted to date, the group of people aware of the investigation might be more limited.

[31] In this case, however, the persons from whom the property was seized are unaware of the judicial authorizations, even though they have been executed. Primarily to keep the ongoing investigation’s existence secret, the Crown has redacted its documents and asked for an *in camera* hearing in chambers.

[32] In the words of the Supreme Court in the first paragraph of *Vancouver Sun*:

In Canada, as in any truly democratic society, the courts are expected to be open, and information is expected to be available to the public.However, from time to time, the safety or privacy interests of individuals or groups and the preservation of the legal system as a whole require that some information be kept secret.[17]

[Emphasis added.]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[14] *R. c. Construction de Castel inc.,* 2014 QCCA 1125 at para. 51.

[15] *R*. *v*. *Gruenke*, [1991) 3 SCR 263 at 286.

[16] *Toronto Star Newspapers Ltd*. *v*. *Ontario*, 2005 SCC 41 at para. 21.

[17] *Named Person v. Vancouver Sun*, 2007 SCC 43 at para. 1.

* **QUESTION 1:** **Can and should the hearing on the motion for further detention of property proceed *ex parte and without notice to the* *persons from whom the property was seized*?**

1. Sections 490(2) and (3) *C.C.* state that this type of hearing proceeds “after three clear days notice thereof to the person from whom the thing detained was seized”.
2. The prosecution argues that the Court has the power to so proceed [translation] “to exercise the powers reasonably related to those already conferred by law”.[[6]](#footnote-6) The Court shares this view, as will be explained below.
3. The intervenors did not specifically address this issue other than to tell the Court that there is nothing unusual about the press attending a hearing when the persons from whom the property was seized will not be present because they have no greater right than the general public.[[7]](#footnote-7) The Court agrees with this position.
4. The Court adopts and repeats the DCPP’s argument[[8]](#footnote-8) on the opportunity to remedy the gap in the legislative framework regarding the further detention period of property seized, which does not provide for a party to be exempted from serving, or at least deferring, the notice.
5. In support of its position, the DCPP cited two judgments: *Re: Section 490 Application - Without Notice*[[9]](#footnote-9) and *Further Detention of Things Seized (Re)*.[[10]](#footnote-10) In general, the Court agrees with the legal reasoning in these judgments.

## Is there a gap in the procedure prescribed in section 490?

1. Although the *Criminal Code* provides various scenarios within its regime for the detention and return of property seized by the State, it is silent on the possibility of exempting or deferring the service of the notice to the lawful possessor at the time of the application for further detention.
2. This gap creates an undesirable incongruous result.
3. For example, during a covert search, under section 487.01(5.2) *C.C.,* Parliament allows the peace officer to be exempted from giving notice of the covert search to the person concerned by the search[[11]](#footnote-11) for a maximum period of three years. Section 490(2) *C.C.*, however, states that nothing shall be detained for a period of more than three months if proceedings are not instituted.
4. Thus, during an ongoing investigation, the police can covertly seize property under a general search warrant without informing the possessor for a period of up to three years. These same police officers, however, would be required to inform the possessor of the seized property of their request for detention beyond the three-month period, which would in practice, prevent the State from benefiting from the deferred notification provided for in section 487.01(5.2) *C.C*.
5. The Court finds that Parliament simply failed to consider this situation.

## Should section 490 *C.C.* be restrictively interpreted?

1. The special nature of the *Criminal Code* requires an interpretative approach which is sensitive to liberty interests.[[12]](#footnote-12) Therefore, an ambiguous penal provision must be interpreted in the manner most favourable to accused persons, while providing clarity and certainty in the criminal law.[[13]](#footnote-13)
2. That being so, in *Canadianoxy Chemicals*, the Supreme Court rejected this restrictive reading principle with respect to section 487 *C.C*. because it was not the type of provision to which the rule should apply.[[14]](#footnote-14)
3. In that judgment, the Supreme Court stated that “the public interest requires prompt and thorough investigation of potential offences”.[[15]](#footnote-15) It added that “the authorities ... should be able to locate, examine and preserve all the evidence relevant to events which may have given rise to criminal liability”.[[16]](#footnote-16) [Emphasis added.]
4. The same reasoning applies to section 490 *C.C*.

## The doctrine of jurisdiction by necessary implication

1. In *Cunningham*,[[17]](#footnote-17) the Supreme Court recalled that statutory courts possess not only the powers explicitly granted by their enabling statute, but also all powers necessary to achieve the objectives intended by the statutory framework.[[18]](#footnote-18)
2. These so-called “implicit” powers exist only when they are practically necessary for the court or tribunal to fulfill its mandate.[[19]](#footnote-19)
3. It should be noted that the doctrine of jurisdiction by necessary implication does not apply when the law already provides for every possibility. There will then be no need to create additional procedures. In that case, the exhaustive nature of the procedures set out in the statute precludes any necessity for additional implied powers because the Court can effectively and efficiently carry out the statute’s purpose.[[20]](#footnote-20)
4. As previously stated, there is a gap with respect to the exemption from the requirement to notify the seized possessor when applying for further detention of property.

## The power of the Court of Québec to establish its own rules

1. Section 482(2)(d) *C.C.* states that the Court of Québec may make rules of court not inconsistent with the *Criminal Code* and section 482(3)(a) states that rules may be made to regulate “any other matter considered expedient to attain the ends of justice and carry into effect the provisions of the law”.
2. In this regard, section 3 of the *Regulation of the Court of Québec*[[21]](#footnote-21) states that a presiding judge may, in light of the particular circumstances of the case of which the judge is seized, modify a rule or exempt a party or person from the application of a rule.

## Conclusion on the application to proceed *ex parte* and for an exemption from notification

1. Considering the foregoing, the Court finds that it has the power to exempt the applicant–seizing party from serving notice of the hearing on the respondents–persons from whom the property was seized.
2. In light of the information in the affidavit of March 11, 2024, and of June 12, 2024, including the redacted portions, the Court finds it appropriate in the circumstances not to send a notice of hearing to the respondents–persons from whom the property was seized and to authorize an *ex parte* hearing.
3. The Court has balanced the interests of justice and those of the persons from whom the property was seized and finds that the ongoing investigation must be protected and that the respondents–persons from whom the property was seized must not be informed of the investigation given the risk of actual prejudice to the investigation described by the affiant.

* **QUESTION 2: Should the hearing on the motion for further detention of property proceed *in chambers* *and* *in camera*?**

1. The DCPP argues that the entire hearing must proceed in chambers and *in camera* with a separate mechanical recording because there is a serious risk at the evidence stage of alerting the suspects and jeopardizing the ongoing investigation.
2. The DCPP is concerned about inadvertently disclosing information and the limit he will have to impose on himself or on the affiant, who may be called to testify, regarding the explanations to provide to the Court in support of the application to further the detention period of the property.
3. The intervenors ask the Court to ensure that the open court principle is minimally impaired. Counsel argues that an *in camera* hearing is incompatible with the constitutional right to freedom of expression, guaranteed by section 2(b) of the *Charter*.

## “The open Court principle Pillar of Our Free and Democratic Society”[[22]](#footnote-22)

1. The Supreme Court “has repeatedly affirmed that the open court principle, which is protected by the constitutionally entrenched right of freedom of expression, is a pillar of our free and democratic society”.[[23]](#footnote-23)
2. This is what the Supreme Court stated in this regard in early June:

When justice is rendered in secret, without leaving any trace, respect for the rule of law is jeopardized and public confidence in the administration of justice may be shaken. The open court principle allows a society to guard against such risks, which erode the very foundations of democracy. By ensuring the accountability of the judiciary, court openness supports an administration of justice that is impartial, fair and in accordance with the rule of law. It also helps the public gain a better understanding of the justice system and its participants, which can only enhance public confidence in their integrity. Court openness is therefore of paramount importance to our democracy — an importance that is also reflected in the constitutional protection afforded to it in Canada.[[24]](#footnote-24)

1. Therefore, “confidentiality orders limiting it can be made by the courts only in rare circumstances”.[[25]](#footnote-25)

## Dagenais/Mentuck/Sherman test

1. As stated above, ongoing investigation privilege is a privilege based on a case-by-case approach, with the Court maintaining discretion over its application.
2. Before issuing any discretionary confidentiality order,[[26]](#footnote-26) the Court must apply the *Dagenais/Mentuck*[[27]](#footnote-27) test as slightly recast in *Sherman Estate*.[[28]](#footnote-28) The Court must ask whether: (1) the disclosure of information poses a serious risk to an important public interest; (2) the order is necessary to prevent this serious risk; and, (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.
3. The applicant bears the burden of establishing a *prima facie* risk.[[29]](#footnote-29)
4. The risk in question must be “real and substantial”,[[30]](#footnote-30) without requiring certainty that it will materialize.[[31]](#footnote-31) Broad assertions are insufficient.[[32]](#footnote-32) A simple advantage for the state does not suffice to meet this burden.[[33]](#footnote-33)
5. Moreover, the risk must be assessed according to the circumstances of the case and the context.[[34]](#footnote-34) Indeed, the test to be applied by the Court is flexible and contextual.[[35]](#footnote-35)
6. This contextual approach includes consideration of the duration of the order sought. As Fish J. wrote in *Toronto Star*:[[36]](#footnote-36)

Where a sealing order is at that stage solicited for a brief period only, this factor alone may well invite caution in opting for full and immediate disclosure.[[37]](#footnote-37)

1. The Court of Appeal confirmed that police investigative theories may be protected and their premature disclosure prevented while the investigation is ongoing, that theories evolve and that the effectiveness of the investigative work requires this.[[38]](#footnote-38)
2. The Supreme Court asks courts to be creative[[39]](#footnote-39) and to minimize, as much as possible, any impairment to the open court principle.[[40]](#footnote-40)
3. After reading the redacted excerpts from the affidavit, the Court finds that the disclosure of this information indeed poses a serious risk to the ongoing investigation privilege and that to prevent the serious risk of prejudice to the ongoing investigation, these facts should not be made public.
4. Given the stage of the investigation and the next steps, the Court finds that the benefits of keeping these details confidential outweigh its negative effects.
5. However, the Court disagrees with the DCPP on the type of hearing to be held. The Court finds that the confidentiality of the investigation may be protected without proceeding in chambers or completely *in camera*.
6. Even before the Supreme Court’s recent decision in *Canadian Broadcasting Corp. v. Named Person*, courts tried, as they should,[[41]](#footnote-41) to proceed in public as much as possible and limited the *in camera* portions to what was strictly necessary.
7. As a result, after balancing the interests of justice and those of access to information,[[42]](#footnote-42) the Court is of the view that there is no need in this case to proceed entirely *in camera* and that the risk may be prevented considering that:
   1. All the information that could reveal the investigation is redacted, including the investigating body, the nature of the offences being investigated, the location of the offences, the period covered by the investigation and, obviously, the suspects;
   2. The filing of sealed documents (motion and affidavits) allows the Court to review the evidence without a witness being examined;
   3. The DCPP is fully aware of the ongoing investigation and can act accordingly to avoid mentioning privileged information; and
   4. A partial *in camera* hearing is still possible if needed.
8. Thus, the other measures implemented (written arguments and documentary evidence, order to seal unredacted documents, possibility of partial *in camera*) mitigate the risk of prejudice to the investigation. In fact, because there is no connection between the facts of the case and the investigation, the hearing may be held, at least in large part, in public without the risk of disclosing information that might reveal the ongoing investigation. The applicant has failed to convince the Court that an entirely *in camera* hearing or a hearing in chambers is required.
9. Some might think that a hearing entirely *in camera* is not very different from a public hearing where confidential facts are not openly discussed. The Court disagrees. In a public hearing, the public can directly see how the proceeding unfolds, which maintains public confidence and provides aclear record of the proceedings.

## Conclusion on the application to proceed in chambers and *in camera*

1. The Court therefore finds that, in these circumstances, the hearing can proceed in public without disclosing the redacted information.
2. By proceeding with a sealed copy of the documents and a judicial summary, the hearing may be public. The DCPP may make submissions by referring to the redacted paragraphs of its motion or the redacted affidavits.
3. As needed, should the applicant wish to add to the evidence or bolster its written submissions, it may ask the Court to proceed *in camera* for a limited portion of the hearing. If the affiant must be heard, the affiant may also testify from behind a screen to avoid being identified as would an undercover officer.

* **QUESTION 3: Should the court’s file numbers remain redacted?**

1. The intervenors ask the Court to reconsider whether the file numbers should remain redacted.
2. The parties agree that the Court has jurisdiction to review its decision in this regard. The Court agrees.[[43]](#footnote-43)
3. At the hearing, the DCPP asked for additional time to make the necessary inquiries.
4. On June 13, 2024, the DCPP emailed its position to the Court. Counsel was of the view that the file numbers should remain redacted because the sequential file number may help identify the date on which the judicial authorizations were granted by obtaining from the court office the file numbers before and after the file numbers at issue.
5. While knowing the date a single specific judicial authorization was issued likely poses no risk to the investigation, the same is not true for the authorization dates as a whole. By grouping or comparing these different dates, an informed person might understand the nature of the investigation (mosaic/triangulation effect) and thus jeopardize it by identifying the subject of the investigation.
6. The orders banning publication and access contemplated by the Court (see paragraph 16 above) cannot mitigate this risk.
7. Therefore, the Court file numbers will remain redacted.

# IV. CONCLUSION

1. The hearing will be conducted *ex parte* but in public as much as possible.
2. The file numbers will remain redacted.

**FOR THESE REASONS, THE COURT:**

1. **GRANTS** the application to proceed *ex parte* without serving the motion on the respondents–persons from whom the property was seized;
2. **ORDERS** themotion signed on March 11, 2024, and the affidavits of March 11, 2024, and June 12, 2024, to be sealed;
3. **AUTHORIZES** the public to access the judicial summaries of the documents filed publicly;
4. **DISMISSES** the application to proceed with a hearing in chambers;
5. **DISMISSES** the application to proceed with a hearing entirely *in camera*;
6. **AUTHORIZES** theapplicant–seizing party to request that a portion of the hearing be *in camera*, as needed**;**
7. **MAINTAINS** the redaction of the Court’s file numbers.

|  |  |  |
| --- | --- | --- |
|  | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **ANNE-MARIE MANOUKIAN, J.C.Q**. |
| **Mtre Rami EL-Maoula** | | |
| Counsel for the applicants–seizing party | | |
|  | | |
| **Mtre Marc-André Nadon** | | |
| Counsel for the intervenors | | |
|  | | |
| Dates of hearing: | March 14 and June 7, 2024 | |

1. Sections 490(2), (3) and (9.1) *Criminal Code* (*C.C*.). [↑](#footnote-ref-1)
2. Note that the Court ordered certain portions of the hearing sealed, see verbal order rendered on April 29, 2024, reiterated on June 7, 2024. [↑](#footnote-ref-2)
3. Within the meaning of *R*. *v*. *Gardiner*, 2008 ONCA 397 and adopted in *R*. *c.* *Construction de Castel inc*., 2014 QCCA 1125 at paras. 63 and 64. [↑](#footnote-ref-3)
4. A form used by the Court for administrative purposes, completed by affiants at the time of the application for judicial authorization, which contains information that could reveal the nature of the ongoing investigation and/or dates relevant to the investigation. [↑](#footnote-ref-4)
5. *R*. *c*. *Landry*, 2022 QCCA 1186 at para. 165. [↑](#footnote-ref-5)
6. Para. 8 of the motion. [↑](#footnote-ref-6)
7. *A.G. (Nova Scotia)* *v*. *MacIntyre*, [1982] 1 SCR 175 at 189. [↑](#footnote-ref-7)
8. Paras. 6 to 18 of the motion. [↑](#footnote-ref-8)
9. 2022 ABPC 100. [↑](#footnote-ref-9)
10. 2018 BCSC 2506. [↑](#footnote-ref-10)
11. Another example of deferred notification in the *Criminal Code* is found ins. 196(3) regarding the interception of private communications. [↑](#footnote-ref-11)
12. *R*. *v*. *McIntosh*, [1995] 1 SCR 686 at para. 39. [↑](#footnote-ref-12)
13. *Ibid*. [↑](#footnote-ref-13)
14. *Canadianoxy Chemicals Ltd. v*. *Canada (A.G.)*, [1999] 1 SCR 743 at para. 18; See also, *R*. *v*. *Tenny*, 2015 ONSC 1471 at paras. 19–22, aff’d 2015 ONCA 841. [↑](#footnote-ref-14)
15. *Ibid*. at para. 19. [↑](#footnote-ref-15)
16. *Ibid*. at para. 22. [↑](#footnote-ref-16)
17. *R*. *v*. *Cunnigham*, 2020 SCC 10. [↑](#footnote-ref-17)
18. *Ibid*. at para. 19, citing *ATCO Gas and Pipelines Ltd*. *v*. *Alberta (Energy and Utilities Board)*, 2006 SCC 4 at para. 51. [↑](#footnote-ref-18)
19. *R*. *v*. *974649 Ontario Inc*., 2001 SCC 81 at para. 71. [↑](#footnote-ref-19)
20. *Re: Section 490 Application - Without Notice*, 2022 ABPC 100 at para. 17. [↑](#footnote-ref-20)
21. C-25.01, r. 9. [↑](#footnote-ref-21)
22. *Canadian Broadcasting Corp. v. Named Person*, 2024 SCC 21 at para. 27. [↑](#footnote-ref-22)
23. *Ibid*. [↑](#footnote-ref-23)
24. *Ibid*. at para. 1. [↑](#footnote-ref-24)
25. *Ibid*. at para. 32. [↑](#footnote-ref-25)
26. *Toronto Star Newspapers Ltd*. *v*. *Ontario*, 2005 SCC 41 at para. 7. [↑](#footnote-ref-26)
27. *Dagenais* *v*. *Canadian Broadcasting Corp.*, [1994] 3 SCR 835; *R*. *v*. *Mentuck*, [2001] 3 SCR 442. [↑](#footnote-ref-27)
28. *Sherman Estate* *v*. *Donovan*, 2021 SCC 25 at para. 38. [↑](#footnote-ref-28)
29. *Supra* note 26 at para. 32; *R. c. Construction de Castel inc.,* 2014 QCCA 1125 at para. 49. [↑](#footnote-ref-29)
30. *Supra* note 26 at para. 27. [↑](#footnote-ref-30)
31. *Ibid*. at para. 42. [↑](#footnote-ref-31)
32. *Ibid*. at paras. 37–39, 41. [↑](#footnote-ref-32)
33. *Ibid*. at para. 39. [↑](#footnote-ref-33)
34. *R. c. Construction de Castel inc.,* 2014 QCCA 1125 at paras. 12, 47. [↑](#footnote-ref-34)
35. *Ibid.* at para. 47, citing Fish J. in *Toronto Star Newspapers Ltd. v*. *Ontario,* 2005 SCC 41 at paras. 8, 31*.* [↑](#footnote-ref-35)
36. *Toronto Star Newspapers v. Ontario,* 2005 SCC 41*.* [↑](#footnote-ref-36)
37. *Toronto Star Newspapers v. Ontario,* 2005 SCC 41 at para. 8*.* [↑](#footnote-ref-37)
38. *R. c. Construction de Castel inc.,* 2014 QCCA 1125 at para. 52. [↑](#footnote-ref-38)
39. *Canadian Broadcasting Corp. v. Named Person*, 2024 SCC 21 at para. 90. [↑](#footnote-ref-39)
40. *Named Person v. Vancouver Sun*, 2007 SCC 43 at paras. 54–56; *Canadian Broadcasting Corp. v. Named Person*, 2024 SCC 21 at paras. 72, 90; *R. c*. *Construction de Castel inc.,* 2014 QCCA 1125 at para. 52, para. 36. [↑](#footnote-ref-40)
41. *Named Person v. Vancouver Sun*, 2007 SCC 43 at para. 55. [↑](#footnote-ref-41)
42. *Toronto Star Newspapers v. Ontario,* 2005 SCC 41*; R. c. Construction de Castel inc.,* 2014 QCCA 1125 at para. 8*.* [↑](#footnote-ref-42)
43. *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 at paras. 1, 6, 36–42. [↑](#footnote-ref-43)