



## Ruling on a Request to Receive *In Camera* Evidence

1. As noted in my Third Notice to the Public, the Attorney General of Canada has requested that I receive certain evidence in the absence of the Parties and the public (“*in camera*”) on the grounds that certain of the information that the Commission has indicated an interest in receiving from Government witnesses consists of classified information. In a further notice to the Parties, I noted that the evidence in question was particular to clauses (a)(i)(A) and (a)(i)(B) of my Terms of Reference, which are very specific in scope, and that the evidence would come from senior public officials, elected officials and staff from the Prime Minister’s office.
2. Although I am very mindful of the requirement in the Commission’s Terms of Reference that I conduct this inquiry in a manner that maximizes the degree of public transparency, I must also be mindful that the Terms of Reference, and the law, impose on me the obligation to protect the confidentiality of classified information.
3. In fact, the Commission’s Terms of Reference direct that on the request of the Attorney General of Canada, I must receive information in camera and in the absence of any party and their counsel if, in my opinion, its disclosure could be injurious to the critical interests of Canada or its allies, national defence or national security.<sup>1</sup>
4. In the French version, this provision provides that at the request of the Attorney General of Canada “[*je reçois*], à huis clos et en l’absence des parties et de leurs

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<sup>1</sup> Terms of Reference, clause (a)(iii)(C)(I)

*avocats, de l'information qui, si elle était divulguée, pourrait selon [moi] porter préjudice aux intérêts cruciaux du Canada ou de ses alliés, à la défense nationale ou à la sécurité nationale."*

5. The word "must" (used in the English version) is clear. It is mandatory. However, equally clear is the requirement that, to be obliged to receive information *in camera*, I must be of the opinion that the disclosure of that information could be injurious to the critical interests of Canada and its allies, national defence or national security.

6. I have already pressed and intend to continue to press the Government to disclose as much information as possible, but I must recognize that there is some information that cannot be divulged publicly.

7. In my Third Notice to the Public, I described as follow the procedures that I would apply to the Attorney General of Canada's request for an *in camera* hearing in order to meet these important obligations:

- a. From the outset of the hearing or throughout its course, the Government will have the burden of convincing the Commissioner, through evidence and argument, that disclosure of the evidence to the Parties or the public could be injurious to the critical interests of Canada or its allies, national defence, or national security. This evidence and these arguments will then be tested by the Commission's experienced counsel, to whom the Commissioner has expressly entrusted this task;

- b. If the Commissioner is not convinced by the evidence and/or the arguments presented by the Government, she will require that the evidence be presented in public hearings; and,
- c. If, on the other hand, the Commission believes that the Government has shown that hearing this information publicly could be injurious to the critical interests of Canada or its allies, national defence, or national security, the Commission will accept that the evidence be heard *in camera*. However, at the conclusion of an *in camera* hearing, the Commission and the Government will undertake a process to prepare a summary or summaries of the evidence presented that will allow for the disclosure of as much evidence as possible without prejudicing these interests.

8. To implement these procedures, I convened an *in camera* proceeding at which the Attorney General of Canada was asked to present evidence on the specific prejudice, in the sense described in the Terms of Reference, that could flow from publicly divulging the information sought by my counsel.

9. It should be noted here that the Commission has already held a week of public hearings on national security confidentiality, the importance of transparency, and the options available to the Commission to balance those two interests. Included in the information that the Commission received during that week of hearings was a detailed account, in oral evidence from senior government officials and in a written report entitled “Institutional Report on the Protection of Information in the National or Public Interest,” of the nature of the harm that could arise from the disclosure of classified information. Accordingly, when convening an *in camera* hearing on this topic, I had some information

about the requirements of national security confidentiality that could apply to classified information.

10. Over the course of a full hearing day, I heard evidence from four witnesses, two from the Canadian Security Intelligence Service and two from the Communications Security Establishment. The witnesses testified about the nature of the information that my counsel was proposing to elicit from Government witnesses, and the reasons that the disclosure of this information could cause injury in the sense described in the Terms of Reference. The reasons given for the confidentiality of information were similar to those discussed in the course of the hearings on national security confidentiality, but the evidence was focused on the impact that divulging the information under consideration could have.

11. The potential injuries described by the witnesses included harm to the intelligence agencies' human sources, harm resulting from the disclosure of the agencies' investigative interests and capabilities, and harm to relationships with foreign agencies on whom Canada relies for information-sharing. In fact, much of the information that has been provided to the Commission and that my counsel were seeking to introduce is not only Top Secret, but subject to further control systems and compartments, meaning that it is exceptionally sensitive.

12. This evidence was tested by my counsel. The Attorney General of Canada and the Commission's counsel also had the opportunity to make submissions on the applicable legal test (whether the disclosure of the information "could cause injury") and the question of whether or not I should conclude that the evidence heard demonstrates that the information in question met that test.

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13. I was satisfied by the evidence and the submissions that certain of the information that my counsel was seeking could cause injury, and that as such I was obliged to receive this evidence *in camera*.

14. There are, however, two mechanisms available to the Commission to maximize transparency despite the need to hear evidence *in camera*. First, as noted above, the Commission will produce a summary of the information that was received *in camera* so that the public can receive as much of the information as possible without causing injury to the interests identified in the Terms of Reference. Second, to the extent that I was to conclude, in the course of the *in camera* hearings, that divulging some of the information received *in camera* would not cause injury, Commission counsel can introduce that information at the public hearings, where it can be examined and tested by the Parties in the presence of the public.

15. Also, in anticipation of the possibility that I would be receiving evidence *in camera*, the Commission has canvassed all Participants for input as to the questions that should be asked, or the topics that should be explored, in the course of such a proceeding. The Commission has received numerous detailed and helpful proposals in response to this request.

16. Accordingly, after having been satisfied that I was obliged to receive information *in camera*, and that I could do so effectively while using other mechanisms to maximize transparency, I convened an *in camera* hearing to be held at a secure location to hear evidence pertaining to sections (a)(i)(A) and (a)(i)(B) of the Commission's Terms of Reference. As soon as possible after the *in camera* hearings, and before the public

hearings, the Commission will produce a summary of these proceedings that discloses as much of the information as possible without causing injury to the interests identified in the Terms of Reference.

*Signed*

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Commissioner Marie-Josée Hogue

March 4, 2024