## SUBサECT TOA PUBIICATIONBAN

Date: 20231020
Docket: DES-5-20
Citation Number: 2023 FC 1398

Ottawa, Ontario, October 20, 2023
PRESENT: Mr. Justice Norris

## BETWEEN:

# THE ATTORNEY GENERAL OF CANADA 

Applicant
and

CAMERON JAY ORTIS
Respondent
and

## DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

ORDER

UPON the Attorney General of Canada applying under section 38.04 of the Canada Evidence Act, RSC 1985, c C-5 (CEA), for an order with respect to the disclosure of information about which notice was given under section 38.01 of the $C E A$;

AND UPON five additional documents (AGC1549, AGC1550, AGC1551, AGC1552 and AGC1553) having been put before the Court pursuant to Notice 9;

AND UPON considering the background to this matter set out in the Court's previous Orders and Reasons;

AND UPON considering the oral representations by counsel for the Attorney General of Canada (AGC) and by the amicus curiae on October 20, 2023;

AND UPON Cameron Jay Ortis and the Director of Public Prosecutions having declined the opportunity to make representations to the Court;

AND UPON considering that the AGC and the amicus curiae have arrived at a joint position regarding the information that should remain redacted in the five documents and regarding certain summaries and word-substitutions;

AND UPON considering the test set out in Canada (Attorney General) v Ribic, 2003 FCA 246, [2005] 1 FCR 33;

AND UPON considering the information in issue in the five documents;

## THIS COURT ORDERS that

1. Pursuant to subsection $38.06(2)$ of the $C E A$, the summaries and word-substitutions set out in the documents attached hereto as Appendix A are ordered disclosed;
2. Pursuant to subsection $38.06(3)$ of the $C E A$, the prohibition of disclosure of the remaining redacted information in the documents attached hereto as Appendix A is confirmed;
3. For the reasons stated in Canada (Attorney General) v Ortis, 2021 FC 737, this Order shall not be published in any document, or broadcast or transmitted in any way before the criminal trial of Cameron Jay Ortis in the Ontario Superior Court of Justice has concluded;
4. For greater certainty, the foregoing term does not apply to the filing of this Order at the Ontario Superior Court of Justice;
5. Subject to further Order of the Court, the Registry shall not make this Order available to any member of the public before the criminal trial of Cameron Jay Ortis in the Ontario Superior Court of Justice has concluded.

## APPENDIX A

## WHAT O.R. DOES ABROAD

- For each mission OR typically spends 1-2 weeks on the ground with the LO/ADO. The agenda is drawn up by the LO in consultation with OR. The approach to each meeting in-country is determined by the unique circumstances, but generally $O R$ is looking to achieve several objectives:
- assess the extent to which the interlocutor is in a position to assist the RCMP;
- evaluate the benefits and risks of engagement, including info sharing considerations;
- signal the RCMP's operational and strategic interests, priorities, and capabilities;
- demonstrate the RCMP's interest in the country and/or commitment to the relationship;
- glean unique insight into how the interlocutor understands the threat environment;
- assess the likelihood that the interlocutor has intelligence of interest to the RCMP; and
- increase the likelihood that relevant information and intelligence will be shared with the LO.
- Of equal or greater importance is the effect the missions have on the LOs. Through OR's interaction with local and international partners, OR is demonstrating an approach to international engagement that tends to shape the LO's approach to his/her job.


## WHAT O.R. HAS ACHIEVED ABROAD

- Immediate operational results like what was achieved for Project are always a goal but will not be the norm. The RCMP got lucky there-reaching out to the right people at the right time. But through proactive engagement in priority AORs the RCMP is decreasing its reliance on luck by making it more likely that contacts will engage the LO when relevant information surfaces

This is the "tripwire effect" referred to in OR mission proposals: through OR's work abroad, FP is laying tripwires in critical spaces $\square$ $\square$ The LO continues laying these tripwires after OR departs. This approach to international engagement turns a collection of informal contacts into a strategic network.

- Each OR mission abroad has had impact.

- The specific value of OR missions is not always easy to articulate in advance, but they are a critical piece of a broader strategy to enhance FP's visibility, reach, and influence abroad. These missions advance FP's national security mandate in two key ways. First, they help establish FP's intelligence collection posture on national security threats in priority regions abroad. The LOs/ADOs cannot do this on their own-they need a nartner with the exnertise and perspective afforded by full-time engagement with the to guide them. Second, OR's work abroad gets noticed by partners. These missions promote a proactive and forward-leaning approach to national security that our international partners - and Canadians - expect from the RCMP.


## RCMP IMPLEMENTATION OF THE 2012-2013 TRANSNATIONAL ORGANIZED CRIME INTELLIGENCE PRIORITY

This document outlines the initial concept of operations for the RCMP in implementing the Transnational Organized Crime Intelligence Priority for the years 2012-2013. The concept will be reviewed as necessary, particularly when major changes in the targets or uses for intelligence are adjusted in future years.

The identification of Transnational Organized Crime (TOC) as a GoC Intelligence Priority requires the Force to make a number of changes in its processes and practices. This paper will cover the possible uses of new intelligence in the RCMP, outline processes to support this effort, and identify secretarial and reporting arrangements to ensure clarity of roles, responsibilities, and accountability as the Force responds to the GoC's new priority.

Successful implementation of this new priority will have three broad results:

- The RCMP will share more intelligence product with the Canadian security and intelligence community;
- The RCMP will receive more covert intelligence ${ }^{1}$ that can be used in guiding, and when appropriate informing, ${ }^{2}$ Federal Policing (FP) operations;
- The RCMP will be well-equipped to provide detailed reporting on the results achieved using new intelligence against TOC in next year's Intelligence Priorities MC.


## How the RCMP will use this new intelligence

In the 2012-2013 MC, the RCMP committed to using covert intelligence in a very limited range of ways, and always: a) in collaboration with community partners; b) respecting existing practices and agreements; c) recognizing the need to safeguard covert collection. In other words, the RCMP agreed that intelligence reporting on TOC was extraordinary and committed to treating it accordingly.

## Those limited uses are broadly:

1) Situational awareness. Covert collection on the RCMP's priority Transnational Organized Crime targets will improve our understanding of top international threats. For 2012-2013, our priority targets are:

Intelligence will help senior decision-makers at RCMP National Headquarters better understand the threat and risks posed by TOC activity. Such information will allow NHQ to better direct operations, provide informed strategic direction on current files and effectively position the Force to tackle the "next file." Additionally, projects that are

[^0]linked to TOC targets could be reviewed to ensure they are properly staffed and prioritized. Closed projects could also be directed to re-open, based on a review of the targets and other entities implicated. This will all involve analyzing intelligence from RCMP holdings in context with covert intelligence.
2) Informing criminal operations. Covert intelligence will provide the RCMP and the wider intelligence community with "lead information" that may present opportunities to disrupt, deter, or pre-empt criminal acts committed by TOC groups. This can only be achieved through a careful assessment of the risks involved and a high level of de-confliction. Acting abroad or in Canada against TOC on the basis of covert intelligence carries a high risk but may be mitigated by working in concert with community partners. ${ }^{3}$

## Access to and processing of TOC-related covert intelligence

The RCMP will incorporate the use of TOC-related covert intelligence into existing processes and practices currently utilized for counter-terrorism related intelligence, whenever possible.

## That means:

1) Utilize SIHU. The RCMP's interfaces to the security and intelligence community will not change. Protection of sources and methods is of utmost importance, and the RCMP will continue to undertake strong measures to prevent mishandling of covert intelligence. SIHU will be responsible for supporting Federal Policing investigations into TOC. SIHU will provide a common interface for our partners and will assist in managing FP's relationship with these agencies.
2) Centralized processing and analysis. Intelligence Research Product (IRP) on TOC will be developed using new covert intelligence, combined with data from RCMP holdings. Covert collection on TOC targets will be received through SIHU and analyzed by Operations Research. Criminal intelligence and situation awareness on priority TOC targets will be created / collated by dedicated teams in FP operations and provided to Operations Research for IRPs and to others as necessary.
3) Decision-making at senior levels. The customer for IRPs will be the Deputy Commissioner of Federal Policing and implicated Assistant Commissioners. Since combined intelligence product (IRP) will be very sensitive information, further dissemination beyond senior levels will only occur in exceptional cases.
[^1]
## Interaction with the intelligence community

In order to "kick start" covert collection on TOC by our community partners, the RCMP must communicate its intelligence needs and provide information on which covert collection programs can be built.

## That means:

1) Intelligence Requirements. The RCMP is the community pen for the Standing Intelligence Requirements (SIRs) on TOC. SIRs are a list of intelligence questions agreed to by both collectors and consumers in the intelligence community, and must be drafted and reviewed every year for each intelligence priority. They provide broad guidance to collectors on where to focus their collection activity, and the level of importance assigned to each question.

Federal Policing will develop SIRs - in coordination with the Privy Council Office and the intelligence community - that address RCMP intelligence gaps on TOC, both at the strategic and tactical levels. Current enforcement operations and intelligence will inform our understanding of overseas gaps, and the development of useful intelligence questions.
2) Expanded sharing with the Canadian intelligence community. Gathering information and other reporting from RCMP holdings on TOC will allow us to both develop SIRs but also to determine what intelligence will be shared with our partners. Relevant raw reporting or selectors ${ }^{4}$ will be shared with the intelligence community via SIHU, which will assist them to develop leads for covert collection and generate reporting which will be useful to the RCMP. ${ }^{5}$ Analysis by FP operations teams will also be shared as necessary for context and background on priority TOC targets. As no active collection program exists for either of the two priority TOC targets, the quality of covert reporting - at least at first - will be commensurate with the amount and detail of information shared on TOC by the RCMP.
3) Memorandum to Cabinet - Annually, the RCMP will report to the Privy Council Office on how intelligence on TOC was used to support operations. ${ }^{6}$ Due to the limited scope of the TOC priority, the Force will draft a document outlining the RCMP's recommendations of priority TOC targets for the following year and provide detailed analysis to support the recommendations.

[^2]
## Responsibility Centres

1) RCMP-CSEC/CSIS relationships - A/C NSCI (supported by A/C CI)
2) Access to Slingshot - A/C NSCI
3) Intelligence Research Products on TOC - Operations Research
4) GoC Operational De-confliction on TOC / Sharing and Coordination with Intelligence Community - DG Drugs and Organized Crime

5) 2012-2013 Standing Intelligence Requirements - FP Operational Results Branch
6) 2012-2013 Intelligence Priorities MC - FP Operational Results Branch (pending re-engineering)

| Approved by: | Approved by: |
| :--- | :--- |
| Todd Shean, Assistant Commissioner <br> Federal and International Operations | Sandra Conlin, Assistant Commissioner <br> Criminal Intelligence |
| Approved by: |  |
|  |  |
| Gilles Michaud, Assistant Commissioner <br> National Security Criminal Investigations |  |

Prepared by:
Federal Policing Operational Results Branch (12-06-15)

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## OPERATIONS RESEARCH AND THE DIVISIONS

This OR Brief explains how Operations Research interacts with RCMP divisions, including how it uses information collected in the divisions and how the integrity of criminal investigations is preserved.

## KEY POINTS

- OR uses RCMP investigative data to generate leads that can reveal new criminal targets.
- OR only briefs FP executives, FPCO inspectors, CROPS and A/CROPS—never the command triangle.
- OR's case files fall within the SIHU framework-they are reviewed separately by PPSC for disclosure.


## WHY WE USE INVESTIGATIVE DATA

- OR uses information from investigative holdings for two primary purposes:

1. To validate and contextualize information we are collating from other sources; and
2. To provide leads to CSEC in support of its foreign intelligence mandate to collect on Government of Canada intelligence priorities, including Intelligence Priority no. 1

- Selectors (phone numbers, names, addresses, etc.) have a shelf life: the more current they are the more likely they will yield relevant information. Immediate and regular access to this kind of current data is vital to OR's efforts to find new potential investigative targets for the RCMP.


## HOW WE USE THE DATA

- OR collates information from all sources (including RCMP investigations) using i2 analytical software, the product of which is stored on a dedicated shared drive on the Canadian Top Secret Network. The RCMP data is used to make connections, identify new directions of inquiry, and to validate data from other sources. The investigative data becomes part of an all-source intelligence picture that is focused on identifying new subjects of interest in Canada or abroad-that is, targets the RCMP was previously unaware of. This intelligence picture is disclosed to CSEC in support of its mandate.
This redaction discusses how CSEC uses this intel picture to inform their SIGINT mission, which can result in production of reports to the RCMP.


## INTERACTION WITH THE DIVISONS

- OR has briefed CROPS and/or A/CROPS on OR case files that have direct bearing on their division. These briefings are for situational awareness; they provide senior managers with strategic warning and context that enables more informed decision-making on matters such as strategic resource allocation and priority setting. OR's interface with the divisions is exclusively through management: from Inspectors and A/CROPS at INSET up to CROPS at divisional HQ. OR never engages the command triangle. The practices of engaging CROPS and A/CROPS and maintaining a strict separation from field investigators within or below the command triangle were established on CT and have carried over into OR's work on TOC. There is no intent to modify these practices.


## TRANSITION FROM INTEL TO ENFORCEMENT

- OR leverages information and relationships from the security intelligence community in order to better position FP senior management to address criminal threats to the security of Canada. Developing visibility and understanding of specific threats is the first objective. Once a clear threat picture is developed, OR then seeks to work with law enforcement and security intelligence partners to create investigative hooks that could be leveraged by the RCMP to establish an enforcement posture. Developing the threat picture and working with partners to establish law enforcement hooks involves regular intelligence deconfliction and information sharing with trusted partners.
- Each transition from intelligence to enforcement posture is unique. Examples of transitions include:
- OR's work on DOMINION, S. 37 CEA and S. 37 CEA led to the creation of divisional projects s. 37 CEA ${ }^{\text {S. } 3 / \text { LEA }}$ In each case the decision to initiate an investigation was made after OR briefed FPCO senior management and CROPS.
- In some cases S. 37 CEA the file transitioned independently of OR's work. In those instances, the value-added was timely situational awareness and advice to senior managers. In two cases s. 37 CEA OR provided important and timely visibility on the Canadian nexus to high profile terrorist incidents overseas.
- In other casess. 37 CEA OR identified investigative opportunities that led to the initiation of, or significant updates to, SPROS occurrences. In at least one case s. 37 CEA OR's engagement with the FBI generated a disclosure letter to FPCO that enabled police-to-police discussion on a possible CT threat.


## DISCLOSURE OF CASE FILES

- OR case files are part of RCMP holdings and hence "disclosable". Information from an OR case file that transitions from pure intelligence to enforcement will be subjected to the relevancy test. All OR case files are governed by the SIHU framework, which means they are stored and managed separately from investigative holdings. Investigators do not have access to our case files, the existence of which is known only to select managers within Federal Policing. These holdings are reviewed separately by PPSC and Crown for disclosure purposes. That the information never touches the command triangle-and hence does not affect the speed, flow, and direction of an investigation-minimizes the risk that the information will be deemed "relevant" for the purposes of disclosure. If any information from OR holdings were to be deemed "relevant" by Crown, mechanisms to protect the information would then be activated, such as provisions under s. 38 of the Canada Evidence Act.
- In four years of operation, OR has never compromised a criminal investigation. In the case of Project s. 37 CEA (ORS. 37 CEA ), PPSC was fully apprised of OR's role in providing situational awareness to senior decision makers within Federal Policing and the divisions. Representatives from PPSC were present for OR's briefing to NSCO officers and A/CROPS when Project s. 37 CEA was about to stand up. OR subsequently provided a dedicated briefing to PPSC on this case. The relevance test on OR's case file was conducted by a Crown prosecutor from Toronto and a DG-level representative from PPSC in Ottawa, with OR and SIHU representatives present to explain each piece of material in our case file. In this instance, PPSC deemed our entire case file "not relevant" for the purposes of disclosure. As such, none of OR's material was included in the package disclosed to the defence.


## FEDERAL POLICING AND THE CSEC X PROCESS

Brief for the Assistant Commissioner, FPSS

## KEY POINTS

- The X process produces Canadian identities-among the most sensitive information in FP holdings.
- With few exceptions, OR is the only FP entity that works with Canadian idents derived from SIGINT.
- X idents are released to FP for intelligence purposes and under strict Need-to-Know principle.


## OVERVIEW

- Under Canadian law, CSEC cannot target a Canadian or any person in Canada under its foreign intelligence mandate, nor can it ask a FIVE-EYES (5Eyes) partner to do so on CSEC's behalf. While each of the 5Eyes SIGINT Agencies operates under its own Government's legislation,
- 



- For
such as the RCMP or CSIS to obtain suppressed identity information from a SIGINT report they must submit an application to CSEC's Team no. 1
designated X We call this procedure of obtaining suppressed Canadian idents the X process.
- From our end the process involves completing a structured application form and submitting it electronically to X The application requires us to make a strong case as to why the suppressed idents should be released to us and how we intend to use the information.
- Once submitted to CSEC, the application follows an extensive review and approval process involving multiple levels of decision-making and assessment,


## BACKGROUND

- For the last three years OR has been the primary, if not sole, RCMP entity submitting $\mathbf{X}$ requests. Prior to the establishment of OR in 2010, the $X$ process was managed exclusively by SIHU, which was responsible for writing and submitting X ident requests on behalf of what was then NSCO.
- The transfer of responsibility from SIHU to OR for the $\mathbf{X}$ process was a function of three changes:
- SIHU was quickly overwhelmed by OR was actioning;
- OR was the sole entity within NSCO responsible for working with suppressed idents; and
- OR had the subject knowledge required to consistently write successful X applications.
- Since the establishment of OR, all the unit's case files have been officially part of SIHU holdings. SIHU has been copied on all correspondence between OR and X


## CURRENT STATUS

- The X process remains mission critical to OR's work.

This redaction covers numbers and details of reports.

Without the idents
released to OR in these and many more cases, the unique visibility afforded by SIGINT would be largely negated.

- With the transition to FPSS, OR has maintained primacy over the $X$ submission process. In addition to the original reasons for OR taking on this function from SIHU, we can add several new reasons that have emerged over time:
- Experience. No other entity within FP has anything close to OR's experience with X The team has become expert at navigating the process.
- Credibility. Through years of daily interaction, OR has established a level of comfort with the staff of X who have previously noted that OR's approach to writing X requests has been held up as the standard by which they evaluate requests from the Canadian security and intelligence community.
- Stewardship. OR's unique role within FP means it has remained in the best position to safeguard released Canadian idents. Unlike almost every other FP entity that would have an interest in obtaining suppressed Canadian idents from SIGINT, OR does not have an operational support function, nor does OR report directly to managers who have control over the speed, flow, and direction of criminal investigations. Safeguarding the information from inadvertent disclosure also safeguards the RCMP's relationship with CSEC Coverage.

This redaction covers the frequency that OR handles SIGINT reporting and its prioritization, and provides an example of how it is used.

OR triaged
the report, submitted an urgent $X$ request to CSEC, and briefed AC FPSS and DG FPCO the same day.

- Function. The $\mathbf{X}$ process is a special intelligence function.

The caveat on released idents explicitly
states that the information is for research and lead purposes only, restricted only to those with a strict Need-to-Know. The generation of investigative leads from security intelligence is the primary mission of OR-a unique function within FP. OR not only deconflicts on the results of its research with FPCO but also with domestic and foreign intelligence partners, including CSEC, CSIS, and the FBI. The X process is not just important to OR's work. Working-up the released idents on behalf of FP is a core part of OR's unique function.


## RCMP LIAISON OFFICERS:

THE MISSING COMPONENT OF THE OR INTELLIGENCE MODEL

## ISSUE

There should be a natural synergy between OR and the RCMP Liaison Officer (LO) program. Their mandates are complementary; both responsible for leveraging relationships and information in the international sphere to advance operations. And yet, the present level of interaction between OR and LOs is minimal, mostly confined to a single LO area of responsibility (AOR). This is at once a challenge and an opportunity. It is a challenge because the LO program is presently task-driven and hence not geared towards proactive intelligence work. It is an opportunity because there exists a proven model of engagement that can be leveraged and replicated, namely OR's excellent relationship with LO Pretoria.

## PROPOSAL

OR proposes a phased LO engagement strategy to develop mutually beneficial relationships with select LOs whose AORs are of critical and immediate CT importance $\qquad$
This strategy seeks to replicate that which OR presently enjoys with LO Pretoria-a combination of bilateral information sharing and on-the-ground interaction that identifies operational opportunities and elicits information that OR can leverage with the broader security and intelligence (S\&I) community.

## BACKGROUND

Traditionally, RCMP LOs have only been called upon when needed for a specific task, typically in support of ongoing criminal investigations or organizing delegation visits. OR was created to leverage international intelligence for domestic advantage but remains almost entirely dependent on partner agencies for information from abroad. Although several LOs have responded to specific OR requests in the past, only LO Pretoria is proactively gathering and sharing valuable information in support of OR's operations on a daily basis.

The incumbent LO Pretoria is unique in that he has a thorough understanding of OR's distinct role within Federal Policing. This understanding is the result of a strong relationship formed through close interaction with the LO prior to his deployment, and regular communication since his arrival at post. OR's travel through with LO Pretoria in April 2012 demonstrated that proactive, inperson engagement with local partners is key to building trust and identifying opportunities. While on the ground, OR gained valuable insight into LO Pretoria's environmental and political challenges. This experience continues to shape OR's understanding of the region and of the LO program's capabilities and limitations.

LO Pretoria's collaborative relationship with OR has led to the identification of investigative opportunities for FPCO while increasing OR's credibility with the S\&I community. While engaging
authorities on behalf of OR in 2012, LO Pretoria obtained exclusive knowledge about
that was critical to advancing FPCO Project In May 2013, LO Pretoria reported information to OR about a

This instance demonstrated the RCMP's
increasing ability to act as an intelligence contributor and not merely a consumer-an evolution that has not gone unnoticed by our key partners in the intelligence community.

## ENGAGEMENT STRATEGY

OR's proposed strategy consists of three phases for each AOR: research, engagement, and cultivation.

1. The first phase will involve OR interacting with the International Liaison and Coordination Center (ILCC) and the respective LOs to learn more about their AOR. This research will include examining the post's historic workload and interaction with CT interlocutors, ascertaining OR's intelligence requirements specific to the AOR, and, in conjunction with the LO, establishing a meeting schedule to build or enhance CT-specific relationships within their AOR.
2. The second phase will involve two OR representatives traveling to the AOR to establish a personal relationship with the LO and to engage with potential partners identified in the first phase. This deployment will help clarify OR's mission to the LO, provide an opportunity to assess the capacity of interlocutors first-hand, and will refine OR's understanding of the state of play within the AOR. The primary objective of this phase will be to uncover, assess, and exploit new channels of information.
3. The final phase involves nurturing and advancing the relationships established in the second phase. An increase in LO's regular communication with CT-interlocutors will help identify new intelligence and investigative opportunities for the RCMP. Regular communication and information sharing between OR and the LOs will sustain the momentum generated during the AOR visit, and will encourage the LOs to actively seek, recognize, and share intelligence leads with OR.

## OUTCOMES

The execution of this engagement strategy will benefit RCMP Federal Policing by:

1. enhancing LO and OR capability in AORs of critical and immediate CT importance;
2. increasing CT visibility and AOR situational awareness for RCMP senior executives;
3. identifying previously unknown intelligence and investigative opportunities; and
4. further establishing RCMP Federal Policing as a meaningful contributor to both the domestic and international intelligence communities.

[^0]:    ${ }^{1}$ "Covert intelligence" or "collection" in the context of this paper refers to intelligence reporting from CSIS, CSEC, and/or allied intelligence agencies.
    ${ }^{2}$ Informing operations using covert intelligence is a risky practice and will only be occasionally undertaken. For further discussion of the risks, see ORB paper: CSIS, CSEC and the new Transnational Organized Crime Intelligence Priority: Risks for the RCMP.

[^1]:    ${ }^{3}$ All reasonable measures possible are to be taken by the RCMP to prevent SIGINT information from entering into the evidentiary chain of any criminal prosecutions, and if this does happen, then appropriate measures are to be taken under the provisions of the Canada Evidence Act to prevent disclosure of the SIGINT information.

[^2]:    4 "Selectors" is a term frequently used $\quad$ to describe identifiable information on an intelligence target (ie: phone number, e-mail address,
    ${ }^{5}$ Raw source debriefing reports would be vetted and analyzed before they were shared with the community. This would be analogous to a CSIS Intelligence Report (CIR) or a SIGINT report produced by CSEC. All RCMP intelligence products would be classified "Canadian Eyes Only" and include caveats.
    ${ }^{6}$ This includes not just reporting on TOC, but all the intelligence priorities where operations are undertaken.

