

CANADA / JUDGMENT

R. v. Majcher

2025 BCSC 2511

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2511 R. v. Majcher

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Majcher,

2025 BCSC 2511

Date: 20251217

Docket: 37428

Registry: Vancouver

Rex

v.

William Robert Majcher

Before: The Honourable Justice Devlin

Reasons for Judgment - First Party/Third Party Records Application

Counsel for the Crown:

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A. Seguin

Place and Date of Hearing:

Vancouver, B.C.

December 10, 2025

Ruling given to Parties with Reasons to Follow:

Vancouver, B.C.

December 16, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 17, 2025

Introduction

- [1] William Robert Majcher is charged with one count of committing "preparatory acts" contrary to s. 22(1) of the Security of Information Act, R.S.C. 1985, c. O-5.[1] In essence, the Crown alleges that in May and June 2017, Mr. Majcher--at the direction of, for the benefit of or in association with the People's Republic of China (the "PRC")--prepared to intimidate or threaten Hongwei "Kevin" Sun, a resident of British Columbia, for the purpose of inducing Mr. Sun to cooperate with Chinese law enforcement authorities. Mr. Majcher's trial by jury is presently scheduled to commence in May 2026.
- [2] By way of a Notice of Application filed October 23, 2025, Mr. Majcher applies for disclosure or production of several categories of records. I will return to the categories identified by Mr. Majcher later in these Reasons. The primary category relates to records in the possession of the Federal Policing National Security ("FPNS") program of the Royal Canadian Mounted Police ("RCMP"). As I will describe, Mr. Majcher's position is that the records he seeks in the possession of FPNS are first party records subject to the disclosure regime established in *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 [Stinchcombe]. Alternatively, Mr. Majcher submits that the FPNS records are likely relevant to these proceedings and ought to be produced to the Court for a determination of their actual relevance, pursuant to the production regime set out in *R. v. O'Connor*, [1995] 4 S.C.R. 411 [O'Connor].

- [3] The prosecuting Crown advises that the records sought by Mr. Majcher are either already in the disclosure made to date or are records not in the possession of the Crown. The Crown further advises that it has made reasonable inquiries in relation to the FPNS records sought by Mr. Majcher and that FPNS has asserted the records are third party records. Accordingly, the Crown submits that it has discharged its disclosure obligations with respect to the entirety of Mr. Majcher's application.
- [4] The Attorney General of Canada (the "AG Canada"), as counsel for FPNS, resists production of the FPNS records. The AG Canada submits that Mr. Majcher has failed to identify an issue at trial to which the FPNS records would be "likely relevant". The AG Canada characterizes Mr. Majcher's application as speculative and says that the application amounts to a fishing expedition. In addition, the AG Canada advises that portions of the FPNS records, if ordered produced, will be subject to a claim of privilege pursuant to s. 38 of the Canada Evidence Act, R.S.C. 1985, c. C-5. However, counsel acknowledges that it is more appropriate to address the implications of a potential s. 38 claim at the second stage of the O'Connor analysis, which will only be undertaken if Mr. Majcher first satisfies the likely relevance threshold.
- [5] I heard the parties' submissions on December 10, 2025. On December 16, 2025, I advised the parties by way of a memorandum to counsel that Mr. Majcher's application is dismissed, with Reasons to follow. These are those Reasons.

Background Context

- [6] I have previously described the allegations advanced by the Crown against Mr. Majcher: see *R. v. Majcher*, 2025 BCSC 2069 at paras. 6-11. I will supplement my prior description of this case only to the extent necessary to inform Mr. Majcher's application. In doing so, I rely solely on the materials provided to the Court to date as part of pre-trial proceedings, and make no findings of fact.
- [7] With that said, the Crown alleges that Mr. Majcher prepared to induce Mr. Sun, by threat of a Chinese arrest warrant, to cooperate with Chinese law enforcement in relation to a major financial fraud that Mr. Sun is alleged to have committed in China. The Crown alleges that Mr. Majcher did so in support of the PRC's global efforts to locate and target Chinese fugitives in Western countries (initiatives known as Operations "Foxhunt" and "Skynet"). They say that Mr. Majcher's preparatory acts with respect to Kevin Sun form part of a broader relationship that Mr. Majcher cultivated with Chinese law enforcement, as a former Inspector of the RCMP ordinarily resident in Hong Kong.
- [8] The RCMP investigation into Mr. Majcher commenced in September 2021. The investigation was conducted by the Integrated National Security Enforcement Team ("INSET") of the RCMP's "C" Division (i.e., Quebec). INSET called the investigation Project Severo. The investigation culminated in the arrest of Mr. Majcher on July 18, 2023, at the Vancouver International Airport.

- [9] Project Severo was initiated after INSET received information from Sergeant Ken Kopp, a member of FPNS's Foreign Actor Interference ("FAI") team. The information primarily consisted of three advisory letters issued in June 2021 by the Canadian Security Intelligence Service ("CSIS"). Project Severo investigators understood the information to indicate that Mr. Majcher poses a national security threat because "he may have or will commit offences which illegally compel individuals to return to China", in support of the PRC's objectives "associated to Project Foxhunt".[2]
- [10] As Project Severo proceeded, investigators relied on FPNS to request information from: other departments within the RCMP;[3] other Canadian law enforcement or intelligence agencies;[4] and foreign agencies that are partners of Canada's national security apparatus, including the United States' Federal Bureau of Investigation ("FBI").[5] In turn, on several occasions Project Severo received information from outside agencies routed to the investigation through FPNS, including from the FBI, the Canada Border Services Agency, and the Financial Transactions and Reports Analysis Centre of Canada.[6]
- [11] Sergeant Kopp was assigned to act as the FPNS "reviewer" for Project Severo, in part to facilitate investigators' requests for information. To explain the nature of Sgt. Kopp's role, I will now briefly describe the evidence adduced on this application relating to FPNS's function within the RCMP.

The Role of FPNS

- [12] The evidence before me relating to the FPNS program comes primarily from an affidavit sworn by Superintendent Taro Tan on November 28, 2025 (the "Tan Affidavit"). Superintendent Tan is a member of the RCMP. Since January 2023 he has served as the director overseeing FPNS's FAI team.
- [13] Superintendent Tan deposes that the RCMP has information-sharing relationships with other domestic and foreign agencies. These relationships are critical for the RCMP to fulfill its mandate in relation to national security. Entities that share information and intelligence with the RCMP set "caveats" on its use and dissemination. To ensure continued cooperation with outside agencies, the RCMP must take all necessary measures to abide by these caveats. If the RCMP wants to disseminate or rely on information it has received, it cannot unilaterally lift or alter any applicable caveats and must instead seek permission from its partner.
- [14] FPNS's mandate emerges from these considerations. Superintendent Tan explains that FPNS, operating from the RCMP's National Headquarters, provides oversight for national security investigations, which are conducted by INSETs at the RCMP's divisional level. In this context, a primary responsibility of FPNS is to perform "review" function through its "reviewers". Superintendent Tan explains the role in these terms (Tan Affidavit at paras. 25-28):

FPNS is tasked with the initial review and handling of shared information and intelligence to ensure that any caveats imposed would not prevent investigative teams from complying with disclosure obligations. For instance, where the caveat imposed prevents use beyond intelligence purposes only, that intelligence would not be shared with an investigative team because it would not allow the investigative team to make an investigation decision or disclose it in a criminal proceeding/application

FPNS therefore determines what can be shared, what must remain restricted, or whether the information or intelligence should be returned to the originator for further clarification, including the lifting or alteration of the caveats imposed.

An FPNS reviewer is assigned to every national security investigation conducted by INSETs. FPNS reviewers act as a liaison between RCMP investigative teams and external agencies, both domestic and foreign.

FPNS manages the caveats imposed on the information or intelligence to ensure it is properly protected. FPNS only provides investigative teams with actionable information or intelligence received from domestic or foreign partners, e.g. usable in an information to obtain (ITO).

[15] An additional function of FPNS is "deconfliction". Superintendent Tan explains that deconfliction is a process aimed at ensuring that the RCMP and its domestic and foreign partners do not simultaneously and separately conduct investigative actions in relation to the same target or subject. A focus of FPNS's deconfliction mandate concerns the RCMP's relationship with CSIS, which also has national security responsibilities. With respect to CSIS and the RCMP specifically, deconfliction is supported through a shared framework, entitled One Vision. I will return to the One Vision framework later in these Reasons.

[16] As I will discuss, the proper characterization of FPNS's function in the context of INSET investigations like Project Severo is a matter of dispute between the parties on this application. However, before turning to the parties' submissions on this and other issues, I will first set out the general principles that govern applications for first party disclosure and third party production.

Governing Legal Principles

First Party Disclosure

[17] The principles of first party disclosure are well-settled. The prosecuting Crown has a duty to disclose upon request all relevant, non-privileged information in its possession or control, whether that information is inculpatory or exculpatory: *R. v. Gubbins*, 2018 SCC 44 at para. 18 [Gubbins], citing *Stinchcombe* and *R. v. Dixon*, [1998] 1 S.C.R. 244 at para. 22.

- [18] Only the prosecuting Crown has the duty to make first party disclosure. Other Crown entities, including the police, are third parties. The law cannot and does not obligate "the Crown to disclose materials that it does not have or cannot obtain". Gubbins at para. 20, citing *R. v. McNeil*, 2009 SCC 3 at para. 22 [McNeil]; see also *R. v. Schirmer*, 2022 BCCA 214 at para. 58 [Schirmer].
- [19] However, in *McNeil* the Supreme Court of Canada clarified that the Crown has "a duty to make reasonable inquiries when put on notice of material in the hands of police or other Crown entities that is potentially relevant". The police have a corollary obligation to disclose to the Crown "all material pertaining to its investigation of the accused". These materials are known as the "fruits of the investigation": i.e., the information "generated or acquired during or as a result of the specific investigation into the charges against the accused". The "fruits of the investigation" are to be contrasted with merely operational or administrative records of the police. Gubbins at paras. 21-22, citing *McNeil* at paras. 14, 22-23, 49, 52; see also *Schirmer* at paras. 54 and 60.
- [20] Finally, the police have a duty to disclose information to the Crown beyond the "fruits of the investigation" where such information is "obviously relevant" to the defendant's case. The phrase "describes information that is not within the investigative file, but that would nonetheless be required to be disclosed under *Stinchcombe* because it relates to the accused's ability to meet the Crown's case, raise a defence, or otherwise consider the conduct of the defence": Gubbins at para. 23; see also *Schirmer* at paras. 64 and 73.

Third Party Production

- [21] I now turn to the principles governing the production of records not captured by the Crown's disclosure obligations. These principles are not in dispute.
- [22] Third party production in the criminal context is governed by the two-step process set out in *O'Connor*. Justice Fitch helpfully summarized the *O'Connor* regime in *R. v. Lowry*, 2023 BCCA 423:
- [3] At the first stage, the applicant must demonstrate that the records sought are "likely relevant" in the context of the use that is proposed to be made of them in the underlying proceeding: *R. v. O'Connor*, [1995] 4 S.C.R. 411, 1995 CanLII 51 at para. 19; *R. v. Johnston*, 2019 BCCA 107 at paras. 60-61. If the applicant meets the likely relevance threshold, the documents will be produced to the Court.
- [4] At the second stage, the Court must weigh the salutary and deleterious effects of a production order to determine whether, and to what extent, the records should be produced to the applicant. This will involve consideration of the extent to which production of the record is necessary, the probative value of the record, and countervailing interests, including third-party privacy interests that could be implicated by an order disclosing the record to the applicant: *O'Connor* at paras. 30-31. At the second stage, it will often be helpful for courts to assess first the true or actual relevance of the targeted record, which will

frequently be determinative of the application: *R. v. McNeil*, 2009 SCC 3 at para. 39; *R. v. Gubbins*, 2018 SCC 44 at para. 27.

- [23] For the time being, only the first stage of O'Connor is at issue on this application. The "likely relevance" threshold at this stage is significant but not onerous. It requires the applicant to demonstrate a reasonable possibility that the information they seek is logically probative of an issue at trial or the competence of a witness to testify. The standard empowers the trial judge, in their gatekeeping function, to prevent the accused from engaging in speculative, fanciful, disruptive, unmeritorious, obstructive, and time consuming requests for production. The caselaw often refers to applications that fail to satisfy the likely relevance threshold as "fishing expeditions". O'Connor at para. 24 and Gubbins at paras. 26-29.

Parties' Submissions

Submissions by Mr. Majcher

- [24] The Notice of Application filed by Mr. Majcher describes the records that he seeks on this application in broad and vague terms. Following inquiries by the Court at the hearing of the application, counsel for Mr. Majcher focused the request for disclosure or production to four discrete categories:

1. All communications between "C" Division's INSET and FPNS's FAI team, as they relate to the investigation of Mr. Majcher.
2. An "I-2" chart referenced by Corporal Stacy Gagné during his testimony in another disclosure application in this case.[7]
3. Notes or other documents concerning One Vision meetings, as they relate to the investigation of Mr. Majcher.
4. All communications involving FPNS and the FBI, as they relate to the investigation of Mr. Majcher.

- [25] I need not address Mr. Majcher's submissions with respect to the first and second categories. For reasons that I discuss in my analysis, below, both categories appear to have been resolved without the need for the Court's intervention.

- [26] With respect to the third category, Mr. Majcher refers to a document titled "CSIS-RCMP Framework for Cooperation: One Vision 3.0", dated July 13, 2023. The document is attached as Exhibit 1 of the Tan Affidavit. It refers to the One Vision framework for deconfliction between the RCMP and CSIS, which I have referenced earlier. The document contemplates different kinds of meetings between members of CSIS and the RCMP for the purpose of strategizing and deconfliction, following which a record of decision ("ROD") is generated and retained by both organizations. The document also refers to CSIS "use letters", which describe information CSIS wishes to share with the RCMP subject to caveats on the use of the information. Superintendent Tan deposes in his affidavit that within the RCMP, the

deconfliction work referenced in the One Vision framework is conducted by FPNS.

- [27] Mr. Majcher seeks production of any notes or other documents (e.g., RODs) arising from meetings contemplated in the One Vision framework, related to the investigation of Mr. Majcher. Mr. Majcher appears to concede that these records are third party records subject to O'Connor. Mr. Majcher says that to the extent RODs related to him are in the possession of FPNS, they ought to be produced to him because they are likely relevant to these proceedings. Counsel for Mr. Majcher did not develop this position further at the hearing of the application.
- [28] Finally, with respect to the fourth category of records, Mr. Majcher submits that communications between FPNS and the FBI arising from requests for information by Project Severo investigators constitute an "arm" of the investigation and are consequently first party records. Counsel for Mr. Majcher characterizes the division between FPNS and INSET as an "artificial construct" internal to the RCMP, and one that is not determinative of disclosure. Mr. Majcher argues that Sgt. Kopp, as the FPNS reviewer for Project Severo, effectively acted as a "conduit of information" for Project Severo and was "intimately involved" with the investigation. In that sense, Mr. Majcher submits that Sgt. Kopp's communications with the FBI in relation to Project Severo are either "fruits of the investigation" or are otherwise so "obviously relevant" that they must be disclosed pursuant to Stinchcombe.
- [29] Alternatively, if the communications between FPNS and the FBI are properly characterized as third party records, Mr. Majcher submits that the communications are likely relevant to these proceedings. Counsel for Mr. Majcher emphasizes that the relevance threshold is not onerous at the first stage of O'Connor. At the hearing of the application, the Court asked counsel for Mr. Majcher to identify the particular issue or issues in this case to which FPNS communications with the FBI, if they exist, may be logically probative. In response, counsel answered that the FPNS communications may be relevant to Mr. Majcher's credibility if he testifies. In addition, counsel suggested that if FPNS possesses materials that demonstrate that Mr. Majcher was investigated by government agencies and found not to be "working for China", such evidence may be relevant to "undercutting" an essential element of the Crown's case. Counsel stated generally that although he does not know what is in the hands of FPNS, he seeks to "ferret out" the agency-to-agency communications in FPNS's possession because they "probably exist" and are likely relevant to this case.

Submissions by the Crown

- [30] As I have stated, I need not address the parties' submissions with respect to the first and second categories of records sought by Mr. Majcher. I consider those categories to have been resolved amongst the parties. I will return to that conclusion in my analysis, below.

- [31] In relation to the third category, the prosecuting Crown emphasizes that the One Vision framework concerns highly confidential deconfliction and strategic meetings and communications between the RCMP and CSIS. The Crown advises that notes or other materials related to One Vision meetings, including RODs, are not shared with RCMP members who actually conduct national security investigations, like the investigators in Project Severo, nor are they shared with the prosecuting Crown. The Crown argues that any such materials, if they exist in relation to Mr. Majcher, are neither fruits of the investigation nor likely relevant to these proceedings. The Crown also stresses that records related to One Vision meetings are records in the possession of CSIS and that CSIS ought to be given notice of any application for their production.
- [32] Finally, with respect to the fourth category, the prosecuting Crown only makes submissions in response to Mr. Majcher's assertion that the FPNS records are subject to first party disclosure. The Crown resists the characterization of FPNS communications with outside agencies, including the FBI, as first party records. The Crown emphasizes that any information routed from other agencies to investigators through FPNS has already been disclosed to Mr. Majcher. In other words, the Crown says that whatever information was given to investigators is already known to Mr. Majcher. The Crown characterizes those materials as the actual "fruits" of the investigation.
- [33] Conversely, the Crown says that any information that was withheld from investigators by FPNS is not the "fruits" of the investigation. Relying on the Tan Affidavit, the Crown stresses that the back-and-forth between FPNS and other agencies is intentionally not disclosed to investigators. They say this is done for two reasons: first, because those conversations and the exchange of information they facilitate are subject to caveats that must be respected for intelligence-sharing relationship to be maintained; and second, to avoid providing investigators information that would be useless to them (i.e., if the information is subject to a caveat of intelligence use only). On that basis, the Crown says it is evident that the communications and information not shared with or relied upon by investigators constitute third party records.
- [34] In addition, the Crown advises that, consistent with McNeil, it has made reasonable inquiries of FPNS for disclosure of the records sought by Mr. Majcher.
- [35] The Crown says that FPNS refused to provide the records because FPNS considers them to be third party records. The Crown submits that it cannot be compelled to disclose materials that the record-holder refuses to provide the Crown.

Submissions by the AG Canada

- [36] Counsel for the AG Canada responds to Mr. Majcher's application only in respect of categories three and four, and only on the assumption that both sets of records are third party records subject to O'Connor. In that respect, the AG Canada submits that while the burden resting on an applicant at the first stage of O'Connor is not onerous, it remains

significant. The AG Canada emphasizes that the gatekeeping function of the trial judge at this initial stage is aimed at filtering requests for production that are speculative, fanciful, disruptive, or unmeritorious: O'Connor at para. 24. In this case, counsel for the AG Canada says that Mr. Majcher has failed to identify a particular issue or issues in these proceedings (e.g., Charter issues, the credibility of a witness, the narrative of events) to which the records sought by Mr. Majcher, if they exist, would be logically probative. The AG Canada says that Mr. Majcher has provided the Court only a general statement or blanket assertion of relevance and submits that this amounts to a fishing expedition, which cannot satisfy the "likely relevance" threshold required under O'Connor.

Analysis

[37] Having described the parties' submissions, I will now address each category of records identified by Mr. Majcher.

Category 1: All emails and communications between FPNS's FAI team and "C" Division's INSET related to the investigation of Mr. Majcher

[38] At the hearing of this application, the Crown advised that it has already disclosed to Mr. Majcher all communications between INSET investigators and FPNS concerning the investigation into Mr. Majcher. In particular, the Crown says it has already disclosed handwritten notes, emails, and other materials of Sgt. Kopp related to his communications with Project Severo investigators. The Crown provided affidavit evidence in support of this submission.[8]

[39] I see no basis for questioning the Crown's representation to the Court that it has already fulfilled its disclosure obligations in relation to this category of records. If there are outstanding disclosure issues concerning communications between INSET and FPNS in relation to the investigation of Mr. Majcher, the Court expects counsel to pursue a resolution of those issues amongst themselves.

Category 2: The I-2 chart referenced by Cpl. Gagné

[40] At the hearing of Mr. Majcher's application, counsel indicated to the Court that the Crown will endeavour to locate the I-2 chart and provide it to Mr. Majcher, if it exists. Since counsel appear to be resolving the matter amongst themselves, I do not need to address it further. I note, parenthetically, that although the Crown intends to provide Mr. Majcher the chart, Cpl. Gagné's description of the chart suggests it is merely a visual aid of no independent evidentiary value.[9]

Category 3: Notes and other documents of One Vision meetings related to the investigation of Mr. Majcher

- [41] As I have stated, Mr. Majcher effectively conceded at the hearing of this application that the notes or other documents (e.g., RODs) of One Vision meetings related to him are third party records subject to O'Connor. In any event, I readily conclude that such records, if they exist, are third party records.
- [42] First, I accept the Crown's representation that these records are not in the possession of the Crown or of Project Severo investigators. Second, based on the description of the One Vision framework provided to the Court on this application, I am satisfied that notes and other documents related to One Vision meetings, even if they refer to Mr. Majcher in some capacity, are clearly operational records of the RCMP and CSIS and are not fruits of the investigation into him. It is apparent that such documents are held in strict confidence (including being withheld from investigators) and are made in furtherance of general strategy and deconfliction initiatives common to the RCMP and CSIS. They simply do not constitute information "generated or acquired during or as a result of the specific investigation into the charges against the accused": Gubbins at para. 22.
- [43] Moving to the first stage of O'Connor, I find that Mr. Majcher has failed to identify the likely relevance of this category of records, if they in fact exist. Any One Vision materials referencing Mr. Majcher have not been shared with investigators or the prosecuting Crown. Consequently, they could not have informed the narrative of events or investigative steps that culminated in Mr. Majcher's arrest and the charge before the court. At the hearing of this application, counsel for Mr. Majcher did not develop his submission that One Vision materials are likely relevant to this case or Mr. Majcher's defence, beyond a general statement of relevance. There is simply no basis for the Court to conclude, on the record adduced by the parties, that the sorts of One Vision records sought by Mr. Majcher may be logically probative of any live issue in these proceedings. It follows that Mr. Majcher has failed to discharge his burden as the applicant at the first stage of O'Connor.

Category 4: All communications involving FPNS and the FBI related to the investigation of Majcher

- [44] In relation to the final category of records sought by Mr. Majcher, I must first address the divergence between the parties on the proper characterization of the records as either first or third party records.

Are FPNS communications with the FBI first or third party records?

- [45] I am satisfied that FPNS's communications with the FBI in relation to Mr. Majcher, if they exist, are third party records subject to the O'Connor regime.
- [46] I agree with the prosecuting Crown that in the circumstances of this case, the "fruits" of the investigation, as they relate to FPNS, are the materials and information originating from outside agencies (like the FBI) that FPNS shared with Project Severo investigators. It is apparent that only the information that Project Severo investigators received constitutes information "generated or acquired during or as a result of the specific investigation into the

charges against the accused": Gubbins at para. 22. I accept the Crown's representation that all the information received by Project Severo from FPNS has already been disclosed to Mr. Majcher.

- [47] By contrast, communication and information exchanged between FPNS and outside agencies that has been withheld from Project Severo investigators does not form part of the "fruits" of the Project Severo investigation. In my view, the FPNS process, and the communications that FPNS had with other agencies following requests for information from Project Severo, is simply context for how the fruits of the investigation ultimately made their way to investigators. I also accept that the confidentiality that attaches to the FPNS process reflects the important policy considerations that animate the RCMP's efforts to maintain the trust of its intelligence-sharing partners. I find that FPNS's communications with outside agencies, in furtherance of its oversight role within the RCMP, are more accurately described as operational records. Specifically, whether investigative "fruits" are borne from FPNS's communications with agencies like the FBI is ancillary to its broader operational function as the program charged with ensuring that caveats imposed on information shared by the RCMP's partners are respected, and that the relationships the RCMP has with those partners are maintained.
- [48] In addition, I am not satisfied that FPNS's communications with the FBI are so "obviously relevant" that they ought to be disclosed to Mr. Majcher, whether or not they are fruits of the Project Severo investigation. Counsel for Mr. Majcher did not meaningfully develop this submission at the hearing of the application. There is no basis to conclude, without even examining the records, that FPNS's communications with the FBI are obviously relevant to this case in the sense that they relate to Mr. Majcher's "ability to meet the Crown's case, raise a defence, or otherwise consider the conduct of the defence": Gubbins at para. 23
- [49] Finally, I accept that the prosecuting Crown does not possess FPNS's communications with the FBI, and that the Crown's reasonable inquiries about those communications have only resulted in FPNS asserting that the communications are third party records. The law cannot obligate the Crown to disclose materials it does not have and cannot obtain: McNeil at para. 22 and Schirmer at para. 58.
- [50] For these reasons, I find the final category of records sought by Mr. Majcher to be third party records.

Are FPNS communications with the FBI likely relevant?

- [51] Turning to the test for third party production set out in O'Connor, I find that Mr. Majcher has failed to demonstrate that FPNS's communications with the FBI are likely relevant to these proceedings. Mr. Majcher has not adequately identified an issue or issues in this case to which such communications, if they exist, may be logically probative. Instead, Mr. Majcher offers the Court either a general statement that the communications would be relevant to his ability to make full answer and defence, or invites the Court to engage in mere speculation as to the contents of the communications. Neither basis is a sufficient foundation to order

production of the communications to the Court for review of their actual relevance.

- [52] First, I reiterate that to the extent communications between FPNS and the FBI resulted in information being shared with investigators, Mr. Majcher has already been provided disclosure of that information. It is difficult to envision how additional information that has been deliberately withheld from investigators (and, by extension, from the prosecuting Crown) could inform trial issues, whether they be the credibility or competency of Crown witnesses, the sequence of investigative steps culminating in Mr. Majcher's arrest, or something else.
- [53] Second, the issues that Mr. Majcher does identify invite the Court to engage in speculation and amount to nothing more than a fishing expedition. For instance, I see no basis to conclude that FPNS's communications with the FBI, if they exist, may assist in supporting Mr. Majcher's credibility as a witness. Counsel for Mr. Majcher has not articulated a coherent manner in which such communications could assist his credibility, beyond a bare assertion that they could do so. As well, counsel's suggestion that the contents of FPNS's communications with the FBI may establish that he has been previously investigated and exonerated of "working for the Chinese" is entirely speculative. There is nothing in the material provided by the parties on this application to suggest even a remote possibility that communications between FPNS and FBI would contain references to prior investigations of Mr. Majcher that tend to be exculpatory. Counsel's stated intention is to "ferret out" these agency-to-agency communications because they "probably exist". Language like this is demonstrative of exactly the sort of speculative application for production that the "likely relevance" threshold is meant to filter and discourage.
- [54] It follows that Mr. Majcher has failed to satisfy the first stage of O'Connor in relation to category four.

Conclusion

- [55] For the foregoing Reasons, Mr. Majcher's application is dismissed.

"Devlin J."

- [1] Now titled the Foreign Interference and Security of Information Act, following legislative amendments enacted by way of the Countering Foreign Interference Act, S.C. 2024, c. 16, s. 15.
- [2] Affidavit of Matthew Sayer sworn on October 23, 2025 [Sayer Affidavit], Exhibit 1, p. 1.
- [3] e.g., Sayer Affidavit, Exhibit 1, p. 7.
- [4] e.g., Sayer Affidavit, Exhibit 1, p. 7.
- [5] e.g., Sayer Affidavit, Exhibit 1, pp. 27.

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- [6] See the affidavit of Chelsea Herwynen affirmed on December 1, 2025 [Herwynen Affidavit] at para. 4.
- [7] The disclosure application in which Cpl. Gagné testified was initiated by a Notice of Application filed on February 21, 2025. Corporal Gagné testified on the application on August 28 and 29, 2025. The parties did not make submissions in relation to the application. To date, the application has not been pursued further by counsel for Mr. Majcher.
- [8] Herwynen Affidavit at para. 3.
- [9] See the testimony of Stacy Gagné on August 29, 2025, transcript at pp. 13-14.
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