



Case in Brief: **Canadian Broadcasting Corporation v. Named Person**

Judgment of June 7, 2024 | On appeal from the Court of Appeal of Quebec  
Neutral citation: 2024 SCC 21

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***The Supreme Court confirms that no secret trial was held in a case involving a person with police informer status.***

A person who acted as an informer for a police force was charged with criminal offences. The person brought a motion for a stay of proceedings based in part on abusive state conduct related to the laying of the charges. Because the person's informer status was at the centre of the relevant factual context and the parties' arguments, the judge dealing with the motion ordered that it be heard *in camera*, that is, in private. No notice was given to the media, since the judge was of the view that revealing anything about the motion, including its existence, would be likely to compromise the person's anonymity. The motion, its content and the exhibits and transcripts submitted to the judge remained confidential and were not in any court record. The motion was dismissed in a written judgment, which had no file number and could not be consulted by the public.

The person was subsequently convicted and appealed the conviction. The appeal was heard *in camera*, and no notice was given to the media. The Court of Appeal allowed the person's appeal, stayed the conviction and entered a stay of the criminal proceedings on the ground of abuse of process by the state. The Court of Appeal decided to open a record at its court office, accompanied by a sealing order, and to make public a version of its decision in which certain information was redacted, that is, blacked out. In that decision, the Court of Appeal denounced the holding of a "secret trial", which alarmed the public and the media. It also expressed its disagreement with the scope of the confidentiality measures put in place for the person's trial.

A number of media organizations, the Attorney General of Quebec and the Chief Judge of the Court of Québec then asked the Court of Appeal to review the confidentiality orders made in this case. In a second decision, the Court of Appeal upheld the sealing of all information that might tend to identify the person. The Court of Appeal also refused to partially unseal, or open up, the appeal record by redacting the same information as in the public version of its decision. The media organizations and the Attorney General of Quebec appealed that second decision to the Supreme Court.

The Supreme Court has allowed their appeals in part.

**Court openness is a cardinal principle of the Canadian justice system. Any exception to this principle must be limited.**

In a unanimous judgment, the Court confirmed that no secret trial was held in this case. The Court in fact specified that "the very concept of 'secret trial' does not exist in Canada. . . . [T]he cardinal principle of court openness may be tempered where the circumstances of a case so require. Various confidentiality orders may be made . . . , up to and including an order that all hearings be held *in camera* . . . But it is well established that 'secret trials', those that leave no trace, are not part of the range of possible measures."

According to the Supreme Court, the magnitude of the controversy that arose after the Court of Appeal's first decision was released could have been limited if that court had not used the expression "secret trial" to describe what were actually *in camera* hearings held in a proceeding that began and initially moved forward publicly.

Where, as in this case, an informer asserts their status in a proceeding that began publicly in which they face charges that do not cause them to lose their status, and the informer-police relationship is central to the proceedings, the appropriate way to protect the informer's anonymity will generally be to proceed totally *in camera*. Even in these most confidential of cases, it is still possible — and even essential — to protect the informer's anonymity while favouring confidentiality orders that do not entirely or indefinitely keep the existence of a hearing or judgment from the public. What is in issue is the maintenance of public confidence in the administration of justice and compliance with the guiding rule from [\*Named Person v. Vancouver Sun\*, 2007 SCC 43](#), which requires a court to protect informer privilege while minimizing, as much as possible, any impairment of the open court principle.

As the Supreme Court noted, 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.

In this case, the Supreme Court found that the Court of Appeal was correct to dismiss the motions for disclosure of the information that had been kept confidential up to that time but that it erred in upholding its order that the entire appeal record be sealed. The case is therefore remanded to the Court of Appeal so that it can make public a redacted version of the trial judgment included in the appeal record, after consulting the parties concerned on a proposal for partial unsealing and redaction.

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**Breakdown of the decision: *Unanimous*:** The Court has allowed the appeals in part (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Rowe](#), [Martin](#), [Kasirer](#), [Jamal](#), [O'Bonsawin](#) and [Moreau](#) heard the appeals)

**More information:** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** [Decision on motions](#) (Court of Appeal of Quebec) (in French only)

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