

CANADA
PROVINCE OF QUEBEC
DISTRICT OF LONGUEUIL

FILE NO: 505-01-173446-218
505-01-173448-214
505-01-173447-216

COURT OF QUEBEC

SAMUEL ROBERGE,

Applicant,

-vs-

HIS MAJESTY THE KING,

Respondent;

AMENDED MOTION OF THE APPLICANT FOR THE BREACH OF A RIGHT TO AN ATTORNEY,

FOR AN ILLEGAL SEARCH AND FOR ABUSE OF PROCESS

(Sections 8, 10 and 24 of the *Canadian Charter of Rights and Freedoms*)

TO ONE OF THE HONOURABLE JUDGES OF THE COURT OF QUEBEC OF THE DISTRICT OF LONGUEUIL, THE APPLICANT RESPECTFULLY SUBMITS THE FOLLOWING:

1. On June 23rd, 2022 in the City of Saint-Alexandre, the Applicant was arrested in an investigation known by several police forces, including the *Sûreté du Québec* from Boucherville and the Longueuil and Montreal municipal police force, as “Projet Qualifié”;
2. The police force that performed the arrest was the Longueuil police even though the police of the *Sûreté du Québec* had jurisdiction of the City of Saint-Alexandre, a small town located on the South Shore of Montreal;
3. Various warrants for the arrest of the Applicant had been issued in the City and District of Longueuil in the following files prior to June 23, 2022:
 - i. On May 14, 2021, file # 505-01-173448-214, for allegedly having in his possession on February 17, 2021, a firearm “à savoir: *une carabine à air comprimé Marksmande calibre .177, pendant que cela lui était interdit par une ordonnance rendue*” in virtue of the *Criminal Code* and allegedly having in his possession certain ammunition “à savoir: *des munitions de calibre 12, 22, .177 et 245 grain, pendant que cela lui était interdit par une ordonnance rendue*”;
 - ii. On May 14, 2021, file # 505-01-173446-218, for allegedly having conspired with Alla Hussein Abdelhamid, Michel Iler, Michael Chrétien-Barrette, Jean-

Simon Larose and Amin Erraki to traffic a substance in Schedule I of the *Drug and Substance Act*;

- iii. On May 14, 2021, file # 505-01-173446-218, for having trafficked with Alla Hussein Abdelhamid, Michel Iler, Michael Chrétien-Barrette, Jean-Simon Larose and Amin Erraki a substance in Schedule I of the *Drug and Substance Act*;
 - iv. On May 14, 2021, file # 505-01-173446-218, for allegedly having in his possession on February 17, 2021, for the purpose of trafficking certain substances in Schedule I of the *Drug and Substance Act*, namely cocaine, MDA and Lidocaine and other paraphernalia often associated with the trafficking of cocaine namely a sealer, cut for cocaine and baggies;
 - v. On May 14, 2021, file # 505-01-173446-218, for allegedly having breached certain conditions of his release;
 - vi. On March 22, 2022, in file # 505-01-173601-218 for allegedly not having constituted prisoner after his bail was revoked on March 13, 2022 by the Court of Appeal; and
 - vii. On June 1, 2022, in file # 505-01-179185-224 for having stolen a motor vehicle, namely a Chevrolet Silverado 2021 from Globe Location Auto & Camion;
4. There were also charges in a new file which were added on June 23, 2022 in file #505-01-179589-227 for allegedly having in his possession at the time of his arrest 16 grams of cocaine for the purposes of trafficking;

Position of the Crown

5. The prosecutor claimed that the arrest on June 23, 2022 was not relevant to the criminal charges against Roberge in the other files and it was only relevant in the file number opened on the date of the arrest being file #505-01-179589-227;
6. With respect, this position of the Crown is not supported by the law, as confirmed by the Judge who presided the hearing to fix the trial in the other files on the merits;
7. It is submitted that the arrest is the most important step of a police investigation as it brings into play many of the rights of the accused protected by *Canadian Charter of Rights and Freedoms* (the "**Charter**");
8. The following rights are all triggered during or after the arrest of an individual:

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11 Any person charged with an offence has the right

(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time;

9. Initially, the Crown asserted that there would be no evidence of the arrest alleged that there would be no evidence of the arrest presented at the trial on the merits which began on November 6th, 2023;
10. The Crown also alleged that no police officers from the Longueuil Police would testify at the trial as the investigation was done by the *Sûreté du Québec*. This is not exactly accurate because the investigation was done by the *Escouade Régionale Mixte*, which is actually a police force composed of both officers from the SQ and officers from various local police forces from the South Shore including Longueuil. Several police officers at the trial confirmed this fact during their testimony;
11. On the first day of trial, being November 6th, 2023, Me Malouin deposited a police report prepared by Martin Claveau and Didier Tanguay of the Longueuil Police, a copy of which was filed by the Crown as Exhibit R-7 and is also filed herewith as **Exhibit VD7-1**;
12. Moreover six (6) police officers from the Longueuil Police also testified at the trial on the merits at the following dates and times:
 - a) November 9, 2023 at 2:03 P.M. Eve St-Germain
 - b) November 9, 2023 at 2:17 P.M. Pascal Roy
 - c) November 14, 2023 at 9:38 A.M. Maxime Laprise

- d) November 16, 2023 at 2:46 P.M. Patrick Cupani
- e) November 16, 2023 at 3:01 P.M. Francois Dubé
- f) November 17, 2023 at 9:40 A.M. Caroline Plamondon;

13. Since the Crown has deposited evidence from the arrest and several officers from the Longueuil Police testified at the trial on the merits the judgment of The Honourable Justice Labrie dated November 21, 2023 is no longer binding on this Honourable Court because fresh evidence has been provided prove that the conclusions therein are erroneous See paragraph 551.3(4) in fine;
14. Based on the foregoing, the Applicant should be authorized to obtain disclosure of the evidence related to the arrest. Moreover, the Applicant submits that he was deprived from obtaining certain relevant information related to his arrest in a timely manner and as such was not able to make full defence to the charges against him;

Warrant for 5745 Brown Avenue in St-Hubert

15. As noted above many of the charges were with respect to a drug trafficking conspiracy among various individuals. On February 16, 2021, a warrant was issued to search the premises of the residence of Samuel Roberge located at 5745 Brown Avenue in the City of St-Hubert;
16. The information in this warrant is very vague especially with respect to Samuel Roberge. The persons with whom he was seen allegedly making transactions were Mr. Samuel Perron, Mr. Benoit Lafreniere and Ms. Zineb Ben Driss. These persons did not even have a criminal record at the time of the alleged transactions and it is not clear by the videos and photos if any transaction even took place;
17. Evidently, for the reasons provided below, the Applicant questions the reliability of any information in the present file due to the conduct of the State in the present file;
18. Mr. Roberge was never identified with any well-known criminals connected with the Hells Angels or any other organized crime units. In fact, Mr. Roberge was not even charged with organized crime;
19. Nevertheless, Me Eve Malouin threatened that if the accused in the file requested a preliminary enquiry, then she would charge them all with having participated in organized crime pursuant to 467.1 and following of the *Criminal Code*;
20. The only person with a criminal record in similar matters was Amin Erraki and Mr. Roberge was never seen with him nor did he ever even go to his address based on the tracking devices put on the vehicle of Roberge. There was insufficient information obtained independently by the police to corroborate a search warrant;

21. Notwithstanding that the police allegedly found cocaine in the premises located on Brown Street and that Samuel Roberge was at the time released on bail conditions pending an appeal on a previous three-year sentence, the police did not file additional charges on February 17, 2021;
22. The police did not even remit Mr. Roberge into custody, they simply released Mr. Roberge without even giving him a promise to appear;
23. The Applicant submits that clearly the intention of the State upon making that decision was to investigate into the matter more prior to adding additional charges. Consequently, the Crown cannot now allege that the present files ended on February 17, 2021. If the Crown was ready to proceed on February 17, 2021, then the Crown should have arrested Roberge on that date;
24. In fact, Mr. Roberge only received the cellular phone dump of one of the co-accused, being Michel Iler, from the Crown on February 2, 2024. Therefore, clearly the investigation did not end on February 17, 2021 as alleged by the Crown since January 2023;
25. It can be assumed that if any of the police involved in the investigation of Roberge after the seizure of the drugs on February 17, 2021, had found additional incriminating information, then Me Malouin would have presented such evidence at the present trial;
26. Simply because certain police officers did questionable acts during the arrest of Roberge, does not exclude the arrest from the present trial. The conduct of the police officers during the arrest is the most important aspect of procedural *Charter* rights as confirmed by the abundance of jurisprudence on the subject;

History of the Files

27. On March 13th, 2021, the Court of Appeal revoked the bail conditions of Roberge, however, he did not constitute himself prisoner on that day;

Anonymous Tip and Arrest of June 23, 2022

28. On May 23rd, 2022, Heidi Mongrain of the St-Jean-Sur-Richelieu police force, allegedly received an anonymous tip from an unidentified person that Roberge was residing either at his girlfriend's home on Brown Street or at a residence located on St-Charles Street in St-Alexandre, as appears in the police report dated July 5th, 2022, a copy of which is filed as **Exhibit VD7-2**;
29. It should be noted that there is no mention of a BMW in this report or that Mr. Roberge had been seen in a BMW prior to that date. There are no surveillance notes that stipulate that Mr. Roberge was seen in a BMW either. It is noteworthy that the title of Exhibit A-14 is "*Projet Qualifié*";

30. It is also interesting to note that the first surveillance of the residence in St-Alexandre happened on the date of the arrest of Roberge based on the evidence provided to the Applicant notwithstanding that this was 31 days after the alleged anonymous tip;
31. The defense was not provided any proof of this alleged anonymous tip other than the police report filed as Exhibit VD7-2 allegedly prepared by SD Savoie- Bilodeau on July 5th, 2022. There are no reasons in any notes for the delay to proceed with surveillance at this address;
32. Based on the said anonymous tip, on June 23rd, 2022, Mr. Roberge was arrested outside of a residence located at 1389 St-Charles Street in the City of St-Alexandre;
33. On June 23rd, 2022, Mr. Roberge was moving a BMW out of the driveway in front of the residence in order to allow an employee of the owner of the residence to move his pick-up out of the driveway. The police suddenly pulled up in front of the said BMW while it was still in the driveway. Mr. Roberge did not try to move the vehicle and he immediately got out of the car and closed the door;
34. Roberge immediately identified himself and cooperated with the police during his arrest;

File # 505-01-179589-227 Possession for the Purpose of Trafficking 16 Grams of Cocaine

35. A police officer, namely, Didier Tanguay, searched the car without a warrant and allegedly found 16 grams of cocaine under the seat;
36. Mr. Roberge was brought back to the police station located on Curé-Poirier in the City of Longueuil at approximately 3:00 PM;

Breach of the Right to an Attorney

37. Me Sanderson immediately went to the police station to meet with Mr. Roberge. However, Sergeant Dominic Athier and Evelyne St-Germain refused to allow Me Sanderson to meet with her client;
38. The officers explained to Me Sanderson that, because they were not going to interrogate Mr. Roberge, he had no right to speak to his attorney. At that time, Me Sanderson requested the names of the officers who were preventing her from meeting with her client. The officer at the reception of the police station provided Me Sanderson with a card with the names of the said officers, namely, Dominic Athier and Evelyne St-Germain, a copy of which is filed herewith as **Exhibit VD7-3**;

39. This is a blatant violation of Roberge's right to an attorney in virtue of paragraph 10 (b) of the Charter. It is submitted that the police officers had a reckless disregard for the constitutional rights of Roberge at the time of his arrest and consistently thereafter;
40. On December 14th, 2022, the trial for the possession of the cocaine in file number 505-01-179589-227 was fixed for January 13, 2023 and the trial for the stolen vehicle in file # 505-01-179185-224 was fixed for January 16th, 2023;
41. Initially, all the trials in all the files were supposed to be fixed together as confirmed by the email from Me Malouin dated December 13th, 2022, a copy of which is filed herewith as **Exhibit VD7-4**;
42. On December 14th, 2022, Me Sanderson wrote to Me Malouin to request additional disclosure with respect to the arrest of June 23, 2022. Me Sanderson did not receive an answer until the night before the trial;
43. On January 5th, 2023, Me Sanderson filed a motion to exclude the evidence obtained from the warrantless search, a copy of which is filed herewith as **Exhibit VD7-5**;
44. On January 12th, 2023, the night before the trial, Me Malouin sent an email to Me Sanderson containing 2 documents, being a *Rapport d'observation* and a *compliment enquête*, a copy of the email and the reports are filed as **Exhibit VD7-6**;
45. The police report ends at 17:30 hours, however, the fact that Me Sanderson came to the police station and that Ms. St-Germain refused to allow Me Sanderson to speak to her client is not indicated on the report. The report is quite detailed, however, there are no notes that were provided by any of the 6 police officers who allegedly came to the police station on the St-Jean Baptiste to sign the report;
46. Questioning whether or it was true that these officers all came to the police station on June 24th, 2022, Me Sanderson asked for the camera surveillance of the Longueuil police station, however, this was refused by the Crown;
47. During the trial on January 13th, 2023, the detective from Longueuil who found the cocaine in the BMW, namely, Didier Tanguay, testified in great detail that the door of the BMW was open during the arrest of Mr. Roberge outside the house. He even stated that Mr. Roberge was brought around the opened door to be put into the police van. He also testified that he had been informed by Martin Claveau, his supervisor, that Mr. Roberge had been seen in a BMW with plate number E11XTM prior to June 23rd, 2022, the date of the arrest;

48. The stenographic notes of the trial of January 13th, 2023 are filed herewith as Exhibit VD7-7 (the “Jan 13 2023 Notes”);

49. It should be noted that Didier Tanguay testified on January 13th, 2023, that the police were aware of the license plate and the description of the BMW prior to the arrest (pages 33, line 18 to page 34 line 13 of the Jan 13 2023 Notes) which provide as follows:

Questions posed by Me Maloun and answered by Didier Tanguay:

Q. O.K. Et c'est quoi votre mission ? L'EPS, là.

R. En fait, on a reçu l'information que monsieur utilise un BMW gris. Donc, je dois vérifier également si le véhicule se trouve à l'adresse en question.

Q. O.K. Donc, à neuf heures vingt (9 h 20), est-ce que vous localisez le véhicule en question ?

R. Effectivement, un véhicule pouvant correspondre est stationné de reculons dans l'entrée.

Q. O.K. Outre un BMW gris, est-ce que vous aviez d'autres informations qui vous avaient été transmises ?

R. On avait... ah! outre le véhicule, non.

Q. O.K. Mais par rapport au véhicule, est-ce que vous avez une description plus détaillée ou juste BMW ?

R. Effectivement, on a une plaque de véhicule à ce moment-là, puis le modèle du véhicule.

Q. O.K. En date d'aujourd'hui, est-ce que vous vous souvenez de ça par cœur ?

R. Par cœur, je ne pourrais pas vous dire.

Q. Donc, est-ce que c'est une information que vous auriez notée, là, dans un rapport de façon contemporaine ?

R. Effectivement.

50. Didier consulted the report dated June 24, 2022, which has been the subject matter of the disputes in this file since January 2023, that is, the report filed under Exhibit VD7-4 with the email from Me Malouin dated January 12th, 2023, the night before the trial;

51. During his cross-examination by the undersigned, Didier Tanguay also stated that he received the information that Mr. Roberge was driving a BMW from Martin Claveau, his supervisor at 7:00 A.M. the morning of the arrest;¹

¹ Page 53, lines 4 to 13 of the Jan 13, 2023 (Exhibit VD7-7).

52. Near the end of the cross-examination of Mr. Tanguay, Me Sanderson asked permission to play the video surveillance of the said arrest. Me Sanderson asked Mr. Tanguay to tell her to stop the video at the time that he had seen the drugs with the car door open as he had confirmed in his testimony without any doubt, a copy of the minutes of the hearing of January 13, 2023 and the video are filed herewith as **Exhibit VD7-8**;
53. Didier Tanguay could not answer the question because the door was not open at the time of the arrest because Mr. Roberge had closed the door as mentioned in his motion (**Exhibit VD7-5**);
54. Justice Lepage was chocked and immediately expressed her concern that there was a material proof (*i.e.* the video) which contradicted the testimony of the police officer, Mr. Didier Tanguay. She asked the lawyers to leave the courtroom and shortly thereafter Me Malouin told the Judge that she would withdraw the file. Consequently, Mr. Roberge, the Defendant, was acquitted of the possession charges;
55. Me Malouin added that Me Sanderson should have showed her the video prior to the trial;
56. At the end of the hearing Justice Lepage specifically noted that she hoped Me Malouin would do the necessary without providing any details to her request. Page 80, lines 13 and following of the stenographic notes of January 13th, 2023 (Exhibit VD7-7) provide as follows:

PAR LA COUR:
On fait rentrer le témoin ?
PAR ME ÈVE MALOUIN:
Non.
PAR LA COUR:
Non ?
PAR ME ÈVE MALOUIN :
Non.
PAR LA COUR :
Il ne faut pas qu'il soit présent pour la suite ?
PAR ME ÈVE MALOUIN :
Non. Je ferai le nécessaire, Madame la Juge.
PAR LA COUR :
J'espère que vous allez faire le nécessaire.²

57. It should be noted that with respect to these comments made by Justice Lepage, Justice Labrie, in a judgment rendered on September 26, 2023 rejecting a motion in which Roberge had requested that Me Malouin be disqualified, presumed that Me Malouin would have done this without her ever testifying or even being present at the hearing of said motion;

² Me Sanderson confronted Me Malouin on the issue on October 5, 2023 and she simply declined to answer as the Judge specifically objected to the question.

58. Page 17, lines 9 to 24, of the stenographic notes of the judgment of Justice Marco Labrie dated September 26th, 2023, filed herewith as **Exhibit VD7-9** provide as follows:

Par surcroît, la procureure a même mentionné à la Cour qu'elle ferait le nécessaire à la suite de ce qu'il venait de se passer, laissant sous-entendre selon la Cour qu'elle allait en informer ses supérieurs et/ou les supérieurs de l'agent Tanguay et/ou les autorités compétentes. La Juge lui a d'ailleurs dit qu'elle espérait qu'elle ferait le nécessaire. (Voir à la page 80 de la transcription). Contrairement à ce qu'allègue le requérant, non seulement la preuve ne démontre pas que Maître Malouin ait voulu cacher quoi que ce soit mais de plus, la preuve ne permet pas de croire que Maître Malouin n'a pas rapporté à ses supérieurs et/ou les supérieurs de l'agent Tanguay et/ou les autorités compétentes ce dont elle avait été témoin lors du témoignage de l'agent Tanguay.

59. It is difficult to understand these comments as Me Malouin was not even present at the hearing of the motion let alone did she testify in her defence;
60. Moreover, on October 5th, 2023, Me Sanderson asked Me Malouin if she could confirm whether she communicated with her superiors and those on Didier Tanguay but the Court intervened and stated that Me Sanderson could not ask that in Court;
61. It should be noted that Me Malouin has since that date filed a motion to declare Me Sanderson unable to act for Roberge insisting that she can order Me Sanderson to testify with respect to certain facts in the present motion;
62. It is submitted that the Crown cannot force the undersigned attorney to testify as it is the evidence and motion of Roberge and he chooses the witnesses that he wishes to hear in the present file;
63. In fact, it will not be too difficult to prove that Me Sanderson went to the police station on June 23, 2022 as there is a camera directly over the place in which Me Sanderson was standing as confirmed by the photos filed herewith as **Exhibit VD7-10**;
64. It is not surprising that the Crown is filing such a motion as almost each time Me Sanderson appears in a file in Longueuil, the Crown files such a motion as will be described in minute detail in the motion to dismiss said motion to declare Me Sanderson unable to act which will be filed prior to the trial on the merits;
65. The Applicant submits that this type of behaviour by a Crown prosecutor goes directly against the principles enunciated by Justice Labrie in his judgment rendered on September 26 (Exhibit VD7-9) cited from *Ontario (Attorney General) v. Clark*, 2021 SCC 18;

66. Furthermore, the filing of this motion of the Crown constitutes an additional motive for the abuse of process in the present file;
67. On January 23rd, 2023, Me Sanderson wrote to Me Malouin asking her to please provide the evidence proving that prior to the arrest the police officers knew that Mr. Roberge was driving a BMW with a specific plate number E11XTM (**Exhibit VD7-11**);
68. Me Malouin responded by email that she was refusing to provide the requested information because the file was closed and Mr. Roberge was acquitted and the file was now closed (**Exhibit VD7-12**);
69. During the hearing of January 25th, 2023, before Justice Greffe, Me Malouin stated that the reason she was refusing the evidence was because it was obtained from an anonymous source. However, there is no mention of this anonymous source in any of the police reports that were provided to the defence. That is, Exhibit VD7-2 mentions an anonymous person and not a *source codée* or registered informant;
70. The stenographic notes of January 25th, 2023 are filed herewith as **Exhibit VD7-13**:
71. In response, Justice Greffe stated that at first glance the information related to the arrest was relevant (pages 34 to 36 of the stenographic notes of January 25th, 2023 provide as follows:

Me Sanderson

Et j'avais juste fait une demande de additionnal disclosure à ma collègue cette semaine et elle a refusé. Alors, j'aurai juste *un petit* requête aussi en *additionnal disclosure*, que je pourrai peut-être présenter en 1.28, le trois (3) février.

Me Eve Malouin

Non non non non...

Me Sanderson

Non?

Me Eve Malouin

non non. Je vous aurais suggéré qu'on remette ça en même temps, quinze (15), seize (16) juin. C'est une question... la prétention, c'est que c'est un élément de preuve qui était pertinent à un dossier qui est terminé, puis c'est le point.

Me Sanderson

Oui, mais c'est l'arrestation dans ce dossier-là. C'est des preuves qui étaient...

Me Eve Malouin

Mais qui n'est pas en preuve dans le procès.

PAR LA COUR

Mais... oui, qui n'est pas en preuve dans le procès, mais est-ce qu'il pourrait y avoir des implications pour son client? Je comprends que, vous, vous ne le mettez pas en preuve, mais est-ce que ça pourrait avoir des implications pour son client?

Me Eve Malouin

Mais l'accusation contre monsieur Roberge se termine le dix-sept (17) février deux mille vingt et un (2021) puis il est arrêté le vingt-trois (23) juin deux mille vingt-deux (2022). Il n'y a rien qui découle de ça.

PAR LA COUR

Mais... non, je comprends, mais dans ce dossier-ci, là, il a aussi été arrêté le vingt-trois (23) juin?

Me Eve Malouin

Il n'a jamais été... dans ce dossier-là, la première fois qu'il est arrêté, c'est le vingt-trois (23) juin deux mille vingt deux (2022).

PAR LA COUR

C'est ça. Et c'est des précisions quant au vingt-trois (23) juin qu'elle demande?

Me Eve Malouin

Oui.

PAR LA COUR

Donc, c'est une arrestation pour plusieurs dossiers?

Me Eve Malouin

Notamment celui-là mais pour d'autres.

PAR LA COUR

O.K. Mais qu'est-ce qu'on demande exactement?

Me Eve Malouin

Mais, en fait, c'est de l'information privilégiée. Ça fait que...mais en tout cas!

PAR LA COUR

Donc...

Me Sanderson

C'est pas privilégié...

PAR LA COUR

... c'est pas le fait... c'est pas le fait que ça vise un dossier terminé, mais c'est le fait que c'est de l'information privilégiée?

Me Eve Malouin

Bien, selon nous, ça vise un dossier terminé parce que c'était relatif au motif d'arrestation lié à l'arrestation du vingt-trois (23) juin... aux informations que les policiers avaient pour procéder à l'arrestation du vingt-trois (23) juin.

PAR LA COUR

Ah, mais il a été arrêté le vingt-trois (23) juin dans ce dossier-ci aussi. **On ne peut pas dire que c'est pas pertinent à première vue.**

72. Since Me Malouin continued to resist providing the information to Me Sanderson, on January 28th, 2023, Me Sanderson filed a motion for the additional disclosure of said evidence, a copy of which is filed herewith as Exhibit VD7-14;

73. The email from Me Sanderson with the motion provided as follows:

Please find attached a motion of Samuel Roberge for additional disclosure of documents regarding his arrest. I would prefer to present this motion before June 15 as I believe that it is important and that I need this information to complete my other motions.

I would ask that my colleague, Me Eve Malouin, not discuss this motion with any police officers of the Longueuil police until the motion is heard before the Court.

I have also attached a private complaint for perjury against the police officer who testified in the criminal file with respect to the arrest of Mr. Roberge.

74. On February 3rd, 2023, Me Sanderson filed a private complaint for perjury against Didier Tanguay;

75. The private complaint was initially scheduled to be heard on November 7, 2023, however, due to the trial in the present file, the date was annulled;
76. It should be noted that the date of November 7th, 2023, was fixed by Justice Greffe in April 2023 after the trial date on the merits which was fixed on January 25th, 2023. Me Sanderson could not have been available on November 7th, 2023 to present the private complaint in *huis clos* if she was at the trial of Samuel Roberge which was scheduled for 3 weeks;
77. It should be noted that finally on April 16th, 2024, Justice Richard Marleau authorized the indictment for perjury against Didier Tanguay;
78. On February 22nd, 2023, before Justice Labrie, Me Sanderson explained that the information she was requesting in the said motion for additional disclosure with respect to the properties of a PDF document should remain confidential (page 24, line 4 to page 25, line 4 of the stenographic notes);

Me Sanderson

Alors, tous ces aspects-là me suggèrent que peut-être il y a une fabrication de rapport de police la veille d'un procès. Alors, ça, c'est la raison que je trouve que c'est sensible. Évidemment, si c'était fabriqué la veille du procès et c'était sauvegardé sur un disque dur avec... si on clique sur *Propriétés*, sur un PDF, ça dit le jour que c'était sauvegardé.

Alors, évidemment, si on les appelle et puis ils savent ça ou ils parlent à quelqu'un, c'est juste ça qui est sensible. Alors, je ne sais pas comment faire ça dans une façon où ça va... on ne va pas appeler les policiers mêmes direct pour demander ces informations-là. Je préfère, si j'ai l'autorisation, je vais écrire à monsieur la police³ [sic] qui est chef de police là-bas pour demander à lui d'obtenir cette information et de ne pas obtenir directement d'eux ou de quelqu'un, oui. Alors, c'est pour ça que je demande que ça reste sensible.

La raison que je ne veux pas qu'on attend un autre trois (3) mois pour savoir ces informations-là, c'est sensible et...

PAR LA COUR :

Vous préférez qu'on entende... qu'on entende ça bien avant le mois de juin ?

Me Sanderson

Oui, parce que c'est sensible et que la preuve peut être détruite dans ce temps-là, d'ici à ce temps-là.

79. The stenographic notes of February 22nd, 2022, are filed herewith as **Exhibit VD7-15**;
80. Me Sanderson was well aware of the fact that both PDF documents and Word documents can be modified;

³ Mr. La Police is actually a police officer at the Longueuil police.

81. It should be noted that on February 22nd, 2023, Me Malouin stated to the Court that the evidence was “probably confidential” and not that it was confidential contrary to the manner that she stated same to Justice Greffe on January 25th, 2023; Page 30, line 20 to page 31 line 9 of the stenographic notes of February 22, 2023 provide as follows:

Me Eve Malouin :

J'allais dire que je ne suis pas tombée en bas de ma chaise quand j'ai entendu maître Sanderson. Je pense que c'est assez clair, là. Je pense que n'importe qui qui sait lire entre les lignes sait très bien que c'est ça qu'elle allègue dans sa requête initialement.

Puis ce que j'allais dire, au départ, là, je vous ai dit, c'est non pertinent. Dans un deuxième... dans un deuxième point, c'est probablement privilégié, puis dans un trois... mais pas pour ce qui est des rapports, des dates de rapport, là, ça, je... mais je vous parlais de l'information initiale. Et là, au surplus, j'allais dire, c'est complètement un motif oblique. On vise autre chose, là. Le dossier est terminé. Le dossier de l'arrestation de monsieur Roberge, il a été acquitté.

82. A few minutes later on the same day Me Malouin stated that she was not even certain if the information even existed and Me Sanderson responded that it has to exist because it is a PDF. Page 33, line 25 to page 34, line 17 provide as follows:

Me Eve Malouin:

Je ne sais pas si ça existe.

Justice Labrie :

Non, je comprends, mais... Je comprends, mais ce n'est pas 2 vous qui avez ce fardeau de preuve-là.

Me Eve Malouin:

Non, ça, je comprends.

Justice Labrie :

Vous comprenez ? C'est pour ça que si on doit se rendre là, moi, je veux bien l'entendre avant, je n'ai pas de problème. Et si jamais à un moment donné, parce que je comprends votre position, vu la demande de votre collègue, vous ne communiquez pas avec le service de police **pour préserver les droits de votre client**, évidemment, ça empêche la poursuite de vérifier si ça existe. C'est juste un Catch-22. Il faut juste en être conscient. L'existence, ça va être votre fardeau par prépondérance de probabilité. Ayez-le à l'esprit pour la date que je vais fixer, mais on va fixer une date.

Me Sanderson :

Évidemment, ça existe, c'est un PDF, c'est un document. T'sais,... Oui, parce que c'est sensible et que la preuve peut être détruite dans ce temps-là, d'ici à ce temps-là.

83. It was clear from these discussions that Me Sanderson had every reason to believe that Me Malouin was not going to speak to the police prior to the hearing of the motion which was scheduled for March 31st, 2023. Me Sanderson had openly accepted that she could potentially lose her motion because Me Malouin could not confirm with the police whether or not the information existed. Me Sanderson was willing to take the said risk as she was clearly warned by Justice Labrie in the passage from the transcript cited in the above paragraph hereof;

84. This understanding was confirmed by Justice Labrie in the judgment dated September 26th, 2023 at page 23 lines 19 to 25 of Exhibit VD7-9 which provides as follows:

Tout au plus, Maître Malouin a mentionné à la Cour que Maître Sanderson lui a demandé de ne pas communiquer avec les policiers relativement à la requête en divulgation et l'on peut comprendre des propos qu'elle tient que Maître Malouin a l'intention de respecter cette demande.

85. It is important to note that the Court even stated that the reason for the request of non-disclosure and confidentiality was to preserve the rights of Me Sanderson's client;

86. It should be noted that Me Sanderson was worried about the independence of Me Malouin because Me Malouin is married to a police officer named Francis Tremblay in the Fraud Division of the Longueuil police;

87. The said motion for additional disclosure was fixed to be heard on March 31st, 2023;

88. On March 20th, 2023, Me Sanderson sent an email to Justice Labrie and Me Malouin explaining that she wanted the presence of certain police officers at the hearing, a copy of which is filed herewith as **Exhibit VD7-16**;

89. Me Malouin did not respond to this email nor did she contact Me Sanderson when she became aware of the fact that Me Sanderson had sent subpoenas to certain police officers, nor did Me Malouin contact Justice Labrie and/or Me Sanderson to discuss the fact that she wanted to contact the police prior to the hearing of March 31st, 2023, contrary to the understanding agreed between the parties before Justice Labrie on February 22nd, 2023;

90. Not being at the Courthouse, Me Sanderson prepared subpoenas herself to send to the 6 police officers who allegedly signed the police report dated June 24, 2022 but which was not provided to the defence until January 12, 2023 (Exhibit VD7-6). The subpoenas also asked a superior officer in the police department of Longueuil to bring the video surveillance and access card registers for June 23rd and 24th, 2022, to confirm whether or not the 6 police officers were in the police station at the alleged times and dates. It should be noted that the subpoenas are filed herewith as **Exhibit VD7-17**;

91. It should be noted that none of the police officers were present at the hearing of March 31st, 2023, notwithstanding that no Judge of the Superior Court quashed the said subpoenas;
92. Evidently, the more that Me Malouin contested providing the information with respect to the arrest, the more the Applicant pushed to obtain the information as by making all the oppositions made it appeared as if the State has something to hide;
93. Me Sanderson also requested the phone records of Martin Claveau and Didier Tanguay who allegedly called each other on the morning of the arrest with respect to the plate number of the BMW as indicated in the stenographic notes of January 13th, 2023;
94. Between the time of the hearing of February 22nd, 2023 and March 31st, 2023, Me Malouin contacted Captain Julien Levesque of the Longueuil police to obtain certain additional information regarding the said police report including the metadata information which Me Sanderson had duly requested remain confidential as explained above. This new police report made by Julien Levesque is filed herewith as **Exhibit VD7-18** (see pages 15 to 24);
95. The Applicant submits that by communicating with the police prior to the hearing, certain evidence which could have been preserved could have been changed;
96. It is common knowledge that a word and PDF document can be changed. The names of said documents and their locations on a server could also have been displaced;
97. It should be noted that on March 21st, 2023, Me Boillat-Madfouny, another prosecutor from Montreal who represents the Crown in file number 505-01-173601-218, sent an email disclosing the evidence from the said arrest of June 23rd, 2022. The famous report entitled "*Rapport d'observation*" was not in the attachment. Consequently, Me Sanderson wrote to Me Boillat-Madfouny to ask him to confirm that that was the only evidence from the report. Me Boillat-Madfouny, wrote back to confirm that he had confirmed with SD Gabriel Savoie Bilodeau;
98. The email exchange between Me Boillat-Madfouny and Me Sanderson is filed herewith as **Exhibit VD7-19**;
99. It is interesting to note that on March 30th, 2023, this same Sergeant Detective Savoie-Bilodeau provided Me Malouin certain emails and other reports which were not included in the said email of March 21st, 2023 to Me Boillat-Madfouny. Mr. Bilodeau-Savoie even noted that there was a new confidential informant that was never disclosed to the defence (see Exhibit VD7-18 at page 14);

100. Me Sanderson requested proof of the existence of this informant because of the late disclosure. The Crown refused to even provide the names of the police officers who allegedly even met with this informant;
101. It appears that this person is the same person who spoke to Heidi Mongrain based on the testimony of Gabriel Savoir-Bilodeau on November 14th, 2023;
102. Since there appears to be contradictory information (which shall be provided to the Court at the trial) with respect to the anonymous tip and the source, the Applicant is requesting that the notes of the police officers who met with the confidential informant be provided to the Court under seal and not disclosed to the Applicant;
103. Notwithstanding the request of Me Sanderson not to communicate with the Longueuil police concerning these aforementioned sensitive, Me Malouin contacted Captain Julien Levesque of the Longueuil police;
104. Mr. Levesque provided a report with respect to the electronic properties of the PDF files of the said "*Rapport d'observation*", (see Exhibit VD7-18 at pages 15-24), a new report dated March 30th, 2023 and signed by Captain Levesque;
105. On March 31st, 2023, Me Sanderson was so disturbed by the aforementioned facts that she asked for a continuance to amend the motion as she could not believe that that the police officers were not present and that Me Malouin had contacted the police officers prior to the hearing of March 31st, 2023 (the stenographic notes of this hearing are filed as **Exhibit-VD7-20**);
106. On May 8th, 2023, Me Sanderson filed a motion to declare Me Malouin unable to act due to her resistance to provide information which Justice Greffe confirmed was relevant and because she communicated with the police notwithstanding the agreement made before the Court on February 22nd, 2023;
107. The motion was initially supposed to be heard on June 1st, 2023. At the hearing, Me Sanderson announced that she was requesting that Me Boillat-Madfouny testify with respect to the email dated March 21st, 2023 (Exhibit A-5). Me Sanderson wanted him to admit that the arrest was relevant to the breach of condition file. However, Justice Labrie immediately objected to the request without the Crown even stating that they did not want him to testify. Justice Labrie insisted on Me Sanderson sending a subpoena and even to renounce to the delays, notwithstanding that Me Boillat-Madfouny was not the attorney for the Crown in the present files;
108. The motion was heard on June 16th, 2023 and the reasons for judgment were rendered on September 26th, 2023;

109. Me Sanderson filed a motion for change of district as she did not believe that a Judge in Longueuil would have the “*distanciation*”⁴ necessary to analyze the issue of whether or not there was abuse of process in the present file based on the conduct of Me Malouin in the present file;
110. Me Sanderson never accused the Judges or the prosecutors as being partial as stated in the Journal de Montreal on September 11, 2023 and as understood by Justice Labrie. Me Sanderson only wanted to advise the Court of the possibility that a Judge in Longueuil would perhaps have difficulty being objective because they have cases with Me Eve Malouin on a daily basis;
111. Notwithstanding that the motion for change of district of the Applicant was dismissed, on October 12th, 2023, Me Malouin stated that a management hearing would be necessary if it was the intent of the Applicant to allege that Me Malouin had not acted appropriately during the proceedings;
112. Me Malouin added that in such a case, it would be necessary to have a Judge from another district hear the case;
113. Me Sanderson confirmed to the Court that she and her client have no problem accepting a Judge from Longueuil to hear the present motion. Me Sanderson explained to the Court that the government was well aware of the fact that Justice Sacha Blais worked for the DPCP in Longueuil prior to appointing him as a Judge in Longueuil;

Motion for Additional Disclosure filed by the Applicant

114. The Applicant filed 2 motions for additional disclosure. As mentioned above, Me Sanderson was surprised that Me Malouin had spoken to the police prior to the hearing of March 31st, 2022, notwithstanding the specific words of Justice Labrie cited above in paragraph 60 above being “*pour préserver les droits de votre client*”, that she decided to postpone her motion;
115. On March 31st, 2023, Me Malouin provided Me Sanderson the report prepared by Julien Levesque (Exhibit VD7-18) and the email from Gabriel Savoie-Bilodeau to Jonathan Bouchard of the Longueuil police, dated June 21st, 2022 (page 14 of Exhibit VD7-18);
116. Due to the late disclosure of the informant and a new redacted email and a new report, Me Sanderson filed a new motion for additional disclosure which was initially filed under seal, as appears in the court record;
117. The motion was first discussed before the Court on September 5th, 2023 and again on September 26th, 2023. Justice Labrie authorized the Applicant to file the new

⁴ See the discussion on the subject by Justice David Cameron in *Investissement Globe international inc. v. 9153-3877 Quebec Inc.*, 2009 QCCQ 3383 at paragraphs 20 to 22.

motion under seal. He also ordered that the prosecution not discuss these issues with the Longueuil police (SPAL);

118. On the first day of the hearing of this motion for additional disclosure a new lawyer for the Crown was present, being Me Maxime Fournier;
119. Me Fournier went to check the minutes of the hearings of September 5th and 26th to confirm the orders that were made with respect to the non-divulgence of the contents of the motion to the police. He noted to Me Sanderson that it only applied to the Longueuil police and not the SQ;
120. It quickly became obvious the reason for the concern of Me Fournier was because Me Malouin had asked Gabriel Savoie-Bilodeau of the SQ to be present at the hearing. Me Malouin stated that he had to be present because the Applicant had requested information in regards to an email from Gabriel Savoie-Bilodeau;
121. The entire point of the gag order was to prevent any police officer from the Longueuil police from knowing that the Applicant was questioning the veracity of certain documents provided to the defence;
122. The Applicant engaged the services of an expert computer engineer, namely Simon Lavallée to analyze the report signed by Captain Levesque, dated March 30, 2023, being Exhibit VD7-18;
123. On October 5th, 2023, at 3:29 PM the Court declared Mr. Lavallée as an expert in computer engineering, computer technology and in analysis of computer metadata;
124. On October 12th, 2023, Mr. Lavallée explained to the Court that the conclusions in Exhibit VD7-18 were erroneous because the report concluded that the "*copie numérique*" of two (2) files were identical but the 2 files were not even the same size. Mr. Lavallée added that it was "*informatiquement impossible*" for the conclusions of the report to be true;
125. Me Malouin tried to discredit the expert by asking numerous hypothetical questions, however, it was nevertheless proven by the expert that a report with false conclusions was provided to the defense on March 31st, 2023;
126. The purpose of the report was to confirm the legitimacy of the police report filed as Exhibit VD7-6, however, due to these inaccurate statements contained in the report, the Applicant submits that it simply confirms his suspicions that the report is not legitimate;
127. It should also be noted that the folders and files were not identical in any manner as purported by Julien Levesque, the officer who signed the said report;

File #505-01-179185-224 Roberge Accused of Stealing a Truck

128. It should be noted that Mr. Roberge was also acquitted in another file on January 16, 2023 before Justice Leblanc for charges of allegedly stealing a pick-up truck from a car rental company;
129. Mr. Nelson Rose, the owner of a car rental company, reported a truck that he had rented to Samuel Roberge as stolen but he admitted that he only wanted to use the TAG GPS device and that was the only reason that he reported the car stolen;
130. Mr. Rose did not come to the trial to testify on January 16th, 2023;
131. It should be noted that the statement provided to the police by Mr. Nelson Rose initially stated that he did not remember the identity of the person who rented the car. He mentioned he wanted to have a police report # to use the TAG location device. First he stated his deductible was too high to claim on the insurance and later he told the police he had no insurance;
132. It is clear from the statement to the police that Mr. Rose did not consider that Roberge stole the car and he only wanted to be able to recover the car using the TAG location device. Presumably, for privacy reasons the insurance company does not allow to use TAG location services unless there is a police file opened;
133. It should be noted that the police officers involved with *Projet Qualifié* also were involved with this file of the stolen truck;
134. It is noteworthy that the Sergeant Detective Pilon of the SQ contacted Yan Lefevre of the police force of Rousillon with respect to Mr. Roberge on April 20, 2021. The file in Longueuil was opened on June 1, 2022, more than one year after the complaint;
135. It should be noted that Mr. Pilon initially denied this meeting during the trial before Justice Blais during cross-examination. Thereafter, Me Malouin reminded him of this meeting with certain notes that she referred to Mr. Pilon;
136. Notwithstanding, this event during the trial the prosecution is objecting to the presence of Yan Lefevre at the trial because the Applicant sent him a subpoena;
137. The Applicant submits that the Crown had no reasonable chance of success with respect to proving this file but nevertheless went to the day of the trial on this file;

Arrest of Michel Iler and Notes Taken by the Police

138. On February 17th, 2021, the SQ and the Montreal police also searched the residence of one of a co-accused in the present file, being Mr. Michel Iler;

139. There were several police officers at the premises of Mr. Iler located on Nuns' Island. Based on the notes of the officers it appears that the officers had lengthy conversations with Mr. Iler but they did not record any such conversations. Moreover, the notes of one officer were even changed and barred out;
140. The notes of Jean-François Larivière (#13440) provide "*je remets la clé du VR à Michel Iler. Celui demeure avec nous pour discuter. Il ne veut pas quitter.*"
141. It is quite suspicious that the time of this event was initially 8:32 in the morning but thereafter someone changed the time to 10:22. There are no initials next to the change of time;
142. There are no police notes on the discussion that Michel Iler had with the police officers nor is there any mention of who he spoke to. The notes of Mr. Larivière were already filed into evidence during his cross-examination;
143. When Me Sanderson questioned Me Malouin on this issue, she mentioned that Iler simply went in the condo to get his cheque book. However, this is not the same event, Me Malouin must be referring to the notes of Marco Demers which are filed herewith as **Exhibit VD7-21.**
144. It should be noted that although the notes were not deposited during the testimony of Mr. Marco Demers, the Crown has consented that they be deposited by consent;
145. Demers' notes provide that at "*10h35 Michel Iler se présente à l'appartement 306 en compagnie de Nicolat (which was barred out and replaced with Francis) Pichette. Il demande son livret de chèque se trouvant sur le micro-onde sous des casquettes. Remise du carnet de chèque par Demers. Un sachet de poche (contaminé) tombe du livret. Carnet Banque Canadienne de commerce #019-00261-010-78-42287 chèque de 18 à 25. Donne code du iPhone sur Divan #2121*";
146. Presumably this is the reason that Larivière changed the time on his notes from "8:32" to "10:32" so they would match up with the notes of Marco Demers;
147. The notes of Francis Pichette do not have any entry with respect to accompanying Iler, a copy of which are filed as **Exhibit VD7-22;**
148. Similarly, the notes of Audrey Carrière mention that Iler was speaking to the "*enquêteurs*" yet the names of the enquêteurs are not mentioned, a copy of the notes of Audrey Carrière are filed as **Exhibit VD7-23;**
149. Based on the foregoing, the Applicant submits that there are too many inconsistencies and serious issues with respect to the evidence and the abuse of process in the present file that the only remedy possible is a stay of proceedings.

FOR THE AFOREMENTIONED REASONS MAY IT PLEASE THIS HONOURABLE COURT OF QUEBEC TO:

ORDER a stay of proceedings in the present file;

SIGNED AT THE CITY OF CARIGNAN,
this 2nd day of June, 2024

Me Jacqueline Sanderson

AFFIDAVIT

I, the undersigned, Samuel Roberge, presently detained at the Establishment of Drummond located at 2025 Jean-de-Brébeuf Blvd. in the City of Drummondville declare that:

1. I am the Applicant herein;
2. All the facts mentioned in the present motion are true.

AND I HAVE SIGNED

SAMUEL ROBERGE

Declared solemnly before me at the City of Longueuil
on this 3rd day of June, 2024

NOTICE OF PRESENTATION

PLEASE TAKE NOTICE THAT the present motion to order a stay of proceedings shall be presented before the Honourable Justice Sacha Blais of the Court of Quebec, District of Longueuil, on June 3rd, 2024 at 9:30 A.M. at the Palais de Justice of Longueuil.

SIGNED AT THE CITY OF CARIGNAN,
This 2nd day of June, 2024

Me Jacqueline Sanderson