

**SUPERIOR COURT OF JUSTICE
(EAST REGION – OTTAWA)**

B E T W E E N:

MATTHEW PEGGS
(Commanding Officer, RCMP Ontario Division)

Applicant

- and -

DIERDRE MOORE

Respondent

APPLICANT’S FACTUM
(Application to Quash a Subpoena issued in the matter of *R v Moore*)

PART I: FACTS

1. The Applicant, Matthew Peggs, Assistant Commissioner Peggs (A/Comm Peggs), is the Commanding Officer of the Ontario Division of the Royal Canadian Mounted Police (RCMP) in London, Ontario.¹
2. On June 12, 2025, the RCMP received a subpoena by email, requesting that A/Comm Peggs attend court in Ottawa, at 161 Elgin Street in Ottawa on June 23, 24, and 25, 2025 in the matter of the Respondent’s trial for three criminal offences alleged to have

¹ Affidavit of Matthew Peggs, sworn June 17, 2025 (“Peggs Affidavit”) at para 1.

occurred on December 16, 2023: (a) failing to comply with a probation order; (b) disobeying an order of the court; and (c) uttering threats/property damage.²

3. The subpoena was issued in the City of Ottawa and is dated June 11, 2025.³
4. The subpoena seeks A/Comm Peggs' attendance to give oral testimony, and to bring with him "anything in [his] possession or under [his] control that relates to the said charge."⁴ The subpoena does not specify any documents, objects or other things required.⁵
5. A/Comm Peggs has never met the Respondent, nor was he or the Ontario RCMP involved with the investigation of the charges relating to these proceedings.⁶
6. A/Comm Peggs and the Respondent spoke once by phone, in 2022.⁷ This conversation was unrelated to the charges relating to this proceeding.
7. The Central Intake Unit (CIU) of the RCMP performs a screening function, in which it intercepts and triages emails before deciding whether to release them to A/Comm Peggs' inbox.⁸
8. The CIU has received approximately 20 emails addressed to A/Comm Peggs from the Respondent from August 8, 2022, to December 12, 2023.⁹ Those emails were withheld by the CIU from A/Comm Peggs' inbox, and A/Comm Peggs has not personally received them.¹⁰ The emails predate the charges and therefore do not describe them, nor are they in relation to them.¹¹
9. A/Comm Peggs is not available to appear in Ottawa on June 23, 24, and 25, 2025. A/Comm Peggs has a series of priorly scheduled and essential work commitments that

² Peggs Affidavit, MR Tab at para 2; Exhibit A to the Affidavit.

³ Exhibit A to the Affidavit.

⁴ Affidavit at para 3; Exhibit A to the Affidavit.

⁵ Exhibit A to the Affidavit.

⁶ Peggs Affidavit at paras 4 and 5.

⁷ Peggs Affidavit at paras 6-8.

⁸ Peggs Affidavit at para 9.

⁹ Peggs Affidavit at paras 10-12.

¹⁰ Peggs Affidavit at para 10.

conflict with the trial dates.¹² These engagements relate to an important aspect of his mandate as Commanding Officer; namely, to ensure that the Ontario Division of the RCMP works efficiently and effectively with domestic and international partners.¹³

PART II: ISSUE

10. The Applicant respectfully submits that the subpoena issued on June 11, 2025, compelling Commanding Officer Matthew Peggs to attend court should be quashed by writ of *certiorari*.

PART III: ARGUMENT

(A) Legal Principles

11. Section 698(1) of the *Criminal Code* states the following:

Where a person is likely to give **material evidence** in a proceeding to which this Act applies, a subpoena may be issued in accordance with this Part requiring the person to attend to give evidence. (emphasis added)¹⁴

12. Section 698 of the *Criminal Code* requires a judicial determination that the proposed witness to be subpoenaed "is likely to give material evidence." The issuance of a subpoena is not "a mere administrative function."¹⁵ Material evidence is evidence that "tends to prove or disprove a fact in issue" and is "pertinent to an issue in dispute".¹⁶

13. Black's Law Dictionary (third edition) defines "material evidence" as follows:

Such as is relevant and goes to the substantial matters in dispute or has a legitimate and effective influence or bearing on the decision of the case.

¹¹ Peggs Affidavit at paras 11-12.

¹² Peggs Affidavit at para 15.

¹³ Peggs Affidavit at para 15.

¹⁴ *Criminal Code* (R.S.C., 1985, c. C-46) at s. 698.

¹⁵ *Dykstra v Greensword*, 2016 ONSC 8211 at para 57; see paras 47-66.

¹⁶ *Trudeau v. His Majesty the King*, 2023 ONSC 1598, at para 13 [*Trudeau*].

14. Subpoenas of third parties to appear at a criminal proceeding in should be challenged by an application to a superior court for the extraordinary remedy of *certiorari*.¹⁷
15. The persuasive burden of proof is not on an applicant to establish that the potential witness does not have relevant, material and admissible evidence. Rather, the evidentiary and persuasive burden is on the respondent seeking to sustain the subpoena.¹⁸ In order to meet the test of materiality to justify the issuance of a subpoena, the respondent cannot merely allege that the witness *may have* material evidence but rather must *demonstrate* that it is *likely* that the witness can give material evidence.¹⁹ Where the respondent provides no further evidence to justify the issuance of a subpoena, the subpoena will be quashed.²⁰
16. On an application to quash a subpoena, the reviewing judge is entitled to review and examine the procedure in which the subpoena was obtained, and the merits of the grounds upon which the respondent based their claim that the proposed witness likely had material evidence to give, including reference to: (i) the issues in dispute; (ii) whether the proposed evidence is reasonably capable of admission; (iii) whether the application could succeed based on the proposed evidence; (iv) and whether the “likely to give material evidence” test has been met.²¹

(B) The subpoena should be quashed

(i) the right to issue a subpoena is restricted to requiring a person to attend and give evidence who is likely to give material evidence.

17. A/Comm Peggs has no material evidence to provide this Court.

¹⁷ *Trudeau* at para 8.

¹⁸ *R v Harris (1994)*, 1994 CanLII 2986 (ON CA); *Trudeau* at para 13.

¹⁹ *R v Harris (1994)*, 1994 CanLII 2986 (ON CA); *Dykstra v Greensword*, 2016 ONSC 8211 at para 57.

²⁰ *Trudeau* at para 13.

²¹ *Trudeau* at para 13.

18. A/Comm Peggs' affidavit indicates that he was not involved in the investigation of the charges at issue in the related proceeding, and that he has no knowledge of those charges.²² The Ontario Division of the RCMP likewise was not involved.
19. A/Comm Peggs' contact with the Applicant was limited to an unrelated phone call in 2022.²³ The phone call predates the charges, and did not pertain to them. As a result, A/Comm Peggs' evidence on this matter is not material.
20. The Respondent has not demonstrated that it is likely that the A/Comm Peggs can provide material evidence, as is required. The subpoena should be quashed.

(ii) the request for documents is an improper attempt to obtain third party records.

21. A/Comm Peggs is not the appropriate record keeper from whom the Respondent should seek documents concerning the charges relating to this proceeding. That is because A/Comm Peggs is not in possession of such records, nor has he ever been. The appropriate record keeper is the Respondent's local police service.
22. Even if the emails addressed to A/Comm Peggs were material to the underlying proceeding, which is denied, they are not in A/Comm Peggs' possession. The emails are third-party records, held by the RCMP's CIU. The subpoena was not accompanied by an appropriate application for third-party records, as outlined by the Supreme Court of Canada in *O'Connor*.²⁴
23. In *O'Connor*, the Supreme Court of Canada confirmed that the request to bring documents to court via subpoena is not a production order. Production, the Court indicated, "will only be ordered if the documents are likely to be relevant and if production is appropriate, having regard to all of the relevant considerations."²⁵

²² Peggs Affidavit at para 4.

²³ Peggs Affidavit at paras 5-8.

²⁴ *R v O'Connor*, 1995 CanLII 51 (SCC), [1995] 4 SCR 411

²⁵ *Ontario (Provincial Police) v Mosher*, 2015 ONCA 722 at paras 85, 89.

24. The process for obtaining third party records, pursuant to the direction in *O'Connor* was succinctly laid out by this Court in *Campbell*.²⁶ The party seeking third party records must serve a subpoena *duces tecum*, and then make an application to the court, supported by affidavit evidence, as to why the documents are appropriate and relevant. Notice must be given to the Crown and all other interested individuals. The court then proceeds on a review as to the relevance of the documents, and the extent to which they should be disclosed.²⁷

25. Ultimately, these documents are not material evidence relevant to the underlying proceeding. Even so, the Respondent has not sought third party documents from the proper record holder, nor has she made the proper application to this Court for production of those documents.

(C) In the alternative, A/Comm Peggs should be permitted to appear by video.

26. In the alternative, A/Comm Peggs should be permitted to appear by videoconference on June 24, 2025. A court may order that a witness in Canada give evidence by videoconference where the court is of the opinion that it is appropriate given the location and personal circumstances of the witness,²⁸ the cost that would be incurred if the witness were to appear in person,²⁹ and the suitability of the location from where the witness will give evidence.³⁰

27. A/Comm Peggs will have a reliable internet connection and computer from which to testify from Toronto or Collingwood on June 24, 2025, if necessary. Appearing by videoconference would alleviate some of the interruption to his essential and priorly scheduled work commitments, and the need for him to travel to Ottawa and the costs associated with such travel.³¹

²⁶ *R v Campbell*, 2015 ONSC 4078 at para 8.

²⁷ *Ontario (Provincial Police) v Mosher*, 2015 ONCA 722 at para 113; *R v Campbell*, 2015 ONSC 4078 at para 8.

²⁸ *Criminal Code* at s. 714.1(a).

²⁹ *Criminal Code* at s. 714.1(b).

³⁰ *Criminal Code* at s. 714.1(d).

³¹ Peggs Affidavit at para 16.

PART III - ORDER REQUESTED

28. An Order allowing the application and quashing the subpoena by writ of *certiorari* on the basis that Matthew Peggs has no material evidence to give.
29. In the alternative it is requested that Matthew Peggs be permitted to testify via videoconference on June 24, 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated this 17th day of June 2025.



Clare Gover
Counsel for the Applicant

SCHEDULE A - AUTHORITIES

Jurisprudence

Dykstra v Greensword, 2016 ONSC 8211

Ontario (Provincial Police) v Mosher, 2015 ONCA 722

R v Campbell, 2015 ONSC 4078

R v Harris (1994), 1994 CanLII 2986 (ON CA)

R v O'Connor, 1995 CanLII 51 (SCC), [1995] 4 SCR 411

Trudeau v. His Majesty the King, 2023 ONSC 1598

Legislation

Criminal Code (R.S.C., 1985, c. C-46)