# IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION

BETWEEN:

## SECRETARY OF STATE FOR DEFENCE

Applicant / Claimant

and

# SAMUEL JAY ROSENFELD

Respondent / Defendant

# NOTICE OF APPLICATION FOR COMMITTAL (annexed to Form N244)

### IMPORTANT NOTICE

The Court has power to send you to prison and to fine you if it finds that any of the allegations made against you are true and amount to a contempt of court.

You must attend court on the date shown on the front of the application notice. It is in your own interest to attend.

At the substantive hearing of the application you should bring with you any witnesses and documents which you think will help you put your side of the case.

If you consider the allegations are not true you must tell the court why. If it is established that they are true, you must tell the court of any good reason why they do not amount to a contempt of court, or, if they do, why you should not be punished.

If you need advice you should show this document at once to your solicitor or go to a Citizens' Advice Bureau.

## A. The Application

The Claimant intends to apply for an order for your committal to prison for breaches of a Final Injunction Order made by Mr Justice David Clarke on 17 February 2004 ("the Order").

# B. The Hearing

Further directions will be sought from the Court before the substantive hearing.

### C. The Acts of Contempt

The acts of contempt relied upon are:

- Disclosing or publishing documents which identify or purport to identify by name "applicable persons" within the terms of the Order;
- 2. Disclosing the witness statement of X, a statement served in the proceedings leading to the Order;
- Failing to deliver up all copies of all documents and other materials containing any information which names or purports to name or otherwise identifies any "applicable person or persons".
- 4. Failing permanently to delete, or cause to be deleted, within 48 hours of service of the Order documents or materials which are not capable of being delivered up to the Claimant's solicitors containing any information which names or purports to name or otherwise identifies any "applicable person or persons".

Within the terms of the Order, "applicable persons" are defined as follows:

"the persons named in paragraph 1 of the Confidential Annexe to this Order and any other person alleged to be or to have been involved with intelligence gathering activities by or on behalf of the Ministry of Defence, in particular (but not restricted to) any alleged agent or agent handler".

The acts identified at 1 above are in breach of paragraph 3 of the Order, which provides that:

- "3. The Defendant be restrained (whether by himself, his servants, or agents or otherwise howsoever) from doing or instructing or encouraging any other person to do the following acts or any of them:
  - (i) Disclosing or publishing in any way whatsoever, or causing or permitting to be disclosed or published, (including, for the avoidance of doubt, publication on the internet) any document or information which identifies by name or otherwise any applicable person.
  - (ii) Making any statement, whether orally or in writing, which purports to be such a disclosure.
  - (iii) Without prejudice to the generality of sub-paragraphs 3(i) and (ii) above supplying to any person or causing or permitting to be supplied to any person any such document or information which identifies by name or otherwise any applicable person."

The acts identified at 2 above are in breach of paragraph 4(iii) of the Order, which provides that:

- "4. The Defendant shall be restrained (whether by himself, his servants or agents or otherwise howsoever) from:
  - [...]
  - (iii) Using or copying, or disclosing the witness statements served in these proceedings."

The omission identified at 3 above is in breach of paragraph 6 of the Order, which provides that:

"6. The Defendant do by 4pm on Monday 23 February 2004 deliver up to the Claimant's solicitors all copies of all documents and other materials in his possession, control or power (including without prejudice to the foregoing any drafts, notes, written or printed material, recordings, manuscripts, disks and information generated or stored in any electronic or mechanical medium or any computer) containing any information which names or purports to name or otherwise identifies any applicable person or persons."

The omission identified at 4 above is in breach of paragraph 7 of the Order, which provides that:

"7. Insofar as documents or materials containing any information which names or purports to name or otherwise identifies any applicable person or persons are stored in any electronic or mechanical medium or any computer and are not capable of being delivered up to the Claimant's solicitors, the Defendant shall within 48 hours of service of this Order upon him delete, or cause to be deleted, permanently such information and thereafter will forthwith provide the Claimant's solicitors with full particulars of such deletion and will allow the Claimant's representatives reasonable inspection facilities to allow them to verify such deletion; provided that prior to such deletion the Defendant may make one copy of any such document or material in a form which is capable of being delivered up to the Claimant's solicitors and deliver up that copy forthwith to the Claimant's solicitors in compliance with this Order."

#### D. The Grounds

The grounds on which the committal application is made are:

- 1. On or before 5 May 2010 the Defendant published, or caused to be published, material on an internet site which disclosed or purported to disclose 'applicable persons'. The relevant material must have been disclosed by the Defendant in the knowledge that it would lead to publication on the website, notwithstanding his knowledge of the terms of paragraph 3 of the Order.
- On or before 5 May 2010 the Defendant published, or caused to be published, material on an internet site which disclosed a statement of X which had been relied upon by the Claimant in the proceedings

leading to the Order. The statement must have been disclosed by the Defendant in the knowledge that it would lead to publication on the website, notwithstanding his knowledge of the terms of paragraph 4(ii) of the Order.

- 3. The Defendant was required by paragraph 6 of the Order to deliver up all copies of the items referred to at Grounds 1 and 2 by 4pm on Monday 23 February 2004.
- 4. The Defendant was required by paragraph 7 of the Order to destroy permanently all copies of the items referred to at Grounds 1 and 2 which were not capable of being delivered up within 48 hours of service of the Order.
- 5. The publication of these materials on an internet site on or before 5 May 2010 demonstrates that the Defendant failed either to comply with paragraph 6, or paragraph 7, or both.

# E. Evidence in support

The Claimant relies upon the affidavit attached and served with this application notice. Annexed to this order is the affidavit of Michael Campbell McCafferty (to which is exhibited the Order at MCM3) sworn on 25 June 2010.