

Commission of Inquiry into Money Laundering in British Columbia

Application of Bob Mackin for Copies of Application Materials – Ruling #4

Ruling of the Honourable Austin Cullen, Commissioner, issued 8 November 2019

A. Background

1. This ruling is in response to a request by Bob Mackin, a journalist with theBreaker.news, for the release of application materials provided by James Lightbody and Fred Pinnock in support of their respective applications for participant status before the Commission.

2. Mr. Lightbody, through his counsel Robin McFee, Q.C., consents to the release of his application materials to Mr. Mackin. Mr. Pinnock, through his counsel Paul Jaffe, opposes the release of his application materials.

3. Rule 6 of the Commission's Rules for Standing provides as follows:

All applications for standing will be available to the public on the Commission's website unless otherwise ordered by the Commissioner.

4. By a direction pursuant to Rule 6, I directed that applications for standing will not be published but will be summarized in rulings.

5. That direction arose out of a concern that premature disclosure of detailed circumstances might compromise the ability of the Commission to pursue an investigation into events detailed by applicants for participant standing in their supporting materials.

6. That direction, however, does not preclude applications brought either by representatives of the media or other participants for access to those materials on a case-by-case basis.

7. The application materials at issue in this ruling consist of:

- a) “Application for Standing on Behalf of James (Jim) Lightbody, President & CEO British Columbia Lottery Corporation” dated September 5, 2019;
- b) “Supplemental Submissions” of Mr. Lightbody dated October 15, 2019;
- c) “Standing Application – Fred Pinnock” (email) dated September 6, 2019; and
- d) “Summary of Observations, Recollections and Conclusions of Retired RCMP S/Sgt Fred Pinnock, relative to the performance of persons within the BC Liberal Party, BC Civil Service, “E” Division RCMP and the MPSSG’s Gaming Policy and Enforcement Branch relative to legal gambling environments within British Columbia” undated, provided to Commission counsel on October 17, 2019.

B. The Statutory Framework

8. The statutory framework for applications of this nature is found in the *Public Inquiry Act*, S.B.C. 2007, c. 9 [**Act**].

9. Section 9(1) of the *Act* provides that:

Subject to this Act and the commission's terms of reference, a commission has the power to control its own processes and may make directives respecting practice and procedure to facilitate the just and timely fulfillment of its duties.

10. That power includes making directives “respecting access to, and restriction of access to, commission records by any person” (see s. 9(2)(f) of the *Act*).

11. Section 15(1)(c) of the *Act* provides that:

15(1) A commission may, by order, prohibit or restrict a person or a class of persons, or the public ... from accessing all or part of any information provided to or held by the commission,

...

(c) if the commission has reason to believe that the order is necessary for the effective and efficient fulfillment of the commission's terms of reference.

12. It is within that statutory context that I must consider and determine these applications.

C. Materials of Mr. Lightbody

13. As noted, Mr. Lightbody consents to the release of his application materials. Those materials, together with his oral submissions at the October 18, 2019 hearing, were generally summarized in Ruling #3 at paras. 5-14. While Mr. Lightbody's consent to the release of his written submissions is not determinative of the issue, I am satisfied after reviewing his initial and supplementary submissions that it would not compromise any future investigation by Commission counsel or any other agency to release those materials at this time. Nor would it result in any unfairness to any third party if they are not represented at this hearing, or otherwise unable to respond.

Conclusion – Materials of Mr. Lightbody

14. Accordingly, I order the release of the Lightbody submissions and related materials to Mr. Mackin.

D. Materials of Mr. Pinnock

15. Insofar as Mr. Pinnock's application materials are concerned, they rest on a different footing. As I noted earlier, Mr. Pinnock opposes the release of his application materials.

16. The supplementary materials provided on October 17, 2019 contained Mr. Pinnock's observations, recollections and opinions about certain political figures, bureaucrats and law enforcement officials in respect of gaming in British Columbia. They focussed primarily on the period between September 2005 and December 2007, when Mr. Pinnock was Unit Commander of the RCMP's Integrated Illegal Gaming Enforcement Team ("**IIGET**").

17. In his materials, Mr. Pinnock acknowledges he has no documents, emails or notes in support of any assertions made in his materials and "[a]ny corroboration in hard

copy of what I have to say must come from other witnesses, or documents obtained through the [freedom of information] process.”

18. As with Mr. Lightbody, Mr. Pinnock’s position is not determinative of whether the materials should be released. However, I am satisfied at least in relation to the supplementary materials that it would be inappropriate to order their release at this time.

19. There are some serious allegations against specific named individuals woven into Mr. Pinnock’s supplementary materials. As he himself points out, “corroboration ... must come from other witnesses, or documents obtained through the FOI process.” In fact, in some cases, it is not just corroboration (or contradiction) that must come from other sources, it is the substance of the allegations themselves. It is apparent that the allegations in Mr. Pinnock’s materials rest entirely on the reliability of third parties who spoke to Mr. Pinnock 12-14 years ago, about what they either observed or believed about the conduct of others.

20. In other words, Commission counsel will need to obtain and review documents and interview a significant number of witnesses to determine whether and to what extent Mr. Pinnock’s materials reveal a viable body of evidence for the Commission’s attention and consideration.

21. In opposing the release of his materials, Mr. Pinnock submitted: “I do not think that it is in the public interest to have this material out there prematurely.”

22. I agree with that proposition. Releasing the supplementary materials before Commission counsel have the opportunity to fully investigate them through interviews of witnesses, including Mr. Pinnock, and performing a document review, would be at odds with the Commission’s statutory mandate. An untimely disclosure of the information could taint or influence the evidence of potential witnesses or could lead to the destruction of documentary or electronic evidence before Commission counsel could carry out any assessment. In other words, premature release could undermine the integrity of the Commission’s investigations process. It could also lead to significant unfairness.

23. Paragraph 4(3) of the Commission's Terms of Reference ("TOR") requires that I provide to the appropriate authorities any information acquired during the course of the Inquiry that I reasonably believe may be useful in the investigation or prosecution of a criminal offence. A premature release of information could similarly compromise any subsequent criminal investigation or prosecution. There is the prospect that not only might Commission counsel be thwarted in a prospective investigation before the Inquiry, but potentially law enforcement authorities as well.

24. It would potentially also be unfair to release the supplementary materials at this stage because serious allegations, which may never be verified and could cause irreparable reputational harm to those against whom they are levelled, would be made public in a context without any meaningful opportunity to respond. At the very least, Commission counsel need to investigate the allegations to determine whether they have any foundation or are simply the product of speculation.

25. I am mindful of the "open court" principle, which has constitutional footing in s. 2(b) of the *Canadian Charter of Rights and Freedoms*, and which has received strong affirmation from the Supreme Court of Canada in leading authorities such as *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835; *R. v. Mentuck*, 2001 SCC 76; *Vancouver Sun (Re)*, 2004 SCC 43; and *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41.

26. The principle of openness applies to a public inquiry such as this: *Phillips v. Nova Scotia (Commissioner of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 at para. 116; *Episcopal Corporation of the Diocese of Alexandria-Cornwall v. Cornwall Public Inquiry*, 2007 ONCA 20 at para. 48.

27. The Commission aims to be open and transparent, with media access (including broadcasting hearings) unhindered, unless doing so is absolutely necessary. Reporters such as Mr. Mackin will be able to learn in abundant detail what evidence and submissions are put forward in this Inquiry. As Commission counsel move forward in their investigation and preparatory work, they will determine what evidence will be led in the course of public hearings. However, at this juncture, it would not be responsible to

release materials that present the risk of undermining the work of the Commission and law enforcement authorities, and creating unfairness.

Conclusion – Supplementary Materials of Mr. Pinnock

28. In light of this analysis, I order that Mr. Pinnock's supplementary materials not be released because I consider such an order necessary for the effective and efficient fulfillment of the Commission's TOR.

Conclusion – Initial Materials of Mr. Pinnock

29. Insofar as Mr. Pinnock's initial submissions are concerned, they are general in nature and are not different from what has already been reported publicly. I accordingly am satisfied that it is not necessary to make an order prohibiting their release and they may be released to Mr. Mackin.

Commissioner Austin Cullen