

**Commission of Inquiry into
Money Laundering in British Columbia**

Public Hearing

Commissioner

The Honourable Justice
Austin Cullen

Held at:

Room 701
Federal Courthouse
701 West Georgia Street
Vancouver, B.C.

Thursday, December 19, 2019

APPEARANCES

Patrick McGowan
Alison Latimer

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for Brad Desmarais

TABLE OF CONTENTS

	PAGE
Introductions	1
Submissions by Mr. Butcher	1

Vancouver, B.C.
December 19, 2019

1
2
3
4 THE REGISTRAR: Order. All rise. The Cullen
5 Commission of Inquiry is now open.

6 THE COMMISSIONER: Yes.

7 MR. MCGOWAN: Yes, Mr. Commissioner. For the record,
8 it's Patrick McGowan, counsel for the Commission.
9 With me is Alison Latimer.

10 THE COMMISSIONER: Thank you, Mr. McGowan, Ms.
11 Latimer.

12 MR. MCGOWAN: Mr. Commissioner, it's David Butcher
13 appearing for the applicant, Brad Desmarais.

14 THE COMMISSIONER: Yes, Mr. Butcher.

15 MR. MCGOWAN: Yes, Mr. Commissioner. Before you today
16 is an application brought by Mr. Desmarais to be
17 granted standing as a formal participant. This
18 application was originally scheduled to proceed
19 on October 18th, at which time Mr. Butcher,
20 counsel for Mr. Desmarais, applied for and was
21 granted an adjournment to allow him to have
22 discussions with counsel for the British Columbia
23 Lottery Corporation and to access documents,
24 which at that time, I understand, were subject to
25 some legal restriction. I understand Mr. Butcher
26 is now prepared to proceed, and I would invite
27 him to do so.

28 MR. BUTCHER: I am prepared to proceed. I've been
29 asked a couple of times by the Commission for a
30 date.

31 As I understand it, document production is
32 still in early stages. Hopefully it's not infant
33 stages, but it's still in early stages. I know
34 BCLC has not yet produced their documents but I
35 also know they're working actively on that. I
36 understand Mr. German has not produced any or
37 many documents with respect to his work on his
38 first report on casinos.

39 So I'm going to proceed anyway in the face
40 of that. Do you have my written submission?

41 THE COMMISSIONER: I do. Thank you.

42 MR. BUTCHER: I'm just going to go through it fairly
43 quickly. It's a fairly straightforward
44 application. It's my position that Mr.
45 Desmarais, as Vice President of Casino and
46 Community Gambling for the BLCL, is really in a
47 very similar position to Mr. Kroeker and Mr.

1 Lightbody, both of whom you have given standing
2 to already, in a limited capacity, to deal with
3 the issues that relate to the regulation and
4 management of casinos through the Corporation.

5 I've set out in paragraph 2 the terms of
6 reference. The first term of reference that
7 causes concern for individuals at the level of
8 management that Mr. Desmarais works is number
9 (b), the acts or omissions of regulatory
10 authorities or individuals with powers, duties or
11 functions in respect of the sectors under review,
12 to determine whether or not those acts or
13 omissions have contributed to money laundering in
14 British Columbia and whether they have amounted
15 to corruption.

16 Those are strong words. And if those
17 allegations are uncovered in the evidence, then
18 clearly the individuals against whom those things
19 might be said need representation.

20 And I've put out the third term of reference
21 in paragraph 3. If you have reasonable grounds
22 to believe that any information obtained during
23 the inquiry may be useful in the investigation or
24 prosecution of an offence under the *Criminal*
25 *Code*, the commissioner must forward that
26 information to the appropriate authorities.

27 When the attorney general issued the terms
28 of reference, he could have limited it to the
29 review of the institutional roles --

30 THE COMMISSIONER: Mm-hm.

31 MR. BUTCHER: -- in the process but has clearly
32 required you to look at the role of individuals
33 as well.

34 THE COMMISSIONER: Before you go further, Mr. Butcher,
35 I just wanted to explore your submission on these
36 two points. As I see it, at this stage in the
37 game those are two theoretical considerations as
38 far as your client is concerned.

39 MR. BUTCHER: Absolutely.

40 THE COMMISSIONER: There's nothing to ground them.

41 MR. BUTCHER: Absolutely.

42 THE COMMISSIONER: Okay.

43 MR. BUTCHER: My client very clearly states that none
44 of those kinds of allegations would apply to him.
45 But that does not in any way reduce his concern.
46 And I'll show you where the concern comes from.

47 I've set out in paragraph 7 one of the

1 paragraphs from your Ruling 1# that set out the
2 factors that you have to consider, and item c is
3 whether the applicant faces the possibility of
4 adverse comment or criticism with respect to his
5 conduct.

6 And then I've got some more paragraphs from
7 your rulings that deal with the Baker factors
8 that deal with administrative fairness. You've
9 already had those reviewed by others and have
10 obviously written about them.

11 I have just quoted a few paragraphs from the
12 German report in these submissions. The
13 executive summary begins with paragraph 5 that
14 I've quoted in my paragraph 9:

15
16 For many years, certain Lower Mainland
17 casinos unwittingly served as laundromats
18 for the proceeds of organized crime. This
19 represented a collective system failure,
20 which brought the gaming industry into
21 disrepute in the eyes of many British
22 Columbians.

23
24 Paragraph 6:

25
26 The problem grew over time until it
27 outdistanced the ability of existing
28 legislation, process and structure to
29 effectively manage the problem. The
30 combined effect of years of denial,
31 alternate hypotheses and acrimony between
32 entities made for a perfect storm which
33 reached its apex in July 2015.

34
35 And Mr. German continued in the executive summary
36 by -- and I'll just quote the underlined quotes
37 dealing with both BCLC and GPEB. He said:

38
39 It was a failed strategy for one simple
40 reason. Organized criminals are not looking
41 for cash alternatives. They want to launder
42 cash and we now know that they continued to
43 do precisely that, and with vigour.

44
45 And then there's an important point about the
46 German report. It says:

47

Submissions by Mr. Butcher

1 Third, it is important at the outset to note
2 what this Review and Report are about, and
3 what they are not about. I do not apportion
4 blame on any person. I was asked to
5 "review" and not to "investigate"
6 allegations of money laundering. This is a
7 critical distinction.
8

9 And so, very clearly, in contrast to your terms
10 of reference, Mr. German's terms of reference
11 were to look at institutions only.

12 I've made some references to Mr. German's
13 report on what he described as a failed strategy
14 following the publication of the Kroeker report.
15 And he describes the -- this is paragraph 12.
16 I've excerpted two other paragraphs where he
17 describes the conflict between GPEB and GCGC and
18 BCLC. And later on he goes so far as to describe
19 that as an internecine warfare.

20 The thrust, in my submission, of Mr.
21 German's report is that BCLC, for various
22 reasons, is at least partially responsible for
23 reported failure to control the reported money
24 laundering in B.C. casinos.

25 My client certainly has a view about the
26 nature and extent of the alleged problem which is
27 different from Mr. German's, quite different, in
28 fact.

29 THE COMMISSIONER: Different from Mr. German. Is it
30 different from BCLC generally?

31 MR. BUTCHER: I don't think I'm in a position to say
32 that yet.

33 THE COMMISSIONER: Right.

34 MR. BUTCHER: In your first ruling, on the paper
35 submissions only, you made comments about Mr.
36 Kroeker's background that he was chief compliance
37 officer and vice president of BCLC for legal
38 compliance and security from September 2015 to
39 July 2019. Mr. Kroeker submits that he's been
40 the subject of reproaches and complaints in the
41 media and has information to provide in response,
42 including some that contradicts the assertions
43 made.

44 And then you granted standing to Mr. Kroeker
45 because of his legal, reputational and privacy
46 interests may be affected by the findings of the
47 Commission.

1 And in paragraph 16 I've made reference to
2 Mr. Lightbody. Mr. Lightbody held my client's
3 position from January '11 to January 2014. And
4 in Ruling #3 you set out his background in your
5 paragraph 5 from that ruling.

6 And in paragraph 20 you said:

7
8 Here, it appears that because of his
9 position, Mr. Lightbody may be subject
10 personally to adverse comment or criticism
11 arising from an adverse assessment of BCLC's
12 corporate actions. There also appears to be
13 a reasonable prospect, given his
14 submissions, that he has information or "a
15 perspective" to offer that is different from
16 the corporate perspective of BCLC and which
17 BCLC is not privy to. In my view, that
18 confluence of factors creates a relationship
19 between Mr. Lightbody and BCLC that would
20 not be accommodated appropriately within a
21 single retainer.

22
23 And then you go on to say that you will grant Mr.
24 Lightbody status on condition that his
25 contribution does not duplicate that of BCLC
26 particularly, or, I suppose, any other party.

27 Paragraph 18. I say:

28
29 Mr. Desmarais is in a very similar position
30 as Mr. Lightbody, and perhaps he has a more
31 compelling case than Mr. Kroeker, who joined
32 BCLC in 2015, two and a half years after Mr.
33 Desmarais.

34
35 Mr. German traces the money laundering issue --
36 and now I really am overgeneralizing -- back to
37 2012 or 2013, when my client started work at
38 BCLC. And Mr. Desmarais says exactly the same.
39 So he had a longer tenure at BCLC than Mr.
40 Kroeker, and direct responsibility for casinos,
41 although not for the whole period of his
42 employment there.

43 I say he has personal insight arising from
44 his background as a police officer of 34 years,
45 personal disagreement with some of the findings
46 of Mr. German's report. He was part of the
47 senior management team through the period in

1 which Mr. German asserts that BCLC had a failed
2 strategy and engaged in internecine warfare. And
3 I say that there's a reasonable prospect that he
4 has a perspective that may be different. His
5 decision making and conduct appears to have been
6 and may again be the subject of criticism.

7 And while Mr. German's -- this is my last
8 page. While Mr. German's report was critical,
9 that criticism was specifically at organizations,
10 not individuals. And your terms of reference are
11 different. Any criticism of BCLC's response to
12 money laundering is a potential criticism of the
13 senior managers responsible for that response.

14 Mr. Desmarais is working closely with BCLC
15 counsel. We've had one daylong meeting already.
16 We have another daylong meeting scheduled for
17 January. My client is meeting with Commission
18 counsel in mid-January. We will be cooperating
19 fully. But that does not eliminate the potential
20 for both deviation from BCLC's position and
21 personal criticism.

22 Accordingly, he seeks participant status to
23 protect his personal interests on the same
24 conditions as those imposed on Mr. Kroeker and
25 Mr. Lightbody. Thank you.

26 THE COMMISSIONER: I think when we adjourned the last
27 time, it wasn't on the footing, but sort of the
28 upshot of your submission was that you may find
29 documents that either reveal that your client is
30 on a different trajectory from BCLC or that he's
31 not. I take it you're not able to --

32 MR. BUTCHER: I'm not able to address that at this
33 point.

34 THE COMMISSIONER: Address that at this point. All
35 right. All right. Thank you, Mr. Butcher.

36 I think what I'll do, then, is simply
37 adjourn, reserve my reasons, and issue them in
38 the next little while. I don't think it will
39 take too long. All right, thank you.

40 MR. BUTCHER: Thank you.

41 THE COMMISSIONER: Anything else, Mr. McGowan, that
42 needs to be dealt with?

43 MR. MCGOWAN: Nothing else, Mr. Commissioner.

44 THE COMMISSIONER: All right. Thank you.

45 THE REGISTRAR: Order. The hearing is now adjourned.

46
47 --- PROCEEDINGS ADJOURNED