

Commission of Inquiry into Money Laundering in British Columbia

Application for Participant Status – Ruling #16

Ruling of the Honourable Austin Cullen, Commissioner

Issued November 12, 2020

[1] On Monday, November 9, 2020, counsel for the Commission received an application brought by Kash Heed seeking a number of orders. The orders sought are as follows:

1. Mr. Heed be granted an extension of time to seek limited participant status;
2. Mr. Heed be granted limited participant status for the limited purpose of:
 - a. Conducting a cross-examination of Mr. Pinnock on his evidence relating to his discussions with Mr. Heed, that is not to exceed 90 minutes in duration; and;
 - b. Failing agreement between Commission Counsel and Mr. Heed as to the relevant portions of the transcripts that can be treated as admissible evidence and therefore not be redacted, bringing an application relating to that issue;
3. Mr. Heed's cross-examination of Mr. Pinnock will take place before Mr. Heed's application relating to the admissibility of portions of Exhibits 163 and 164;
4. The application deadline of Wednesday, November 11, relating to redactions will be adjourned generally and, following Mr. Heed's application relating to the admissibility of portions of Exhibits 163 and 164, the remaining participants and, if necessary, any third parties, will be provided with notice and an opportunity to address whether any redactions to Exhibits 163 and 164 are warranted;
5. Exhibits 163 and 164 will not be made public until the conclusion of the process set out in point 4; and
6. Mr. Heed's rights as a limited participant are subject to variation and modification to address any issues that may arise.

[2] The factual context of this application arises from the testimony of Fred Pinnock given to the Commission on November 5 and 6, 2020.

[3] Mr. Pinnock is a former RCMP officer who has levied public criticism of his then superior officers and others for failing to take steps to abate money laundering in the gaming industry during and after his tenure with the RCMP which ended in 2007.

[4] In the course of his evidence before the Commission, Mr. Pinnock testified that in early November 2009 he arranged to meet with the then Minister of Public Safety and Solicitor General, Kash Heed. The meeting allegedly took place shortly after Mr. Pinnock first went public with his criticisms.

[5] Mr. Pinnock testified that during the meeting Mr. Heed told him that he (Mr. Pinnock) was right about the police failures to take steps against money laundering, saying “it’s all about the money” and that he (Mr. Heed) named Mr. (Rich) Coleman as being “largely responsible for this along with senior Mounties who were complicit.” Mr. Pinnock testified he said to Mr. Heed that he (Pinnock) was sure Mr. Coleman was aware of what was going on inside the casinos and Mr. Heed “confirmed [he] was accurate in [his] belief and he did feel that [Mr.] Coleman had created this and it received the sort of tacit support of senior Mounties in this province.”

[6] Mr. Pinnock testified that he believed Mr. Heed told him that he (Heed) understood “there to be an issue of organized crime and cash in casinos.” According to Mr. Pinnock, Mr. Heed told him nothing was being done because “it’s all about revenue generation” – “it’s all about the money.”

[7] Mr. Pinnock testified Mr. Heed did not tell him why he believed that. According to Mr. Pinnock, Mr. Heed told him that the senior police officers were “puppets for Coleman.”

[8] In subsequent testimony in response to questions from counsel for Canada suggesting that all he had to support his conversation was his recollection from 11 years before, Mr. Pinnock asserted he remembered the conversation and explained that it led him to surreptitiously record a telephone conversation he had with Mr. Heed on July 10, 2018, as well as a lunch conversation which he had with

Mr. Heed on September 7, 2018. He testified he did that because “I wanted him to repeat to me the essence of what he told me in 2009.”

[9] That evidence was given on November 5, 2020.

[10] Before and after Mr. Pinnock testified on November 5, Mr. Heed had several communications with Commission counsel. He was interviewed as a potential witness on January 23, 2020. On October 26, Commission counsel wrote to Mr. Heed to notify him that they “had not yet communicated a firm view” as to whether or not he would be a witness.

[11] On November 4, he was told that Mr. Pinnock had recently provided Commission counsel with the two recordings (July 10, 2018 and September 7, 2018) but that Commission counsel did not intend to introduce the recordings or transcripts during its examination of Mr. Pinnock. Commission counsel noted, however, that other participants had the recordings and the transcripts.

[12] Shortly after Mr. Pinnock’s evidence concluded on November 5, Commission counsel emailed Mr. Heed informing him that they intended to call him as a witness “in the next round of hearings in 2021” and alerting him to the fact that he “will wish to be aware of” Mr. Pinnock’s evidence given that day and referring him to the archived recording. Later the same day (at 6:46 p.m.), Commission counsel informed Mr. Heed that they would seek to enter the two transcripts during re-examination of Mr. Pinnock, but noted that they would be seeking to redact one portion of the transcript and would seek a brief window of delay to enable Mr. Heed and others to bring an application for redactions “to the public facing version posted on the website.”

[13] Mr. Heed responded by asserting he had no issue with the parts of the discussions potentially relevant to the Commission’s mandate being tendered into evidence but resisted the portions of the transcripts that were “irrelevant and private.”

[14] Commission counsel responded to Mr. Heed at 9:00 p.m. that they “determined that the transcripts ought to be tendered in evidence and will seek to do so tomorrow” but will apply for a direction that the transcripts not be posted on the website for a few days to enable applications for redactions to be made to the documents.

[15] On November 6, Commission counsel tendered the transcripts and they were marked as exhibits 163 and 164, subject to certain redactions which had been directed. At the same time, I directed that the transcripts not be posted until the participants, Mr. Heed, Mr. Pinnock and, potentially, third parties, had an opportunity to seek redactions of the documents.

[16] In his submissions in support of the application, counsel for Mr. Heed confirmed that Mr. Heed has no issue with the recorded discussions “potentially relevant to the Cullen Commission’s mandate being tendered into evidence.” He characterized them as “simply personal opinions expressed in 2018 by a long-since retired politician” which “were not based on first-hand knowledge.” Counsel for Mr. Heed questioned whether ultimately the evidence of what Mr. Heed said in 2018 will have any probative value but confirmed that he “is fine with them being tendered into evidence and will gladly address those comments in their proper context” when he testifies.

[17] Insofar as Mr. Pinnock’s evidence about the meeting and discussions which allegedly took place in early November of 2009, it is Mr. Heed’s position, as I understand it, that he neither had any basis for, or first-hand knowledge on which to base the opinions attributed to him by Mr. Pinnock in 2009, nor did he express those opinions to Mr. Pinnock. Mr. Heed submits he will “gladly address those comments” when he is called to testify.

[18] That is the factual context in which Mr. Heed’s application is brought.

[19] It is not clear to me when Mr. Heed was first made aware of Mr. Pinnock’s allegations concerning the November 2009 meeting, nor is it clear when Mr. Heed was first made aware of the fact that Mr. Pinnock had secretly recorded their

conversations in July and September of 2018 or what the substance of those discussions were.

[20] While those circumstances might be useful to know in light of the nature of this application, given the way in which the immediate circumstances have unfolded, I do not consider that lack of information to be a critical factor. Until November 5, Mr. Heed was uncertain whether he would be called as a witness and unaware of Commission counsel's intention to introduce the transcripts. The transcripts were introduced in the wake of Mr. Pinnock's assertion, when challenged on the reliability of his memory of the 2009 discussion, that his recollection of that conversation led him to record Mr. Heed in 2018, who in effect repeated what he said to Mr. Pinnock in 2009. In other words, the critical issue is whether the recorded conversations either corroborate or undermine Mr. Pinnock's evidence of the contested 2009 conversation.

[21] In Ruling #14, in response to an application for limited participant status brought by Paul Jin, I set out the legal basis for such a grant of standing at paras. 4-6 as follows:

[4] The statutory provisions that govern applications for participant status are ss. 11(4)(a)-(c) of the *Act*. Those sections read as follows:

11(4) On receiving an application under subsection (3), a commission may accept the applicant as a participant after considering all of the following:

- (a) whether, and to what extent, the person's interests may be affected by the findings of the commission;
- (b) whether the person's participation would further the conduct of the inquiry;
- (c) whether the person's participation would contribute to the fairness of the inquiry.

[5] The relevant considerations in determining whether to grant participant status include (September Ruling at para. 11):

- a. the nature and extent of the applicant's rights or interests;
- b. why standing is necessary to protect or advance the applicant's rights or interest;
- c. whether the applicant faces the possibility of adverse comment or criticism with respect to its conduct;

- d. how the applicant intends to participate, and how this approach will assist the Commission in fulfilling its mandate;
- e. whether and how the applicant's participation will contribute to the thoroughness and fairness of process;
- f. whether the applicant has expertise and experience relevant to the Commission's work;
- g. whether and to what extent the applicant's perspective or interest overlaps or duplicates other applicants'; and
- h. whether the applicant may participate in another capacity — for example, as a witness who may testify — instead of being granted formal standing.

[6] The Commission relies on the submissions of applicants to assess whether their rights and interests might be affected over the course of the Commission process. Consideration of whether an applicant's participation will contribute to the fairness of the process requires attention to the non-exhaustive list of factors outlined in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

[22] As I see it, the circumstances, taken as a whole and considered in light of the applicable legal basis, justifies making the orders sought by Mr. Heed. I will make those orders, but I will leave it for counsel to consult and agree on the appropriate amount of time to allocate for cross-examination of Mr. Pinnock.

[23] In addition to the orders which I have already made in relation to this application, I consider that in light of the nature of this application which seeks a ruling on the admissibility of portions of the transcripts, the transcripts should be marked as exhibits for identification rather than as exhibits proper at this stage until the issue of admissibility is resolved. I accordingly make that order as well.



Commissioner Austin F. Cullen