

# Commission of Inquiry into Money Laundering in British Columbia

## Application for Redactions – Ruling #23

### Ruling of the Honourable Austin Cullen, Commissioner

Issued December 15, 2020

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#### A. INTRODUCTION

[1] The British Columbia Government and Service Employees' Union ("BCGEU") has applied on behalf of Muriel Labine for redactions to be made to the public facing version of Exhibit 147, an affidavit sworn by Ms. Labine on November 2, 2020.

[2] The redactions sought are of "references to and descriptions of individuals referred to in the affidavit who Ms. Labine believes to be involved in criminal activity." BCGEU "also seeks the redaction of the names of frontline casino staff identified as having interacted with the individuals Ms. Labine believed to have been involved in criminal activity."

[3] The redactions are sought "on two interrelated bases":

1. The Labine Affidavit includes numerous references to suspected criminals, in some cases with detailed physical descriptions. To put it bluntly, these criminal figures are dangerous people that Ms. Labine reasonably believes would seek retribution against her or her daughter, Michelle. Ms. Labine legitimately fears for her and Michelle's personal safety should these names and descriptions be publicly available.
2. The Labine Affidavit also includes names of frontline staff at her former workplace (some of whom continue to work for GCGC) who are noted as having interacted with suspected criminals. Again, Ms. Labine genuinely fears for these persons' safety should their names be publicly disclosed.

[4] Ms. Labine's evidence concerned her experiences, interactions and observations while working at the Great Canadian Gaming Corporation Richmond Casino between 1992 and 2000. Ms. Labine and her daughter, Michelle, kept a journal "detailing what

appeared to be organized crime activity at the casino including loan sharking and money laundering” between August 1998 and January 1999.

[5] BCGEU submits that based on Ms. Labine’s asserted fears for her personal safety and that of her daughter “should these names and descriptions be publicly available” and based on her asserted fear for the personal safety of frontline staff should their names be disclosed, both the “*Dagenais / Mentuck* test and the substance of *Ruling #13* militate in favour of the requested redactions.”

[6] BCGEU contends this application “engages serious and genuine issues of personal safety for Ms. Labine, her family and former co-workers.” BCGEU submits not to accede to the application “would subvert the ends of justice and unduly compromise its proper administration.” Further, BCGEU says that the salutary effects of such an order would go beyond preserving the safety of Ms. Labine and “vulnerable rank and file casino workers” in that it would “avoid placing a chill on other fearful citizens stepping forward to assist the Commission.”

[7] In its response to the BCGEU application, Her Majesty the Queen in Right of the Province of British Columbia (“HMTQ”) submitted that “any [ruling] on [the] application ought to be consistent with Ruling 13 and the ... decision on the extant application to vary that Ruling.”

[8] Counsel for the Great Canadian Gaming Corporation (“GCGC”) took no position on the application. No other participants responded.

[9] Commission counsel submitted that “the only redactions that should be made to Exhibit 147 are those required by Ruling #13” and that “BCGEU has not provided a sufficient evidentiary basis to justify further redactions.”

[10] Commission counsel contended that the only evidence put forth by BCGEU is Ms. Labine’s express belief that there is a risk to her personal safety, that of her daughter and current or former casino staff. Commission counsel pointed out that the events referred to by Ms. Labine occurred over 20 years ago, and are indistinguishable from more recent events and interactions between casino staff, cash facilitators and

casino patrons outlined in testimony and exhibits filed with the Commission, all of which are governed by Ruling #13.

[11] Commission counsel submitted that at the time Ruling #13 was made, it was to be expected that there would be a high likelihood that many service provider employees, British Columbia Lottery Corporation ("BCLC") investigators and the Gaming Policy and Enforcement Branch ("GPEB") would be identified in the context of interactions with those who may be involved in money laundering.

[12] In those circumstances, Commission counsel submitted, there should be no distinction drawn between Ms. Labine, her daughter, or the casino staff referred to in her affidavit and/or the exhibits to her affidavit. The redactions to Ms. Labine's affidavit should be limited to those required by Ruling #13.

## **B. DISCUSSION AND CONCLUSION**

[13] The legal framework that guides the disposition of this application was set out in Ruling #13, which concerns various applications seeking directions with respect to the redaction of personal information on "public facing documents" entered as exhibits during the Commission hearings.

[14] In the result, I gave the following directions (at para. 75):

- i. Participants shall redact the following information from public facing documents produced by them that are entered as exhibits: email addresses, telephone numbers, home addresses, driver's licence information, social insurance numbers, health card numbers, bank account information, and names of casino patrons.
- ii. Participants are responsible for proposing and making redactions to their own documents with respect to any other category of information.
- iii. The names of current or former employees of participants, licence plate numbers, business names, photographs and SIDs are not to be redacted.
- iv. Commission counsel, participants and members of the media may propose to alter the redactions, or non-redactions, as the case may be, under directions (i), (ii) and (iii).
- v. Further to direction (iv), Commission counsel and participants will endeavour at first instance to resolve any proposals under directions (i), (ii) and (iii) by agreement.

- vi. In the event that Commission counsel and participants are unable to resolve a proposal, parties may apply to the Commissioner for a direction under Rule 28 of the Rules of Practice and Procedure.

[15] In Ruling #12 I describe the legal framework which was applicable to an application for witness accommodation and in Ruling #13 I accepted that that legal framework was equally applicable to an application for redactions. The relevant portion of Ruling #12 in which I set out the legal framework reads as follows:

[11] I accept commission counsel's submission that the *Dagenais / Mentuck* test has broad application and applies to "all discretionary decisions that affect the openness of proceedings" (see *Canadian Broadcasting Corp. v. The Queen*, [2011] 1 S.C.R. 65 at para. 13).

[12] I also accept that the *Dagenais / Mentuck* test is stringent, met only when a decision-maker concludes that disclosure would subvert the ends of justice or unduly compromise its proper administration (see *Toronto Star Newspapers Ltd. v. Ontario*, [2005] 2 S.C.R. 188 [*Toronto Star*] at para. 4).

[13] I agree with the submissions of commission counsel that the *Dagenais / Mentuck* test establishes the applicable framework for determining this and similar applications.

[14] The test requires an applicant seeking a restriction of public access to surmount two barriers:

- (a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

(*Mentuck* at para. 32)

[15] The evidentiary basis for the order sought – that is to establish its necessity to prevent a serious risk – must be "convincing" and meet "rigorous standards" (see *Vancouver Sun (Re)*, [2004] 2 S.C.R. 332 at para. 65; *Toronto Star* at para. 41).

[16] To put it another way, the objective of such an order is to prevent a real and substantial risk, not one that is speculative or remote (see *R. v. Esseghaier*, 2017 ONCA 970 at para. 27). However, the risk need not meet a standard of "predictive certainty" (see *Toronto Star* at para. 42).

[17] The test is "a flexible and contextual one" which focuses on the circumstances giving rise to the application (see *Toronto Star* at para. 31).

[18] Any order made must be crafted in a minimally restricted way (see *N.E.T. v. British Columbia*, 2018 BCCA 22).

[16] Those considerations are equally applicable to the present application.

[17] In my view, the concerns expressed by Ms. Labine through BCGEU, while no doubt genuinely held, do not rise above the level of being speculative and remote. They do not, given the lapse of time and the lack of any specificity, establish a serious risk to the proper administration of justice which could only be abated by making the redactions sought. Ms. Labine's circumstances, those of her daughter, and those of her co-employees 20 years ago do not, in context, justify treating them differently from the casino staff, BCLC investigators and GPEB investigators who were the subjects of the applications in Ruling #13. To make the redactions sought would deprive the media and the public of access to information which would more fully inform them of the interactions and events which developed as the gaming sector, particularly casinos, saw increasing amounts of cash flowing through their doors.

[18] I am therefore not persuaded that the redactions sought by BCGEU meet the stringent test as set out in *R. v. Mentuck*, 2001 SCC 76 at para. 32 (set out above). I see no reason to distinguish the circumstances of this case from those considered in Ruling #13 or the subsequent ruling, Ruling #22. Accordingly, I will dismiss BCGEU's application, but confirm that para. 75 of Ruling #13 and Ruling #22 apply to Ms. Labine's affidavit and its exhibits.



Commissioner Austin F. Cullen