

Commission of Inquiry into Money Laundering in British Columbia

Application for Witness Accommodation – Ruling #20

Ruling of the Honourable Austin Cullen, Commissioner

Issued December 2, 2020

[1] In this application, Canada seeks accommodations for an upcoming witness, RCMP Sergeant Sushile Sharma. The application is straightforward and governed by the considerations I identified in Ruling #12 issued on October 23, 2020. I am satisfied, based on the evidence and submissions advanced, that the orders sought should be granted. These are my brief reasons for reaching this conclusion.

[2] The Commission is presently hearing evidence organized by topic area. On December 9-11, 2020 witnesses will be called on the topic of trade-based money laundering or TBML. One of these, testifying as one of three witnesses on a panel, is RCMP Sgt. Sushile Sharma (the “Witness”). On November 23, 2020, Canada applied for accommodation measures for the Witness, relying on a written submission and an affidavit from the Witness. (Canada asked that its application materials not be circulated to participants nor made public. Pursuant to Rule 61 of the Commission’s Rules of Practice and Procedure, I have determined that it is appropriate that the application materials be restricted to myself and senior Commission counsel.)

[3] The application seeks orders that would limit the public livestream of the Witness’s evidence to audio only; the only visual image would be an image of a static silhouette. (This was done recently for two witnesses who were the subject of Ruling #12.) In addition, the Commission would not maintain any recording of the video evidence of the Witness, only the audio portion. The Zoom video feed would be restricted to counsel for those participants who have standing on the issue of TBML (which Commission counsel confirms, and I agree, includes only these participants: the Province (Ministry of Finance); Canada; BMW; BC Civil Liberties Association; Transparency International Coalition; Law Society of BC; BC Government Employees

Union; and Canadian Bar Association BC-Criminal Defence Advocacy Society). Finally, Canada asks for an order prohibiting any reproduction (screenshot, photo, video) of the internal Zoom feed, by those in attendance on that feed.

[4] The application is rooted in concerns specific to the Witness, and the nature of his work and responsibilities as a senior police officer now at RCMP “E” Division. The application materials, including the Witness’s affidavit, document this in considerable detail.

[5] Senior Commission counsel provided a written response to Canada’s application, and in turn, Canada filed a short reply. Commission counsel does not oppose the orders sought, and provides further information about the mechanics of how the Inquiry’s hearings operate, with both (1) a “Zoom feed” that is limited to participants, Commission staff and me, and (2) a public livestream. As was done for a few earlier witnesses, the public livestream can show a static picture of a nondescript shadow of a person, in lieu of displaying the witness himself or herself or themselves. The livestream can nonetheless carry the audio of that person. The advantage to this is that it enables counsel for participants and the Commissioner to observe the witness on the internal Zoom feed.

[6] The principles governing this application are those set out in Ruling #12 and I need not repeat them here. While the familiar *Dagenais / Mentuck* test applies, the context is that of a public inquiry with considerable flexibility in its process. As Commissioner, I have the ability to impose restrictions on access to Inquiry hearings: *Public Inquiry Act*, S.B.C. 2007, c. 9, s. 15(1). This Commission has conducted its hearings, since the onset of the pandemic, using a videoconferencing platform, which is then made publicly available (both live and after-the-fact) on the Commission’s website. Unlike conventional hearings in a courtroom, in which it is apparent who is in attendance, livestreamed hearings permit for a far broader viewership. While this is ordinarily not a problem, there are particular circumstances in which broadcasting a person’s appearance gives rise to difficulties.

[7] The present application is well founded. As noted, Canada has furnished submissions and an affidavit sworn by the Witness. I am satisfied, based on the evidence presented, that there is a well-founded concern that a process identifying the

Witness's appearance would create unacceptable risks — for the Witness, for investigations and cases he has been involved in, and conceivably for people he has interacted with in the course of his duties. The proposed orders will permit counsel for participants with standing on TBML, and the Commissioner, to see and hear the Witness. The hearings will remain public, with the Witness's voice audible on the livestream (and archived recording) of the hearing. All that is lost is the ability of the public to see one of three witnesses on a panel.

[8] I therefore grant the application as framed, and make these directions:

- a. The public livestream, and the archived recording, of the Witness's evidence will be restricted to audio only. His image will not be displayed. The images of other witnesses on the panel, and those of counsel and the Commissioner, will be displayed.
- b. Pursuant to s. 15(1) of the *Public Inquiry Act*, I prohibit access to the visual image of the Witness, and in particular:
 - i. There can be no recording, screenshot, photo, or video taken of the Zoom feed displaying the image of the Witness. (The Commission will prepare transcripts using a recording of the webcast feed which does not include the Witness's visual display, rather than using the Zoom feed.)
 - ii. Any recording of the Witness's evidence is restricted to audio recording.
- c. The hearing involving the Witness will require a unique password, and entry to the Zoom meeting will be limited to those counsel whose participant client has standing on TBML, as identified earlier in these reasons.



Commissioner Austin F. Cullen