Commission of Inquiry into Money Laundering in British Columbia

Application re: Definition of Loan Sharking – Ruling #34

Ruling of the Honourable Austin Cullen, Commissioner

Issued July 21, 2021

A. INTRODUCTION

[1] The Applicant, Paul King Jin, applies for an order that Commission counsel provide him with the definition of the term "loan shark" as that term will be used and applied by the Commission when it analyzes evidence, and considers and formulates recommendations and findings. In the alternative, he seeks an order that the Commission will not in any way apply that phrase to him either by finding that he was a "loan shark" or that he engaged in "loan sharking" activities.

[2] Mr. Jin's application arises from a warning letter sent to him by Commission counsel on October 14, 2020 which was intended to give him notice of evidence to be called during the Commission's evidentiary hearings. The letter states:

> We write to provide you with notice of the anticipated evidence to be called during the hearings of the Commission of Inquiry into Money Laundering in British Columbia in the fall of 2020. We are providing you with notice of this evidence because, if accepted, it may negatively impact on your reputation.
>
> We anticipate that evidence called at the Commission's hearings will indicate that for several years, you were engaged in loan sharking in and around British Columbia casinos, that you provided significant quantities of cash to individuals for the purpose of gambling in British Columbia casinos, and that information provided by the Royal Canadian Mounted Police to the British Columbia Lottery Corporation indicated that the cash you provided was the proceeds of crime. We anticipate the evidence will indicate that you were banned from British Columbia casinos on multiple occasions for these actions, but that you continued to engage in this behaviour while subject to these bans.

[3] Mr. Jin submits that he is entitled, as a matter of fairness, to understand the definition of the term "loan shark" as it is being applied by the Commission, its investigators and its counsel, in order to meaningfully address any allegation from

Commission counsel or Commission witnesses that he was a “loan shark” or that he was somehow engaged in “loan sharking.”

[4] He further submits that it would be “unusual” for Commission counsel to have used that term in the warning letter if it did not have a definition of that term in mind, and expresses concern about the definition to be applied by Commission counsel charged with flagging relevant evidence with respect to this issue:

> In its Ruling issued May 5, 2021, this Commission allowed that members of the commission counsel team will continue to assist the Commission, at the post-evidence phase, in ways that include “flagging relevant evidence”.
>
> In order to potentially flag evidence relevant to loan sharking it is necessary to have an understanding of the meaning of the term. For example, does the phrase refer to commercial lending, all private lending, some private lending, does it refer to a Criminal Code offence?
>
> It would be unusual if Commission counsel were to have sent a formal letter to the applicant, in which the phrase “loan shark” is used if Commission counsel did not at that time have a definition of that phrase.
>
> To the extent that inquiry into “loan shark” activities falls within the Commission’s terms of reference and, to the extent to which this Commission will consider a finding of fact or finding of misconduct against the applicant that relates to “loan sharking”, the applicant is entitled as a matter of fairness to know, at this stage, the definition of the phrase as the phrase might used by commission counsel and the Commission.
>
> Fairness dictates that in order for the applicant to be able to meaningfully address any allegation from the Commission counsel or from Commission witnesses that he was a “loan shark” or somehow engaged in “loan sharking”, he must first understand the definition of that phrase as it is being applied by this Commission, and its investigators and counsel.

[5] Commission counsel oppose both orders sought by Mr. Jin and submit that the application (1) conflates the roles of the Commissioner and Commission counsel, (2) misconstrues the October 2020 letter from Commission counsel and (3) seeks a remedy that is premature and/or unnecessary in light of the requirements of s. 11(2) of the *Public Inquiry Act,* S.B.C. 2007, c. 9 [*PIA*].

[6] With respect to the first point (the role of the Commissioner and Commission counsel), Commission counsel submit that they should not and cannot bind the Commissioner to a particular definition of that term.

[7] They note that multiple witnesses have given evidence that Mr. Jin was engaged in activity they identified or described as “loan sharking”, with one witness giving evidence that Mr. Jin has previously identified himself as a loan shark.

[8] They also note that if Commission counsel were to bind the Commissioner to a particular definition of that term it would intrude upon the Commissioner’s exclusive jurisdiction to make findings of fact based on that evidence.

[9] Commission counsel further submit that developing a definition of the activity in which Mr. Jin is alleged to have engaged, and which may be used as a standard against which Mr. Jin’s conduct is measured, clearly exceeds the limits that I have imposed on Commission counsel’s involvement in findings relating to Mr. Jin.

[10] These limitations restrict the post-hearing role of Commission counsel who have participated in the gathering and presentation of evidence to the following:

a. Organizing and bringing forward evidence relevant to any findings of misconduct that could be made against Mr. Jin; and

b. Reviewing relevant sections of the final report after they have been drafted to ensure there are no inaccuracies or statements that may expose the Commission to legal challenge.

[11] With respect to Mr. Jin’s second point (the October 2020 letter), Commission counsel submit that the purpose of that letter was to provide Mr. Jin with notice of the evidence that would be led during the Commission’s public hearings so he could take steps to safeguard his interests (such as applying for participant status, as he then did).

[12] The letter was not intended to set out any specific allegations being made by Commission counsel or the Commissioner, and clearly indicated that Commission counsel took no position as to whether the anticipated evidence ought to be accepted or whether, if accepted, it ought to reflect negatively on Mr. Jin.

[13] Commission counsel note that Mr. Jin subsequently applied for participant status and participated in the Commission’s public hearings where he had the opportunity to

cross-examine witnesses who gave evidence relevant to his grant of standing. To the extent he believed the evidence was unclear or incomplete, it was open to him to cross-examine on those issues. It was also open to him to seek to have other evidence led at the hearings; he did not avail himself of this.

[14] Commission counsel also note that the evidentiary record provides Mr. Jin with ample information about the meaning attributed to that term by the witnesses who testified during the Commission's evidentiary hearings. They have provided a non-exhaustive list of affidavit and transcript references in which witnesses identify Mr. Jin as a loan shark or as being involved in loan sharking activity. They have also provided a list of affidavit and transcript references concerning the use of these phrases within the BC gaming industry.

[15] With respect to the third point (prematurity), Commission counsel submit that if Mr. Jin is vulnerable to being found to be a loan shark or to have engaged in loan sharking, and if such a finding would amount to a finding of misconduct, Mr. Jin would be entitled to receive a notice of misconduct in accordance with s. 11(2) of the *PIA*.

[16] To the extent that reasonable notice requires the terms "loan shark" and "loan sharking" to be defined, those definitions would properly be provided, with Mr. Jin having the ability to seek particulars in the event that he is dissatisfied with the content of that notice.

[17] Finally, Commission counsel submit that findings regarding the meaning of the term and its usage within the gaming industry in British Columbia, if any, are appropriately made as part of the Commissioner's final report. They say that the correct definition of "loan shark" or "loan sharking" may be significantly less important than the Commissioner's determination about what the witnesses intended to convey when they used these phrases during their evidence. In any event, decisions regarding the use and definition of these terms are best made when the Commissioner is considering all of the evidence and has had the opportunity to review the submissions of all participants.

[18] I agree with Commission counsel that it is not necessary or appropriate to define the term “loan shark” or “loan sharking” at this stage of the commission process.

[19] In my opinion, these terms are a short-hand way of describing a particular type of conduct or activity. There is no single (or “correct”) definition of these terms, and they were used in different ways by the witnesses who testified during the Commission’s evidentiary hearings.

[20] If the Commission determines that it would be appropriate to issue a notice of misconduct to Mr. Jin, he will receive full and fair notice of the conduct giving rise to the notice so he can respond in a meaningful way. Whether or not that conduct meets the definition of “loan sharking” is beside the point as long as he has adequate notice of the allegations being made against him.

[21] I agree with Commission counsel that the letter sent to Mr. Jin on October 14, 2020 was not intended to fulfill that purpose. Rather, it was intended to provide notice of the evidence that would be led during the evidentiary phase of the commission process so Mr. Jin could take steps to safeguard his interests.

[22] I also agree with Commission counsel that Mr. Jin has had ample opportunity to cross-examine witnesses with respect to the meaning they have attributed to the terms “loan shark” and “loan sharking” in their evidence, and to take steps to have additional evidence introduced.

[23] Indeed, the meaning that a particular witness attributes to these terms is a matter which is properly addressed through cross-examination. While the trier of fact is entitled to make findings about what a particular witness meant when he or she used those terms, it cannot itself “define” a phrase and apply that definition without regard to how it is used in the evidence.

[24] For the reasons set out above, I have concluded that the application should be dismissed. If Mr. Jin receives a notice of misconduct in accordance with s. 11(2) of the *Public Inquiry Act,* and if that notice uses the term “loan shark” or “loan sharking” without adequately defining that term, it would be open to him to bring a further

application seeking further and better particulars of the allegations against him.[1] I am also prepared to hear submissions from Mr. Jin with respect to the meaning of the terms “loan shark” and “loan sharking,” including the use of that term in the evidence and the implications for any findings I make in the final report.

[25] Nothing in these reasons should be construed as an indication that Mr. Jin has received or will be receiving a notice of misconduct.

Commissioner Austin F. Cullen

[1] Any such application can be brought on a confidential basis to ensure the confidentiality of the notice.