

Commission of Inquiry into Money Laundering in British Columbia

Ruling on Admissibility of Transcripts – Ruling #18

Ruling of the Honourable Austin Cullen, Commissioner

Issued November 26, 2020

A. INTRODUCTION

[1] These reasons should be read in conjunction with Ruling #16 for background and context.

[2] Fred Pinnock is a former RCMP officer whose last position before his retirement in 2008 was as commander of the Integrated Illegal Gaming Enforcement Team (“IIGET”). He described his departure from his role at IIGET and ultimately the RCMP in the following terms: “I was so frustrated and exasperated with my journey with this unit that I went on medical leave in December of 2007.”

[3] Mr. Pinnock testified that he developed concerns about cash entering casinos relating to proceeds of crime, money laundering and loan sharking. He testified he alerted several of his superior officers in the chain of command during his tenure at IIGET but did not attempt to communicate his concerns to anyone in government until after he left the RCMP.

[4] He was dating a new member of the legislative assembly after the May 2009 election, Naomi Yamamoto. He asked Ms. Yamamoto to speak to the cabinet minister responsible for gaming, Rich Coleman, to arrange a meeting “between him and me” to alert him to what Mr. Pinnock regarded as out-of-control organized criminal activity in casinos.

[5] Mr. Pinnock said that Ms. Yamamoto told him she approached Mr. Coleman and “described his reaction as brutal and dismissive and embarrassing to her.” Mr. Pinnock concluded that Mr. Coleman “did not want to be seen to be told.”

[6] Mr. Pinnock never had a meeting with Mr. Coleman or any conversation with him about his concerns.

[7] In the fall of 2009, after Mr. Pinnock gave an interview to a reporter about his concerns regarding casinos, he saw the then Minister of Public Safety and Solicitor General, Kash Heed, on television, reacting negatively to Mr. Pinnock's public comments.

[8] According to Mr. Pinnock, because he knew Mr. Heed, he arranged to meet with him to discuss his concerns several weeks later. He believed it was in November of 2009. He made no notes of the encounter but he recalled Mr. Heed telling him that although he could not say it publicly, he agreed with Mr. Pinnock.

[9] Mr. Pinnock testified that he said to Mr. Heed that he believed Rich Coleman "knows what's going on inside those casinos" and Mr. Heed confirmed that he was accurate in his belief. According to Mr. Pinnock, Mr. Heed "did feel that Rich Coleman had created this and it received the sort of tacit support of senior Mounties in this province." Mr. Pinnock agreed that Mr. Heed told him "he understood there to be an issue of organized crime and cash in casinos." According to Mr. Pinnock, Mr. Heed did not discuss what was being done to address it "[b]ecause it's all about revenue generation." He believed Mr. Heed told him "it's all about the money."

[10] Mr. Pinnock testified that he did not recall "verbalizing" his concern about a lack of response to the developing issue of organized crime in British Columbia casinos to Mr. Heed at that meeting.

[11] At that point in his evidence, Mr. Pinnock volunteered his evidence of having a telephone conversation with Mr. Heed in 2018 where they both went into greater detail about that concern and his belief in terms of what led to the current circumstances in the casinos and racetracks.

[12] Mr. Pinnock agreed that Mr. Heed did not tell him why he believed what he did in 2009. He "didn't get into the origins of that belief in that conversation." He "seemed to know."

[13] Mr. Pinnock testified that Mr. Heed did name the senior RCMP members he referred to in the 2009 conversation, but did not get into details about their involvement or the relevance they had to the issues that were being discussed. According to Mr. Pinnock, Mr. Heed named three or four officers “and that was the extent of his reference to senior police involvement.” Mr. Pinnock was asked about the context of Mr. Heed’s naming the three or four officers and testified “the context was it was a game being played by senior police officers.” He thought Mr. Heed described them as “puppets for Coleman.”

[14] Mr. Pinnock agreed he did not follow up on what he learned from his meeting with Mr. Heed in any way. He testified that he did not believe he had any further conversations with Mr. Heed about the issue of organized crime or cash in British Columbia casinos between 2009 and 2018.

[15] In cross-examination by counsel for Canada in which he was challenged on the reliability of his evidence about the 2009 conversation, Mr. Pinnock testified that he remembered having that conversation and it led to his decision “to audio record [his] conversation with Kash Heed on the 10th of July, 2018.” He said, “I wanted him to repeat to me the essence of what he told me in 2009.”

[16] In subsequent cross-examination by counsel for the British Columbia Lottery Corporation, Mr. Pinnock repeated that he recorded the July 10, 2018 conversation, and also recorded two other conversations with Mr. Heed, one a lunch conversation on September 7, 2018 and another telephone call on December 31, 2018. Of the December 31, 2018 call, Mr. Pinnock testified “there was nothing said that would be of assistance to the commission.”

[17] As events unfolded, Mr. Pinnock eventually produced a recording of the third call which was subsequently transcribed. It did contain a conversation which, at least on its face, is of assistance to the Commission. A transcript of that third conversation was entered as an exhibit for identification on November 17, 2020 following Mr. Pinnock’s cross-examination by counsel for Mr. Heed. The other two transcripts of the July 10 and

September 7, 2018 recorded conversations were also re-marked as exhibits for identification on the same date.

[18] This ruling addresses the issue of whether and to what extent the content of the three transcripts of the conversations between Mr. Pinnock and Mr. Heed is admissible at this stage. It also addresses to what extent portions of the transcripts held to be admissible should be redacted from public view.

[19] The issue of admissibility of portions of the transcript is inextricably tied to the issue of the reliability and veracity of Mr. Pinnock's evidence that he had a conversation with Mr. Heed in 2009 when Mr. Heed was the Minister of Public Safety and Solicitor General, in which he allegedly told Mr. Pinnock that he understood there to be an issue of organized crime and cash in casinos; that he agreed with Mr. Pinnock that Mr. Coleman had created the problem and received tacit support from "senior Mounties in the province"; that then Minister Heed believed it was "all about the money", and nothing was being done to address it.

[20] Because Mr. Pinnock's evidence proceeded in two stages, the reasons for which are detailed in Ruling #16, the approach to the question of the admissibility of the three transcripts, and the separate but related question of what, if any, redactions should be made to the public facing portions of the transcripts ultimately ruled admissible, also occurred in stages.

[21] Initially, after the July 10 and September 7 transcripts were marked as Exhibits 163 and 164 on November 6, I directed that the participants, Mr. Pinnock and Mr. Heed were to apply in writing setting out redactions they sought and the basis for them. Second, after receiving those submissions I indicated I may make further orders as needed to enable individuals affected by the release of the information to seek additional redactions. I also directed Commission counsel to notify individuals whose privacy or reputational interests may be affected by the release of the exhibits to the public without redactions.

[22] In submissions dated November 7, Commission counsel advocated for a course of action that would begin with a presumption of openness, but would then remove extraneous information about people and events where: (1) it was unrelated to the Commission's mandate and the topics and issues in the public hearings; and (2) it was of a nature that could give rise to an identifiable risk of harm to a person's reputation in an unjust way, or would cause some other harm (for instance undermining a relationship or the administration of justice).

[23] Commission counsel's proposed approach involved weighing the probative value against the prejudicial effect of the evidence — a concept generally employed to assess the admissibility of evidence.

[24] Subsequently, as a result of Ruling #16 which granted Mr. Heed participant status, I directed that he have leave to cross-examine Mr. Pinnock on his evidence, and ordered that Exhibits 163 and 164 be re-marked as exhibits for identification pending resolution of their admissibility. In light of the ensuing cross-examination of Mr. Pinnock on November 17, I directed that submissions on admissibility of the three transcripts be made in writing by the end of November 20.

[25] Commission counsel provided submissions on November 18 on what portions of the initial two transcripts, and the third transcript which Mr. Pinnock produced only shortly before the continuation of his evidence, should be admitted. Commission counsel's submissions were sent to all participants including Mr. Heed, as well as to Mr. Pinnock.

[26] Commission counsel submitted that the portions of the transcripts which are "on their face material and have probative value in relation to issues within the mandate of the commission" should be admitted. Commission counsel included "the introductory and some 'general chatter' portions to give some context to the conversations between the two men."

[27] With respect to the transcript of July 10, 2018, Commission counsel submitted the following portions were relevant, probative and should be admitted:

- page 1, lines 1 to 22;
- page 4, lines 1 to page 8, line 3;
- page 8, line 6 to page 14, line 11;
- page 16, line 16 to page 17, line 5; and
- page 22, line 3 to the end.

[28] With respect to the transcript of September 7, 2018 Commission counsel submitted the following entries were relevant, probative and should be admitted:

- page 1, line 1 to page 4, line 2;
- page 6, line 18 to page 9, line 19;
- page 11, line 5 to page 12, line 1;
- page 29, line 17 to page 30, line 7;
- page 31, line 17 to page 43, line 21;
- page 52, line 12 to page 53, line 13;
- page 58, line 13 to page 68, line 17;
- page 71, lines 3 to 22;
- page 83, line 19 to page 86, line 7; and
- page 87, line 6 to end.

[29] Finally, with respect to the December 31, 2018 transcript, Commission counsel submitted the following portions were relevant, probative and should be admitted:

- page 1, lines 1 to 15; and
- page 3, line 13 to end.

[30] In the wake of my directions made November 6 respecting submissions on the issue of redactions, and my subsequent directions made November 17 respecting submissions on the issue of admissibility, I have received submissions from or on behalf of Canada, Great Canadian Gaming Corporation, Gateway Entertainment Ltd., the British Columbia Lottery Corporation, the Gaming Policy and Enforcement Branch, Mr. Kroeker, Mr. Lightbody, Mr. Heed, Mr. Pinnock, and Mr. Coleman respecting admissibility, and a number of additional submissions from individuals whose names were mentioned in the transcripts, respecting redactions. I note that in relation to those individuals, I have directed that their submissions are not to be circulated generally to participants.

B. THE ISSUE OF ADMISSIBILITY

[31] Of the participants, none of Great Canadian Gaming Corporation, the British Columbia Lottery Corporation, the Gaming Policy and Enforcement Branch, Mr. Kroeker or Mr. Lightbody took issue with the admissibility of the portions of the transcripts identified by Commission counsel on November 18, although Mr. Kroeker submitted that certain portions (July 10, 2018, page 6, lines 4-9; September 7, 2018, page 41, pages 61-63; and December 31, 2018, page 3, line 13-page 4, line 17, and page 15) only minimally fall within the parameters of admissibility.

[32] Mr. Pinnock agreed with the submissions of Commission counsel with respect to the admissible portions of the transcript.

[33] Gateway Entertainment Ltd. took the position that no portion of the transcripts were admissible urging me to find “statements of opinion such as these that are not those of an expert and which do not have associated with them any factual foundation lack probative value and ought to be given no weight in this proceeding.”

[34] Canada made two submissions, the first on November 9 in response to the direction concerning proposed redactions, and the second dated November 18 in response to my directions concerning submissions on admissibility.

[35] In its November 18 submission, Canada did not agree that all the passages set out in Commission counsel's November 18 email are relevant to the Commission's mandate, will inform the evidence of a witness who has testified, or will provide useful/relevant context. Canada maintained the position it took in its November 9 letter with respect to the extent of the redactions which ought to be applied to the transcripts and apply the same principles with respect to the December 31 transcript.

[36] Canada submitted:

As set out in our November 9, 2020 letter, the passages we have identified for redaction are entirely irrelevant to the Commission's mandate or to the issue of money-laundering in British Columbia generally. Certain passages also contain inflammatory, unsubstantiated comments with respect to federal entities and individuals. They are best described as Mr. Pinnock and Mr. Heed's negative, unsubstantiated personal views about particular RCMP members and the RCMP as a federal institution.

There is simply no probative value in the portions of the transcripts that Canada has proposed be redacted. What Mr. Pinnock or Mr. Heed think about the personalities of certain individuals or the RCMP as a police force are of no assistance to the Commissioner in addressing the issues set out in the Commission's mandate. On the other hand, there is real prejudice to these individuals. Their reputations are at stake and placing these portions of the transcript in the public realm by including them in an official Commission exhibit would only serve to sanction and add gravitas to what is a gossipy, name-calling private conversation.

[37] In its November 9 letter, Canada agreed with the approach suggested by Commission counsel set out in their November 7 submission and proposed redactions accordingly. With respect to the unredacted material counsel for Canada submitted:

While Canada agrees with Commission counsel that the appropriate balance with respect to redacting these transcripts for public consumption is to excise this irrelevant material, Canada does not agree that the balance of the transcripts contains evidence that has any probative value for assisting the Commissioner in drawing conclusions for his final report. This material suffers from the same fundamental flaws as the portions marked for redaction, namely, it consists solely of hearsay allegations made in a context where their veracity and reliability is

highly suspect. In Canada's submission, the Commissioner should afford no weight to any of the statements contained in Exhibits 163 and 164.

[38] Mr. Heed has challenged the veracity and/or reliability of Mr. Pinnock's evidence concerning the alleged November 2009 conversation, both in cross-examination and in submissions. It is his position on the question of admissibility that Mr. Pinnock's evidence "completely lacks credibility and is unreliable." Peter Senkpiel, counsel for Mr. Heed, submits that as a matter of principle and evidence the three transcripts which have been adduced as Exhibits D, E, and F for Identification have — at present — no relevance or probative value to the issues before the Commission. He submits that in principle, until Mr. Heed has testified and the relevance of the transcripts can be assessed in that context, they should not be made public. He concedes, however, that "as a practical matter, the bell has been rung on certain portions of the transcript and that bell cannot be un-rung." In light of that, counsel for Mr. Heed takes the position that only those portions of the transcript which have been referred to in Mr. Pinnock's evidence should be made public at this time.

[39] Counsel for Mr. Heed contends that "If Commission Counsel did not see fit to put certain portions of the transcripts to Mr. Pinnock, and if Mr. Heed is months away from being able to address the transcripts, they should not be included at this time."

[40] Mr. Senkpiel submits: "If there are additional portions that Commission Counsel wishes to include, Mr. Heed should be able to address them at the time they are made public so that they are put in context."

[41] Mr. Heed's counsel further submits that there are portions of the transcript that contain personal, private and irrelevant material that should be excluded in any event.

[42] Mr. Coleman, who was referred to in Mr. Pinnock's evidence and who is referred to by Mr. Heed and Mr. Pinnock in portions of the transcripts of the recorded conversations, has also taken a position on the admissibility of the transcripts. Counsel for Mr. Coleman submits the transcripts are not relevant, probative or admissible. He characterizes them as containing "scurrilous gossip regarding dozens of individuals" which ought to be excluded from evidence in their entirety. Mr. Coleman submits if they

are not entirely excluded then they ought to be admitted into evidence and disclosed to the public in their entirety to allow the public to judge what weight should be afforded to them “rather than in a redacted form which magnifies the comments regarding our client.”

[43] Counsel for Mr. Coleman questions “what matters are in issue, what findings are being considered, and what process will be put in place to address them?” (emphasis in original).

[44] Mr. Coleman submits the subject matter of the transcripts is wholly unrelated to the Commission’s mandate as “unfounded, and inaccurate, allegations” and “not something which falls within the scope of the Commission’s mandate.”

C. DISCUSSION

[45] There appears to be some, perhaps understandable, confusion about the basis upon which and the purpose for which the three transcripts are receivable in evidence.

[46] The alleged conversation between Mr. Pinnock and Mr. Heed in November 2009, when Mr. Heed was the Minister of Public Safety and Solicitor General, falls squarely within the scope of the Commission’s mandate.

[47] In para. 4 of its Terms of Reference, the Commission is required to conduct hearings and make findings of fact respecting money laundering in British Columbia including (a) the extent, growth, evolution and methods of money laundering in the gaming and horseracing sector, and (b) the acts or omissions of individuals with powers, duties or functions in respect of the gaming and horseracing sector to determine whether those acts or omissions have contributed to money laundering in British Columbia and whether those acts and omissions have amounted to corruption. The Commission is also mandated to make findings of fact as to the barriers to effective law enforcement respecting money laundering in British Columbia.

[48] It is uncontroversial that the duties cast on Mr. Heed in his role as Minister of Public Safety and Solicitor General included crime prevention and law enforcement.

Although it appears he did not have any specific role with respect to gaming or horseracing, it is clear that his responsibilities would be engaged by the presence of organized crime and money laundering in British Columbia casinos.

[49] Accordingly, the nature of Mr. Heed's knowledge or belief about the state of affairs in British Columbia casinos in 2009; his contemporaneous knowledge or belief about the approach towards that state of affairs adopted by the government of which he was a member; and his own actions or inactions in keeping with or at odds with that approach, are matters of obvious importance to this Commission.

[50] As I noted previously in Ruling #16, "the critical issue is whether the recorded conversations either corroborate or undermine Mr. Pinnock's evidence of the contested 2009 conversation." In other words, it is the alleged 2009 conversation that is the centrepiece of Mr. Pinnock's evidence, not the transcripts, because if I find the meeting took place as alleged by Mr. Pinnock, it reflects the attitude of an important member of the government towards issues for which he had significant responsibilities. The transcripts at issue do not provide direct evidence of what Mr. Heed's state of knowledge or belief was in 2009 as to what was happening in British Columbia casinos. However, the content of the transcripts does provide some evidence relevant to and probative of whether the 2009 discussion took place as Mr. Pinnock testified or at all.

[51] Insofar as the transcripts provide evidence that his present (i.e. 2018) view of past events conforms with what Mr. Pinnock testified Mr. Heed expressed in 2009, they provide some indirect support for Mr. Pinnock's evidence. In addition, in the transcript of the December 31, 2018 conversation, Mr. Heed appears to adopt Mr. Pinnock's suggestion that they talked about "... the big reason is it's the money. All about money" nine years ago (i.e. in 2009). If ultimately that interpretation of the conversation is accepted, it would establish continuity between Mr. Heed's state of knowledge or belief in 2018 and his state of knowledge or belief in 2009. It would also tend to confirm the existence of the conversation Mr. Pinnock testified about.

[52] On the other hand, the transcripts may be relevant and probative evidence that Mr. Pinnock deceptively or mistakenly attributed what Mr. Heed said in the recorded

conversations in 2018 to the alleged 2009 conversation as part of a narrative that he has become committed to advancing. In that context the fact that he apparently made no notes of the 2009 conversation until 2019 (after he made the recordings), and the fact that he was unable to recall how the 2009 meeting was arranged or where or in what circumstances it took place, are cogent considerations.

[53] The point is simply that the transcripts are relevant and probative insofar as they assist in making a determination whether the 2009 conversation took place as Mr. Pinnock said it did or not.

[54] I turn to the basis for the admissibility of the transcripts. By virtue of s. 14(1) of the *Public Inquiry Act*, S.B.C. 2007, c. 9, “A commission may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be relevant in any court.” But where, as here, the evidence at issue touches on the reputations of third parties (i.e. those not party to the recorded conversations), the Commission ought to be careful in its approach and be guided by the rules of evidence which protect against unreliable evidence being admitted. As I see it, however, the admission of Mr. Pinnock’s evidence of the 2009 meeting and the evidence of the transcripts on this issue do not infringe any rule of admissibility.

[55] Mr. Heed’s alleged statements to Mr. Pinnock in November 2009, and the statements attributed to him in the transcripts, are strongly analogous to a statement made by a party to a proceeding which is a well established exception to the hearsay rule and, indeed, “it is open to dispute whether the evidence is hearsay at all” (see: *R. v. Evans*, [1993] 3 S.C.R. 653 at 664).

[56] The party exception to the hearsay rule does not countenance a statement admitted on that basis to be admissible against anyone other than the maker of the statement. By way of illustration, if an accused in a criminal trial makes an inculpatory statement which implicates both himself and a co-accused in the commission of the crime, the statement is only admissible against the accused who made it, not his co-accused.

[57] Thus, in the circumstances at issue here, none of what Mr. Heed asserts in the statements about third parties, their actions or inactions, are admissible as evidence of anything they knew, believed, did, or did not do. The evidence of what Mr. Heed said or is alleged to have said is admissible as evidence of what he knew, believed, did or did not do.

[58] At this stage in the process, I can see no justification for ruling portions of the transcripts which are unrelated to the issue whether the 2009 conversation took place as Mr. Pinnock testified it did as being admissible. However, I cannot foreclose the possibility that in light of evidence yet to be given, at least some of those other portions of the transcripts may become admissible. For instance, they may assist in assessing whether Mr. Heed's expressions of the state of his knowledge or belief about past events arise from what he experienced or what he inquired into, or whether they represent ungrounded speculation formed after the fact. I will thus defer any determination of the admissibility of those portions of the transcript until there is a more complete evidentiary context.

[59] As to the admissible portions of the transcripts, I am not persuaded that only the positions touched on in the examination and cross-examination of Mr. Pinnock should be admitted at this stage. The portions of the transcripts that are relevant and probative to the issue before me include various statements made not only by Mr. Pinnock but by Mr. Heed as well. The fact that Mr. Pinnock may not have been examined or cross-examined on what Mr. Heed said does not reflect indifference to or ambivalence about the probative value of those exchanges, it merely recognizes that what Mr. Heed said speaks for itself.

[60] Mr. Senkpiel submits that because Mr. Heed will be unable to give his evidence and provide the necessary context for the evidence adduced through Mr. Pinnock until later in the proceeding, it would be unfair to admit all of the relevant evidence at this stage. I do not agree. In the course of many trials, both civil and criminal, evidence which weighs against or cast a shadow on a defendant or accused is inevitably called before, sometimes long before, there is an opportunity for an accused or a defendant to

respond to it or to put it in context. Although the evidence of Mr. Pinnock did not unfold as expected, with the result that Mr. Heed was brought into the hearing in a way that he did not anticipate, there was never any doubt that Mr. Pinnock would be testifying about the alleged November 2009 meeting between them and it is unlikely that had Mr. Heed wanted to respond to that evidence, he would have been able to do so immediately.

[61] Accordingly, I will admit those portions of the transcripts which are relevant, probative and appropriate to the Commission's mandate. I will defer any decision as to the ultimate admissibility of those other portions of the transcript when there is a more complete evidentiary context.

[62] I conclude that the portions of the transcripts identified by Commission counsel in paras. 27-29 above should be admitted as exhibits proper in this hearing. The July 10, 2018 transcript will be marked as Exhibit 163; the September 7, 2018 transcript will be marked as Exhibit 164; and the December 31, 2018 transcript will be marked as Exhibit 269.

i. Redactions

[63] As the transcripts are admissible only as regards Mr. Pinnock and Mr. Heed and not as regards any of the third parties mentioned in the transcripts, I can see no justification for refusing the applications of those seeking a redaction of their name when referred to in a negative way. The names of the third parties in the transcripts are not critical to understand the purposes for which the transcripts have been admitted. In my view, there is no value in revealing those names in the transcripts to the public, and there is considerable risk to the proper administration of justice that may arise if they were not redacted. Unless and until there is otherwise admissible evidence to implicate those parties in matters which fall within the Commission's mandate, it would be inappropriate to decline the redactions being sought. Accordingly, I will order that the names of those individuals who are or were senior police or public officials and who have sought redactions, be redacted. The reference to the small community where Mr. Pinnock and his wife live will also be redacted.

[64] In coming to this conclusion, I have considered the so-called *Dagenais / Mentuck* test as set out in *R. v. Mentuck*, 2001 SCC 76 at para. 32 for when a publication ban or restrictive order is merited:

(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.

[65] I have considered this matter both with respect to the considerations identified above, and the overarching principle of transparency in relation to this Commission's process and hearings, and the legitimate public interest in the media being permitted to access information to report to the public about the Inquiry's work. As with the issue of admissibility, it may be that in light of evidence yet to be called, the calculus governing the redaction of particular names will change, and an application of the *Dagenais / Mentuck* test will support the removal of redactions. At this point, however, a fair application of the test weighs in favour of rather than against the redactions sought, and I so order. I will leave it to Commission counsel to implement the redactions in accordance with this order to the admissible portion of the transcripts. If it is necessary to resolve a particular issue, further directions may be sought.



Commissioner Austin F. Cullen