

Submissions of Paul Jin

1. For reasons set out below, other than making some submissions which are general in nature, Mr. Jin cannot make more specific submissions without creating a significant risk of prejudice to other ongoing legal proceedings.

General Remarks

2. Section 14(1) of the Public Inquiry Act provides general guidance with respect to the evidence that a commission may receive and accept.

14 (1) A commission may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in any court.

3. The phrase “relevant, necessary and appropriate” and, in particular the word “appropriate” can clearly incorporate common law principles of evidence such as hearsay so that a commission may, and at times must apply common law rules of evidence when determining what documentary or testimonial evidence to accept and what weight to place upon the evidence.
4. Where evidence which might form the basis of a factual finding as distinct, for example, from evidence which might be used to establish a narrative, the reliability of that evidence must be of primary concern.
5. This was made evident during the proceedings of 10 September 2021 during Mr. Alderson’s evidence.

6. Through his counsel, Mr. Alderson sought to present evidence in relation to an email between Mr. Samuel Taylor and Mr. Fred Pinnock. The Commissioner found that the proposed evidence was inadmissible on the grounds that it was “classic hearsay.”¹

7. Further:

THE COMMISSIONER: How is it probative, Mr. Jaffe, how is it probative? It's hearsay. It's not a sworn statement. It's an email to Mr. Pinnock. Mr. Alderson isn't even a party to this conversation.²

8. On this same basis, Mr. Jin urges this commission to carefully scrutinize evidence for probative value and reliability before making a finding of fact upon the evidence.

9. It is clear that a witness can testify about his/her/their understanding of a document or conversation to which they were not a party for the purpose of establishing the witness's state of mind. This might be relevant to explain steps that a witness took, or did not take, on the basis of that understanding or belief.

10. However, and as the commission ruled with respect to Mr. Alderson, that is fundamentally different from testimony which is conjecture, speculation or based on a witness's impressions about the truth of what a document might mean, where the witness did not author the document, or what was meant by speakers in a conversation, which the witness was not a party to.

11. This Commission has heard evidence about the E Pirate investigation and prosecution.

¹ Commission proceedings. 10 September 2021, pp.177-178

² Pp.178-179

12. If E Pirate was in any way a turning point with respect to what was believed in relation to some of the funds going into the casinos, it must be kept in mind that after the dedication of very significant investigative resources, Mr. Jin was never charged. The only conclusion that may be drawn from this is that, despite the best efforts of the investigators, there was no evidence which would justify a prosecution of Mr. Jin for any suspicions or allegations in relation to those same issues which were investigated by this commission.
13. In addition, the charges against those who were charged were eventually stayed and one reason for staying charges is that a prosecutor determines that the charge approval standard of- substantial likelihood of conviction is no longer met.

Prejudice to Mr. Jin's Interests in Relation to Other Court Proceedings

14. In accordance with a ruling made by this Commission after Mr. Jin was granted participant status, Mr. Jin has been provided with what is likely a small subset of materials made available to other participants and likely an even a smaller subset of the materials and information obtained and produced by the Commission through its investigations.
15. As this Commission is aware, Mr. Jin is presently engaged in civil forfeiture as well as other proceedings which are presently before the courts.
16. The significance that one of the ongoing proceedings is civil forfeiture is, not only did the Director of Civil Forfeiture participate as a witness in these commission

proceedings, but in his reasons for judgment in *Angel Acres*,³ Mr. Justice Davies described the civil forfeiture proceedings as being “quasi-criminal in effect.”

[43] The Court of Appeal’s recognition that forfeiture proceedings pose the risk of “being labelled for criminal behaviour” states the obvious. I have, in the past during some of the many interlocutory proceedings over which I have presided in this case, observed that these forfeiture proceedings are quasi-criminal in effect.

[44] I remain of that view.

17. In the same Reasons, Davies J. described the “close relationship” between the office of the Director of Civil Forfeiture and the RCMP.⁴

18. In the present circumstances, Mr. Jin must protect and be sure to in no way prejudice or undermine his rights and interests in those other proceedings.

19. In addition, this Commission has heard evidence about an ongoing criminal investigation. Mr. Jin has not been advised that he is not a target of that investigation.

20. At least some of the materials and information obtained by the Commission through its compulsion powers, and which have also been provided to participants, might relate or be relevant to that investigation or those ongoing legal proceedings. Indeed, one report prepared by the Commission and admitted into evidence specifically relates to and offers untested analysis upon some of the ongoing court proceedings.

³ *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*, 2020 BCSC 880

⁴ 2020 BCSC 880, para.1462-1463

21. Finally, while Commission investigators are no longer required through a term of reference to provide information to law enforcement, it is understood that it remains permissive for Commission investigators and, or counsel to do so under certain circumstances.
22. In the circumstances, if Mr. Jin were to make a specific submission upon the evidence from the commission proceedings or the limited documentary evidence that this Commission has provided to him, he would likely be making a submission upon issues and evidence as might exist in or relate to the other proceedings. However, he would be doing so upon only a portion of the evidence, and perhaps not a representative portion of the evidence as might exist in the other proceedings.
23. To comment at this stage upon what might also be evidence or issues in other court proceedings and worse, to comment upon what might be only a portion of what might be evidence in other proceedings would certainly have the effect of prejudicing Mr. Jin's interests in those other court proceedings.
24. For that reason, and given the other ongoing and related court proceedings, beyond the general comments above, no specific submissions will be made.

Greg DelBigio, QC

Counsel to Mr. Jin