

**Commission of Inquiry into
Money Laundering in British Columbia**

Public Hearing

Commissioner

The Honourable Justice
Austin Cullen

Held at:

Room 701
Federal Courthouse
701 West Georgia Street
Vancouver, B.C.

Friday, October 18, 2019

APPEARANCES

Brock Martland, QC
Patrick McGowan

Senior Commission Counsel
Senior Commission Counsel

David Butcher, QC

for Brad Desmarais

Robin McFee, QC
Jessie Meikle-Kahs

for James Lightbody

Paul Jaffe

for Fred Pinnock

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1
Introductions

Vancouver, B.C.
October 18, 2019

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2
3
4 THE REGISTRAR: Order. All rise. The Cullen
5 Commission of Inquiry is now open to hear
6 applications for standing.

7 THE COMMISSIONER: Yes, Mr. Martland.

8 MR. MARTLAND: Thank you. Mr. Commissioner, it's
9 Brock Martland, M-a-r-t-l-a-n-d. I appear with
10 Patrick McGowan, M-c-g-o-w-a-n. We're both
11 senior commission counsel. We're convening the
12 first hearing today of the commission into Money
13 Laundering in British Columbia.

14 As we commence our process, I'd like to
15 start by acknowledging we're here today on the
16 unceded and traditional territories of the Coast
17 Salish People, the Musqueam, Squamish, and
18 Tsleil-Waututh Nation.

19 I'll first ask counsel to introduce
20 themselves, and then Mr. McGowan is going to
21 address you briefly.

22 THE COMMISSIONER: Thank you.

23 MR. MCGOWAN: I think I've been introduced, but
24 Patrick McGowan, M-c-g-o-w-a-n, for the
25 commission.

26 THE COMMISSIONER: Yes. Thank you, Mr. McGowan.

27 MR. BUTCHER: Mr. Commissioner, I am David Butcher. I
28 appear for Mr. Brad Desmarais.

29 THE COMMISSIONER: Thank you, Mr. Butcher.

30 MR. MCFEE: Mr. Commissioner, Robin McFee, M-c-f-e-e,
31 and with me is Jessie Meikle-Kahs, M-e-i-k-l-e,
32 dash K-a-h-s, and we appear for James Lightbody.

33 THE COMMISSIONER: Thank you, Mr. McFee.

34 MR. JAFFE: Mr. Commissioner, my name is Paul Jaffe
35 and I appear as counsel on behalf of Frederick
36 Pinnock.

37 THE COMMISSIONER: Yes. Thank you, Mr. Jaffe. Yes,
38 Mr. McGowan.

39 MR. MCGOWAN: Yes, Mr. Commissioner. You convened
40 today's hearing to further consider the
41 applications of four individuals. In directing
42 this hearing in your initial ruling, you noted
43 that it was unclear from the materials filed by
44 one of the applicants, Mr. Alderson, the nature
45 and extent of participation he was seeking. You
46 noted that Mr. Alderson had requested a meeting
47 with commission counsel and requested that we

2
Commissioner's Opening Remarks

1 meet with him. I can advise that I have met with
2 Mr. Alderson. I discussed with Mr. Alderson his
3 application, what being granted standing as a
4 participant means, and the different ways members
5 of the public with relevant information can
6 engage with the commission.

7 At the conclusion of our meeting, Mr.
8 Alderson advised me that he did not wish to
9 proceed with his application to be a formal
10 participant and asked that I convey that decision
11 to you today.

12 THE COMMISSIONER: Yes.

13 MR. MCGOWAN: I can say, Mr. Commissioner, that as
14 part of the Commission's investigation, we do
15 plan to engage with Mr. Alderson with a view to
16 determining what relevant information and
17 documents he can offer.

18 Having addressed Mr. Alderson's application,
19 I would invite you, Mr. Commissioner, to proceed
20 with your opening remarks, following which we
21 will hear from counsel for the three remaining
22 applicants.

23 THE COMMISSIONER: Thank you, Mr. McGowan.

24 Before I formally open this hearing, I would
25 like to say a few words since this is the first
26 time I am speaking publically in my role as
27 commissioner of the Commission of Inquiry into
28 Money Laundering in British Columbia.

29 As Mr. Martland and Mr. McGowan mentioned,
30 this hearing has been convened in accordance with
31 a direction I made following the receipt of 20
32 applications from various individuals and
33 entities seeking leave to participate in the
34 Commission of Inquiry into Money Laundering in
35 British Columbia. On September 24th of 2019, I
36 granted participant status to 16 of the
37 applicants with a direction that the remaining
38 four applicants, Messrs. Alderson, Desmarais,
39 Lightbody, and Pinnock, attend an oral hearing of
40 the inquiry to enable a further review and
41 determination of their individual circumstances
42 in light of the relevant considerations governing
43 these applications.

44 In the meantime, the British Columbia Real
45 Estate Association sought an extension of time to
46 apply for participant status. I granted that
47 extension of time, and in light of their

1 application, I granted their application for
2 participant status on October 15th of 2019. My
3 reasons for doing so are posted on the
4 commission's website.

5 As you've heard and as it transpired, Mr.
6 Alderson, after discussions with senior
7 commission counsel, has elected to withdraw his
8 application for participant status, being
9 satisfied that if he is called as a witness, he
10 will be able to contribute to the work of the
11 commission to the extent that he wishes.

12 Before considering the remaining three
13 applications, it seems appropriate to provide a
14 brief overview of the nature and the scope of our
15 mandate and to say something about the commission
16 itself, which will help to give some context to
17 the remaining applications.

18 As I noted in the introductory statement,
19 which is posted on the commission's website,
20 there appears to be a consensus among law
21 enforcement officials, academics, and subject
22 matter experts that British Columbia is a
23 jurisdiction in which money laundering is
24 flourishing.

25 The mandate of the commission, which was
26 established by the provincial government, is very
27 broad. It encompasses various economic sectors
28 where money laundering is said to have taken
29 root, grown, and evolved, and it requires the
30 commission to make findings of fact in relation
31 to a number of things, including:

- 32
33 - the extent, growth, evolution, and methods
34 of money laundering in British Columbia
35 with regard to specific economic sectors
36
37 - the acts or omissions of responsible
38 regulatory agencies and individuals and
39 whether those have contributed to money
40 laundering in the province or amount to
41 corruption
42
43 - the scope and effectiveness of the anti-
44 money laundering powers, duties, and
45 functions of these regulatory agencies and
46 individuals
47

1 - and the barriers to effective law
2 enforcement in relation to money
3 laundering.
4

5 In addition, the commission has a responsibility
6 to make recommendations to address the conditions
7 that have enabled money laundering to grow and
8 evolve in the province.

9 In recent years, there has been extensive
10 media investigation and coverage of money
11 laundering. There have also been studies and
12 reports prepared by academics and other experts
13 that shed light on the prevalence of money
14 laundering in the province and its noticeable
15 effects. As a result, the public has become aware
16 of and concerned about this problem. One recent
17 poll reported that approximately 90 percent of
18 British Columbians are concerned about money
19 laundering.

20 It is part of this inquiry's role to add to
21 the public's understanding of the nature and scale
22 of money laundering in the province and to address
23 its concerns to the extent possible through
24 recommendations for action.

25 There is also an incidental benefit from
26 simply bringing additional concentrated attention
27 to the crime of money laundering. The more
28 awareness there is of its presence and of the
29 profound social harms it springs from and
30 propagates, the less complacency there can be for
31 facilitating or tolerating it.

32 Brock Martland, QC, and Patrick McGowan, who
33 are present at this hearing, are the two senior
34 commission counsel. They have undertaken the
35 significant responsibility of assembling and
36 organizing the evidence that will be placed before
37 the commission at the hearing stage.

38 The evidence will come from many sources and
39 will cover a broad array of topics. To assist in
40 this task, they have put together a very capable
41 team of lawyers and consultants. Biographies of
42 all the commission counsel are posted on our
43 website.

44 This commission, like all commissions
45 appointed under the *Public Inquiry Act*, is
46 independent of government. We serve the people of
47 British Columbia. This means that the commission

1 must live up to certain standards in conducting
2 its public hearings.

3 One of the integral standards is that of
4 fairness to those whose privacy interests, legal
5 interests, or reputational interests may be
6 affected by the proceedings.

7 Another important standard for the
8 commission is thoroughness. The commission must
9 do its utmost to ensure that its subject matter is
10 comprehensively and meaningfully covered. That
11 entails hearing from a range of voices and points
12 of view.

13 One of the mechanisms of ensuring fairness
14 and thoroughness is permitting certain parties to
15 act as participants in the proceedings if their
16 interests may be affected by the findings of the
17 commission, if their participation would further
18 the conduct of the inquiry, and/or if their
19 participation would contribute to the fairness of
20 the inquiry.

21 Not all persons or organizations'
22 representatives who may be called as witnesses are
23 entitled to participant status. If a person
24 believes that he or she has relevant evidence to
25 give, they may be entitled to testify and they may
26 be represented by counsel. It does not follow
27 that having relevant evidence to give justifies a
28 grant of participant status. The other conditions
29 I have mentioned must be in play.

30 This hearing is not adversarial. It's an
31 attempt by all present to get at the root of the
32 question of whether Messrs. Desmarais, Lightbody,
33 and Pinnock meet the criteria for status as
34 participants or whether their involvement is
35 appropriately confined to that of a witness or a
36 potential witness. I do not anticipate any need
37 for extensive evidence or any cross-examination at
38 this hearing. A simple exploration of the factual
39 and statutory conditions at issue will lead to an
40 appropriate resolution.

41 As I understand it, Mr. Martland and Mr.
42 McGowan have spoken with counsel for Messrs.
43 Desmarais, Lightbody, and Pinnock, and have agreed
44 upon a format for proceeding this morning. I will
45 shortly ask one of them to set forth what format
46 those proceedings will follow. But in the
47 meantime we'll stand down briefly to permit the

1 cameras to be cleared from the hearing room.

2 THE REGISTRAR: All rise.

3

4 (PROCEEDINGS RECESSED)

5 (PROCEEDINGS RECONVENED)

6

7 THE COMMISSIONER: Yes, Mr. Martland.

8 MR. MARTLAND: Yes, Mr. Commissioner. We'll now hear

9 from counsel for the three applicants. I thought

10 I would just mention for the benefit of people in

11 the room that your opening remarks from this

12 morning would be posted on line on the

13 commission's website in short order so people can

14 access them that way.

15 THE COMMISSIONER: Thank you. Yes, Mr. Butcher.

16 MR. BUTCHER: Mr. Commissioner, I'm going to say from

17 the outset that I am going to be applying for a

18 brief adjournment of my application. But I'll

19 come to the reasons for that at the end of my

20 submissions.

21 THE COMMISSIONER: All right. Thank you.

22 MR. BUTCHER: My client, Mr. Desmarais, is currently

23 the vice-president of Casino and Community Gaming

24 for the province -- sorry, for the British

25 Columbia Lottery Corporation, and also the interim

26 vice-president of Legal Compliance and Security

27 for the lottery commission. He has been involved

28 for almost 40 years in the investigation,

29 detection, and regulation of money laundering in

30 different economic spheres.

31 He has been at the Lottery Corporation since

32 2013 and was one of the senior regulators at the

33 corporation who have been subject to some critical

34 comment both by Mr. German and by other persons in

35 the public domain in the last six months. He was,

36 like Mr. Kroeker, who did receive participant

37 status, responsible for many of the key decisions

38 that are the subject of some comment, sometimes

39 adverse comment, in Mr. German's report.

40 I want to just take you quickly to the terms

41 of reference that relate to him. He clearly --

42 and this is paragraph 2 from your ruling with

43 respect to application for standing. He clearly

44 has very significant evidence going back probably

45 to the 1980s with respect to the extent, growth,

46 evolution, and methods of money laundering in

47 British Columbia with respect to the economy as a

1 whole, I would expect, not just the sectors set
2 out there. But it includes the gaming and
3 horseracing sector as item number one.

4 The part of your commission mandate that
5 concerns him the most and probably concerns most
6 of the other applicants is the second bullet in
7 paragraph 2, which directs you to make findings
8 with respect to the acts or omissions of
9 responsible regulatory agencies and individuals,
10 and whether those individuals have contributed to
11 money laundering in the province or amount to
12 corruption. Those are very serious words used by
13 the attorney general in the establishment of this
14 commission and make every person who sits in
15 the -- or sat in the decision-making chairs of the
16 responsible regulatory agencies concerned about
17 the evidence that may be led and concerned about
18 whether or not that they are at jeopardy.

19 Now, my reason for seeking to apply to
20 adjourn at this point is really two-fold. First,
21 I have had some very preliminary discussions with
22 Mr. Smart, who is counsel for the Lottery
23 Corporation, about both documents and our relative
24 roles in this commission should I be granted
25 participant status. I would like to continue
26 those discussions.

27 Second, I am aware of some documents that
28 would bring much more clarity to the submissions I
29 made that were both brief and somewhat vague in
30 the initial process. But those documents are not
31 available for use by me at this point in this
32 proceeding. They are subject to legal
33 restrictions. I would hope to be able to sort
34 those two issues out within a month or so, and I
35 would ask that I be able to come back before you
36 for 15 or 30 minutes at sometime in November.

37 THE COMMISSIONER: All right. Thank you, Mr. Butcher.
38 Mr. Martland or Mr. McGowan, do you have any
39 comments to make?

40 MR. MARTLAND: No. I suppose I would, Mr.
41 Commissioner, identify as -- this is a question I
42 think Mr. Butcher has already anticipated, the
43 question of alignment versus departure in interest
44 between the Lottery Corporation and the individual
45 here.

46 THE COMMISSIONER: Yes.

47 MR. MARTLAND: But I do appreciate -- with respect to

1 the request for more time and the basis for that,
2 I don't have any questions that arise. I think
3 that's been spelled out fairly clearly.

4 THE COMMISSIONER: Thank you. Mr. Butcher, as I'm
5 sure you understand what is primarily of concern
6 to the commission in these applications is that
7 you establish or applicants establish that they're
8 on a somewhat different trajectory than the
9 corporation, which has been granted standing. And
10 if I understand your application for an
11 adjournment correctly, you're seeking that
12 adjournment to enable you to get documents that
13 may help to establish that there is a --

14 MR. BUTCHER: There is or is not a different
15 trajectory.

16 THE COMMISSIONER: -- is or is not a different
17 trajectory, yes.

18 MR. BUTCHER: Yes.

19 THE COMMISSIONER: Yes. All right. Well, I think in
20 those circumstances, I am disposed to grant it and
21 I will. Thank you.

22 MR. BUTCHER: Thank you.

23 MR. MARTLAND: Mr. Commissioner, I've been -- I should
24 do this with a loud voice. I've just been
25 reminded that although we have mikes in front of
26 us --

27 THE COMMISSIONER: Yes.

28 MR. MARTLAND: -- and usually this courtroom has an
29 amplification process, but it's actually not
30 turned on today. So if everyone -- if I can just
31 remind anyone addressing you to please speak in a
32 loud voice so the people at the back can hopefully
33 hear.

34 THE COMMISSIONER: So far have people been able to
35 hear me in the back row?

36 VOICES: Yes.

37 MR. MARTLAND: Well, of course they're going to say
38 that you, so...

39 THE COMMISSIONER: All right. Thank you. Yes, Mr.
40 McFee.

41 MR. MCFEE: Yes, Mr. Commissioner. As we told you in
42 the introductions, we act on behalf of James
43 Lightbody who is the president and CEO of the B.C.
44 Lottery Corporation. Now, he's fulfilled that
45 function and performed those important duties
46 since February of 2014. But prior to February of
47 2014, Mr. Lightbody was BCLC's Vice-President of

1 Casinos and Community Gaming, and that was from
2 2011 to January 2014.

3 Now, when one looks at those dates, Mr.
4 Lightbody's tenure with BCLC and his involvement
5 in the gaming industry in British Columbia spans
6 the timeframe identified in Mr. German's report
7 number one for the evolution of what Mr. German
8 described in his reports as small-time loan
9 sharking that evolved into large-scale money
10 laundering in the Lower Mainland casinos.

11 Now, in that timeframe and that context, one
12 then looks at the commission's mandate, and its
13 terms of reference require the commission to make
14 findings of fact, including with respect to the
15 extent, growth, evolution, and methods of money
16 laundering in British Columbia with regard to --
17 one aspect is gaming and horseracing.

18 The second aspect of the mandate is the acts
19 or omissions of responsible regulatory agencies
20 and individuals -- and I emphasize the
21 "individuals" -- and whether those contributed to
22 money laundering in the province or amount to
23 corruption.

24 And a third aspect of the commission's
25 mandate is the scope and effectiveness of anti-
26 money laundering powers, duties, and function of
27 those regulatory agencies, and again, I emphasize
28 "and individuals."

29 Now, the terms of reference require the
30 commission to inquire into the extent and growth
31 of money laundering in the very period of time
32 that Mr. Lightbody was a senior executive and
33 ultimately the president and CEO of BCLC, and
34 importantly, to make findings of fact with respect
35 to the acts or omissions of individuals and the
36 scope and effectiveness of anti-money laundering
37 powers of individuals.

38 Now, the terms of reference mandate that you
39 make findings of fact with respect to the
40 regulatory agencies and individuals.

41 Now, as such, Mr. Lightbody, the president
42 and CEO of BCLC, has obvious significant personal,
43 privacy, reputational, and professional interests
44 that may be affected in the course of the
45 commission's proceedings and by the findings of
46 the commission. That Mr. Lightbody's personal,
47 privacy, reputational, and professional interests

1 are in play is further highlighted by the
2 commission's terms of reference that require the
3 commission -- require the commission -- to review
4 and take into account foundational reports,
5 including the German reports.

6 Now, Mr. German's March 31st, 2018, report,
7 entitled "Dirty Money: an Independent Review of
8 Money Laundering in Lower Mainland Casinos," can
9 fairly be described as being in aspects highly
10 critical of BCLC's alleged failure to recognize
11 the evolution of money laundering in Lower
12 Mainland casinos. Its response to the issue, when
13 identified, and BCLC's relation, or sometimes lack
14 of relation, and interplay, with the Gaming Policy
15 and Enforcement Branch. And Mr. German's even
16 critical of BCLC's expenditures on certain aspects
17 of their operations, including its software
18 system.

19 Now, all of Mr. German's observations and
20 criticisms occurred, it's fair to say, on Mr.
21 Lightbody's watch as a senior vice-president or
22 the president and CEO. Mr. Lightbody takes
23 significant issue -- significant issue -- with a
24 number of Mr. German's observations and
25 conclusions.

26 Mr. Lightbody is and was a key player and
27 decision maker in the British Columbia gaming
28 industry at all times material to the commission's
29 terms of reference. And it's a well accepted
30 principle of law -- and we've outlined this for
31 you in our written submissions. I'm not going to
32 go over them in detail, but I want to highlight a
33 few aspects. It's a well established principle of
34 law that commissions of inquiry have a duty to act
35 fairly in coming to decisions that affect the
36 rights, privileges, and interests of an
37 individual.

38 Now, in our written submissions we've
39 addressed the five factors stipulated by the
40 Supreme Court of Canada in the *Baker* decision to
41 be considered when determining the content of that
42 duty of fairness. And as I said, I'm not going to
43 repeat those. But consideration of those factors
44 draws one to the conclusion, the inescapable
45 conclusion, that Mr. Lightbody's personal
46 interests, as opposed to the collective corporate
47 interests of BCLC, are squarely engaged by the

1 commission's terms of reference. Hence, Mr.
2 Lightbody in his personal capacity is owed a high
3 degree of procedural fairness that can only be met
4 by granting a right of standing on the gaming and
5 horseracing sectors.

6 Now, further granting Mr. Lightbody
7 standing, in our submission, will enhance and
8 contribute to the commission's work. As I have
9 noted, Mr. Lightbody's tenure in British Columbia
10 spans the entire timeframe under consideration by
11 the commission. Mr. Lightbody can provide
12 personal and unique insight into the government's
13 oversight of BCLC's operations and the casino
14 industry and the changes that occurred when the
15 oversight transferred from the Ministry of Finance
16 to the Ministry of the Attorney General. Mr.
17 Lightbody can provide evidence and insight with
18 respect to interactions between BCLC, gaming
19 service providers, and the regulators: GPEB and
20 FINTRAC, which are the subject of very
21 considerable comment, as you'll see, in the German
22 reports.

23 He can provide personal insight into and
24 educate the commission with respect to the unique
25 business model under which casinos are operated in
26 B.C. And he can also --

27 THE COMMISSIONER: I'm sorry to interrupt you at this
28 point. I just have a question though, Mr. McFee.
29 The things you're discussing right now is, it
30 seems to me, evidence he could give or information
31 he could provide equally under the umbrella of
32 BCLC. In other words, what you're talking about
33 isn't incongruent with BCLC's interests before
34 this commission, it seems to me.

35 MR. MCFEE: No, that's correct. But the ability to
36 have his personal, privacy, and reputational
37 interests protected is not co-extensive with BCLC.
38 His personal, privacy, and reputational interests
39 in some situations could be in conflict with the
40 collective interests of BCLC.

41 THE COMMISSIONER: That's really what I wanted to get
42 to.

43 MR. MCFEE: Let me just provide you, if I can, with
44 a -- as I say, we're not going to delve into the
45 evidence.

46 THE COMMISSIONER: No.

47 MR. MCFEE: But just one example. One example of that

1 where Mr. Lightbody's interests can't be
2 adequately protected and represented by counsel
3 for BCLC or BCLC, who have the corporate
4 collective interests to look after. Mr. German's
5 report -- and I don't need to take you to it, but
6 I'll give you the references. Under Chapter 16,
7 "A Failed Strategy," paragraph 478, Mr. German
8 says:

9
10 [A BCLC] investigator --

11
12 So this is a BCLC investigator.

13
14 -- further advised that no transaction was
15 refused by BCLC before 2015. A senior
16 official within the corporation told him in
17 2012 that his job was "not to investigate
18 money laundering." He pointed out that
19 nobody was investigating money laundering
20 despite copies of suspicious transaction
21 reports being provided to GPEB and to the
22 RCMP. In his view, nobody showed any
23 interest in the issue.

24
25 Now, that's an important aspect of evidence
26 that Mr. German relies upon that, one expects,
27 will come before you as the commissioner. Mr.
28 Lightbody -- the buck stopped with him. He takes
29 great issue with that. He says that's incorrect,
30 and that's only one example. BCLC's counsel can't
31 properly represent Mr. Lightbody's interests in
32 that scenario because you've got a conflict
33 between what one individual at BCLC may have said
34 and what the senior executives and BCLC were
35 actually doing and undertaking and the oversight
36 they were providing.

37 So in summary, when one -- and that's only
38 one example. But in summary, when one considers
39 the significant extent to which Mr. Lightbody's
40 personal interests are engaged by the commission's
41 terms of reference and how Mr. Lightbody's
42 personal interests may be affected by the
43 commission's finding, supplemented -- and it's a
44 supplementing -- by Mr. Lightbody's wealth of
45 experience and knowledge in the gaming and
46 horseracing industry in British Columbia, which
47 will serve to further the conduct of the inquiry.

1 In our submission, Mr. Lightbody should be
2 granted standing on gaming and horseracing.
3 THE COMMISSIONER: So your position, if I understand
4 it correctly, is that there is a realistic
5 prospect that Mr. Lightbody may find himself at
6 odds with BCLC on some issues that arise during
7 the course of the inquiry?
8 MR. MCFEE: I wouldn't say with the collective of
9 BCLC, but of aspects of the BCLC's position and
10 evidence that will come forward from former or
11 current employees of BCLC that were perhaps not in
12 the senior executive ranks at the time. And
13 BCLC's counsel will be in an impossible position
14 to deal with that.
15 THE COMMISSIONER: All right. Thank you.
16 MR. MCFEE: And I should say this. Should the
17 commission grant standing to Mr. Lightbody, we as
18 his counsel, as you will appreciate, will ensure
19 that his participation doesn't duplicate that of
20 other participants, that there will be Mr.
21 Lightbody's perspective and it won't be repetition
22 and it won't be duplicative of that of other
23 participants, whether they be BCLC or others.
24 THE COMMISSIONER: No. It seems to me that in the
25 event standing were to be granted to him, it would
26 be on the footing that you would fully cooperate
27 with Mr. Smart in his presentation or at least his
28 shepherding --
29 MR. MCFEE: Yes.
30 THE COMMISSIONER: -- of BCLC during the course of the
31 inquiry.
32 MR. MCFEE: Yes, no question about that. And not just
33 Mr. Smart for BCLC. For any other persons that
34 would have similar interests if you grant standing
35 to other senior executives of BCLC.
36 THE COMMISSIONER: All right.
37 MR. MCFEE: Those are our submissions.
38 THE COMMISSIONER: Thank you. Mr. Martland or Mr.
39 McGowan, do you either have any submissions or
40 comments or --
41 MR. MARTLAND: No --
42 THE COMMISSIONER: -- questions you wish --
43 MR. MARTLAND: -- the questions we had have been
44 canvassed. Thank you.
45 THE COMMISSIONER: Thank you. Yes, Mr. Jaffe.
46 MR. JAFFE: Thank you, Mr. Commissioner. I understand
47 that you've had a chance to review Mr. Pinnock's

1 lengthy statement?

2 THE COMMISSIONER: Yes, I have. Thank you.

3 MR. JAFFE: Thank you. I want to start by saying that
4 at paragraphs 101 to 105 of your initial ruling on
5 standing, you briefly reviewed who Mr. Pinnock is.

6 THE COMMISSIONER: Yes.

7 MR. JAFFE: And you would know from having seen what
8 you've seen that Mr. Pinnock brings to the
9 commission the possibility of a relatively unique
10 perspective. It's a perspective that was
11 developed throughout 29 years of policing, much of
12 which was associated directly with organized
13 crime, the investigation of organized crime. And
14 before Mr. Pinnock was appointed commander of the
15 Integrated Illegal Gaming Enforcement Unit, he
16 brought with him to that job tremendous experience
17 in the area of investigating organized crime.

18 In my respectful view -- well, let me just
19 start by saying that you would know from what
20 you've read that Mr. Pinnock is extremely grateful
21 that a commission has been struck facilitating a
22 public inquiry into the concerns that were so
23 meaningful to Mr. Pinnock that it forced him after
24 29 years with the RCMP to leave and take early
25 retirement. That -- if there's any question as to
26 whether the personal, reputational, privacy
27 interests of Mr. Pinnock are at stake in this
28 proceeding, one need only look at the history and
29 how involved he was in the matters that are now
30 squarely before this commission.

31 THE COMMISSIONER: The way I read Mr. Pinnock's
32 report, Mr. Jaffe, or his submissions rather, is
33 that he's provided a wealth of information --

34 MR. JAFFE: Mm-hm.

35 THE COMMISSIONER: -- to the commission that it seems
36 to me warrants the commission engaging with him to
37 investigate the various aspects of his
38 submissions. I don't see that -- well, let me put
39 it this way. It seems to me that his interests
40 are congruent with that of the commission. In
41 other words, the commission would be pursuing the
42 things that he considers to be of value to the
43 commission. And at this stage, it's difficult to
44 see how granting Mr. Pinnock participant status
45 would advance that process.

46 MR. JAFFE: Yes.

47 THE COMMISSIONER: In other words, there is a certain

1 coordination that can be done with Mr. Pinnock.
2 MR. JAFFE: Yes, I understand that. And of course we
3 all know that much of his evidence, if not all of
4 it, can come out by way of being called as a
5 witness. And the question then is whether or not
6 his participation beyond that might be helpful to
7 the commission.

8 THE COMMISSIONER: Right.

9 MR. JAFFE: And in my respectful view, it would be for
10 a number of reasons. First of all, this
11 commission wouldn't exist today if it wasn't for
12 the part of a couple of whistleblowers who came
13 forward and exposed what they believe has been
14 going on. Mr. Pinnock, without delving into the
15 evidence of course, was in a fairly unique
16 position to see what he perceived as being
17 interference with his stated mandate, and far
18 beyond a simple indifference or neglect as to the
19 systemic use of gaming venues to facilitate money
20 laundering.

21 Yes, this is his concerns and much of what
22 he has set out in his statement is congruent with
23 the function of this commission, and therefore the
24 concern might be that his standing would be
25 somewhat redundant and unnecessary. But I raise
26 this concern. This commission of public inquiry
27 has a very important function of satisfying the
28 public demand for an area of great concern to be
29 thoroughly and fairly investigated. You have
30 before you 20 applications for standing, only two
31 of which relate to people who had the courage to
32 come forward. In other words, only two of the 20
33 are the people whose courage really is what has
34 brought this commission into being, Fred Pinnock
35 being one of them. Mr. Alderson now has accepted
36 his role as a witness rather than a participant.
37 But the two of them have much in common in terms
38 of the nature of their observations and the
39 concerns they've expressed.

40 But if you exclude Mr. Pinnock from having
41 standing here, virtually all of the participants
42 or parties that have interests to protect in ways
43 which -- let me back up a bit from that. There
44 are some participants of course that aren't
45 capable of being -- finding themselves in the
46 crosshairs of Mr. Pinnock's concerns. Of course
47 there's a few of them. But for the GPB, the

1 Government of Canada, FINTRAC, and the RCMP, the
2 Gateway, the B.C. Lottery Corp -- they're all here
3 participating fully with counsel, with the ability
4 to call witnesses, with the ability to cross-
5 examine and shape evidence, with production of
6 documents capabilities, and --

7 THE COMMISSIONER: Just so you're aware, Mr. Jaffe,
8 the question of the extent to which participants
9 can call witnesses is not determined yet. We have
10 a draft set of --

11 MR. JAFFE: I understand.

12 THE COMMISSIONER: -- rules of procedure, but --

13 MR. JAFFE: Okay. I understand. But eventually there
14 will come a time when they will, under whatever
15 rules are agreed upon, be capable of participating
16 much more fully than someone who's merely on a
17 witness list.

18 THE COMMISSIONER: I take your point there.

19 MR. JAFFE: Yes. And so from the point of -- and I
20 don't think one can overstate the importance that
21 this commission be seen by the public as one that
22 has a level playing field on which all the
23 discrepant interests can be addressed. And I'd
24 simply say that if, within all of the
25 participants, neither of the whistleblowers are
26 able to be at the table and have the capability of
27 participating whether through cross-examination or
28 otherwise, could, in my respectful view, be a
29 problem for the commission down the road.

30 It would also be quite likely, in my view,
31 that because of Mr. Pinnock's background and
32 observations he made, as you've now reviewed in
33 his statement, he's capable of helping the
34 commission explore certain avenues that may not be
35 as obvious to other people at the table.

36 It's interesting that here we are in October
37 of 2019 and I -- as you've seen from Mr. Pinnock's
38 statement, efforts have been under way for quite
39 some time through various Freedom of Information
40 requests for the production of documents from the
41 Lottery Corporation and from FINTRAC dealing
42 squarely upon matters that Mr. Pinnock is able to
43 give evidence on. And you don't have the document
44 production yet that will truly inform you of the
45 degree to which Mr. Pinnock may contribute to this
46 commission, whether by way of witness or as a
47 participant. But just to give you an example

1 of -- you know, and I was interested to hear Mr.
2 Butcher -- his position, the needing some more I
3 understand his position and -- but it's
4 interesting that for four years, efforts have been
5 made for the Lottery Corp and FINTRAC to provide
6 disclosure of documents relative to the
7 observations of Mr. Pinnock and his concerns about
8 organized crime in the gaming venues. And for
9 years those efforts have been unsuccessful. I can
10 simply say, for instance, the request went out in
11 February of 2019 --

12 Actually, before I read to you the FOI
13 request, I'll just tell you where I'm headed. It
14 may be -- it may be, in order for you to reserve
15 on the question of Mr. Pinnock's standing until
16 you see what it is that we're seeking to have
17 produced. And it also may be within your
18 jurisdiction to fast-track the FOI process and
19 make an order yourself for the material that I'll
20 describe to you.

21 But in February of 2019, Mr. Sam Cooper from
22 Global News made the following FOI request:

23
24 any emails or documents addressed to or
25 exchanged between Fred Pinnock, Derek
26 Sturko, Kevin Begg, Bev Busson, Dick Bent,
27 Leon Ben Wall (phonetic), Joe Schalk, Don
28 Adams [sic], David Morhart --

29
30 These are all people whose names you will see
31 surfacing in Mr. Pinnock's statement.

32
33 -- regarding the policing or regulation of
34 illegal gaming venues in the B.C. Government
35 legal casinos with regard to issues relating
36 to concerns about organized crime and money
37 laundering, crime and money laundering,
38 jurisdiction of regulation and enforcement
39 of these issues or reports on these issues.

40
41 Now, that went out nine months ago. And
42 other than some bureaucratic form letters, there's
43 been no production, materials squarely of immense
44 relevance to the commission, and much of which
45 will require Mr. Pinnock's involvement to manage
46 and deal with properly beyond being on a witness
47 list, in my view. Or at least that may be the

1 case. Until we see it, you won't know.

2 I will say that of the disclosure made so
3 far, FINTRAC in 2015 -- so that shows you how long
4 efforts have been made to get the material.
5 FINTRAC in a heavily redacted statement has a
6 record from 2015 saying this:

7
8 According to media reports, an RCMP unit
9 whose responsibility was to combat illegal
10 gambling in British Columbia, reported in a
11 threat assessment that organized crime
12 figures were likely involved in illegal
13 gambling. According to the assessment, 25
14 reports were filed over 2005 to 2008 --

15
16 That's Mr. Pinnock's tenure there.

17
18 -- involving illegal gaming houses connected
19 to or operated by organized crime figures or
20 frequented by gang members. Members and
21 associates of the Hells Angels as well as
22 Italian and Asian organized crime figures
23 are believed to run these illegal facilities
24 and operate as bookmakers.

25
26 It is also noted that:

27
28 Some loan sharks are also believed to be
29 associated to Asian-based criminal
30 organizations. The assessment recommended
31 that a now disbanded RCMP unit take a
32 leadership role in the province-wide
33 coordinated enforcement initiative to combat
34 organized crime that engaged in illegal
35 gambling.

36
37 Now, FINTRAC had that in 2015, four years
38 ago. Yet, you know, when we read the Peter German
39 report -- now, it's a lengthy report and I
40 apologize if I missed it, but I didn't find it.
41 And one can certainly appreciate the frustration
42 and hurt that Mr. Pinnock -- of all the hundreds
43 of RCMP people and officials of the provincial
44 gaming unit and the casino -- he has come forward.
45 He has come forward. If it wasn't for Fred
46 Pinnock and Mr. Alderson, this commission wouldn't
47 be here. And I think it's imperative from the

1 public perception that he be treated as more than
2 just a witness, be able to participate and
3 actually assist the commission in what's supposed
4 to be the great engine of truth in making the
5 necessary findings.

6 THE COMMISSIONER: I think there's no doubt but that he
7 will assist the commission, whatever status he
8 has. But I take your point.

9 MR. JAFFE: Thank you. And I'll just finish by saying
10 this. I know, Mr. Commissioner, you have all the
11 discretion in the world to fashion the standing in
12 a manner which best suits the purposes of the
13 commission, and it's not a black and white matter.
14 It's not an on-and-off switch. So obviously there
15 are areas of your inquiry that are beyond Mr.
16 Pinnock's capability to help you with. But
17 there's much of what you'll be looking at which
18 would be assisted greatly, in my view, by his
19 place at the table before you.

20 And I also note -- I know that Mr. Alderson
21 has accepted his role as a witness in this, but I
22 also note that you can fashion standing in the
23 nature of a group allocation. So if for instance
24 there are people of -- other whistleblowers who
25 might want to come forward, you can fashion
26 standing to some degree to accommodate them. And
27 you'll see in Mr. Pinnock's statement there's a
28 number of people that he doesn't identify
29 specifically but that he's spoken with, including
30 an individual who was an employee of a casino that
31 observed a senior manager at the casino dealing
32 with a known loan shark, but moving off camera
33 before they had that conversation. That kind of
34 evidence --

35 THE COMMISSIONER: As I recall, though, he doesn't
36 have his name, that individual's name.

37 MR. JAFFE: Ah, well, that has been resolved.

38 THE COMMISSIONER: Oh, okay.

39 MR. JAFFE: That has been resolved, and there are
40 other names of other people who at this point have
41 confided in Mr. Pinnock but who haven't come
42 forward for various reasons. So if Mr. Pinnock
43 had standing, the ability to marshal some of that
44 evidence and put it before the commission, I
45 think, would be enhanced.

46 THE COMMISSIONER: All right. Thank you, Mr. Jaffe.

47 MR. JAFFE: Thank you.

1 THE COMMISSIONER: Anything, Mr. Martland or Mr.
2 McGowan?

3 MR. MARTLAND: Thank you, no, Mr. Commissioner.

4 THE COMMISSIONER: Thank you. All right. Thank you.

5 MR. MARTLAND: I think we're now at the juncture where
6 I think we're able to conclude unless there's
7 something I've overlooked. It seems to me that
8 we'll be looking to set some further date to
9 address Mr. Butcher's application.

10 THE COMMISSIONER: Yes.

11 MR. MARTLAND: In addition to these hearings on
12 standing, we have public meetings that are
13 starting next week, Wednesday, in Vancouver --

14 THE COMMISSIONER: Yes.

15 MR. MARTLAND: -- in five cities. All of the
16 information about those meetings will be available
17 through the commission website. Unless there's
18 anything further, I suggest we're in a position to
19 adjourn at this point.

20 THE COMMISSIONER: Yes. And I think I should indicate
21 to the applicants that I will do my best to get a
22 decision out sooner rather than later. I'm
23 hopeful it can be before the end of next week, but
24 it may slide into the following week. We'll do
25 our best. Thank you.

26
27 (PROCEEDINGS ADJOURNED)

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