

Commission of Inquiry into Money Laundering in British Columbia

Application re: Proposed Overview Report – Ruling #36

Ruling of the Honourable Austin Cullen, Commissioner

Issued August 20, 2021

A. INTRODUCTION

[1] The Applicant, Paul King Jin, applies for various orders relating to an overview report entitled “Paul Jin Debt Enforcement Against BC Real Estate” sought to be tendered by Commission counsel pursuant to Rules 33 and 34 of the Commission’s *Rules of Practice and Procedure* (the “Overview Report”). These orders include:

- a. An order that the Overview Report not be admitted into evidence;
- b. An order that Rules 33 and 34 of the Commission’s *Rules of Practice and Procedure* be struck; or, in the alternative,
- c. An order that the Overview Report not be admitted into evidence until:
 - i. Mr. Jin has been provided with an unredacted copy of the Overview Report;
 - ii. Mr. Jin has been provided with copies of the source documents referred to, relied upon and/or considered in authoring the Overview Report;
 - iii. Mr. Jin has been provided with any documents or statements given to Commission investigators by individuals referred to in the Overview Report;
 - iv. Mr. Jin has been granted the opportunity to conduct cross-examination of the investigator who authored the Overview Report; and

v. Mr. Jin has received and been provided the opportunity to respond to Commission counsel's submissions with respect to the relevance, admissibility and evidentiary weight of the Overview Report and, on the basis of those submissions, the Commissioner has decided that the Overview Report, or any part of it is admissible.

[2] For the reasons set out below, I have concluded that the application should be dismissed.

B. FACTUAL BACKGROUND

(1) *Rules of Practice and Procedure*

[3] On May 15, 2019, the Lieutenant Governor of British Columbia issued Order in Council No. 2019-238 establishing the Commission of Inquiry into Money Laundering in British Columbia (the "Order in Council") (the "Commission"). The Commission was established as both a study commission under s. 20 of the *Public Inquiry Act*, S.B.C. 2007, c. 9 [*PIA*] and a hearing commission under s. 21 of that statute.

[4] The Order in Council and attached Terms of Reference require the Commission to conduct hearings and make findings of fact with respect to money laundering in various sectors of the economy including the real estate and gaming sectors.

[5] On December 5, 2019, the Commission published its *Rules of Practice and Procedure* in accordance with s. 9(1) of the *PIA*.

[6] Rules 32-35 outline a process by which overview reports can be prepared and entered into evidence. These rules provide:

OVERVIEW REPORTS

32. Commission counsel may prepare overview reports derived from their investigations. These overview reports may contain core or background facts, referring to their sources. They may also describe facts and circumstances relevant to the subject matter under discussion.
33. Once final, an overview report is an exhibit before the Commissioner without the necessity of being introduced into evidence through a witness.

34. Before an overview report is finalized:
 - a. Commission counsel will deliver a draft to each participant with standing to participate in respect of the subject matter of the overview report;
 - b. such participants may provide comments in writing on the draft overview report, within 14 days or such other time as Commission counsel advises; and
 - c. Commission counsel may modify the draft overview report in response to comments received from participants or on Commission counsel's own initiative.
35. In accordance with Rule 46, participants may propose witnesses for Commission counsel to call during the evidentiary hearings to support, challenge or comment upon the overview report in ways that are likely to significantly contribute to an understanding of the issues relevant to the Inquiry.

[7] Rules 46 and 47 outline a process by which participants can suggest witnesses to be called during the Commission's evidentiary hearings. These rules provide:

46. Participants may propose witnesses to be called during the evidentiary hearings. Participants shall provide to Commission counsel at the earliest reasonable opportunity and in writing the name and contact information, if known, of any person who the participant believes should be called as a witness during the evidentiary hearings, with a statement of the subject matter of their proposed testimony, their experience and background, anticipated evidence and the estimated length of their testimony.
47. Commission counsel may decline to call a witness proposed by a participant. If the participant believes that the witness's evidence is necessary, the participant may apply, in accordance with Rule 60 (Applications), to the Commissioner for an order that Commission counsel call that witness.

[8] Since the commencement of the Commission's evidentiary hearings, 52 overview reports have been entered into evidence. On each occasion, the overview report has been entered as an exhibit, at my direction, during the Commission's public hearings, with participants having the opportunity to voice any issues or objections to the admission of the report.

(2) Mr. Jin's Participation in the Inquiry

[9] On November 3, 2020, Mr. Jin applied for participant status in accordance with ss. 11(4) of the *Public Inquiry Act*.

[10] On November 5, 2020, I extended the time period for Mr. Jin to bring that application and granted him participant status insofar as it relates to evidence that affects his interests or engages him specifically.

[11] On November 9, 2020, Commission counsel sent a letter to Mr. Jin (through his lawyer) explaining his document production obligations under Rules 13 and 14 of the *Rules of Practice and Procedure*. The letter also attached a summons requiring production of various documents including:

- a. Records of any loans made by or on behalf of Mr. Jin or any entity controlled by Mr. Jin including promissory notes, communications in respect of such loans, and records relating to any security for such loans, including but not limited to mortgage agreements; and
- b. Records relating to the enforcement of any loan made by or on behalf of Mr. Jin or any entity controlled by Mr. Jin including but not limited to communications with borrowers by SMS, WeChat, and email.

[12] Mr. Jin has not complied with his document obligations under Rules 13 and 14 of the *Rules of Practice and Procedure*. Nor has he produced any documents in response to the summons. While Mr. Jin's non-compliance with his document production obligations has not factored into my decision on this application, I refer to it here because it was the subject of submissions by Commission counsel, the Attorney General of Canada and Her Majesty the Queen in Right of British Columbia.

[13] On February 5, 2021, I issued a ruling in response to an application brought by Commission counsel in which I restricted Mr. Jin's access to certain documents received by the Commission in furtherance of its mandate ("Ruling 26"). However, I indicated that it would be unfair to make a finding of misconduct on the basis of evidence to which Mr. Jin did not have access and that I would not consider any such documents in deciding whether to make a finding of misconduct against Mr. Jin, unless those documents were favourable to him.

[14] On May 5, 2021, I issued a ruling in response to an application brought by Mr. Jin in which I reiterated that any potential findings of misconduct against Mr. Jin would only be made on the basis of evidence to which he had access or that was favourable to him (“Ruling 32”). I also made an order limiting the role of hearing counsel (i.e., counsel who participated in the gathering and presentation of evidence) in deliberations with respect to potential findings of misconduct against Mr. Jin:

[135] Insofar as I am considering any findings of misconduct against Mr. Jin, I will limit the role of counsel who have participated in the gathering and presentation of evidence to the following:

- a. Organizing and bringing forward evidence relevant to those issues; and
- b. Reviewing relevant sections of the report after they have been drafted to ensure that there are no inaccuracies or statements that may expose the Commission to legal challenge.

[136] Any evidence brought forward by hearing counsel will be limited to evidence that is accessible to Mr. Jin (or that is favourable to him) and should be presented in a fair, complete and impartial manner without urging a particular finding or result.

(3) *The Overview Report*

[15] On May 14, 2021, the Overview Report was marked as an exhibit for identification pending the outcome of this application. The Overview Report is divided into four parts.

[16] Part 1 provides a list of debt enforcement proceedings commenced by Mr. Jin and/or his spouse, Xiao Qi Wei, along with a list of mortgages filed by Mr. Jin, Ms. Wei and companies under their apparent control.¹

[17] Part 2 provides a summary of the legal proceedings set out in Part 1 including the stated purpose of the loan (as set out in the originating pleading), the substance of any response and the current status of the proceeding.

¹ Lawsuits that are unrelated to private lending (e.g., claims arising from motor vehicle accidents) are not listed in the Overview Report.

[18] Part 3 summarizes the documented gambling history of individuals who allegedly borrowed money from Mr. Jin based on documents provided to the Commission by gaming sector participants as well as civil litigation records.

[19] Part 4 provides a summary of recent mortgage lending activity by entities associated with Mr. Jin including two mortgages issued by companies which list Mr. Jin's son, Jesse Xin Jia, as their sole director.

[20] The Overview Report attaches publicly-accessible records used to prepare the report but does not attach documents disclosed by gaming sector participants such as the British Columbia Lottery Corporation ("BCLC") and the Gaming Policy and Enforcement Branch ("GPEB") which are not otherwise available to the public.

[21] I understand, from the submissions of counsel, that Mr. Jin was provided with a redacted version of the Overview Report which obscures any information that could identify the individuals referenced in Part 3. I also understand that he was referred to the *Rules* pertaining to overview reports and asked to provide any comments by May 11, 2021. Mr. Jin's lawyer posed a number of questions with respect to the authorship and relevance of the Overview Report. However, he did not make any substantive comments or corrections with respect to the information contained in the Overview Report.

C. POSITIONS OF THE PARTIES

(1) *Mr. Jin's Submissions*

[22] Mr. Jin submits that the present Inquiry must be conducted with fairness, the appearance of fairness and transparency.

[23] With respect to the *Rules of Practice and Procedure*, he submits that the clear language of the *Rules* gives authority to Commission counsel to determine when an overview report is final and it is in the discretion of Commission counsel, not the Commissioner, to determine whether to modify a draft report.

[24] Mr. Jin further submits that there is no provision for the Commissioner to consider and determine an application for admissibility of an overview report. Once Commission counsel determine that the report is final, the report becomes an exhibit through the mandatory operation of the *Rules* with the Commissioner having no oversight over that process and no discretion as to whether to admit the report.

[25] In his submission, if there is to be “meaningful distance between a Commission and its investigators and counsel, it must be the Commissioner who has the jurisdiction to make a final determination with respect to what is and what is not admissible. The independence of the Commissioner demands this.”

[26] Mr. Jin further submits that the process by which the Overview Report was introduced gives rise to concerns about fairness and transparency. In his submission, the authors of the report are not just “discovering” evidence through the compulsion of documents and statements; they are also *creating* evidence which may be used as a basis on which the Commission makes findings of fact. For example, the report “attaches documents but also refers to information outside of those documents, and characterizes, analyzes and draws conclusions [based on] that information.”

[27] Mr. Jin submits that there are three concerns about fairness and transparency in this context. First, there is no public record of other information held by the Commission which may be relevant to the admissibility or weight of the report. Second, the report is not accompanied by a public submission as to how the report fits within the Commission’s Terms of Reference or how the report might be flagged as relevant by Commission counsel. Third, the author of the report is immunized from cross-examination with the result that the inferences that might be drawn from the report, and the weight to be given to those inferences cannot be tested.

[28] Mr. Jin summarizes his position by stating that admitting the Overview Report would be contrary to principles of fairness and transparency on the following grounds:

- a. The Overview Report would be admitted through the mandatory operation of the *Rules of Practice and Procedure* as opposed to the exercise of the Commissioner's discretion;
- b. The Overview Report is unaccompanied by a public submission with respect to its admissibility as well as its proposed use, relevance and weight;
- c. The Overview Report as provided to Mr. Jin contains redactions;
- d. Mr. Jin does not have many of the source documents referred to in the Overview Report;
- e. Mr. Jin does not know the extent to which the Commission holds, or the investigator considered information which is not included in the Overview Report;
- f. Fairness requires that Mr. Jin have the ability to test, through cross-examination, any evidence that might be used as a basis to make a finding of fact or a finding of misconduct against him;
- g. Commission counsel, who might also be the investigator and author of the Overview Report, might also assist the Commissioner in the post-evidence phase of the Inquiry by flagging relevant aspects of the Overview Report for relevance; and
- h. The Overview Report might be used as a basis on which the Commission makes findings of fact in relation to Mr. Jin.

[29] Finally, Mr. Jin submits that the Overview Report makes reference to an order made by Justice Rogers of the British Columbia Supreme Court as well as a related order that I granted in my capacity as Associate Chief Justice of that Court, though he does not seek any specific relief in relation to that issue.

(2) Commission Counsel's Submissions

[30] Commission counsel oppose the relief sought by Mr. Jin. They submit that his application is based on a misreading of the *Rules of Practice and Procedure* and that the fairness concerns he raises, including redactions and access to documents, were addressed in Rulings 26 and 32.

[31] With respect to Rules 33 and 34, Commission counsel submit that Mr. Jin has acquiesced to the *Rules of Practice and Procedure*. More specifically, they submit that seven months have passed since Mr. Jin was granted participant status and 52 overview reports have been entered into evidence following the process set out in the rules. They also submit that:

- a. Mr. Jin did not bring an application to strike Rules 33 and 34 until the evidentiary hearings had concluded; and
- b. Mr. Jin should be taken to have accepted the validity of the *Rules of Practice and Procedure* at the time he applied for standing.

[32] Commission counsel further submit that the application to strike Rules 33 and 34 is premised on an incorrect interpretation of these rules that no one—much less Commission counsel—has sought to advance in these proceedings.

[33] In their submission, Rule 33 ought to be read as directing that an overview report need not be entered into evidence through a witness. They also submit that the invariable practice throughout the Inquiry has been that overview reports are entered as exhibits, by direction of the Commissioner, in the course of public hearings with Commission counsel addressing the matter in oral submissions.

[34] Commission counsel further submit that Mr. Jin was given the opportunity to respond to the draft overview report circulated by Commission counsel and did not avail himself of that opportunity whether by suggesting changes or proposing additional evidence. Moreover, when he expressed concerns about the admissibility of the Overview Report, he was given the opportunity to bring this application.

[35] Accordingly, they submit that Mr. Jin's concerns about Rules 33 and 34 have been addressed and I should not strike those rules, particularly where doing so could jeopardize the status of the 52 overview reports that have already been entered.

[36] With respect to the admissibility of the Overview Report, Commission counsel note that Mr. Jin does not submit that the Overview Report is inadmissible on the grounds of relevance or on the basis of any exclusionary rule. Rather, Mr. Jin submits that the unfairness arises from the process by which the Overview Report was created including his lack of access to information and documents.

[37] Commission counsel further submit that Mr. Jin's concerns regarding procedural unfairness have been addressed by my previous rulings, including Ruling 26, where I ruled that no finding of misconduct will be made against Mr. Jin on the basis of information and documents to which he does not have access.

[38] With respect to the alternative relief sought in paragraph 3 of the application, Commission counsel make the following submissions:

- a. The relief sought in paragraphs 3(a) and 3(b) was addressed in Ruling 26, and Mr. Jin has not articulated a reason to deviate from that ruling;
- b. The relief sought in paragraph 3(c) was addressed in Ruling 32, where I ordered that no finding of misconduct will be made against Mr. Jin on the basis of material not in evidence;
- c. Mr. Jin has not articulated any basis on which cross-examination is necessary. He has not identified any statements or conclusions that need to be challenged. Nor has he identified errors on the face of the Overview Report that require correction;
- d. Mr. Jin has not produced documents relating to his private lending activities and should not be permitted to cross-examine others with respect to these matters (which are "particularly within his own knowledge");

- e. With respect to those parts of the Overview Report that are redacted, cross-examination is not necessary in light of my previous rulings that no finding of misconduct will be made against Mr. Jin in reliance on documents and information to which he does not have access;
- f. With respect to the relief sought in paragraph 3(e) of the application, Mr. Jin has it backwards. Evidence is *prima facie* admissible if it is relevant and not subject to any exclusionary rule. If Mr. Jin seeks to have the Overview Report ruled inadmissible, the application is his to make; and
- g. In any event, the matter of admissibility is before me as a result of this application.

(3) The Attorney General of Canada's Submissions

[39] The Attorney General of Canada ("Canada") opposes the relief sought in paragraphs 3(a)–(c) of the application and submits that it has serious concerns about the disclosure of the source documents to Mr. Jin. These concerns include the risk of harm to potential or actual investigations, to individuals and to the repute of the administration of justice.

[40] Canada further submits that the Overview Report contains gambling information on more than 20 individuals with whom Mr. Jin is currently in direct debt enforcement conflict over significant unpaid sums. It also contains information on suspected loan sharks and private lenders with whom Mr. Jin might compete.

[41] In Canada's submission, the approach adopted in my previous rulings was put in place to protect exactly that type of information and Mr. Jin has not provided any basis on which to depart from my directions on these matters.

[42] Canada further submits that gaming sector participants proposed redactions to the Overview Report to protect information surrounding the gambling activity of individuals who borrowed money from Mr. Jin. The redacted information includes full legal names, mortgage numbers, partners' names and gaming habits. If released to

Mr. Jin, the redacted information may be linked to other information already in his possession and used against these individuals.

[43] In the alternative, Canada submits that if the Commissioner grants the relief sought in paragraph 3(b) of the application, gaming sector participants should be permitted to vet and propose redactions to the source documents referred to in the Overview Report before those documents are produced to Mr. Jin.

[44] In its submission, these redactions are necessary as these documents may contain information that would put individuals subject to debt enforcement at risk of harm. For example, the source documents are likely to contain casino staff observations on the make/model of patron vehicles, patron arrival times at casinos, and the names and physical descriptions of patrons' friends and family.

[45] Canada also notes that Mr. Jin does not have a broad grant of standing. Rather, his standing is limited to matters that give rise to the possibility of having an impact on his rights. In its submission, the Commission has provided Mr. Jin access to documents based on his limited participatory rights in order to meet the standard of procedural fairness and made it clear that any findings of misconduct will be confined to the evidence to which Mr. Jin has access.

[46] Finally, Canada submits that Mr. Jin has not complied with his participant obligations which "reflects a lack of commitment to the Commission's processes and militates against providing Mr. Jin with sensitive documents in the possession of other participants."

(4) *The Province of British Columbia's Submissions*

[47] Her Majesty the Queen in Right of British Columbia ("British Columbia") takes no position with respect to the relief sought in paragraphs 1 and 3(d) of the application but opposes the relief sought in paragraphs 2 and 3(a)-(c).

[48] In response to the relief sought in paragraph 2 of the application—namely, that Rules 33 and 34 be struck—British Columbia adopts the submissions of Commission counsel as set out in their submissions dated June 7, 2021.

[49] In response to the relief sought in paragraphs 3(a)-(c) of the application, British Columbia submits that Mr. Jin has failed to provide “clear and cogent” reasons why he should be provided with more extensive disclosure than that contemplated in my prior rulings. British Columbia further submits that the information that has been redacted from the report and the source documents which form the basis of the report contain sensitive information that could be used improperly and that there has been no change in circumstances that would require further disclosure.

[50] Finally, British Columbia submits that Mr. Jin’s lack of compliance with his obligations as a participant “militates against providing him with documents that are sensitive and cannot be made accessible to the public generally.”

(5) *British Columbia Lottery Corporation’s Submissions*

[51] The British Columbia Lottery Corporation (“BCLC”) supports the submissions made by Canada with respect to the granting of the relief sought in paragraph 3(a)-(c) of the application. It further submits that the concerns identified by Canada as set out in paragraphs 43-44 (above) also apply to the relief sought in paragraphs 3(a) and (c) of the application.

(6) *Mr. Jin’s Reply*

[52] Mr. Jin did not file any reply submissions.

D. DISCUSSION AND ANALYSIS

(1) *Rules 33 and 34*

[53] I begin by addressing Mr. Jin’s submission that Rules 33 and 34 of the *Rules of Practice and Procedure* should be struck. While I accept that there is a slight ambiguity in the *Rules* with respect to the manner in which overview reports are put before the

Commission, the invariable practice to date has been for these reports to be marked as an exhibit, at my direction, during the Commission's public hearings, with all participants having a full opportunity to object or otherwise raise concerns about the report before it is introduced into evidence. I would also note that Rule 4 of the *Rules of Practice and Procedure* allows me to "amend, supplement, vary or depart from any rule for the effective and efficient conduct of the inquiry."

[54] In this case, Mr. Jin was given ample opportunity to review the Overview Report and bring an application with respect to the admissibility of that report before it was introduced into evidence. Indeed, it is that process that gives rise to this ruling.

[55] Accordingly, I cannot accede to Mr. Jin's submission that Rules 33 and 34 should be struck from the *Rules of Practice and Procedure*.

[56] I will, however, direct that, consistent with the practice adopted by the Commission to date, any future overview reports sought to be introduced by Commission counsel be entered as exhibits subject to my overriding discretion to refuse to admit a report.

(2) Admissibility of the Overview Report

[57] With respect to the admissibility of the Overview Report, it is trite law that evidence is *prima facie* admissible if it is relevant and not subject to any exclusionary rule. In *R. v. Corbett*, [1988] 1 S.C.R. 670, La Forest J. (dissenting but not on this point) articulated that principle as follows:

As is true with respect to the resolution of most, if not all, issues relating to the law of evidence, resort must be had, first and foremost, to its animating or first principles, for it is only with reference to these that the more specific rules of evidence can be understood and evaluated. Failure to so reference discussion often results in the unhappy divorce of legal reasoning from common sense, with the consequence that rules of evidence are apt to be viewed as both self-sustaining and self-justifying. The present case further illustrates that statutory rules of evidence must also be interpreted in light of these guiding principles.

The organizing principles of the law of evidence may be simply stated. All relevant evidence is admissible, subject to a discretion to exclude matters that may unduly prejudice, mislead or confuse the trier of fact, take up too much time, or that should

otherwise be excluded on clear grounds of law or policy. Questions of relevancy and exclusion are, of course, matters for the trial judge, but over the years many specific exclusionary rules have been developed for the guidance of the trial judge, so much so that the law of evidence may superficially appear to consist simply of a series of exceptions to the rules of admissibility, with exceptions to the exceptions, and their sub-exceptions.²

[58] I have no trouble finding that the Overview Report is relevant to various issues falling within the Commission's mandate. For example, the Commission has heard evidence that private lending is one of the key mechanisms used by criminals to place illicit cash into the legitimate economy and the Overview Report provides an important window into that activity. While I appreciate that the Overview Report is based, to some extent, on hearsay statements, allegations contained in pleadings, and documents not in evidence, I have decided to admit the Overview Report into evidence and deal with these concerns as a matter of use and weight. The Commission has a broad mandate to examine the extent, growth, evolution and methods of money laundering in British Columbia, and the information contained in the Overview Report may be relevant to issues that have little to do with Mr. Jin. For example, the information may form the basis of findings concerning the knowledge of gaming sector participants with respect to the use of illicit (or suspicious) cash to make large cash buy-ins.

[59] It may also form the basis of recommendations with respect to steps that could be taken to better investigate money laundering activity and curb the flow of illicit funds into lower mainland gaming facilities and other sectors of the economy.

[60] In my opinion, these factors militate in favour of admission of the report subject to any subsequent determinations I make with respect to use and weight.

(3) Procedural Fairness

[61] With respect to the procedural fairness concerns raised by Mr. Jin, I have concluded that my previous rulings—including Rulings 26 and 32—provide sufficient

² *R. v. Corbett*, [1988] 1 S.C.R. 670 at 713-714. See also *R. v. Morris*, [1983] 2 S.C.R. 190 at 201; *R. v. Watson* (1996), 30 O.R. (3d) 161 (Ont. C.A.) and *R. v. White*, 2011 SCC 13 at para. 31.

protections to Mr. Jin such that none of the relief sought in his application should be granted. I deal with each of his submissions below.

i. Redactions

[62] Mr. Jin submits that it would be contrary to fairness and transparency to admit the Overview Report into evidence in circumstances where the version provided to him contains redactions. While I appreciate the potential unfairness arising from these redactions, I have previously ruled that no finding of misconduct will be made on the basis of evidence to which Mr. Jin does not have access. I will apply the same principle to the information redacted from the version of the Overview Report provided to Mr. Jin.

ii. Source Documents

[63] Mr. Jin submits that it would be contrary to fairness and transparency to admit the Overview Report into evidence where he does not have access to many of the source documents referenced in that report.

[64] Again, my previous rulings with respect to the use that can be made of that material provide a full answer to this argument. No findings of misconduct will be made against Mr. Jin on the basis of documents to which he does not have access.

iii. Cross-Examination

[65] Mr. Jin submits that it would be contrary to fairness and transparency to admit the Overview Report into evidence in circumstances where he does not have the ability to test, through cross-examination, any evidence that might be used as a basis to make a finding of fact or a finding of misconduct against him.

[66] With respect to Parts 1 and 2 of the Overview Report, I cannot accede to the submission that cross-examination is necessary or appropriate. Mr. Jin has personal knowledge of the information contained in those parts of the Overview Report as well as access to the source documents (all of which are publicly available).

[67] He was given ample opportunity to raise concerns with respect to the contents of the Overview Report and did not do so. Nor has he pointed to any specific portion of

the Overview Report that he would seek to challenge or amplify through cross-examination.

[68] In these circumstances, I cannot see any basis on which cross-examination is necessary and have declined to make the order sought by Mr. Jin.

[69] With respect to Part 3, I accept that it would be unfair for me to rely on statements made in that part of the Overview Report as against Mr. Jin in circumstances where he has not had the opportunity to cross-examine the author of the Overview Report.

[70] Consistent with my previous rulings, I will not rely on any such statements (or the underlying documents) in making any findings against Mr. Jin.

iv. Submissions as to Relevance

[71] Mr. Jin submits that the Overview Report should not be admitted into evidence until he has received and been given the opportunity to respond to Commission counsel's submissions with respect to relevance, admissibility and weight.

[72] In addressing this issue, it is important to distinguish between the admissibility of the Overview Report and the use (or weight) to be given to that evidence.

[73] Through this application, Mr. Jin has been given the opportunity to address the issue of admissibility. I have considered the submissions of Commission counsel, Mr. Jin and other participants and have determined the Overview Report is relevant to the Commission's work and is admissible.

[74] With respect to the use and weight to be given to the Overview Report, I am of the view that these matters are properly addressed in final submissions and need not be addressed at this stage.

v. Assistance with the Report-Writing Process

[75] Mr. Jin submits that it would be unfair to admit the Overview Report into evidence in circumstances where the author of that report is unknown and may offer assistance to

me in the post-evidentiary phase of the Commission process. Again, I am unable to accede to that submission. Ruling 32 makes it clear that the role of hearing counsel in my deliberations (as it relates to Mr. Jin) will be limited to organizing and bringing forward relevant evidence and reviewing relevant sections of the final report after they have been drafted to ensure that there are no inaccuracies or statements that may give rise to a legal challenge.

[76] I also directed that any evidence brought forward by hearing counsel be limited to evidence accessible to Mr. Jin (or favourable to him) and be presented in a fair, complete and impartial manner without urging a particular finding or result.

[77] I consider those protections to be sufficient to address the concerns raised by Mr. Jin in his application materials.

vi. Previous Rulings

[78] Finally, I note that Mr. Jin has raised an issue with respect to an order I made in my capacity as Associate Chief Justice of the Supreme Court of British Columbia on August 20, 2015 (though he does not seek any specific relief in connection with that matter). It is a fundamental duty of a trial judge performing their judicial function to consider only the evidence admitted at trial (*Taylor Ventures Ltd. (Trustee of) v. Taylor*, 2005 BCCA 350 at para. 9). I consider that principle to be equally applicable in the Commission context, and I will decide this matter in a fair and impartial manner based solely on the evidence tendered during the Commission process.

E. CONCLUSION

[79] For the reasons set out above, the application is dismissed.



Commissioner Austin F. Cullen