

Commission of Inquiry into Money Laundering in British Columbia

Application for Removal of Certain Documents from Public View – Ruling #25

Ruling of the Honourable Austin Cullen, Commissioner

Issued January 29, 2021

A. BACKGROUND

[1] This ruling addresses an application brought by Interac Corp. (“Interac”) on January 14, 2021, seeking an order that certain records it produced be made unavailable to the public.

[2] On June 25, 2020, the Commission issued a Summons to Produce to Interac for several categories of documents (the “Summons”), including:

1. unredacted Interac anti-money laundering regulations in respect of “white label” ABMs adopted on March 1, 2009 (the “AML Regulations”), and any other portion of the Interac operating regulations relevant to money laundering; [“Item 1”]

[and]

4. a list of “high-risk” Cash Owners in British Columbia, as defined in the AML Regulations[.] [“Item 4”]

[3] Interac provided documents and information in response to the Summons, including to the categories above. In its application, Interac asks for an order excluding from the public any response it gave to Item 4. It also asks to make the following unavailable to the public:

Any overview or description of the unredacted Interac anti-money laundering regulations in respect of “white label” ABMs adopted on March 1, 2009 (“AML Regulations”), and any other portion of the Interac Operating Regulations relevant to money laundering.

[4] Commission counsel has indicated they take no position on this application and I have received no responding materials from any of the participants.

[5] As I understand it, Interac is, in effect, seeking to limit public access to Exhibits 433, 434 and 435 which comprise (1) the Interac White Label ATM (“WLATM”) Anti-Money Laundering Operating Regulations, (2) Interac – Overview White Label Cash Owners Regulations, 2020 (which encapsulates an overview or description of the unredacted Interac Anti-Money Laundering Regulations) and (3) the list of “high-risk” cash owners, respectively.

[6] In their application, Interac asserted that Commission counsel would be bringing an application for similar relief in connection to “any other portion of the Interac Operating Regulations relevant to money laundering,” based on the premise that Commission counsel would be introducing the entirety of Interac’s Operating Regulations into evidence. That did not take place and accordingly, any need for Commission counsel to bring an application in respect of those materials has been obviated.

[7] Interac states that both categories of information (Item 1 and Item 4) are confidential, and that documents in response to Item 1 contain “highly sensitive confidential information that is disclosed to Interac service Participants in connection with or as a result of entering into Interac’s Master Services Agreement and Participants are thereby bound by a strict duty of confidence.”

[8] Interac describes the type of confidential information that was provided in response to Item 1 of the Summons as cash owner due diligence requirements, source of funds declarations, specialized procedure review obligations (which involves procedures to verify the identity of a cash owner and his/her source of funds) and other minimum requirements that Interac requires those who are subject to its operating regulations to abide by.

[9] With respect to the harm that could result from publication of documents in response to Item 4, or an overview or description of documents in response to Item 1, Interac states that disclosure will undermine the confidentiality of these provisions, which may have negative impacts on its business partners and product users, and may

inform those who intend to launder money how to circumvent Interac's anti-money laundering regulations.

[10] With respect to the harm that could arise from public availability of information provided by Interac in response to Item 4 of the Summons, Interac states that its categorization of "high-risk" or "low-risk" cash owners is developed for its own internal purposes, primarily to determine whether any additional requirements ought to apply to high-risk users. Interac is concerned that making this information public could have negative repercussions for the reputations of those persons named on this list.

[11] Interac does not specify what measures it considers the Commission should take to prevent public access to the documents and information at issue, nor does it identify particular documents before me that it seeks to withhold from public view. However, I understand that Exhibits 433, 434, and 435 contain the information at issue here.

B. DISCUSSION AND CONCLUSION

[12] The legal framework that guides the disposition of this application was set out in Ruling #13, which concerned several applications seeking directions with respect to the redaction of personal information on "public facing documents" entered as exhibits during the Commission hearings.

i. Item 1: the AML Regulations, and any portion of the Interac Operating Regulations relevant to money laundering, and "any overview or description" thereof.

[13] In applying the *Dagenais / Mentuck* test adopted in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 [*Dagenais*] and *R. v. Mentuck*, 2001 SCC 76 [*Mentuck*], I see little deleterious effects on the rights and interests of the participants and the public, including on the efficacy of the administration of justice, to withholding the full text of the AML Regulations or any other portion of the Interac Operating Regulations relevant to money laundering. I do consider there could be a serious risk to the proper administration of justice by their inclusion, in that individuals seeking to subvert the anti-money laundering protocols Interac has implemented may well be aided

in their attempts. Interac is a widely used transaction mechanism and the publishing of the portion of their Regulations relating to anti-money laundering could have widespread negative effects. I therefore allow Interac's application with respect to "any other portion of the Interac operating regulations relevant to money laundering," comprising Exhibit 433.

[14] Having reviewed Exhibit 434, I conclude that certain sections contain very specific information which could imperil Interac's Operating Regulations in the manner urged upon me. Particularly, sections 4 and 11 and Appendix A include criteria for the categorization of cash owners as "low-risk" or "high-risk," and steps that flow from that categorization, sections 5, 6, 7, and 9 include procedures for establishing identity and banking information of cash owners, section 10 provides criteria and procedures for determining source of funds from cash owners, sections 12-14 include certain procedures to be followed in conducting Interac's prescribed annual review of cash owners, and sections 16-19 set out expectations for reporting and document storage responsibilities. I consider that releasing this information to the public presents the same risk as that entailed by releasing the text of Interac's Operating Regulations related to anti-money laundering provisions, in that prospective money launderers, fraudsters or other nefarious actors may use the information to circumvent Interac's monitoring procedures.

[15] However, there are other sections of the document that are innocuous. Those sections that I consider to be innocuous are: 1, 2, 3, 8, and 15.

[16] In the result, I order that sections 4-7, 9-14, 16-19, and Appendix A of Exhibit 434 be withheld from public view.

ii. List of "high-risk" Cash Owners in British Columbia

[17] With respect to the information provided in response to Item 4 of the Summons in Exhibit 435, i.e. the list of individuals or entities Interac classifies as "high-risk," I agree that naming these persons may engender negative reputational consequences that are

unwarranted here. I consider the public naming of these persons unlikely to further the aims of the Commission.

[18] I find that Interac has met the test for excluding documents and information provided to the Commission in response to Item 4 from the public. This order does not restrict Commission counsel or counsel for the participants from leading relevant and probative evidence of the identities of particular persons on the “high-risk” list, or to link them to people and events of interest to the Commission where applicable.

A handwritten signature in black ink, appearing to read "Cullen". The signature is fluid and cursive, with a large initial 'C'.

Commissioner Austin F. Cullen