

Commission of Inquiry into Money Laundering in British Columbia

Application Pursuant to Rule 60 – Ruling #17

Ruling of the Honourable Austin Cullen, Commissioner

Issued November 19, 2020

A. INTRODUCTION

[1] The Applicant, Fred Pinnock, applies for an order that any reference to the community in which he resides be expunged from the public version of any transcript produced as a result of his cross-examination on November 17, 2020. He also seeks an order that an audio block be applied to the video recording of his testimony to protect that information.

[2] The issue arises because of a series of questions asked by Peter Senkpiel, counsel for Kash Heed, during his examination of Mr. Pinnock.

[3] At the time he asked these questions, Mr. Senkpiel was reading from a transcript of a July 2018 conversation between Mr. Pinnock and Mr. Heed wherein they engaged in general conversation about various matters including the current location of Mr. Pinnock's residence.

[4] As I understand it, the point of that line of questioning was to establish Mr. Heed's speech patterns, and counsel prefaced his questions by stating that the substance of the conversation was entirely irrelevant to anything to do with this Commission.

[5] When counsel for Mr. Pinnock objected to personal information about Mr. Pinnock being put into the public record, Mr. Senkpiel indicated that it was not necessary to reference those details in order to proceed with the line of cross-examination he intended to pursue.

[6] For the reasons set out below, I have concluded that any reference to the community in which Mr. Pinnock resides be excised from any public version of any transcript produced as a result of his cross-examination on November 17, 2020 and that an audio block be applied to the video recording to similarly prevent publication of that information.

B. FACTUAL BASIS

[7] Mr. Pinnock is a former RCMP officer who was, for a time, the commanding officer of the RCMP's Human Source Management Unit.

[8] In September 2005, Mr. Pinnock became the Officer in Charge ("OIC") of the Integrated Illegal Gaming Enforcement Team ("IIGET").

[9] In advance of his testimony before the Commission, Mr. Pinnock provided Commission counsel with an audio recording of a July 2018 conversation with Mr. Heed.

[10] On November 6, 2020, a transcript of that audio recording was entered into evidence, subject to submissions with respect to appropriate redactions.

[11] On November 12, 2020, I granted Mr. Heed's application for participant status and made an order allowing him to cross-examine Mr. Pinnock on his evidence with respect to his recorded conversations with Mr. Heed. It was during that cross-examination, which took place on November 17, 2020, that reference was made to the location of Mr. Pinnock's residence.

[12] Shortly thereafter, Mr. Pinnock filed an application pursuant to Rule 60 of the Commission's Rules of Practice and Procedure seeking the relief set out above. The application was not accompanied by an affidavit from Mr. Pinnock and merely states that Mr. Pinnock lives in a very small town and believes that his personal security and that of his wife (who is formerly a member of the Legislative Assembly of British Columbia) could be at risk if the location of his residence becomes public.

[13] It is unclear whether that risk arises from his role as the commander of the Human Source Management Unit, his role as the Officer in Charge of IIGET or the testimony he gave before the Commission.

[14] Mr. Pinnock also states that he sent an email to Commission counsel on October 22, 2020 where he sought an assurance that personal information would be redacted from the transcript of his conversation with Mr. Heed. His email states:

If it is your intention to have these recordings released to any other parties, we require that irrelevant portions of them be redacted in order that both Fred and Kash Heed's personal affairs be kept confidential. This includes telephone numbers, location of homes and names of their children and friends. For this reason we ask that you kindly provide us with the redacted version(s) of whatever portions of the tapes are to be released at least 24 hours PRIOR to releasing same to any other party, thus ensuring Fred's agreement that such personal information has been kept confidential. If this arrangement is not agreeable, kindly advise forthwith.

[15] Commission counsel has taken the position that the relevant information should not be redacted from the transcript or a sound block applied to the video recording.

[16] In making that submission, it emphasizes the importance of transparency and submits there is no identification of harm or prejudice arising, other than the belief that personal safety is at risk:

There is no assertion of legal privilege, nor any evidence or rationale given for this proposed removal, other than saying it is personal information. There is no identification of a harm or prejudice arising, other than expressing a belief that personal safety is at risk, but it is not clear what that belief is based on. The word at issue was a word spoken by Mr. Pinnock when he (and only he) knew that the tape was running. There is nothing deeply private or personal about the name of a location.

This is a public inquiry. The principle of transparency is important to how the commission does its work. Pursuant to s. 15 of the *Public Inquiry Act* the commissioner does, where appropriate, have authority to limit the public dissemination of information received. In our submission, such a limitation should be reserved for those situations where there is a sound basis established on evidence. That is not the case here.

[Emphasis in original.]

[17] Mr. Heed takes no position on the application but submits that information about the location of Mr. Pinnock's residence is publicly available on the internet.

[18] The British Columbia Lottery Corporation, the Gaming Policy and Enforcement Branch and the Great Canadian Gaming Corporation also take no position on the application.

C. LEGAL PRINCIPLES

[19] I do not consider it necessary to repeat the applicable legal principles governing an application of this sort. I have canvassed the relevant statutory provisions and judicial authorities in several of my previous rulings: Ruling #8; Ruling #12 and Ruling #13.

[20] In the context of Ruling #13, which concerned applications to redact private information in documentary exhibits, I held that it would not violate the test in *R. v. Mentuck*, 2001 SCC 76 (known as the *Dagenais / Mentuck* test) to order redactions of private information including addresses of third parties.

[21] In this case, although I agree that there is insufficient information to establish that Mr. Pinnock's personal safety would be put at risk by publication of the location of his and his wife's residence, I accept his implicit submission that the community is sufficiently small that it is akin to (but not the same as) an address. I also accept that the fact of his and his wife's residence in that small community, although neither deeply private nor personal, does raise a privacy issue. I note that Mr. Pinnock's wife is/was a public political figure.

[22] I accept Commission counsel's submission that Mr. Pinnock (and not Mr. Heed) referred to the name of the community but it is a disclosure that implicates his privacy and that of his wife. If it were only Mr. Pinnock's privacy interest at stake, I would agree that by deliberately revealing the community in which he resides in a recording he was surreptitiously making would undermine his claim for excision or redaction. In the circumstances, however, I do not think Mr. Pinnock's behaviour should necessarily undermine his wife's privacy interest.

[23] In my view, given that the disclosure arose before there was any reasonable opportunity to address redaction of the transcript being quoted from, given that it has no relevance to any issue to be decided, and given that it implicates some measure of a privacy interest, the circumstances marginally favour the order being sought. The excision/redaction at issue is in relation to a manifestly irrelevant detail for the Commission's purposes. I do not, in that context, see any likelihood that the principle of transparency applicable to public inquiries would be adversely affected by making such an order.

[24] I accordingly order that any reference to the community where Mr. Pinnock and his wife reside be excised from any public version of the transcript of his cross-examination by Mr. Senkpiel on November 17, 2020 and that a corresponding audio block be placed on the audio recording of the name of the location.

A handwritten signature in cursive script, appearing to read "A. Cullen".

Commissioner Austin F. Cullen