Commission of Inquiry into Money Laundering in British Columbia

Application to Exclude Evidence and Maintain Information Confidentiality – Ruling #31

Ruling of the Honourable Austin Cullen, Commissioner

Issued April 22, 2021

This Ruling is not to be made public until further direction of the Commissioner.

A. INTRODUCTION

[1] The applicant, [redacted] seeks several orders in anticipation of Commission counsel presenting evidence relating to him and members of his family before the Commission.

[2] The primary order sought is to exclude certain information contained in that evidence from being admitted.

[3] Specifically, [redacted] submits the following information should be excluded:

(a) A criminal judgment of [redacted] dated [redacted];

(b) Certain interrogation records, consisting of:

i. [redacted];

ii. [redacted];

iii. [redacted];

(c) Transaction records, including apparent bank drafts; and

(d) Any other document or information that emanates from the [redacted] in relation to the applicant or his family members.

[4] [redacted] also seeks ancillary orders to (1) maintain confidentiality of this application by anonymizing any public decision relating to this application to protect his identity; and (2) seal and treat this application and any materials filed by any party as confidential, subject to further order of the Commission. He has provided a draft order relating to confidentiality which reads as follows:

a) Any public decision relating to this Application will be anonymized so as to protect the Applicant's identity in this Application;

b) This Application and all materials filed by any party in this Application shall be sealed and treated as confidential, subject to further order of the Commission[;]

c) The following information is confidential (the "Confidential Information") until further order of this Commission:

(i) The entirety of this Application and materials submitted in connection with this Application;

(ii) Any portion of a document, pleading, testimony or submissions sought by any party to be filed before the Commission that contains information that could serve to disclose the fact that:

i. the Moving Party and/or his family members have made allegations of torture and/or mistreatment by [redacted];

ii. the Moving Party has made a [redacted] against [redacted]

iii. the Moving Party and/or his family members [redacted]

iv. the Moving Party's family members have conveyed information to him about the [redacted];

v. the Moving Party's family members have provided him with information about [redacted].]

d) All documents sealed pursuant to para. 3 and filed in the Proceedings shall remain sealed and continue to be treated as confidential, subject to further order of the Commission[;]

e) The terms of this Order will continue, *nunc pro tunc*, in effect until the Commission orders otherwise, including for the duration of any appeal of the proceeding and after final judgment.

[5] In addition to the entirety of this application and materials submitted in connection with it, the applicant also seeks a confidentiality order in connection with anything "to be filed before the Commission that contains information that could serve to disclose the fact that" the applicant or his family have alleged torture and/or mistreatment by the [redacted]; that he has made a [redacted] against [redacted]; that he or his family have [redacted]; that the applicant's family [redacted]

[6] For the reasons that follow, [redacted] application is granted.

B. BACKGROUND

[7] [redacted] is a citizen of [redacted] and has been a permanent resident of Canada since [redacted]. He, his wife and his daughter live in British Columbia. He is also known as [redacted].

[8] [redacted] asserts that he has been the victim of torture in [redacted]. He states his family members in [redacted] have been harassed and subject to coercion by the [redacted] authorities. He expresses a belief that his family members were also tortured in [redacted]

[9] [redacted] assertions arise in the context of Canadian Border Service Agency ("CBSA") reports issued against him in [redacted] under s. 44(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*]. These reports allege that he is inadmissible to Canada pursuant to ss. 36, 37 and 40 of the *IRPA* on the basis of his participation in organized crime (s. 37(1)(a)); a misrepresentation (s. 40(1)(a)); serious criminality (s. 36(1)(b)); and money laundering (s. 37(1)(b)).

[10] In [redacted] brought an application before the Federal Court for leave to seek judicial review of the s. 44(1) referrals. His application was dismissed on [redacted].

[11] In the meantime, the matters arising from the CBSA reports were referred for hearing before [redacted]

[12] [redacted]

[13] In the course of applying to the Federal Court for leave to seek judicial review of the CBSA's s. 44(1) [redacted] filed an application record which included a series of affidavits appending significant materials. The materials include evidence from [redacted] which [redacted] asserts to be tainted by torture.

[14] The affidavits also append materials not originating with [redacted], including FINTRAC (Financial Transactions and Reports Analysis Centre of Canada) disclosures which reveal that despite declaring his net worth as $1.2 million in his 2006 application for permanent residence status, [redacted] and his family received deposits totaling $[redacted] between 2006 and 2014. A senior forensic accountant [redacted] concluded:

[redacted]

[15] Commission counsel obtained the records from the Federal Court file in 2020 and provided notice to [redacted] in December 2020 that evidence concerning him, including records from the Federal Court file, may be put in evidence before the Commissioner. At the time, the Federal Court file was not subject to a sealing or confidentiality order.

[16] On March 5, 2021, [redacted] counsel brought an application to the Federal Court for a confidentiality and sealing order over the application record and other materials in the Federal Court file. On March 18, 2021, the Federal Court granted the confidentiality and sealing order in the following terms:

> 1. The Moving Party shall be identified as "A.B." in these proceedings;
> 2. The Motion Record and all materials filed by either party in this motion and any subsequent motion shall be sealed and treated as confidential, subject to further order of the Court.
> 3. Any portion of a document, pleading or submissions filed in the Application for Leave and for Judicial Review (the "Proceedings") that contains information that could serve to disclose the identity of the Moving Party or any of the Moving Party's family members or associates, including the Moving Party's name, age, place of birth, all records from the [redacted] authorities, and any similar information about the Moving Party's family members or associates, any photographic or other images of the Moving Party (the "Confidential Information"), shall be treated as confidential until further order of this Court, but such information shall be available to the Court.
> 4. The Moving Party shall provide versions of the Leave documents which redact the Confidential Information and can form part of the public record.
> 5. As Leave was not granted in these proceedings, all documents containing Confidential Information pursuant to para 3 and filed in the Proceedings shall remain sealed and continue to be treated as confidential, subject to further order of the Court and either party is at liberty to apply to the Court for a further order.
> 6. The terms of this Order will continue, *nunc pro tunc*, in effect until the Court orders otherwise.

[17] After obtaining the confidentiality order from the Federal Court on March 18, 2021, counsel for [redacted] amended his submissions in connection with this application by taking the position that the Commission is required to accept the determination of the Federal Court with respect to the confidentiality issue. As I understand [redacted]

position, he submits that since the Federal Court has issued an order of confidentiality over the material, or portions of the material, that have been filed with the Federal Court, the Commission must comply with that order. Counsel for [redacted] relies on s. 152 of the *Federal Courts Rules*, SOR/98-106, which reads as follows:

> **Marking of confidential material**
>
> 152 (1) Where the material is required by law to be treated confidentially or where the Court orders that material be treated confidentially, a party who files the material shall separate and clearly mark it as confidential, identifying the legislative provision or the Court order under which it is required to be treated as confidential.
>
> **Access to confidential material**
>
> (2) Unless otherwise ordered by the Court,
>
> (a) only a solicitor of record, or a solicitor assisting in the proceeding, who is not a party is entitled to have access to confidential material;
>
> (b) confidential material shall be given to a solicitor of record for a party only if the solicitor gives a written undertaking to the Court that he or she will
>
> (i) not disclose its content except to solicitors assisting in the proceeding or to the Court in the course of argument,
>
> (ii) not permit it to be reproduced in whole or in part, and
>
> (iii) destroy the material and any notes on its content and file a certificate of their destruction or deliver the material and notes as ordered by the Court, when the material and notes are no longer required for the proceeding or the solicitor ceases to be solicitor of record;
>
> (c) only one copy of any confidential material shall be given to the solicitor of record for each party; and
>
> (d) no confidential material or any information derived therefrom shall be disclosed to the public.
>
> **Order to continue**
>
> (3) An order made under subsection (1) continues in effect until the Court orders otherwise, including for the duration of any appeal of the proceeding and after final judgment.

[18] As a preliminary matter, counsel for [redacted] objected to disclosure of the application materials to any party or agency and requested that the application materials not be distributed to any participant until the Commissioner has ruled on the application.

[19] On March 18, 2021, I directed that the application materials not be circulated to any participant other than Commission counsel and the Government of Canada ("Canada"), given that Canada already has constructive notice of the contents of the application through the [redacted] and before the Federal Court.

C. SUBMISSIONS OF COUNSEL

i. Prematurity

[20] Counsel for Canada take the position that the exclusion order being sought is premature. Canada notes that until it is made clear what information Commission counsel proposes to put before the Commission and for what purpose, the application for an exclusion order should not be adjudicated.

[21] Commission counsel agree with Canada that the application for the exclusion order is premature as [redacted] seeks exclusion of evidence that has not yet been put before the Commissioner. They submit that this application should be adjourned until such time as the evidence is in fact sought to be put before the Commissioner.

[22] In their reply, counsel for [redacted] submit that the application is not premature as Commission counsel have made clear in correspondence and in their submissions that they intend to put forward evidence that [redacted] asserts is the product of torture.

ii. The Confidentiality Order

[23] Commission counsel submit that Ruling #12 and Ruling #13 issued on October 23, 2020 and October 27, 2020 respectively, establish that applications for the removal of certain material from public view are governed by the so-called *Dagenais / Mentuck* test set forth in *R. v. Mentuck*, 2001 SCC 76, at para. 32:

> (a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the

> right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

[24] Commission counsel submit that although only some portions of the Federal Court file "raised the concerns articulated by [redacted] about access by [redacted] authorities," they nevertheless "are content with the issuance of a general confidentiality and sealing order." In particular, Commission counsel consent to the orders sought as set out in the draft order, paras. 2, 3, 4, 5 and 6 which are set out above at para. 4 of these reasons.

[25] Canada does not oppose [redacted] request for an order of confidentiality as set out in paragraphs 2 and 3 of his notice of application.

[26] With respect to the Federal Court order, Canada submitted as follows at paragraph 17 of its submissions:

> As noted above at paragraph 5, the Federal Court issued a confidentiality order on March 18, 2021. Pursuant to the terms of that order, information contained in the Federal Court file that could disclose the identity of [redacted] or any of his family members or associates must be treated as confidential. While this order is obviously not binding on the Commission, as a matter of judicial comity, it would seem desirable for the Commission to take a consistent approach to [redacted] request for confidentiality in respect of the same information that was the subject of the Federal Court proceeding.

[27] Canada also noted that [redacted] has determined that the [redacted] Canada submits: "To the extent that the Application Record and/or Canada's Application Response contain details and information about the status of [redacted], Canada submits that that information should also be treated as confidential."

iii. The Exclusionary Order

[28] In his application record, [redacted] presented his affidavit sworn February 26, 2021 which included, as Exhibit A, [redacted]; an affidavit of [redacted] who is a socio-legal researcher with training and expertise

in both law and sociology with a primary research area in [redacted] law and society including [redacted] legal profession, criminal justice system, human rights and rule of law; and an affidavit of [redacted], an articled student in the offices of counsel for [redacted] which appends a copy of the records originating from the [redacted] authorities and said to be the product of torture, together with "selected documents from the material filed before the [redacted] as it relates to the past history of torture, [redacted] coercion and the skills and the risks to the Applicant and his family."

[29] In their submissions in response to [redacted] notice of application and the materials contained in his application record, Commission counsel made the following submission:

> As this issue [redacted] and to narrow the issues to be decided, Commission counsel asks the Commissioner to proceed on the assumption that [redacted] has raised a plausible connection to torture with respect to the Torture-tainted Evidence.

[30] Commission counsel and counsel for [redacted] in agreement that in Canadian law the test to be applied in determining whether evidence has been obtained by torture is found in *France v. Diab,* 2014 ONCA 374 and *Ching v. Canada (Immigration, Refugees and Citizenship)*, 2018 FC 839. Pursuant to that test, the person alleging that evidence is tainted by torture must establish "a 'plausible connection' between the challenged evidence and the use of torture."

[31] The determination to which that test applies arises from the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 UNTS 85 ("CAT") of which Canada is a signatory. Article 15 of the CAT provides:

> Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

[32] Counsel for [redacted] argue that the exclusionary rule in Article 15 is absolute and non-derogable. They contend that the absolute character of the exclusionary rule is

essential to ensuring compliance with the absolute ban on the use of torture itself. This ban removes a significant motivation for inflicting torture, reflects the abhorrent character of torture, protects the fundamental rights of the party against whom torture-derived evidence may be used, and preserves the integrity of the judicial process.

[33] [redacted] submits the exclusion applies to any proceeding, including this Commission of Inquiry, regardless of the purpose for which it is being tendered "due to its provenance in torture."

[34] In their submissions, Commission counsel included, in Appendix A, materials exhibited to an affidavit filed in the Federal Court in support o[redacted] application for leave to seek judicial review of the CBSA's decision to refer him to [redacted]

[35] The materials included the documents which [redacted] seeks to exclude by reason of being tainted by torture, as well as other documents not alleged to be the product of torture.

[36] Commission counsel have indicated in their submissions that they have not yet determined "what form the ultimate evidence before the Commissioner will take." They anticipate adducing "a limited subset of records contained in the [Federal Court] Application Record which…has yet to be finalized."

[37] Commission counsel set out a summary of what they anticipate the evidence will be probative of:

1) [redacted] and related persons/entities received transfers of large amounts of money into Canadian bank accounts from [redacted] in [redacted];
2) These transactions raised concerns at the receiving bank, which filed an STR [suspicious transaction report] with FINTRAC and debanked the [redacted] family;
3) Some of those funds were invested into British Columbia real estate;
4) Later, [redacted] authorities communicated allegations of criminality in the [redacted] against [redacted] and his family members to Canadian authorities;

5) The same [redacted] authorities assert that [redacted] and his family members engaged in money laundering by moving wealth, which they assert to be the proceeds of crime, from [redacted] into Canada;

6) The substance of those allegations is found in documents provided by [redacted] to the CBSA, including a [redacted] allegations, the criminal conviction record and translations of interrogations which append bank transfer records;

7) As a result of the communications by [redacted], and of other investigations by the CBSA, [redacted];

8) As a result of the communications by [redacted], certain Canadian and BC entities did or did not take certain actions;

9) [redacted] allegations are disputed by [redacted], who asserts that evidence relied on by [redacted] to establish [redacted] criminality, including a conviction entered in [redacted], was obtained by torture of both himself and others. He claims his wealth was legitimately gained; and

10) The evidence will be adduced for the purpose of illustrating the complexities of identifying and combatting international money laundering in Canada. The evidence will assist in understanding and evaluating what information was obtained by institutions and agencies in British Columbia, and what they did or did not do in response.

[38] Commission counsel submit that the purposes for which the evidence is being adduced do not require any findings of fact as to the truth or reliability of the allegations made against [redacted] by the [redacted] or any statements alleged to have been obtained by torture.

[39] As noted, Commission counsel agree with Canada that [redacted] application is premature in that he is seeking exclusion of evidence which has not been put before the Commission yet and Commission counsel "have yet to finalize which records will be used." Commission counsel argue that it is not yet possible to make informed arguments about whether the intended use of the records will engage "the concerns articulated in general terms by the applicant."

[40] Commission counsel's primary submission is that the application should be adjourned until the evidence is finalized and ready to be introduced.

[41] In the alternative, Commission counsel seek a (potentially) two-step process:

a. First, the Commissioner will address both the application for a sealing and confidentiality order, and the argument that there is no permissible use of evidence which it says was derived from torture;

b. Second, and only if the Commissioner rejects the applicant's submission that the Torture-tainted Evidence may not be used for any purpose, the application will proceed to determine admissibility based on the final work product. It is proposed that Commission counsel will provide the proposed report to [redacted] in advance of having it entered as an exhibit. Both [redacted] and Commission counsel will then have an opportunity to make informed submissions as to admissibility, with the benefit of a complete record. It may be that at this point, [redacted] objections fall away, or that he considers his concerns are better addressed by way of an application for a sealing or confidentiality order.

[42] In particular, Commission counsel contend that if a torture-tainted statement is being tendered for reasons other than for the truth of its contents, it may be admissible. Commission counsel concede there is no Canadian authority in support of that proposition, but submit it is necessary to look at rulings of international tribunals to determine that question.

[43] Commission counsel cite and rely on a decision of the Extraordinary Chambers in the Courts of Cambodia ("ECCC"), which was "a hybrid United Nations–Cambodia court established to adjudicate on the genocide and crimes against humanity during Cambodia's Khmer Rouge period."

[44] In particular, Commission counsel rely on a February 5, 2016 decision: Case 002: E350/18, *Decision on Evidence Obtained Through Torture*, (5 February 2016) Extraordinary Chambers in the Courts of Cambodia: Trial Chamber. In that case what appeared to be at issue was whether torture-induced statements were used by those standing accused before the ECCC "to commit crimes against the persons named in the confession."

[45] In admitting the statements, the ECCC Court ordered:

> …that the exception to the exclusionary rule in Article 15 of the CAT permits the use of torture-tainted evidence against a person accused of torture for purposes other than proving the truth of the matter asserted in the statement.

[46] Commission counsel also rely on *Shagang Shipping Company Ltd. v. HNA Group Company Ltd.*, 2020 UKSC 34 [*Shagang*], wherein an allegation of torture-tainted evidence was raised at trial. The trial court admitted the impugned evidence *de bene esse* (on the assumption, without deciding, that the evidence was admissible). In the result, the trial judge concluded that the evidence said to be the product of torture was not determinative and decided the issue without relying on that evidence. The United Kingdom Supreme Court concluded that that was an appropriate way to proceed.

[47] Commission counsel submit that approach is consistent with the ECCC's decision, which found that Article 15 does not create a categorical rule that questions of admissibility must be decided at the outset. Rather, it is appropriate for courts to determine whether the evidence is tainted by torture at a later stage, once it has all the evidence before it.

[48] Commission counsel submit that because the impugned statements are not being tendered for their truth, the proposed process for dealing with the evidence does not engage any of the concerns underlying Article 15 of the CAT. Accordingly, I should either simply adjourn the application until the evidence is put before me, or alternatively reject the applicant's submission that the torture-tainted evidence may not be used for any purpose and "[direct] that the application proceed to determine admissibility based on the final work product, with both [redacted] and Commission counsel having the opportunity to make informed submissions as to admissibility with the benefit of a complete record."

[49] Commission counsel contend that I should reject the categorical approach to exclusion advanced by counsel for [redacted] and direct that the application proceed to determine admissibility in light of a finalized evidentiary record. In support of this position, Commission counsel submit that none of the underlying reasons for the prohibition in Article 15 of the CAT are engaged by the proposed use of the impugned evidence.

[50] Commission counsel rely on four purposes underlying Article 15 elucidated by the ECCC decision at para. 73:

i. a public policy of disincentivizing torture;
ii. preventing the use of unreliable evidence as it is not conducive to ascertaining the truth;
iii. preserving the integrity of the proceedings; and
iv. protecting the Accused's right to a fair trial, including due process.

[51] Commission counsel also submit that the evidence, if admitted for a non-truth purpose, could illuminate “the difficulty of prosecuting potential money laundering in Canada when the crime takes place in a jurisdiction with a legal system that has a conception of rule of law that differs from Canada's.” Commission counsel submit the Commissioner “ought to have a record on which to understand how the discrepancies between Canadian and foreign legal systems cause problems for the prosecution of money laundering in Canada.”

[52] In brief compass, [redacted] reply to the submission that his application is premature is that Commission counsel has made it clear in correspondence and in their submissions that they intend to put forward evidence that [redacted] asserts is the product of torture. Although Commission counsel has elaborated on the intended use of the evidence, [redacted] has responded to that proposed use in his reply submissions. He maintains that the application should be dealt with now rather than adjourned until Commission counsel has finalized its offering.

[53] [redacted] does not agree that it is appropriate for me to proceed on the basis of the assumption that the impugned material was obtained by torture. His counsel submit that I must rule on whether [redacted] "has met the plausible connection test.”

D. DISCUSSION AND CONCLUSION

[54] When I was initially confronted with this application and Commission counsel's response, I was disposed towards adjourning the application until Commission counsel had finalized the form and the contents of the evidence which is the subject of

[redacted] objection. Generally speaking, determining an issue which is not fully crystallized is not appropriate as it has more the character of a hypothetical opinion than a ruling.

[55] Having considered the matter, however, I am satisfied that what I am being asked to do is rule on the admissibility of evidence which, on its face, falls within the scope of Article 15 of the CAT. Although I do not know precisely what the evidence consists of, its substance is not determinative of the question of admissibility. Commission counsel has asked that I assume that for the purposes of this application, [redacted] has established a plausible connection between the evidence at issue and the use of torture. The issue is only whether, if the evidence is tendered for a non-truth purpose which arguably avoids offending the underlying rationale for Article 15, it can be admitted.

[56] In my view, that issue can be determined on the state of the evidentiary record before me. It is clear from Commission counsel's submissions that they intend to adduce a body of evidence, a portion of which, I am to assume is torture-tainted, in order (in summary) to establish a case study relating to how transactions of [redacted] and his family members suggestive of money laundering were dealt with by Canadian agencies and entities. The case study would also be used to illustrate "the difficulty of prosecuting potential money laundering in Canada when the crime takes place in a jurisdiction with a legal system that has a conception of rule of law that differs from Canada's" (i.e. jurisdictions employing torture).

[57] In my view, the purposes for which Commission counsel seek to adduce the evidence do not bring it within the very limited exception to the prohibition against the admission of torture-tainted evidence in Article 15 of the CAT. The exception to the prescription against the admission of torture-tainted evidence is very narrow and very specific: "except against a person accused of torture as evidence that the statement was made."

[58] In other words, statements obtained by torture can only be adduced as evidence the statement was made (not as evidence of its truth), and only in proceedings against a person accused of torture.

[59] I do not consider the authorities advanced by Commission counsel to derogate from that interpretation of Article 15. In the ECCC decision, the proceedings in which the torture-tainted statements were admitted were against persons who committed crimes (of torture) “against the persons named in the [torture-tainted] confession.” In other words, the statements were admitted against a person accused of torture and only to establish that the statements were made.

[60] In the *Shagang* case, the evidence was admitted *de bene esse* in the absence of a finding that there was a plausible connection to the use of torture. By contrast, in the present case, I am being asked to assume that the evidence at issue is plausibly related to the use of torture. Although the *Shagang* case does support the proposition that issues of admissibility need not be decided at the outset, but can be determined at a later stage once a court has all the evidence before it, it does not modify the limited circumstances articulated in Article 15 as an exception to the proscription against the admission of such evidence once it is found to be plausibly related to the use of torture.

[61] While it may be argued that admitting torture-tainted evidence before the Commission for a purpose other than the truth of its contents obviates the concerns underlying Article 15, that argument invites a calibration of the impact of the admission of such evidence on the public policy of disincentivizing torture and on the question of what is necessary to preserve the integrity of these proceedings. In my view, that contention is manifestly unavailable in the face of the clear wording of Article 15.

[62] Accordingly, I rule that the portion of the evidence which Commission counsel seek to adduce that falls within what Commission counsel has asked me to assume has a plausible connection to torture is inadmissible.

[63] I do not agree with the applicant's submissions that I must make a finding of fact as to whether the impugned evidence was obtained by torture.

[64] According to the affidavit of Karen Mendonça filed by Canada in this application, in the context of [redacted] application to exclude the torture-tainted evidence brought in [redacted]. As I earlier noted the [redacted].

[65] [redacted] has given no reason why he submits it is imperative that I make a finding on whether the impugned evidence was obtained by the use of torture even in the face of Commission counsel's submission that I should assume it to be the case for the purposes of this application. In his submissions he asks rhetorically "How else can the Commissioner properly determine the issues before him?" The only substantive issue before me is the issue of the admissibility of the evidence which I am to assume is plausibly connected to the use of torture. I have made a determination based on that assumption. I see no need to attempt to determine an issue of fact which another tribunal has fully engaged with and heard evidence about, not available to me.

[66] In my view, if I were to accede to [redacted] argument, it would put me in the position of unnecessarily deciding a matter which another decision-maker [redacted] better positioned to decide. Although my decision would not bind [redacted] it could result in inconsistent decisions, a result which might imperil the integrity of either this process, [redacted].

[67] Additionally, I note in the *Shagang* decision, the United Kingdom Supreme Court concluded at para. 60 that "…the issue of torture is a sensitive one and any findings that [the judge] made about whether torture had occurred might have ramifications beyond the confines of the case. In these circumstances, it is understandable that he should have preferred not to determine that issue unless it was necessary to do so." I find that reasoning apposite to the circumstances before me.

[68] Accordingly, I decline to accede to [redacted] submission that I make a factual finding as to whether the impugned evidence was obtained by torture or not.

[69] I am satisfied in all the circumstances that [redacted] ancillary application for confidentiality and a sealing order will be granted in the terms he has sought. Counsel may propose how best to anonymize this ruling before it is made public and may seek directions if they are unable to reach agreement. It may be that Commission counsel will seek to put evidence before the Commission which does not include that which I have ruled inadmissible. Should that be get the case, my order of September 18, 2020 would not be sufficient to protect the applicant.

Commissioner Austin F. Cullen