

# Commission of Inquiry into Money Laundering in British Columbia

## Applications for Standing – Ruling #3

Ruling of the Honourable Austin Cullen, Commissioner, issued 25 October, 2019

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### A. Background

1. This ruling addresses two applications for leave to participate in the Commission of Inquiry into Money Laundering in British Columbia (“**Inquiry**” or “**Commission**”) brought by James Lightbody and Fred Pinnock.

2. Mr. Lightbody and Mr. Pinnock’s applications for standing were originally considered along with 18 other applications, resulting in a ruling issued on September 24, 2019 (“**September 24 Ruling**”), granting participant status to 16 entities and persons.

3. Mr. Lightbody and Mr. Pinnock’s applications were two of four applications which I concluded required more information to permit a decision as to whether they met the criteria for participant status. Accordingly, I directed an oral hearing take place to explore the issues further. That hearing took place on October 18, 2019.

4. At that hearing, I was advised that one of the four applications, that brought by Ross Alderson, had been withdrawn. I also heard from counsel for the fourth applicant, Brad Desmarais, who sought and was granted an adjournment of his application so that his counsel could obtain documents required for his application.

### B. James Lightbody

5. Mr. Lightbody is the President and Chief Executive Officer (“**CEO**”) of the British Columbia Lottery Corporation (“**BCLC**”). BCLC was one of the entities which applied for and was granted participant status in the September 24 Ruling. As its President and CEO, Mr. Lightbody runs BCLC’s daily operations and reports to its board of directors.

6. The thrust of Mr. Lightbody’s initial submissions leading to the September 24 Ruling was that his personal interests are at stake and may be affected by the findings of

the Commission. In other words he contended that his position and responsibilities at BCLC have the potential to bring him individually within the scope of the Commission's mandate, as set out in the Commission's Terms of Reference ("**TOR**"), to make findings of fact respecting "the acts or omissions of regulatory authorities and individuals with powers, duties or functions in respect of the sectors referred to in paragraph (a) ... to determine whether those acts or omissions have contributed to money laundering in British Columbia and whether those acts or omissions have amounted to corruption" (see paragraph 4(1)(b) of the TOR).

7. Mr. Lightbody also contended that the findings and recommendations of the Commission could affect the powers and duties exercised by him in his role as President and CEO. He submitted that his knowledge of BCLC's operations and anti-money laundering efforts could contribute to the Commission's understanding of the issues within its mandate.

8. Based on Mr. Lightbody's initial application and submissions, it appeared that he would be able to provide evidence of interest to the Commission. However, it was not apparent that his interests were sufficiently distinct from those of BCLC to justify a separate grant of standing. It was for that reason that I considered an oral hearing necessary to learn more about Mr. Lightbody's distinct circumstances.

9. In supplemental written submissions dated October 15, 2019, Mr. Lightbody acknowledged that his "perspective may overlap to a certain extent with BCLC's perspective", but contended that "he has a personal perspective on matters relevant to the Commission and will be able to instruct his own counsel on those matters that BCLC will not be privy to."

10. Mr. Lightbody noted that *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos Conducted for the Attorney General of British Columbia*, Peter M. German, Q.C., March 31, 2018 ("**First German Report**") was "highly critical of BCLC's anti-money laundering policies and procedures" and that he personally "has faced criticism in the media", citing a media article titled "Exclusive: It's Brutal – BCLC CEO calls spin doctors to help amid casino money laundering scandal". Mr. Lightbody contended that

he “faces the possibility of further adverse comment or criticism during the course of the Commission that could affect his reputational, privacy and/or legal interests.”

11. He pointed out that counsel for BCLC owes an undivided duty of loyalty to BCLC. If a conflict arose between Mr. Lightbody’s personal or reputational interests and BCLC’s corporate interests, he submits that his interests would not be adequately safeguarded were his personal participation to be limited to that of a witness.

12. One example of such a potential conflict, highlighted in his oral submissions, was in respect of paragraph 478 of the First German Report. There, a senior official within BCLC is said to have told an investigator in 2012 that his job was “not to investigate money laundering”. This senior official is said to have “pointed out that nobody was investigating money laundering, despite copies of [Suspicious Transaction Reports] being provided to [the Gaming Policy and Enforcement Branch of the British Columbia Ministry of Attorney General (“**GPEB**”)] and the RCMP. In his view nobody showed an interest in the issue.” Mr. Lightbody takes issue with this account and discussion. In his submission, counsel for BCLC could not represent Mr. Lightbody’s personal interests when they conflict with those of the corporation or other BCLC officials.

13. Mr. Lightbody also submitted that his experience in leadership positions with BCLC since 2011 provided him with “experience and knowledge relevant to the Commission’s work”, that would “contribute to the thoroughness of the process.”

14. He submits he “can offer his perspective and insight on governmental oversight of BCLC ... under the former Ministry of Finance and... under the current Attorney General”; can give context and background with respect to GPEB and Financial Transaction and Report Analysis Centre of Canada (“**FinTRAC**”); and can educate the Commission about how casinos are operated in British Columbia and the role of various players. He submits he can also provide information about the horse racing industry as he has been the chair of the B.C. Horse Racing Management Committee for about five years.

15. As I noted in my September 24 Ruling, the statutory provisions that govern applications for participant status are found in sections 11(4)(a)-(c) of the *Public Inquiry Act*, S.B.C. 2007, c. 9. It reads as follows:

11 (4) On receiving an application under subsection (3), a commission may accept the applicant as a participant after considering all of the following:

(a) whether, and to what extent, the person's interests may be affected by the findings of the commission;

(b) whether the person's participation would further the conduct of the inquiry;

(c) whether the person's participation would contribute to the fairness of the inquiry.

16. The considerations at play in determining whether to grant participant status were listed in the September 24 Ruling at paragraph 11. They are:

a. the nature and extent of the applicant's rights or interest;

b. why standing is necessary to protect or advance the applicant's rights or interest;

c. whether the applicant faces the possibility of adverse comment or criticism with respect to its conduct;

d. how the applicant intends to participate, and how this approach will assist the Commission in fulfilling its mandate;

e. whether and how the applicant's participation will contribute to the thoroughness and fairness of the process;

f. whether the applicant has expertise and experience relevant to the Commission's work;

g. whether and to what extent the applicant's perspective or interest overlaps or duplicates other applicants'; and

h. whether the applicant may more appropriately participate in another capacity — for example, as a witness who may testify — instead of being granted formal standing.

17. In my view, in light of the fact that BCLC has been granted participant status and to the extent that Mr. Lightbody is an integral part of BCLC, the considerations in paragraphs (e) to (h) above do not favour his application.

18. As I see it, his participation, contribution, expertise, experience and perspective arise from his position at BCLC. His involvement and evidence could be presented effectively as part of that organization's participation in the Commission, or indeed, independent of any participant status, as a witness with relevant expertise. The question that remains, however, is whether, in light of Mr. Lightbody's particular rights or interests; the possibility he will face individual adverse comment or criticism with respect to his conduct; and what his approach to his participation will entail, there is a realistic prospect that he will be at odds with the rights, interests, or intended approach of BCLC.

19. As I noted in my September 24 Ruling, it would be premature to make any finding now as to whether or how an applicant's rights or interests may be adversely affected by the findings of the Commission, and so it is necessary to rely on the submissions of applicants to determine the objective probability of such an outcome.

20. Here, it appears that because of his position, Mr. Lightbody may be subject personally to adverse comment or criticism arising from an adverse assessment of BCLC's corporate actions. There also appears to be a reasonable prospect, given his submissions, that he has information or "a perspective" to offer that is different from the corporate perspective of BCLC and which BCLC is not privy to. In my view that confluence of factors creates a relationship between Mr. Lightbody and BCLC that would not be accommodated appropriately within a single retainer.

21. Thus I conclude that while there is considerable common ground between Mr. Lightbody and BCLC, there is also a realistic prospect that advancing his individual interests or protecting his individual rights would place him in a position that is either incompatible with, or on a different trajectory from, BCLC.

22. Accordingly, I am inclined to grant standing to Mr. Lightbody on the gaming and horse racing sectors.

23. His grant of participant status is conditional on ensuring that his contribution is not duplicative of other participants, most notably BCLC, where his interests and those of another participant are aligned. Mr. Lightbody's status as a participant is limited to matters involving consideration of his personal conduct and with respect to which his position clearly diverges from that of BCLC.

**C. Fred Pinnock**

24. Mr. Pinnock was the RCMP Unit Commander of the Integrated Illegal Gaming Enforcement Team ("IIGET") for British Columbia between September of 2005 and 2008, the year of his retirement.

25. The thrust of Mr. Pinnock's initial submissions leading to the September 24 Ruling was that as a result of his role, he made certain observations that led him to conclude the public was being misled as to the nature and degree of money laundering and other criminal activity taking place in casinos.

26. Between 2006 and 2019, Mr. Pinnock made a number of public statements in the media and online which reflected his concerns that legal gaming facilities within British Columbia were havens for organized criminal activity. He further emphasized that this criminal activity could not have achieved the levels it had "without government and law enforcement agencies engaging in wilful blindness and worse."

27. Mr. Pinnock is concerned that the acts or omissions of individuals he and his colleagues observed allowed criminal organizations to flourish in British Columbia and beyond, contributing to the opioid crisis and untold numbers of overdose deaths in recent years.

28. Mr. Pinnock submits that in September 2018 he provided detailed evidence to counsel for the Attorney General of British Columbia in an interview and named a number of individuals who he concluded were connected in various ways with money laundering taking place in legal gaming venues. Mr. Pinnock believes that the conduct of some of these people constituted corruption and/or gross indifference regarding matters before the Commission.

29. Mr. Pinnock provided supplemental written materials on October 17, 2019, which I have reviewed. Those materials contain a summary of Mr. Pinnock's observations, recollections and opinions about certain political figures, bureaucrats, and law enforcement officials in respect of gaming in British Columbia, primarily focused on the period between 2005 and 2008. In those materials, Mr. Pinnock is frank in stating that he personally has no documents or notes in support of any of the assertions made in this submission.

30. At the oral hearing convened on October 18, 2019, Mr. Pinnock further submitted that his personal, privacy and reputational interests are at stake in these proceedings. The thrust of this submission was that when he was Unit Commander of IIGET, he raised the concern that legal gaming environments were hubs of criminal activity including money laundering. He submits that his efforts to expand IIGET's mandate to address illegal activity occurring within legal gambling environments damaged his working relationships with GPEB and the RCMP and ultimately resulted in his early retirement. Mr. Pinnock submits that he was right and that others within the RCMP, BCLC, government and GPEB knew or were willfully blind about this. In that sense, he submits his reputational interests may be engaged as the Inquiry may vindicate him.

31. He argued that the Commission would not exist but for whistleblowers like him and that there is a risk, if he is not granted standing, that the only parties before the Commission would be individuals and entities with private interests to protect in justifying the *status quo*. In his submission, there is a need to level the playing field. He offered that he could marshal evidence from other whistleblowers, assist the Commission to explore avenues that may not be obvious to others, and assist with managing disclosure of documents from BCLC and FinTRAC that have long been sought by way of freedom of information requests.

32. In light of Mr. Pinnock's concern about "levelling the playing field", it is important to clarify that public inquiries are not courts and that their function is different from that of a criminal prosecution or civil trial. As Ronda Bressner and Susan Lightstone observe in

their text *Public Inquiries in Canada: Law and Practice* (Toronto: Thomson Reuters Canada Limited, 2017), p. 8:

The purpose of civil litigation is to settle disputes between opposing parties. And in a criminal trial, it is to establish the guilt or innocence of the accused person... In contrast to public inquiries, criminal prosecutions and civil proceedings are adversarial.

33. To similar effect, Justice Dickson, concurring, explained in *Di Iorio v. Warden of the Montreal Jail*, [1978] 1 S.C.R. 152 at 201:

The Inquiry does not act as a criminal court or exercise criminal jurisdiction. The conduct of the Inquiry is not part of a criminal prosecution under the *Criminal Code* nor is it an investigation into a particular crime or transaction which later might be the subject of a criminal charge. We are not here concerned with a criminal trial, structured as a dispute between two sides, the Crown and the accused. The function of the Inquiry is merely to investigate and report; no person is accused; those who appear do so as witnesses; there is no *lis*; there is no attempt to alter criminal procedure.

34. The Inquiry is thus not adversarial and there is no need to “level the playing field” as between the participants. To the extent that Mr. Pinnock is interested in exploring whether and how legal gaming facilities within British Columbia were used for money laundering, and whether and how government or law enforcement agencies addressed that issue, his interests are aligned with those of the Commission itself. Those issues will be explored by Commission counsel and to the extent that Mr. Pinnock has evidence to give in respect of those issues, including testifying, identifying other witnesses who may wish to give evidence, or identifying documents that should be obtained and assessed, those efforts can and should be coordinated with Commission counsel.

35. I note that it is customary, in public inquiries, that Commission counsel are charged with the responsibility to obtain and adduce evidence in the public interest, which best equips the Commissioner to discharge his or her mandate. Many inquiries spell this out in their rules of procedure and in the main, in recent Canadian inquiries, it is Commission counsel who bear the duty of marshalling and presenting the evidence. To the extent any person’s interests are aligned with the Inquiry’s mandate, it will generally fall to Commission counsel to put forward the information, evidence and submissions.



36. At this stage there is nothing to suggest that Mr. Pinnock's reputational, legal, or privacy interests are implicated in this Inquiry. The prospect exists that his recollections, observations and conclusions, as set forth in his submissions at the hearing on October 18, 2019, may be challenged. However, until Commission counsel have had an opportunity to explore and assess Mr. Pinnock's assertions by interviewing witnesses and obtaining and reviewing relevant documents, it is not possible to gauge reliably whether and to what extent his interests will be put at stake or require protection through acquiring participant status.

37. His is not in a situation like those of other individuals or agencies who fall within the compass of the Commission's mandate to investigate "the acts or omissions of responsible regulatory agencies and individuals and whether those have contributed to money laundering in the province or amount to corruption" (see paragraph 2 of September 24 Ruling).

38. The thrust of Mr. Pinnock's submissions is that he was attempting to overcome the apathy of those charged with the relevant responsibility; not that he was a part of it.

39. In those circumstances, I am not satisfied that Mr. Pinnock has met the criteria for participant status.

40. As with any potential witnesses, should it become apparent that Mr. Pinnock's interests may be affected by the findings of the Inquiry, he may seek leave to reapply for participant status having regard for the provisions of section 11(4) of the *Public Inquiry Act* and the related considerations set forth in paragraph 16 of this ruling.

Commissioner Austin Cullen