Commission of Inquiry into Money Laundering in British Columbia

Application for Disclosure of Information

Ruling #38

Ruling of the Honourable Austin Cullen, Commissioner

Issued January 19, 2022

A. INTRODUCTION

[1] On November 15, 2021, the applicant, journalist and author Sam Cooper, applied for an order that the Commission provide him with "any transcripts or documents filed as records in the Cullen Commission of Inquiry that have not been made public, regarding investigation of, testimony of, testimony about, or questioning of Richmond lawyer Hong Guo."

[2] For the reasons that follow, the application is dismissed.

B. THE APPLICATION

[3] The applicant frames his application as resting on the public interest in making information about Ms. Guo available to the public and to the Law Society of British Columbia before a disciplinary hearing concerning her professional conduct. The applicant made the following submissions in support of his application:

> In the course of my research and due diligence in writing a book, Wilful Blindness, (published May 2021) I sent a letter requesting comment of Ms. Hong Guo, on various allegations connected to her practice. Ms. Guo claimed in a response that she had spoken with Cullen Commission lawyers (without specifying the context of discussions.)
>
> Since I received that response, I found Hong Guo and Mr. Paul Jin were named

in a number of documents in a Cullen Commission exhibit 1052, regarding real estate debt enforcement and its connections to B.C. Lottery casino activity and gambling activity in general. [link removed]

I also learned that the BC Law Society had reportedly sought Hong Guo's disbarment in connection to a case of misconduct. (Although it was not reported the case of lost $7-some million in Guo law trust account funds directly connected to a BCLC 'VIP' account investigation and an employee, Qian PAN, eventually also named in a Cullen Commission exhibit 1052 related to an alleged debt enforcement and transnational money exchanges related to online casino accounts.)

The concern for the public's interest underlying my application, is that if Hong Guo were a witness in the Inquiry and the information was not made public, it could be the case that the misconduct Tribunal was deprived, as the public was, of information that might have been material to the Tribunal's decision regarding Hong Guo's fitness to continue as a lawyer in British Columbia. (please see Vancouver Sun report, which indicates the Tribunal did not consider issues related to B.C. Lottery Corporation casino money laundering investigations that are connected to the case they considered, **as documented in the Qian PAN Section 86 report in my possession and attached.)** [link removed]

[4] Counsel for the Commission and counsel for Her Majesty the Queen in Right of British Columbia (the Province) each provided a response to the applicant's submissions on November 26th and December 2nd, 2021, respectively. The applicant made reply submissions on December 8th, 2021.

C. APPLICATION RESPONSE OF COMMISSION COUNSEL

[5] Commission counsel oppose Mr. Cooper's application on the basis that, although there is a strong public interest in ensuring the media are able to report about a public inquiry such as this, there is a distinction to be drawn between evidence led at the

public hearings conducted by the inquiry and the "initial preparatory work done by the Commission." Commission counsel submit that any information they gathered in the Commission's "pre-hearing investigative process is entitled to a zone of confidentiality," particularly if the information engages or is likely to engage "third party privacy, reputational and security interests." Commission counsel argue that because the information has not been led in a public hearing with "attendant procedural protections," it would be "unfair to make it public now."

[6] Commission counsel submit the Commission is not required to make, and has not made, public information which does not advance to the stage of being used as evidence. Commission counsel are tasked with determining what evidence is adduced before the Commissioner in public hearings and that which is not. They note that in keeping with that responsibility, I issued an order on September 18th, 2020 under s. 15 of the *Public Inquiry Act*, SBC 2007, c. 9 (the s. 15 order). The order reads as follows:

> 1. Pursuant to ss. 9(2)(f), 9(5) and 15(1)(c) of the *Public Inquiry Act,* subject to paragraph 2, persons other than Commission staff and contractors must not access the records produced and information obtained by the Commission in the course of its investigative work preparatory to public hearings (the "Records").
> 2. Commission counsel may provide access to the Records to participants, witnesses, and/or other persons where they determine that doing so is appropriate and that this will not undermine the integrity of the Commission's investigative process.
> 3. The process for providing access to the Records will be as set out in the Commission's *Rules of Practice and Procedure,* pursuant to s. 9 of the *Public Inquiry Act.*
> 4. This Order shall remain in effect unless and until varied by the Commissioner in accordance with the *Public Inquiry Act.*

[7] Commission counsel point out that the s. 15 order is determinative of this application unless the applicant's arguments persuade me that it is appropriate to treat this application "as an exceptional case justifying a departure from the general rule of confidentiality over the materials generated in the preparatory and investigative phase."

[8] Commission counsel submit that there is a significant difference between information gathered at the preparatory and investigative stage of a Commission's work

and the evidence tendered at the adjudicative stage of its work. Generally, in this Commission, as with most commissions, most of the evidence adduced at the hearing stage has been made freely accessible to the public and only very rarely shielded from public view.

[9] Commission counsel rely on s. 9 of the *Public Inquiry Act*, which affords the Commission "the power to control its own process" and to "make directions to facilitate the just and timely fulfillment of its duties." Commission counsel cite Justice Cory's judgment in *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy),* [1995] 2 SCR 97, emphasizing the importance of "a generous interpretation to a commissioner's powers to control their own proceedings … [to ensure] that the hearings are as public as possible yet still maintain the essential rights of the individual witnesses" (para. 175).

[10] Commission counsel submit the pre-hearing processes of the Commission are manifestly not subject to the same presumption of openness as the hearings and further submit that at the former stage of proceedings, it is appropriate that the Commission's work be undertaken in a confidential manner "in recognition of the reputational, privacy and security interests to be safeguarded."

[11] Commission counsel submit there is a particular need to guard the preparatory and investigative phase of the Commission's work from public view where issues of procedural fairness, self-incrimination and reputational damage are potentially at risk without the ameliorating effect of a counterbalance that a properly conducted hearing can achieve.

[12] Commission counsel submit that permitting public access to information not led in evidence "gives rise to significant privacy and security concerns as well as a risk of unfairness."

[13] Commission counsel submit that "[i]n the absence of compelling reasons to the contrary, preliminary information obtained by the Commission, which is <u>not evidence</u>

before the Commissioner, was never conveyed to the Commissioner and was never sought to be led as evidence is entitled to a zone of confidentiality."

[14] Finally, with respect to the applicant's submission that Ms. Guo's disciplinary hearing may be affected by the unavailability of information obtained by the Commission, Commission counsel rely on the principle that the Commission's process "should not be invoked to gain information for use in another forum or proceeding." They submit that any concern the applicant has relating to the Law Society's proceedings ought to be raised with the Law Society, not with the Commission.

[15] Accordingly, Commission counsel take the position that the requested information should not be disclosed to the applicant. This is not a case where exceptional or compelling reasons justify a departure from the general rule of confidentiality over information obtained in the preparatory and investigative phase.

[16] In the alternative, Commission counsel submit, if the application is granted in whole or in part, any individuals who are the subject of disclosure should be afforded an opportunity to make submissions before any documentation is released to protect their reputational, privacy and security interests.

D. HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA'S SUBMISSIONS

[17] The only participant apart from Commission counsel who responded to Mr. Cooper's application was the Province. The Province agrees with Commission counsel that the s. 15 order applies to the information being sought in the present application. Accordingly, the Province submits "that Mr. Cooper must satisfy the Commissioner that it is appropriate to depart from the s. 15 order in this case." The Province takes no position on the release of the information sought; however, it submits that if I determine that it is in the public interest to release the information sought to the applicant, the Province should be granted leave under ss. 15 ─ 19 and 21 ─ 22.1 of the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, to redact the records which it has produced to the Commission. The Province notes that the records

were provided under summons and "have not been redacted for, among other concerns, third party privacy concerns." The Province notes that the Commission "has the power to control its own processes and make directives respecting practice and procedure to facilitate the just and timely fulfillment of its duties … [including] making directives respecting access to and restriction of access to, Commission records by any person." It cites s. 15(1)(a), (b) and (c) of the *Public Inquiry Act* as conferring the authority on the Commissioner to make the orders it seeks. Those sections read as follows:

> **15** (1) A commission may, by order, prohibit or restrict a person or a class of persons, or the public, from attending all or part of a meeting or hearing, or from accessing all or part of any information provided to or held by the commission,
>
> > (a) if the government asserts privilege or immunity over the information under section 29 *[disclosure by Crown]*,
> >
> > (b) for any reason for which information could or must be withheld by a public body under sections 15 to 19 and 21 to 22.1 *[privacy rights, business interests and public interest]* of the *Freedom of Information and Protection of Privacy Act*, or
> >
> > (c) if the commission has reason to believe that the order is necessary for the effective and efficient fulfillment of the commission's terms of reference.

[18] The Province also supports Commission counsel's alternative relief that if I grant the relief sought, "any individuals who are the subject of disclosure should be afforded an opportunity to make submissions regarding the disclosure prior to the release of any records."

[19] The Province further notes that should I decline to grant production of the information sought because it is necessary for the effective and efficient fulfillment of the Commission's Terms of Reference, access to the Province's records "could be facilitated under the *Freedom of Information and Protection of Privacy Act* following release of the final report."

E. MR. COOPER'S REPLY

[20] Mr. Cooper filed a reply to the submissions of Commission counsel and the Province. In his response, the applicant enlarges on his application, submitting that to the extent that Commission counsel raised "security interests" as a basis for opposing disclosure of any information gathered, it "would be a harm to society in Canada … if this limitation were due to the chilling effect of dangers relating to transnational organized crime, or fear on the part of any witness or participants." The applicant also argues that if "the public's ability to transparently scrutinize matters that … relate to the actions of any B.C. lawyers … on matters regarding real estate services" or other transactions including "fraud investigations, money laundering investigations … related to the safety of any clients of B.C. lawyers, … would be a very serious finding, worthy of an alert to Canadian citizens and proportionate response."

[21] Mr. Cooper questions why information related to "Ms. Guo's legal services and the interrelationship with an E-Pirate investigation subject and Silver International Investigations" was not openly tested by the Cullen Commission. He references a letter which he received from Ms. Guo in which she informed him that she "met with Mr. German during his investigation, and more recently with counsel from the Cullen Commission. All were grateful for the small assistance I was able to offer and there never was any suggestion of any impropriety on my part."

[22] It was in light of that "information related to Ms. Guo's legal services and the interrelationship with an E-Pirate investigation subject and Silver International Investigations" that Mr. Cooper began to question why Ms. Guo's information was "not openly tested by the Cullen Commission." Mr. Cooper opines that some of the Commission's exhibits (Exhibit 1052 and 663) "raise evidence of financial activity at the heart of the Inquiry's search for answers to questions" which he outlines in his reply submissions. He concludes his submissions by asserting that in the circumstances, "[i]t is of primary importance that the public have access to the information produced in the Commission, if not openly tested in the Commission." Although emphasizing the "public's interest" in accessing the information, Mr. Cooper acknowledges the potential

need to “redact some or all information and perhaps in turn consider broader recommendations and remedies that would flow from the outcome.”

[23] Mr. Cooper expresses a lack of “high confidence” in the freedom of information process referred to by the Province, and submits the Commission “is the public’s best avenue for obtaining important documentation.”

F. DISCUSSION AND CONCLUSION

[24] As I understand it, the applicant’s submission is essentially that the information which he seeks should have been openly presented and tested in the context of the Commission’s hearings and hence ought not to fall within the zone of confidentiality referred to and relied on by Commission counsel.

[25] In my view, the applicant’s submission amounts to second-guessing Commission counsel’s assessment of what evidence can or should be made public through the Commission’s evidentiary hearings, and it relies on speculation on what that evidence might be or might reveal.

[26] Although it is important to consider and give effect to the importance of the public interest in understanding the circumstances at issue in a Commission of Inquiry such as this, it is equally important to ensure the coercive powers which underpin inquiries of this nature are used responsibly and with due regard for procedural fairness so as not to court potentially unfair or illegitimate results. In those circumstances, I agree with Commission counsel that “in the absence of compelling reasons to the contrary, preliminary information obtained by the Commission, which is not evidence before the Commissioner, was never conveyed to the Commissioner, and, was never sought to be led as evidence – is entitled to a zone of confidentiality.”

[27] In the present case, where the applicant’s request for disclosure primarily rests on speculation as to what might be revealed by the information being sought, I am not satisfied that he has met the onus of establishing sufficiently compelling reasons to conclude that “all information held by the Commission regarding questioning,

investigation and testimony of or about Richmond lawyer Hong Guo which is not currently available to the public" should be made public. To grant the application in such circumstances would obviate the intended effect of the s. 15 order.

[28] Accordingly, I decline to grant Mr. Cooper's application.

Commissioner Austin F. Cullen