

# Commission of Inquiry into Money Laundering in British Columbia

## Application for Witness Accommodation – Ruling #30

Ruling of the Honourable Austin Cullen, Commissioner

Issued March 29, 2021

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### A. INTRODUCTION

[1] The Government of Canada (“Canada”) applies, pursuant to Rule 41 of the Commission's Rules of Practice and Procedure and pursuant to s. 15(1) of the *Public Inquiry Act*, S.B.C. 2007, c. 9 [*PIA*] for an accommodation for witness safety for S/Sgt. John Hussey comprised of the following orders:

1. An order directing that the public livestream of S/Sgt. Hussey's testimony be limited to audio only;
2. An order directing that any recording of S/Sgt. Hussey's testimony, including any recording posted to the Commission's webcast archive or distributed to transcribers, be limited to audio only;
3. An order limiting the distribution of, access to, and viewing of the internal Zoom feed to counsel only for the Participants who have standing with respect to the Enforcement section of the Commission;
4. An order that electronic reproduction, for example but not limited to screenshots, photos or videos, of the internal Zoom feed be prohibited for the testimony of S/Sgt. Hussey.

[Underlining in original.]

[2] Canada does not seek to restrict the use or publication of S/Sgt. Hussey's name.

[3] S/Sgt. Hussey will be called as part of a panel of witnesses testifying on behalf of the Joint Illegal Gaming Investigation Team (“JIGIT”) on April 7, 2021. It is expected that he will be asked to provide evidence on JIGIT and investigations into money laundering in British Columbia.

[4] As part of its application, Canada sought a direction that the application “be adjudicated *in camera* and *ex parte* the other Participants because of the sensitivity of the issues it addresses.” Canada also requested that my ruling “not contain any

personal or operational information about S/Sgt. Hussey, including details of his past and present work.”

[5] Having reviewed the application and its supporting materials, I am satisfied it is appropriate to accede to these submissions. The matter will be adjudicated *in camera* and *ex parte* the other participants, and my ruling will not contain any personal or operational information about S/Sgt. Hussey other than his name, including details of his past and personal work.

## **B. CANADA’S SUBMISSION**

[6] Counsel for Canada supplied information concerning S/Sgt. Hussey including reference to his previous court testimony, some of which was subject to publication bans, and detailed reasons why, Canada submits, the orders sought are justified having regard for the relevant statutory and regulatory provisions and the legal test articulated in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 and *R. v. Mentuck*, [2001] 3 S.C.R. 442 at para. 12 (the “*Dagenais / Mentuck* test”).

[7] In its submissions, Canada notes that this application is similar to and involves the same statutory and regulatory provisions and legal test which were applied in Ruling #12 and in Ruling #20, both of which dealt with applications for the same witness accommodation being sought in the present case.

[8] Canada submits that applying the same statutory regulatory provisions, legal test and reasoning to the present application as were applied in Rulings #12 and #20 should lead to the same result. In particular, Canada submits that the circumstances of this application surmount the *Dagenais / Mentuck* test as they establish that the orders sought are:

- (a) ...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 orders] 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.

(*R. v. Mentuck*, para. 32)

[9] Counsel for Canada submits that although S/Sgt. Hussey has provided testimony “in ordinary in-person public court proceedings,” the risk at issue in those proceedings was adequately abated by publication bans. The present circumstances, unlike the circumstances governing a public courtroom, involve the prospect of livestream video feed where there is no ability to control the dissemination of S/Sgt. Hussey's image.

[10] Canada submits that limiting dissemination of S/Sgt. Hussey's image does not deprive the media or the public of the evidence being advanced through him, but it does protect the potential that unlimited dissemination of his image would compromise the proper administration of justice. Canada submits the orders sought strike an appropriate balance between the proper administration of justice and the public and media access to the Commission's proceedings.

### **C. COMMISSION COUNSEL’S RESPONSE**

[11] Commission counsel agrees with Canada that Ruling #12 and Ruling #20 should govern the present application and that the considerations outlined in Ruling #12 in paras. 7-18 “provide useful guidance for the consideration of the present application.”

[12] Commission counsel also agrees with Canada that because of the similarity in the circumstances of S/Sgt. Hussey in the present application and Sgt. Sharma in application #20 “the two applications warrant consistent treatment.”

[13] Commission counsel's position is set out in his submissions as follows at paragraph 6:

- i. Commission counsel does not oppose an order that the public livestream of S/Sgt. Hussey's testimony be limited to audio only, but says that the images of other witnesses, counsel and the Commissioner should be displayed on the livestream. Commission [counsel] suggest that a “silhouette” image, as used for the previous witness be shown.
- ii. Commission counsel says that the image of S/Sgt. Hussey should remain visible to the Commissioner and counsel attending the hearings on the Zoom feed.
- iii. Commission counsel does not oppose an order that any recording of S/Sgt. Hussey's testimony, including any recording posted to the Commission's webcast archive or provided to transcribers, be limited to audio only, so long as the order provides that the images of other witnesses, counsel and the Commissioner continue to be visible.

- iv. Commission counsel agree with Canada that the Zoom feed should be accessible only by counsel for participants with standing in the Enforcement sector. While not specifically addressed in the Commissioner's standing rulings, Commission counsel's view is that all participants have standing in the Enforcement sector.
- v. Commission counsel does not oppose an order that electronic reproductions, such as screenshots, photos or videos of the internal Zoom feed be prohibited during the testimony of S/Sgt. Hussey.

#### **D. DISCUSSION AND CONCLUSION**

[14] I agree that the similarity of the present application with the applications giving rise to Rulings #12 and #20 justify treating those rulings as useful guidance in making the determination of this application.

[15] In Ruling #12, I set out the legal framework and principles governing that application "and any other similar applications" at paras. 7-18. It is not necessary to repeat those considerations in the context of this application. It is sufficient to say that they provide useful guidance and I have considered them in the determination of this application.

[16] As noted by Canada, S/Sgt. Hussey's circumstances are particularly similar to those of Sgt. Sharma referenced in Ruling #20. Having reviewed both applications and the evidence underlying each of them, I can find no basis for drawing any kind of distinction between those cases.

[17] Accordingly, I am satisfied that the present application is well-founded. As was the case with Sgt. Sharma, I am satisfied that based on the evidence presented to me there is justifiable concern that a process identifying S/Sgt. Hussey's appearance would create unacceptable risks—for him, for investigations and cases he has been involved in, and conceivably for people he has interacted with in the course of his duties.

[18] As with Sgt. Sharma, granting the orders sought will abate those risks but at minimal cost to the integrity of the Commission's process or the right of the public to have access to the evidence presented to the Commission.

[19] I will accordingly make the orders sought with the proviso that Commission counsel's submissions set out at para. 13 above, are applicable. I agree with Commission counsel's submission that all participants have standing with respect to the Enforcement sector of the Commission's hearings, to the extent articulated in their grant of standing.

[20] Accordingly, I make the following directions:

1. The public livestream of S/Sgt. Hussey's testimony will be limited to audio only, but images of the other witnesses, counsel and the Commissioner will appear on the livestream.
2. S/Sgt. Hussey's image will be visible to the Commissioner and to counsel attending the hearing on the Zoom feed.
3. The distribution of, access to, and viewing of the internal Zoom feed will be for counsel only for the participants with standing in the Enforcement sector.
4. Any recording of S/Sgt. Hussey's testimony including any recording posted to the Commission's website archive or distributed to transcribers will be limited to audio only.
5. There will be no electronic reproduction (such as screenshots, photos or videos) of the internal Zoom feed for S/Sgt. Hussey's testimony.

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

Commissioner Austin F. Cullen