

# Commission of Inquiry into Money Laundering in British Columbia

## Renewed Application for Participant Status – Ruling #9

### Ruling of the Honourable Austin Cullen, Commissioner

Issued September 23, 2020

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#### **INTRODUCTION**

[1] This ruling addresses a renewed application brought by Brad Desmarais for leave to participate in the Commission of Inquiry into Money Laundering in British Columbia (“Inquiry” or “Commission”) under section 11(4) of the *Public Inquiry Act*, S.B.C. 2007, c. 9 [PIA].

[2] In a ruling dated January 6, 2020, I denied Mr. Desmarais’s first application for participant status. In the reasons for that ruling, I set out the background to Mr. Desmarais’s initial application as follows (at paragraphs 2-4):

2. Mr. Desmarais’s application for standing was originally considered along with 19 other applications, resulting in a ruling issued on September 24, 2019 (“**September 24 Ruling**”), granting participant status to 16 entities or persons.
3. Mr. Desmarais’s application was one of the 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.
4. That hearing was initially convened on October 18, 2019. At that time, Mr. Desmarais sought and was granted an adjournment of his application. The reasons for the requested adjournment were twofold. First, so that counsel for Mr. Desmarais could continue discussions with counsel for the British Columbia Lottery Corporation (“**BCLC**”) about documents and their relative roles in the Commission should Mr. Desmarais be granted standing. Second, Mr. Desmarais advised he was aware of documents that would bring more clarity to whether or not Mr. Desmarais was on a different trajectory than BCLC.

[3] Mr. Desmarais is currently the Vice President of Casino and Community Gaming of the British Columbia Lottery Corporation (“BCLC”). He has been with BCLC in part in other capacities since 2013. Prior to that he had 34 years’ policing

experience with the Vancouver Police and the RCMP. He has extensive expertise and experience in anti-money laundering.

[4] BCLC has been granted standing as a participant in this Inquiry pursuant to my ruling dated September 24, 2019.

[5] The considerations at play in determining whether to grant participant status were set out in my original ruling of September 24, 2019, and again in my ruling of January 6, 2020. They are as follows:

- 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 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 participate in another capacity — for example, as a witness who may testify — instead of being granted formal standing.

[6] In declining to grant Mr. Desmarais standing, I noted that he had evidence of interest to provide to the Commission.

[7] However, I held that the evidence did not establish, first, that his interests or rights were sufficiently different from or at odds with those of BCLC to justify a separate brand of standing. Second, although in his original application Mr. Desmarais raised the issue that he might face some "individual adverse comment or criticism with respect to his conduct," he conceded that at that juncture, his concerns were entirely theoretical and not grounded in any specific evidence or allegations.

[8] It was in light of those circumstances, having regard for the applicable factors set out above, that I denied Mr. Desmarais's initial application.

[9] In doing so I observed in the January 6, 2020 ruling (at paragraph 22):

22. As with any potential witnesses, should it become apparent that Mr. Desmarais's individual rights or interests may be affected by the findings of this Inquiry, or that his interests are at odds with BCLC he may seek leave to reapply for participant status having regard for the provisions of s. 11(4) of the *Public Inquiry Act* and the related considerations set forth in my rulings.

[10] Section 11(4) of the *PIA* 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.

[11] Mr. Desmarais, through counsel, has renewed his application for participant status because of a change in the circumstances confronting him. On August 27, 2020, Mr. Desmarais received a notice, through his counsel, that evidence at the hearing, if accepted, may negatively impact his reputation.

[12] It is Mr. Desmarais's submission that, given his reputational interests at stake, the circumstances warrant a high degree of procedural fairness. Mr. Butcher, for Mr. Desmarais, submits the five factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, weigh in favour of granting participant status to Mr. Desmarais.

[13] Those factors are:

- i. the nature of the decision and the decision-making process;
- ii. the statutory scheme;

- iii. the importance of the decision to the individuals affected;
- iv. the legitimate expectations of the parties; and
- v. the choices of procedures made by the decision-making party.

[14] Commission counsel takes no position on this application.

[15] I generally accept Mr. Butcher's submissions on behalf of Mr. Desmarais that the factors set forth in *Baker* weigh in his favour. In particular, the importance of the decision to Mr. Desmarais, his legitimate expectations in light of the nature of this Inquiry and the scope of its fact-finding mandate, as well as the trial-like procedures adopted by the Commission for the hearings.

[16] I find Mr. Desmarais's legal, reputational and privacy interests may be affected by the findings of the Commission in respect of his acts and omissions in the gaming industry between 2013 and the present. It may well be that his interests will diverge from those of BCLC and, accordingly, warrant separate representation. In those circumstances, I am satisfied that granting him participant status will further the conduct of the Inquiry and will contribute to the fairness of the Inquiry in the gaming and horse racing sector.

[17] Accordingly, I grant Mr. Desmarais standing in that sector.

[18] Mr. Desmarais must ensure that his contribution does not duplicate that of other participants in that sector, including BCLC.

[19] His status is limited to matters involving consideration of his personal conduct and with respect to which his position diverges from that of BCLC.



Commissioner Austin Cullen