

SUPERIOR COURT OF JUSTICE

FILE DIRECTION/ORDER

Reasons Re: Proposed Paragraphs 89-9 (Nov. 22/10)

Master's Endorsement ~~Continued~~

I have a dispute with respect to proposed terms for giving notice before evidence is filed with the court in any proceedings proceeding prior to the conclusion of the inquiry such that the delayed undertaking would no longer apply in accordance with rule 30.1.01 (5) (a) and (b) to which notice is given and to what extent the interests of persons other than the disclosing party (Ontario crown) should be taken into account on a motion under rule 30.1.01 (8) for relief from the delayed undertaking.

The court's consent to giving notice of a 30.1.01 (8) motion to persons identified, but not to a consideration of any prejudice to them on the hearing of the motion. The court's giving notice to the Crown of such motion, even restricted in time until the inquiry is concluded. They agree giving of a notice to the Crown of a document to be filed in any proceedings proceeding, even restricted to the conclusion of the inquiry.

The Crown is concerned with the tainting of the jury pool by evidence falling into the public domain that may be admitted or admissible at the inquiry or that may differ from evidence given by the representative of the inquiry. Although the evidence before a jury such concern I accept that the Crown has such concerns by virtue of its public duty dated Oct 28/10. My concern is to maintain the integrity of the inquiry process.

The issues were somewhat different i.e. restrictions on use of exhibits from the prosecution entering into charges against the 2 guards (The Court of Appeal in R v CBC 2010 FC 726 at para. 53 released Nov. 1/10 states that given the magnitude of the Crown's jurisdiction there was no right to the administration of justice with respect to the pending Crown inquiry to justify any restrictions on CBC's access to the exhibits.

In any event, I am not today deciding whether there should be relief from the delayed

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Master's Endorsement Continued

undertaking, also who should get notice & whose interests may be affected.

A: To why should get notice, rule 37.07(1) governs. Clearly, persons named in documents produced by Ontario through the discovery process may have their privacy and legal rights affected if such documents are used for purposes outside of this litigation, such as:

on a separate lawsuit against such persons, or in publication by the media, or possibly at the request of a third party. Such persons may be unaffected by the order sought. Likewise the Crown should have the right to raise issues that could affect the inquiry process & as such is a person that could be affected by rule 30.1.01(x) order.

That is not to say the court will not permit the documents to be used for other purposes, whether at the inquiry process, but until the inquiry concludes, the Crown should have notice as to a person who may be affected by the order sought.

As to whose interests may be considered in a 30.1.01 order, the Rules Committee determines that what is to be balanced is the interests of justice, often expressed as being the interests of the producing party, particularly prejudice to the disclosing party. More broadly, as the case was in *Bennett v. Canada (Attorney General)* [2003] 1 S.C.R. 147, in para 25 & 28 found that the parties protected by rule 30.1 are the producing party and not the other parties who may have provided information to the producing party.

Such former party of the producing party disclosure. It is not for me to rule rule 30.1.01(B) particularly in advance. They do not require consideration of the any prejudice to the Crown or named individuals in full consideration. For example, of rule 9.1.04 or of any full consideration for example, of rule 9.1.04 or of any

argument that copying to individuals of the Crown would prejudice the Ontario or that such was deemed by the court to be in the interest of justice.

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the Ontario or that such was deemed by the court to be in the interest of justice.

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Of Ontario wanted of the best evidence of persons who supplied documents to them that ultimately made their way into the Green Brief in order to complete redactions & redactions for privacy, security & other concerns, as for example they did with ABC who separately reviewed the documents for relevance, redactions & other concerns that could have been done at the production stage.

I believe this will be given as set out in Ontario version of para 8. Except that the introductory words to 8(b) will read: "If any party seeks relief from the words rule 31.1.01(8) shall be given to the following persons:" In terms of 8(b)(iii) the knowing party need only make best effort to seek.

In terms of proposed para 9, ~~the~~ ^{the} ~~court~~ ^{court} seeks an order such as that given in para 36 of Hallstrom v CCRA 32 P.R.(2d) 314 per Kennedy J. In essence, is a Hallstrom the court seeks the right to authorize a ~~party~~ ^{party} to disclose documents as to be filed with the court & thus, by the already existing order, become available to the public & available for any purpose, the protection of the deemed confidentiality that ~~has~~ ^{has} been lost under rule 31.1.01(1)(a). In Hallstrom there was clear evidence of 2 competing Charter values - open courts vs. right against self-incrimination. Here the concern would be to enlarge that ~~the~~ ^{the} a right to the integrity of the judicial process would be ~~at~~ ^{at} risk value of ~~the~~ ^{the} importance to the Charter ~~of~~ ^{of} open courts. A.C. Stated in More v. Bortnick 85 B.R. 34, 499 at para 46, substantiated evidence must be provided that a fair trial (or in this case a fair inquest) will be jeopardized to ~~override~~ ^{override} the interests of the public.

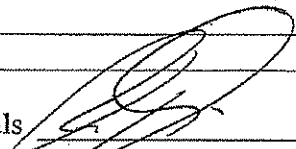
SUPERIOR COURT OF JUSTICE

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in open court proceedings. Given the evidentiary
 issues and the recent court of appeal decision in
 R. v. CBC, I am not satisfied that the ~~integrity~~
~~integrity~~ ~~of the~~ ~~proceedings~~ ~~should~~ ~~be~~ ~~jeopardized~~ ~~by~~ ~~the~~ ~~prosecution~~
 process would be jeopardized should the
 plaintiff "testify" and, for proper purposes
 connects with the ~~case~~ ~~subject~~ ~~matter~~ ~~filed~~ ~~as~~ ~~part~~ ~~of~~
 a motion record, some of the documents
 produced by ~~the~~ ~~prosecution~~. ~~The~~ ~~relevant~~ ~~documents~~ ~~are~~
 intended to be filed since AGC has already
 produced its documents, the St. of Adam has
 already been arranged and examination for
 discovery, from which documents & transcripts may be
 filed ~~or~~ ~~on~~ ~~a~~ ~~separate~~ ~~motion~~ ~~will~~ ~~not~~ ~~be~~
 conducted prior to the inquiry. While such
 documents may be attached to a mediation
 brief, mediation ~~and~~ ~~brief~~ ~~are~~ ~~protected~~
 by attorney privilege and by Rule 24.1.14
 and possibly by a mediation ~~agreement~~ ~~to~~ ~~be~~
 signed by the parties. Furthermore, even if
~~the~~ ~~order~~ ~~requested~~ ~~by~~ ~~the~~ ~~Crown~~ ~~could~~ ~~be~~
 granted, it would only apply to ~~the~~ ~~relevant~~
 brief & not to documents already produced by
 AGC under rule 30.02, which, I ~~note~~ ~~with~~ ~~regard~~ ~~to~~ ~~rule~~ ~~24.1.14~~
 no motion is made to the ~~court~~ ~~by~~ ~~the~~
 statement, I caution the ~~prosecution~~ ~~against~~ ~~making~~ ~~them~~ ~~available~~ ~~to~~
 filing disallowed documents with the Court
 for purposes only of making them available to
 the public or the media. ~~As~~ ~~per~~ ~~para. 9~~
 will not be added.

Master's Initials _____



November 22/10

CORALEE SMITH et al.

Plaintiffs

and

ATTORNEY GENERAL OF CANADA et al.

Defendants

Court File No. 09-383001

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced in Toronto

Oct 28, 10
Motion adjourned to a special hearing
before Master Dash on November 22, 2010
for 1/2 day commencing at 10 a.m.

Parties shall make best efforts to draft an
order in compliance with the discussions
conducted today. Any in the event of
ongoing disagreements as to the form of order,
alternate versions shall be provided. If
particular documents need to be examined at that
time that would assist in the drafting of the
order they shall be brought to the hearing.
Any cross examination of Mr Edwards shall be
concluded by November 15, 2010.

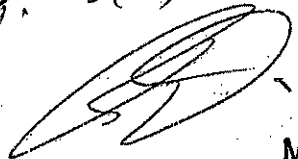

Master Ronald Dash

MOTION RECORD

FALCONER CHARNEY LLP
Barristers-at-Law
8 Prince Arthur Avenue
Toronto, Ontario
M5R 1A9

Julian N. Falconer (L.S.U.C.#29465R)
Jackie Esmonde (L.S.U.C.#47793P)
Tel: (416) 964-3408
Fax: (416) 929-8179
Lawyers for the Plaintiffs

order to go on form of draft order as submitted by
parties and determined by the court, and in the case of
draft ~~part~~ paragraphs 8 & 9 for written reasons attached.
I will sign the final order if agreed as to form & content by all parties.
If there are any remaining disputes, each of disputing
party shall send me their ~~respective~~ respective version within
7 days. If I am unable to determine which version
is correct I will convene a case conference by appearance
to settle the order. I will advise as soon as
possible with respect to the relevance of the
names referenced in para. 3(i)



Master Ronald Dash