



NO. S-142648
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*
R.S.B.C. 1996, c. 241**

BETWEEN:

B.C. Lions Football Club Inc.

PETITIONER

AND:

**Information and Privacy Commissioner for British Columbia,
BC Pavilion Corporation, and Bob Mackin**

RESPONDENTS

NOTICE OF DISCONTINUANCE

Filed by: B.C. Lions Football Club Inc. ("Petitioner")

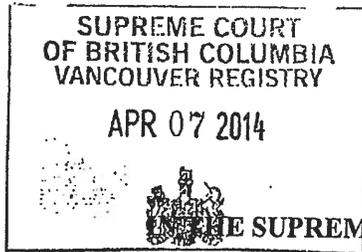
TAKE NOTICE that the Petitioner discontinues this proceeding against the Respondents, Information and Privacy Commissioner for British Columbia, BC Pavilion Corporation, and Bob Mackin.

A Notice of Hearing has not been filed.

Date: May 4, 2015



Signature of lawyer for the filing party
Melanie J. Harmer



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RESPONDENTS

PETITION TO THE COURT

THIS IS THE PETITION OF:

B.C. Lions Football Club Inc.
c/o McMillan LLP (Attn: Joan M. Young)
1500 – 1055 West Georgia Street
Vancouver, BC, V6E 4N7

RESPONDENTS:

Information and Privacy Commissioner for British Columbia
PO Box 9038 Stn. Prov. Govt.
Victoria, BC V8W 9A

BC Pavilion Corporation
c/o Angus M. Gunn, QC
Borden Ladner Gervais LLP
1200 – 200 Burrard Street
Vancouver, BC V7X 1T2

Bob Mackin
18 – 1073 Lynn Valley Road
North Vancouver, BC V7J 1Z6

NOTICE REQUIRED BY ss. 15 and 16 of the *Judicial Review Procedure Act*:

Information and Privacy Commissioner for British Columbia
PO Box 9038 Stn. Prov. Govt.
Victoria, BC V8W 9A

Attorney General of British Columbia
Deputy Attorney General
Ministry of Justice
PO Box 9280 Stn. Prov. Govt.
Victoria, BC V8W 9J7

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after the date of that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:

Vancouver Law Courts
800 Smithe Street
Vancouver, B.C.

(2) The ADDRESS FOR SERVICE of the Petitioner is:

McMillan LLP
1500 - 1055 West Georgia Street
Vancouver, B.C. V6E 4N7

Telephone: 604-689-9111 Attention: Joan M. Young
Fax number for service (if any) of the petitioner: 604-893-2672
E-mail address for service (if any) of the petitioner: N/A
(3) The name and office address of the petitioner's lawyer is: Same as address for service.

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

The Petitioner applies for the following:

1. an order quashing the February 24, 2014 order of the Information and Privacy Commissioner's delegate ("Order F14-05") in which the delegate ordered the Respondent, BC Pavilion Corporation ("PavCo"), to give the Respondent, Bob Mackin ("Mackin"), access to information harmful to the business interests of the Petitioner, B.C. Lions Football Club Inc. ("B.C. Lions");
2. in the alternative, an order that the matter be remitted back to the Information and Privacy Commissioner (the "Commissioner") with a direction that the Commissioner reconsider Order F14-05 and in doing so consider any submissions or evidence advanced by the B.C. Lions;
3. costs; and
4. such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

1. The Petitioner B.C. Lions is incorporated pursuant to the laws of British Columbia and operates the B.C. Lions Football Team. The B.C. Lions Football Team is a professional sports team in the Canadian Football League ("CFL").

2. The Respondent Commissioner is appointed by the Lieutenant Governor to the position of Information and Privacy Commissioner and is an officer of the Legislature of the Province of British Columbia.

3. The Respondent PavCo is a "public body" for the purposes of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (the "*Act*") and operates BC Place Stadium.

4. In November 2011, PavCo and B.C. Lions entered into the BC Place License Agreement (the "License Agreement"), under which B.C. Lions is afforded the right and license to use BC Place Stadium for its professional football games in the CFL and ancillary events.

5. The Respondent Mackin is a journalist and was the applicant before the Commissioner.

Request to PavCo

6. On July 21, 2011, Mackin made a request under the *Act* for:

The lease contract, agreement or letter of intent (whichever is the most current) between BC Pavilion Corporation and the BC Lions and Canadian Football League for use of BC Place Stadium, practices and other events. Please also include the contract, agreement or letter of intent (whichever is the most current) for the 2011 Grey Cup and associated events.

7. The License Agreement was identified by PavCo as the information requested.

8. On February 6, 2012, PavCo wrote to Mackin advising that the requested records contained information that may affect the interest of another business and that PavCo would be giving that business an opportunity to make representations concerning disclosure under the *Act*.

9. On February 6, 2012, PavCo also wrote to the B.C. Lions advising of the request and seeking its views on the disclosure of the records. The letter indicated that PavCo intended to sever certain information.

10. On March 5, 2012, B.C. Lions advised that it consented to the disclosure of the information as proposed by PavCo, namely a redacted version of the License Agreement. This

consent was premised on the severance of certain information from the record that B.C. Lions consider to be confidential and sensitive business information.

11. On March 15, 2012, PavCo wrote to B.C. Lions confirming that the information would be severed as outlined in PavCo's February 6, 2012 letter to B.C. Lions. This letter was re-sent to B.C. Lions on March 16, 2012 as the e-mail attaching the correspondence was not transmitted.

12. A redacted version of the License Agreement was released by PavCo to Mackin.

13. On November 6, 2012, PavCo wrote to B.C. Lions and advised that Mackin had filed an appeal with the Office of the Information and Privacy Commissioner ("OIPC") regarding the severing applied to the record. PavCo advised within that it had provided the redlined document to the OIPC and the OIPC had reviewed the redlined document and advised PavCo that it did not support the severing that was applied. PavCo's letter advised that it was initiating a second consultation process with B.C. Lions and sought its views regarding disclosure of the information.

14. On December 19, 2012, PavCo wrote to B.C. Lions and advised that it had re-evaluated the License Agreement and would release it to Mackin with certain information severed from the record.

15. The information severed from the License Agreement included confidential information regarding fees charged for facilities and services, which services are provided without cost, and information about complimentary tickets and insurance coverage.

Review by the Privacy Commissioner

16. Mackin requested that the Commissioner review the decision of PavCo.

17. The Commissioner initiated a review but failed to give a copy of the request for review to B.C. Lions as required by section 54 of the *Act*.

18. During the course of this inquiry, PavCo withdrew its reliance on section 15 (disclosure harmful to law enforcement) and section 21 (disclosure harmful to business interests

of a third party) of the *Act* and the inquiry proceeded solely on section 17 (disclosure harmful to the financial or economic interests of a public body) of the *Act*.

19. B.C. Lions was not provided with notice that PavCo was withdrawing its reliance on section 21 of the *Act*. Section 23(1) of the *Act* requires that PavCo must give B.C. Lions specific written notice required by section 23(3) of the *Act* in any circumstance in which it intends to give access to a record that contains information excepted from disclosure under section 21 of the *Act*. By withdrawing its reliance on section 21 of the *Act* in the review proceeding without giving notice to B.C. Lions, PavCo failed to give the notice required by section 23(3) and B.C. Lions was not given the opportunity to make submissions before the Commissioner.

20. The Commissioner delegated the conduct of the review to an adjudicator, Vaughan L. Barrett (the "Adjudicator").

21. The Adjudicator conducted a written inquiry and concluded that PavCo had not met the burden of proof required to confirm it was authorized under section 17 of the *Act* to sever information from the License Agreement.

22. The Adjudicator failed to consider section 21 of the *Act* or the interests of B.C. Lions.

23. The Adjudicator issued Order F14-05 directing PavCo to provide Mackin with a copy of the complete, un-redacted License Agreement on or before April 7, 2014.

Disclosure Harmful to Business Interests of Third Party

24. At all times, B.C. Lions understood that PavCo would produce the License Agreement with certain confidential information redacted.

25. The License Agreement contains an express agreement to keep the terms of the License Agreement confidential.

26. The information described in paragraph 24 above is information that would reveal the trade secrets or commercial, financial or technical information of or about B.C. Lions and is therefore information that PavCo must refuse to disclose pursuant to section 21(1)(a) of the *Act*.

27. The disclosure of the complete un-redacted License Agreement would reveal information that was supplied in confidence and which PavCo must refuse to disclose pursuant to section 21(1)(b) of the *Act*.

28. The disclosure of the complete un-redacted License Agreement would reveal information that would reasonably be expected to: (i) harm significantly the competitive position or interfere significantly with the negotiating position of B.C. Lions; and (ii) result in undue financial loss to B.C. Lions, which PavCo must therefore refuse to disclose pursuant to section 21(1)(c) of the *Act*.

29. The failure by the Commissioner to provide a copy of the request for review to B.C. Lions resulted in B.C. Lions being deprived of the opportunity to be heard in the proceedings and to advance arguments, including under section 21 of the *Act*, to protect its interests. In failing to notify B. C. Lions that the provisions of section 21 of the *Act* (which are expressly intended to protect the commercial interests of third parties such as B. C. Lions) would not be presented in the review proceeding, PavCo: (i) deprived B.C. Lions of the opportunity to be heard and to protect its interests; and (ii) failed to give proper notice as required by section 21(3) of the *Act*.

Part 3: LEGAL BASIS

1. B.C. Lions relies on the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.

2. The Commissioner breached the rules of natural justice and/or procedural fairness in failing to give notice of the review inquiry to B.C. Lions or in failing to give B.C. Lions the opportunity to make representations during the inquiry.

3. The Commissioner erred in law or made a patently unreasonable decision and thereby exceeded the Commissioner's jurisdiction in failing to give notice of the inquiry

pursuant to section 54 of the *Act* to B.C. Lions or in failing to give B.C. Lions the opportunity to make representations during the inquiry pursuant to section 56(3) of the *Act*.

4. The Commissioner erred in law and thereby exceeded the Commissioner's jurisdiction by failing to consider and apply section 21 of the *Act*.

5. Such other grounds as counsel may advise.

Part 4: MATERIAL TO BE RELIED UPON

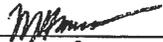
1. Affidavit #1 of Shannon Ulmer, sworn April 7, 2014.

2. Record of the proceedings before the Information and Privacy Commissioner's delegate.

3. Such further material as counsel may advise.

The Petitioner estimates that the hearing of the petition will take one day.

Date: April 7, 2014



Signature of
 Petitioner lawyer for Petitioner
for:
Joan M. Young