



Copley, George AG:EX

From: Copley, George AG:EX
Sent: Tuesday, March 14, 2006 10:52 AM
To: MacMillan, Elizabeth PREM:EX
Cc: Reimer, Nancy AG:EX
Subject: RE: Basi and Virk-Search Warrants and Seizure of Cabinet Documents

Dear Ms. MacMillan:

As you may be aware the trial in this matter was adjourned to June which may explain why the office of the Special Prosecutor has not been further pressing us up until now for the government position with respect to Cabinet privilege for the documents in question.

However, they now need to disclose these documents to defence counsel as part of the Stinchcombe disclosure obligation and have renewed their request. If the documents are not disclosed to defence counsel they cannot be used as part of the evidence at trial in the prosecution of the accused.

I suggest we meet with you sometime soon at your convenience to bring you into the picture as to what the Special Prosecutor wants in the way of documents and explain why they are relevant to the prosecution. We can also answer any questions you might have concerning Cabinet privilege or solicitor/client privilege. I am available this afternoon, all day Wednesday, Thursday afternoon and all day Friday. I am also available all day Monday, Wednesday and Friday next week and Tuesday and Thursday morning.

George H. Copley

-----Original Message-----

From: Copley, George AG:EX
Sent: January 31, 2006 1:54 PM
To: MacMillan, Elizabeth PREM:EX
Cc: Reimer, Nancy AG:EX
Subject: RE: Basi and Virk-Search Warrants and Seizure of Cabinet Documents

Dear Ms. MacMillan:

Thank you very much for forwarding the signed undertaking which was received last week. The Special Prosecutor's office has not yet contacted us but I do expect that they will fairly soon since they indicated to Ms Reimer that they would be needing certain documents. I think what happens is that the RCMP decide that certain documents are needed for interview(s) they are scheduling with potential witnesses at which point the Special Prosecutor's office phones us with a request for an expedited response. That seems to have been the pattern in the past.

I suggest if you have some time this week or the next that it might be beneficial to meet and deal with this now rather than try to respond to an urgent request from the Special Prosecutor's office. At least, we can bring you into the picture as to what the Special Prosecutor wants in the way of documents and explain why they are relevant to the prosecution. I am available Thursday morning and Friday afternoon this week and Monday all day, Tuesday morning and Friday all day next week. I would hope that we could keep the meeting relatively short while at the same time answering any questions you might have about the documents or the process.

Yours truly

George H. Copley

-----Original Message-----

From: Copley, George AG:EX
Sent: January 20, 2006 11:45 AM
To: MacMillan, Elizabeth PREM:EX
Cc: Reimer, Nancy AG:EX
Subject: RE: Basi and Virk-Search Warrants and Seizure of Cabinet Documents

Dear Ms. MacMillan

Thank you very much for this prompt reply. I have amended the undertaking to accord with the protocol for electronic documents since the documents being sought by the Special Prosecutor are hard copies of the electronic documents which were seized. That amended undertaking is attached.

The number to which the signed undertaking may be sent is 356-9154. I am available all day Monday and so any time that is convenient for you is fine with me.

Yours truly

George H. Copley

-----Original Message-----

From: MacMillan, Elizabeth PREM:EX
Sent: January 20, 2006 9:04 AM
To: Copley, George AG:EX
Cc: Reimer, Nancy AG:EX
Subject: RE: Basi and Virk-Search Warrants and Seizure of Cabinet Documents

Hello Mr. Copley --

My apologies for the delay. I believe I am the appropriate person. I do have questions but I am prepared to sign the undertaking and will do so today.

If acceptable, I'll ensure a faxed copy is sent to today (what # would be best?) and that the original goes to you by house mail.

Is there any time on monday that you might be available to discuss?

Thank-you
Elizabeth

From: Copley, George AG:EX
Sent: Fri, January 20, 2006 8:44 AM
To: MacMillan, Elizabeth PREM:EX
Cc: Reimer, Nancy AG:EX
Subject: RE: Basi and Virk-Search Warrants and Seizure of Cabinet Documents

Dear Ms. MacMillan

I expect that the Special Prosecutor's office will be contacting me or Nancy Reimer next week to follow up on their request that the government waive (or not assert) the privilege attaching to certain documents they wish to use. Please let me know if you have any questions about the e-mail message below asking if you are the appropriate person to seek instructions on this question.

Yours truly

George Copley

-----Original Message-----

From: Copley, George AG:EX

Sent: January 13, 2006 9:50 AM

To: MacMillan, Elizabeth PREM:EX

Cc: Reimer, Nancy AG:EX

Subject: Basi and Virk-Search Warrants and Seizure of Cabinet Documents

Dear Ms. MacMillan:

In late December, 2003, documents, both paper and electronic, were seized from the offices of the Legislature as a result of an ongoing RCMP investigation into drug offences which then revealed the possibility of charges based on misconduct by David Basi and Robert Virk, ministerial aides, in connection with the sale of B.C. Rail. We had been taking instructions from Joy Illington on whether or not to assert Cabinet Privilege or solicitor-client privilege should that question have to be faced with respect to specific documents. We now have the need to obtain further instructions since the RCMP have requested that we waive the privilege (more accurately not assert the privilege) with respect to certain other specific documents (electronic) which they seized. The trial is set for April, but they need access to these documents (five in number), for the purpose of investigation and trial.

The task of seeking instructions is complicated by the existence of a protocol with the Special Prosecutor intended to maintain the confidentiality of seized documents and to provide us with access to review those documents and decide whether or not to assert Cabinet privilege or solicitor client privilege. Under that protocol everyone from the government who would have access to the documents for the purpose of review gave an undertaking of confidentiality (myself, Nancy Reimer a legal assistant in this office and Joy Illington-the list was later extended to our IT persons in order to facilitate access to the electronic documents).

Since Joy Illington has gone, there is no one else in the Premier's Office who can give us instructions on behalf of Cabinet on whether or not to assert Cabinet privilege or solicitor client privilege. Would you be able to undertake that task? If you are then in accordance with the protocol with the Special Prosecutor you would have to give an undertaking as to confidentiality. I have attached the Protocol (there was a draft used for the paper documents and subsequently amended for the electronic documents) and a copy, unsigned, of Joy Illington's undertaking for your information. The Protocol is quite complicated but in essence it is intended to cast a blanket of secrecy over the documents that were seized so as to ensure that irrespective of whether there is any privilege or not the documents remain confidential until needed and used at the trial. The Protocol is and was intended to facilitate our access to review these documents for a claim of privilege. The difficulty is that the Protocol restricts discussion of those documents to those persons covered by it, essentially those with a need to know and who have given undertakings of confidentiality. Which meant that if Joy had to seek instructions directly from Ministers or the Cabinet we would have had to go back to Mr. Justice Dohm to be released from the undertaking in order to seek those instructions. Fortunately, that did not become necessary. I would hope that in this present round of seeking instructions that would still continue to be the case.

I know that you will have a number of questions and perhaps some concerns about this process and this request. I suggest that these are best answered by a meeting between us at which I can provide any further information and explanations you require. Please let me know when it would be convenient for us to meet. There is some urgency to this request since the Special Prosecutor is in the final stages of preparing for trial

Yours truly

George Copley

George H. Copley, Q.C.,
Barrister and Solicitor,
Telephone Number 356-8875
Fax Number 356-9154

IN THE MATTER OF CERTAIN SEARCH WARRANTS
AND
IN THE MATTER OF COURT FILE NO. BLO 345
AND
IN THE MATTER OF ELECTRONIC DOCUMENTS SEIZED FROM
THE LEGISLATIVE ASSEMBLY OFFICES AND FROM
4000 SEYMOUR PLACE VICTORIA BC

UNDERTAKING

In accordance with the Protocol provided to Associate Chief Justice Dohm in this matter by the Special Prosecutor, William Berardino, Q.C., on March 2, 2004 (the "Protocol");

I, Elizabeth MacMillan., pursuant to paragraph (t) of the Protocol hereby undertake not to disclose the contents of the electronic documents removed from the offices of Mr. Basi and Mr. Virk which were seized under warrant from those offices in the Legislative Assembly precincts and from government computer servers located at 4000 Seymour Place in Victoria BC and which are currently under seal and in the custody of the Registry of the Supreme Court of British Columbia at 800 Smithe Street in the City of Vancouver (the "documents"), subject to the following exceptions:

Pursuant to paragraph (u) of the Protocol I may disclose the contents of the documents after application to Mr. Justice Dohm that I and/or Mr. Copley be released from our undertakings for the purpose of seeking instructions from the Executive Council and in accordance with any conditions imposed upon that release of undertaking by the Court; and

Finally, when the contents of the documents seized have been partially or wholly made public I am released from this undertaking to the extent that knowledge of the contents of those documents, wholly or partially, are now available to the public.

DATE

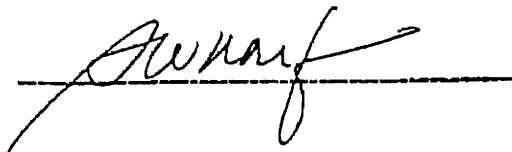
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SIGNED



Elizabeth MacMillan

WITNESSED BY

A handwritten signature in cursive script, appearing to read "Awanif", is written over a solid horizontal line.