



This is Exhibit " E " referred to in the affidavit of Nancy Reimer sworn before me at Vancouver in the Province of British Columbia this 13 day of December 2007
[Signature]
Commissioner for taking Affidavits
within the Province of British Columbia



July 20, 2007

By Fax (604) 660-0623 and Courier

THE LAW COURTS
800 Smithe Street
Vancouver, B.C. V6Z 2E1

Attention: Mary Ellen Pearce
Trial Coordinator, Criminal Registry

Dear Sirs/Madams:

Re: R. v. Basi, Virk and Basi
File No. VA23299

This is to acknowledge receipt of the Memorandum to counsel from Madam Justice Bennett dated July 16, 2007, forwarding an inventory of the two boxes of Cabinet documents which were provided to the Court for review. This reply deals with two matters:

- (1) Forwarding the inventory to counsel for the Crown and defence; and
- (2) Release from Undertakings for the purpose of seeking instructions.

Would you kindly bring this letter to the attention of Her Ladyship.

Forwarding Inventory to Counsel for the Crown and Defence

I have reviewed the descriptions of each of the documents set out in the inventory and I am confident that those descriptions do not represent waiver of the privilege that is claimed for the contents of the documents, whether Cabinet privilege or solicitor-client privilege. Even if the descriptions of the documents were to constitute waiver, and this is specifically denied, it is our intention to only waive the privilege at this time for the purpose of disclosing the descriptions of the documents to defence counsel and the Special Prosecutor and only to the extent of the descriptions which are set out in the inventory and only for the purpose of these criminal proceedings. With that

Ministry of
Attorney General

Legal Services Branch
Constitutional &
Administrative Law

Mailing Address:
PO BOX 9280 STN PROV GOVT
Victoria BC V8W 9J7

Location:
1001 Douglas Street
Victoria BC

Telephone: 250 356-8875
Facsimile: 250 356-9154

understanding, I am providing a copy of the inventory to each defence counsel and counsel for the Special Prosecutor, attached to their copy of this letter.

As a courtesy, I am also providing a copy of this letter and attachments, but not a copy of the inventory, to counsel for the Speaker of the Legislative Assembly, Paul J. Pearlman, Q.C., counsel for the Department of Justice, Valerie Anderson, and counsel for the B.C. Railway Company, Robert Deane.

Release from Undertakings for the Purpose of Seeking Instructions

A Protocol was prepared early in January, 2004, by the Special Prosecutor for the purpose of facilitating review for claims of privilege, either public interest immunity (Cabinet privilege) or solicitor-client privilege of the paper documents seized from the Legislature. The Protocol was provided to Associate Chief Justice Dohm by the Special Prosecutor on January 14, 2004. A similar Protocol was later prepared to facilitate a review of seized electronic documents for claims of privilege. This electronic documents Protocol was provided to Associate Chief Justice Dohm by the Special Prosecutor on March 2, 2004. A copy of both Protocols are attached and marked as attachments "A" and "B" to this letter.

An integral part of each Protocol was the giving of Undertakings, prior to reviewing the documents, by the solicitor on behalf of the Executive Council, by an associate counsel or legal assistant, being Neena Sharma or Nancy Reimer, and the Deputy Cabinet Secretary, then Ms. Joy Illington, not to disclose the contents of those documents to any person other than the Court until the claims of privilege have been dealt with (see paragraphs (d), (e) and (m) of attachment "A"). The Protocols contemplated only three ways in which the Undertaking given by any of the parties could be released:

- (1) No claim of privilege – such documents shall be released to the RCMP (see paragraph (p) of attachment "A");
- (2) By order of the Court, for the purpose of seeking instructions (see paragraph (n) of attachment "A"); and
- (3) Documents made public – once documents have been made public, partially or wholly, the Undertaking was released (see the last paragraph of the Undertakings).

A copy of Undertakings given by the following people are attached to this letter as attachments "C" through "F".

- (1) George H. Copley, Q.C. (Attachment "C" – signed copies should be in the file in the Registry);
- (2) Nancy Reimer - (Attachment "D" – signed copies should be in the file in the Registry);

- (3) Joy Illington (Attachment "E" – signed copies should be in the file in the Registry);
- (4) Elizabeth MacMillan (Attachment "F" – signed copies should be in the file in the Registry).

The present Deputy Cabinet Secretary who has been giving instructions, Elizabeth MacMillan, will be going on leave shortly. She will be replaced in that position while she is away by Robert Lapper, Q.C., who has not yet given an Undertaking.

I am requesting that the Court either by Order or Direction release each of these four persons from their Undertakings given to the Court in this matter. That is, I am requesting release of the Undertakings of George H. Copley, Q.C., Nancy Reimer, Joy Illington and Elizabeth MacMillan. That release is sought for the purpose of seeking instructions on whether or not to continue to assert the privilege claimed with respect to those documents in the inventory which the Court has decided based on the *O'Connor* test are "likely relevant". In particular, with respect to those "likely relevant" documents covered by solicitor-client privilege, I will have to seek the advice and assistance of the solicitors at Borden Ladner Gervais, who acted as solicitors during all of the transactions involving the B.C. Railway Company. Those solicitors from Borden Ladner Gervais are in a unique position and, I expect, would be able to point out to the Court the nature and degree of harm or prejudice to the Crown that could result from waiver of the solicitor-client privilege associated with particular documents or an order of the Court for disclosure of the document.

I would ask each defence counsel and the Special Prosecutor to indicate to the Court by way of a letter to the Registry if they have any objection to the Court releasing George H. Copley, Q.C., Nancy Reimer, Joy Illington or Elizabeth MacMillan from the Undertakings of confidentiality given to the Court in respect of the documents seized from the Legislature.

This letter is being delivered by fax and courier on July 20, 2007, and I would ask that any such letters of objection be delivered to the Registry within 7 days of the date of delivery of this letter. Unless a letter of objection is delivered within the time specified, I will presume that each counsel intends to consent to the release of these Undertakings as described herein.

I will be away from the office on holiday from July 22 through to and including August 3, 2007, returning to the office on August 7, 2007. I will make myself available at any time convenient to the Court after August 7, 2007, if it is necessary to speak to this application to be released from the Undertakings.

Please let me know if any further information is required or steps need to be taken in order to assist the Court in dealing with this application to be released from these Undertakings as described herein.

Yours truly,

GEORGE H. COPLEY, Q.C.
Barrister and Solicitor
GHC:sf

Encls.

c.c. Bill Berardino Q.C.
P. Michael Bolton, Q.C.
Joseph Doyle
Kevin McCullough
Valerie J. Anderson
Paul J. Pearlman, Q.C.
Robert Deane

