

 Copley, George AG:EX

From: Copley, George AG:EX
Sent: Wednesday, November 24, 2004 2:16 PM
To: Lapper, Robert AG:EX
Cc: Reimer, Nancy AG:EX
Subject: FW: Confidential Documents

For your information.

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

From: Dobell, Ken F PREM:EX
Sent: November 24, 2004 1:07 PM
To: Copley, George AG:EX
Subject: RE: Confidential Documents

you have presented the rationale, thank you.

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

From: Copley, George AG:EX
Sent: November 24, 2004 11:31 AM
To: Dobell, Ken F PREM:EX
Subject: Confidential Documents

Ken Dobell,
Deputy Minister to the Premier,
Premier's Office

CONFIDENTIAL AND PRIVILEGED

Dear Mr. Dobell:

Further to our meeting this morning to discuss instructions with respect to certain confidential documents I am writing to confirm my instructions and to record the basis for those instructions. Please let me know if I have not accurately recorded those instructions or the basis on which they were issued.

The confidential documents we discussed were those referred to in Ms. Mackay's letter dated October 7, 2004, and were identified as:

- (1) Document 0028006:Memorandum dated August 5, 2003, to the Honourable Judith Reid from Joy Illington forwarding an excerpt from a Cabinet minute;
- (2) Document 00290376 to 00290378: Cabinet Submission with respect to B.C. Railway Company dated July 16, 2003, signed by the Honourable Judith Reid; and
- (3) Document 00290224 to 0029238 and 0020071 to 280085: Power point presentation with respect to B. C. Railway Company dated July 23, 2003.

Subsequent to the October 7, 2004, letter we have been requested by Ms. Mackay on behalf of the Special Prosecutor in a telephone conversation to waive privilege with respect to these confidential documents (or more properly in a legal sense not to assert privilege with respect to these documents).

After discussing these documents your instructions were to waive privilege (to not assert the privilege) with respect to these confidential documents for the limited purpose of the proposed investigative interviews set out in Ms. Mackay's letter dated October 7, 2004, and if charges are laid for the limited purpose of providing those documents to court as evidence if they are relevant to the charges laid. For all other purposes we are to continue to assert the privilege claimed with respect to those documents. In particular,

if charges are not laid eventually we are to assert the privilege and request the return of the documents.

The basis of this waiver (or decision not to assert the privilege) is that the public interest in the disclosure for the purpose of investigation and possible prosecution outweighs the public interest in maintaining the confidentiality of the documents.

The investigation and possible prosecution are being undertaken with a view to ultimately protecting generally the process by which documents utilized by Cabinet in its deliberations remain confidential. Given that these particular documents appear to be relevant to the criminal investigation and potential charges that may be laid, to insist upon maintaining the privilege at this time with respect to these documents would defeat the very purpose of the investigation which has been initiated to protect the process by which Cabinet confidentiality is maintained.

If this confirmation as to the instructions and the basis on which they were issued is accurate I will advise Ms. Mackay accordingly.

Yours sincerely

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

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