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Order F15-43

BRITISH COLUMBIA LOTTERY CORPORATION

Ross Alexander
Adjudicator

August 21, 2015

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Summary: A journalist requested that the British Columbia Lottery Corporation provide expense reports of a specified BCLC employee who hosted BCLC customers at music concerts in 2012. BCLC withheld the names of the BCLC customers who were hosted at these music concerts under s. 17 (disclosure harmful to the financial or economic interests of the public body) and s. 22 (disclosure harmful to personal privacy) of FIPPA. The adjudicator determined that BCLC is authorized to refuse to disclose the customer names because disclosure could reasonably be expected to harm the financial or economic interests of BCLC under s. 17 of FIPPA.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 17.

Authorities Considered: B.C.: Order F14-53, 2014 BCIPC 57 (CanLII); Order F11-25, 2011 BCIPC 31 (CanLII); Order F08-22, 2008 CanLII 70316 (BC IPC).

Cases Considered: *British Columbia Lottery Corp. v. Skelton*, 2013 BCSC 12 (CanLII); *R. v. Mohan*, [1994] 2 SCR 9, 1994 CanLII 80 (SCC); *R. v. Abbey*, 2009 ONCA 624; *Bergen v. Guliker*, 2015 BCCA 283**;** *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31; *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3.

INTRODUCTION

[1] This inquiry relates to a journalist's request to the British Columbia Lottery Corporation ("BCLC") for the expense reports of a specified BCLC employee for four music concerts in 2012, including the names of BCLC staff and the BCLC customers who attended these events (the "BCLC Players").

[2] BCLC responded to the applicant's request by withholding the responsive records in their entirety under s. 17 (disclosure harmful to the financial or economic interests of the public body), s. 19 (disclosure harmful to individual public safety), and s. 21 (disclosure harmful to the business interests of a third party) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA").

[3] The applicant made a request to the Office of the Information and Privacy Commissioner ("OIPC") to review BCLC's decision to deny access to information.

[4] During the OIPC mediation process, BCLC reconsidered its decision and released some information to the applicant. It also applied s. 22 (disclosure harmful to personal privacy) to the names of third parties and withdrew its reliance on s. 19 of FIPPA. In addition, a third party requested a review of BCLC's decision to disclose four pages of records, submitting that s. 21 applied to that information.

[5] The applicant requested that this matter proceed to inquiry for the withheld information. The third party withdrew its request for third party review, which led to s. 21 no longer being at issue. Therefore, ss. 17 and 22 are the two remaining issues.

[6] BCLC then asked the Commissioner to exercise her discretion under s. 56 of FIPPA to not hold an inquiry regarding the remaining information. In his submissions on the s. 56 issue, the applicant narrowed the scope of his request, which removed some of the information that was at issue. As a result, the only remaining information at issue in the records is the identities of the BCLC Players.

[7] Order F14-53[1] determined that s. 56 did not apply, and that this matter should proceed to inquiry.

ISSUES

[8] The issues listed in the Notice of Inquiry are:

a) Is BCLC authorized to refuse access to information because disclosure could reasonably be expected to harm the financial or economic

[1] Order F14-53, 2014 BCIPC 57 (CanLII).

interests of the public body or the government of British Columbia, or the ability of the government to manage the economy, under s. 17 of FIPPA?

b) Is BCLC required to refuse access to information because disclosure would be an unreasonable invasion of a third party's personal privacy under s. 22 of FIPPA?

DISCUSSION

[9] **Background –** BCLC operates and manages lottery gaming, casino gaming, commercial bingo gaming and eGaming in BC. One of its gaming enterprises is PlayNow.com, which offers a variety of gaming services online. PlayNow.com is the only legally authorized online casino in BC.

[10] BCLC's competitors operate in the so-called "grey market". This refers to the fact that most online gambling is conducted on offshore gambling websites that are largely unregulated and cannot legally transact with Canadian residents.[2] However, they offer gaming services to British Columbians, and British Columbians gamble at these sites.

[11] BCLC uses a variety of techniques to market PlayNow.com. However, in recent years, BCLC's eGaming marketing strategy has increasingly focused on relationship marketing and more specific target marketing to individuals based on their consumer profiles.[3]

[12] From time to time, BCLC's marketing of PlayNow.com includes extending bonus or incentive offers to players registered with PlayNow.com, including offers to attend VIP promotional events.

[13] In Fall 2012, the VIP promotional events included hosting players at music concerts. It is the identities of these people, the BCLC Players, which is at issue in this inquiry.

[14] The applicant is a journalist who explains that he was contacted by a whistleblower who is deeply concerned that BCLC is contravening its own publicly advertised guidelines for responsible gambling by offering incentives and rewards to certain contest-winning and high-spending gamblers. In the applicant's view, BCLC is attempting to encourage more gambling by certain customers by offering these marketing incentives. He believes BCLC is attempting to profit while disregarding the cost of gambling to society.

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[2] Affidavit of BCLC's director of product & business development for eGaming at para. 23.
[3] IBid at paras. 16 and 17.

[15] **Information at Issue –** The only information at issue in the records is the names of 10 BCLC Players who BCLC hosted at music concerts in 2012 (the "Player Names"). The Player Names are contained in a one-page expense breakdown sheet and five pages of hotel receipts.

Preliminary Matters

New issues raised by the applicant

[16] The applicant's submissions raise arguments relating to ss. 25 and 35 of FIPPA, which are not listed in the Notice of Inquiry. Section 25 overrides all of FIPPA's exceptions to disclosure, requiring a public body to disclose information if s. 25 applies. This provision applies to information that is about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or if disclosure is clearly in the public interest. Section 35 authorizes public bodies to disclose personal information for research purposes in certain circumstances. The applicant submits that the public has an interest in knowing how BCLC conducts its affairs, and whether it adheres to the principles it advertises about "Responsible Gaming". He also submits that the duty of a journalist who reports in the public interest is to conduct research.

[17] The applicant does not explain why he did not raise these issues prior to his submissions in this inquiry, or why he should be permitted to raise them now. In my view, it is inappropriate for the applicant to be able to raise these issues at this late stage. Moreover, in any event, it is clear that neither of these provisions apply in this case. For s. 25 to apply, the information must be of sufficient gravity to override all other provisions of FIPPA. The disclosure of the names of BCLC Players who attended music concerts at the expense of BCLC due to their gambling activity with BCLC does not fall into this category. For s. 35, this provision only authorizes – it does not require – public bodies to disclose personal information. Further, there is no evidence that the conditions required for s. 35 to apply have been met in this case.

Expert Evidence

[18] In support of its position regarding harm under s. 17, BCLC provided an affidavit from Paul Lauzon, Senior Vice President of Lottery and Gaming with Ipsos Reid, containing a report by Mr. Lauzon as an exhibit (the "Lauzon Report"). BCLC wants this report to be admitted as expert evidence. Further, while it does not expressly say so, I infer that BCLC is also seeking to have its Director of Product and Business Development for eGaming (the "Director") accepted as qualified to give expert evidence, since his evidence contains a number of opinions.

[19] As a general rule, witnesses may not give opinion evidence. They may only testify as to matters within their knowledge, observation or experience. Expert evidence is an exception to this general rule. Experts are allowed to provide opinions in regard to matters that are likely to be beyond the fact-finder's knowledge or experience.[4]

[20] Mr. Lauzon provided a similar expert report for the inquiry that resulted in Order F11-25,[5] although there are differences in the exact questions he was answering. In that order, the Commissioner determined that Mr. Lauzon's evidence was admissible, but not as "expert evidence" because he was providing an opinion on the precise matters the Commissioner was deciding. On judicial review of this order in *British Columbia Lottery Corp. v. Skelton* [*Skelton*], the Court determined that the report met the criteria for admissibility, and that it was an error that the report was not considered as expert evidence.[6]

[21] The Supreme Court of Canada set out a four-part test for when expert evidence is admissible in *R. v. Mohan* [*Mohan*], which is: (a) relevance; (b) necessity in assisting the trier of fact; (c) the absence of any exclusionary rule; and (d) a properly qualified expert.[7] In *R. v. Abbey* [*Abbey*],[8] the Ontario Court of Appeal suggested that the criteria for admission described in *Mohan* might be addressed by engaging in a two-step process that includes, first, an inquiry into the threshold requirements for the admissibility of the opinion evidence, and, thereafter, a cost-benefit analysis as part of the court's gatekeeper function. This process was summarized by the British Columbia Court of Appeal as follows:

> [72] Under the first step of the inquiry as structured in *Abbey,* the trial judge must conduct a "rules-based" analysis to assess compliance with certain "preconditions to admissibility". These preconditions are set out at para. 80:
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> * the proposed opinion must relate to a subject matter that is properly the subject of expert opinion evidence;
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> * the witness must be qualified to give the opinion;
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> * the proposed opinion must not run afoul of any exclusionary rule apart entirely from the expert opinion rule; and
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> * the proposed opinion must be logically relevant to a material issue.
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> ...
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> [76] The second step of the analysis as structured in *Abbey* consists of what Doherty J.A. termed "the 'gatekeeper' phase of the admissibility inquiry"

[4] *British Columbia Lottery Corp. v. Skelton*, 2013 BCSC 12 (CanLII) at para. 55.
[5] Order F11-25, 2011 BCIPC 31 (CanLII).
[6] *British Columbia Lottery Corp. v. Skelton*, 2013 BCSC 12 (CanLII).
[7] *R. v. Mohan*, [1994] 2 SCR 9, 1994 CanLII 80 (SCC).
[8] *R. v. Abbey*, 2009 ONCA 624.

> (para. 78). In this phase, the trial judge must exercise judicial discretion to determine whether the benefits associated with the evidence outweigh the costs. This determination involves consideration of necessity (para. 93), which is not the central issue here, but which requires that the expert opinion convey information "which is likely to be outside the experience and knowledge of a judge or jury" (*Mohan* at p. 23, citing *R. v. Abbey,* [1982] 2 S.C.R. 24).
>
> [77] The cost-benefit analysis also requires consideration of the legal relevance of the proposed evidence, meaning that its probative value must outweigh its prejudicial effect (*Mohan* at p. 20). As stated by Doherty J.A., "Evidence that is relevant in the sense that it is logically relevant to a fact in issue survives to the 'gatekeeper' phase where the probative value can be assessed as part of a holistic consideration of the costs and benefits associated with admitting the evidence" (*Abbey,* para. 84).[9]
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> [Underlining removed from original]

[22] In this case, the opinion evidence in the Director's affidavit and the Lauzon Report is admissible as "expert evidence" if it meets the above test. However, even if it does not meet this test, I may still admit it given the flexible rules of evidence in administrative proceedings.

[23] For the Lauzon Report, BCLC requested that Mr. Lauzon provide his opinions regarding the following questions:

> 1. Please provide your opinion as to whether BCLC has third-party competition for its online gaming operations at PlayNow.com, and, if so, please provide a general description of the third-party competitors, including the nature of their operations.
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> 2. Please provide your opinion as to whether the Player Names have or are reasonably likely to have monetary value and, if so, please explain:
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> (i) to whom the Player Names have or are reasonably likely to have monetary value; and
>
> (ii) why the Player Names have or are reasonably likely to have monetary value to the person(s) identified in (i) above.
>
> 3. If the BCLC has third-party competition for its online gaming operations at PlayNow.com, please provide your opinion as to whether the disclosure of the Player Names:
>
> a. could reasonably be expected to afford a competitive advantage to BCLC's competitor(s) and, if so, please detail the nature of the reasonably expected competitive advantage;

[9] *Bergen v. Guliker*, 2015 BCCA 283 at para. 116. citing *R. v. Aitken*, 2012 BCCA 134 at paras. 72, 76 and 77.

b. could otherwise reasonably be expected to harm the financial or economic interests of BCLC, and, if so, in what way and with what likely result; and

c. could reasonably be expected to otherwise benefit BCLC's competitors, and, if so, how.

[24] BCLC submits that the Lauzon Report is admissible. It submits that Mr. Lauzon is properly qualified to give the opinion, and there are no applicable exclusionary rules. It further submits that the report is necessary, and that it ought to be given significant weight when considering s. 17(1). It submits that the determinations required by s. 17(1) cannot be made in a contextual vacuum, and that the Commissioner needs some evidence of how the Player Names could be used and are valued by the online gaming industry.

[25] The applicant did not provide submissions regarding the admissibility of the Lauzon Report.

[26] Mr. Lauzon's resume is enclosed as part of the Lauzon Report. Based on this, I find that Mr. Lauzon has the knowledge and experience to give opinions with respect to online gaming.[10] I find that he is qualified to give the opinions contained in the report. Further, based on my review of materials in this inquiry, I find that the proposed opinions are relevant to a material issue in this inquiry (*i.e.* whether s. 17 of FIPPA applies to the Player Names). I also find that the proposed opinions relate to a subject matter that is properly the subject of expert opinion evidence, and that there is no exclusionary rule that would otherwise render it inadmissible apart from the expert opinion rule. I therefore find that the "preconditions to admissibility" as set out in *Abbey* have been met.

[27] The second step of the analysis considers the necessity of whether the opinion at issue conveys information that is likely to be outside of the expertise and knowledge of the trier of fact. It also requires consideration of the legal relevance of the proposed evidence, meaning that its probative value must outweigh its prejudicial effect.

[28] As stated in *Mohan*, there is an inherent concern that expert evidence not be permitted to usurp the functions of the trier of fact.[11] These concerns formed the basis of the rule that expert evidence regarding the ultimate issue is not admissible. Although the rule is no longer of general application, the concerns underlying it remain. In light of these concerns, "the criteria of relevance and necessity are applied strictly, on occasion, to exclude expert evidence as to an ultimate issue."[12]

[10] I also note that the Court previously determined in *Skelton* that Mr. Lauzon was a qualified expert for similar subject matter.
[11] *Mohan* at para. 24.
[12] *Mohan* at para. 25.

[29] The Lauzon Report contains a number of different opinions BCLC requested from Mr. Lauzon. In my view, some of these opinions relate to contextual information and an evidentiary foundation regarding the s. 17 issue in this inquiry, while others approach – or even directly opine about – the ultimate issue under s. 17.

[30] I agree with BCLC that the opinions provided as answers to questions 1 and 2 provide necessary and relevant evidence of how the Player Names could be used, and are valued, by the online gaming industry. I find that these opinions, as well as all of the factual information in the Lauzon Report, are admissible.

[31] However, the opinions provided as answers to questions 3(a) to (c) approach the ultimate issue in this inquiry of whether s. 17 of FIPPA applies. The opinions provided in response to questions 3(a) and (c) are closely tied to the ultimate issue, and the answer to 3(b) about whether disclosure of the Player Names could otherwise reasonably be expected to harm the financial or economic interests of BCLC is precisely the issue I am considering under s. 17 of FIPPA.

[32] In my view, there is no necessity to admit Mr. Lauzon's opinions about the ultimate issue, since I am able to draw my own conclusions from the surrounding facts and opinions about whether s. 17 applies. Further, in my view, there would be prejudice to the applicant from admitting these opinions that go to the ultimate issue, as wholly accepting the opinions would be determinative of this inquiry. Moreover, I have concerns about the accuracy and relevance of some of Mr. Lauzon's reasoning that he uses to support his opinion under 3(b). For example, after Mr. Lauzon gives his opinion that disclosure of the Player Names would financially harm BCLC in the first paragraph of his answer to 3(b), the reasoning for his opinion in the next paragraph states as follows:

> Ipsos Reid research has shown over the years that 65-75% of Internet gamers for money started out as for-fun gamers (66% among BC Internet gamers) (most recent data from the Canadian Gaming Association study noted above in this section). Further, data from the same study shows a fairly high level of loyalty to one gaming site; 65% of BC internet gamers play exclusively at only one site and 53% are actually registered with only one site. More recent data (Ipsos Reid I-Gaming National Study – Canada 2012) shows that significantly more BC Internet games (72% of BC Internet games) are actually registered with only one site, meaning a much higher level of loyalty. This demonstrates that once a 'grey' market competitor unfairly lures a PlayNow.com player away from BCLC, statistically speaking those customers are more likely going to remain with the 'grey' market

> competitor that lured them using unfair marketing tactics, strategies, promotions, and incentives.[13]

[33] In my view, factual statements in this paragraph do not persuasively support the conclusions in this paragraph, including because:

- Mr. Lauzon does not explain the causal connection (or even establish a correlation) between the statistics in the first half of the paragraph and his conclusions in the bottom of the paragraph. The statistics cited by Mr. Lauzon state that the percentage of BC gamblers who are only registered at one gambling website is increasing. However, a gambler who is lured from one gambling site to another would, presumably, usually then be registered with two gambling websites (even if they were only exclusively playing at one site at a time). The Lauzon Report does not explain, and it is not apparent to me, how an increase in the percentage of BC gamblers who are only registered with one gambling site is correlated with the likelihood that a lured player (who it seems would therefore likely be registered on at least two gambling websites) will only gamble on the new website.

- The first study that Mr. Lauzon references is a January 2010 study,[14] while the second study is a 2012 study. However, the Lauzon Report never mentions or discusses how these study results are impacted by the fact that BCLC opened its online casino games on PlayNow.com in July 2010 and its peer-to-peer online poker on PlayNow.com in February 2011.[15] Absent an explanation from Mr. Lauzon, it would stand to reason that the increase in BC gamblers that are only registered with one site may be attributable to new gamblers entering the marketplace to make use of the new services BCLC was offering (particularly since PlayNow.com is the only legally authorized online casino and poker room in BC, and some gamblers may only want to gamble using a legal website).

[34] Even if I were to admit Mr. Lauzon's opinions regarding the ultimate issue, I would give them little weight because I have concerns about the reliability of the reasoning that forms the basis for Mr. Lauzon's opinion for question 3(b).

[35] After considering the cost-benefit of the opinions in the Lauzon Report, including necessity and prejudice to the applicant, I find that the opinions that go directly to the ultimate issue in this inquiry are inadmissible. There are also some opinions that do not go directly to the ultimate issue that I find are admissible,

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[13] Laurzon report at p. 6 and 7.
[14] Laurzon report at p. 5.
[15] Affidavit of the Director at paras. 12 and 13. Further, I note that Mr. Lauzon neither provides copies of the studies, nor explains the methodology of the studies or their results in detail.

although I accord them little weight because Mr. Lauzon does not provide a factual foundation that supports the opinion.

[36] For the Director, I am satisfied that he is qualified to give the opinions he gives in his affidavit (which relate to the eGaming industry). He has a Bachelor of Commerce from the University of British Columbia, he has worked in a variety of business development roles (including the financial services, e-commerce and technology industries), and he started working for BCLC in 2006 in the position of Business Development Manager. His current job duties include the oversight of all product, business development and marketing activities for PlayNow.com. Further, I find that the Director's opinions are logically relevant to the issues before me, and that they do not run afoul of any exclusionary rule. Further, for most of the Director's opinions, I find that their probative value outweighs their prejudicial effect. The exceptions to this are those opinions that go to the ultimate issue that is before me. The admissibility of these opinions is prejudicial to the applicant, and they are not necessary for me to determine the issues in this inquiry. I therefore find that the Director's opinions contained in his affidavit are admissible in this inquiry, except for those opinions that go to the ultimate issue.

Section 17

[37] Section 17 relates to disclosure harmful to the financial or economic interest of a public body. It states in part:

> **17**(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:
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> (a) trade secrets of a public body or the government of British Columbia;
>
> (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
>
> …
>
> (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
>
> …

[38] The issue under s. 17 is whether disclosure "could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the

economy". Sections 17(1)(a) to (f) are examples of this harm, but disclosing information that does not fit into these enumerated examples may still constitute harm under s. 17(1). As for how to interpret ss. 17(1)(a) to (f), former Commissioner Loukidelis stated in Order F08-22 that:

> The intent and meaning of the listed examples are interpreted in relation to the opening words of s. 17(1), which, together with the listed examples, are interpreted in light of the purposes in s. 2(1) and the context of the statute as a whole.[16]

[39] The standard of proof for s. 17 is whether disclosure could reasonably be expected to result in the specified harm. The Supreme Court of Canada has described this standard as requiring a reasonable expectation of probable harm from disclosure of the information.[17] It is a middle ground between what is probable and that which is merely possible. A public body must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach this standard. The determination of whether the standard of proof has been met is contextual, and the quantity and quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and the "inherent probabilities or improbabilities or the seriousness of the allegations or consequences".[18]

Positions of the Parties

[40] BCLC relies on s. 17(1) generally, as well as subparagraphs 17(1)(a), (b) and (d). It submits that disclosure of the Player Names can reasonably be expected to be detrimental to BCLC's position in the online gaming market (*i.e.* a loss of customers to grey market competitors), and that the result of this would be an associated economic loss (*i.e.* a loss of gaming revenues).

[41] The applicant quotes orders from this and other jurisdictions about how to interpret s. 17, but he does not explain how the jurisprudence he cites applies in this case. I have considered the cases referred to by the applicant and applied those principles where appropriate. Further, a significant portion of the applicant's submissions are related to information about problem gamblers, and his concerns that BCLC does not have appropriate marketing practices. The applicant submits that while gambling is a source of revenue that benefits the province's coffers, it is also a cost to society from a health and safety standpoint. The applicant does not directly tie his arguments to s. 17, but I will consider them in this context. The applicant does not address BCLC's argument

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[16] Order F08-22, 2008 CanLII 70316 (BC IPC) at para. 43.
[17] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.
[18] *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3 at para 94 citing *F.H. v. McDougall*, 2008 SCC 53, at para. 40.

that disclosure of the Player Names will result in BCLC losing customers and harm BCLC's revenues.

Analysis

[42] BCLC's primary submission regarding harm under s. 17 is fairly straightforward. It submits that disclosure of the Player Names will result in BCLC's competitors directly targeting the BCLC Players, which may result in BCLC losing those customers to competitors. This would result in a loss to BCLC because it would not continue to make a profit from those customers. This argument is clearly tied to BCLC's revenues and competitive position. Given this clear connection to the ultimate issue under s. 17(1) about whether disclosure of the Player Names could reasonably be expected to harm the financial or economic interests of BCLC, I will address this argument without specifically discussing the enumerated examples in subparagraphs 17(1)(a) to (f).

[43] BCLC provided the Lauzon Report and affidavit evidence from the Director in support of its position that s. 17 applies. While addressing the admissibility of the Lauzon Report, I was somewhat critical of portions of the report, particularly as Mr. Lauzon's opinions approached the ultimate issue. I determined that Mr. Lauzon's opinion as to the ultimate issue is inadmissible, and that I would give little weight to some of his other opinions. However, there are other facts and opinions in the Lauzon Report to which I attribute significant weight. The evidence adduced by BCLC includes the following:

- In 2010, the online gambling market in British Columbia was estimated to be $100 million.

- According to a 2012 Ipsos Reid study, BCLC holds 21.7% of the marketshare with respect to wagers placed by BC Internet games on all Internet gaming sites available to BC residents, including legal and grey market sites. This means that 78.3% of the marketshare belongs to third party competitive grey market sites.

- BCLC generates significant revenues from its eGaming (PlayNow.com). Further, the Director provided *in camera* evidence about the amount of revenue it has received from the BCLC Players from their PlayNow.com gaming transactions.[19]

- Online gaming is a very competitive industry. Acquiring players requires substantial investment. It is also a common gambling industry standard for operators to offer promotional incentives to their premium customers,

[19] BCLC calculated revenues as the total wagers placed by the BCLC Players minus the total prizes and promotions paid to them.

both as a reward and as an incentive to play and spend more with the operator.

- Grey market gambling sites have player acquisition strategies involving activities such as advertising (online and offline), sponsorships, database mining, etc.

- There is a prohibition in Canada on grey market gambling sites advertising about gambling for money. However, the majority of grey market sites also offer some form of "free" gameplay, usually on a ".net" site. These websites use those "free" games to circumvent the restriction against advertising gambling for money. Once the consumer arrives at the ".net" website to play the "free" game, they are invited to play a variety of gambling games for money.

- An example of BCLC's grey market competition is the grey market operator Bodog's sponsorship of the Canadian Football League ("CFL") in 2011. BCLC sponsored the November 2011 Grey Cup game in Vancouver, but it was unable to secure advertising space inside BC Place Stadium during the game because the CFL controlled the on-field advertising and Bodog sponsored the CFL.

- The Lauzon Report provides evidence of websites specifically targeting BC residents, and that these websites attempt to discourage gamblers from using the BCLC PlayNow.com site. One of the ways they do this is by stating that alternative sites offer higher gaming bonuses.

- Grey market competitors may offer more lucrative bonus offers to gamblers than BCLC because they are not bound by any type of regulatory parameters like BCLC is.

- If the Player Names are disclosed, it will enable grey market sites to target the BCLC Players. Even if only the Player Names are disclosed, grey market competitors could likely connect the names to contact information.

- According to the Lauzon Report, if the Player Names are disclosed, grey market competitors could tightly narrow their targeted communications to directly reach the players with various promotions. With the types of generous sign-up promotions these sites tend to offer, there is a significant risk that these players would transition from BCLC to whichever site offered the most appealing sign-up offer, odds, and player retention program. If a BCLC Player did sign up with an alternative site, they would be less likely to wager with BCLC.

- The Director believes that the risk of the grey market competitors using promotional offers to target the BCLC Players is significantly heightened

by the fact there are only a limited number of gamblers whose names would be disclosed (10 players). In his opinion, the risk that a customer will decide to sign up for a competitor's site increases as the value of the promotional offer increases. Since any competitive promotional offer targeted to the BCLC Players would be restricted to a very small number of recipients, grey market operators would be able to offer the BCLC Players promotions well beyond what may otherwise be offered in a promotion that was distributed more widely.

- Mr. Lauzon opines that if the names of the BCLC Players are publicly disclosed, some people may not want to use BCLC's services out of fear that their names could also be publicly disclosed.

[44] In my view, the cumulative effect of the evidence above is compelling with respect to the likelihood of financial harm to BCLC from disclosure of the Player Names. Based on the evidence before me, it is clear that the BCLC Players are individuals who are particularly important to BCLC's revenue and therefore profitability. I find that it is reasonably likely that grey market competitors will attempt to target the BCLC Players using aggressive financial promotional incentives if the Player Names are disclosed. I further find that there is a reasonable expectation that this could result in at least some of the BCLC Players signing up with a BCLC competitor, which would be to the detriment of BCLC revenues. I therefore find that disclosure of the Player Names could reasonably be expected to harm the financial or economic interests of BCLC. I note in making my finding that the applicant's submission that there is a cost to society from a health and safety standpoint from problem gamblers does not impact whether disclosure of the Player Names in this case could reasonably be expected to harm the financial or economic interests of BCLC. I therefore find that s. 17(1) applies to the Player Name information.

[45] Since I have determined that BCLC is authorized to withhold the Player Names under s. 17, I do not need to consider whether s. 22 applies.

CONCLUSION

[46] For the reasons given above, under s. 58 of FIPPA, I order that BCLC is authorized to refuse to disclose the Player Names under s. 17 of FIPPA.

August 21, 2015

ORIGINAL SIGNED BY

Ross Alexander, Adjudicator