

No. S-006985
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 (as amended)

And in the matter of the *Freedom of Information and Protection of Privacy Act*,
R.S.B.C. 1996, c.165 (as amended)

And in the matter of Order F09-13 of the Delegate of the
Information and Privacy Commissioner for British Columbia

BETWEEN:

INTRANSIT BC LIMITED PARTNERSHIP, BY ITS GENERAL PARTNER
INTRANSIT BRITISH COLUMBIA GP LTD.

PETITIONER

AND:

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER FOR
BRITISH COLUMBIA, CANADA LINE RAPID TRANSIT INC., SNC-
LAVALIN INC., and A. CAMERON WARD

RESPONDENTS

PETITION TO THE COURT

THIS IS THE PETITION OF:

**InTransit BC Limited Partnership, by its General Partner
InTransit British Columbia GP Ltd.**
2800 Park Place, 666 Burrard Street
Vancouver, British Columbia V6C 2Z7

ON NOTICE TO:

Office of the Information and Privacy Commissioner for British Columbia
3rd Floor, 756 Fort Street
Victoria, British Columbia V8W 1H2

Canada Line Rapid Transit Inc.
1650 - 409 Granville St.
Vancouver, BC V6C 1T2

SNC-Lavalin Inc.
1800 - 1075 W. Georgia St.
Vancouver, BC V6E 3C9

A. Cameron Ward
The Dominion Building
1106-207 West Hastings Street
Vancouver, BC V6B 1H7

Let all persons whose interests may be affected by the order sought TAKE NOTICE that the petitioner applies to court for the relief set out in this petition.

APPEARANCE REQUIRED

IF YOU WISH TO BE NOTIFIED of any further proceedings, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court within the Time for Appearance and YOU MUST ALSO DELIVER a copy of the "Appearance" to the petitioner's address for delivery, which is set out in this petition.

YOU OR YOUR SOLICITOR may file the "Appearance". You may obtain a form of "Appearance" at the registry.

IF YOU FAIL to file the "Appearance" within the proper Time for Appearance, the petitioner may continue this application without further notice.

TIME FOR APPEARANCE

Where this petition is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

Where this petition is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the application, you must, on or before the 8th day after you have entered an appearance,

- (a) deliver to the petitioner
 - (i) 2 copies of a response in Form 124, and
 - (ii) 2 copies of each affidavit on which you intend to rely at the hearing, and

- (b) deliver to every other party of record
 - (i) one copy of a response in Form 124, and
 - (ii) one copy of each affidavit on which you intend to rely at the hearing.

1. The address of the registry is: 800 Smithe Street Vancouver, BC V6Z 2E1
2. The ADDRESS FOR DELIVERY is: Tamara Hunter DAVIS LLP Barristers & Solicitors 2800 Park Place 666 Burrard Street Vancouver, BC V6C 2Z7 Fax number for delivery: 604.687.1612
3. The name and office address of the Petitioner's solicitor is as set out in the address for delivery above.

The Petitioner applies for:

- 1. (a) An order in the nature of *certiorari* quashing the August 11, 2009 decision of the adjudicator acting as the delegate of the Information and Privacy Commissioner for British Columbia, identified as Order F09-13, insofar as Order F09-13 would require disclosure of Schedule 16 to the Concession Agreement and a numerical figure contained in the definition of "Threshold Equity IRR" in the Concession Agreement, as further described in paragraph 2 of the statement of facts contained in this Petition;
- (b) In the alternative, an order directing the adjudicator to reconsider the decision in Order F09-13 as it pertains to the items described in paragraph 1(a) above;
- 2. Costs; and
- 3. Such other relief as this Honourable Court may deem just and appropriate in the circumstances.

The Petitioner will rely on

1. The *Judicial Review Procedure Act* RSBC 1996, c. 241, as amended;
2. The *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, as amended;
3. Rules 1, 10, 44, 51A and other rules of the Supreme Court Rules.

At the hearing of this Petition will be read the Affidavit of Jean-Marc Arbaud, sworn September 23rd, 2009, a copy of which is served herewith and such other information and materials as counsel may advise.

THE FACTS UPON WHICH THIS PETITION IS BASED ARE AS FOLLOWS:

1. The Respondent, Mr. Ward, made a request to the Respondent Canada Line Rapid Transit Inc. ("Canada Line") under the *Freedom of Information and Protection of Privacy Act* ("FOIPPA") on or about July 29, 2005 for a copy of the "final project agreement (or Concession Agreement) dated on or about July 29th, 2005 in respect of the Canada Line Rapid Transit System (formerly known as RAVCO)".
2. Canada Line asked the Petitioner InTransit BC Limited Partnership, by its General Partner InTransit British Columbia GP Ltd. ("InTransit Ltd.") to indicate whether it consented to disclosure of the Concession Agreement under FOIPPA. InTransit Ltd. opposed disclosure of the entire Concession Agreement under FOIPPA and requested that certain portions of the Concession Agreement be severed prior to disclosure. Among the provisions of the Concession Agreement that InTransit Ltd. asked Canada Line to sever prior to disclosure under FOIPPA, was Schedule 16 to the Concession Agreement (the Financial Model), and a numerical figure which was contained in the definition of "Threshold Equity IRR" in the Amended and Restated RAV Concession Agreement.
3. Canada Line severed, among other things, Schedule 16 and the numerical figure contained in the definition of "Threshold Equity IRR" (as described in paragraph 2 above) before releasing the Amended and Restated RAV Concession Agreement to Mr. Ward.
4. Mr. Ward then requested that the Office of the Information and Privacy Commissioner review Canada Line's decision to, among other things, sever Schedule 16 and the numerical figure contained in the definition of "Threshold Equity IRR" from the Amended and Restated RAV Concession Agreement, ("Request for Review").
5. InTransit Ltd., Canada Line, SNC-Lavalin Inc. and Mr. Ward each provided submissions and, in some instances, affidavits to the Office of the Information and Privacy Commissioner ("OIPC") in relation to Mr. Ward's Request for Review.
6. InTransit Ltd. provided to the OIPC affidavits sworn by Jean-Marc Arbaud, President and Chief Executive Officer of InTransit Ltd., and from D. B. Buchanan, legal counsel with

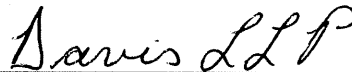
Davis LLP, in support of its submissions that, among other things, Schedule 16 and the numerical figure contained in the definition of "Threshold Equity IRR" should be excepted from disclosure under Section 21 of *FOIPPA* which provides an exception for third party business information. These affidavits addressed, among other things, the confidential nature of those items and the risk of significant harm which could arise if those items were disclosed under *FOIPPA*.

7. On August 11th, 2009, an adjudicator with the Office of the Information and Privacy Commissioner issued Order F09-13 requiring Canada Line to give Mr. Ward access to all of the information Canada Line withheld from Mr. Ward under the *FOIPPA* exceptions.

The Petitioner estimates that the application will take one day.

September 23, 2009

Date



Davis LLP (Tamara Hunter)
Solicitors for the Petitioner

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COMMISSIONER FOR BRITISH COLUMBIA, CANADA
LINE RAPID TRANSIT INC., SNC-LAVALIN INC., and A.
CAMERON WARD

RESPONDENTS

PETITION TO THE COURT

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666 Burrard Street
Vancouver, BC V6C 2Z7

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File No. 66053-000015
Davis:5464715.2

KES/kes