

From: MacKenzie, Neil AG:EX
To: Mueller, Linda GCPE:EX;
Subject: Re: Questions_Special Prosecution
Date: Wednesday, May 5, 2010 9:50:14 AM

Hi Linda,

I don't want to speculate about whether Mr Robertson might face any kind of Law Society sanctions.

CJB when first discussing retaining a special with the lawyer asks the lawyer to confirm there is no conflict. We confirm in the written appointment letter that the lawyer is not aware of any conflicts that would preclude them taking the file. CJB has no way of knowing the extensive relationships, generally confidential, which a law firm may have in the community, so CJB relies on counsel to identify any potential conflicts.

Going into a meeting...all I have time to say right now.

Neil

From: Mueller, Linda PAB:EX
To: MacKenzie, Neil AG:EX
Sent: Wed May 05 09:37:19 2010
Subject: Questions_Special Prosecution

Neil, I'd appreciate your thoughts on the following in case it comes up in QP this afternoon:

1. Does Robertson face possible disciplinary procedures by the Law Society of B.C. for not revealing the conflict of interest?
2. Does CJB's appointment process for special prosecutors require that they reveal conflicts of interests (such as specifying this in a contract issued to engage their services) or is it considered a special prosecutor's obligation as a licensed professional to divulge this on their own?
3. Will CJB do anything differently in future to prevent a reoccurrence or is this considered an isolated event?
4. Will the new special prosecutor decide whether or not to re-examine any evidence related to Heed or will CJB direct that to occur?

5. How will this impact the charges laid against the three individuals or will the new special prosecutor decide that?

From: MacKenzie, Neil AG:EX
To: Mueller, Linda GCPE:EX;
Subject: RE: News_Heed Special Prosecution
Date: Monday, May 10, 2010 5:19:37 PM

Well in regard to number 6, we have already made it clear that Mr. Robertson was not known by CJB to be a major contributor to the Heed campaign. We did not learn that at CJB until last Tuesday, and it does not appear to have been particularly well known elsewhere prior to that.

With respect to number 7, that is a question for the RCMP, and I believe they already answered it last week.

Neil

From: Mueller, Linda PAB:EX
Sent: Monday, May 10, 2010 5:05 PM
To: MacKenzie, Neil AG:EX
Subject: News_Heed Special Prosecution

Note questions 6 and 7 below. Will CJB be responding if other media followup?

The Tyee, Page , 10-May-2010

Seven Big Questions for Heed Campaign Case

By Bill Tieleman

"There is a cloud over the report." -- B.C. Attorney General Mike de Jong

While much national laughter has been rightly directed at the sight of a hapless Premier Gordon Campbell popping ex-Solicitor General Kash Heed out and in and out of cabinet like a clock cuckoo, serious questions remain unanswered about allegations of political fraud.

The strange tale of Chief Kash and Mr. Heed is far from a cold case, with even the legitimacy of the MLA for Vancouver-Fraserview's

election in doubt.

The appointment Friday of veteran lawyer Peter Wilson as the new Special Prosecutor to replace Terry Robertson, the man who "cleared" Heed of any possible involvement in political dirty tricks that resulted in both criminal and Election Act charges against B.C. Liberal Party campaign officials is just a start.

Robertson resigned as Special Prosecutor shortly after giving Heed a glowing all-clear while recommending that his campaign manager Barinder Sall, financial agent Satpal Johl and supporter and mailing house owner Dinesh Khanna be charged with multiple alleged offences.

Sall and Khanna both face Criminal Code obstruction of justice charges and all three are charged with Election Act violations for their parts in allegedly distributing a vicious and untrue anti-New Democratic Party flyer aimed at the riding's substantial Chinese-Canadian community that was both unauthorized and not included in Heed's campaign financing.

The result could be not only jail time and fines, but Heed losing his seat and a by-election ordered, regardless of Heed's repeated statements that he neither knew of nor was at all involved in the Chinese-language mailer.

If it is found that the flyer was indeed sent by the campaign and the cost pushes campaign spending over the legal limit, Heed's election could be tossed out.

Much more to learn

But as troubling a situation as it already is, there's much more to learn as a police investigation continues.

Here are some of the questions that need to get answered.

1. Mailings mystery. The same flyer was mailed into two other ridings with sizeable numbers of Chinese-Canadian voters -- Vancouver-Kensington and Vancouver-Kingsway. Who was responsible for those mailings and will more charges be laid?

2. Sall's job. Barinder Sall has been described as "campaign manager" for Kash Heed. But did he also have any other roles in the B.C. Liberal election campaign in other east side ridings or centrally?

3. Nailing down numbers. The Heed campaign revised downward its election expenditures report to Elections BC from an original amount of \$63,203 to a lower \$60,762 -- almost \$10,000 below the \$70,000 spending limit. Why?

4. Liberal early response. The virulent anti-NDP flyer targeting its Vancouver-Fraserview candidate Gabriel Yiu became a news story in early May 2009, just days before the May 15 election. Did the B.C. Liberal Party take immediate steps to investigate the mailing? What were they?

5. Campbell's steps. When did Premier Gordon Campbell learn of this mailing and what steps did he take to investigate it before the original appointment of Kash Heed as Solicitor General -- B.C.'s top cop?

6. Robertson's OK. Why was Robertson, a known major contributor to Heed's personal campaign, still appointed as Special Prosecutor to investigate alleged electoral fraud by key staff in that campaign?

7. RCMP's response. Why was Robertson able to dismiss direct RCMP questions about his apparent conflict of interest in making a \$1,000 donation to Heed's campaign and continue on to "exonerate" Heed?

Once again British Columbia is rocked with allegations of political corruption and once again there are significant mysteries and serious consequences for those involved.

From: Groot, Jeff GCPE:EX
To: Harrison, Sarah PSA:EX; Rud, Jeff GCPE:EX; Gordon, Matt GCPE:EX;
cc: Mueller, Linda GCPE:EX; Townsend, Dave H GCPE:EX;
Subject: RE: Elex BC will hold Heed press conference tomorrow
Date: Wednesday, November 16, 2011 3:09:03 PM

Thx!

From: Harrison, Sarah GCPE:EX
Sent: Wednesday, November 16, 2011 3:08 PM
To: Groot, Jeff GCPE:EX; Rud, Jeff GCPE:EX; Gordon, Matt GCPE:EX
Cc: Mueller, Linda GCPE:EX; Townsend, Dave H GCPE:EX
Subject: Elex BC will hold Heed press conference tomorrow

Heads up

From: Mueller, Linda GCPE:EX
Sent: Wednesday, November 16, 2011 3:03 PM
To: Reimer, Neil AG:EX
Cc: Harrison, Sarah GCPE:EX; Townsend, Dave H GCPE:EX
Subject: FW: Elex BC will hold Heed press conference tomorrow

News conference tomorrow by Elections BC on most recent allegations.

CBC Online
Smart tweet
16-Nov-2011 14:40

Elections BC holding news conference tomorrow regarding Kash Heed election financing complaints. [agmc]

ADVICE TO MINISTER

CONFIDENTIAL ISSUES NOTE

Ministry: Attorney General

Date: Oct. 28, 2011

Minister Responsible: Shirley Bond

Guilty pleas in Barinder Sall and Dinesh Khanna Case

ADVICE AND RECOMMENDED RESPONSE:

- **After a lengthy police investigation, a special prosecutor was appointed, independent of government, by the head of the province's criminal justice branch.**
- **The special prosecutor conducted a thorough review of the available evidence and on Friday, Mr. Sall and Mr. Khanna pled guilty to Election Act offences.**
- **If Mr Sall has new evidence to provide, then he should give that evidence to police.**

KEY FACTS REGARDING THE ISSUE:

- Barinder Sall and Dinesh Khanna pled guilty to Election Act charges Oct. 28 in B.C. Provincial Court stemming from an investigation into possible offences alleged to have occurred in relation to the May 2009 provincial general election campaign of Vancouver Fraserview MLA Kash Heed.
- Sall was fined \$15,000, given a year's probation and ordered to perform 200 hours of community service.
- Khanna was fined \$6,000 and given three months probation and 50 hours of community service.
- Following sentencing, Sall told media he was aware of another \$40,000 in unreported election campaign expenses and said other individuals had not taken responsibility for their role in failing to report the expenses.
- Special prosecutor Peter Wilson approved charges against Sall and Khanna in April 2011 for alleged obstruction of the investigations.
 - Sall was charged with seven counts under the Election Act and three under the Criminal Code. He pled guilty to six of the Election Act counts Oct. 28. The Criminal Code charges did not proceed.
 - Khanna was charged with three counts under the Election Act and one under the Criminal Code. He pled guilty to the three Election Act counts Oct. 28. The Criminal Code charge did not proceed.
 - No charges were approved against Kash Heed or Satpal Johl.

- The investigation was initially conducted by Elections BC then handed over to the RCMP. The investigation centred on the production and distribution of three election pamphlets, on the election financing report and on certain payments made by Heed to former campaign staffers.
- Sall was Heed's official agent during the campaign. Khanna was the owner of North American Mailing Services Ltd, which distributed campaign pamphlets.

Chronology

- **Oct. 28, 2011:** Sall and Khanna plead guilty to Election Act charges.
- **April 2, 2011:** Wilson approves charges against Barinder Sall and Dinesh Khanna under the Election Act and the Criminal Code.
- **May 7, 2010:** Peter Wilson, QC, is appointed special prosecutor.
- **May 4, 2010:** Robertson resigns as special prosecutor after confirming his law firm (Harper Grey) donated to Heed's 2009 election campaign.
- **May 3, 2010:** Robertson approves charges three charges under the Election Act and three charges under the Criminal Code against Barinder Sall; three charges under the Election Act and two charges under the Criminal Code against Dinesh Khanna; and a single count under the Election Act against Satpal Johl. No charges were approved against Heed.
- **April 9, 2010:** CJB announces Robertson's appointment.
- **Jan. 12, 2010:** Special prosecutor Terrance Robertson, QC, is appointed in connection with a police investigation into possible offences involving the campaign office of former Solicitor General Kash Heed.

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Communications Contact: Sherri Patterson 7-8102
 Program Area Contact: Neil MacKenzie 7-5169
 File Created: Oct. 28, 2011
 File Updated: Oct. 29, 2011
 File Location: J:\2011\OPERATIONS\Issues
 Management\MAG - FINAL INs\Criminal
 Justice\IN_Sall case_10 28 11 (FINAL).docx

Minister's Office	Program Area	Deputy	Comm. Dir
Update to MO Oct. 29	N. MacKenzie Oct. 29		L. Mueller Oct. 29 S. Harrison Oct. 28

ADVICE TO MINISTER

CONFIDENTIAL ISSUES NOTE

Ministry: Attorney General

Date: April 18, 2011

Minister Responsible: Barry Penner

Heed Special Prosecution

ADVICE AND RECOMMENDED RESPONSE:

- The special prosecutor has completed his review of the matter.
- His decision not to approve any charges against Mr. Heed is based on his independent assessment of the investigative report.
- I will respect his decision.
- Charges have been approved against other individuals and it would not be appropriate for me to discuss the matter while those charges remain before the court.

KEY FACTS REGARDING THE ISSUE:

- A second special prosecutor reviewing allegations of election irregularities against Vancouver-Fraserview MLA Kash Heed has concluded there is insufficient evidence for criminal charges.
- The first prosecutor, Terry Robertson, stepped down after advising the ministry his employer had donated to Heed's election campaign.
- The second prosecutor found no fault with Robertson's charge assessment review, but increased the number of charges due to new investigative information.
- The decision not to charge Heed, announced April 8/11, relates to three allegations:
 1. That Heed was involved in the production of election pamphlets. The pamphlets commented on the NDP's platform and were directed at Chinese voters in Vancouver-Fraserview.
 2. That he knew of or was involved in filing a false election financing report, a violation of Sec. 266 of the Election Act.
 3. That he knowingly, following the 2009 general election, made \$6,000 in payments to campaign staff Barinder Sall and Sameer Ismail for election-related purposes.
- Special prosecutor Peter Wilson found there was no reliable, independent evidence the MLA was involved in, knew of or, with due diligence, could have been aware of the alleged violations.
- Heed also faces a court challenge by Elections BC, seeking to remove him from elected office for exceeding a \$70,000 spending limit for elections expenses by \$4,135.70 and not filing a new, accurate financial disclosure document. Heed is seeking a court order absolving him of responsibility on the basis he has no way to compel his financial agent to file the disclosure or to do it himself.

BENEFITS FROM POSITION TAKEN:

- Supports the independence of the criminal justice branch.

STRATEGIC LINKAGES:

- SUPPORTS THE INDEPENDENCE OF THE CRIMINAL JUSTICE BRANCH.

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Communications Contact: Linda M. Mueller 7-4961
 Program Area Contact: Neil MacKenzie 7-5961
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 File Location: J:\2011\OPERATIONS\Issues
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 Justice\IN_Heed Special Prosecution_April 18
 11_draft.doc

Minister's Office	Program Area	Deputy	Comm. Dir
To MO April 18	N. MacKenzie April 18		L. Mueller April 18 S. Harrison April 18

ADDITIONAL BACKGROUND:

- Ten counts were laid April 8/11 against campaign staffer Barinder Sall – seven under B.C.'s Election Act and three criminal charges.
 - The criminal charges include two counts under Sec. 139 (2) for allegedly obstructing RCMP by providing investigators with a fabricated story and one under Sec. 366 (1) (b) for forging a false document.
- Two counts under the Election Act and one under Sec. 139 (2) of the Criminal Code were laid against publisher Dinesh Khanna for allegedly obstructing RCMP and Elections BC by telling a false story. One count was laid under the Elections Act for publishing elections material without identifying the sponsor.
- An Election Act charge against campaign financial agent campaign financial agent Satpal Johl for not properly declaring all campaign expenses was stayed.

ADVICE TO MINISTER

CONFIDENTIAL ISSUES NOTE

Ministry: Attorney General
Updated: May 5, 2010

Minister Responsible: Michael de Jong, QC

Special Prosecutor Conflict of Interest

ADVICE AND RECOMMENDED RESPONSE:

- This is a disturbing matter that I understand the Law Society will be looking into.
- The Law Society is responsible for disciplinary action against lawyers and I will leave it to them to reach their own conclusions based on their investigation.
- The criminal justice branch relies on legal counsel to identify potential conflicts of interest before they discuss a case involving a special prosecution.
- The written letter of appointment from the criminal branch confirms the lawyer is not aware of any conflicts that would preclude them from taking the file.
- It is impractical to expect the criminal justice branch to know the extensive relationships, generally confidential, law firms have in the community.

KEY FACTS REGARDING THE ISSUE:

- Speculation has arisen about whether Criminal Code and Election Act charges special prosecutor Terry Robertson laid May 3/10 against three individuals who worked on former Solicitor General Kash Heed's 2009 election campaign will stand up in court.
- Heed resigned as solicitor general for a second time after Robertson advised the criminal justice branch May 4/10 his legal firm, Harper Grey, donated \$1,000 to the MLA's election campaign.
- Robertson cleared Heed of any involvement in the allegations May 3/10. His resignation letter said there was "inadequate evidence" against the MLA to ensure a sufficient likelihood of a conviction.
- Robertson laid the charges against the other parties after reviewing a report to Crown counsel into allegations two campaign workers and a third party produced and/or distributed 2009 campaign materials that violated the Election Act.
- The criminal justice branch asks lawyers to confirm they have no conflicts of interest when first discussing retention of a lawyer as a special prosecutor. The written appointment letter from the branch states the lawyer is not aware of any conflicts that would preclude them taking the file.

BENEFITS FROM POSITION TAKEN:

- Upholds the criminal justice branch's independence.

STRATEGIC LINKAGES:

- MINISTRY SERVICE PLAN: THE BEST JUSTICE SYSTEM IN CANADA.

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Minister's Office	Program Area	Deputy	Comm. Dir
To MO May 5	To N. Mackenzie May 5		L. Mueller May 5 To S. Robins May 5