

IN THE MATTER OF THE INQUIRY

between

AN APPLICANT

and

**THE MINISTRY OF HEALTH
(Public Body)**

AFFIDAVIT

I, Stacy Johnson, 617 Government Street, Victoria, British Columbia, SWEAR AS FOLLOWS:

1. I have personal knowledge of the matters in this affidavit, except where they are stated to be based on information and belief, in which case I believe them to be true.
2. I am a Senior Investigator in the Investigation and Forensic Unit, Office of the Comptroller General, Ministry of Finance.
3. As delegated under the mandate of the Comptroller General, I conduct or otherwise assist in the investigation of alleged or suspected financial improprieties.
4. I have a Bachelor of Arts in Economics from Simon Fraser University and hold the following professional degrees, certifications and memberships:
 - Certified General Accountant, Certified General Accountants Association
 - Certified Fraud Examiner, Association of Certified Fraud Examiners
 - Certified Internal Auditor, Institute of Internal Auditors
 - Advanced Speciality Certificate in Forensic and Investigative Accounting (with distinction), British Columbia Institute of Technology
 - Member, Information Systems Audit and Control Association (ISACA).
5. Investigations conducted by the Investigation and Forensic Unit of the Office of the Comptroller General (“OCG”) must strive to comply with generally accepted standards of investigation, including the seeking and reviewing of original documents; and seeking multiple sources of documents for verification purposes.
6. In addition, as Certified Fraud Examiners, members of the Investigation and Forensic Unit are required to demonstrate professional care and competency in the conduct of an investigation which includes the gathering of relevant evidence, preservation of such evidence and ensuring our conclusions are supported by the facts. More specifically, we must meet the due diligence standards set by the Association of Certified Fraud

Examiners. To do so, we must strive to obtain evidence that is complete, reliable and relevant. At the end of the day, the Investigation and Forensic Unit's objective is to confirm or refute the allegations.

The Ministry of Health Investigation

7. In March 2012, the Office of the Auditor General ("OAG") was advised of several serious concerns regarding the Pharmaceutical Services Division ("PSD") of the Ministry of Health ("MOH"). The concerns included inappropriate data access; intellectual property infringement; standard of conduct violations; inappropriate procurement practices; and contracting irregularities including suspected conflicts of interest. The OAG advised the MOH regarding this matter.
8. In 2012 the MOH commenced an internal investigation into concerns that employees and/or service providers were accessing personal health information inappropriately and engaging in contracting irregularities (the "MOH Investigation").
9. I am advised by John Tuck, Barrister and Solicitor, and I believe it to be true that three responses by MOH in relation to three requests under the *Freedom of Information and Protection of Privacy Act* (the "Act") are being reviewed by the Information and Privacy Commissioner for British Columbia (the "Reviews").
10. I am advised by Wendy Taylor, the lead MOH investigator, and I believe it to be true that the Reviews relate to records created or acquired for the purposes of the MOH Investigation (the "Records").

The Office of the Comptroller General Investigation

11. On or about May 2012, MOH advised the OCG that it had commenced an internal investigation regarding several serious concerns involving the PSD of the MOH. Based on the results of a preliminary assessment of the allegations, the MOH requested that the OCG examine suspected financial improprieties in the procurement and contracting practices of the PSD.
12. (*In Camera*) This request was consistent with the Comptroller General's statutory responsibilities; under section 9(e) of the *Financial Administration Act* the Comptroller General must evaluate financial management throughout the government and recommend to the Treasury Board improvements considered necessary.
13. Attached and marked as *In Camera* Exhibit "A" to this affidavit are the terms of reference relating to the OCG Investigation (the "Terms of Reference").

14. *(In Camera)*

15. I am advised by Wendy Taylor and I believe it to be true that MOH initially withheld information from the Records on the basis that the disclosure of such information could reasonably be expected to harm the MOH Investigation (the "Section 15 Information"). I am advised by Wendy Taylor and believe it to be true that the MOH Investigation is no longer active and that the MOH has continued to withhold information from the Records on the basis that the disclosure of such information could reasonably be expected to harm the ongoing OCG Investigation and RCMP Investigation.

16. Based on my previous experience conducting OCG investigations, the following sanctions or penalties potentially result from an investigation such as the OCG Investigation:

- Penalties and sanctions under the province's Standard of Conduct, including discipline up to and including dismissal of government employees; and
- Penalties and sanctions under the federal *Criminal Code* of Canada that may be of relevance to this investigation, including the following:
 - Section 121, dealing with frauds on the government;
 - Section 122, dealing with fraud or a breach of trust; and
 - Section 380 dealing with fraud.

17. *(In Camera)*

18. Police often request access to records that the OCG has compiled during the course of an investigation for use as evidence in their criminal investigations.

19. *(In Camera)* The OCG Investigation is a particularly complicated one.

20. The Records relating to the Reviews are being considered by the OCG as part of the OCG Investigation.
21. I have discussed with Wendy Taylor and we have agreed as to the types of harm that could reasonably be expected to occur in relation to the public release of the Records. Those types of harm are as follows:
- Access to such information by potential witnesses could reasonably lead to those individuals altering their responses to questions asked in interviews conducted for the purposes of the investigation, whether it is the OCG Investigation or the RCMP Investigation. This would hamper the ability of the OCG and the RCMP to get at the truth. MOH has referred to this category of harm as “Category A” in relation to their review of the records relating to the Reviews;
 - Access to such information by potential witnesses or other individuals could reasonably lead to those individuals destroying evidence, including emails, database data and hard copy records. This would hamper the ability of the OCG and the RCMP to get at the truth. MOH has referred to this category of harm as “Category B” in relation to their review of the records relating to the Reviews;
 - Access to such information by potential witnesses or other individuals could result in potential witnesses being less inclined to cooperate in the OCG Investigation. MOH has referred to this category of harm as “Category C” in relation to their review of the records relating to the Reviews;
 - Access to such information would reveal information to the targets of the investigation, which could enable them to take steps to adversely affect or thwart the course of the OCG Investigation. MOH has referred to this category of harm as “Category D” in relation to their review of the records relating to the Reviews;
 - Disclosure would identify anticipated witnesses, thus alerting those individuals that they might be interviewed, thus resulting in the potential for those individuals to thwart the OCG Investigation. MOH has referred to this category of harm as “Category E” in relation to their review of the records relating to the Reviews.
22. The release of information from the Records, after learning of the relevance of the Records to the OCG Investigation, could be expected to result in the Applicant (and potentially others) learning of the focus of the OCG Investigation. For instance, they will learn that a certain agreement or other document is being considered by the OCG. They may have been unaware of that aspect of the OCG Investigation. That would be new information that someone could use to try to thwart the OCG Investigation, including potentially altering their responses to questions asked of them in a later

- interview or the responses of others or potentially destroying documentation relevant to the investigation.
23. It is not uncommon for people who have engaged in fraud to attempt to cover up their past actions. For such people, it is valuable to know the focus of an investigation. Once they have such information they can try and obfuscate and otherwise try to thwart the investigation.
 24. I have been advised by Wendy Taylor and I believe it to be true that the MOH Investigation is no longer active but that section 15(1)(a) of the Act continues to be applied to protect the OCG and RCMP Investigations. By releasing the Records in their entirety, the Applicant and others would have confirmation of the focus of the OCG Investigation. That is valuable information to anyone with a desire to attempt to thwart the investigation in the ways referred to above in this affidavit.
 25. *(In Camera)*
 26. *(In Camera)*
 27. *(In Camera)* Access to source documentation relating to an investigation can also result in potential targets of the investigation or other witnesses creating records to exonerate themselves.
 28. Attached and marked as Exhibit "C" to this affidavit is an excerpt from the 2011 Fraud Examiners Manual (Canada). That excerpt deals with the interviewing of witnesses. On that first page of Exhibit "C" there is a reference to the importance of the order of displaying documents to a witness. This recognizes the importance of being able to keep confidential evidence until a certain stage of the investigation so that the investigator can get at the truth. This is one of the several reasons that I believe that

the premature disclosure of Records could reasonably be expected to harm the OCG Investigation.

Standards of Investigation

29. The OCG Investigation and Forensic Unit applies the Association of Certified Fraud Examiners (ACFE) Code of Professional Standards and Code of Professional Ethics in the conduct of our investigations.

30. The ACFE Code of Professional Standards include the following:

Standards of Professional Conduct:

- Integrity and objectivity
- Professional competence
- Due professional care
- Understanding with client or employer
- Communication with client or employer
- Confidentiality

Standards of Examination:

- A Certified Fraud Examiner must conduct examinations in a legal, professional and thorough manner.
- A Certified Fraud Examiner must obtain evidence and information that is complete, reliable and relevant.
- A Certified Fraud Examiner must establish predication.
- A Certified Fraud Examiner must take due care in dealing with evidence; diligence must be applied to establishing a chain of custody, preserving the integrity of evidence and material, and maintaining appropriate documentation.

Standards of Reporting:

- Reports prepared by a Certified Fraud Examiner cannot be misleading and must only contain information that is based on evidence.

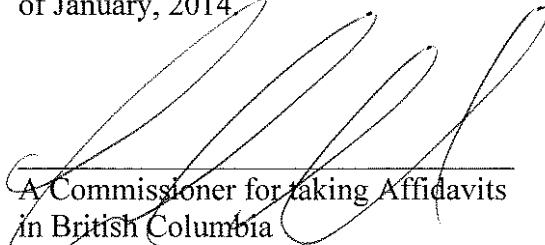
31. The ACFE Code of Professional Ethics include the following:

- A Certified Fraud Examiner shall at all times demonstrate a commitment to professionalism and diligence in the performance of his or her duties.
- A Certified Fraud Examiner, in conducting examinations, will obtain evidence or other documentation to establish a reasonable basis for any opinion rendered.
- A Certified Fraud Examiner shall not reveal any confidential information obtained during a professional engagement without proper authorization.
- A Certified Fraud Examiner will comply with lawful orders of the courts, and will testify to matters truthfully and without bias or prejudice.

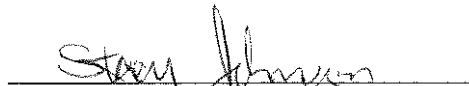
32. There are certain generally accepted practices in the field of Fraud Investigation.

33. I swear this Affidavit for consideration by the Information and Privacy Commissioner in this inquiry.

SWORN BEFORE ME at the City of)
Victoria, British Columbia, this 6th day)
of January, 2014.)



A Commissioner for taking Affidavits
in British Columbia)



Stacy Johnson

EXHIBIT "A"

TO THE AFFIDAVIT OF STACY JOHNSON

SWORN January 6, 2014

IN CAMERA

EXHIBIT "B"

TO THE AFFIDAVIT OF STACY JOHNSON

SWORN January 6, 2014

IN CAMERA

Diffuse Alibis

Even if the accused is presented with an appropriate rationalization, it is likely that he will continue to want to deny culpability. When the interviewer is successful in stopping denials, the accused normally will then turn to various reasons why he could not have committed the act in question. The purpose of this stage is to convince the accused of the weight of the evidence against him. Miscreants usually have a keen interest in material that tends to implicate them. Alibis generally can be diffused using one of three methods: displaying physical evidence, discussing witnesses, or discussing previous deceptions.

DISPLAY PHYSICAL EVIDENCE

It is common for most guilty people to overestimate the amount of physical evidence. The interviewer wants to try to reinforce this notion in the way the evidence is laid out to the accused. The physical evidence—usually documents in fraud matters—generally should be displayed one piece at a time, in reverse order of importance. In this way, the full extent of the evidence is not immediately known by the accused. When the accused no longer denies culpability, the interviewer should stop displaying evidence.

Each time a document or piece of evidence is laid out to the accused, its significance should be noted by the interviewer. During this phase, the accused is still trying to come to grips with being caught. The interviewer should, therefore, expect that the accused will attempt to lie his way out of the situation. Like denials, the interviewer should stop the alibis and other falsehoods before they are fully articulated.

Once the alibis are diffused, the interviewer should return to the theme being developed. The following is an example of this technique in a case where Linda Reed Collins set up a fictitious company and embezzled money by approving payments from her employer to a shell corporation.

EXAMPLE

Respondent:

"I couldn't have done this. I am not responsible for paying invoices."

Interviewer:

"Here is one of the invoices in question [display document]. We have never received the merchandise." (Don't mention whether you have talked to the accounts payable

This is Exhibit "C" referred to in
The Affidavit of STACY JOHNSON
Sworn before me at VICTORIA,
British Columbia, this 6TH day
Of JANUARY 2014

John Tuck
A Commissioner for taking Affidavits within British Columbia

ANALYZING DOCUMENTS

The fraud examiner will usually obtain a great deal of documentary evidence. It is critical that the examiner understand the relevance of this evidence and how it should be preserved and presented. Always keep in mind that documents can either help or hurt a case, depending on which ones are presented and how they are presented. The goal is to make sure that all relevant documents are included and that all irrelevant documents are eliminated. Many examiners pay too much attention to documents. It is easy to get bogged down in detail when examining records and to lose sight of a simple fact: Witnesses, not documents, are what makes a case. The documents make or break the witnesses. So-called “paper cases” often confuse and bore a jury.

Basic procedures in handling evidence are required for it to be accepted by the court. Proof must be provided that the evidence is relevant and material. Submitted evidence must be properly identified, and it must be established that the proper chain of custody was maintained.

The relevance of documents cannot be easily determined early in a case. For that reason, all possible relevant documents should be obtained. If they are not needed, they can always be returned. Here are a few general rules regarding the collection of documents:

- Obtain original documents where feasible. Make working copies for review, and keep the originals segregated.
- Do not touch originals any more than necessary; they might later have to undergo forensic analysis.
- Maintain a good filing system for the documents, especially in cases where large numbers of documents are obtained. Losing a key document is an unpardonable sin and can mortally damage the case. Documents can be stamped sequentially for easy reference.

Obtaining Documentary Evidence

Documentary evidence may be obtained in a number of ways. If both parties agree, it is possible to obtain evidence by consent. This is the preferred method. Consent can be oral or written. Where information is obtained from possible adverse witnesses, or the target of the examination, it is recommended that the consent be in writing. Sample forms are contained in the Appendix to the “Report Writing” chapter. In many cases, however, the investigator will not wish to alert the suspect to his intentions, and other routes must be taken.

- Is he likely to be embarrassed by the results of the inquiry even though not personally culpable?

These and other factors will determine whether the interviewer should be humble, deferential, apologetic, matter-of fact, or aggressive. Obviously, no one mode fits all subjects or all situations. However, the interviewer should not be cowed by the subject's position, although feigning humility may be appropriate.

Obstructing the Investigation

An official who declines to be interviewed or to answer certain questions acts at his own peril if under orders from his own superior or on the advice of counsel. In fact, a superior who tells his employees of whatever rank that they do not have to cooperate with investigations commits actionable misconduct. Often overlooked is the ability of high officials to influence underlings to be less than forthcoming or to "misplace" key documents.

When appropriate, the high official should be reminded of all public employees' obligation to assist in the fact-finding process. Interviewers should make no assumption in advance of any high official's integrity or lack thereof.

Rules of Procedure

Those who interview high officials must avoid extremes of procedure and should, as a general rule, neither act overly belligerent nor kow-tow to them. Basic rules of procedure in the areas of warnings and representation apply to these people as much as to the general population of public employees. What is different is the high official's ability to influence others and their particular susceptibility to embarrassing publicity, and a good interviewer will turn these traits to his own advantage in his quest for a truthful recitation of what did in fact occur.