

Reprint **Island Tides**

Visit www.islandtides.com to read the current edition and more find more interesting articles on other BC, national & international topics in our extensive archive of newspapers and articles.

Reprint from Volume 22 Number 12

June 24, 2010

Basi-Virk trial underway at last

Patrick Brown

The trial of Dave Basi, Bobby Virk, and Aneal Basi has been formally under way for about a month in BC Supreme Court. These three individuals, formerly government employees with responsible positions, have been charged with corruption in connection with the 2003 takeover of BC Rail by CN Rail.

Many questions have been raised about both the decision and the competitive bidding process through which it was accomplished. Public concern continues, six and a half years later, and extends beyond the government to the operation of the justice system and now, critically, to the role of the media.

The Legislature Raids

The original RCMP raids on the legislature took place December 28, 2003 ; at the time, the RCMP said that they were in connection with a drug investigation, and 'organized crime'. They also stated, significantly, that no elected officials were involved.

The corruption charges were laid on December 21, 2004, and have been followed by years of pre-trial argument and delays.

The charges stem from the takeover of BC Rail by CN Rail in 2003. Dave Basi and Bobby Virk (both politically appointed ministerial assistants at that time) are charged with fraud, influence peddling and receiving a benefit—in plain language, selling information to one of the bidders.

The sting in the tail, and what makes this trial so significant, is that their defence argues that anything they did was at the behest of their Liberal political masters.

Special Crown Prosecutor Appointed

Special Crown Prosecutors are appointed by the government in situations where some governmental conflict of interest may occur. At the time, the Solicitor General said in the legislature that such an appointment is to 'insulate' a case 'so no minister of the Crown has any

input into the preparation of the case.'

The Special Prosecutor for this case, Bill Berardino, was for seven years a law partner of the Attorney General, Geoff Plant, who appointed him, and for eleven years a law partner of Allan Seckel, the Deputy Attorney General.

Stephen Owen, a former Liberal MP, has now been appointed to review the appointment process for Special Prosecutors. He will do his work pro bono (he will not be paid) and will report his findings to Attorney General Michael de Jong in mid-July.

Judges Changed

Much of the pre-trial legal action, which has gone on for five years, centred on disclosure of documents requested by the defence. At one point, the government claimed that a large number of emails had been destroyed. However, under some pressure from the Court, they were eventually retrieved.

These years of pre-trial arguments were conducted under Justice Elizabeth Bennett. However, she was elevated to the Court of Appeals as the trial date approached, and former Associate Chief Justice Patrick Dohm announced that he had in mind a replacement; this turned out to be Justice Anne Mackenzie. Justice Dohm retired shortly afterwards, and Justice MacKenzie was appointed Associate Chief Justice in his place.

Six Years Later, the Trial

Fast forward. On May 17, 2010, the first Crown witness was called to the stand. Martyn Brown, Deputy Minister to the Premier of British Columbia, was first examined by Bill Berardino, Special Crown Prosecutor. But the trial was almost immediately delayed for two weeks to allow lawyers to review newly disclosed evidence. Brown has since been cross-examined by Kevin McCullough, Counsel to Dave Basi, and at mid-June was still on the stand, being cross-examined by Michael Bolton, Counsel to Bobby Virk.

© Island Tides Publishing Ltd. This article may be reproduced with this attribution, in its entirety, with notification to Island Tides Publishing Ltd.

This article was published (June 24, 2010) in 'Island Tides'. 'Island Tides' is an independent, regional newspaper distributing 18,000 print copies throughout the Gulf Islands and Vancouver Island from Victoria to Campbell River.

Island Tides, Box 55, Pender Island, BC, Canada.
Email: islandtides@islandtides.com.

Phone: 250-629-3660. Fax: 250-629-3838.
Website: <http://www.islandtides.com>

How Long Will This Go On?

The Court, with a twelve-person jury under Associate Chief Justice Anne MacKenzie, sits from Monday to Thursday, in Courtroom 54 of the Vancouver Courthouse. Sessions start officially at 9:45am and continue until about 4pm.

The Special Crown Prosecutor had first estimated that the trial would be completed by mid-July of this year, and this is what the jury was told. However, later accounts of how long it would take to hear all the probable witnesses (at least 40 will be called by the prosecution alone, and the defence may call additional witnesses) have resulted in official estimates that the trial will not be completed until April of 2011.

The jury, to their credit, have agreed to stick with it until then. They will then have to render their decision on the charges laid against Basi, Virk, and Basi, on the basis of the evidence presented during the trial.

Being There

And now to the trial itself. Courtroom 54 in the Vancouver courthouse. Spacious, high-ceilinged; overhead fans slowly stir the conditioned air. At its head, under the provincial coat of arms, Madame Justice Anne MacKenzie looks over a collection of tables and chairs populated by a collection of robed lawyers; at the front, the Special Crown Prosecutor and his staff; at the right, the witness box; at the left, twelve red chairs occupied by the jury (six men and six women); in the centre, six lawyers for the defence, and in a glass box in the middle of the room, the three accused. The gallery, the back half of the room, has comfortable seats for maybe 80 members of the public. There are many empty seats.

On the left of the courtroom are cardboard boxes of documents piled four or five deep; on the right, bookcases full of four-inch looseleaf binders. All the tables are piled with more looseleaf binders. It is unclear how many documents have been thought relevant to the case, but clearly the number is many thousands.

The witness (the Premier's Chief of Staff, Martyn Brown) is cross-examined by defence lawyers. Frequently, he 'does not recall', pleading that all this happened six or seven years ago. From time to time, an objection to the questioning is raised by Special Crown Prosecutor Bill Berardino. When this happens, the jury and the witness must leave the courtroom while the lawyers argue the legal point involved; then Justice MacKenzie repeats all the arguments for the record and gives her decision; then the witness and the jury are allowed back in and the cross-

examination continues. A 'publication ban' prevents any of the media (or anyone else, for that matter) from reporting what goes on when the jury is not present.

Now the trial is proceeding steadily, but slowly, interrupted by periods when the proceedings cannot be reported. It will be further interrupted from July 7 to the end of August for summer vacation, and for two-and-a-half weeks at Christmas.

Estimates that the trial may be finished next April already begin to look unreliable.

What the Trial May Reveal

Evidence may reveal the decisionmaking process that led to the deal with CN. Questions about leaks during the bidding process are less important than the unanswered questions about those decisions and the long-term agreement between the Province and CN. Those questions concern whether the process was fair and above board; won legitimately by CN over competitors CPR, Omnitrax, and Burlington Northern; and whether it was a good deal for British Columbians.

Or whether, as has been suggested, BC Rail need not have been sold in the first place, and if it was to be, CN had the takeover wrapped up and the other bidders were just included to make it look fair.

This, of course, is the real significance of this case. It is the important issue that may be answered by the trial. Was the takeover fair or corrupt? And, if it was corrupt, who was corrupt? The charges laid against Basi, Virk, and Basi are a mere sideshow compared to these larger questions.

Whatever the result of the trial, courts will likely never pass judgement on these larger questions. However, the judicial process may well bring out the evidence that would enable the public to judge whether there was corruption in the billion-dollar deal—and who was responsible. However, this can only happen if the public is informed and can fairly weigh the evidence.

Who's Judging Who?

The judicial process will judge Basi, Virk, and Basi. The public will also judge them, and the public will also judge the integrity of the judicial process: both through the lens of the media, for this is the only lens there is.

Inevitably, the integrity of the media will also be judged. (Readers familiar with the Bible will recognize the echoes of Matthew 7:1.)

While the original RCMP raids on legislative offices in Victoria were the stuff of headlines, the long, slow, grinding processes of investigation, charges, disclosure,

© Island Tides Publishing Ltd. This article may be reproduced with this attribution, in its entirety, with notification to Island Tides Publishing Ltd.

This article was published (June 24, 2010) in 'Island Tides'. 'Island Tides' is an independent, regional newspaper distributing 18,000 print copies throughout the Gulf Islands and Vancouver Island from Victoria to Campbell River.

Island Tides, Box 55, Pender Island, BC, Canada.
Email: islandtides@islandtides.com.

Phone: 250-629-3660. Fax: 250-629-3838.
Website: <http://www.islandtides.com>

and pre-trial maneuvering are not; matters surfaced periodically, then disappeared beneath the media surface with nary a ripple.

So coverage of the years of pre-trial proceedings has been spotty; the scheduling has been unpredictable, and the proceedings often arcane and of interest only to legal junkies. Occasionally, such as when the Crown wished to introduce a 'secret witness' and had to go to the Supreme Court of Canada to get permission, they have been unusual. But because he (she?) was a secret witness, his (her?) name was never revealed, so there was not even a good basis for media speculation.

Now, with the trial under way, coverage is improved, but it is an expensive exercise for media, and may require investigative work well beyond the courtroom. This case has already been going on since 2003; nobody really knows how long any form of closure will take. And the media is still not allowed to report much of the proceedings.

It's Up To You

And yet, for democracy's sake, citizens must judge: the accused, the judicial system, the government, and the media.

If this is democracy, it's not easy. And most people have to make a living and raise a family as well.

Please stay tuned. The best source for current and past information and comment is BC Mary's blog, 'The Legislature Raids' at <http://bctrilofbasivirk.blogspot.com/>. Robin Mathews and Bill Tieleman report regularly.

There are links there to most of the other sources. ✍