

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 23 Number 1

Jan 13, 2011

Special Report by Patrick Brown

Crown seeks to bury BC Rail deal evidence

Special Crown Prosecutor William Berardino is scheduled to appear in BC Supreme Court on January 11, seeking an Order requiring the return of all evidence disclosed to the defense during the lengthy but abruptly wrapped-up Basi-Virk trial process.

But the BC Rail cat seems to be already out of the bag; despite his surprise switch to a guilty plea on October 18, David Basi is getting his story out—releasing his memos from 2003.

Berardino's move continues a trend to secrecy established during the Basi-Virk trial. The trial was covered by a publication ban, granted by Associate Chief Justice Anne MacKenzie, forbidding media reports on any proceedings that took place when the jury was not present.

Unusually, this publication ban was retroactive, effectively stifling the reporting of years of pre-trial legal argument over the relevance of documentation from the Crown requested by the defense. Much of this argument had centred on the processes, administrative and political, which resulted in the eventual sale of BC Rail to CN.

The trial was unexpectedly concluded in October; on the day Dave Basi and Bobby Virk suddenly agreed to plead guilty to corruption charges in connection with the Province's sale of BC Rail to CN. Basi and Virk were paid \$6 million by the Province to cover their legal costs.

The testimony of witnesses, the only part of the trial which could be reported, was thus cut short after the appearances of Martyn Brown, former Chief of Staff to Premier Campbell, and Brian Kenning, a former Director of BC Rail. Before the much-anticipated testimony of former Finance Minister Gary Collins, plus forty further witnesses, could take place.

Government's Silence On The BC Rail Deal

Premier Campbell and other members of the BCLiberal government have for years refused to answer questions about the BC Rail sale, with the excuse that the matter was

'before the courts' in the Basi-Virk corruption trial. After the trial conclusion, the Premier has taken the position since Basi and Virk were 'convicted' the BC Rail affair is closed. On October 19, Premier Campbell referred to Basi and Virk as 'criminals'.

David Basi Documents Rekindle Interest In BC Rail Deal

However, the documents recently disclosed by Basi have rekindled interest in what actually took place. And an 'indemnity' clause in the still unpublished agreement between the Province and CN leaves some doubt as to what CN will finally pay for the railway (see below). It's far from over.

How It All Got Started

Very soon after the landslide election of the BCLiberal government in May 2001, lobbyists Erik Bornmann, Bruce Clark (Christy Clark's brother), Dave Basi and Bobby Virk were already benefiting from their active participation in the BCLiberal party.

However, in June 2001, Dave Basi was appointed ministerial assistant to Finance Minister Gary Collins and Bobby Virk was appointed ministerial assistant to Transportation Minister Judith Reid. About a year later, Basi's cousin Aneal Basi was appointed to the government's Public Affairs Bureau.

Dave Basi was soon involved with a Sooke developer in arranging the removal of a large tract of land from the Agricultural Land Reserve for Sun River Estates, an effort for which he was paid \$50,000. He also had an ongoing arrangement with Bornmann that paid him some \$25,695 (through Aneal Basi) for advice and information during 2002 and 2003. (As part of the trial's final plea bargain, Basi was fined \$75,695.)

BC Rail

Despite having promised during the election campaign that BC Rail was not for sale, in 2003 the government

© 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 (Jan 13, 2011) 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>

advertised for proposals for the railway, circulating financial reports indicating that it had been losing large amounts of money and must be sold.

A complex procedure was set up to assess proposals, which were received from CN, OmniTRAX/BNSF and CP. An initial round of proposals was to be assessed by an evaluation committee, to be followed by a second round and then further evaluation before a final choice of the successful bidder was to be made. A 'fairness advisor' was also hired.

David Basi's Memos

According to Dave Basi, it was in October of 2003 that he realized that CN was the favoured bidder, and that it was becoming difficult to keep OmniTRAX in the game and maintain the appearance of a fair competition.

He recorded his concerns in a series of 'memos to file' and took the further step of having them witnessed at that time by George Jones, QC, a prominent Victoria lawyer. These memos have been made public over the past month. The following are excerpts; the complete memos may be found on Alex Tsakumis' website.

Memo to file, October 6, 2003:

'We do not want to be left holding the bag without another option if the preferred bidder CN starts to play hard ball at the negotiating table.... The Minister wants me to continue back channeling with the various players to keep them on side and prevent them from going off the deep end. ... I advised the Minister that Dwight Johnson and OmniTRAX/BNSF are very upset with the present state of affairs....' (The 'Minister' referred to is presumably Gary Collins.)

Memo to file, October 14, 2003:

'I advised the Minister that I would talk to Ian May and continue to backchannel with his support network of Brian Kieran and Erik Bornmann

'I reminded the Minister that Bruce wants assurances from us that his friends at the Washington Group will not be led along the garden path in a sham process for the next item up for bid, the Roberts Bank Line. The Minister stated it would do no harm to allow Bruce to have a draft copy of the RFP to allay any fears his friends have about the process.' (Ian May represented BC Rail's shippers; Brian Kieran was a partner of Bornmann; Bruce is Bruce Clark, who was lobbying on behalf of Washington Marine.)

Memo to file, October 17, 2003:

'The biggest frustration we have is with the double talk

Reprint from ISLAND TIDES, Jan 13, 2011, Page 2

that seems to be coming out of everybody's mouth in the premier's office. It is hard to get validators on side for the deal when the very people we need to step up to the plate and tell us what a great job we have done are the people who are being screwed in the process.'

Memo to file, October 23, 2003:

'I voiced my opinion that if things go sideways and CN proceeds to break every promise this will be something the Premier will wear, not us. The Minister cautioned me on my views and warned me that the only viewpoint that matters was the Premier. I replied that he was the one who promised not to sell BC Rail after the election in 1995 and now he is breaking that promise. The premier can call this whatever he wants, a lease, a partnership, new investment etc. At the end of the day it's a sale pure and simple....'

Memo to file, November 17, 2003:

'The senator [Kelly Reichert, Executive Director of the BCLiberal party] gave me details about the tax pools and what was happening regarding this issue from a federal and provincial perspective. He told me he received this information from [Patrick] Kinsella who would call Martyn [Brown] and the Premier directly if he needed anything.... It's as if Kinsella knew exactly what would happen after the election and knew the Premier would say anything to win the election after the debacle in 1996.... The senator reminded me that the best thing to do is keep your head down and follow orders.'

It is not unusual, in government, to write memos to file, particularly to record the results of conversations or actions. One can only speculate why Basi did so in this case, and particularly why he would take the memos to George Jones to notarize.

It's A Small World

The BC Rail/CN deal was signed November 25, 2003, after a reported meeting between Premier Campbell, 2001 election campaign co-chair Patrick Kinsella, and CN Board Chairman David McLean. McLean had been a major fundraiser for Campbell in the 1996 election.

(Superintendent Kevin deBruyckere, in charge of the original RCMP investigation, is Kelly Reichert's brother-in-law. Patrick Kinsella was paid some \$300,000 by BC Rail during the negotiations for the CN purchase. Kinsella and Bruce Clark are key members of Christy Clark's campaign team in the BCLiberal leadership race.)

RCMP Raids & The Special Prosecutor

In late 2003, it emerged that the RCMP had been investigating drug cases in Victoria; William Berardino,

© 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 (Jan 13, 2011) 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>

who had been a law practice partner of Attorney-General Geoff Plant and Deputy Attorney-General Allan Seckel, was appointed Special Prosecutor on December 11 to look after the case of Victoria Constable Rob Dosanjh.

The reason that a Special Prosecutor might be required becomes clearer considering that, on December 28, 2003, one day after Solicitor-General Rich Coleman warned Premier Campbell (in Hawaii), the RCMP searched the offices of Basi, Virk, Bornman, Kieran, Bruce Clark, and Mark Marissen (then Christy Clark's husband and strategist for federal Liberal Paul Martin). The RCMP said they were probing international drug trafficking, organized crime, and police corruption.

Later, RCMP search warrants showed that they were actually looking for evidence that government officials may have interfered with the BC Rail deal.

On December 21, 2004, Basi and Virk were charged with accepting bribes, fraud, and breach of trust; Aneal Basi with money laundering. (On April 3, 2006, Dave Basi was also charged with accepting a bribe and breach of trust in the Sun River case.)

The pre-trial maneuvering started in April 2007 before Madame Justice Elizabeth Bennett. After she berated the Crown and the RCMP for delays in the disclosure of material requested by the defense, Associate Chief Justice Dohm (who had been involved with the case since the original search warrants) replaced her with Associate Chief Justice Anne MacKenzie, who started the trial proper, empanelling the jury in May 2010. She granted a two-month summer break, and the trial then resumed until October 18, 2010.

What the BC Rail Deal Cost Taxpayers

Extraordinarily the BC Rail deal is not even over. One of the provisions in the Province/CN's 2003 'Revitalization Agreement' (still officially unpublished) apparently notes that BC Rail had recorded accumulated losses of some \$2 billion which might be claimed and used by CN.

\$250 million of the \$1 billion total that CN paid was for these tax losses, with the proviso that should Revenue Canada not allow CN's claim, the Province would refund the \$250 million (termed an 'indemnity') plus compound interest at 9% per annum.

The accumulated losses on BC Rail's books were questioned at the time they were revealed by the Premier; some commented that they had been created to give the false impression that the railway was losing money and had to be sold.

It is now seven years since the agreement was signed, no Revenue Canada decision seems to have been made, and the Province is now carrying on its books a 'contingent liability' of \$600 million or more.

Ironically, despite the end to the Basi-Virk trial and Bernadino's new move to keep the lid in the BC Rail deal, it is coming back to light and life in spades. ☞