

**THE DILEMMA OF WHAT TO DO WHEN AUTHORITIES SEEK INTERVIEWS DURING ONGOING COMPLIANCE MONITORING AND INVESTIGATIONS OF OFFENCES**

By Stanley Berger

The British Columbia Supreme Court's decision on the admissibility of two statements provided to environmental officers provides guidance on how interviews should be conducted when there is a dual purpose to the interview—one being investigative and another being regulatory. Environmental statutes, like other regulatory laws have compulsory requirements to provide information both orally and by way of written reports to inspectors who are monitoring compliance and dealing with ongoing matters which may require remediation. Failure to cooperate can lead to obstruction charges. At the same time, once regulatory authorities have reasonable and probable grounds to believe an offence has been committed, those suspected have the constitutional rights to remain silent and not to incriminate themselves under *Canada's Charter of Rights and Freedoms*. How these competing obligations and rights can be consistently applied was the subject of the appeal in *Banks Island Gold Inc. et al* 2020 BCSC 167.

A mining company was regulated under permits pursuant to B.C.'s *Environmental Management Act* S.B.C. 2003, c.53 and the *Mines Act* R.S.B.C. 1996, c.293 . There was reasonable grounds to believe that a spill had occurred with potential to adversely affect fish which prompted an investigation under both provincial environmental law and the federal *Fisheries Act*. Two statements were provided by the mining company's management. In both cases those interviewed agreed to speak having been advised beforehand that they were not required to do so and that anything they said could be used against them. However, in the first statement the officers had also advised that as they were continuing to monitor compliance with the provincial permits, the interviewed individuals were required to cooperate with them. The court, on appeal held that that first statement was inadmissible as aspects of the interview did not relate to urgent ongoing compliance issues and the officers should have identified those aspects from the regulatory aspects which required answers. A second statement was held admissible because it was conducted by Fisheries officers and it was clear that the interview was solely for investigative purposes and not for compliance. A spill report which had been required to be prepared before the officers directed that it be provided was also admitted. Further details on the right to remain silent and the statutory duties to make reports and cooperate with authorities may be found in my loose-leaf service *The Prosecution and Defence of Environmental Offences* published by Thomson Reuters and available on Proview at <https://proviewthomsonreuters.com>.



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