

APPENDIX A

PROVINCE OF BRITISH COLUMBIA

IN THE MATTER OF THE *MEMBERS' CONFLICT OF INTEREST ACT*
R.S.B.C. 1996, CHAPTER 287

AND

IN THE MATTER OF AN INQUIRY PURSUANT TO S. 21
OF THE *MEMBERS' CONFLICT OF INTEREST ACT* INTO WHETHER THE
HONOURABLE GLEN CLARK, M.L.A. HAS BEEN IN BREACH OF ANY
OF THE SECTIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT*
IN CONNECTION WITH THE GRANTING OF APPROVAL-IN-PRINCIPLE
OF A GAMING LICENCE FOR THE NORTH BURNABY INN/545738 B.C. LTD.

**RULING ON APPLICATION OF DERRICK LUU
FOR FUNDING OF COUNSEL FEES**

On July 6, 1999, Mr. Derrick Luu appeared before me, in answer to a Summons issued by me, to testify as to his knowledge of the subject matter of my Inquiry. He was accompanied by his counsel Mr. Edward Wong. At the end of Mr. Luu's examination by Mr. Leonard Doust, Q.C., Commission Counsel, Mr. Wong applied on behalf of his client for funding for counsel's attendance at his client's examination.

Mr. Wong acknowledged that the legislation pursuant to which Mr. Luu's attendance was required, the *Members' Conflict of Interest Act*, does not address this issue, but submitted that Mr. Luu's attendance necessitated the presence of counsel. He submitted that it was within the Commissioner's discretion to make an order for payment of counsel for the witness out of public funds, and said that he believed such orders may have been made in other inquiries.

Commission Counsel argued that Mr. Luu was a mere witness who could not be characterized as a person directly affected by this Inquiry (unlike others in the inquiries alluded to by Mr. Wong) He argued that there was little distinction between the position of a witness at an inquiry and a witness in a trial and that, although witnesses may have the option of retaining counsel to represent them, that remains a matter of personal choice.

Following submissions, I asked that Mr. Wong provide to Commission counsel, within seven days, any references to other commissions of inquiry where an order has been made for payment out of public funds of counsel fees of one who was a witness only, and neither directly involved as a complainant nor in jeopardy as the result of the inquiry. No such submission has been received.

Although I have some doubt as to my authority to make the type of Order sought that is not an issue I find it necessary to address.

In conducting this Inquiry, I am mindful of my responsibility in respect of the expenditure of public funds. Whilst recognizing that the matter into which I am inquiring is one of substantial importance both to Executive Council, who requested my opinion and to the people of the Province, I believe I must conduct my Inquiry with the utmost frugality consistent with fairness.

I am grateful for Mr. Luu's cooperation and will pay due heed to his evidence. His participation in this Inquiry, however, has been purely that of a witness. His rights are not in issue, nor will he be in any jeopardy as a result of any finding I may make.

This is an Inquiry not an adversarial proceeding. It will in due course lead to an opinion which the Executive Council of British Columbia may or may not choose to adopt. Any witness appearing before me in this Inquiry wishing to have his or her counsel present during his or her examination will be accommodated. Whether or not such representation is in fact required is a matter between client and counsel. The nature and extent of the involvement of Mr. Luu in the subject matter of this Inquiry are not such as to persuade me to make the Order sought nor to create a precedent likely to encourage all other witnesses appearing before me in the Inquiry to advance similar applications. The application is therefore dismissed.

Dated this 13th day of August, 1999 at the City of Vancouver, in the Province of British Columbia.

THE HONOURABLE H.A.D. OLIVER, Q.C.
CONFLICT OF INTEREST COMMISSIONER