



BRITISH  
COLUMBIA

February 21, 2014

Mr. Richard Ajabu  
20044 Birch Place  
Hope BC V0X 1L2

Dear Mr. Ajabu,

This letter is in response to yours dated Feb 10, 2014 in which you ask me to investigate “the possibility of violations of the BC *Members’ Conflict of Interest Act* (“the Act”) by Executive Council Members and their agents”. You also allege that Minister Donald McRae may have acted in “conflict of interest” while he was Minister of Education in 2012. As I understand you, the matters you have asked me to “investigate” are as a result of the decision of Madam Justice Griffin of the British Columbia Supreme Court in her recent decision involving the British Columbia Teachers’ Federation versus the Government of British Columbia.

In the course of your letter you interpret that “Justice Griffin determined government strategy and actions were for the purpose of a political gain”. You go on to say “deliberate sabotage of our public education system by public officials is clearly not in the public interest, nor is it the kind of behaviour Canadian citizens expect from officials entrusted with the power to govern.” You characterize events as follows: “...by putting the personal and ideological interests of their political party ahead of the public interests, it appears the Executive Council Members and their agents acted in a conflict of interest”.

In your complaint, these allegations are said to apply to “Executive Council Members” generally and their unspecified agents. So far as I can tell, the alleged conduct you seek to have me review occurred in 2011 and, in any event, during the life of the Executive Council during the term of the previous government in calendar years 2011 and 2012. Your interpretation of the judgment appears to be that, “Justice Griffin determined that Government strategy and actions were for the purpose of a political gain”.

The Act limits my jurisdiction to *currently serving* members of the Legislative Assembly and the Executive Council. I have no jurisdiction with respect to “agents” of either members of the Legislative Assembly or the Executive Council. I also have no jurisdiction over *former* members of the Legislative Assembly or the Executive Council. Therefore, I am only able to express an opinion on compliance by currently serving members of the Executive Council.

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Section 19 (2) of the Act provides as follows:

A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention. (emphasis added)

Therefore I am treating your letter of February 10, 2014 as a request for an opinion pursuant to sec 19(2) of the Act.

Sec 21 (1) of the Act provides that, on receiving the request under section 19, and on giving the member concerned reasonable notice, the Commissioner may conduct an inquiry." (emphasis added)

The term "inquiry" is not defined in the Act. Upon receiving complaints under sec 19(2) of the Act, the longstanding practice of this Office has been to gather relevant information in order to determine whether "reasonable and probable grounds" exist to believe that there has been a contravention of the Act. My practise is to conduct a formal "inquiry" only if I am satisfied after gathering relevant information that there are reasonable grounds to do so.

In dealing with your request, I have to consider the threshold question of whether the alleged furtherance of political interests equates with a member's "private interest", as that term is used in section 2 of the Act. Nowhere in the *Act* is there express language, or even a suggestion that "private interest" could include or extend to partisan political gain or advantage. If *political* interest is equated with "*private interest*", practically everything a member of the Executive Council does could be a breach of the Act, because almost every activity undertaken by an elected official contains an element of seeking popular support. I do not believe that the Legislature intended that the Act should prevent members of the Executive Council from carrying out their duties and responsibilities in a way that they believe will maximize their public acceptance. In our democracy and system of government, all members of the Executive Council are, of course, fully accountable to the electorate for the political decisions they make for political purpose. The recourse that all citizens have in this province if they disapprove of those political decisions is at the ballot box. The Act exists for the purpose of dealing with conduct where the opportunity to further a purely private interest is found to have inappropriately occurred.

In the result, I must find that the issues you have raised with respect to currently serving members of the Executive Council do not involve their "private interest" and, are not in breach of any conflict or apparent conflict of interest provisions of the Act; and therefore, do not disclose any reasonable or probable grounds for me to conduct a formal inquiry under s.21(1) of the Act.

In addition to your general allegations, you specifically allege that Minister Donald McRae, “as a member of the Executive Council, ... was in a position to advise and influence the other Members of the Executive Council regarding the decisions in question and as a certificate holder [certified teacher] he was obligated to do so. Minister McRae had the opportunity to resign his membership in the Executive Council if he could not convince the Executive Council to act in the public interest, but he did not. Minister McRae also had the opportunity to relinquish his TRB [issued by the Teacher Regulation Branch of the BC Ministry of Education] certificate when he became a Member of the Executive Council (as per Members’ Conflict of Interest Act Section 9.1.a), but he did not. It appears that Minister McRae may have acted in conflict of interest”.

With respect, the only one of these allegations that has any possible relevance to ministerial conduct under the Act, is the reference you make to section 9(1)(a). The material portion of that section reads as follows:

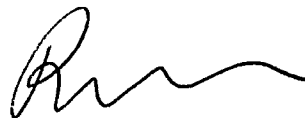
“A member of the executive Council must not  
(a) Engage in employment or in the practice of a profession, ...  
if any of these activities are likely to conflict with the member’s public duties”

My information is that the Minister has been on leave from his employment with School District #71 since he was first elected to Legislative Assembly in the 2009 general election. He was first appointed to the Executive Council on March 14, 2011 and continues to be a member of the Executive Council. He is still certified as a teacher in British Columbia by the BC Teachers’ Council.

My longstanding interpretation of section 9(1)(a) of the Act is that a professional person who is on leave from his employment as (in this case) a teacher is not engaged in the practise of a profession. I have also interpreted the Act to mean that a professional person can retain their professional certification while serving as a member of Executive Council. There was, therefore, no need for Minister McRae to relinquish his TRB certificate when he became a member of the Executive Council. The policy reason for my interpretation is simply that, in my view, the intent of the Act was not to dissuade professional persons from entering public life.

It follows that I can find no reasonable or probable grounds for conducting a formal inquiry under s.21(1) of the Act with respect to the allegations you have made with respect to Minister McRae.

Sincerely,



Paul D. K. Fraser, Q.C.  
Commissioner