



ADDENDUM TO THE OPINION dated May 4, 2016

**OF
THE CONFLICT OF INTEREST COMMISSIONER
PURSUANT TO SECTION 19(1) OF THE
*MEMBERS' CONFLICT OF INTEREST ACT***

**IN THE MATTER OF APPLICATIONS BY
DAVID EBY, MLA (VANCOUVER-POINT GREY)
WITH RESPECT TO ALLEGED CONTRAVENTIONS OF THE
MEMBERS' CONFLICT OF INTEREST ACT
BY THE HONOURABLE CHRISTY CLARK, MLA
(WESTSIDE-KELOWNA) AND PREMIER OF BRITISH COLUMBIA**

City of Victoria
Province of British Columbia

August 9, 2016

INTRODUCTION

In correspondence dated July 4, 2016, David Eby, the Member for Vancouver-Point Grey, asked that I “re-open” my Opinion of May 4, 2016.

The request is based on details Mr. Eby has become aware of in relation to an event held in the Premier’s constituency in September 2015 (the “Beans and Jeans” event). According to the Elections BC report submitted in support of the request, 66 individuals paid either \$25 or \$35 to attend the Beans and Jeans event, and unnamed sponsor(s) contributed \$10,000 to the event. It is alleged that this documentation “confirms that the Premier fundraises large gift donations that directly benefit her personally, and also contradicts the key evidence offered to you that donors cannot direct donations to the Premier personally. In this case, a donor or donors, directed donations of \$10,000 to the Premier personally and directly in her home constituency”.

Mr. Eby has asked that I “reconsider the potential for conflict of interest in light of this new information that an unidentified donor or donors made direct donations of \$10,000 to the Premier in her own constituency for her own personal benefit”.

There is no provision in the *Act* which allows for an Opinion issued under section 19(1) to be “re-opened”. However, I have considered the issues raised in the correspondence to determine whether there is any new information that is so significant that it would cause me to change the conclusion reached in my Opinion.

Background

For context, it is relevant to review the history of Mr. Eby’s requests. Originally, the issue at stake was identified as large donations received at “exclusive” fundraising events, which it was submitted amounted to a private interest to the Premier, on the basis that she benefitted politically from contributions made to the Liberal Party of BC (“LPBC”). The request was later amended by characterizing the Leader’s Allowance the Premier receives from the LPBC as the relevant private interest. Still later, a separate ground was added, alleging that the Premier’s activities as Leader violated the “employment” provisions of section 9 of the *Act*.

I concluded that the Premier’s private interest had not been advanced by any particular donor or group of donors at the events in question, and she was not in an apparent conflict of interest in relation to those donors; nor had she violated section 9 of the *Act*.

This further request, made two months after my Opinion was issued, now asks me to “re-open” the matter in light of the sponsorship donations made to the Beans and Jeans event.

Information Gathering

I have gathered information from the LPBC Westside-Kelowna Riding Association and from the person who had the primary responsibility for organizing the Beans and Jeans event and was the main contact in dealing with the sponsors. There were four sponsors, each of whom contributed \$2,500 to the event. Beans and Jeans was regarded as a “cost recovery” event in which the goal was not to raise money but to try and break even on the cost of the event. Its primary purpose was to bring out party members or prospective party members.

The Premier was a featured participant in the event but had no involvement in the organization of the event, including arranging the sponsors, none of whom were given any sort of private meeting with her. Apparently, the Premier arrived approximately half an hour into the event, addressed the crowd and spent some time greeting the various attendees. She did not solicit donations at or for the event.

As reported in the Elections BC public filing, 66 tickets were sold for the event. A number of free tickets were also issued, bringing the total number of attendees to approximately 175. There was a surplus of \$2,451.63 from the combination of sponsors and tickets fees. This amount was deposited into the Riding Association's bank account, which is centrally administered by the BC Liberal Party, and it is planned to use these funds for this year's Beans and Jeans event.

ANALYSIS

Did the Premier fundraise for the event?

It is asserted that “the Premier's fundraising produced in excess of \$10,000 for her constituency” (my emphasis). It does not appear, however, that the Premier did engage in any fundraising activities in relation to this event. Rather, the sponsorship donations were secured by the Riding Association executive.

A further allegation made in support of revisiting my Opinion is because the Beans and Jeans event turned a profit, and in earlier submissions made on the Premier's behalf I was informed that “any event the Premier does attend in her home constituency is break even” or that “any event attended by the Premier is funded entirely by entry fees that reflect the cost of the event” (my emphasis).

I was not, in fact, provided with such categorical statements for my earlier consideration, but rather the following:

“The Premier, as Leader of the Party, often attends other party events, both in Westside-Kelowna and other ridings, that are organized by riding associations. These are either free or, on occasion, involve an ‘at cost’ entry fee. These “at cost” events are priced to attempt to break even but depending on attendance, can show a small profit (or loss) which would go to (or be borne by) the Constituency Association. With respect to Westside-Kelowna the most expensive of these last year was an event with a \$35 entry fee (or \$25 for Party members)” (my emphasis).

Accordingly, while the Beans and Jeans event realized a modest surplus, primarily as a result of the sponsorships the organizers were able to secure, I am unable to conclude that this outcome is inconsistent with the information provided to me by the Premier, as the possibility of a surplus arising from such constituency events was specifically contemplated.

In a similar vein, another assertion is that I was told that the “Premier does not participate in events to raise money for her own constituency association”. However, the submission made to me was, in fact, “the Premier does not participate in events intended to raise money for her own

riding association” (my emphasis). I appreciate that it may be open to interpretation whether an event is “intended” to raise money or not. However, I accept the characterization of the event as not primarily designed for fundraising purposes, given that the majority of the attendees were provided with free entry and no other funds were solicited or generated at the event according to the Elections BC report.

Were donations directed to the Premier?

It is suggested that I was told in the first instance, on behalf of the Premier, that “donors cannot direct donations to benefit the Premier, they are never earmarked for any particular purpose” (Mr. Eby’s emphasis). The suggestion now is that I was misled, given that donations were made specifically to support the Beans and Jeans event, allegedly benefitting the Premier directly.

The information I was given in the course of gathering information to prepare the May 4 Opinion included the following statements: “the BCLP does not have either a formula or procedure for either automatically, or by designation of a donor, redirecting donations back to a particular riding or candidate”; and “a donor would not be able to request or have their donation directed to the Leader’s Allowance (or indeed any other central party expense)”.

It is relevant to consider the particular context in which these statements were provided; i.e. in response to the allegation that large donations made to the central BC Liberal Party at exclusive events were linked to the Premier’s Leader’s Allowance. Sponsorship of larger local events with a modest ticket fee such as Beans and Jeans is of a different character entirely and was not the subject of the original complaint. So far as I can determine it is not uncommon for both major political parties to seek sponsorship for various party events, and this activity is permitted under our political fundraising laws.

In the supporting documentation Mr. Eby provided and confirmed by LPBC, the contributions in question were reported as a donation to the party for the purpose of sponsoring an event in the Premier’s constituency. The profit realized from the event reverted to the Riding Association, not to the Premier or her personal campaign. It is, therefore, simply inaccurate to characterize the sponsorship of the event as a “direct donation of \$10,000 to the Premier”.

Did the sponsorship donations benefit the Premier personally?

It is also inaccurate to describe the donations or the surplus as accruing to the Premier for “her own personal benefit”. The sponsorship donations in question were solicited by the Riding Association executive, for a party event in the Premier’s constituency, with the surplus accruing to the Riding Association. It does not appear that the Premier had any role in soliciting the sponsorship funds, made any requests for donations at the event, or had any input into directing how the surplus funds might be spent.

There may indeed be some residual political benefit to the Premier, as from any event with publicity; but as outlined in the Opinion, a political interest of this general nature will very rarely be considered a private interest under the *Act* and that threshold is far from being crossed in this case.

SUMMARY AND CONCLUSION

As discussed in some detail in my May 4, 2016 Opinion, essential to a finding of a conflict of interest is the furtherance of a private interest. In the Beans and Jeans example provided, I am again unable to conclude that there is a private interest at stake for the Premier. In essence, the request comes full circle by asserting that the Premier's general political interest amounts to a private interest.

In summary, the "new" information provided is not compellingly different and (given the relevant dates) must have been available at the time the original request was submitted. Had this information been submitted by either party in the first instance, it would have had no bearing on my analysis.

The *Act* makes some provision for finality. It specifically provides in section 18 that a confidential opinion requested by an MLA "on any matter respecting [their] obligations... under [the] *Act* is final for all purposes...so long as the facts presented by the member... were accurate and complete".

There is no equivalent provision when the request for an opinion respecting compliance is not made by members themselves. Under section 19, such requests can come from other MLAs, members of the Public, the Executive Council or the Legislative Assembly.

The difference can be explained because the policy in the *Act* is that the information provided by members seeking an opinion on their obligations is confidential and not transparent, whereas requests for opinions under section 19 are typically documented as part of a transparent process of information gathering. In my view, the intent and purpose of the *Act* is that before our opinion process is engaged, all of the relevant and cogent information including evidence and grounds will have been assembled and presented for consideration. If that imperative is observed, incremental requests and any ongoing cycle of rebuttal and response will be avoided and matters can be dealt with and decided on a fully considered basis.

I consider this matter to now be closed.

Dated August 9, 2016



Paul D.K. Fraser, Q.C.
Conflict of Interest Commissioner