



OPINION

**OF THE CONFLICT OF INTEREST COMMISSIONER
PURSUANT TO SECTION 18(1) OF THE
*MEMBERS' CONFLICT OF INTEREST ACT***

**IN THE MATTER OF A REQUEST BY
THE HONOURABLE MEMBER FOR KOOTENAY EAST,
WILLIAM BENNETT,
WITH RESPECT TO HIS OBLIGATIONS UNDER
*THE MEMBERS' CONFLICT OF INTEREST ACT***

City of Victoria
Province of British Columbia

March 19, 2015

PREFACE

Under the *Members' Conflict of Interest Act* ("the *Act*"), a member of the British Columbia Legislative Assembly may request, pursuant to section 18(1), that the Commissioner give an opinion on any matter respecting the obligations of the member under the *Act*. The Commissioner may make appropriate inquiries and provide the member with a written opinion (section 18(2)). The opinion is confidential, but may be released publicly by the member (section 18(3)).

On February 19, 2015 the Honourable William Bennett, MLA for Kootenay East and Minister of Energy and Mines and Minister Responsible for Core Review, requested the Commissioner's written opinion with respect to his obligations under the *Act*. At the same time, the Minister agreed that he would publicly release the opinion upon receipt.

I. EXECUTIVE SUMMARY

A. BACKGROUND

The Honourable William Bennett is the member of the Legislative Assembly of British Columbia for Kootenay East.

He was first elected in May, 2001 and appointed to cabinet in June 2005. Since then he has served as Minister of several ministries and, since June 10, 2013, as Minister of Energy and Mines and Minister Responsible for Core Review.

For wildlife management purposes, the province is divided into Regions. Minister Bennett's constituency is located in Region 4 of the province. On December 10, 2014 the Honourable Steve Thomson, Minister of Forests, Lands and Natural Resource Operations (FLNRO) announced the Ministry's new 2014 Wildlife Allocation Policy for resident and non-resident hunters in the province. Non-resident hunters are required to hire the services of a guide outfitter who is licensed to operate in a specific territory. Under the new policy, non-resident hunters received an increase in their share of the wildlife harvest allocation. Resident hunters expressed objections to this change in the allocation. One of the objections was to the decision that there be open season on Big Horn Sheep in Region 4 for both resident and non-resident hunters. As a result of the continued public debate, there was further consultation with the stakeholder groups and on February 6, 2015 a revised policy was announced. Under the revised policy, the open season for Big Horn Sheep in Region 4 was cancelled for non-resident hunters. Instead, both resident and non-resident hunters received specific allocations for these animals, with resident hunters remaining on open season.

Concerns were raised in the media and by the Official Opposition in the Legislative Assembly that Minister Bennett may have "involved himself" in the 2014 allocation decision and may have been in a conflict of interest, or in an apparent conflict of interest, because of a financial interest he had publicly disclosed in a business related to guide outfitting in Region 4. As a result of these concerns, the Minister contacted me on February 12, 2015 and on February 19, formally asked for my written opinion on whether he should have recused himself from any caucus, committee and cabinet discussions relating to the 2014 wildlife allocation policy; and whether he should recuse himself from participating in similar wildlife allocation issues in the future.

In the course of gathering information and documentation from various sources, I interviewed both Minister Bennett and Minister Thomson. Both Ministers voluntarily agreed to provide information under oath.

B. FINDINGS

In 1995, Minister Bennett and a small group of close professional friends incorporated and invested in Height of the Rockies Adventure Company Inc., (the "company"). The company purchased the assets of a company which held the rights to a guide outfitting territory in the East Kootenays. The property included a lodge, cabins, trails, corrals and equipment. The group of purchasers intended that the guide outfitting operation, to be carried out by a licensed guide outfitter, would cover annual expenses relating to land occupancy, grazing, trail maintenance,

insurance, general maintenance and the like, while the group would continue with their respective professional jobs and occasionally use the facilities when not used by the guide outfitter. The original investments were supplemented from time to time by shareholder cash contributions to cover capital and operating costs.

Prior to running for and being elected to the Provincial Legislative Assembly in 2001, Minister Bennett returned his shares to the company. His stated reason for doing so was so that he could advocate in an unencumbered way for the wildlife and conservation issues that had inspired him to seek public office. He was not paid any money for his shares and his original shareholder loan and his subsequent cash contributions to the company (amounting to approximately \$70,000) were converted into an unsecured loan. Thereafter, Minister Bennett had no role in the company. At no time was he asked by the company or any of its shareholders for information or any advice or assistance with government.

Minister Bennett discussed the unsecured loan with this Office several times and publicly disclosed its existence in his annual disclosure statements for the years 2002 through 2014 inclusive, as he was required to do under the *Act*. Minister Bennett did not receive any income from the company; neither did he demand any interest or payment of any kind on his unsecured loan. He took no steps to secure his financial interest and (as he has said publicly) “had no idea whether [he] would ever be repaid”.

Over the course of its history, the company’s operating revenue steadily diminished. The company ceased operating the guide outfitting business in 2000 and thereafter the company leased the assets of the company to a guide outfitter who operated through his own limited company. It became clear that this arrangement was not sustainable as a reliable source of revenue for the company. All guiding operations ceased about three years ago. Over the course of the company’s life, the shareholders accessed the property occasionally for maintenance and recreational use. None of the shareholders, except one who owned a separate guide outfitting company, ever benefitted financially from the company.

In May, 2014, Minister Bennett was advised by the President of the company that an offer had been received to purchase the company and its assets. The offer represented a substantial loss of nearly 60% of shareholder investment. The decision to sell was made by the existing shareholders and was recorded in a Letter of Intent dated May 20, 2014. A formula was agreed upon by the existing shareholders for the distribution of the sale proceeds. The Minister played no part in the decision to sell or in the sale negotiations. The sale completed on July 1, 2014 and the Minister’s distribution of the proceeds is expected to be approximately \$30,000.

Minister Bennett has an established reputation as a passionate advocate for hunting, fishing, recreation and conservation opportunities in the province. As a result, he was often involved in consultations with resident hunters with respect to previous wildlife allocation decisions prior to 2014. From all the information and documentation I have reviewed, it appears that there were no discussions in Cabinet or Cabinet Committee with respect to the 2014 allocation. I have found that Minister Bennett’s first involvement in the 2014 allocation decision occurred sometime in late November 2014, a few weeks before the decision was announced on December 10, 2014. The matter was also discussed in caucus meetings on December 10, 2014 and January 20, 2015. I have found no evidence that in those discussions he promoted the interests of guide outfitters or advocated for a shift in the allocation policy to favour guide outfitters. Indeed, I found that his

principal concern continued to be advocacy for the positions advanced by resident hunters. Such advocacy was obviously contrary to any private financial or other interests he might be alleged to have had with respect to benefitting guide outfitters.

In any event, as the company had already been sold in May, 2014, months before Minister Bennett became involved in the 2014 allocation discussions in late November/December 2014 and January 2015, I have found that Minister Bennett had no “private interest” that could be affected by the changes to the 2014 allocation period. I concluded, therefore, that Minister Bennett was not in direct or apparent conflict of interest and did not breach the *Act* when he participated in these discussions. I have also found that Minister Bennett is not precluded from participating in discussions relating to the allocation of wildlife hunting opportunities between resident hunters and guide outfitters in the future.

II INFORMATION RECEIVED AND FINDINGS OF FACT

1. The Honourable William Bennett is a senior Minister in the Executive Council of British Columbia. He was first elected to the Legislative Assembly as the member for East Kootenay in the May 16, 2001 general election and was re-elected in the general elections in 2005, 2009 and 2013. In the course of his legislative career he was appointed to the Executive Council on June 16, 2005 and has served at various times as Minister of State for Mining, Minister of Tourism, Culture and the Arts, Minister of Community and Rural Development, Minister of Energy, Mines and Petroleum Resources and, since June 10, 2013 as Minister of Energy and Mines and Minister Responsible for Core Review.

2. On February 12, 2015, Minister Bennett contacted me seeking oral advice with respect to his obligations under the *Act* and with respect to previous contact he had over the years with this Office concerning an unsecured loan of funds he had contributed between 1995 and January 2001 to a company called Height of Rockies Guide Outfitters Inc. It was agreed that he would make a formal request seeking a written opinion pursuant to section 18(1) of the *Act*. On February 19, 2015 the Minister formally asked for my written opinion on whether he should have recused himself from any Caucus, Committee and Cabinet discussions relating to the 2014 Wildlife Allocation Policy; and whether he should recuse himself from participating in similar wildlife allocation issues in the future.

3. The Minister's request potentially engages the following sections of the *Act*:

Conflict of Interest

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in

the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

- (2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Conflict of Interest prohibition

- 3** A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

Insider Information

- 4** A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Influence

- 5** A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

Procedure on conflict of interest

- 10** (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,
- (a) disclose the general nature of the conflict of interest, and
 - (b) withdraw from the meeting without voting or participating in the consideration of the matter.

Performance of responsibilities by minister

11 (1) If, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must

- (a) refrain at all times from attempting to influence the matter, and
- (b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private interest and withdraw from the meeting without voting or participating in the discussion.

4. Minister Bennett's personal history is relevant to the issues raised in the course of this opinion. His early life was spent in Ontario and his interests in wildlife and outdoor recreation manifested itself in the course of his childhood. As a teenager he spent his summers working as a fishing guide in Northern Ontario. After university he owned and operated a fishing lodge on the Manitoba/Northwest Territory border for 11 years and a fly fishing and goose hunting lodge for another year thereafter. He then decided to go to Law School in Ontario and ultimately moved to British Columbia in 1992. Shortly thereafter he began practicing law in Cranbrook, which continues to be his family residence. In the East Kootenay, Minister. Bennett continued his lifelong interest in wildlife management, recreational hunting and conservation. Ultimately that interest led in 2001 to his career as a member of the Legislative Assembly. On March 11, 2002, he said the following in the House:

“Recreational hunting and the contribution hunters make to conservation in BC...is a topic near and dear to my heart. It's one of those issues that MLAs think about when they think about going into politics and perhaps getting elected and having an opportunity to represent constituents on issues not raised in this House...I speak this morning on behalf of the hunters in the East Kootenay but also those men and women in BC who hunt the mountains and valleys of our province. With respect, I will be their voice in this house today. These are people who oftentimes are the only ones to volunteer to assist wildlife during severe winters and disease

cycles or to help with labour-intensive habitat restoration projects...Hunting is vital part of wildlife management and conservation in BC. I am proud to call myself a hunter and a conservationist. I believe that recreational hunting is an important part of our British Columbia heritage and should be recognized in law as such”.

5. Those comments were made by Minister Bennett in support of his introduction of a Private Member’s Bill, the *Hunting and Fishing Heritage Act* [SBC 2002] chapter 79, which received Royal Assent on November 26, 2002. That Act records the following in its single section:

A person has the right to hunt and fish in accordance with the law.

Height of the Rockies Adventure Company Inc.

6. I come now to discuss Minister Bennett’s entire involvement and investment in this company.

7. In early 1995, Minister Bennett and a small group of professional friends decided to jointly acquire the assets of a business that held the rights to a guide outfitting territory in the Palliser River area, located near the Height of the Rockies Provincial Park in south eastern British Columbia. The assets included a lodge, cabins, trails, corrals and equipment as well as various permits and tenures.

8. The new company was incorporated in January, 1995 and was named the Height of the Rockies Adventure Company Inc. (the “company”). The group of purchasers intended that the guide outfitting operation, to be carried out by a licensed guide outfitter, would cover annual expenses relating to land occupancy, grazing, trail maintenance, insurance, general maintenance and the like, while the group would continue with their respective professional jobs and occasionally use the facilities when not used by the guide outfitter. The original investments

were supplemented from time to time by cash contributions from shareholders in order to cover capital and operating costs. Minister Bennett contributed \$56,250.00 initially and was issued shares in the company. He later made total additional cash contribution of \$13,583.00, for a total investment in the company of \$69,833.00. During the time he was a shareholder, Minister Bennett was practicing law and received no income from the company.

9. Other investors joined the company as shareholders in 1999, including Minister Bennett's brother Jim. Jim Bennett purchased shares and also provided a shareholder loan, making a total investment that exceeded the amount Minister Bennett had contributed to the company.

10. On January 18, 2001, prior to running for and being elected to the Provincial Legislative Assembly (in May, 2001) Minister Bennett returned his shares to the company. His stated reason for doing so was so that he could advocate in an unencumbered way for the wildlife and conservation issues that had inspired him to seek public office. He was not paid any money for the return of his shares, and his original shareholder loan and his subsequent cash contributions to the company were converted into an unsecured loan.

11. Minister Bennett discussed the unsecured loan with this Office several times and publicly disclosed its existence in his annual disclosure statements for the years 2001 through 2014 inclusive, as he was required to do under the *Members' Conflict of Interest Act*. Minister Bennett said that since divesting himself of his shares, he had little involvement with the company apart from occasionally visiting the main lodge and cabins at the invitation of one of the shareholders. Some of these invitations were extended by his brother, a retired teacher who has lived abroad for several years but returns to British Columbia for a number of weeks each summer.

12. Minister Bennett had no role in the company and did not receive any income from the company after he ceased to be a shareholder; neither did he demand any interest or payment of any kind on his unsecured loan. He took no steps to secure his financial interest and (as he has said publicly) “had no idea whether [he] would ever be repaid”. At no time was he asked by the company or any of its shareholders for information or advice or assistance with government.

13. In May 2014, Minister. Bennett was informed by the President of the company, Mr. Chris Callen, that an offer had been made to purchase the company and its assets. The offer represented a substantial loss of nearly 60% of shareholder investment. The decision to sell was made by the existing shareholders and was recorded in a Letter of Intent which I have had the opportunity to review. The letter is dated May 20, 2014 and indicates a closing date of July 1, 2014. The letter was signed on May 23, 2014.

14. I spoke to Mr. Callen, who provided me with further information about the company and the sale. Over the course of its history, the company’s operating revenue steadily diminished, as the guide outfitting operation failed to generate enough revenue to break even from the beginning. The company ceased operating a guide outfitting business in 2000. The company later leased its assets to a guide outfitter who operated through his own limited company (and who had become a shareholder in 2007). However, it became clear that this arrangement was not sustainable as a reliable source of income for the company, as the guide outfitter was not able to generate sufficient income from his guiding activities to cover the lease payments to the company. Mr. Callen said that all guiding operations ceased about three years ago. Over the course of the company’s life, the shareholders accessed the property for maintenance and improvement purposes as well as for occasional recreational use when not being used for guiding activities.

15. Mr. Callen confirmed that neither Minister Bennett nor his brother was involved in the negotiations for the sale of the company. He said that in November, 2013 he contacted the existing shareholders to advise them that an offer had been made to purchase the company, and recommended a formula to distribute the proceeds of the sale. The formula agreed to by the shareholders gave priority to later shareholder loans (i.e. loans invested later when cash was needed to service debt and for growth of assets and maintenance) over shareholder loans paid upon the original investment. Each shareholder was subject to the same rules in terms of calculating payment from the sale price. As a non-shareholder, Minister Bennett was not a party to the agreement. Under the formula, Minister Bennett will receive approximately \$30,000.00 of his original \$70,000.00 investment. His brother will receive less than half of his original investment back.

Minister Bennett's contact with COI Office

16. Since his election as an MLA in 2001, Minister Bennett has complied with the various disclosure requirements contained in the *Act* for the years 2002 through 2014 inclusive. After having met with the then Commissioner on October 9, 2002 during which there was a discussion about his former shareholdings in the Height of the Rockies Adventure Company Inc., the Minister confirmed to the then Commissioner that the company owed him a "loan" and went on to say the following:

“Finally, let me state unequivocally that I am not a shareholder of this company. Neither does any person hold an interest in this company in trust on my behalf. I do not represent this company or speak on behalf of this company to government officials”.

17. Over the years the Minister continued to discuss with the Office the continued existence of the unsecured loan. The Minister was advised that accepting occasional invitations from his

shareholder friends to visit the property did not raise any conflict of interest concerns. He was also in touch with the Office in July 2003 and received a confirmation that he could retain an Honourary Life Membership in the BC Wildlife Federation, which he had received in a surprise ceremony at its Annual General Meeting.

18. The Minister has had annual discussions with me since the commencement of my term as Commissioner in 2008 about his unsecured loan to the company and has on those occasions expressed considerable doubt about whether the loan could or would be repaid. In the course of those conversations, he has confirmed that the primary reason for this investment was not to earn income or profit from it, but rather to enjoy the company of his friends during the time he was a shareholder.

19. Prior to the Minister's contact with me on February 12, 2015 and his subsequent request for this opinion, the implications of Wildlife Allocation Policy had not been specifically discussed between us.

2014 Wildlife Allocation Policy

20. According to the Ministry of Forests, Lands and Natural Resource Operations ("FLNRO") website¹, allocation is the process by which the available harvest of a particular wildlife population is divided amongst consumptive users, after the rights of First Nations have been considered. Decisions around the allocation of harvest opportunities for certain big game populations are guided by the Harvest Allocation Policy and Procedure (the "Policy").

¹ http://env.gov.bc.ca/fw/wildlife/harvest_alloc/

21. The Policy is intended to address those species (by region) where resident and non-resident hunting pressure exceeds the number of animals that are available. An established procedure is used to advise on the splits of the annual allowable harvest that are allocated to the resident hunters and to the guided non-resident hunters.

22. A government mandated wildlife allocation for all hunters has been in effect for several decades in British Columbia. In this century, a Wildlife Allocation Policy Review Project (the “Project”) was undertaken in 2003 by the Ministry of Environment. The stated goal of the policy was to give certainty to both resident and non-resident user groups in how wildlife allocations were made to each group. Extensive consultations took place in an effort to accommodate the interests of all stakeholders. Minister Bennett was one of those involved in the consultation process. The then Minister of the Environment, the Honourable Barry Penner, has advised me that he was assisted in the consultation process by Minister Bennett whom he indicated was one of the strongest advocates for the interest of resident hunters. He also advised me that Minister Bennett’s experience and knowledge of recreational and commercial big game hunting needs and requirements was a valuable source of information to inform the Project. Minister Bennett also told me that he was involved in discussions with organized interest groups, which contributed to a consensus among the stakeholders that became popularly known as the “2007 temporary policy.”

23. In 2011, responsibility for the wildlife allocation policy was given to FLNRO, with Minister Thomson responsible. In negotiations and discussions that took place in 2012, it was obvious that changes were being sought by some stakeholder groups and that revisions to the existing policy were being suggested. The Ministry gathered the necessary information and background material over several months and at the end of September, 2014, FLNRO staff presented their

recommendations to Minister Thomson. He reviewed the recommendation in October and November and in the course of doing so held discussions with various stakeholder groups. In late November 2014, Minister Thomson contacted Minister Bennett to advise him that a decision on the policy was imminent and to let him know the general direction of the proposed changes that were being contemplated. Minister Thomson told me that his purpose for contacting Minister Bennett was to get feedback on how the policy might be received by the resident hunters. He valued Minister Bennett's perspective, given his longstanding interest in wildlife issues and his knowledge of the organizations and interests representing hunters. He advised me that in his experience, Minister Bennett had always been a "passionate" supporter of the resident hunters. He confirmed that Minister Bennett had not been involved in the Review process conducted by FLNRO from 2012 - 2014 and that Minister Bennett had not been involved in the 2014 Wildlife Allocation Process until he initiated contact with him in November to seek his feedback. Both Ministers confirmed that the 2014 Allocation Policy was not discussed either in Cabinet or in Cabinet Committee.

24. A breakfast meeting was held on November 26, 2014 involving Ministers Bennett and Thomson and representatives of the BC Wildlife Federation ("BCWF"), the largest organization of resident hunters in BC, with a membership of approximately 46,000. George Wilson, the President of BCWF attended the meeting with his vice-president. Mr. Wilson was the Regional President of the BCWF for Kootenay Region for 5 years before being elected to the Board of Directors in 2001. He has been a member of the Board since then and became President in April, 2014. Mr. Wilson told me that he perceived Minister Bennett's principal interest in hunting to be on behalf of resident hunters. While that was Minister Bennett's primary interest, Mr. Wilson's experience with him over the last 14 years has been that he also understands the needs and

aspirations of the guide outfitters industry and was readily available to seek to find common ground between the groups.

25. At the breakfast meeting, Minister Thomson discussed various options and solicited views on general issues having to do with wildlife allocation. Potential specific allocation decisions for each Region were not discussed. Minister Bennett confirmed to me that he was not requested to and did not meet or communicate with representatives of the Guide Outfitting sector in relation to the 2014 Wildlife Allocation Policy.

26. On December 10, 2014 Minister Thomson released the 2014 Allocation Policy. The previous allocation formula had been changed to give a larger proportion to guide outfitters. According to FLNRO, the allocation changes allow “for some relief and additional opportunity to increase the likelihood of success” for guide outfitters. The allocation shift was expected to represent a “minimum economic value to guides of approximately 2.6 million dollars per year and will help ensure the sector remains viable”.

27. The announcement generated a considerable amount of controversy from resident hunters who expressed disagreement with the changed allocation. Ministers Bennett and Thomson were criticized in both traditional and social media outlets by many in the resident hunter community.

28. Minister Bennett told me that when the policy was announced, he immediately contacted Minister Thomson to discuss some of the specific allocation decisions. In particular, Minister Bennett questioned the general open-season (GOS) for big-horn sheep in Region 4 for non-resident hunters. Meetings of the BC Liberal Caucus took place on December 10, 2014 and January 20, 2015. Robust public discussion and debate continued. Minister Thomson agreed to reconsider the allocation decision. On February 6, 2015 a revised 2014 allocation policy was

issued.² The overall changes could be described as “modest” but, in the result, the GOS for big-horn sheep in Region 4 was cancelled for non-resident hunters. Instead, both resident and non-resident hunters received specific allocations for big-horn sheep with resident hunters remaining on open season.

Leaked Emails

29. On February 19, 2015 questions were raised in the House and in the media about a leaked string of email messages exchanged between Minister Bennett and a senior member at FLNRO on June 16 and 23, 2014. Minister Bennett inquired about the status of a constituent’s application for an expansion of his existing guiding territory. Apparently, guide outfitters can apply to have contiguous or adjacent properties added to their territory, in appropriate circumstances. One consequential result of being granted additional territory could be an increase in the allotment of animals that could be harvested by the guide operator. In the course of the email exchange Minister Bennett said in a message on June 23, 2014: “I am aware of the fractional territory issue, having been intimately involved in the allocation file”. (emphasis added) The term “fractional territory” can be understood to be the equivalent of “allotted territory for a guide outfitter”.

30. Minister Bennett has advised me that his reference to “the allocation file” related to the long-standing issue with respect to allocation as between resident and non-resident hunters. As discussed earlier, Minister Bennett had been involved in discussions with respect to the 2003, 2007 and 2012 allocation policy decisions. The term “file” was a convenient and apt description of the continuing issue. Minister Bennett advised me that the reference he made to being

² http://www.env.gov.bc.ca/fw/wildlife/harvest_alloc/docs/2015FLNR0009-000152.pdf

“intimately involved in the allocation file” was a general reference and did not include the Policy review process carried out by FLNRO in 2014. Minister Thomson confirmed to me that Minister Bennett was not involved in the 2014 process until his limited participation which began in November, 2014. I am satisfied that the reference made in the June 23 email was historical in context and was not a reference to the contemporary 2014 Wildlife Allocation Policy review process.

III ANALYSIS AND CONCLUSIONS

Was Minister Bennett in a direct conflict of interest by participating in discussions related to the 2014 Wildlife Allocation Policy?

31. For a direct conflict of interest, I must consider whether the Member knew he had the opportunity to further his private interest in the exercise of his official power. The question is not whether a reasonably well informed person would think such an opportunity existed, but whether such an opportunity actually existed on the facts and whether the Member knew this to be the case.³

32. I am unable to conclude on the facts before me that an opportunity actually existed for Minister Bennett to further his private interest. Minister Bennett had no official function or decision making power with respect to the 2014 allocation policy. The responsibility for the policy lay with Minister Thomson, who was informed by his consultations with various stakeholder groups and the advice of his professional staff. Minister Bennett had only one informal meeting with Minister Thomson just prior to the policy announcement, and only caucus

³ Clark (2002) <http://www.coibc.ca/down/clark.pdf>

level discussions thereafter. While he certainly participated in these discussions in his capacity as a Member, in my view section 2 of the *Act* is engaged only when the official powers, duties or functions in question involve some decision making dimension.

33. In any event, by the time Minister Bennett became involved in the 2014 allocation issue, he no longer had a private interest that could be affected by changes to the policy. Minister Bennett was aware that the company in question had been sold some months beforehand, and knew approximately how much of his loan would be repaid once the proceeds of the sale were distributed based on the formula agreed upon by shareholders. It is clear that there was no opportunity for Minister Bennett to further his private interest, and he knew this to be the case when he participated in discussions related to the 2014 Wildlife Allocation Policy.

34. In his decision in the *Blencoe* case⁴, Commissioner Hughes noted that the private interests of another person, such a family member, close personal friend or business associate might, in some circumstances, give rise to a private interest on the part of the Member. The test is whether it is reasonable to assume that the Member would benefit directly or indirectly from the benefit to the third party. I considered whether Minister Bennett might have been in a conflict of interest as a result of his brother's financial interest in the company. Given that the same circumstances outlined above apply to Jim Bennett's investment, there was no opportunity for Minister Bennett to further his brother's private interest either.

⁴ Blencoe (1993) http://www.coibc.ca/down/opinion/opinion_blencoe_1993.pdf

Was Minister Bennett in an apparent conflict of interest by participating in discussions related to the 2014 Wildlife Allocation Policy?

35. As stated by my colleague Mr. Gerald Gerrand, Q.C. in a recent Opinion issued on behalf of this Office, “absent a private interest, there can be no conflict or apparent conflict of interest”.⁵ It is clear that Minister Bennett was not in an apparent conflict of interest. Given that I have concluded that there was no private interest at stake for Minister Bennett or his brother as the company had been sold by the time he became involved in the 2014 Wildlife Allocation Policy discussions. Regardless, it is important to express my view that even if the sale had not occurred by then, I would still have found that Minister Bennett was not in an apparent conflict of interest.

36. There were indeed some “red flags” that could suggest the existence of an apparent conflict of interest. Minister Bennett had for several years publicly disclosed his loan to a company involved in guide outfitting; he had participated in previous discussions relating to wildlife allocation decisions; and “the leaked emails” from June, 2014 could, on their face, create the impression that Minister Bennett remained actively involved on an ongoing basis in the “allocation file”.

37. However, as I have stated previously:

To constitute a breach of the *Act*, a perception of conflict of interest cannot simply exist in the air or in the abstract, it must be established against a test of reasonableness. While the simple perception of conflict of interest may raise a “red flag” or give rise to suspicion, that is clearly not sufficient to support a finding of an apparent conflict of interest until the objective test of reasonableness, which is mandated by section 2(2), is applied to the particular circumstances under review. Whether a perception is “reasonable” depends on whether it is one that “a reasonably well informed person could properly have, that the member’s ability to exercise an official power or perform an official duty or function must

⁵ Clark (2013) http://www.coibc.ca/down/opinion/opinion_van_dongen_2013.pdf

have been affected by his or her private interest”. Notice has to be taken of the mandatory language of the section. The member’s ability must have been affected, not may have been or could have been affected, by his or her private interest. I interpret the *Act* to mean that for a member to be found to have had an apparent conflict of interest in breach of the *Act*, he or she must have acted knowingly, or have been deliberately blind in all of the circumstances.⁶

38. As noted above, Minister Bennett did not “exercise an official power or perform an official duty” with respect to the allocation policy. He had no power or authority to skew the allocation in favour of non-resident hunters either generally or with regard to specific allocations in Region

4. Ironically, when Minister Bennett did express his views, from all accounts his support tended to be on behalf of resident hunters rather than non-resident hunters. In fact, the focus of his advocacy after the specific regional allocations were announced was to seek revocation of the open season on Big Horn Sheep granted to non-resident hunters in Region 4. In taking this position, he acted in a manner that was presumably detrimental to the company’s prospects had it not been sold by that point, and would therefore have been against his own private interest.

39. Taking into account all these circumstances, it is my view that even if Minister Bennett still had a private interest by the time he became involved in the 2014 allocation discussions, a reasonable person could not properly form the belief that his ability to perform his official duties (such as they were) must have been affected by his private interest.

40. Given my conclusion that Minister Bennett was not in a direct or apparent conflict of interest, it is unnecessary to consider the recusal provisions set out in sections 10 and 11 of the *Act*.

⁶ Campbell (2009) http://www.coibc.ca/down/opinion/opinion_campbell_2009.pdf

Did Minister Bennett use insider information, or use his office to seek to influence Minister Thomson's decision, to further his private interest?

41. Section 5 of the *Act* stipulates that a member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest. I have established that it was Minister Thomson who first approached Minister Bennett to solicit his views on the general direction of the Policy. I am satisfied that in contributing to the 2014 allocation discussions, Minister Bennett tended to represent the interests of resident hunters as opposed to guide outfitters. There is no evidence before me to suggest that Minister Bennett's purpose in participating in the allocation discussions was motivated by a desire to further his private interest. Neither is there any evidence to suggest that he used insider information to further his private interest in contravention of section 4 of the *Act*.

CONCLUSION

42. In the result, I find that Minister Bennett was not in a direct or apparent conflict of interest in the discussions he participated in about the 2014 Wildlife Allocation Policy and did not otherwise breach the *Act* when he participated in these discussions. It is also my opinion that Minister Bennett is not precluded from participating in discussion relating to the allocation of wildlife hunting opportunities between resident hunters and guide outfitters in the future.

Dated this 19th day of March, 2015
In the City of Victoria, Province of British Columbia



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