BRITISH COLUMBIA

OPINION OF
THE COMMISSIONER OF CONFLICT OF INTEREST
PURSUANT TO SECTION 15(1) OF THE
MEMBERS' CONFLICT OF INTEREST ACT

IN THE MATTER OF A COMPLAINT BY THE HONOURABLE MEMBER FOR POWELL RIVER-SUNSHINE COAST WITH RESPECT TO ALLEGED CONTRAVENTION OF PROVISIONS OF THE MEMBERS' CONFLICT OF INTEREST ACT BY THE HONOURABLE MEMBER FOR MATSQUI

City of Victoria
Province of British Columbia
October 26, 1994

IN THE MATTER OF A COMPLAINT
BY THE HONOURABLE MEMBER FOR POWELL RIVER-SUNSHINE COAST
WITH RESPECT TO ALLEGED CONTRAVENTION OF PROVISIONS OF
THE MEMBERS' CONFLICT OF INTEREST ACT
BY THE HONOURABLE MEMBER FOR MATSQUI

INTRODUCTION

This is an opinion prepared pursuant to section 15(1) of the *Members' Conflict of Interest Act*. It concerns the participation of Michael de Jong, the member for Matsqui, in debate and voting in the Legislative Assembly on July 7 - 8, 1994 on amendments to the *Legal Services Society Act* RSBC Chap 227. That Act established the Legal Services Society whose objectives, as enumerated in section 3(1), are to ensure that:

(a) the services ordinarily provided by a lawyer are afforded to individuals who would not otherwise receive them because of financial or other reasons; and
(b) education, advice and information about law are provided for the people of British Columbia.

The business of the Society, which is operated without purpose of gain for its members, is conducted by a Board of Directors and they constitute the members of the Society.

Section 3(2) of the Act expands on the fulfillment of the first of the objectives of the Society by detailing legal services which ***must*** be available to qualifying individuals in specified situations - criminal proceedings that could lead to imprisonment, civil proceedings that could result in confinement, some domestic disputes, etc.

I believe it will be helpful to explain how the delivery of legal aid services through the Legal Services Society actually occurs. All members of the Law Society of British Columbia engaged in the private practice of law are eligible to take legal aid cases and be paid for their services by the Legal Services Society. At present there are approximately 6000 lawyers engaged in the private practice of law in British Columbia. Lawyers interested in doing legal aid work ask the nearest referring office for a billing number and indicate their availability and their preferred area of practice. Once the Society confirms that the lawyer is a member in good standing of the Law Society, a billing number is issued. I am advised that, at the present time, approximately three thousand or one half of the private practitioners in the province have billing numbers but only about two thousand of them are actively engaged in the delivery of legal aid services at any one time.

The primary factor in selecting a lawyer is choice of counsel made by the client, provided the lawyer selected is in the same geographic area. If a specific lawyer is not requested, then as a general rule, the referring officer will select a lawyer by preferred area of practice and on a rotation basis.

In fiscal year 1991/92 total payments to 1607 members of the private bar by the Legal Services Society was 48.9 million dollars. In fiscal year 1992/93 total payment to 1732 lawyers was 69.2 million dollars. While a tabulation for fiscal year 1993/94 is not yet complete, it appears that approximately 1925 lawyers received remuneration totaling approximately 76.3 million dollars.

THE AMENDMENTS

The 1994 amendments are part of Bill 55 entitled *Miscellaneous Statutes Amendment Act (No. 3), 1994*. They are contained in sections 7 and 8 of that Bill. Section 7 details amendments to section 5 of the *Legal Services Society Act*. Section 5 provides for the establishment of the Board of Directors of the Society. Section 8 adds two new sections to the *Legal Services Society Act* numbered as 10.1 and 14.1.

Bill 55 was first presented to the House on Wednesday afternoon, July 6, 1994. It was immediately read a first time and second reading was ordered for the next sitting day of the House after the day of its introduction. The Bill had 21 sections and contained amendments to 9 statutes. On July 7, second reading commenced about 5:20 p.m. and was concluded about 6:45 p.m. at which time it was sent to a committee of the Whole House for consideration later that day. The House continued to sit without interruption and the debate in committee commenced at 2:00 a.m. on July 8. That debate concluded an hour later and it was immediately read a third time and passed. The hour then being 3:10 a.m., the House adjourned.

Section 5 of the *Legal Service Society Act*, *prior* to amendment read;

Board of Directors

5.(1) The board shall consist of 14 directors.

(2) Seven directors, at least 2 of whom shall not be lawyers, shall be appointed by the Lieutenant Governor, on the recommendation of the Attorney General.

(3) Seven directors, at least 2 of whom shall not be lawyers, shall be appointed by the benchers of the law society after consultation with the executive of the British Columbia branch of the Canadian Bar Association.

(4) The term of office of a director is 2 years after the date on which his appointment becomes effective.
(5) Notwithstanding subsection (4), 3 of the first appointments by the Lieutenant Governor in Council and 4 of the first appointments by the benchers of the law society shall be for a term of one year.
(6) A director shall not hold office for more that 6 consecutive years.
(7) Notwithstanding anything else in this section, a director whose term of office has expired may continue to hold office until his successor is appointed, and where a vacancy on the board exists for any other reason, the person or body who appointed the director to be replaced shall appoint a successor, and the person so appointed may hold office for the residue of the term for which his predecessor was appointed.
(8) The board shall control and direct the business of the society and may, by resolution, determine its own procedure.
(9) A director shall be reimbursed for his reasonable out of pocket traveling and other expenses incurred in the discharge of his duties and may be paid a fee for his services.

With the amendments as passed, incorporated into the section and italicized and underlined, section 5 as amended now reads:

Board of Directors

5.(1) The board shall consist of *15* directors.
(2) *Five* directors, at least 2 of whom shall not be lawyers, shall be appointed by the Lieutenant Governor, on the recommendation of the Attorney General.
(3) *Five directors* shall be appointed by the benchers of the law society after consultation with the executive of the British Columbia branch of the Canadian Bar Association.
(3.1) Two directors shall be appointed by the board of directors of the Native Community Law Office Association of British Columbia.
(3.2) Two directors shall be appointed by the board of directors of the Association of Community Law Offices of British Columbia.
(3.3) One director shall be appointed
(a) jointly by the directors appointed under subsections (3.1) and (3.2), or
(b) where the directors appointed under subsections (3.1) and (3.2) have not appointed a director under paragraph (a) of this subsection within 60 days after the date on which the last of those 4 directors was appointed, by the Attorney General.

Sub-sections (4), (5), (6), (7), (8) and (9) are unamended and remain in section 5 as they appear above.

The two new sections contained in section 8 of the *Miscellaneous Statutes Amendment Act (No. 3) 1994* are now incorporated into the *Legal Services Society Act* and they read:

Limit on Expenditures

10.1 (1) In this section "revenue" means, for a fiscal year of the society, the revenue of the society from all sources for that year, including, without limitation, all grants made or to be made to the society for that year by the government or any other person or agency.

(2) The aggregate of the expenditures made by the society in a fiscal year and the liabilities incurred by the society that might reasonably come due in the fiscal year shall not exceed the society's revenue for that fiscal year.

(3) Notwithstanding subsection (2), the society may make an expenditure or incur a liability that would have the effect of placing the society in contravention of that subsection where the expenditure or liability is first approved by the Attorney General and the Minister of Finance and Corporate Relations.

Society to Supply information

14.1 The society shall submit to the Attorney General, in the format and within the time required by the Attorney General, any financial, statistical or other information that the Attorney General may require respecting the operation of the society and the services provided by it.

THE COMPLAINT OF VIOLATING THE MEMBERS' CONFLICT OF INTEREST ACT

Section 15 (1) of the *Members' Conflict of Interest Act* reads:

> A member who has reasonable and probable grounds to believe that another member is in 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 compliance of the other member with the provisions of this Act.

The complainant under that section is Gordon F.D. Wilson, MLA for Powell River-Sunshine Coast.

The House met for 15 minutes, commencing at 11:05 a.m. on July 8, 1994. It has not met since that time. Royal assent was given to several bills including Bill 55. The only other business at this brief session involved Mr. Wilson addressing this matter and the response to his remarks by some other members. On that occasion, Mr. Wilson said:

> "I note that last evening in debate on a miscellaneous statutes act provision regarding legal aid lawyers, the member for Matsqui mounted aggressive arguments both in second reading and in committee stage with respect to the provisions in the act that would remove remuneration from legal aid lawyers. I have in my possession a notice that that member received $15,255.45 directly from that process. I checked this morning with the Law Society of British Columbia and I found only one member with that name registered in the province, in Abbotsford. I believe this to be a prima facie case of conflict. I will be putting that position to the conflict of interest commissioner, Mr. Hughes."

Mr. Wilson did write to me later the same day. The portions of his communication that bear directly on the matter requiring my consideration read:

> "Yesterday and this morning, the member from Matsqui both entered debate on second reading and committee stage of Bill 55, the *Miscellaneous Statutes Amendment Act (No. 3)* , that would directly affect remuneration of private lawyers who engage in legal services work. As you will note by the disclosure enclosed, the member from Matsqui has directly gained through provisions of the existing act, to my knowledge, to the sum of $15, 000, and potentially larger amounts than which are noted.
>
> Insofar as the passage of Bill 55 would directly affect amounts payable to private lawyers, one of whom may well be the member from Matsqui as he continues an active law practice, that member's aggressive debate in opposition to reduction of those funds and in favour of the status quo by which he has directly gained, as well as his participation in a division (standing) vote in both second reading and committee stage, may well constitute a prima facie case of conflict of interest.
>
> I formally request that you review this matter and rule on it in the interest of all members of the Legislative Assembly so that we may further clarify how the act should and will be applied."

To clarify matters I subsequently wrote to Mr. Wilson and then met with him. In that meeting he confirmed that it is his position that he has reasonable and probable grounds to believe that Mr. de Jong is in contravention of the *Members' Conflict of Interest Act*. He alleges the contravention occurred by de Jong taking part in the debate and voting on amendments to the *Legal Services Society Act* that would directly affect remuneration of private lawyers who engage in legal aid work paid for by the Legal Services Society of whom Mr. de Jong is one. He advised me that the reasonable and probable grounds for the belief that he holds that Mr. de Jong is in contravention of the Act because of being in a position of conflict of interest, are that as a private legal practitioner he has recently been in receipt of remuneration from the Legal Services Society for legal aid services rendered to clients qualifying for such assistance. He supplied figures to me that indicate that in fiscal 1992/93 the amount received was $15, 255.45 inclusive of disbursements and GST. My inquiries reveal that in the year previous he received $24,026.60 inclusive of disbursements and GST. The amount for the 1993/94 fiscal year including disbursements is approximately $80,000.00. At a recent meeting with Mr. de Jong, he confirmed those figures.

PROCEDURE TO BE FOLLOWED WHEN IN CONFLICT

Section 9(1) of the Act addresses this aspect. It reads:

> **Procedure on Conflict of Interest**
>
> 9(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 Assembly or the Executive Council, or a committee of either of them, shall, 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.

This is a procedural section that directs members as to what they should do under the indicated circumstances.

STANDING ORDER 18

When I met with Mr. Wilson, he advised me that he believes all members seek clarification on what, in fact, is required of them when they believe they are in a position of conflict of interest, in light of the different requirements in section 9(1) of the Act and Standing Order 18. Standing Orders are an area of codified parliamentary law, adopted

by the Legislature for the orderly regulation of the business conducted by it. Standing Order 18 of the Legislature of the Province of British Columbia provides:

> STANDING ORDER 18 - No member is entitled to vote upon any question in which he has a direct pecuniary interest, and the vote of any member so interested shall be disallowed.

There are major differences between section 9(1) of the Act and Standing Order 18. The one relevant to this discussion is that the latter has reference only to entitlement to vote, whereas, the Act addresses the procedure to be followed with respect to both debating and voting. Decisions I am required to make and opinions I am required to deliver, are based solely upon the provisions of the *Members' Conflict of Interest Act*. Standing Orders do not bear on my decisions. It is to be noted, however, that Standing Order 18, like section 9(1) of the Act, addresses a procedural matter.

I note, in passing, that an informative discussion on Standing Order 18 is found at pp. 22-25 of *Parliamentary Practice in British Columbia, 2nd Edition* by the present Clerk of the British Columbia Legislative Assembly, E. George MacMinn, Q.C.

THE DEBATE ON BILL 55

Before turning my attention to a consideration of whether Mr. de Jong was in violation of the Act through participation in debate/voting on the amendments, brief reference to the debate will give some indication of the flavour of it.

On first reading the only speaker was the Attorney General. His sole comment on the entire bill was that: "It's housekeeping, entirely".

On second reading the Attorney General, alone, entered the debate on behalf of the government. Four members of the Official opposition participated. They were Messrs. Dalton, Gingell, de Jong and Chisholm. The House Leader of the third party in the Assembly, J. Weisgerber and opposition member Serwa also contributed to the debate.

The Attorney General spoke briefly about the amendments proposed to the nine statutes. All of the opposition comments, with the exception of those by Mr. Gingell, were directed to sections 7 and 8 of the Bill. Mr. Gingell advised of other sections of the Bill that he would be addressing during debate at Committee stage. Mr. Dalton, critic for the Attorney General and Consumer Services Ministries conceded that the amendments to the eight other acts were of a housekeeping nature but he and other opposition speakers made

it clear that they did not believe that amendments to section 7 and 8 fell into that category. Mr. Dalton saw the amendments in section 7 (to section 5 of the *Legal Services Society Act)* as representing a statutory takeover of the Legal Services Society by the Association of Community Law offices and the Native Community Law Office Association and the destruction of the previously existing balance on the Board of representatives of the Law Society and government appointees. The opposition participation in the debate was mainly of that tenor. The Attorney General closed the debate on second reading by responding to the critics from the opposition and expressing the view that the extension of the partnership between the Law Society and the government to include community representation was a positive step to take.

When the Bill was debated in Committee, Mr. Gingell of the Official opposition raised questions about amendments to the *Industrial Development Incentive Act*, the *Securities Act* and the *Tobacco Tax Act*. The Minister of Employment and Investment responded to him.

Participating in the debate on sections 7 and 8 of Bill 55 were Messrs. Dalton, de Jong and Tanner, the latter also being a member of the Official opposition. Once again, the Attorney General was the sole participant on behalf of the government answering questions raised by opposition members. The Official opposition members who spoke repeated their objections to the restructuring of the Board of the Legal Services Society as provided for in section 7 of Bill 55. On that section, Mr. de Jong asked the following question to which the Attorney General gave the indicated answer:

Question: (de Jong)

> "Hon. Chair, I asked the Attorney General how the amendment to the *Legal Services Society Act*, which would radically alter the make-up of that board, relates to his concerns regarding the cost of the delivery of legal aid services. If that's going to be ruled out of order, I would like to hear that. I can't think of a more pertinent question, and we haven't had an answer."

Answer: (the Attorney General)

> "The changes in the structure have nothing whatsoever to do with cost. They have everything to do with the government's desire to have the partnership , which has heretofore been between lawyers and government - extended so that it is a partnership between lawyers, government and the community. That's all this section is about."

Mr. Dalton said Official opposition members would vote against section 7 of Bill 55 and he advised the government to "Dump the section". With respect to the new section 10.1

in the *Legal Services Society Act* as contained in section 8 of Bill 55, Mr. Dalton asked the following question to which the Attorney General gave the indicated answer:

Question: (Dalton)

> "I think we have underscored the major points or arguments that we wish to have on record. I would ask the Attorney General - in perhaps a more amiable tone - how the amendment to section 10.1 in particular, is going to address the escalating budget problems of the Legal Services Society. As we know, for the last two or three years, the budget has gone over by 25 percent each year. If the Attorney General could assist the committee by explaining how this amendment will address this ever-burdening problem, it would be helpful."

Answer: (the Attorney General)

> "One of the difficulties we have had with the delivery of legal aid in the province ... is that up until last little while, there was no real effort to contain costs. There was no recognition that tax dollars were being expended. Every year Attorneys General had to come to this House and secure a special warrant to pay for overruns. The Ministry of Finance quite properly demanded that I put an end to these annual overruns. We have embarked on a number of initiatives to accomplish that . One of them is to do with the Legal Services Society the same as we do with school boards and other publicly funded agencies in British Columbia - that is, put a budgetary cap on their expenditures. We have a very generous out in this, inasmuch as they can exceed their budgetary cap if they have the permission of the Minister of Finance and the Attorney General. ... This is simply a capping section."

THE VOTING ON BILL 55

On completion of second reading debate, one vote was taken on the entire Bill. 30 government members voted "yes". 20 members of the opposition voted "no" made up of 11 members of the Official opposition including Mr. de Jong, all four members of the third party in the House, opposition members Serwa, H. De Jong, Tyabji, Wilson (the complainant) and Mitchell.

In committee, a separate vote was taken on each section of Bill 55. On the vote on section 7 (the amendments to section 5 of the *Legal Services Society Act),* 27 government members vote "yes" and 7 members of the opposition voted "no" made up of 6 members of the Official opposition including Mr. de Jong, and opposition member Serwa. The vote on section 8 of Bill 55 (adding new sections 10.1 and 14.1 to the *Legal Services Society Act*), occurred almost immediately after the vote on section 7 and the tabulation

was a unanimous "yes " vote by all 29 members voting, made up of 21 government members, 7 members of the Official opposition including Mr. de Jong and opposition member Serwa.

Bill 55 was then reported complete, read a third time and then passed. The hour was then 3:10 a.m. on July 8 and immediately the House adjourned until 11:00 a.m. that day.

DID MR. DE JONG VIOLATE THE MEMBERS' CONFLICT OF INTEREST ACT BY DEBATING AND VOTING ON BILL 55?

It is trite but worthy of note that we are governed under a system of representative democracy because all citizens debating and voting on legislation would be unwieldy, chaotic, impossible and in the end, would undoubtedly result in anarchy. Citizens in a defined geographic area therefore select by ballot persons to represent them at the various levels of government. Mr. de Jong is the representative for approximately 28,000 registered voters and other residents in the provincial electoral district of Matsqui.

It is therefore with thoughtful consideration and great caution that I undertake an adjudication that could result in the denial to those 28,000 voters of the voice in the legislature that they selected to represent them. There is no precedent in British Columbia to guide me in this task. Indeed, a recent review of Conflict of Interest Commissioner and Ethics Counselor colleagues across the country at the federal, provincial and territorial levels indicates that this will be the first adjudication that attempts to define the extent of limitation on participation in House proceedings that Conflict of Interest legislation enacted in recent years across Canada has imposed on democratically elected members.

A denial, however, must occur if participation in the debate and voting process offends section 2.1 of the Act. That sections reads:

> "A member shall 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."

Section 2(1) says the 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."

Section 2(2) says the member has an apparent conflict of interest where:

> "... 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."

Debating/voting in the House on legislation proposed by the government for enactment, undoubtedly constitutes the performance by a member of the House of an official function. For a member who is not also a member of the Executive Council it likely is the pinnacle of the member's official power, duty or function as an MLA. That is particularly so for MLA's on the opposition side of the Assembly. Meeting responsibilities at committee level would be another area where a member could be called upon to exercise an official power, duty or function.

The same thoughtful consideration and caution of which I speak, and the same reasons that brought me to meet my responsibility in that manner, causes me to conclude that I must be *quite satisfied* that a member has offended section 2.1 of the Act by debating and voting in the House before I rule that a violation has, in fact, occurred. Because the very foundation of our democratic system rests on freedom of speech and action by those elected to represent us, no lesser standard than that is acceptable for determining when a muzzle is to be placed on a member's participation. In a sense, what is required is a delicate balancing of a member's right to fully participate against his/her obligations to comply with the provisions of the *Members' Conflict of Interest Act*. Relevant as a factor for consideration, in arriving at what that balance ought to be, is an appreciation that a parliament is a conglomerate of individuals who each bring with them their experiences in life and the expertise they have acquired through training and experience. That expertise should not be denied to one's colleagues in the House, as they grapple with serious legislative decisions, without meeting the standard I have specified.

In this instance, Mr. de Jong is the only member on the entire opposition side of the House who is a member of the Law Society of British Columbia presently entitled to practice law in the province. There are three such individuals on the government side of the House. Mr. de Jong undoubtedly possesses more expertise on the subject matter of section 7 and 8 of Bill 55 than any other opposition member. The denial of the availability of that expertise to the House should not occur unless the standard of satisfaction that I have defined, in fact, exists.

I decline to give section 2.1 an expansive interpretation that would unnecessarily curtail freedom of expression, appreciating always, however, that the Legislature has made it very clear that curtailment must occur when a member has a conflict of interest or an apparent conflict of interest as those terms are defined in sections 2(1) or 2(2) of the Act.

The question I must now turn to address is whether I am *quite satisfied* that, in this instance, Mr. de Jong should have declined to participate in the debate and voting process and, rather, followed the procedure stipulated in section 9(1) of the Act. While it turns out not to be a determining factor, the time frame given in this instance to Mr. de Jong to consider and make his determination was a very short and narrow one. A government proposing legislation that requires thoughtful consideration by members of possible conflict of interest implications for them ought not, under normal circumstances, to proceed with the haste that occurred here. I understand that the government viewed the whole of Bill 55 as housekeeping only, but the availability of more time for reflection by members such as Mr. de Jong would be expected. Members of the opposition side of the House certainly did not see the amendments in section 7 and 8 as falling into the category of "housekeeping, entirely".

In considering whether a violation of section 2.1 occurred, the definitions in sections 2(1) and 2(2) become important. Central to a consideration of them is the question of what constitutes a private interest and whether Mr. de Jong knew there was the opportunity to further his private interest when he participated on July 7/8 or whether a reasonably well-informed person would have a reasonable perception that his ability to debate/vote on the amendments to the *Legal Services Society Act* must have been affected by his private interest. I have previously held that "private interest", as that phrase is used in the Act, is not limited to pecuniary or financial interests but can include any real or tangible benefit that enures to the personal benefit of the member.

What personal benefit to Mr. de Jong could be involved here? The complainant said in the House that the amendments to the *Legal Services Society Act* provide for the removal of remuneration from legal aid lawyers. In his letter to me he refers to the amendments as directly affecting remuneration of private lawyers who engage in legal services work. He says the amendments would directly affect the amounts payable to private lawyers. He refers to Mr. de Jong's aggressive debate in opposition to reduction of amounts payable to private lawyers by the Legal Services Society.

Did the amendments have the effect attributed to them by the complainant? I cannot see that the amendments in section 7 of Bill 55 (to section 5 of the *Legal Services Society Act*) have that effect. While the opposition speakers, including Mr. de Jong, clearly

opposed the change to the structure of the Board of the Society, I do not see a nexus between that change and the remuneration of private bar lawyers who perform legal aid work. While in debate, Mr. de Jong mused about whether such a nexus was present, my consideration of the matter indicates that it is not there. The debate clearly indicates dissatisfaction by many lawyers with a move to a mixed model delivery system for providing legal aid.

The movement to a mixed model delivery system may well affect the remuneration of private bar members doing legal aid work, but it is important to appreciate that this would not be the result of the amendments being debated in the House in July. A review of the actions of the Legal Services Society Board reveals that at its October 29, 1992 meeting, it decided:

> THAT the Board of Legal Services Society endorse in principle the Agg Report and commit itself to implementation, and
> THAT the Board seek a $98M budget in accordance with the Agg Report and
> THAT the Board support a 15% cut to the criminal tariff effective December 1, 1992, and
> THAT the family tariff be increased by 10% effective April 1, 1993, and
> THAT the government be requested to accept a funding formula to allow for all volume increases, and
> THAT the Board request the government, in addition, fund costs such as family maintenance costs.

The Agg Report had been commissioned by the Attorney General and was received in the fall of 1992. The above resolution was passed following its release. It recommended a model that is roughly 50-50 between tariff lawyers and staff lawyers. On February 18, 1994 the Legal Services Society Board unanimously passed the following motion:

> "That LSS adopt the mixed model as the model for reform and that the Society move for implementation of the model in the 1994/95 fiscal year and that the Society obtain and have ongoing consultation with all interested groups as to implementation of the model."

There is nothing in the amendments to section 5 of the *Legal Services Society Act* that relates to, bears on or gives direction with respect to the delivery model for legal aid. That is a matter for decision by the Legal Services Society Board and the decision about adopting the mixed model system had been taken even before the 1994 session of the Legislature opened.

I would agree that if the legislation directed the implementation of a mixed model system that would have the result of reducing the amount of legal aid work available for

distribution to private bar members, the prohibition in section 2.1 of the Act would likely apply. An amendment to section 3 of the Act that would widen the citizen base entitled to receive legal aid services could result in the inability of one in Mr. de Jong's position to participate in the House because of the additional legal work that that could mean for private bar lawyers doing legal aid work. Other examples where the prohibition could apply could be recited but the bottom line in this instance is that the amendments in section 7 of Bill 55 to section 5 of the *Legal Services Society Act* were not of a nature to trigger, for Mr. de Jong, the requirements for disclosure and withdrawal as provided for in section 9(1) of the Act. The amendments contained in section 7 of Bill 55 did not have the effect on remuneration to private bar legal aid lawyers as attributed by Mr. Wilson. Mr. de Jong's continuing presence and participation through the debate and voting procedure on section 7 did not breach his obligation of compliance with the *Members' Conflict of Interest Act*.

From no quarter has there been the suggestion that the addition of section 14.1 to the *Legal Services Society Act*, as contained in section 8 of Bill 55, would impact on the remuneration of private bar lawyers doing legal aid work. That is because the new section that allows the Attorney General to request and receive financial, statistical or other information from the Society does no such thing.

That leaves for consideration the "capping" section which directs the society to live within its income unless permission to do otherwise is granted by the Attorney General and the Minister of Finance. Perhaps some of the negative debate engaged in by Mr. de Jong was against this section. I say perhaps because it is not always possible to tell to which section he was directing his critical remarks. Certainly throughout de Jong was opposed to the restructuring of the Board and his voting pattern was consistent with what he said in that regard. However, on the only individual vote taken on the two new sections to the Act contained in section 8 of Bill 55, Mr. de Jong voted "Yes". That is to say he voted in favour of the "capping" section. Even if I were to assume without finding that the "capping" section could have a detrimental effect on private bar lawyers doing legal work, including Mr. de Jong, his vote in favour of the "capping" provision hardly seems consistent with acting in a manner that furthered his private interest.

Further, even if it could be speculated that the "capping" section could have the effect of reducing the remuneration of private bar lawyers, such a conclusion does not meet the standard of satisfaction that I find as being necessary in order to conclude adversely against the member. To deny Mr. de Jong participation in the debate and voting on section 8 of Bill 55, on the basis of all that I know and have repeated in this decision, would not reflect an equitable balance of the interests of the approximately 28,000

registered voters and other residents of Matsqui that he represents with his obligation to comply with the requirements of the *Members' Conflict of Interest Act*. This is because from all that I know about the matter, I am far from being *quite satisfied* that his participation offended section 2.1 of the Act.

The "capping" section was not a clear-cut amendment that would necessarily reduce the income of private bar lawyers including Mr. de Jong. Had it been an amendment that controlled the income of private bar lawyers from the Legal Services Society, then the prohibition in section 2.1 as interpreted by a consideration of section 2(1) would likely apply and participation would be denied. I do not see this amendment in that light. Nor, in my opinion, would the reasonably well-informed person, who studied the amendment and was appreciative of the history that I have related and the facts that I have found to exist, conclude that the member's ability to debate and vote as he did on the amendment must have been affected by his private interest.

That completes my review of the amendments to the *Legal Services Society Act* as contained in Bill 55. I have concluded that they do not have the effect attributed to them by the complainant. While I decline to concur with the view of the Attorney General that these amendments were "housekeeping, entirely", I do concur that considerable of the debate fitted his description as he brought second reading of the Bill to a close that: "The debate the members were having wasn't about this bill; it was about the unanimous decision of the Legal Services Society to move to a mixed model".

In concluding as I have, it has not been necessary to give consideration to the provisions of section 1 of the Act on the question of whether Mr. de Jong, as a legal aid lawyer engaged in the private practice of law is, as such, a member of a "broad class of electors".

Dated this 26th Day of October 1994
in the City of Victoria, Province of British Columbia

E.N. (Ted) Hughes
Commissioner of Conflict of Interest