



**OPINION
OF THE
CONFLICT OF INTEREST COMMISSIONER**

**IN THE MATTER OF A REQUEST BY
LEONARD KROG, MLA FOR NANAIMO,
UNDER SECTION 19(2) OF THE
MEMBERS' CONFLICT OF INTEREST ACT
TO REVIEW THE
ALLEGED ACTIONS OF THE EXECUTIVE COUNCIL
UNDER SECTION 8(1)(a) OF THE ACT**

City of Victoria
Province of British Columbia

February 25, 2009

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I INTRODUCTION

Section 19(1) of the *Members' Conflict of Interest Act* ("the Act") provides that a member of the Legislative Assembly who has reasonable and probable grounds to believe that another member is in contravention of the Act may request that the Commissioner give an opinion respecting the compliance of the other member with the provisions of the Act. [emphasis added]

Section 19(2) of the Act provides that a member of the public who has reasonable and probable grounds to believe that there has been a contravention of the Act may request that the Commissioner give an opinion respecting the alleged contravention. [emphasis added]

Section 8(1)(a) of the Act provides that:

The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary, until 24 months have

expired after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office.

II REQUEST FOR OPINION

Leonard Krog, as the MLA for Nanaimo, made a request on October 17, 2007, to the then Conflict of Interest Commissioner for an opinion under section 19(1) of the *Act*. The first part of the request was for a review of alleged conflict of interest issues surrounding “contractual arrangements and activities” of Mr. Graham Bruce, who had been the member of the Legislative Assembly for Cowichan-Ladysmith and the Minister of Skills, Training and Labour until his defeat in the May 17, 2005 general election.

The second part of the request asked for a review of the alleged conduct of the Executive Council in its dealings with Mr. Bruce within the 24 month period after he ceased to hold office.

In December, 2007, my predecessor decided that he had no jurisdiction under section 19(1) of the *Act* to deal with the request for a review of Mr. Bruce’s conduct, because at the time of the request Mr. Bruce was no longer a member of the Legislative Assembly. Section 8(8) of the *Act* makes it clear that jurisdiction over former members is with the courts.

In January, 2008, (when my appointment became effective) Mr. Krog advised that he was making his request as a member of the public under section 19(2) of the *Act*. The request was for a determination of whether there had been a contravention of the *Act* based on the alleged

conduct of the Executive Council. Specifically, Mr. Krog has requested a review of the following:

1. The actions of the Premier, the former Minister of Aboriginal Relations, Minister Christiansen, the former Minister of Community Services, Minister Chong and other members of Executive Council in approving funding for the projects represented by Graham Bruce, in the 24 month period after Mr. Bruce ceased to hold office; and
2. The actions of Mr. Bruce regarding his representation on behalf of the Cowichan Tribes within the 24 month period after he ceased to hold office, including the contractual arrangements, his meetings with the Premier and various other members of Executive Council, and the related payments regarding the Cowichan Tribes.

Initially Mr. Krog provided 41 pages of material to support his request. At the end of May, 2008, Mr. Krog provided further additional material in support of his request. The collection of all the material provided, included some minutes of the Treaty Committee of the Cowichan Tribes, various emails and various other paper documents from within and outside the Government.

The “projects” Mr. Krog refers to concerned services provided by Mr. Bruce to the Cowichan Tribes and to the Cowichan Journey of a Generation Society in relation to the North American Indigenous Games held in 2008 (“the 2008 Games”), about which more will be said later in this opinion.

In summary, it is alleged that the Executive Council did the following things in contravention of section 8(1)(a) of the *Act*:

- (i) The Ministry of Aboriginal Relations posted an advertisement for a contract with the Cowichan Tribes on the Government's website, BC Bid, which ultimately resulted in Mr. Bruce being given a contract by the 2008 Games;
- (ii) The Ministry established regular monthly meetings with the 2008 Games organizers, thereby allowing Mr. Bruce to make representations which ultimately resulted in the granting of a contract or benefit for Mr. Bruce from the Cowichan Tribes and the 2008 Games.

The essence of the allegations is that there has been a contravention of the *Act* because in the 24 month period after Mr. Bruce held office, the Executive Council knowingly granted him a "benefit" contrary to section 8(1)(a) of the *Act* by, in effect, creating or facilitating opportunities for him that resulted in the Cowichan Tribes hiring him to provide services to them with respect to the 2008 Games. Put another way, the suggestion is that the Executive Council did indirectly what it could not do directly, because of the provisions of section 8(1)(a) of the *Act*.

Mr. Krog has confirmed that his request for an opinion does not include any allegation that the awarding of the 2008 Games or the granting of financial assistance by the Government to the Cowichan Tribes with respect to them or for other purposes, was improper.

III GATHERING THE FACTS

Understandably, Mr. Krog does not have direct knowledge of the matters which are the subject of his request. In addition to the material previously mentioned, he referred our office to Ms. Anne-Marie DeLorey, Director of Research of the Opposition Caucus, and Doug Routley, the MLA for Cowichan-Ladysmith as potential sources of information. They were interviewed: neither had direct knowledge, but they provided the names of persons who might be able to provide relevant and direct information.

As a result of the information received, extensive interviews were conducted over several weeks with the following individuals with respect to the allegations made in this request:

- Lorne Brownsey, Deputy Minister of Aboriginal Relations and Reconciliation (“the Ministry”);
- Mike Furey, former Assistant Deputy Minister of the Ministry;
- Joy Illington, former Associate Deputy Minister of the Ministry;
- Jessica MacDonald, Deputy Minister to the Premier and Cabinet Secretary;
- Harvey Alphonse, former Chief of Cowichan Tribes;
- Ernie Elliott, Cowichan Tribes General Manager;
- Ed Elliott, Cowichan Tribes Council Member;
- Calvin Swustus, Cowichan Tribes Council Member;
- Albi Charlie, Cowichan Tribes Council Member;
- Al Edkins, Cowichan 2008 North American Indigenous Games Society;

- Kim Dibb, Cowichan Tribes Controller; and
- Melissa Bellamy, Cowichan Tribes Treaty Manager.

Mr. Bruce was also interviewed.

IV THE FACTS

The events which are the subject of this request occurred 3 ½ years ago. While individual recollections of the detail of what transpired vary somewhat, the information with respect to core events was, in my view, consistent.

The North American Indigenous Games are held every three years, alternating between Canada and United States. There is a fiscal framework in place between the Provincial and Federal Governments regarding funding for the Games and, although the amounts change from year to year, essentially each of the Federal and Provincial Governments contribute 35% of the cost of hosting the Games. The community hosting the Games makes a commitment to raise the remaining 30%. This funding arrangement is of longstanding.

The 2008 Games were awarded to the Cowichan Tribes in 2004. Mr. Bruce, as the then member of the Legislative Assembly for Cowichan-Ladysmith, lent his support to the Cowichan Tribes' bid for the Games and travelled to the United States when their bid was presented. His involvement at the time was as the MLA for his constituency in a contest between different First Nations groups within British Columbia to see which bid would get the nomination on behalf of

the Province. When the Cowichan Tribes' proposal was chosen, he was involved on behalf of the Province in the contest involving two other competing provinces. His efforts were not about raising money but about first getting the Games for his constituency, and then for British Columbia.

Following the awarding of the 2008 Games to the Cowichan Tribes, Mr. Bruce had no further involvement with the 2008 Games until after his defeat in the May 2005, election. Shortly afterwards, he was contacted by the then General Manager of the Cowichan Tribes asking if he would put his name forward to run the 2008 Games. He applied for the position, but was not successful. An organization known as the Cowichan North American Games Society was eventually formed to run the 2008 Games. Mr. Bruce was never employed by this organization.

It was recognised that the Games could provide substantial spin-off benefits to the Cowichan Tribes. This eventually led to the formation of the Cowichan Journey of a Generation Society ("the Society") whose objective was to identify and carry out projects that could improve the lives of the Cowichan people. Mr. Bruce was hired to provide assistance to the Society and received payment for his services from it. This was pursuant to a contract made between Mr. Bruce and the Society, not between Mr. Bruce and the Government. Initially he was paid by the Cowichan Tribes pursuant to a motion passed by the Chief and Council, that the Cowichan Tribes would cover the costs related to the Society until it received its funding. After the Society was formed, he was paid by the Society and the Society reimbursed the Cowichan Tribes for the money which it had advanced to cover Mr. Bruce's charges for fees and other expenses.

The Cowichan Tribes did apply to the Provincial Government for funding and funding was provided by the Provincial Government to the Society. This application was typical of a number of applications received from First Nations across the Province with whom the Government was interested in working. This application was considered by the Ministry and evaluated by it in accordance with existing Ministry objectives. Funding was approved in the amount of \$500,000 for the first year, and \$300,000 for the second year. Senior Ministry officials confirm that Mr. Bruce's involvement had no bearing on the Government's decision to approve the project and that funding was not conditional upon him being employed by the Cowichan Tribes.

Mr. Ed Elliot, a Council Member, was aware of this funding. He confirmed that there was no suggestion that the funding was in any way conditional upon Cowichan Tribes engaging Mr. Bruce. Mr. Elliot, along with everyone else who was aware of the funding, confirmed that the funding was not in any way tied to Mr. Bruce. Mr. Elliot, along with everyone who was aware of this funding, confirmed that the Cowichan Tribes were free to hire whomever they wished. Included in the material provided in support of his request, Mr. Krog relied upon a number of emails sent by various Government officials. Upon examination, these emails appear to have nothing to do with the contract which Mr. Bruce entered into with the Society.

In the months following the 2005 election, senior officials of the Ministry held a series of internal informal discussions during which they attempted (in the context of pursuing a New Relationship with First Nations) to identify individuals who could assist the Ministry in its consultations and dealings with the forest, agriculture, mining, oil and gas development sectors ("third parties"). In these discussions, Mr. Bruce's name was raised. This came about solely as a

result of internal discussions within the Ministry, primarily involving Mr. Brownsey, Mr. Furey and Ms. Illington. Both Mr. Brownsey and Mr. Furey confirmed that no attempt was made by Executive Council to influence their discussions and that Mr. Bruce's name was *not* one given to them for consideration.

Since Mr. Bruce was a former member of the Executive Council, there was a concern that if the Ministry entered into a contract with him, that might constitute a contravention of the *Act*. The Associate Deputy Minister decided, therefore, to request an opinion from my predecessor, Mr. Oliver. Ms. Illington wrote to Mr. Oliver to outline the proposed contract and seek his advice. Mr. Oliver considered the matter and concluded that it would contravene the *Act*. He suggested, however, that if the position was advertised and Mr. Bruce applied for and was the most qualified for the position, there would be no statutory objection to his appointment.

As a result of receiving this opinion, the Ministry put forward a posting on BC Bid seeking individuals who could serve as advisers who could assist in negotiations with First Nations when those negotiations affected third parties. The Ministry wanted to establish a panel of pre-approved individuals the Government could call upon from time to time. Mr. Bruce, and others, applied for the position. Mr. Bruce was one of those selected. In the end, it turned out that the various third parties who potentially could be affected by such negotiations were already engaging First Nations in discussions. With the exception of one instance, not involving Mr. Bruce, the Government never followed through with these arrangements. While one of the emails provided in support of the request for this opinion concerned the preparation of the terms of a contract for Mr. Bruce, a contract was not signed or benefit granted.

The material provided by Mr. Krog indicates that in 2006, during the run-up to the Games, the Ministry apparently wanted to establish regular monthly meetings to discuss organizational progress. The Ministry's ongoing interest obviously arose because the Province was contributing \$3.5 million to the Games. The allegation relating to these meetings is that by setting them up, the Ministry allowed Mr. Bruce "to make representations which ultimately resulted in the granting of a contract or benefit for Mr. Bruce from the Cowichan Tribes and the 2008 Games".

Based on all of the information provided and gathered, it appears that by the time these meetings took place Mr. Bruce was already actively engaged in working with the Cowichan Tribes and ultimately employed by the Cowichan Journey of a Generation Society. As noted earlier, he was never employed by the organization that was formed to run the 2008 Games. His presence at whatever meetings took place would, I expect, have occurred because of Mr. Bruce's long time interest in First Nations issues and involvement in the community. Given the broad spectrum of interest and involvement within the Cowichan community, I doubt that fine representational distinctions would have been made at progress meetings of stakeholders. For both of these reasons, it is my opinion that the allegation with respect to the Ministry's purpose for these meetings cannot succeed.

The minutes of the Treaty Committee meetings of the Cowichan Tribes contain records of discussions regarding the allocation of funds and payment for Mr. Bruce's services rendered to the Cowichan Tribes. When interviewed, the person who was responsible for administering the Cowichan Treaty budget confirmed that her concerns expressed in the minutes had only to do

with the internal matter of how the allocation of expenditures should be recorded and was not criticism of the fact that Mr. Bruce was being engaged or that there had been any impropriety in paying him. She was responsible for managing the budget and wished to ensure that amounts which were paid to Mr. Bruce were allocated correctly.

As already noted, initially the Cowichan Tribes paid Mr. Bruce's fees as part of an arrangement whereby it was covering the costs related to the Cowichan Journey of Generation until the Society received its funding. The funding was delayed and some members of the Committee were concerned about whether money which was allocated for one purpose was improperly being used for another. Eventually, the funds were received and the correct accounting designations were made. In any event, the internal allocations within the Treaty budget had nothing to do with any "benefit" allegedly granted by the Government to Mr. Bruce.

While it is correct that statements to the effect that Mr. Bruce was being paid by the Government were made, those statements must be considered in the context in which they were made. In my opinion, they amounted to nothing more than a recognition that the Cowichan Tribes had applied for funding for a particular project (the Cowichan Journey of a Generation Society) and that the cost of the project would be covered by an available grant from the Province. This was not an arrangement whereby Mr. Bruce's salary was secretly being channelled through the Society. Rather, it was an arrangement whereby funds were made available to the Cowichan Tribes to carry out certain work and they were free to spend the funds as they wished, within the constraints of the original funding application.

V CONCLUSION

Having considered all of the information provided or obtained by this office, it is my opinion that there has been no contravention of section 8(1)(a) of the *Members' Conflicts of Interest Act*. In the 24 month period after he ceased to be a Minister, no contract or benefit was *directly* awarded to Mr. Bruce by the Executive Council, a member of the Executive Council or an employee of the Ministry. Further, nothing in the information provided or obtained convinces me that the Executive Council, or any member or employee thereof, acted *indirectly* in a way that created opportunities for Mr. Bruce or facilitated the receipt of a benefit from others to him.

It is clear, based on the information available to me, Mr. Bruce was never employed by the organization that was formed to actually run the Games.

It is also clear that Mr. Bruce was independently engaged by the Cowichan Tribes and ultimately paid by the Cowichan Journey of a Generation Society to identify projects and to provide services to support and carry out those projects in order to improve the lives of the Cowichan people. While funding for some of these efforts came from a provincial grant, that grant was not conditional upon Mr. Bruce being employed by the Society or engaged by the Cowichan Tribes. Both entities were free to employ or engage whomever they wished to provide services.

VI DISTRIBUTION OF THIS OPINION

Opinions given as a result of a request under section 19(1) of the *Act* must be reported to the Speaker of the Legislative Assembly (section 21(3)). This opinion was ultimately requested under section 19(2). The *Act* is silent about how an opinion under subsection (2) should be released and distributed.

I will, therefore, provide copies of this opinion to Mr. Krog and to Mr. Bruce and to the Cabinet Secretary. In order that the opinion will be available to the public, copies will also be provided to the Speaker of the Legislative Assembly. As a courtesy, a copy of the opinion will be provided to the Clerk of the Legislative Assembly. The opinion will also be posted on the Conflict of Interest website: www.gov.bc.ca/oci.

Dated this 25th day of February, 2009

In the City of Victoria, Province of British Columbia



Paul D. K. Fraser, Q.C.

Conflict of Interest Commissioner