



BRITISH  
COLUMBIA

## OPINION

**OF THE CONFLICT OF INTEREST COMMISSIONER  
PURSUANT TO SECTION 19(1) OF THE  
*Members' Conflict of Interest Act***

**IN THE MATTER OF AN APPLICATION BY  
CHRISTY CLARK, MLA (PORT MOODY-BURNABY MOUNTAIN)  
WITH RESPECT TO ALLEGED CONTRAVENTION OF PROVISIONS  
OF THE *MEMBERS' CONFLICT OF INTEREST ACT* BY  
THE HONOURABLE MOE SIHOTA, MLA (ESQUIMALT-METCHOSIN)**

City of Victoria  
Province of British Columbia  
May 31, 1999

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**INTRODUCTION**

**General**

This is an opinion requested by Christy Clark, MLA for Port Moody-Burnaby Mountain pursuant to section 19(1) of the *Members' Conflict of Interest Act*. Section 19(1) provides as follows:

- 19(1) 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.

Pursuant to that provision, the member wrote to me on March 12, 1999 requesting my opinion respecting the conduct of the Member for Esquimalt-Metchosin.

**ALLEGATIONS OF FACT**

Ms. Clark has based her request on recent media reports of statements by Mr. Sihota and in particular:

"I've gone to ski resorts in British Columbia where owners have entertained me, taken me out, showed me the hill, talked to me about an application they've got that I now have to deal with." (**Vancouver Sun, March 11, 1999**)

"People took me out skiing, took me on a helicopter trip."  
**(Vancouver Province, March 11, 1999)**

Ms. Clark suggests that the actions of the Member for Esquimalt-Metchosin may constitute a violation of section 2 of the Act insofar as this member has a conflict of interest or an apparent conflict of interest for having received gifts connected directly or indirectly with the performance of the duties of his office. By receiving these benefits, then exercising an official power or function, it is arguable that the member may be exercising such official power or function while at the same time furthering his own "personal interest". The member for Esquimalt-Metchosin was, at the time, Minister of Economic Development and has since become Minister responsible for the Public Service and Vice Chair of the Premier's Economic Council of Ministers.

The Premier's Economic Council met on March 9, 1999 with representatives of the Provincial Ski Resort and Ski Hill sector for discussions "about how best to streamline the evaluation and approvals of ski development in BC". Ms. Clark further draws attention to Section 7 of the Act which reads as follows:

- 7(1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance or his or her duties of office.
- (2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.
- (3) If a gift or personal benefit referred to in subsection (2) exceeds \$250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds \$250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating
  - (a) the nature of the gift or benefit,
  - (b) its source, and
  - (c) the circumstances under which it was given and accepted.

Ms. Clark states that no such gift has been disclosed by Mr. Sihota in his public disclosure statements.

## **INVESTIGATION**

The allegations against Mr. Sihota are based entirely on media reports brought to the Commissioner's attention by Ms. Clark. It goes without saying that reports in the news media of attributing statements to a particular MLA would not, as a general rule, standing by themselves, amount to sufficient proof that words attributed to a member were indeed spoken by the member. As a first step, I therefore provided copies of the news reports in question to Mr. Sihota who advised me that the words attributed to him or words to the same effect were indeed spoken by him. That being established, I must consider whether these words spoken by Mr. Sihota to reporters in the course of a media scrum whilst being questioned about the relationship between the Premier and an applicant for a casino licence amount to an admission of improper conduct on Mr. Sihota's part in contravention of the provisions of the *Members' Conflict of Interest Act*.

I accordingly interviewed Mr. Sihota in person and also put to him a series of questions in writing to which I obtained his written responses. Mr. Sihota stated that the words reported by Jim Beattie and Chad Skelton in the Vancouver Sun of Thursday, March 11, 1999: "As you all know, I love to ski.... I've gone to ski resorts in British Columbia where owners have entertained me, taken me out, showed me the hill, talked to me about an application they've got.... that I now have to deal with...." refer to a series of visits between the 12<sup>th</sup> and 17<sup>th</sup> of March, 1995 when, as a result of a prior invitation extended by Canada West Ski Areas Association on behalf of the resort owners of Apex Ski Village, Penticton, Big White Resort, Kelowna, Silver Star Resort, Vernon and Sun Peaks, Kamloops extended to him in his capacity as Minister of Environment, Lands and Parks, he visited the sites in question to deal with a number of policy issues impacting the resorts. He states that on March 12 and 13 he was at Apex, on March 14 at Big White, on March 15-17 at Silver Star and on March 17 at Sun Peaks, Kamloops and that his transportation costs were defrayed by the Ministry of Environment, his meals, in part, by the Ministry, in part by himself and in part by the host. His lodging was paid for by the Ministry of Environment, Lands & Parks. These visits were undertaken by Mr. Sihota in his capacity as Minister of the Environment, Lands and Parks and were directly related to a series of official discussions involving the operation and development of the ski areas.

I have discussed Mr. Sihota's visit with Mr. Jimmie Spencer, President and CEO of Canada West Ski Areas Association. Canada West Ski Areas Association is the representative body of the Ski Areas and Resorts of the 4 Western Provinces, comprising 127 ski area/resort members and 175 association members. This organization is in the 31<sup>st</sup> year of operation. Mr. Spencer, a retired senior British Army Officer and former Captain of the British Army ski racing team has held the office of President and CEO for many years. Mr. Spencer readily responded to my questions both orally and in the form of written answers. He has advised me that Mr. Sihota's visits to the ski areas were the result of invitations of each of the ski area operators co-ordinated through CWSAA and that he, himself, was involved as co-ordinator and advisor to the Minister on the overall industry viewpoints and perspectives. Mr. Spencer has informed me in some detail of the nature of the special concerns of the ski area operators and of the nature of the discussions with the Minister. He has advised me that the Minister's travel expenses were underwritten by the Government but that ground transportation between certain resorts was provided by the ski industry. He has a distinct recollection of being surprised that the Minister insisted that his accommodation should not be paid for by the ski area operators or the Association. He states that the Minister's meals were paid for by the Minister with the exception, he believes, of a working lunch in each area hosted by the ski area operators. On each occasion, Mr. Sihota was taken up the mountain in his capacity as Minister of the Environment to view the development project areas either by chair lift or by snowmobile and that it would not have occurred to anyone to make a charge either to Mr. Sihota or to his Ministry for this tour of inspection. I gather from the whole tenor of our interview, that Mr. Spencer is firmly of the view that the Minister acted normally and with complete propriety. No personal benefits were extended to Mr. Sihota nor were any favours sought.

I have been provided by Mr. Spencer with a detailed account of the various matters discussed between Mr. Sihota and the different ski area operators. Whilst I do not find it necessary in the public interest to detail the subjects discussed I am entirely satisfied that the subjects were all appropriate ones for a Minister to discuss on an official working visit.

I questioned Mr. Sihota about the report by Michael Smythe of the Province of March 11, 1999 of the following statement by Mr. Sihota: "People took me out skiing, took me on a helicopter trip". I am advised by Mr. Sihota that this is not a reference to a heli-skiing trip but to a helicopter flight to show him a ski hill and proposed ski hill development. The entire trip took 30-45 minutes and Mr. Sihota did not have skis with him in the helicopter.

I have examined Ministry of Finance accounting records relating to these ski hill visits and find that they confirm the statements made to me by Mr. Sihota, and the official expense issues referred to by Mr. Spencer.

### **OPINION**

When a minister in the course of his ministerial duties travels, whether down a mine or up a ski hill, the cost of enabling him to do so whether borne out of public funds or by or on behalf of the owner or operator of the facility in question is a necessary expense, incidental to the carrying out by the minister of his official responsibilities. The fact that the minister may find the trip enjoyable does not convert the public duty into a private junket nor the cost necessarily involved into a personal gift or benefit prohibited by or subject to disclosure pursuant to section 7 of the *Members' Conflict of Interest Act*. The mere fact that from time to time a public duty required of a member may actually be enjoyable does not thereby make it sinful or unlawful.

I find:

1. that the necessary travel, meals and accommodation expenses were paid for by his Ministry and that the ski hill transportation costs and the costs of the working lunches were appropriate items paid for by the ski hill operators, and were not "fees, gifts or personal benefits" within the meaning of section 7 of the *Members' Conflict of Interest Act*.
2. the helicopter ride was not a fee, gift or personal benefit" within the meaning of section 7 but was necessarily incidental to Mr. Sihota's Ministerial duties.
3. that no conflict or apparent conflict of interest occurred.

Though Mr. Sihota's words, volunteered by him during a media scrum, when read out of context may well, at the time, have given rise to suspicion of a contravention of the *Members' Conflict of Interest Act*, I am of the opinion that no improper conduct was involved in the ski hill incidents which form the subject matter of this complaint.

Dated this 31<sup>st</sup> day of May, 1999

In the City of Victoria, Province of British Columbia

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H.A.D. Oliver, Q.C.

Conflict of Interest Commissioner