

ETHICS BULLETIN

*Office of the Conflict of Interest Commissioner
Province of British Columbia
#101 – 431 Menzies Street, Victoria, BC Canada V8V 1X4
Phone: 250-356-9283; Fax: 250-356-6580*

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Issue No. 4

To: Members of the Legislative Assembly

From: The Honourable H.A.D. Oliver, Q.C.
Commissioner

PROCEDURE ON CONFLICT OF INTEREST

From time to time, Ministers and other Members may find themselves in the position where a conflict of interest (actual or apparent) suddenly arises – or where such an event may reasonably be anticipated.

Anticipation

Ministers must take care to avoid such problems well in advance by providing a Conflict of Interest Directive in a form approved by the Commissioner (see copy attached) to their Deputy Minister – ensuring that its contents are made known to all appropriate staff members.

Action

When a conflict (actual or apparent) arises when the House or Executive Council is in session or while in committee, Members believing that they might have a conflict of interest (actual or apparent) will of course refrain from participating in debate or discussion. Some Members may think that non-participation in discussion or debate is not enough and will withdraw until the matter has been dealt with.

Is either non-participation or withdrawal sufficient? It is not. Members must not only act ethically, they must be seen by the public to act ethically. It is with that in mind that the Legislature enacted section 10 of the *Members' Conflict of Interest Act* which reads as follows:

- 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.
- (2) If a member has complied with subsection (1), the Clerk of the Legislative Assembly or secretary of the meeting must record
- (a) the disclosure,
 - (b) the general nature of the conflict of interest disclosed, and
 - (c) the withdrawal of the member from the meeting.
- (3) The Clerk of the Legislative Assembly or secretary of the meeting must file the information recorded under subsection (2) with the commissioner,
- (a) in the case of a meeting of the Legislative Assembly or a committee of the Legislative Assembly, as soon as practicable, and
 - (b) in the case of a meeting of the Executive Council or a committee of the Executive Council, as soon as practicable after the Executive Council's decision on the matter which has been the subject of the disclosure is made public.
- (4) The commissioner must keep all information filed under subsection (3) in a central record kept for that purpose and must
- (a) make the central record available for inspection by any person without charge during normal business hours, and
 - (b) on request by any person provide a copy of the record or portion of it on payment of a reasonable copying charge.

The operative word in section 10(1) is **MUST**. It is only when section 10(1)(a) is strictly complied with by the Member stating for the record the existence of a conflict (actual or apparent) that the public (and the Conflict of Interest Commissioner) can be fully satisfied that

the statutory requirements have been duly met. It should be noted that the term in section 10(1)(a) “disclose the general nature of the conflict of interest” has been interpreted by the Commissioner as requiring words such as “because of certain personal knowledge I wish to declare a possible conflict of interest” or “for personal reasons I wish to declare a possible conflict of interest”: what must be avoided is any indication by the speaker which might indicate the direction in which he would like the discussion to proceed. Any such indication, if given, might potentially be more influential than actual participation in the debate.

CONFLICT OF INTEREST DIRECTIVE

Memorandum

Date:

To: AB
Deputy Minister of X

From: The Honourable YZ
Minister of X

Re: Conflict of Interest

My obligations under the *Members' Conflict of Interest Act* require me to refrain from having ministerial dealings with matters that may be seen as involving or benefiting W, F or S.

To ensure that there will be no breach of the Act, I am directing you, as my Deputy Minister, to ensure that I have no involvement in the matters referred to above. If issues arise with respect to these companies you should deal with those issues at the bureaucratic level. However, if they cannot be dealt with at that level because they require the exercise of ministerial discretion, they must be brought to the attention of one of my backup ministers for decision. I must not be briefed on their decision until after their decision has been made.

If issues arise with respect to those companies that require consideration by Cabinet, or a Cabinet Committee of which I am a member, I am directing you to advise me well in advance of any meetings where the issues will be discussed. I am to be informed of the fact that the issue is on the agenda. I must not be briefed on any of the details until after a decision is made.

Please ensure that this Directive is brought to the attention of appropriate staff members.

Minister of X