



BRITISH
COLUMBIA

April 16, 2013

VIA FAX AND MAIL

Mr. John Cummins
Leader
BC Conservative Party
Suite 314-20465 Douglas Crescent
Langley BC V3A 4B6

Dear Mr. Cummins,

Re: My Written Opinion Given on June 7, 2012 to Eric Foster, MLA for Vernon-Monashee

As you know, I wrote to you on March 18, 2013 asking that you forward to me any and all documentation that supports the assertions of fact contained in paragraph one of your letter to me dated March 12, 2013. Almost a month has gone by and I have received no response. Rather than allow this matter to drift, I consider it appropriate in the circumstances to provide a substantive reply to your assertion that the opinion I gave to Mr. Foster on June 7, 2012 was “flawed ... based on false or incomplete information”.

First, I must clarify that while you have applied to have me “reopen your investigation”, there is, in fact, no “investigation” to reopen. As provided for by the *Members’ Conflict of Interest Act* (“the *Act*”), the member himself came to me pursuant to section 18(1) of the *Act*, and I provided my opinion accordingly. The provision of that opinion triggers section 18(5), which applies for all purposes of the *Act*:

18(5) If the commissioner determines that a member has not contravened this *Act*, that determination is final for all purposes of the *Act* and any proceeding under the *Act*, so long as the facts presented by the member to the commissioner under subsection (1) were accurate and complete.

You have suggested that the facts provided to me by the member were not accurate and complete. Principal among the new “facts” you assert is that the building “is owned by an immediate family member – the husband of Mr. Foster’s assistant”. You have provided no evidence to support that statement. I can advise you that the member did, in the first instance, make me aware that the assistant’s husband had a 25% minority shareholding in the company that owns the building, with the majority shareholding belonging to his parents. This

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Office of the
Conflict of Interest
Commissioner

Paul D. K. Fraser, Q.C.
Commissioner

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information has been independently verified as correct from the company's records. It is, therefore, inaccurate to suggest that the building was "owned by the husband of Mr. Foster's assistant".

I was, of course, well aware that the monies used in respect of the lease agreement were public funds related to the constituency allowance. While you have emphasized the proximity between the old and new constituency offices, you have not taken issue with the proposition that MLA Foster's reason for changing premises was to address the fact that the previous space "had no convenient off-street parking and was located on the upper floor of a building". You have not challenged the accuracy of the statement that the office "had off-street access to five parking spaces" and was "at street level with good visibility and easy pedestrian access". In my view, a concern for better visibility and easy constituency access, and the view that this building best served that purpose, is an entirely legitimate consideration for an elected member of the Legislative Assembly. Nor have you challenged the statement that there was an "active negotiation" which was ultimately "\$800 a month less than the owner's first offer".

In short, you have not provided new information that would warrant disturbing the finality of my opinion.

The nature of your letter also makes it appropriate for me to emphasize that the *Members' Conflict of Interest Act* concerns itself with the specialized issue of conflict and apparent conflict of interest, all of which turns on ensuring that members do not advance (or are not perceived to advance) their private interest – or use their office for their own private gain. The *Act* is not a vehicle for the Commissioner to undertake an investigation about whether a particular expenditure of constituency funds was too high, or received sufficient management scrutiny. These types of issues are properly for determination by the administration rules of the Legislature and do not fall within the jurisdictional scope or the request provisions of the *Act*.

For all of these reasons, I confirm that my previous determination remains final in accordance with section 18(5) of the *Act* and I consider the matter to be closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul D. K. Fraser". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul D. K. Fraser, Q.C.
Commissioner