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
UNDER THE *MEMBERS' CONFLICT OF INTEREST ACT*
BY FRED GINGELL,
MEMBER OF THE LEGISLATIVE ASSEMBLY FOR DELTA SOUTH
ALLEGING THAT THE HONOURABLE MOE SIHOTA,
MEMBER OF THE LEGISLATIVE ASSEMBLY FOR ESQUIMALT-METCHOSIN
DID NOT DISCLOSE TO THE LEGISLATURE IN HIS DISCLOSURE STATEMENTS
A DEBT HE OWED TO A FORMER CLIENT

City of Victoria
Province of British Columbia
October 10, 1995

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By letter dated and received on July 12, 1995 Mr. Gingell drew to my attention the recently concluded investigation by the Law Society of British Columbia relating to Mr. Sihota. He referred to the investigation having brought to light judgments against Mr. Sihota in 1984-85 and in 1987-88. He also advised that:

> It also became apparent that the member became indebted in the amount of $170,000 to a Ms. Antonio through her paying the member's loan from the Royal Bank of Canada.

Mr. Gingell then asked me "... if all the member's liabilities have been properly disclosed in his filings with your office."

I advised Mr. Gingell on July 13, 1995 that his letter of the previous day did not constitute an application pursuant to section 15(1) of the *Members' Conflict of Interest Act*. I advised what would be required to come within that section, which 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.

On September 6, 1995 I received a letter from Mr. Gingell dated the previous day. He submitted to me a news release from the Law Society and he identified two specific parts of it: the first, addressing a 1988 mortgage transaction between Mr. Sihota and Ms. Antonio; and the second,

Ms. Antonio's guarantee of a loan taken out by Mr. Sihota from the Bank in the same year. In this letter Mr. Gingell made no further mention of the judgments he had referred to earlier.

With respect to the first of the two matters identified by Mr. Gingell, he also sent to me disclosure statements filed by Mr. Sihota in 1987 and 1988 under the *Financial Disclosure Act*. He speaks of a failure by Mr. Sihota in his July 7, 1988 disclosure form to list Ms. Antonio or a corporation controlled by her as a creditor as Mr. Gingell believes he should have done. On September 27, 1995 I advised Mr. Gingell that:

> This office does not have jurisdiction to deal with issues arising from the filing of disclosure forms under the *Financial Disclosure Act*.

There is, therefore, nothing further to be said by me about the 1988 mortgage transaction and what Mr. Gingell alleges to be Mr. Sihota's failure to list Ms. Antonio or a corporation controlled by her as a creditor in his July 7, 1988 disclosure form under the *Financial Disclosure Act*.

With respect to the second of the two matters identified by Mr. Gingell, he stated the following which he identified as coming from the Law Society release:

> **Ms. A's guarantee of a loan . . .**
>
> At the request of Mr. S Sr. and Mr. W, Mr. Sihota agreed to take out the loan. Mrs. A agreed to put up her mortgage funds as collateral once they became available . . .
>
> In the end, Mr. Sihota's bank loan was paid out from funds held in Ms. A's name. To date, Ms. A has never requested or received payment of the $170,000 principal or interest from Mr. Sihota.

Addressing that matter in his letter to me Mr. Gingell said:

> With respect to Ms. A's guarantee of Mr. Sihota's loan, it is simply unclear at what point Ms. A became a creditor of Mr. Sihota's and at what point, if ever, she ceased to be a creditor. In any event, Mr. Sihota should have declared her as a creditor in his March 21, 1991, March 31, 1992, March 31, 1993, March 31,

> 1994 and March 31, 1995 Public Disclosure Statements -- and he hasn't. On the face of it, it appears that Ms. A continues to be able to commence an action against Mr. Sihota to recover her funds forfeited to pay his loan. Frankly, the fact that Ms. A has not commenced an action is irrelevant. The fact that she could seek recourse against Mr. Sihota underlines the fact a debtor-creditor relationship exists between Ms. A and Mr. Sihota -- and should have been disclosed by him. Even if Ms. A has chosen not to pursue recovery of her funds, that does not remove the underlying relationship -- which could subsequently be enforced by her estate or successors and assigns. I refer you to Section 30 of the *Law and Equity Act* for authority, and attach a copy for your reference.

Mr. Gingell concluded his September 5, 1995 submission by stating:

> I believe the attached and the above set out reasonable and probable grounds to believe that the member did not disclose to the Legislature a debt he owed to a former client -- a debt he has only recently admitted to the Law Society.
>
> I therefore request you examine Mr. Sihota's conduct as a member pursuant to Section 15(1) of the *Members' Conflict of Interest Act*.

I have proceeded to examine Mr. Sihota's conduct as a member pursuant to section 15(1) of the *Members' Conflict of Interest Act* insofar as it relates to the disclosure forms filed by him under that *Act* commencing in February 1991. Clearly, the former client referred to by Mr. Gingell is Ms. Antonio.

The *Members' Conflict of Interest Act* became operative on December 1, 1990. Pursuant to my request, Mr. Sihota, in or about the month of February in each of the years 1991 to 1995 inclusive, filed with this office a confidential disclosure statement as required by section 12(1) of the *Act*. In the month of March in each of those five years I filed with the Clerk of the Legislative Assembly, as required by section 13(3) of the *Act*, a public disclosure statement relating to the financial affairs of Mr. Sihota. On none of those occasions did Mr. Sihota identify an indebtedness by him to Ms. Antonio or a corporation controlled by her. If he was indebted to Ms. Antonio or a corporation controlled by her at the time of filing his first return under the *Members' Conflict of Interest Act* in February 1991, or if he has at anytime since been indebted to

her or a corporation controlled by her, then Mr. Sihota would be in violation of section 12(2) of the *Act* which requires that he disclose "... a statement of the nature of the ... liabilities ... of the member, the member's spouse and minor children, and private corporations controlled by them".

Thus, the sole question for my determination is whether, at any time between February 1991 and the present date, Mr. Sihota was indebted to Ms. Antonio or a corporation controlled by her. That narrow but nevertheless important question is all that is before me for adjudication. The issue addressed by the Law Society relating to whether Mr. Sihota, as a practicing lawyer, allowed his personal interests to conflict with those of his clients is not a matter for either my consideration or comment.

Once I had satisfied myself that Mr. Gingell had met the requirements of Section 15(1) of the *Act*, I invited Mr. Sihota to my office for a discussion about Mr. Gingell's allegation that he did not disclose that he was indebted to his former client Ms. Antonio. He identified his former client as Ms. Edith Antonio. Their solicitor-client relationship resulted from Ms. Antonio's retainment of Mr. Sihota to reach a settlement for her arising out of injuries she suffered in a 1983 motor vehicle accident.

Mr. Sihota was definite that at no time since the enactment of the *Members' Conflict of Interest Act* had he been indebted to Ms. Antonio or a company controlled by her. He detailed for me the history of her guaranteeing a loan that he had taken out at the Whalley Branch of the Royal Bank of Canada in Surrey, British Columbia, and the subsequent retirement of that loan by the application of funds standing to the credit of Ms. Antonio at the Bank. Except in the case of a gift, of which there is no suggestion here, when the debt of one is retired by the application of the funds of another it is usual for the former to be indebted to the latter. Having been told that it was not the case in this instance, I felt it desirable for the explanation as to why that was so to be formally recorded and I told Mr. Sihota that I would require both him and Ms. Antonio to recite the details of the transaction, either under oath or solemn affirmation as provided for by the *Evidence Act* of this province. Mr. Sihota agreed to do so. Ms. Antonio also agreed to relate to me, under oath, the events relating to the loan, her guarantee of it and its subsequent retirement.

The original transcript of the evidence of Mr. Sihota, solemnly affirmed by him to be the truth, and that of Ms. Antonio, sworn by her to be the truth, will be filed this date with the Clerk of the Legislative Assembly and be available in that office for those who wish to read the documents in full. Likewise, the exhibits identified on each examination will be filed and made available.

I will now summarize the explanation as it has been given to me and I will quote relevant passages from the transcripts where appropriate.

Harvey Williams, with whom Ms. Antonio lived in a common-law relationship from 1970 to 1991, and Mr. Sihota's father, Baz Sihota, were partners in the building of homes in California. In the late spring or early summer of 1988 Mr. Williams and Mr. Sihota Sr. were in need of funds to carry through with their construction project. Mr. Williams was aware that Ms. Antonio was to receive approximately $170,000 on retirement of a mortgage she held on property in Smithers, British Columbia. That was the approximate amount recovered in the motor vehicle settlement and Ms. Antonio invested it in the mortgage on the Smithers property. She agreed to re-invest those settlement funds in the form of a loan to Mr. Williams and Mr. Sihota Sr. and she was to be paid out by them from the proceeds of house sales in the California development. Her funds were not available as quickly as they were needed so the Bank was asked to advance them pending the receipt of her money. The only potential borrower in the picture, who was acceptable to the Bank, was Moe Sihota but the loan to him would be conditional on Ms. Antonio agreeing that her money from the Smithers transaction would come to the Bank and be held as collateral for the loan to Moe Sihota. The paperwork to carry out this plan was completed and the $170,000 borrowed by Mr. Sihota was sent to California for use in the development project. Ms. Antonio's approximate $170,000 subsequently arrived at the Bank. The California development began to sour and instead of sales resulting in money to pay out the loan, Ms. Antonio's funds on deposit were, on or about January 15, 1991, used for that purpose. On January 4, 1991 Ms. Antonio had signed a letter to the Bank instructing that that be done. That letter was identified as an exhibit during her examination. The Bank has advised me that that application of Ms. Antonio's funds retired Mr. Sihota's indebtedness to the Bank.

On October 2, 1995 Mr. Sihota gave me the following explanation as to why he did not consider himself indebted to Ms. Antonio after the application of her funds to retire his loan;

Q. Now as I understand it, it is your position and I believe from what I've read also that Ms. Antonio, although I hope to talk to her in the next day or two, that the application of her funds to discharge your loan at the bank did not create an indebtedness from you to her?

A. That's right.

Q. And can you explain why that is so given that her money was used to retire the debt that you had taken out?

A. Well the understanding of all the parties from the outset was that Mr. Williams and my late father were obliged to pay Ms. Antonio back the money that they had in effect borrowed from her. It just so happened that because of the delay in her receiving the funds from the sale of the earlier property that the bank asked me to be involved as they put it as a borrower of convenience, and all of the parties understood including the bank from what I know that the obligation to repay the amount borrowed from essentially from Ms. Antonio was vested in the partnership of my father and Mr. Williams.

On October 4, 1995 Ms. Antonio gave me the following explanation as to why she did not consider Moe Sihota to be indebted to her after the application of her funds to retire his loan:

Q. (By Mr. Hughes) Now, in that your money went to pay off the loan that Mr. Moe Sihota had taken out at the bank, did you as a result of that consider that he was indebted to you for the amount of money that had been applied on the loan?

A. No. No, there was no indebtedness at all on Moe Sihota's part. At that time when Mr. Sihota came to California to -- on the passing of his father and also

to take and discuss the housing that was not completed, the three of us had a mutual agreement. It was agreed upon that Harvey Williams would complete the building of the housing. Moe was giving that part up.

He gave permission to Harvey to do it on the condition that I would receive my hundred and seventy thousand dollars. And whatever he made more than that -- I mean Moe was getting no monies out of any of the sale of the houses. And it was a mutual agreement between the three of us that Moe was having nothing further to do with the building and he was released from -- I would pay off that loan and Harvey and I would go on with finishing up the housing.

Q. And who then did you consider owed you the hundred and seventy thousand dollars?

A. Harvey, Harvey Williams. I maintained that from the beginning until this day.

Q. Is that money still owed to you today?

A. Yes.

Q. By whom?

A. By Harvey Williams.

Q. And your position is that it never has been owed to you by Moe Sihota?

A. No. No, there is no indebtedness on Moe's part. He was not a business partner. It was a business deal between Harvey and Baz, not between Moe. All we did -- we did them a favour.

What Ms. Antonio told me was consistent with what she had said in correspondence in 1993 and 1994. On April 21, 1993 she had written to Chris Starkey who continues the law practice with which Moe Sihota had been associated and said, *inter alia,*:

> It's my view that the funds left outstanding through my assisting Harvey Williams and his deceased business partner is now an affair between myself and Harvey Williams and that there is no indebtedness of $170,000 to me by Moe Sihota him never being a business partner of Harvey Williams and his deceased partner.

Ms. Antonio wrote to the Law Society of British Columbia on August 18, 1993 and November 30, 1994 and said, *inter alia*, in the first of those letters:

> Around the time of the sale of the Smithers property, the deceased Mr. B. Sihota and Mr. Williams encouraged me to invest in California, on the promise that I would be repaid when the initial property was sold. They did not fulfill that promise. I believe that Mr. Williams and the deceased are indebted to me. There is no indebtedness between myself and Mr. Sihota.

and, in the second of those letters:

> As for the California investment - I want you to understand that I was encouraged by Mr. Harvey Williams and the late Baz Sihota to invest in that real estate venture. Based on their representations I made an investment of $170,000. I lost that investment. Harvey Williams may well owe me $170,000, but there is no indebtedness on the part of Mr. M. Sihota. I thought that I had made it clear that Mr. M. Sihota was not involved in the partnership and did not twist my arm to invest in California. I have no complaints about Moe Sihota. I hope that overcomes any confusion on your or the law society's part.

During their October examinations, Ms. Antonio and Mr. Sihota agreed that those passages accurately represent the financial relationship and related arrangements that existed between them with respect to the California investment.

At the examination, Mr. Sihota was presented with the public disclosure statements relating to his affairs as filed by this office with the Clerk of the Legislative Assembly, pursuant to Section

13(3) of the *Act* for each of the years 1991 - 1995 inclusive. No mention was made in any of them of a liability owing by Mr. Sihota to either the Royal Bank of Canada or to Ms. Antonio. He said that was because the Bank loan had been extinguished in January 1991 and that he had never considered Ms. Antonio to be a creditor of his. The five public disclosure statements were marked as exhibits at Mr. Sihota's examination. His examination concluded with the asking of the following question and him giving the indicated answer:

> Q. And is what is disclosed as liabilities in each of these documents that have been marked P6 to P10 inclusive a correct and true reporting of what your liabilities were at the time of filing with me in the early months of the years 1991 - 1995 inclusive?
>
> A. Yes, I believe to the best of my knowledge to be accurate and true.

Ms. Antonio's examination concluded with the following questions and answers:

> Q. (By Mr. Hughes) Now, I just have this final question for you Ms. Antonio.
> At any time since December 1990 -- and I use that date because that's the date that the conflict -- Members' Conflict of Interest Act in British Columbia became law and under which I have operated as either Acting Commissioner or Commissioner since that date.
> And the question I am asking you is: Since that date in December 1990 has Moe Sihota at any time been indebted to you for any sum of money whatsoever?
>
> A. No, he has not.
>
> Q. That's it.
>
> A. Moe has always been up front, open and always treated me professionally. And I maintain again he is not indebted. The debt belongs to Harvey Williams.

I accept what I have been told by Mr. Sihota and Ms. Antonio. It follows that in disclosing his liabilities to this office since the inception of the *Members' Conflict of Interest Act* Mr. Sihota has met the obligations resting with him under that *Act* with respect to the disclosure of his liabilities and in doing so he has not contravened the *Act*. It also follows that Section 30 of the *Law and Equity Act* is not applicable.

Dated at the City of Victoria, Province of British Columbia
this 10th day of October, 1995

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