



**CONFLICT OF
INTEREST COMMISSIONER**

The Honourable H.A.D. OLIVER, Q.C.

ANNUAL REPORT

1998-99

May 31, 2000

The Honourable Bill Hartley, MLA
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia
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Mr. Speaker:

I have the honour, pursuant to section 15 of the *Members' Conflict of Interest Act* (RS Chapter 287), to present my Annual Report for the period August 7, 1998 to December 31, 1999.

Yours sincerely,

H. A. D. Oliver
Commissioner

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ANNUAL REPORT

OF THE CONFLICT OF INTEREST COMMISSIONER

1998-99

Introduction

This seventh Annual Report of the Commissioner (an independent Officer of the Legislative Assembly) covers the period August 7, 1998 to December 31, 1999. Past reports have covered periods ending on a variety of different dates. It seems more satisfactory for future reports to cover the calendar year.

Public Perception

I once again remind readers that the effective functioning of government in any parliamentary democracy must be firmly founded in the respect in which the members of the public held their government in general and their elected representatives in particular.

The reputation of governments and of their leaders and parliamentarians has, in the past year, been bedevilled by major scandal and allegation of sleaze and misconduct world wide: the list (by no means exhaustive) includes; Austria, Burma, China, Eire, France, Germany, Ghana, Great Britain, Israel, Italy, Japan, Mexico, Nigeria, Pakistan, Peru, Russia, Uganda, and the Ukraine. By comparison, problems brought to my attention in this province arising under the *Members' Conflict of Interest Act* do not pale into insignificance -- for there can not be an insignificant conflict of interest -- but generally fail to rise to a point on the scale of gravity of many of those observed abroad.

Whether this is due to differing levels of ethical standards or to the growing readiness of members of the Legislative Assembly to consult the conflict commissioner before committing themselves to some course of action which may, in retrospect, turn out to have been unacceptable, the fact remains that I have not found it necessary in 1999 to make any findings of

serious infractions of the *Members' Conflict of Interest Act*. I make no comment on any complaint presently under investigation or inquiry by my office.

Weighing the Evidence

Let me, in this connection, comment on the apparent readiness of some members of the public (and occasionally of the media) to conclude that any allegation of misconduct by a Minister or a Member constitutes an adverse finding and that dire punishment must immediately follow. Or, in the words of the Red Queen in *Alice in Wonderland*:

"Sentence first, verdict later. Off with his head!"

Similar ill-considered criticism is heard from time to time in relation to the decisions of judges or juries in high profile trials.

The commissioner should seek to prevent breaches of the Act when he can and when allegations of infractions are brought forward should produce a full report as quickly as possible consistent with the need to undertake a fair, thorough and professional investigation. He must bear in mind his duty to the Legislative Assembly and to the public which includes not only protecting the integrity of the political process, but also ensuring that in any serious case no finding adverse to a Member should be made without clear and convincing proof of misconduct -- always remembering that a single ill-considered word or unfair phrase in his Opinion can seriously affect or permanently destroy a promising political career.

There will always be those who:

- Unprejudiced by any familiarity with the evidence.
- Unbiased by any knowledge of the submissions made before the Commissioner.
- Uninfluenced by the centuries-old precept to listen to both sides of an argument, will leap to judgement and will write to the media to condemn the supposed offender or the decision-

maker. These critics appear to resent any suggestion that allegations of political wrongdoing should be decided by something more than gut reaction.

Sadly, an occasional article in the press will condemn as unduly "soft" a finding following an investigation, that the complaint is unsupported by the evidence, or that an infraction was unplanned or unintended.

It should be borne in mind that the task of this office is, essentially, the prevention of political corruption rather than the detection or punishment of purely technical or inadvertent breaches and that numerous complaints are brought before me by members of the public unfamiliar with the specific prohibitions contained in the *Members' Conflict of Interest Act* or with the limits placed on my jurisdiction. Every once in a while a complaint may originate with political opponents seeking to use the Act as a stick with which to belabour an MLA of another political party for purely partisan ends. This is, of course, permissible but does tend to produce occasional allegations of somewhat picayune infractions.

The Conduct of Members

My colleague, the Honourable Robert C. Rutherford, in his 1998/99 Report to the Legislative Assembly of Ontario observes as follows:

"Government is an extraordinarily serious business. Wisely run, it is the repository of the democratic tools that safeguard the fundamental human rights of citizens. It is also the vehicle for promoting material well being and ensuring a measure of social justice within our society. Unwisely run, or run without the highest standards of integrity, government can become the vehicle for cronyism, corruption and the decline in the values so fundamental to democracy. Integrity in government is therefore of compelling interest to us all. Without the abiding trust of citizens in our political and governmental institutions - institutions that are so central to our way of life - democracy can not function."

I echo Commissioner Rutherford's remarks but point out that "abiding trust of citizens in our political and governmental institutions" is something that must be earned by transparent honesty, not merely on the part of our public institutions themselves, but of every individual who is a cog

wheel in the machinery of government and, above all, of every individual whom we elect to represent us in the seats of power of our province and nation. The unedifying spectacle of allegedly unethical conduct by senior political figures in Europe, Asia and the Americas must not mislead any of us in this province into the belief that a lowering of ethical standards of conduct in public life is gradually becoming acceptable.

I do not believe that in British Columbia elected political office is viewed as an attractive career by the greedy, the corrupt or those anxious to build up secret offshore bank accounts at the expense of the taxpayer.

I do, however, believe that in the course of political life, elected members may from time to time be exposed to insidious or unexpected temptations: I see it as one of the most useful functions of my office to serve members as a pilot around the concealed rocks, sunken wrecks and dangerous shoal waters which may be more readily discernible to one who spends much of his time in the detection of these frequently hidden hazards. At the same time, I recognize that there are many members of the House whose own experience and navigational skills are such as to enable them to avoid the vast majority of such unexpected hazards and to steer the ship of state to a safe harbour with little outside assistance.

The Commissioner as Advisor

Members of Cabinet and of the Legislature have been consulting the Commissioner for informal advice with ever-increasing frequency, resulting in relatively few complaints under the *Members' Conflict of Interest Act*. The Commissioner continues to be available for informal consultation by members in person or by telephone at any time during and outside regular working hours. All such consultations are confidential and are aimed at assisting the member to view the member's problem from various different angles and to assist the member in arriving at a carefully considered decision as to the course he or she should pursue. On occasion a member may, as a result of such discussion with the Commissioner, reach the conclusion that though the course originally intended did not involve a breach of the statutory conflict of interest rule, the political wisdom of the proposed course remains questionable. It is the Commissioner's practice to point

out that the question of political wisdom is no concern of his but undoubtedly that question is one of the surrounding circumstances, careful consideration of which will assist the member in arriving at a proper determination.

Common sense tells us that a situation in which members are able to avoid questionable conduct in the first place is infinitely preferable to one resulting in a string of complaints necessitating formal investigation or inquiries.

Investigations versus Inquiries

From time to time inquiries or complaints are received from members of the Legislature or of the media or of the public with a request to "put one of your people onto this". Readers are reminded that the entire staff of the office of Conflict of Interest Commissioner consists of the Commissioner (a half time officer) and of two administrative assistants who job-share a single appointment.

The view held by some that the Commissioner operates some form of small police department is based on a misconception.

My general policy is quite simply this: I seek, wherever possible, to avoid infractions by members of the *Members' Conflict of Interest Act* by strong emphasis on my advisory function and members, almost without exception, have readily availed themselves of the assistance offered, sharing my view that prevention is better than cure. When formal complaints have come in, these have wherever possible been dealt with by way of **investigation**. The Commissioner has power under section 21(2) of the Act to order a **formal Inquiry** and if he does so enjoys certain of the powers of a Supreme Court Judge under sections of the *Inquiry Act*. An inquiry, however, is a slow and costly procedure necessitating the retaining of commission counsel and the employment of court reporters. This is an expense and a delay which I try to avoid wherever possible. There are, of course, some occasions when it is impossible to save the taxpayers this expense, but wherever I properly could I have endeavoured to deal with complaints by way of investigation.

One of the problems which this has entailed is that in conducting an investigation I was unable to take evidence on oath or by statutory declaration (powers which, under the *Inquiry Act* I enjoyed only whilst conducting an Inquiry). This has now been remedied by my recent appointment as a Commissioner for taking affidavits.

Pending Inquiry

The year has brought with it one matter which has absorbed much of my time: it is the formal investigation at the request of Cabinet, pursuant to section 19(3) of the *Members' Conflict of Interest Act* of the conduct of the Hon. Glen Clark, MLA for Vancouver-Kingsway. In March 1999, a search warrant was executed at the home of the Honourable Glen Clark, MLA, Premier of British Columbia in relation to a criminal investigation of allegations surrounding an application by a BC Limited Company for the grant of a casino licence.

It was alleged that one of the principals of the company was a friend and neighbour of Mr. Clark's who had played a role in certain construction work at Mr. Clark's home and cabin in the Okanagan.

Under the *Members' Conflict of Interest Act* the opinion of the Conflict of Interest Commissioner with regard to the conduct of a member of the Legislative Assembly or Executive Council (Cabinet) may be requested by a member about his or her own compliance [section 18(1)] or about the compliance of another member [section 19(1)]. Similar requests may be made by a member of the public [section 19(2)], by Cabinet [section 19(3)] or by the Legislative Assembly as a whole [section 19(4)]. By a request dated March 5, 1999, Mr. Clark asked that I review the Cabinet records for the whole of 1998 on an urgent priority basis and that I provide my interim opinion as to whether Cabinet had made a decision at any time during that period to grant approval-in-principle of a gaming licence for the North Burnaby Inn. I immediately proceeded to an examination of the Cabinet records for 1998 and on March 8, 1999 following my review, I released an interim opinion stating that these records disclosed that no such decision was made by Cabinet.

On March 5, 1999 in addition to the request for a review of the Cabinet records, Mr. Clark requested that I provide an opinion pursuant to s. 18(1) as to whether he had been in a conflict of interest in the granting of the approval in principle of a Gaming Licence for the North Burnaby Inn.

On March 12, 1999, the Cabinet made the same request pursuant to section 19(3) of the *Members' Conflict of Interest Act* advising that at the request of Mr. Clark this request should replace his earlier request on his own behalf. The reason for Mr. Clark's request to Cabinet that this matter be dealt with as a Cabinet request is that the Commissioner, acting on a request by a member for an opinion about that member's own conduct pursuant to section 18(1) can merely make a confidential report to the requesting member about that member's own conduct after such inquiries as he thinks appropriate, but does not have power to conduct an inquiry with the same powers to summon witnesses and documents and to take evidence on oath as a commissioner appointed under the *Inquiry Act*.

Following receipt of the Cabinet request under section 10(3) I exercised my discretion to conduct an inquiry, the results of which when completed will be reported to Cabinet.

Having regard to the significant nature of the allegations and to the fact that conduct to be investigated was that of the Premier of the Province, I have thought it appropriate that my investigation and inquiry should be as thorough as possible and a large number of witnesses have either testified already or will do so in the months ahead. Care is being taken throughout to avoid any interference with the criminal investigation. I am, of course, aware of the fact that a criminal investigation may take months or years before it comes to fruition and that there is no indication of whether any criminal charges will be laid against the member or of what such charges might be if a prosecution proceeds. I am mindful of the fact that if a charge is laid, it will then take many months before the commencement of a preliminary hearing which might or might not result in a committal for trial, and if the member were committed for trial, it would then take many further months before the commencement of any trial.

Bearing all these factors in mind, it was my view that I would be in breach of my statutory duty and the letter and spirit of the *Members' Conflict of Interest Act* were I to delay or defer my investigation under that Act until the conclusion of any criminal proceedings.

My Report and Opinion will be delivered to Cabinet at the conclusion of my Inquiry.

Some Referred Questions

1. I dealt during the year with a complaint by the Member for Matsqui respecting compliance by the Member for Powell River-Sunshine Coast alleging failure by the latter to disclose in his public disclosure statements a Supreme Court judgement obtained against him and alleging that forgiveness of a personal debt constituted acceptance of a gift or benefit connected directly or indirectly with the performance of the member's duties of office. After a full investigation I found that non-disclosure of the judgement constituted a breach of the Act but that in all the circumstances the member had acted inappropriately but in good faith. I found further that there had been no breach of the gift or benefits sections of the *Members' Conflict of Interest Act*. In my Opinion, I added a comment that had the member consulted the conflicts commissioner beforehand, placing before him the existing facts, he would have received certain advice: and had the member "followed that course and availed himself of the Commissioner's advisory function, these entire unhappy and embarrassing proceedings would have become unnecessary".

My Opinion was submitted to the Speaker: copies were provided for each member and for the use of the news media. Limitations of space and knowledge of the fact that many of the readers of this Report will be familiar with my Opinion have prevented me from reproducing it in full in this Report, but any reader who is interested in its details may obtain a copy from my office upon request.

2. A multi-national corporation owning a large cemetery -- in its capacity as a member of the public under s. 19(2) -- complained that a member, the owner of a dwelling house adjoining their cemetery, when the corporation had started to cut down a stand of trees separating the

cemetery from the residential area had been personally involved in a protest demonstration on the cemetery grounds with other adjacent property owners and had written a letter of protest to the local city council supporting the council's endeavours to enact a by-law intended to restrict or regulate the cutting of trees in the portions of the cemetery adjoining the residential area, and that the member had done so using official MLA's letterhead.

I delivered my Opinion as follows:

1. Member's participation in protest demonstration was the subject of an application for an injunction to Supreme Court: Commissioner declines to comment.
2. Letter to local council should have been written on personal stationery. The member had for many years been a member of local council -- member's identity as an MLA was a matter of common knowledge on Council regardless of type of stationery used.

Request for Opinions

The following nutshell summaries reflect samples of advice provided by the Commissioner in the past year. These examples are not exhaustive and have been abbreviated due to space limitations. They represent summaries of certain types of issue only and are intended to raise the awareness of members and their staff and to bring to their attention potential problems in the hope that this office will be contacted for advice and guidance whenever it is felt that the experience of the Commissioner and his staff may be useful in assisting members how to proceed or how not to proceed. Since inquiries received and opinions expressed are usually confidential, I have taken certain liberties in altering the fact patterns in some cases to avoid the identification of members and others involved.

- **Issue**

May a minister sit on the board of directors of a foundation which receives funding from the Minister's department?

- **Opinion**

No: this might involve Minister in lending personal advocacy service. Minister may properly serve as a patron.

- **Issue**
A member has been invited to attend a conference sponsored by a National Research Institute dealing with a leading Aboriginal rights court decision. May the member accept an offer of travel expenses and accommodation from the conference organizers?

Opinion
The member has been asked to speak in connection with his duties as an MLA. The expenses to be refunded are not a "personal benefit". He may accept.
- **Issue**
A Crown Corporation wishes to purchase land for an expansion of essential public facilities from a corporation of which a director is also a member of the Crown Corporation?

Opinion
Director gave instructions to the Corporate Secretary that he was not to be involved in any discussions or negotiations, and not to be sent any briefing material normally sent to directors. He made a formal declaration of interest and not only complied with the Crown Corporation's conflict by-law but conducted himself with exemplary nature above and beyond the strict requirement of the conflict by-law.
- **Issue**
A member's spouse is a consultant with an extensive practice involving hundreds of clients. Is the member required to file statements of material change of circumstances as part of the disclosure process whenever the spouse's firm is retained by a fresh client?

Opinion
New clients may or may not constitute material change. If Provincial Government or a government agency or a Crown Corporation, or someone closely associated with them: file. If not, use common sense. If in doubt, speak to Commissioner.
- **Issue**
A member has received four free tickets to a sporting event. What should the member do?

Opinion
These tickets were a gift or benefit. Member of his own volition contacted donors, at whose suggestion he donated their true value to a charity.
- **Issue**
A parliamentary secretary has been asked to make recommendations to his Minister involving departmental dealings with a corporation: the parliamentary secretary in his RRSP owns a quantity of shares in a mutual fund, which in turn owns shares in the corporation in question. What should the parliamentary secretary do?

Opinion
The mutual funds holdings, and the parliamentary secretary's own holdings in the mutual fund, are so minimal that no reasonably well-informed person could think that his ability to perform his official duty must have been affected.

- **Issue**
A member is on the board of a crown corporation: a relative of the member's spouse is applying to that corporation for employment in a junior capacity. What is the member's duty?

Opinion
Job applied for would not normally come to Board's attention. A declaration of interest to management would merely draw attention to a connection of which they were probably unaware. Do not intervene. Do nothing.
- **Issue**
A constituency staff employee works for a member as well as sitting on the board of a trust over which the member exercises ministerial responsibility.

Opinion
Act does not prohibit this. Commissioner declined to comment on the political wisdom of such an appointment.
- **Issue**
A member has been invited to attend a dinner concert in his riding. May he accept the invitation and is he required to disclose the ticket under section 7?

Opinion
A member should not be expected to buy opening night tickets to everything in his riding. Many sponsoring bodies are honoured by the presence of the elected representative of the citizens of the community. Section 7 allows acceptance. File disclosure statement under s. 7(3).
- **Issue**
A member's daughter had applied for and been granted a BC Arts Council grant.

Opinion
Daughter's decision to apply was solely her own, she prepared all documentation -- which was never seen by member -- she made own application in every way independent of member. Acceptance by daughter is entirely appropriate.
- **Issue**
A member was invited by the British government to tour certain public service restructuring being developed in Britain. The British government would pay for costs, but not airfare. Was such an invitation acceptable?

Opinion
Member is opposition critic for the appropriate area of interest. Acceptable.
- **Issue**
A minister inquired about his participation in discussions relating to a new post-secondary training program where there was a possibility of his young son benefiting from the program in the future.

Opinion
The class of students benefiting from new programs will exceed over 200,000 over next four

years. Any benefit to son is remote and would constitute an incidental benefit to a "broad class of electors". No conflict, real or apparent.

- **Issue**

A member was offered a holiday flight paid for by accumulated air miles by a personal friend.

- **Opinion**

The relationship is of 10 year standing -- personal and neither of a political nor a business nature. No business relationship is anticipated. Nothing brings this within either the prohibition or the disclosure provisions of s. 7 nor does it constitute an "asset" or financial interest within the meaning of s. 16 of the Act.

Public Education

I continue to give talks to and conduct seminars for a variety of organizations, including university schools of public administration, faculties of law and political science, service clubs, high schools, and other citizens groups interested in good government, the avoidance of political corruption, and the functioning of the Office of Conflict of Interest Commissioner. I have participated in radio and television broadcasts and have from time-to-time contributed to the correspondence columnists of newspapers of the subject of the functioning of my Office.

Prospective Candidates

The 36th Parliament comes to an end within the next twelve months and I think it appropriate to repeat on this subject what I have said in my Annual Report for 1997-98:

"I gather from a number of members that they were, prior to election, unaware of the *Members' Conflict of Interest Act* and the extent to which its restrictive provisions were applicable to them. I believe it important that arrangements should be made for all prospective candidates without prior service in the Legislative Assembly to attend an interview with the Commissioner at the very outset of their candidature to ascertain the extent to which the legislation may impact on their private lives. No responsible person should seek any employment, least of all public office, without making inquiries as to the terms and conditions of employment. I believe it important that party leaders, prior to nomination day (whether for a general election or a by-election) should inform prospective candidates that this office is available to provide information and advice with respect to the *Members' Conflict of Interest Act* and should insist that candidates attend for interview with the Commissioner."

Relations with Colleagues in Other Jurisdictions

The Office of Conflict of Interest Commissioner is a lonely one: there is only one such officer in each province or territory and the Commissioner has no colleagues within his jurisdiction with whom common problems can be discussed. Nevertheless some of the matters with which a Commissioner has to deal may have arisen previously, perhaps in slightly different form in other jurisdictions. To avoid the constant exercise of reinventing the wheel, it is useful for the Commissioner to bear in mind that similar Officers exist in virtually each of the provinces and territories of Canada with whom matters of common interest may from time-to-time be discussed.

The Canadian Conflict of Interest Network (CCOIN) is composed of the heads of province-wide or federal government organizations with a major mandate for administering conflict of interest and ethical conduct rules in Canada. The members of CCOIN meet annually to discuss common problems and are in frequent communication with each other with the view to rendering mutual assistance. The 1998 Conference was held in Quebec City at the invitation of the Assemblée Nationale du Quebec. At the conclusion of that Conference, I extended an invitation to the members of CCOIN to hold the final conference of the century in Victoria.

The 1999 Conference in Victoria proved a great success and enabled the members to discuss a variety of topics, some local in nature, others of nation-wide concern.

The members of CCOIN are grateful to the people and the Legislative Assembly of British Columbia for the welcome extended to them, to the Speaker for the Conference facilities made available in the Parliament Buildings, and to the Sergeant at Arms and his courteous and helpful staff for making the Conference a success. Thanks are also extended to my distinguished predecessor, the Hon. E.N. (Ted) Hughes, Q.C. who, in his capacity as Yukon Commissioner of Conflict of Interest, extended hospitality to our guests.

Office Costs

The British Columbia Conflict of Interest Office continues to be operated as modestly and as economically as has been the practice in the past. The budget for 1998-99 was \$189,000 and expenditures over the 12-month period totalled \$185,292.68. I must add a note of caution -- as my predecessor Commissioner Hughes did repeatedly: with the minimum of staff in the office, the retaining of professional services is sometimes necessary. This may occur when preparing confidential opinions for members when complications in the fact pattern make that course advisable. It is especially so during investigations when the retaining of Commission counsel and court reporters (and sometimes of accountants) becomes necessary.

It is in large measure because of this expense factor, which persuades me that whenever possible Inquiries should only be instituted when investigations are not likely to be a satisfactory substitute, that we have not in the past budgeted for a type of procedure which generally only occurs once every few years. Though the financial figures for the past fiscal year may once again be regarded as satisfactory, I warn readers that the on-going Inquiry to which I have referred earlier to in my Report will involve substantial professional fees which were not in our budget estimates and could not reasonably have been anticipated.

Office Operations

My staff consists, as it has for many years, of Jill Robinson and Daphne Thompson who job-share a single appointment as Administrative Assistant.

The accommodation we occupy in the old stables behind the Legislature is spartan. Our furniture has been to some extent scavenged from various storage areas. If the result is aesthetically unimpressive, we remind ourselves that it is not our purpose to impress visitors with the splendor of our surroundings but rather to set a good example: I never forget that I have been a taxpayer for very much longer than a Conflict Commissioner.

I am warmly appreciative of the loyalty and support of my colleagues Jill Robinson and Daphne Thompson. If this office operates smoothly, much of the credit must go to them. I extend my thanks to the Legislative Comptroller, Peter Bray, and his assistants who with care and efficiency watch our income and expenditure and keep the books of my office as an Officer of the Legislative Assembly. My thanks also to the Legislative Librarian and to all the other helpful and courteous staff of the Legislative Assembly. Lastly, I again express my thanks to all members of the House for their continued co-operation.