

APPENDIX B

PROVINCE OF BRITISH COLUMBIA

IN THE MATTER OF THE *MEMBERS' CONFLICT OF INTEREST ACT*  
R.S.B.C. 1996, CHAPTER 287

AND

IN THE MATTER OF AN INQUIRY PURSUANT TO S. 21  
OF THE *MEMBERS' CONFLICT OF INTEREST ACT* INTO WHETHER THE  
HONOURABLE GLEN CLARK, M.L.A. HAS BEEN IN BREACH OF ANY  
OF THE SECTIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT*  
IN CONNECTION WITH THE GRANTING OF APPROVAL-IN-PRINCIPLE  
OF A GAMING LICENCE FOR THE NORTH BURNABY *INN/545738 B.C. LTD.*

**RULING ON APPLICATION OF PACIFIC PRESS,  
PUBLISHER OF THE VANCOUVER SUN**

This is an application on behalf of Pacific Press, the publishers of the Vancouver Sun, for a direction that all or part of this Inquiry be conducted in public.

By letter to my counsel dated July 28, 1999, Mr. Robert Anderson, counsel for the Applicant sought access to the proceedings of my Inquiry for his client, and, in the event that there was an issue as to whether or not my Inquiry was to be held in public, the opportunity to make representations before me in this regard. On Friday August 6, 1999, I made myself available to hear Mr. Anderson on this issue.

In his submissions before me, Mr. Anderson conceded that, on the authority of the decisions of the British Columbia Supreme Court and Court of Appeal in the case of *Tafler v. British Columbia (Commissioner of Conflict of Interest)*, [1985] B.C. J. No. 1042 (S.C.) and [1988] B.C.J. No. 1332 (C.A), I have an absolute discretion as to how to conduct my Inquiry, including a discretion as to whether to conduct it in public. These decisions confirm that as an officer of the Legislative Assembly (see s. 14(1) of the *Members' Conflict of Interest Act*), I have the benefit of the privileges of the Legislative Assembly and the authority to make my own decisions regarding public access to my proceedings.

Mr. Anderson, however, urged me to exercise my discretion to hold as much of my Inquiry in public “as can possibly be conducted without impairing its effectiveness”. Mr. Anderson provided me with examples of some public inquiries where various arrangements were made with respect to the presence of television cameras, such as allowing each witness to decide whether or not he or she was comfortable with being videotaped, to illustrate that there is a range of options available in terms of allowing limited media access to a process of this kind.

Mr. Anderson referred me to passages from the Supreme Court of Canada decision in *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 which highlight the important function which public inquiries may serve in holding open and public hearings to inform and educate concerned members of the public about the community problem or government institution under examination.

Mr. Anderson submitted that this Inquiry is of profound interest and concern to the citizens of the Province, and that scrutiny resulting from the presence of the public at my Inquiry might even assist in eliciting the truth.

Commission Counsel very properly refrained from taking any position as to how I should exercise my discretion in this matter.

I am mindful that my Inquiry is not a public inquiry like those cited to me by Mr. Anderson, as was the inquiry into the Westray mine disaster. Although, in conducting my Inquiry I have powers of summons and contempt arising under the British Columbia *Inquiry Act*, my Inquiry (unlike those cited to me by Mr. Anderson) arises not under the *Inquiry Act*, but under the *Members' Conflict of Interest Act*, the statute which I have the responsibility to administer. Though my role in conducting this Inquiry is in some ways similar to that carried out by a Commissioner appointed under the *Inquiry Act*, it is also unique.

One of my responsibilities under the *Members' Conflict of Interest Act* is to provide my opinion, when requested, as to the compliance of a member of the Legislative Assembly with the requirements of the Act. Such requests may come from another member, from a member of the public, from the Executive Council (commonly referred to as the "cabinet"), or from the Legislative Assembly. The request for an opinion which has given rise to this Inquiry is one which I received from the Executive Council. As a result, in accordance with s.21(6) of the *Members' Conflict of Interest Act*, the opinion I reach following the conclusion of my Inquiry must be reported to the Secretary of the Executive Council.

Although I am enjoy complete independence and absolute freedom from any form of political interference in the manner in which I conduct my statutory responsibilities and in the opinions I reach under the *Members' Conflict of Interest Act*, the services I provide are for the assistance of the Legislative Assembly. In his decision in the *Tafler* case, Melvin J. summarized the role of the Conflict of Interest Commissioner in conducting an investigation or inquiry under the *Members' Conflict of Interest Act* as follows, at paragraph 53 of his reasons:

"In the final analysis, the Commissioner is acting for and on behalf of the Legislative Assembly in providing that body with information and opinion. The nature of the investigation relates to the functioning of the member of the Legislative Assembly. Control over members or a member, or sanction of a member, remains with the Legislative Assembly. In my opinion, information gathering which may assist the Assembly in dealing with its own members is a vital step in the decision of the legislature and is necessary to the proper functioning of the Assembly. ...Consequently, the manner in which it chooses to deal with its members in the context is one cloaked with privilege, the exercise of which is not reviewable. The public knowledge interest will be met by the Legislative Assembly dealing in its proceedings publicly, if it wishes, with the information and the opinion it receives in the usual fashion in the legislative chamber."

Although, in this instance, by s.21(6), my opinion is, to be provided to Executive Council rather than to the Legislative Assembly, the comments of Melvin J. are apposite to my

role vis a vis the Executive Council. My mandate is to gather information and provide an opinion to Executive Council to assist it in dealing with an issue that has arisen surrounding one of its members.

In his investigation of Premier Harcourt, my predecessor the Honourable E.N. (Ted) Hughes, Q.C., chose to conduct his proceedings in private. That decision was upheld in the court proceedings challenging this decision which were subsequently brought by Mr. Sid Tafler of Victoria's *Monday Magazine* referenced above. In so doing, in the passage cited above, Melvin J. of the British Columbia Supreme Court concluded that "the public knowledge interest will be met by the Legislative Assembly dealing in its proceedings publicly, if it wishes, with the information and the opinion it receives in the usual fashion in the legislative chamber".

The proceedings of Executive Council, or cabinet, are subject to the doctrine of public interest immunity and by law generally remain confidential. Executive Council, if and when it wishes, may opt to deal with my opinion publicly. I understand that it is the intention of Executive Council to make my report public in due course. Until it exercises that prerogative, my report and the steps leading up to it will remain confidential.

An equally important reason in the present case for exercising my discretion in favour of conducting my proceedings in private arises from the ongoing criminal process related to the subject matter of my Inquiry. Before embarking upon my Inquiry, I seriously considered the question of whether it was appropriate for me to proceed with the mandate I have been given by Executive Council prior to the conclusion of both the criminal investigation and any trial which may result. I have concluded that it is. Executive Council and, by extension, the citizens of the Province, are entitled to know whether or not the Premier conducted himself in a manner prohibited by the *Members' Conflict of Interest Act*. The public importance of such matters is the reason for which the *Members' Conflict of Interest Act*, and the office I hold thereunder, were created. Should criminal charges result from the current criminal investigation, the trial of individuals charged might take place many months, if not years, from now. In the circumstances,

I believe it imperative to proceed with this Inquiry under the *Members' Conflict of Interest Act*, and to do so forthwith.

That said, I am mindful of avoiding any interference with or compromise of the ongoing criminal process. I am concerned that conducting my Inquiry in public, which no doubt would result in the publication of details of evidence I receive, has the potential of creating a significant impact on subsequent criminal proceedings, resulting in a danger of prejudice to the prosecution or the defence. That is a risk I am, at this stage, in duty bound to avoid.

The application is therefore dismissed.

Dated this 13<sup>th</sup> day of August, 1999 at the City of Vancouver, in the Province of British Columbia

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THE HONOURABLE H.A.D. OLIVER, Q.C.  
CONFLICT OF INTEREST COMMISSIONER