



May 10, 2011

BY EMAIL AND MAIL

Ms.

Dear Ms,

This will acknowledge receipt of your email message dated May 5, 2011 in which you ask me, "to investigate whether the Premier Christy Clark campaign [in the current by-election in Vancouver-Point Grey] has broken some Conflict of Interest rules by appearing in and using government announcements for her election campaign...." In your message, you have referenced videos posted at <http://www.newsroom.gov.bc.ca/ministries/office-of-the-premier/>. The announcements you cite were made both before and after April 13, 2011 when the by-election was called. You note that "there appears to be some uncomfortable overlap between Christy Clark's role and duties of Premier and duties directly involving her personal election campaign". You question whether government staff and resources were used to "facilitate" the Premier's by-election campaign, "including public appearances, and photo/media events"; and you question whether the Premier should "not have stepped back from her duties as Premier beginning April 13 so as to have an arms/length relationship with government and reduce the perception of conflict of interest in the public eye regarding her PERSONAL election campaign".

The jurisdiction conferred upon me by the *Members' Conflict of Interest Act* ("the *Act*") is to determine whether Members of the Executive Council and/or Members of the Legislative Assembly have complied with the conflict of interest provisions contained in the *Act*. While Premier Clark is not at the moment a Member of the Legislative Assembly, she has been sworn in as a Member of the Executive Council (or Cabinet) and I, therefore, have jurisdiction to provide you, as a Member of the public, with the opinion you seek. That jurisdiction arises under s. 19(2) of the *Act* and includes the power to conduct an inquiry under s. 21. My practice is to conduct an inquiry only when I'm satisfied that there are reasonable and probable grounds to believe that the *Act* has been contravened.

Office of the
Conflict of Interest
Commissioner

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

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The *Act* defines Conflict of interest as follows:

- 2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.
- (2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

The term "private interest" is defined as follows:

"private interest" *does not include* an interest arising from the exercise of an official power or performance of an official duty or function that

- (a) applies to the general public,
- (b) affects a member as one of a broad class of electors, or
- (c) *concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly; (emphasis added)*

In addressing your request, I have to consider the threshold question of whether seeking to be elected as an MLA amounts to a person improperly furthering a "private interest". Nowhere in the *Act* is there a suggestion that the expression "private interest" would cover or extend to partisan political gain or advantage. I suppose an argument could be mounted that because Members receive a salary and other benefits, seeking election amounts to furthering a private interest. However, following the argument to its logical conclusion would imply that any or all of the actions of a Member to seek popular support for re-election would also be a furtherance of a private interest and a contravention of the *Act*. In my opinion, such a conclusion is against both the spirit, intent and, indeed, the letter of the *Act*.

I have carefully reviewed the material you referred to in your request. I cannot find anything in either written or electronic form that would support the suggestion that government resources


were used, in whole or in part, to promote the Premier's by-election campaign. The announcements that were made are general in nature and contain no references to the by-election or the Premier's campaign.

It must be acknowledged that the Premier's only sworn responsibility at the moment is to carry out her duties as the Premier and the head of the government. The fact that she is, at the same time, seeking election to the Legislative Assembly does not and should not prohibit her from carrying on her duties as Premier, including making public interest announcements and attending events recording government policy and actions.

In the result, I must find that the issues you have raised do not involve a "private interest" and that no conflict or apparent conflict of interest has been shown to exist. The material provided does not disclose any reasonable or probable grounds for conducting an inquiry under s. 21(1) of the *Act*.

Thank you for having brought this matter to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul D.K. Fraser', with a stylized, wavy flourish extending to the right.

Paul D.K. Fraser, QC
Commissioner