



## **OPINION**

**OF THE CONFLICT OF INTEREST COMMISSIONER  
PURSUANT TO SECTION 18(1) OF THE  
*MEMBERS' CONFLICT OF INTEREST ACT***

**IN THE MATTER OF A REQUEST BY  
THE HONOURABLE MEMBER FOR FORT LANGLEY-ALDERGROVE,  
RICH COLEMAN,  
WITH RESPECT TO ANY APPEARANCE OF CONFLICT OF INTEREST  
UNDER SECTION 2(2) OF THE  
*MEMBERS' CONFLICT OF INTEREST ACT***

City of Victoria  
Province of British Columbia

September 16, 2008

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**I INTRODUCTION**

The material portion of section 18(1) of the *Members' Conflict of Interest Act* ("the Act") provides:

A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act ....

Pursuant to this section, the Honourable Rich Coleman, the Member for Fort Langley-Aldergrove and a member of the Executive Council, requested in writing by letter dated July 10, 2008, that I provide him "with a written opinion about whether any appearance of conflict of interest under section 2(2) of the *Act* resulted from" two discretionary decisions he made as the then Minister of Forests and Range in April, 2006 and in January, 2007. The former related to transfer of tenure and the latter to removal of private lands from designated tree farm licences ("TFLs") on Vancouver Island.

Section 2(2) of the *Act* provides:

For the purposes of the 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.

Section 3 of the *Act* provides:

A member must not exercise an official power or perform a special duty or function if the Member has a conflict of interest or an apparent conflict of interest.

In the ordinary course, any written opinion requested by a Member remains confidential (s. 18(4) of the *Act*). That confidentiality resides with the Member. The Minister has advised that he will make this opinion public.

## **II BACKGROUND**

Rich Coleman has been elected as a Member of the Legislative Assembly of British Columbia three times. He was first elected in May, 1996. When he was re-elected in 2001, he was appointed as the Solicitor General and Minister of Public Safety. He remained in that portfolio until June 16, 2005 when he was appointed Minister of Forests and Range: a portfolio which he held for three years until his appointment on June 23, 2008 as Minister of Housing and Social Development.

## **III GATHERING THE FACTS**

In order to prepare this opinion, I have had reference to a variety of materials and have interviewed all of the individuals who have been at the intersection of events. The interviews were comprehensive and, in some cases, followed up with additional information.

Those interviewed were the Deputy Minister of Forests and Range at the material time, the CEO and President of WFP, the Chief Operating Officer of WFP, the Chief Forester for WFP, Stan Coleman, the Minister's Ministerial Assistant, and the Minister himself.

In the course of conducting these interviews, I satisfied myself that there were no other individuals who were likely to have material information to provide.

The Auditor General of British Columbia conducted a review under section 13(3) of the *Auditor General Act* of the processes supporting the decision made by Minister Coleman to approve the removal of private land from TFL 6, 19 and 25. The review was carried out from December, 2007 to May, 2008 and resulted in a report that was published in July, 2008.

In the course of the review, the Auditor General asked the Minister a variety of questions. The Minister provided me with copies of the questions and his answers, and requested that I review that information in preparing this written opinion.

The Auditor General's report had only to do with the merits of the Minister's decisions referred to in the introduction to this document. However, the Auditor General's review (without drawing any conclusions) mentioned that the Minister's brother, Stan Coleman, was employed by the companies whose applications lead to the decisions made by the Minister. In these circumstances, the Minister has brought this concern to my attention for review and opinion.

#### **IV THE FACTS**

In the context of the Minister's request for an opinion, part of his personal and family history is relevant. He was raised in Penticton, British Columbia as the third of six children. His brother, Stan Coleman was a year and a half older. Both are now in their 50's. Before being elected to the Legislative Assembly, Rich Coleman had a career as a peace officer and as a businessman. Stan Coleman has been a professional forester most of his working life. Rich Coleman lives with his family in the Fraser Valley. Stan Coleman and his family reside on Vancouver Island.

While each has a high regard and respect for the other, the fact that they have lived in different parts of the Province and pursued very different careers has resulted in little social contact between the brothers, beyond occasional family gatherings. As their father was a career civil servant, it appears that the Coleman family was apolitical as the children were growing up. The brothers have never been political or business associates or confidants. They have been together at only a handful of family weddings and events over the past few years. Their mother is the common focus for activity involving the two brothers and their siblings. Mrs. Coleman still lives in Penticton and her holiday visits to her children have been the occasion for the two brothers to meet to assist her with her travel plans.

In November 2004, about eight months before Rich Coleman became Minister of Forests and Range, Western Forest Products Inc. ("WFP") made an application to the Ministry to remove

private land from three TFLs on Vancouver Island, Numbered 6, 19, & 25. At the time the application was filed, Stan Coleman was employed by one of WFP's competitors, Cascadia Forest Products Ltd. ("Cascadia"). Cascadia had divided its operations into five geographic units on Vancouver Island. Stan Coleman was employed as the Manager of the operational unit located on TFL 44 in Central Vancouver Island, in the Port Alberni area.

At the time of his appointment as Minister of Forests and Range, Rich Coleman advised the Premier that his brother, Stan, was a registered forester employed in the forest industry on Vancouver Island. That information was also made known to the Deputy Minister of Forests and Range and to the Ministerial Assistants in the Minister's office. It should also be noted that after Rich Coleman's appointment as Minister of Forests and Range, he and his brother Stan agreed that they would have no discussions about the Forest Industry while Rich Coleman held this Cabinet portfolio. Both men have advised me under oath that they kept that agreement. Every indication is that great care was successfully taken by both of them to avoid any suggestion of influence or preference based on their familial relationship. The staff in the Ministry and the Minister's office were aware of the potential for difficulty. So too, was the senior management at Cascadia and at WFP. The sense I have from all of the information received is that none of those involved considered that the relationship between the brothers held any hope of advantage for anyone. The reality was that much time and effort was spent in managing the situation, so that no advantage was given or taken. Fortunately, the nature of the work done by Stan Coleman was such that he was not involved in any of the issues that lead to the decisions that the Minister ultimately made.

The important events that occurred over the period from June, 2005 until January, 2007 are as follows:

- July, 2005 – WFP delivers to the Ministry its material in support of its application for removal of private lands from TFLs 6, 19 and 25. The Ministry of Forests and Range commences its review of the material.

- November, 2005 – an announcement was made of the potential merger between WFP and Cascadia. WFP was the larger of the companies with a stronger presence in the Vancouver Island forest industry. A process of due diligence was begun to verify assets and value in both companies. Mergers of two companies that are subject to government tenure and regulation don't occur quickly or easily, and announcements of potential mergers are invariably followed by weeks or months of inventory examinations and due diligence, before the fate of a potential transaction is known.
- February 3, 2006 – Cascadia applies to transfer its tenure in TFL 44 (and others) to WFP. The application is processed by the Ministry. Understandably, confirmation of the proposed merger is affected by the fate of proposed tenure transfer applications.
- April 29, 2006 – Cascadia's tenure application is approved by the Minister upon consultation with the Ministry.
- May 1, 2006 – WFP and Cascadia confirm that the merger transaction will complete and integration of the two companies will proceed.
- January 2007 – the Minister decides that WFP may remove some private lands from TFLs 6, 19 and 25, on conditions.

It will be remembered that at the beginning of this corporate continuum, Stan Coleman was employed by Cascadia as one of its Unit Managers. Cascadia was a prominent forest company on Vancouver Island.

Given Minister Coleman's previous experience, he knew what steps are available and can be taken under the *Act* to safeguard Ministerial involvement in any conflict of interest or apparent conflict of interest situation. Section 11 of the *Act* deals with Ministerial performance of responsibilities, and provides:

(1) if, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must:

- a) refrain at all times from attempting to influence the matter, and
- b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private interest and withdraw from the meeting without voting or participating in the discussion.

(2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of the member referred to in the subsection (1) for any matter with respect to which the member referred to in subsection (1) has a conflict of interest or apparent conflict of interest.

Soon after he became Minister of Forests and Range, Mr. Coleman delivered a memorandum dated July 21, 2005 to his Deputy Minister as follows:

Re: Conflict of Interest

My obligations under the *Members' Conflict of Interest Act* require me to refrain from having Ministerial dealings with matters that may be seen as involving or benefiting Cascadia Forest Products with regard to TFL 44.

To ensure that there will be no breach of the Act, I am directing you, as my Deputy Minister, to insure that I have no involvement in the matters referred to above. If issues regarding TFL 44 arise with respect to this company, you should deal with those issues at the bureaucratic level. However, if they cannot be dealt with at that level because they require the exercise of Ministerial discretion, they must be brought to the attention of my back-up Ministers for decision. I must not be briefed on their decision until after their decision has been made.

If issues regarding TFL 44 arise with respect to this company that require consideration by Cabinet, or a Cabinet Committee of which I am a Member I am directing you to advise me well in advance of any meetings where the issues will be discussed. I am to be informed of the fact that the issue is on the agenda. I must not be briefed on any of the details until after the decision is made.

Please ensure that this directive is brought to the attention of appropriate staff members.

While the memorandum does not refer to Stan Coleman by name, he was then the unit manager of TFL 44 for Cascadia. In November, 2005 the proposed merger of WFP and Cascadia was announced. During that month the Minister met with my predecessor for the Member's annual financial disclosure review which is mandated by the *Act*. They discussed the new development and the Minister advised that he would replace his memorandum of July 21, 2005 to his Deputy Minister with the following memorandum dated November 14, 2005.

Re: Conflict of Interest

This memo clarifies and replaces my July 21, 2005 memo to you regarding any conflict I have with regard to Cascadia Forest Products and TFL 44, and arises from my conversation today with the Conflict of Interest Commissioner.

My obligations under the *Members' Conflict of Interest Act* require me to refrain from having ministerial dealings with operational decisions that may be seen as directly involving or benefiting S.J. (Stan) Coleman, Unit Manager, Cascadia Forest Products.

...

The remaining three paragraphs of the memorandum are identical to the memorandum of July 21, 2005, except that references to TFL 44 in the third and fourth paragraph are, instead, to Stan Coleman.

On November 17, 2005, my predecessor sent the following letter to Minister Coleman:

In view of certain prospective take-over plans involving Cascadia Forest Products and of the fact that your brother, Stan Coleman, works for that company, you have consulted me as to your position as the Minister responsible for ultimate approval of the take-over proposition.

Your brother is neither a director nor an officer nor a shareholder, but a middle management employee. Any appearance of conflict on your part is, I think, eliminated by your memorandum to your Deputy Minister dated November 14, 2005, of which you have been good enough to send me a copy, and which I think is suitable in the circumstances.

The Minister's memorandum dated November 14, 2005 to his Deputy Minister and my predecessor's letter to Minister Coleman of November 17, 2005, were tabled by the Minister in



the House on March 28, 2006, a month before Cascadia's transfer of tenure application was approved by the Minister.

The reference in my predecessor's letter of November 17<sup>th</sup> to Stan Coleman as "neither a director, nor an officer, nor a shareholder, but a middle management employee" has been confirmed in all of the information I have received with respect to his employment as a Unit Manager with Cascadia. His responsibilities in that role were entirely operational. He was not part of a senior management team that had responsibility for corporate policy or organization. In the course of his work with Cascadia, he was not part of any discussions or negotiations having to do with the ultimate merger with WFP. He had no responsibility with respect to the application to transfer tenure from Cascadia to WFP. His contact with the Ministry of Forests and Range was entirely at the bureaucratic level. He was involved in dealing with various important First Nations issues and with other operational issues that were Port Alberni specific. While his contributions to Cascadia were valued, they were not in the area that touched on the executive aspects of forest tenure.

The information provided to me with respect to the merger of Cascadia and WFP was that the integration process was complex and decisions about which employees would remain with the merged company were not automatically or easily made. While the confirmation of the merger was ultimately announced on May 1, 2006 and Stan Coleman was confirmed on the payroll as of that date, his responsibility in the merged entity were then still under discussion. Ultimately, he was confirmed as Manager of Strategic Planning, reporting to the company's Chief Forester. At first impression, that title would appear to indicate a large executive responsibility for the company's strategic plan going forward. In fact, Mr. Coleman's responsibilities are entirely operational in nature. His strategic responsibilities must be viewed through that prism. While he is the only person in the company with the title, his responsibilities appear to be unique in terms of work he is doing with First Nations and the supervision of complex arbitration proceedings in which WFP is involved.

The information given to me about Stan Coleman's involvement with the two decisions that are the subject of the opinion the Minister has requested, is completely unequivocal: Stan Coleman

had nothing whatever to do with any aspect of the application for the transfer of Cascadia's tenure to WFP and/or with the application by WFP to remove private lands from the designated TFLs.

There is no indication that Stan Coleman benefited in any way from the decisions made by the Minister. He received no extra compensation or consideration from either Cascadia or WFP as a result of the Minister's decisions. I am unaware of any suggestion that any financial or other benefit accrued either to the Minister or Stan Coleman as a result of the Minister's decisions. Stan Coleman's position with WFP appears to have evolved logically from the work he was previously doing with Cascadia before the merger took place.

In the question submitted to the Minister in the course of the Auditor General's review include a reference to Stan Coleman's ultimate employment by WFP. The questions asked and the answers given are as follows:

- 1. In November 2005 the Minister provided his Deputy Minister with a memorandum outlining mitigation actions regarding Stan Coleman at Cascadia. Did the Minister seek any advice from the Conflict of Interest Commissioner subsequent to Stan Coleman's move from Cascadia to Western? If so, what was discussed? If not, why not?**

I did not discuss the issue with the Conflict of Interest Commissioner subsequent to Stan Coleman's move from Cascadia to Western as I believe Stan remained a middle manager in a forest company of which he was neither an officer nor a shareholder, and the November 14, 2005 memo to my Deputy Minister eliminated any appearance of conflict. Both my Deputy Minister and I continued to apply the directives of the November 14, 2005 memo after Stan moved to Western.

- 2. Did the Minister advise his Deputy Minister that Stan Coleman had changed companies / positions? If so, did the Minister have any discussion on mitigation options? Is this documented?**

My Deputy Minister was the first person to advise me that Stan Coleman had changed positions so he was aware before I was. Given that he transmitted the information to me, I did not feel it necessary to inform him about the change in writing.

The direction provided to my Deputy Minister in my July 25, 2005 and November 14, 2005 memos regarding Stan was and is accurate and continues to apply. If operational decisions that may be seen as directly involving or benefiting Stan arise, my Deputy Minister is to deal with those issues within the ministry. If those issues require a ministerial decision, they must be brought to my backup ministers for decision. And should those issues require consideration by Cabinet or a Cabinet committee that I belong to, my Deputy Minister is to inform me in advance and must not brief me on any details until after a decision is made.

These directives applied when Stan was a Unit Manager at Cascadia Forest Products and continue to apply to his present position. My Deputy Minister is aware that the directives continue to apply and I'm certain he would be pleased to confirm this understanding with you.

I accept the Minister's answers and his assertion that he was unaware of his brother's change in position and that, in any event, the directions given to his Deputy Minister remained in place throughout.

It is significant that from the outset of his career as Minister of Forests and Range, Minister Coleman triggered the well developed machinery of conflict of interest and apparent conflict of interest prevention set forth in section 11 of the *Act*. He accessed and followed the advice from the then Conflict of Interest Commissioner. In my view, the Minister was careful throughout to properly insulate his ministerial responsibilities from allegations of apparent conflict of interest.

## **V CONSIDERATION OF THE MEMBERS' CONFLICT OF INTEREST ACT**

A Member's "private interest"... "must have been affected" before the objective "reasonable perception" test, mentioned in the section, is engaged. In two previous decisions interpreting section 2(2) of the Act, my predecessors have had this to say:

- A. "... private interest is not limited to a pecuniary or economic advantage. It can include any real or tangible benefit that enures to the personal benefit of the Member. [page 28]:

Private interest of other persons can also be, in some circumstances, a private interest that is attributed to the Member. While this class of persons is likely a

narrow one, it would encompass those persons who are in a close and proximate relationship to the Member where it is reasonable to assume that the Member would benefit directly or indirectly from the benefit to the third party. Such persons would include the Member's spouse ... but in some circumstances could include other family members and close personal friends and perhaps even business associates.

The above list of private interests is not meant to be categorical or exhaustive. Each case will have to be looked at and all the circumstances taken into account." [page 31]: *Opinion of the Conflict of Interest Commissioner re Blencoe (Hughes), August 16, 1993; and*

- B. "Even in the absence of an opportunity for personal economic advantage, the term "private interest" may, in certain circumstances, be wide enough to include acts based upon personal loyalty or affection or benefits provided to others in the expectation of returned favours in the future. The extension of this definition of "private interest" beyond direct or indirect financial advantage is one which calls for the exercise of caution and careful consideration of the particular circumstances of each case.": *Opinion of the Conflict of Interest Commissioner re Campbell (Oliver), June 18, 2004.*

[emphasis added]

The issue that arises in the circumstances that have arisen is whether, applying the objective test set out in the *Act*, there is an apparent conflict of interest in the exercise of the Minister's power, duty, or function resulting from his brother's employment with companies that benefited from the Minister's decisions, notwithstanding that the brother's employment was in middle management, played no role and had no participation in the application processes and received no benefit financially or by employment promotion as a result of the decisions made by the Minister.

In my opinion, in these circumstances it is clear that there was no apparent conflict of interest in the exercise of the Minister's power, duty or function.

## **VI CONCLUSION**

For the reasons already given, it is my opinion that a reasonably well informed person would not reasonably perceive that the Minister's decisions to transfer tenure from Cascadia to WFP in April, 2006 and to allow private lands to be removed from some of the TFL's held by WFP in January, 2007 must have been affected by his brother's employment with either company. Accordingly, it is my opinion that Minister Coleman was not in an apparent conflict of interest in making these decisions.

Dated this 16<sup>th</sup> day of September, 2008

In the City of Victoria, Province of British Columbia

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Paul D. K. Fraser, Q.C.

Conflict of Interest Commissioner