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
BY THE HONOURABLE MEMBER FOR VANCOUVER-QUILCHENA
WITH RESPECT TO ALLEGED CONTRAVENTION OF PROVISIONS OF
THE MEMBERS' CONFLICT OF INTEREST ACT
BY THE HONOURABLE MEMBER FOR CARIBOO SOUTH

City of Victoria
Province of British Columbia
May 18, 1994

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Section 15(1) of the Members' Conflict of Interest Act provides:

> "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."

Pursuant to that section, the honourable member for Vancouver-Quilchena (Gordon Campbell, Leader of the Official Opposition) has made the following two applications with respect to the honourable member for Cariboo South (the Honourable David Zirnhelt, Minister of Agriculture, Fisheries and Food), the first dated April 26, 1994 and the second dated April 27, 1994. They read:

1. "It has come to my attention that the Minister of Agriculture, Fisheries and Food, Mr. David Zirnhelt, may have used information brought to his attention by virtue of his role as a Member of the Legislative Assembly, to further his own interest.

   Ms. Linda Brady owns part of D.L. 8240 Cariboo Land District. The land is only legally accessible by water, although there is a road through Parcel A, D.L. 8238. The owners of D.L. 8240 require land access to their property in order to secure electricity.

   We understand that Ms. Linda Brady approached Mr. Zirnhelt in the late fall of 1991 to ask for his assistance in securing land access to her land, lot 6 District Land 8240, Cariboo Land District. Mr. Zirnhelt informed her that he felt that the "best option" available to Ms. Brady was to discuss the matter with Mr. Doug Jefferson, owner of Parcel A, District Land 8238, Cariboo Land District.

Ms. Brady's statements indicate that there is some question as to whether the Province of British Columbia had previously allowed a road through Parcel A, D.L. 8238, Cariboo Land District, and whether that road should be a provincial route.

We understand that the issue was apparently not resolved between Ms. Brady and Mr. Jefferson, and the matter went before the Ombudsman's office of British Columbia, investigated by Mr. Errol Nadeau. The investigation was commenced in July of 1992 and has not yet been completed.

During the Ombudsman's investigation, we understand that Mr. Zirnhelt, along with a partner, purchased the land in question, Parcel A, D.L. 8238 as well as D.L. 8239. This purchase was completed on August 3, 1993.

Since that time, Mr. Zirnhelt has been approached by Ms. Brady to discuss access through the property. We understand that Mr. Zirnhelt told Ms. Brady that he would rather wait until the Ombudsman's office had completed its investigation before entering into negotiations concerning land access.

The chronology of events as related to us by Ms. Linda Brady (refer to attached) suggest that Mr. Zirnhelt's actions are in contravention of Section 3 of the Member's Conflict of Interest Act.

It would appear that based on his knowledge, he was in a position to know that either remuneration would be forthcoming from the Crown as a result of the Ombudsman's decision, or from the landholders of D.L. 8240, upon completion of negotiations concerning land access.

We believe that the issues raised above are a serious matter worthy of examination by your office.

I look forward to your timely response."

2. "I refer to my letter to you of April 26, 1994.

   In addition to Section 3 of the Act, I would ask that you consider all other provisions of the Act should you choose to investigate the activities of the Minister of Agriculture, Fisheries and Food, David Zirnhelt. Two provisions of the Act I wish to point out at this time are Section 2(2) and Section 2(1).

   As you are no doubt aware, Section 2(2) states:

> 'For the purposes of this Act, a member has an apparent conflict of interest where there is a reasonable perception ... 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 own private interest.'

One of the most important official functions which an MLA has upon election is their role in meeting with citizens about their individual concerns and advising them on how best to deal with the government in resolving them.

We also note that Section 2(1) of the Act states:

> **Conflict of interest prohibition**
> 2.1 A member shall not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

From my understanding of what transpired between Ms. Brady and the Minister in question, I believe that the Minister should have informed Ms. Brady that he was considering purchase of the lands in question, was in a personal conflict of interest with her on this matter, and should have abstained from advising her on her efforts to secure public road access through the lands.

We continue to believe that the issues raised by Mr. Zirnhelt's conduct are a serious breach of the Act and look forward to your timely response."

The attachment to the first application reads:

"**Chronology of events as related by Ms. Linda Brady.**

Fall 1991.

Ms. Linda Brady met with Mr. David Zirnhelt, MLA, with respect to gaining legal land access to her property located within D.L. 8240, Cariboo Land District. The road in question runs through Parcel A, D.L. 8238 and D.L. 8239. Mr. Zirnhelt suggested to Ms. Brady that her best course of action would be to discuss the matter with the owner of the property, Mr. Doug Jefferson of Stewart, B.C.

July 15, 1992.

Ms. Brady wrote to the Office of the Ombudsman requesting an investigation into the status of a road into her property. Mr. Errol Nadeau began work on Ms. Brady's request.

August 3, 1993

Mr. Zirnhelt with a partner, purchased Parcel A, D.L. 8238 and D.L. 8239."

GATHERING THE FACTS

In preparation of this opinion in response to the two written communications from the honourable member from Vancouver-Quilchena, I have conducted several interviews, mostly in person but some by telephone. I have had one or more face to face interviews with each of the following British Columbia citizens:

1. The honourable member for Vancouver-Quilchena (hereafter called Campbell), who was accompanied on his visit by the honourable member for Fort Langley-Aldergrove and caucus researcher, Neil Sweeney.

2. The honourable member for Cariboo South (hereafter called Zirnhelt).

3. The honourable member for Cariboo North, who was accompanied by his constituency assistant, Steve Hilbert.

4. Linda and Patrick Brady of 150 Mile House.

5. Dan Hamblin of Big Lake Ranch.

6. Tracy Cooper of Williams Lake .

7. Lon Smith of Williams Lake.

8. Pat and Juanita Corbett of 108 Mile House.

9. Fred Tillotson of Big Lake Ranch.

10. Henry Block of Surrey (Block acts in this matter as agent for his spouse Laura).

11. Harry Tomyn and Rodney Ellard of Delta.

Telephone interviews were conducted with:

1. Carol Baker of Savona.
2. Len Monical of 100 Mile House.
3. Carol Taphorne of Williams Lake.
4. William Sundhu of Williams Lake.
5. Alan Vanderburgh, Q.C. of Williams Lake.

I also conducted follow up telephone interviews with several of those with whom I had previously met or talked. I was also in touch by telephone with the Office of the Ombudsman. Before completing this opinion, I was again in touch with members Campbell and Zirnhelt and Linda Brady to be certain that they had no other individuals whom they thought I should interview before completion of this assignment.

I want to express my appreciation to all those who assisted me, particularly for accommodating my schedule as I moved to complete this assignment expeditiously. Everyone I approached willingly made themselves available for an interview with me.

THE FACTS

Zirnhelt lived his early years at 150 Mile House where his father operated a general store. Prior to Zirnhelt's birth in 1947, his father had commenced to purchase ranch land in the Beaver Valley area of the Cariboo located approximately 50 kms. north and east of 150 Mile House. Beaver Creek runs through the valley and joins Opheim Lake at both its south and north ends. From the north end it goes in a northwesterly direction into Chambers Lake. The land purchased by Zirnhelt Sr. is substantially to the west of the Creek and Lakes and also to the south of Opheim Lake. Part of what he purchased was DL 8239 and what has since been designated as Parcel A of DL 8238. These parcels are hereafter described as the "subject lands" as it was the 1993 purchase of these lands by Zirnhelt and his partners in the ranching business, Susan Zirnhelt and Daniel and Melody

Hamblin, that gave rise to my entry into this matter as Commissioner of Conflict of Interest.

Zirnhelt's father remained in the general store business but he entered into an arrangement with his brother, Alfons, which saw the latter become an active rancher on the lands that Zirnhelt Sr. began to acquire in 1944. Eventually, Alfons and his wife Ida became the owners of the subject lands.

Zirnhelt has had a lifelong interest in the valley. As a boy, he spent his summers there and, early in adulthood he expressed a desire to become a rancher in the district. In 1970, in partnership with his brother John, he bought his present homesite from his father. This is DL 8243 and is presently owned by Zirnhelt and his spouse.

In 1973 Zirnhelt wrote to his Uncle Alfons and Aunt Ida about the prospect of acquiring additional land in the area. He said;

> "Our searching for a ranch to buy has not been successful yet. ... I've been thinking a little more about developing our Chambers Lake place but feel there is not enough land and so I was wondering if there is any chance that you might be interested in selling a piece - say 160 acres or so if Cathy wouldn't mind. Or, would you be interested in leasing part of the place thereby enabling us to run enough cattle to make a living on our place."

Nothing materialized from that approach but in 1977 Zirnhelt purchased part of DL 8241. In the 1980 - 1981 time frame, the Zirnhelts and Hamblins joined forces in the ranch operation. Soon after this, Ida Zirnhelt, by then a widow, was in the process of disposing of her holdings. I am satisfied that, at the time, the Zirnhelts and Hamblins desired to acquire the subject lands but they could not afford them. In or about 1982 Ida Zirnhelt sold the subject lands and other properties in the area to Pat Corbett of 108 Mile House. Corbett says that Zirnhelt was a little miffed that Corbett was the purchaser rather than himself but, nonetheless, Zirnhelt helped Corbett round up the cows and assisted him in becoming acquainted with the land. Corbett never intended to operate a ranch on the property. He sold off the cows and a year or so later commenced to re-sell some of the property. Zirnhelt's brother Norman bought a piece of the old family property from

him. The Zirnhelts and Hamblins were interested in purchasing from Corbett but they were financially unable to do so. Corbett sold the subject lands in 1983 to members of the Jefferson family by way of an agreement for sale. It was the last piece to be sold. The Jeffersons conducted a ranching business on the property, raising cows and cropping the hayfields for feed.

Soon after this final sale, Corbett became involved in an extensive development in the 108 Mile House community. Henry Block, with whom he had been associated in business, assumed Corbett's unpaid vendor's equity in the subject lands in order to provide Corbett with funds to proceed with his development. The agreement for sale was assigned by Corbett to Block's now spouse.

In 1989, the Jeffersons asked Block to transfer title to them and take a mortgage back in that they required title in their name in order to enter into some other land transaction in the immediate vicinity. The agreement for sale was current and Block obliged. The principal sum of the mortgage was $117,877.21. Soon after, the Jeffersons fell into arrears. In 1991, Block commenced foreclosure proceedings. On February 10, 1992 an order *nisi* for foreclosure was made. The redemption date was set at August 10, 1992. On application of the mortgage holder Block, the Supreme Court of British Columbia ordered, *inter alia*, on December 22, 1992:

> "THIS COURT ORDERS that the lands and premises which are the subject matter of these proceedings namely, Parcel Identifier 014-470-527, District Lot 8239, Cariboo District, Parcel Identifier 017-217-717, Parcel A of District Lot 8238, Cariboo District, Plan PGP35253 (the "Lands and Premises") shall be offered for sale, by private sale, free and clear of all encumbrances of the parties save and except the reservations, provisos, exceptions and conditions expressed in the original grant thereof from the Crown;
>
> THIS COURT FURTHER ORDERS that the Petitioner shall have exclusive conduct of sale and shall be at liberty to list the Lands and Premises for sale for a period commencing forthwith until further Order of the Court, and for the Petitioner to be at liberty to pay any such real estate agent or firm who may arrange a sale of the Lands and Premises a commission of not more than 7% of the first $100,000 of the gross sale price and 2 1/2 % of the balance of

> the gross sale price, which commission shall be paid from the proceeds of the gross sale price;
>
> THIS COURT FURTHERS ORDERS that the sale shall be subject to the approval of the Court unless otherwise agreed by all parties."

During the first part of 1993, Block asked Corbett to assist him in disposing of the property. His first request was to obtain a valuation as he wanted to know what he could expect to receive and also, the court would want to know the value before confirming a sale. Corbett says he felt an obligation to Block in that he had assumed the paper on the deal from him back in 1983. Corbett asked a realtor with whom he was acquainted, Len Monical of NRS Realty at 100 Mile House, to do a valuation for him. In the late spring of 1993, Block made a second request of Corbett, asking him if he could find a buyer. Shortly before this, Corbett had seen Zirnhelt at a function and had told him that the subject lands might become available. He said he had always known that Zirnhelt was interested in the property. Corbett phoned Zirnhelt and asked if that interest still continued. Zirnhelt arranged with Corbett for Hamblin to meet with Block to negotiate a purchase. Eventually, Zirnhelt and Hamblin put in an offer at $140,000. It was received by Block at his office and on June 30 and he sent it on to his lawyers Harris, Stuart and Tomyn of Delta to the attention of Rod Ellard, an associate with the firm. This firm was acting for Block in the transaction and Ellard carried responsibility within the firm for the matter. Block advised Ellard in an accompanying memorandum that he would be in touch with him about the offer.

Before Zirnhelt and Hamblin's written offer was received but after Block's meeting with Hamblin, Block received a telephone call from Len Monical who said he had buyers for the property by the names of Fred and Carol Tillotson. Monical was aware of the impending sale because of the valuation of the property that he had prepared. Block was a little embarrassed and mildly upset by this call as he had indicated to Zirnhelt and Hamblin that he would sell to them if the offer to be made by them met with the approval of the court. Nevertheless, he told Monical that the Tillotson offer should be sent to his lawyers who would then take it to the court. Tillotson's offer of June 28 for $160,000 less $9,416 commission (inclusive of G.S.T.) for a net offer of $150,584 was also received by Ellard on June 30, 1993. It was sent by Monical on behalf of the Tillotsons and also attached was the market valuation as prepared by Monical in

the amount of $159,000. There is no record of that valuation being sent at an earlier date to either Corbett or Block. Neither recollect receiving the document, although, Monical believes he would have sent a copy to one of them.

The initial Zirnhelt/Hamblin offer provided for $100 deposit with $14,900 to be paid on completion and the balance of $125,000 to be financed by way of a first mortgage to be granted by Mrs. Block. The offer provided that the mortgage was to be on the following additional three terms:

(a) The Purchasers/Borrowers shall have the option of paying off the entire principal sum on or before September 1, 1994. In such event, the principal sum shall be reduced to the sum of One Hundred Eleven Thousand Dollars ($111,000.00) and the Purchasers/Borrowers will be Discharged from any and all obligations on the mortgage by a lump sum payment, in the amount of One Hundred Eleven Thousand Dollars ($111,000.00);

(b) In the event the Purchasers/Borrowers do not exercise the option stated in Clause 2(a) aforementioned, they shall make payment on the first mortgage granted by the Vendor, LAURA ANN BLOCK, for the term of Ten years with interest payable at 10% per annum to be payable in 10 (ten) equal annual installments of Twelve Thousand Five Hundred Dollars ($12,500.00) commencing September 1, 1994, and payable on the first day of September each and every year, thereafter;

(c) Purchasers/Borrowers shall have the privilege of prepaying the mortgage at any time or from time to time without notice, bonus or penalty.

On July 8 Block faxed to Ellard a revision of the offer to purchase from the Zirnhelts and Hamblins pointing out, in a covering memorandum, that it was essentially the same as the first offer excepting he had deleted that part of Clause (a) in the additional terms of the mortgage which reduced the amount payable by September 1, 1994 to $111,000.00 and also deleting all of the provisions of term (b). Some dates were also changed.

Block was in touch with Zirnhelt by telephone over this period and explained what had occurred as a result of Monical calling him and subsequently submitting the offer from another party.

Zirnhelt was told the approximate amount of that bid and Block advised Zirnhelt that the court would decide on the successful party. Zirnhelt says that the identity of the other bidder was not known to him until he saw Tillotson at the Court House on July 21, 1993. I accept that this is so but Tillotson must have been high on his "probable" list given the advantage that this acquisition would be to the Tillotsons as it was to the Zirnhelts and Hamblins. On July 14, Block faxed a memorandum to Zirnhelt which read as follows:

> "The court Hearing for sale of property will be July 21/9:45 a.m. 800 Smithe Str. Vanc., B.C.
>
> Your offer would have to be in the hands of Lorne Stewart (lawyer) by July 19/93.
>
> His fax is 591-8722
>
> I will be in Osy starting today at 495-6382
>
> My offer to grant you a mortg. of $125,000 at 10% Intr. for 1 year of said property is acceptable to me based on our conversation . A timely payout would make you eligible for a $10,000 discount.
>
> All the best."

No offer of a mortgage back with a discount provision was made to the Tillotsons.

On the same day Block's solicitors filed in the Vancouver Registry a Notice of Motion returnable on July 21, 1993 seeking confirmation by the court of the sale of the subject lands to the Tillotsons for the $160,000 (less commission) as offered by them on June 28. An accompanying affidavit sworn by Mrs. Block on July 14 reads:

> 1. I am the petitioner in these proceedings and as such I have personal knowledge of the facts and matters hereinafter deposed to save and except those facts and matters which are stated to be based upon information and belief and where so stated I verily believe the same to be true.

2. Pursuant to an Order of Master Patterson made in these proceedings on Tuesday, December 22, 1992, I was granted conduct of sale of the property which forms the subject of these proceedings.

3. On or about June 28, 1993, I received an offer from Fred and Carol Tillotson to purchase the property for $160,000.00. A copy of the offer is attached hereto and marked as Exhibit "A" to this affidavit. Attached hereto and marked as Exhibit "B" to this affidavit is a copy of the proposed commission agreement which was prepared and sent to me by Mr. Len Monical, a licensed realtor from NRS Block Bros. Realty Ltd. in 100 Mile House, British Columbia. Mr. Monical presented the offer on behalf of the Tillotsons.

4. On or about July 2, 1993, I received an offer to purchase the property from Daniel John Hamblin, Melody Ann Hamblin, David George Zirnhelt and Susan Elizabeth Zirnhelt in the amount of $140,000.00. This is a private sale and there would be no sales commission payable. Attached hereto and marked as Exhibit "C" is a copy of that offer.

5. I requested Mr. Monical to provide a market valuation of the subject property which consists of about 300 acres of ranch land located about forty miles north east of Williams Lake. Attached hereto and marked as Exhibit "D" is a copy of the market valuation Mr. Monical prepared.

6. I make this affidavit in support of an application to approve the sale of the property to Fred and Carol Tillotson.

Block's July 14 memorandum to Zirnhelt did prompt a further offer from the Zirnhelts and Hamblins. It was faxed to Harris Stuart & Tomyn on July 16, and had a purchase price of $155,000 with $10,000 to be paid by way of deposit and the balance on closing. The solicitors for the Zirnhelts and Hamblins, Oliver, Smith & Company of Williams Lake acknowledged receipt of the $10,000. It was Lon Smith in that firm who was handling the matter for the proposed purchasers.

Also on July 16, the Williams Lake Law office of Vanderburgh Scott Halpin & O'Brien was in touch with Ellard seeking information on behalf of Mr. and Mrs. Tillotson who had retained Alan Vanderburgh, Q.C., of that firm. At that point, the highest offer was the most recent Zirnhelt/Hamblin offer, in that the $155,000 offered exceeded the net amount

of the previous Tillotson offer. On July 16, Ellard faxed to Vanderburgh a copy of the most recent

Zirnhelt/Hamblin offer to purchase together with the Motion returnable on July 21 asking the court to confirm the sale of the property. On July 20, Vanderburgh Scott Halpin & O'Brien faxed a new offer from the Tillotsons for $157,000 cash at closing and Vanderburgh advised that his clients would be present in court the following day. This now made the most recent Tillotson offer the highest one that had been received.

The sale confirmation proceeding came before a Master of the Supreme Court on its return date of July 21. Zirnhelt, Tillotson and some friends or associates were present as was Henry Tomyn a partner in Harris Stuart & Tomyn, standing in for Rod Ellard and representing the petitioner. Service of the Notice of Motion on the respondents (the Jeffersons and the holder of a second mortgage) was proved. Zirnhelt was unaware of the $157,000 Tillotson offer until he arrived at the Court House and learned of it from Tomyn. Lon Smith had told Zirnhelt that he could expect that the bidding may continue at the Court House until resolved in a manner satisfactory to the court. Zirnhelt had with him a second offer form prepared in blank, insofar as purchase price was concerned, by Oliver, Smith & Company and signed by Zirnhelt's partners.

Tomyn had taken envelopes and blank papers to court with him, anticipating that with the leap-frogging that was taking place, it was best to give the parties the opportunity to submit one final offer without knowledge of the final submission of the other and then have the envelopes opened by the Master. This is the procedure that prevailed and I believe it to have been a wise decision given that a bidding war was underway and it had to be brought to a conclusion in a sensible manner. The parties were given a period of time to consider and consult with others. When the Master opened the envelopes the Zirnhelts and Hamblins had a bid of $175,000 and legal costs as filled in on the blank form and the Tillotson's bid was in the amount of $167,500. On that basis the court confirmed the sale to the Zirnhelts and Hamblins. As with the previous $155,000 offer from the Zirnhelts and Hamblins the transaction, upon confirmation, was to be a cash at closing arrangement.

The Master's order reads, *inter alia*:

> "THIS COURT ORDERS that the written agreement made between David George Zirnhelt, Susan Elizabeth Zirnhelt, Daniel John Hamblin and Melody Ann Hamblin, (the "Purchasers"), and Laura Ann Block, and the sale of the lands and premises described therein at the price of $175,000 plus legal fees is hereby approved;"

Title was directed to be vested in the purchasers and after payment of taxes the balance of payment was directed to go to Block to be applied on the mortgage which, at that point, was outstanding in the amount of $179,069.43 inclusive of principal and interest.

On July 27, as the parties negotiated through their lawyers to close the transaction, Harris Stuart & Tomyn, for the first time became aware of financing arrangements that had been worked out between the Zirnhelts, Hamblins and Block. That was also the first time Oliver, Smith & Company had heard of the financing proposal. Hamblin, who gave the instructions for the preparation of the $155,000 offer and the subsequent one that Zirnhelt filled out at the courtroom door, told me that he and his partners did not appreciate that the mortgage back and its terms were germane or relevant for inclusion once the competitive bidding stage was reached. On July 27, Harris, Stuart and Tomyn received from Oliver, Smith & Company a copy of Block's memorandum of July 14 to Zirnhelt and also a mortgage as prepared by Oliver, Smith & Company It was in favour of Mrs. Block in the amount of $125,000 with interest at 10% with monthly payments of interest to be made and the principal to be retired by 10 annual installments of $12,500 each commencing September 1, 1994. The mortgage then provided;

> "In the event the mortgagors shall repay the full amount of principal secured hereunder and interest accrued thereon prior to September 1st, 1994, the mortgagee shall allow the mortgagors a discount in the amount of $10,000.00."

The transaction closed on that basis with the remaining $50,000 paid in cash. On April 14, 1994 payment was made in full under the mortgage to Mrs. Block with the result that

the benefit of the prepayment clause in the mortgage was realized by the Zirnhelts and Hamblins.

Tillotson settled in the area in 1970. In the late 1970's and early 1980's he bought considerable ranch land. He owns land immediately south of the subject lands and land immediately north of them that fronts on Opheim Lake. In all, he has ranch land holdings of about 1400 acres and he lives close to the southern boundary of the subject lands. He was aware that the Jeffersons were in default of their mortgage. He indicates that realtor Carol Taphorne of Realty World Northern in Williams Lake was on his property in 1991 with a party who had some security interest in the subject or adjacent lands and subsequent to that visit Tillotson both telephoned and visited Ms. Taphorne in her office to let her know that if she ever had a listing on the subject or adjacent lands he would be interested in purchasing. She never received a listing from her potential client who was based in Vancouver and she just assumed that he never reached the stage of ownership. Knowing that the Jeffersons were in default and that Block held the mortgage, Tillotson left a message at Block's office that he was interested in the land if it came on the market. He heard nothing back. Block acknowledged to me that he had received such a message, but since the time for sale was still quite distant, it was not pursued and he believes that eventually the slip of paper containing the telephone number was lost.

The property immediately to the north of the subject lands was purchased by Tillotson in 1990. It is part of Block 8240 and he purchased it from a bank which had assumed title from its former owner, Bob Carson, at a time when the bank had had dealings with Carson. For some years, much earlier, Carson had operated Four Lakes Resort on another part of Block 8240 facing on the lake which attracted hunting and fishing clientele. Tillotson bought his portion of Block 8240 with the knowledge that it had "water access only". He was subsequently able to overcome that problem by acquiring access through a logging road to the west and then over range land that he had under lease. In 1987 Carson had subdivided the Four Lakes Resort property into 8 lots all fronting on Opheim Lake and each having approximately 5 acres. They were sold with the knowledge and understanding by all purchasers that they carried "water access only", meaning boat access across Opheim Lake from a road that ran along the east side of the narrow lake. Linda

and Patrick Brady purchased one of the lots that had two cabins on it for the sum of $7,000. They understood that they were acquiring property "with water access only" but Carson had told them that the ranchers did not mind them having access over the land. This is the Mrs. Brady referred to in the letters of complaint received by me from Campbell and quoted at the outset of this opinion. I will be making extensive reference to Mrs. Brady on following pages (hereafter called "Brady").

In that it was Brady who brought her concerns to Campbell, I propose to detail what was communicated directly to me by Brady and her husband. When they bought the lakefront lot they were living in Savona. They moved to the recently purchased location in July of 1988 and stayed there for about 4 months and then moved to 150 Mile House. They again occupied the cabin in mid-1991 and have been in the house they presently occupy, approximately 30 kms. from Williams Lake, since 1992.

Brady took the lead on behalf of lot owners to attempt to secure land access to the lots. They want to be able to come and go with their goods without having to cross the Lake and they want hydro to the site as it is their wish to construct a year round home on the lot. It was well known to those in the Beaver Valley that the owners of these lakefront lots were seeking that access through whatever avenues were open to them. They had talked to the Hamblins from time to time and they had talked to Tillotson. At one point, Tillotson had offered to sell them easement rights that would have given them ground entry to the lakefront lots from the west over the portion of DL 8240 owned by Tillotson. That was not an acceptable proposal to the lots owners. Much of the effort of the lot owners, under the leadership of Brady, was directed to endeavoring to establish the existence of a roadway on the subject lands on which public money had been spent years ago. This endeavor was because of section 4(1) of the Highway Act which reads;

> "4(1) Where public money has been expended on a travelled road that has not before then been established by notice in the gazette or otherwise dedicated to public use by a plan deposited in the land title office for the district in which the road is situated, that travelled road is deemed and is declared to be a public highway."

Ministry policy in applying that section may present other considerations before it is established that a road is a public highway by the operation of section 4. I need not explore that further because whether the requirements have been met in this instance is not for me to say. Suffice to say that it is the presence of that statutory provision that has motivated the efforts of Brady in this regard. She has not succeeded in her approach to the Ministry of Transportation and Highways but on the basis of her representations, the Ombudsman has been investigating the matter since she took it there in mid-1992. The Ombudsman is still actively dealing with the matter. While there may be other obstacles to overcome with the Ministry of Transportation and Highways and B.C. Hydro, certainly success in this endeavor would be a major step forward in accomplishing Brady's objective. Ownership of the subject lands by Brady, had that ever occurred, would even be more likely to accomplish her objective. It certainly would insofar as road access to the site is concerned and perhaps, also, for bringing in hydro. I express the hydro issue that way because I understand a road constructed to a maintainable standard might be required before hydro would come through. If Brady had purchased the subject lands, the road would not necessarily be one that could be considered to be of a maintainable standard.

Zirnhelt has known from almost the time the lakefront lots were subdivided and sold by Carson to Brady and others with the "water access only" limitation, that there was this desire, on the part of, at least, some of the purchasers, to gain access by road. Susan Zirnhelt and Linda Brady had discussions about this and those discussions, as well as discussions that Brady held with the Hamblins, were reported to Zirnhelt. Hamblin has told Brady and other lot owners that if they phone in advance and advise him that they are coming through his property, they can travel to their lots over land owned by the Hamblins and Zirnhelts. Several do take advantage of this offer. Hamblin says he wants to know who is on his private property at all times and that is why a call is necessary. Brady says this is an unsatisfactory procedure and, in any event, is not a permanent solution to the problem. Further, this does not provide for hydro access. In the summer of 1991, when Susan Zirnhelt and Brady met at the Big Lake General Store, they discussed the matter and the former suggested that her husband might have useful background

information based on land experiences of his family that could assist Brady in her endeavors. At that time, and since Zirnhelt's 1989 election to the Legislature, he represented this area in the House. There was a rearrangement of constituency boundaries that came into effect with the 1991 election. The subject lands, from that time onward fell within the boundaries of the Cariboo North Constituency represented by Frank Garden, MLA whereas Zirnhelt from October 1991 onwards has been the MLA for Cariboo South.

It is common ground between Zirnhelt and Brady that after the Fall 1991 election, Brady telephoned Zirnhelt's constituency office in Williams Lake and talked to Zirnhelt, asking if he could help gain access over the road, through the subject lands to their waterfront lot. Brady wanted this request to go through him because he knew the whole situation from having lived out there for such a long time. Zirnhelt recollects that he did discuss his family experiences with Brady during this telephone call but indicated that, as he was no longer the MLA for the area in which the subject lands were located, she should be in touch with Frank Garden, MLA for Cariboo North, and he gave Garden's number in Quesnel to Brady. He also suggested contact with the Ministry of Transportation and Highways and perhaps the then owners of the subject lands, the Jefferson family. In October-November 1991, Brady was residing half a mile from Big Lake which is within the Cariboo North Constituency.

Brady was in touch with Garden. Steve Hilbert, the Constituency Assistant for Cariboo North, is of the view that Zirnhelt called the office to put them in touch with Brady. In any event, conversations did take place between Garden and Brady and subsequently, the Constituency Assistant. It appears that Mr. Hilbert was in touch with the Ministry of Transportation and Highways but ascertained there was nothing further that could be done that would be of assistance to Brady. It was after this was communicated to her that she went to the Ombudsman as Mrs. Carol Baker, an adjoining lot owner, had just previously done.

Brady's efforts did not stop there. She was still hoping to get a favourable ruling from the Ministry of Transportation and Highways or that they would take a positive view of the

matter from her perspective when dealing with the Ombudsman. On September 11, 1992, Mr. and Mrs. Baker and Brady met with Tracy Cooper, District Highways Manager, at Williams Lake. On this occasion, as they had done in the past, the parties exchanged information, with the lot owners pressing their case for a recognition of a section 4 road by the Ministry. There exists a difference of opinion with respect to one occurrence at that meeting. Brady and Mrs. Baker both told me that they were shown a letter by Cooper that had been sent to the Ministry by Zirnhelt, sometime earlier, in which he opposed the location of a road on the west side of the lake leading to the waterfront lots. Cooper said that, to the best of his knowledge, no such letter ever existed. Zirnhelt confirms that that is so. I believe that Mrs. Baker and Brady are sincere in their belief but my conclusion is that they are mistaken. I believe that what was shown to them on that occasion was a telexed message of August 13, 1980 from A.N. Hepp, District Highways Manager, in Williams Lake to J.B. Mill, Regional Approving Officer. It reads:

> "Re: request for public access to proposed subdivision in DL 8240, Cariboo District - Mr. R.D. Carson
>
> Per your telex of Aug. 11/80:
>
> I drove down and talked to the Zirnhelts and the Hamiltons, and both parties are absolutely adamant against establishment of the existing private road as public access. They both feel this splits up their hayfields. They will not consider any terms or conditions or compensation."

The Hamiltons were long time land owners in the district. Cooper tells me that at the meeting, when this message was discussed, he was unsure to which Zirnhelt the telex referred. David Zirnhelt's name came into the conversation. Cooper says that the women were of the belief that it was David Zirnhelt that was being talked about and Cooper did not interfere in that conversation because he did not know which Zirnhelt was referred to in the memorandum. It was subsequently learned through inquiries and research by Ministry staff that it was Alfons Zirnhelt who had expressed this adamant position but I believe the women left the meeting satisfied it was David Zirnhelt and the Ministry officials did nothing to dissuade them from that thought because the Ministry did not know at that time to which Zirnhelt the reference was made.

There is also another reason why the women left the meeting with that belief. On the telex page, towards the bottom, is a hand-written note which reads:

> "Barb
> The Zirnhelts are David Zirnhelt, MLA Cariboo South, Minister.
> Tracy"

This was written by Cooper. It would be logical to conclude that the statement "The Zirnhelts are..." would have reference to the Zirnhelts referred to in the body of the telex. Cooper, however, has given me the following explanation for the notation in his handwriting: With the complaint from Brady and Mrs. Baker concerning the road access to the property, and with the Ombudsman's study underway which had prompted a request for information, the Ministry of Transportation and Highways initiated a review of the status of the road on the west side of Opheim Lake. The review was coordinated by Ministry staff member Barb Thomas, P. Eng. She is the "Barb" referred to in the note. She was located in Victoria in the summer of 1992. Cooper sent her a large quantity of printed documents for her inspection. Since many of the references in the file were to David Zirnhelt, MLA, Cooper decided "as a caution that absolute confidentiality needed to be exercised" to put this notice on the telex which, I take it, was the top document in one of the files being sent to Victoria. This occurred on July 10, 1992. Thomas eventually returned the material and it was returned to the file in Williams Lake and was there when Brady and Mrs. Baker inspected the document on September 11, 1992.

I am satisfied that the reference in the telex of August 13, 1990 was not an identification of David Zirnhelt. It was a misleading reference but it has been explained to my satisfaction. Mr. Cooper has been District Highways Manager at Williams Lake since August of 1991 and he advises me that over this period of time, there has been no occasion when David Zirnhelt has contacted the office about this matter. I believe him.

The Bradys heard of the sale of the subject lands to the Zirnhelts and Hamblins sometime in late August, 1993. Mr. Brady learned of it from the Hamblins when he was crossing to

his cabin and the Hamblins were busy baling hay on the recently purchased property. Mr. Brady says he was shocked to learn of the purchase. A day or two afterwards Brady expressed her discontent with this turn of events in a telephone call to Mrs. Hamblin. She said she felt that they should have been given the opportunity to bid on the property. If they had done so and were successful she said they would have established their access and afterwards sold off the remainder of the land. Brady wanted to know whether the new purchasers, the Zirnhelts and Hamblins, would give the access desired. The Zirnhelts and Hamblins conferred on that request and decided that the matter should remain with the Ombudsman where it was under consideration and they will abide by whatever decision is arrived at by the Ombudsman. Zirnhelt has stated that the land was bought with full knowledge that they would have to live with whatever is decided by the appropriate public body. The Ombudsman's decision is awaited.

THE COMPLAINTS OF VIOLATION OF THE MEMBERS' CONFLICT OF INTEREST ACT AGAINST ZIRNHELT

It is appropriate to record the essence of the complaints that Campbell has brought to me and also to state in the words of Mr. and Mrs. Brady their complaints as expressed to me face to face. In that they are the informants on the basis of which Campbell made his applications to me, it seems reasonable to do that.

In his April 26, 1994 letter Campbell says:

1. "...David Zirnhelt, may have used information brought to his attention by virtue of his role as a Member of the Legislative Assembly, to further his own interest."

2. That when Brady approached Zirnhelt in the late fall of 1991 to ask his assistance in securing land access to her lot, "Zirnhelt informed her that he felt that "the best option" available to Mrs. Brady was to discuss the matter with Mr. Doug Jefferson, owner of Parcel A, District Land 8238, Cariboo Land District."

3. "During the Ombudsman's investigation...Zirnhelt, along with a partner, purchased the land in question, Parcel A, D.L. 8238 as well as D.L. 8239.

4. On being approached by Brady since the purchase to discuss access to the property, "Zirnhelt told Ms. Brady that he would rather wait until the Ombudsman's office had completed its investigation before entering into negotiations concerning land access."

5. Based on knowledge that Zirnhelt had, "he was in a position to know that either remuneration would be forthcoming from the Crown as a result of the Ombudsman's decision, or from the landholders of D.L. 8240, upon completion of the negotiations concerning land access."

Campbell suggests that these events suggest that Zirnhelt's actions are in contravention of section 3 of the Members' Conflict of Interest Act.

With respect to points 2, 3 and 4 there is no major disagreement. I believe, however, that in the conversation in the fall of 1991, Zirnhelt did not restrict those he thought might assist Brady to Doug Jefferson, but also included the Ministry of Transportation and Highways, and particularly, the MLA in whose riding the land was located and in whose riding Brady resided, Frank Garden. I will address points 1 and 5 together in my conclusions, as point 5 is an amplification of point 1.

In his April 27, 1994 letter, Campbell asked that I broaden my investigation to consider, in addition to section 3, whether Zirnhelt's actions contravened any other section of the Act. Sections 2(2) and 2.1 are highlighted and the member makes these two points.

1. "One of the most important official functions which an MLA has upon election is their role in meeting with citizens about their individual concerns and advising them on how best to deal with the government in resolving them."

2. With reference, I believe to Mrs. Brady's late fall 1991 telephone call to Zirnhelt, Campbell says "I believe that the Minister should have informed Ms. Brady that he was considering purchase of the lands in question, was in a personal conflict of interest with her on this matter, and should have abstained from advising her on her efforts to secure public road access through the lands."

I agree with Campbell with respect to the first of the two points. I will address the second point in my conclusions.

The Bradys stated their complaints to me in the following phraseology:

1. Brady would never have spoken to Zirnhelt in 1991 if she had known he was interested in the property himself. She asked the question, "what help would I get if he was interested himself? If we had known that he had been wanting this property for the last twenty years, we would never have approached him about it. He had many opportunities to tell this to us but he never did."

2. Our main complaint is that we were never given the opportunity to bid on the property - it was all so quiet. Nobody knew a thing. If it was a bankruptcy sale it should have been in the newspaper. Its availability was not known.

3. We were trying to get road access and if we could not get it through the Ministry of Highways then Dave Zirnhelt, who knew we wanted the access, by buying the property himself took away our only remaining opportunity for access. That is our complaint.

With respect to the third point, the substance of which is really part of point 2, I have ascertained that the purchase of this property by the Bradys would have given them land access to their lakefront lot. I have already commented that it is an unknown whether it would have, in turn, allowed hydro to be brought to the lot. I will address these points in my conclusions.

CONCLUSIONS WITH RESPECT TO THE COMPLAINTS OF VIOLATIONS OF THE MEMBERS' CONFLICT OF INTEREST ACT AGAINST ZIRNHELT

Campbell's submission in points 1 and 5 of his April 26 letter is essentially one of contravention of section 3 of the Act. It reads:

> "3. A member shall not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest."

I see no violation of that section in the facts of this case. Zirnhelt was well aware of the fact that Brady and those associated with her who owned waterfront lots, wanted land access to their lots, preferably, over the subject lands which Zirnhelt and his partners bought in August 1993. That information was not acquired by him in the course of the conduct of his business as an MLA. In fact, it was no secret to anyone resident in the Beaver Valley that the people who owned waterfront lots in the area of the subject lands wanted to obtain access to their property preferably over those lands. I therefore conclude that Zirnhelt did not receive any information that was gained in the execution of his office and which was not available to the general public.

Campbell's submission in point 2 of his April 27 letter is essentially one of contravention of section of 2.1 of the Act as a result of exercising an official power or performing an official duty or function when in an "apparent conflict of interest" as that term is defined in section 2(2) of the Act. That subsection reads:

> "2(1)...
>
> (2) For the purposes of this Act, a member has an apparent conflict of interest where 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 function must have been affected by his or her private interest."

In the course of my inquiry I have been unable to find any evidence that Zirnhelt exercised any official power or performed any official function with respect to the matters in issue. In any event, even if it could be said that he was exercising an official function when he spoke to Mrs. Brady and gave her the advice that he did, I cannot see how that advice must have been affected by his private interest. I therefore conclude that Zirnhelt is not in breach of section 2.1 of the Act.

While it is not necessary for me to state anything further with respect to point 2 in Campbell's April 27 letter, I have received other information that I wish to record.

At the time of the late fall 1991 telephone call, Zirnhelt was not considering purchasing these lands because he had no expectation of their availability in the foreseeable future. He believed that opportunity to purchase was lost to him, and he has said to me, and he has stated publicly, that, at the time, he did not think that the subject lands would become available to purchase. He referred to the Jeffersons as being:

> "...young people who grew up in the area. It was an old family that goes back even before our time in the valley, so before 50 years, so probably 70 years back or more. Those people bought it and it was a third generation family, young people in their 20's and 30's and we thought there was no way this would ever become available."

I believe that is a truthful statement. At the time, the Zirnhelts and Hamblins were of the view that the subject lands had escaped them for the remainder of their working years. They certainly were interested in the property, but had no reasonable expectation that the opportunity for an ownership interest would ever present itself to them.

I turn to a consideration of the complaints against Zirnhelt as expressed direct to me by the Bradys. The essence of their complaint is that they should have been given the opportunity to bid on the subject lands when they became available for sale following the order of the court. In my opinion, nothing in the Members' Conflict of Interest Act would impose any obligation on Zirnhelt to ensure that the Bradys had that opportunity. Furthermore, this was not a public sale. It was in Block's discretion how he conducted the sale, subject to bringing to court for confirmation an offer with a purchase price that related to market value. It cannot be said that Zirnhelt had any reason to think that Brady might be prepared to consider a $150,000 plus expenditure in order to obtain access to her waterfront lot. The interest she made known to him was one that would give her access over the subject lands, either by the declaration of a section 4 road or through the granting of access rights by the owner of the subject lands. In summary I find no breach of the Act with respect to these complaints made to me by the Bradys.

REMAINING CONSIDERATIONS

While pinpointing specific sections of the Act under which Campbell requested an investigation with respect to possible violations by Zirnhelt, Campbell also made the generalized request that I consider "all other provisions of the Act" should I undertake an investigation. I have already dealt with the specific matters. While such a general request, standing alone, would not meet the requirements of section 15 (1) of the Act, I have nevertheless, in this instance, done what has been requested of me.

As I considered the facts, I concluded that two further sections should be addressed.

Section 8 provides that a member of Cabinet "shall not carry on a business...where... these activities are likely to conflict with a member's public duties". Farming is such a business. I monitored Zirnhelt's activities closely, particularly through discussions with him, while he was Minister of Economic Development, Small Business and Trade, the portfolio he held at the time of the purchase of the subject lands. Leaving aside his activities on July 21 and the days immediately preceding that date which only became known to me during this investigation, it was my assessment that while in that portfolio, Zirnhelt conducted himself in a manner that complied with section 8. He removed himself from involvement in the operations and business side of the ranch from the time of his entry into Cabinet in November 1991. While I believe he would have been well advised to let Hamblin complete the purchase transaction rather than entering into it himself, I do not conclude that his actions in this regard were a breach of section 8. They were not related to the day to day operations of the ranch. The involvement was of short duration, restricted to closing a land acquisition transaction. I do not construe that somewhat isolated incident as constituting a carrying on of a business activity that was likely to conflict with his public duty as member or minister.

When Zirnhelt became Minister of Agriculture, Fisheries and Food in September, 1993 I was conscious of the need to have a farmer, who was Minister of Agriculture, totally withdrawn from his day to day farming operations in order for him to be able to put all his

efforts on agricultural matters into meeting ministerial responsibilities on a full time basis. I concluded the potential for conflict for a farmer in this position was such that a formalized written commitment was advisable. The result was the willing execution by Zirnhelt on January 24, 1994 of an undertaking that he was removed from all management and day to day operations of the cattle, logging and other farming aspects of the ranch and that its management remained, as it had been from his first entry into Cabinet, exclusively in the hands of other partners in the enterprise.

The other section that I have considered is section 6(1). It reads:

> "A member shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office."

My interest in this clause was triggered by the availability of the financing proposal made by Block and accepted by the Zirnhelts and Hamblins that was not also made available by Block to the Tillotsons. The history of the financing arrangement is as follows:

Block agreed to finance the purchase for the Zirnhelts and Hamblins and that would include the taking back of a mortgage for $125,000. That was worked out at the Block/Hamblin meeting. It is my belief that Block also agreed at that time to forgive $10,000 of the mortgage if it was retired within one year. It is also my belief that Hamblin mistook this provision as an agreement to forgo 10% of the purchase price. That explains the provision for the $14,000 forgiveness which was in the first offer and it also explains why Block struck out that clause when he sent the second copy of the offer to his lawyers.

When discussing with Zirnhelt in mid-July, the entry of a new bidder, Block promised to reinstate for the Zirnhelts and Hamblins the previously agreed upon finance package, with the amount to be forgiven in the event of retirement of the $125,000 mortgage within one year to be $10,000, not 10% of the purchase price. That explains Block's July 14

memorandum to Zirnhelt, quoted above. As I indicated, when Tomyn appeared in court on July 21, he was unaware of the finance package.

The original $140,000 offer was prepared in the Williams Lake law office of William Sundhu. Mr. Sundhu had been made aware of the finance package but when the need for his services again arose in mid-July he was not in a position to assist, so Hamblin then went to Oliver, Smith & Company In the days immediately following the confirmation of the sale, Ellard and Smith were both informed by their respective clients of the financing arrangements and the documents were drawn taking them into account.

I asked Block why the mortgage back arrangement had not been offered to Tillotsons. He told me that he had never spoken to Tillotson and therefore had never been asked to make this available to him, but he said he would have considered doing so had it been requested of him.

It is important to review what occurred at the courtroom door. Zirnhelt says that when it came down to the time for the final bid, he did not know whether the financial arrangement was still part of the transaction. He said that Tomyn said it had to be a cash offer. The form he had with him was drawn that way as was the July 16 form on which the $155,000 bid was submitted. Zirnhelt says that when he bid $175,000 he realized that if called upon to do so, he and his partners would have to put up all cash. He says that arrangements were made to do so if necessary, but he expected that the opportunity to negotiate terms would be given after the successful bidder was decided upon and it was then that he believed that the mortgage and its terms would be discussed and the provisions of the July 14, 1993 memorandum would hopefully come into play. I am satisfied that Hamblin had taken steps to ensure that the Zirnhelts and Hamblins were able to meet the necessary requirements for a Farm Improvement Loan sufficient to allow for purchase at the price bid, if need be. Tomyn was clearly not under any instructions to play favourites and he did not do so. He interpreted his instructions as requiring him to obtain the highest possible price for his client and, like Ellard before him, he conducted himself in that manner. He communicated the Zirnhelt/Hamblin $155,000 offer to Tillotson's

solicitors and he acquainted Zirnhelt at the Court House with the $157,000 bid that had been received the previous day from the Tillotsons.

This brings me to the most difficult issue I have faced in preparing this opinion. It is whether Zirnhelt knew, or ought to have known, when he submitted the $175,000 bid that the mortgage back arrangement, that he expected would come into play to his obvious advantage if he was the successful bidder, was an arrangement that was not available to the Tillotsons.

It is my opinion that Zirnhelt received a personal benefit that the Tillotsons did not receive. That benefit, simply put, was being offered terms of purchase more favourable than the other bidder for the subject lands. That benefit could enable Zirnhelt to offer more for the subject lands because of the discount being offered. However, on a proper construction of section 6(1) of the Act there can only be a breach if the following two conditions are met:

1. that the member knew or ought to have known that he or she was receiving preferential treatment and, thus, accepting a personal benefit; and

2. that this personal benefit must be connected, directly or indirectly, with the performance of the member's duties of office.

For reasons that I will state, it is my opinion that these two conditions have not been met.

Insofar as the first condition is concerned, Zirnhelt has been adamant throughout a number of meetings that I have had with him over the last two weeks that he had no knowledge of what had gone on between Tillotson, Block and their lawyers. He had no contact with any of them from the time he had submitted his first offer, other than the one phone call and the memorandum from Block, on or about July 14. He said that in that one telephone call, the question of the availability of the financing arrangements to the new bidder never entered into the conversation. He has said to me, "I was unaware that our partnership had

available to it something that was not available to the other bidder." This is a man who I believe has been honest and forthright with me through all my dealings with him over the last three and one-half years. I accept that statement by him as a truthful one.

Furthermore, his statement is corroborated by the fact that, at least after July 14, 1993, Block was conducting himself in such a way that Zirnhelt would not have reason to believe that he was being treated with favour. After sending Zirnhelt the memo of July 14, 1993, Block simply allowed the competitive bidding war to proceed. Obtaining the best possible price would appear to have been Block's guiding principle. His lawyers launched the confirmation motion on the basis of asking the Court to confirm Tillotson's first offer which was the highest offer on the table at the time of commencing the court application. During the final week, Block's lawyer faxed Zirnhelt's and Hamblin's most recent offer to the Tillotsons' lawyer so it could be seen what amount Tillotsons would be required to offer in order to again move to the top. It was apparent that Block was looking to obtain the highest bid possible for the property and seemed indifferent, at that point, as to whether it was ultimately sold to Zirnhelt and his partners or the Tillotsons.

Accordingly, I conclude that Zirnhelt did not know that he was in receipt of a financing package that was not available to the Tillotsons. Nor would I conclude that he ought to have so known at the time he submitted his final bid. That is to say, the first of the two conditions referred to above, has not been met.

Insofar as the second condition is concerned, I set out the factors that could be seen as connecting the personal benefit, either directly or indirectly, to the performance of Zirnhelt's duties of office as a Minister of the Crown. Firstly, there is the willingness of Block, in the Spring of 1993, to sell the property to the Zirnhelts and Hamblins at somewhat less than his total equity in the subject lands when accrued interest is taken into account, without undertaking an aggressive search for a buyer. Secondly, there is Block's seeming indifference to Tillotsons' contact with his office about his interest in purchasing the property, particularly, when it could be readily ascertained that Tillotson would be a potential and avid participant as and when the subject lands became available for sale. Thirdly, there was the discomfort felt by Block when the Tillotsons entered the bidding

circle vis a vis the commitment he believed he had made to the Zirnhelts and the Hamblins. Fourthly, there is the offer of a financial package to the Zirnhelts and the Hamblins and not to the Tillotsons. That is not necessarily an exhaustive list.

Worthy of weight and consideration in my assessment is Block's explanation for these factors. He says he wanted to be rid of the problems that the ownership of an interest in the subject lands had caused him and his wife. He was prepared to get all of his principal and a reasonable portion of his interest and be done with it, providing the offer was in the realm of market value and one that the court would approve. He considered the $140,000.00 offer to be in that realm. He had asked Corbett to find a potential buyer and once that had been done, and a selling price satisfactory to him had been established with the potential buyers, he was content to go the distance with that offer and had given his word that that would be so, subject to the court confirmation proceedings. He says that, in effect, going back on his word to the Zirnhelts and Hamblins once the Tillotsons had entered the picture, was a difficult position for him to be in. I have already recorded his response to my question why the financial package was not offered the Tillotsons.

When all of the factors I have reviewed are taken into consideration, I am not prepared to conclude that the personal benefit that I found to exist was connected directly or indirectly with Zirnhelt's performance of his duties of office as a Minister of the Crown. The proof required to reach such a conclusion is not there. That is to say, the second of the two conditions referred to above has not been met.

Whether there may be a reasonable perception that the personal benefit I have found to exist was connected directly or indirectly with the performance of his duties as Minister of the Crown is not something which requires my attention. Unlike sections 2.1 and section 2(2) of the Act, section 6(1) is not breached by a perception that a personal benefit is connected directly or indirectly with the performance of the members duties of office. For section 6(1) of the Act to be breached, the personal benefit must, in fact be connected directly or indirectly with the performance of those duties. As stated above, I do not find that to be the case in these circumstances.

In conclusion, I find that Zirnhelt did not breach section 6(1) of the Act.

Dated this 18th Day of May, 1994
in the City of Victoria, British Columbia

The Honourable E.N. (Ted) Hughes, Q.C.
Commissioner of Conflict of Interest