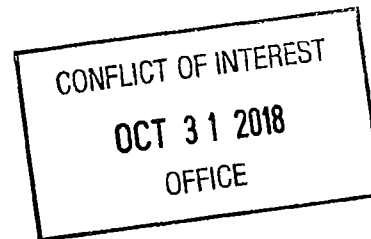




LEGISLATIVE ASSEMBLY
of BRITISH COLUMBIA

Paul Fraser, Q.C.
Conflict of Interest Commissioner
Office of the Conflict of Interest Commissioner
First Floor, 421 Menzies Street
Victoria, British Columbia
V8V 1X4



October 31, 2018

Re: Request for Opinion - Bill 53 *Recall and Initiative Amendment Act, 2018*

Yesterday in the Legislative Assembly, Bill 53 was tabled on behalf of the government by the Attorney General, the Honourable David Eby. The bill contains a lengthy series of proposed amendments to the Recall & Initiative Act which, in general terms, are intended to place significant limitations upon those citizens wishing to initiate or participate in a recall campaign.

The government has chosen to introduce Bill 53 mere days before the existing Act allows for members of the 41st Parliament to become subject to recall campaigns. In fact, there are published reports indicating that several members of the Assembly, including the Member for Vancouver-Point-Grey, will be targeted for recall by voters within their constituencies.

Bill 53 will limit advertising expenditure for recall campaigns to \$5,000 total and prevents MLAs from being subject to multiple recall petitions therefore opening the door to possible serious recall efforts failing as a result of another campaign being orchestrated beforehand to prevent serious efforts.

Sections 2 & 3 of the Members Conflict of Interest Act state the following:

2. (1) 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.
2. (2) 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.
3. A member must 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.

BC Liberal Official Opposition
Parliament Buildings
Victoria, BC V8V 1X4
T: 250-356-6171



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Section 11 of the Members Conflict of Interest Act sets out the requirements that a member of the Executive Council must follow in circumstances where a conflict of interest or apparent conflict of interest may arise.

11. (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.

11. (2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of a member referred to in 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.

I seek your opinion pursuant to Section 18 of the Member's Conflict of Interest Act on the following questions:

1. Does the participation by a member in the debates and votes pertaining to Bill 53 constitute a conflict of interest within the meaning of the Members Conflict of Interest Act in circumstances where the member is aware of a pending recall targeting him/her?
2. Does the participation by a member in the debates and votes pertaining to Bill 53 constitute a conflict of interest within the meaning of the Members Conflict of Interest Act in circumstances where an actual recall campaign has been initiated and registered with Elections BC targeting the member?

I am obliged to you for considering these questions and look forward to receiving your opinions at your earliest convenience.

Sincerely,

Andrew Wilkinson, Q.C.
Leader of the Official Opposition
MLA, Vancouver - Quilchena

BC Liberal Official Opposition
Parliament Buildings
Victoria, BC V8V 1X4
T: 250-356-6171



November 6, 2018

VIA EMAIL AND MAIL

Andrew Wilkinson, Q.C.
Leader of the Official Opposition
MLA, Vancouver-Quilchena
Room 109, Parliament Buildings
Victoria BC V8V 1X4

Dear Mr. Wilkinson,

This will acknowledge receipt of your letter dated October 31, 2018. You refer to Bill 53, the bill to amend the *Recall and Initiative Act*, which was tabled on behalf of the government on October 31, 2018, by the Attorney General, the Honourable David Eby, the Member for Vancouver-Point Grey, and passed 1st Reading.

You have asked my opinion pursuant to section 18 of the *Members' Conflict of Interest Act* ("the Act") on the following two questions:

1. Does the participation by a member in the debates and votes pertaining to Bill 53 constitute a conflict of interest within the meaning of the [Act] in circumstances where the member is aware of a pending recall targeting him?
2. Does the participation by a member in the debates and votes pertaining to Bill 53 constitute a conflict of interest within the meaning of the [Act] in circumstances where an actual recall campaign has been initiated and registered with Elections BC targeting the member?

As a preliminary matter, I note that your request has been made under section 18 of the Act. That section is the provision that allows Members to seek a confidential opinion of their own obligations and compliance with the Act. Your intention was clearly to request a formal opinion on another Member's compliance with his obligations under the Act and you may do so by engaging section 19 of the Act:

- 19(1) A member who has reasonable and probable grounds to believe that another member is in contravention of this 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.

.../2

Office of the
Conflict of Interest
Commissioner

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

Mailing Address:
First Floor, 421 Menzies Street
Victoria, BC V8V 1X4

Telephone: 250 356-0750
Facsimile: 250 356-6580
website: www.coibc.ca
e-mail: conflictofinterest@coibc.ca

Therefore, I will treat your letter as a request under section 19 of the Act and provide a copy of it to the Member concerned.

As the background to your two questions, your letter refers to "published reports indicating that several members of the Assembly, including the Member for Vancouver-Point Grey, will be targeted for recall by voters within their constituencies."

I conclude that the two questions on which you have sought my opinion are, in all the circumstances, premature. No recall application has actually been filed with Elections BC under the existing *Recall and Initiative Act*. The published reports referred to in your letter describe steps that one or more voters may take in the future. Whether they actually will do so is unknown at this time.

The policy of this office is not to give opinions on hypothetical matters. Unless and until a recall is initiated, the questions you pose do not give rise to a live issue, or controversy, for opinion from me. A response to them should properly be made if and when they are ripe for consideration.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a series of connected loops and a long horizontal stroke extending to the right.

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