



BRITISH
COLUMBIA

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 MEMBER FOR DELTA NORTH,
RAVI KAHLON,
WITH RESPECT TO HIS OBLIGATIONS UNDER
*THE MEMBERS' CONFLICT OF INTEREST ACT***

City of Victoria
Province of British Columbia

August 14, 2019

PREFACE

On February 13, 2019, MLA Ravi Kahlon requested that Commissioner Paul D.K. Fraser, Q.C. issue an Opinion pursuant to section 18(1) of the *Members' Conflict of Interest Act*. Sadly, Commissioner Fraser died on March 29, 2019 before being able to release his Opinion. On June 17, 2019 the Honourable Lynn Smith, Q.C. was appointed as Acting Conflict of Interest Commissioner, and completed the work commenced by Commissioner Fraser.

EXECUTIVE SUMMARY

OVERVIEW

Mr. Ravi Kahlon is the Member of the Legislative Assembly of British Columbia for Delta North and the Parliamentary Secretary for Multiculturalism and Sport. In the fall of 2017, he was appointed to the Select Standing Committee on Crown Corporations (the “Committee”). The Committee has 11 members.

The Legislative Assembly mandated the Committee to examine, inquire and make recommendations on ride-sharing in British Columbia. The Committee commenced its deliberations in November 2017, and delivered its first report, which included 32 recommendations, to the Minister of Transportation in February 2018. That report recommended that Transportation Network Companies (“TNCs”) should be permitted to operate in British Columbia within a provincial regulatory scheme. Legislation was later passed to that effect. In November 2018, the Committee was tasked with conducting further research and produced another report on March 26, 2019. That report made recommendations regarding the regulatory regime for TNCs, specifically as to boundaries, supply, fare regimes and driver’s licences.

In mid-February 2019, concerns were raised in the media and by the Official Opposition in the Legislative Assembly that Mr. Kahlon was in a conflict of interest, or an apparent conflict of interest, on the basis that his father holds a taxi licence in Victoria. After the concerns were raised, Mr. Kahlon ceased to participate in the Committee’s hearings and played no part with respect to its March 2019 report.

Mr. Kahlon asked for the Commissioner’s Opinion on these questions, pursuant to section 18 of the *Members’ Conflict of Interest Act* (the Act). Members of the Liberal Caucus also asked the Commissioner to release any Opinion issued to Mr. Kahlon under section 18; or if he had not sought the Commissioner’s Opinion on the matter, to provide an Opinion pursuant to section 19 of the Act. As Opinions provided to Members under section 18 are confidential, Mr. Kahlon agreed to waive confidentiality and permit the public release of this Opinion.

FINDINGS

A conflict of interest exists when a 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. 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.

In most cases, a “private interest” involves the Member’s own pecuniary interests, or those of a person with whom the Member has a shared pecuniary interest such as a spouse. However, the interpretation of a private interest may, in some circumstances, extend to non-pecuniary interests,

the interests of others in close proximity to the Member, or be based on personal loyalty or affection, particularly with respect to apparent conflict of interest. However, such extensions of the definition of private interest require careful consideration and caution.

Mr. Kahlon's finances are completely separate from those of his father. He has no financial interest in his father's taxi business or the taxi industry. Mr. Kahlon's parents' financial well-being is not dependent on the value of the taxi licence or the income received from it.

In some circumstances, an indirect private interest based on personal loyalty and affection might be sufficient for the purposes of the Act; for example if there were a direct causal link between the official duties performed by the Member and the financial impact on another person close to the Member, especially if that impact was significant. However, that is not this case.

The work of Parliamentary Committees is restricted to consideration of matters referred to them by the Legislative Assembly. Committees are comprised of several Members from all parties, who work collaboratively to gather information from a variety of sources, including public hearings, and present their observations and recommendations in a report to the Legislative Assembly. Committees do not have the authority to make or alter legislation or cause the government to take any specific action. Neither is the government required to respond to committee reports or accept their recommendations.

Whatever regulatory regime is ultimately adopted by the Province to address TNCs, its future impact on the value of Mr. Kahlon's father's taxi licence is a matter of speculation. Further, given the Committee's limited role and the limited scope of Mr. Kahlon's official duties as a regular Committee member, Mr. Kahlon had a very limited opportunity to further his own or his father's interests.

For those reasons, no conflict of interest arose from Mr. Kahlon's participation in the Committee.

The second question is whether an apparent conflict of interest exists. The mere fact of having a family member involved in the taxi industry, which is likely to be impacted in some unknown way by the advent of ride-sharing, is insufficient on its own to meet the test set out in the Act. A reasonably well informed person, i.e. someone who had an opportunity to review the mandate of the Committee and to appreciate the type of official function carried out by the Members on the Committee, and who understood that Mr. Kahlon had no direct or indirect interest in the value of his father's taxi licence, would not properly perceive that Mr. Kahlon's ability to carry out his duties as a Committee member must have been affected by a desire to protect the financial interests of his father.

BACKGROUND AND TIMELINE

On October 23, 2017, Mr. Ravi Kahlon was appointed as one of eleven members to the Select Standing Committee on Crown Corporations (the “Committee”).¹ The Committee was comprised of four members from the BC NDP Caucus, four members from the BC Liberal Party Caucus, and one member from the BC Green Party Caucus.

On November 28, 2017, the Legislative Assembly approved a motion to instruct the Committee to “examine, inquire into and make recommendations on ride-sharing in British Columbia”.² The Committee issued its report entitled “Transportation Network Companies in British Columbia” on February 15, 2018.³ It recommended that TNCs (meaning companies such as Uber and Lyft) be able to operate in the province within a regulatory regime. Mr. Kahlon was reappointed to the Committee on that same date.⁴

Later that year, on November 27, 2018, the *Passenger Transportation Amendment Act, 2018* received royal assent. It introduced legislative changes to allow TNCs to enter the British Columbia market by fall 2019. On November 27, 2018, and February 21, 2019, the Legislative Assembly authorized the Committee to “examine, inquire into and make recommendations on regulations regarding transportation network services in British Columbia”. From mid-December 2018 to mid-March 2019, the Committee held public hearings and met several times.

Mr. Kahlon participated in the Committee’s activities until mid-February 2019. He voluntarily withdrew from participating in further deliberations after questions were raised in the Legislative Assembly relating to his participation in the Committee. For example, Shirley Bond, MLA for Prince George-Valemount, commented, in the February 13, 2019, afternoon sitting of the Legislative Assembly:

S. Bond: The Parliamentary Secretary for Sport and Multiculturalism is the lead government member on a committee that is making recommendations on ride-sharing regulations. However, licensing documents from the Passenger Transportation Board confirm that the parliamentary secretary’s immediate family member is the owner and operator of a Bluebird Cab taxi licence.⁵

It was also suggested in the House that Mr. Kahlon’s father owned “one of only 234 taxi licences in the Province”.⁶

¹ https://www.leg.bc.ca/content/CommitteeDocuments/41st-parliament/2nd-session/Select/Rpt-41-2-1stReport_Selection.pdf

² <https://www.leg.bc.ca/parliamentary-business/committees/41stParliament-2ndSession-cc/>

³ Available online at https://www.leg.bc.ca/content/CommitteeDocuments/41st-parliament/2nd-session/CrownCorporations/Report/SSC-CC_41-2_Report-2018-02-15_Web.pdf

⁴ https://www.leg.bc.ca/content/CommitteeDocuments/41st-parliament/3rd-session/Selection/SSC-Sel_41-3_Report.pdf Mr. Kahlon was one of seven reappointments to the Committee.

⁵ Hansard, February 13, 2019, afternoon sitting

⁶ Hansard, February 14, 2019 morning sitting [P. Milobar] In fact, depending on what is being counted, overall there are some 3,350 taxi licences in the Province. See footnote 15.

In a letter dated February 13, 2019, Mr. Kahlon asked for Commissioner Fraser's Opinion as a result of the questions raised in the Legislative Assembly and in the media about a "potential perceived conflict of interest" due to his father working as a taxi driver and holding a taxi licence.

On February 14, 2019, Commissioner Fraser received a request from Liberal members of the Committee, asking for confirmation that Mr. Kahlon had sought his Opinion in relation to this matter and asking that the response be made public.

On February 15, 2018, Commissioner Fraser wrote to Mr. Kahlon to clarify the precise nature of his request and confirm his understanding that Mr. Kahlon was seeking a formal Opinion and recommendations pursuant to s. 18(1) of the Act. To that end, the Commissioner met with Mr. Kahlon on February 19, 2019. That same day Mr. Kahlon also wrote to Commissioner Fraser, stating:

I am writing in response to your February 15, 2019 letter regarding my request for an opinion under Section 18(1) of the *Members' Conflict of Interest Act* (the "Act").

I am confident that I am not now, nor have I ever been, in a conflict of interest in relation to my duties as a member of the Select Standing Committee on Crown Corporations (the "Committee"). I do not have a private interest in relation to my father's work in the taxi industry.

However, as a result of this issue being raised in the media and by the BC Liberal Caucus, I am nonetheless formally seeking your written opinion regarding:

1. Whether I have a conflict of interest, or apparent conflict of interest, in relation to my duties on the Committee and making recommendations involving ridesharing;
2. Whether I should declare a conflict or apparent conflict of interest and recuse myself from further Committee meetings that relate to ridesharing in accordance with section 10 of the act (sic).

I have never had reasonable grounds to believe that I am in a conflict of interest in this matter. In the unlikely event that you make a recommendation that I should now declare a conflict or apparent conflict of interest and recuse myself from further Committee meetings related to this matter, I will of course follow your recommendations.

Pursuant to Section 18(4) of the Act, you have my consent to release your opinion and recommendations, if any, regarding this matter.

Shortly thereafter, Commissioner Fraser received a written submission from Mr. Kahlon's legal counsel. Based on preliminary information provided by counsel, the Commissioner requested further elaboration on a number of points. Mr. Kahlon's counsel provided a second written submission dated March 8, 2019.

The Committee issued its final report on March 26, 2019. Sadly, Commissioner Fraser died soon after (on March 29, 2019). I was appointed as Acting Commissioner on June 17, 2019; thus, there was an unfortunate and unavoidable delay in issuing this Opinion.

In addition to reviewing the information provided by Mr. Kahlon through his counsel, I also interviewed Mr. Kahlon and his father separately on July 26, 2019. The interviews were conducted under affirmation in the presence of Mr. Kahlon's counsel and the Commissioner's Legal Officer at the Commissioner's Office in Victoria. I also spoke with the Government House Leader, the Honourable Mike Farnworth, on August 7, 2019, regarding the process of appointing Members to parliamentary committees.

Additionally, to better understand the context of the Committee's work and Committee members' roles and responsibilities, I reviewed the Committee's website, related Committee documents, transcripts of the Committee's proceedings, and consulted with the Clerk's Office.

APPLICABLE SECTIONS OF THE MEMBERS' CONFLICT OF INTEREST ACT

Definitions

1 In this Act:

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

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

Conflict of interest

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Conflict of interest prohibition

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.

Procedure on conflict of interest

10(1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly, a committee of either of them, must, if present at a meeting considering the matter,

- (a) disclose the general nature of the conflict of interest, and
- (b) withdraw from the meeting without voting or participating in the consideration of the matter.

NATURE OF THE OFFICIAL POWER, DUTY OR FUNCTION

There is a wide range of official powers, duties and functions that a Member may perform. In this case, the duties in question relate to Mr. Kahlon's activities as a member of a parliamentary committee. It is therefore helpful to review the function of parliamentary committees in British Columbia and the roles and responsibilities of Committee members.⁷

Parliamentary committees are appointed by the Legislative Assembly of British Columbia to undertake business on behalf of the Assembly. Committees are comprised of small groups of Private Members who have been appointed by the Legislative Assembly. Ministers of the Crown do not serve on these committees. Committees consider only those matters that are referred to them by the Legislative Assembly. Within their terms of reference, committees are afforded total independence in their deliberations.

The committee system allows for a more detailed examination of policy and other matters than is possible in the larger House. At times, the committee system also provides members of the public with the opportunity to have direct input into the parliamentary process by making written or electronic submissions and attending public hearings.

Select Standing Committees are established by the Legislative Assembly at the commencement of each session. There are ten Select Standing Committees, including the Select Standing Committee on Crown Corporations. At the commencement of each session, a Committee of Selection is appointed to prepare and report lists of Members to compose the ten Select Standing Committees of the House.

At the end of its deliberations, a parliamentary committee must report its observations and recommendations to the Legislative Assembly. The observations contained in a report often refer to evidence collected during the public hearing process.

Procedural advice, research services and administrative support are provided to parliamentary committees by the Parliamentary Committees Office. The Clerk to a committee oversees the work

⁷ Information in this section is summarized from the Legislative Assembly website at <https://www.leg.bc.ca/parliamentary-business/about-the-committee-system> and in consultation with the Office of the Clerk of the Legislative Assembly.

of the Committee Researcher assigned to a committee. The Committee Researcher prepares summaries of all the submissions received which include any suggested recommendations. Based on direction from committee members, the Committee Researchers draft a report summarizing the committee's process, evidence received, and its recommendations. The Chair and Deputy Chair review draft versions of the report prior to distribution to the full committee and any requested changes are incorporated into the draft distributed to its members.

Committee reports contain recommendations to the Legislative Assembly for action by government or by the Legislative Assembly, but committees do not have the authority to enact legislation or cause the government to take any specific action. There are no provisions in British Columbia for minority reports or dissenting opinions – committee reports are either unanimous or the report of the majority. No provisions require the government to respond to committee reports.

Committee on Crown Corporations' Activities

As noted earlier, the Legislative Assembly on November 28, 2017, assigned the Committee with the task to “examine, inquire into and make recommendations on ride-sharing in British Columbia”.⁸ The Terms of Reference for the Committee were limited to forming recommendations on the following:

- How provinces with public auto insurance companies have provided, or are looking to provide, insurance to both transportation network companies and the taxi industry;
- Assessing the impact transportation network companies would have on different communities across the province; and
- Considering the regulatory regime that may be established between the Province and municipalities, including looking at the issue of public safety.

The Committee met nine times from November 30, 2017, to February 7, 2018, including three days of public hearings. The Committee heard 26 presentations and received 13 written submissions before issuing its report on February 15, 2018, entitled “Transportation Network Companies in British Columbia”.⁹ The Committee concluded that transportation network companies (TNCs) should be permitted to operate in British Columbia within a provincial regulatory regime, and included 32 recommendations. In relation to the taxi industry specifically, the Committee observed:

The introduction of TNCs will have an impact on the taxi industry, and Committee Members agreed that this issue merited further consideration as regulations are developed to enable TNCs to operate. Recognizing that the government has tasked Dan Hara of Hara Associates to review the taxi industry within this context¹⁰, the Committee chose generally

⁸ <https://www.leg.bc.ca/parliamentary-business/committees/41stParliament-2ndSession-cc/>

⁹ Available online at https://www.leg.bc.ca/content/CommitteeDocuments/41st-parliament/2nd-session/CrownCorporations/Report/SSC-CC_41-2_Report-2018-02-15_Web.pdf

¹⁰ “BC Taxi Regulation and Industrial Structure”, prepared by Hara Associates for the Ministry of Transportation and Infrastructure (June 8, 2018). (the “Hara Report”) Available online at http://www.th.gov.bc.ca/rpt/Documents/20180718_Modernizing%20Taxi%20Regulation.pdf

to defer that process and only make recommendations which relate directly to the potential impact of TNCs on the taxi industry. (p. 14-15)

On November 27, 2018, the legislation enabling ride-sharing, the *Passenger Transportation Amendment Act, 2018*, was passed. That same day, the Legislative Assembly authorized the Committee to “examine, inquire into and make recommendations on regulations regarding transportation network services in British Columbia”.¹¹ The Committee was directed to restrict its consideration to forming recommendations on the following:

- criteria to consider when establishing boundaries;
- appropriate policies to balance the supply of service with consumer demand, including the application of the Passenger Transportation Board’s current public convenience and necessity regime as it pertains to transportation network services (TNS);
- criteria to be considered when establishing price and fare regimes that balance affordability with reasonable business rates of return for service providers; and
- appropriate classes of driver’s licences, including but not limited to ensuring a robust safety regime without creating an undue barrier for drivers.¹²

These Terms were renewed again on February 21, 2019, and the Committee was asked to issue a report by March 31, 2019.

The Committee invited 32 witnesses with knowledge and expertise in relevant fields, and heard from 15 expert witnesses. It extended over 700 invitations to make written submissions to municipalities, regional districts, First Nations, taxi associations, and disability advocacy organizations in British Columbia, as well as to all TNCs operating in Canada. It received 47 written submissions in response. Additionally, the Committee reviewed reports from other jurisdictions that evaluated various impacts of TNS in major cities.

The Committee met *in camera* on February 11, February 25, March 4, and March 12, 2019, to consider and deliberate on the evidence received. Directions from Committee Members regarding the text of the report or the text of their recommendations were incorporated into the next version of the report and the Committee adopted its final draft on March 12, 2019. The report was entitled “*Transportation Network Services: Boundaries, Supply, Fares, and Driver’s Licences*” and was issued on March 26, 2019.¹³ The report includes eleven recommendations encompassing overall themes (e.g. data collection and monitoring) and the four topics outlined in the terms of reference (i.e. boundaries, supply, fare regimes and driver’s licences). None of the recommendations specifically relates to the taxi industry.

Mr. Kahlon’s appointment and role on the Committee

Mr. Kahlon was first appointed to the Committee on October 23, 2017, and his appointment was renewed on February 15, 2018. He indicated that he is not aware of any particular reason he was

¹¹ <https://www.leg.bc.ca/parliamentary-business/committees/41stParliament-3rdSession-cc>

¹² <https://www.leg.bc.ca/parliamentary-business/committees/41stparliament-3rdsession-cc/termsofreference>

¹³ Available online at https://www.leg.bc.ca/content/CommitteeDocuments/41st-parliament/4th-session/cc/SSC-CC_41-4_Report-2018-03-26_Web.pdf

appointed to the Committee, aside from the usual allocation of work among members. He said that his caucus colleagues are generally aware of his family background and of the fact that his father drives a taxi. Mr. Kahlon advised that one of his uncles also drives a taxi in Vancouver, and another uncle did so in the past. He was unfamiliar with the exact nature of his uncles' involvement in the industry (e.g. whether as shift driver or licence holder). He said he has no reason to hide his background, and that he is proud of it. He stated that he does not believe that his secondhand knowledge of the taxi industry as a result of his father's participation in it played a role in his appointment.

Mr. Kahlon said that at the time of his initial appointment he did not know that the focus of the Committee's work would be on ride-sharing, as the Terms of Reference for the Committee had yet to be determined, but did not see that his family background would have been a negative factor if the Terms of Reference had been known.

Minister Farnworth explained that Members are appointed to the various committees based on a variety of factors, such as gender balance and regional representation. A Member might also be considered based on some expertise in relation to the committee's subject matter, or on a Member's expression of interest in a particular committee. However, Minister Farnworth did not recall that these considerations arose in relation to Mr. Kahlon's appointment. The Committee's Terms of Reference were not known when the Committee members were appointed. In any event, he said, he was not aware of Mr. Kahlon's family connections to the taxi industry until questions about Mr. Kahlon's participation in the Committee arose in the House and the media. He stated, however, that it would not have caused him concern had he been aware both of Mr. Kahlon's background and the Committee's mandate to consider ride-sharing at the time Mr. Kahlon was appointed to the Committee. He noted that it is generally viewed as beneficial if Committee members have some personal experience or interest in the matter to be addressed by the Committee (for example, someone with a background in forestry might be helpful on a committee looking at forestry issues.)

Mr. Kahlon had no leadership duties on the Committee at any time. He was neither the Chair nor the Deputy Chair, and had no particular or specialized role (e.g. there were no subcommittees of the Committee). Mr. Kahlon attended Committee meetings regularly and participated actively in public hearings, until the last meeting he attended on February 11, 2019. Mr. Kahlon decided to cease participation in further Committee meetings and deliberations a few days after that date, pending this Opinion. While Mr. Kahlon did not formally resign from the Committee, on February 24, 2019, he informed Commissioner Fraser of his decision to cease his participation out of an abundance of caution. Commissioner Fraser agreed that it was a prudent course of action.

Mr. Kahlon said that he supports ride-sharing and voted in favour of legislation allowing TNCs to operate in British Columbia when it was introduced in the House in November 2018. He said that his focus on the Committee was to ensure that concerns about safety for passengers and fair compensation for drivers were considered in the legislative framework. During the time that he participated in the Committee's work, Mr. Kahlon asked some questions of the witnesses, for example about the compensation for TNC drivers, concerns about accessibility for people with disabilities, and congestion.

Mr. Kahlon does not recall any Committee deliberations on the impact of introducing TNCs on taxi licence share values. While submissions were made to the Committee on this point, it was not part of the Committee's mandate or recommendations. Mr. Kahlon advised that he did not raise his father's history in the taxi industry during the deliberations as it was neither relevant to nor necessary for any of the internal Committee discussions.

He told me that in his view, the introduction of ride-sharing would likely have a lesser impact on the taxi industry in Victoria than in the lower mainland, and would not greatly affect his father's taxi business. Additionally, given his father's pending retirement and his parents' other assets and income, he did not consider his father's taxi business as a very significant component of his parents' overall financial picture and did not believe his father was greatly concerned about any future impacts from ride-sharing.

Mr. Kahlon said that he did not discuss his work on the Committee with his father, and his father did not express any views about ride-sharing with him while he was an active member of the Committee.

He said he was surprised by the concerns raised about his participation on the Committee based on the familial connection. To his knowledge, he said, there are many examples historically of Members who have direct involvement in a sector or industry and sit on committees whose mandates relate to that sector or industry (e.g. agriculture). His understanding was that such connections did not give rise to a conflict of interest, given the nature of committee work; i.e. members from all parties working together to investigate a topic and provide a non-binding report. Moreover, he noted that his perspective on the taxi industry is largely informed by what he has heard from his constituents who are involved in the industry.

NATURE OF THE PRIVATE INTEREST

Mr. Kahlon does not have a direct interest in the taxi industry. The question of whether his father's involvement in the taxi business might create an indirect private interest on the part of Mr. Kahlon himself depends on many factors. Commissioner Fraser therefore reviewed some basic information about the taxi industry in British Columbia, and asked Mr. Kahlon to provide details of the nature of his father's interest to determine if there was anything that might connect their interests.

The Hara Report¹⁴ provides a useful overview of the BC Taxi regulation and industry structure, including a description of the various types of licences and interests, as summarized below.

British Columbia is one of three Canadian provinces that regulate taxis at the provincial level. The Passenger Transportation Board (PTB) is an independent tribunal appointed by the Province that receives applications from individuals and corporations to operate taxis. Municipalities may also pass bylaws regulating taxis.

¹⁴ See footnote 10.

The taxi industry consists of different stakeholder groups with different interests. The Hara Report describes those stakeholders as follows:

- Taxi Company: receives a licence to operate a fixed number of taxis from the PTB
- Licence-Share Holder: investors who have purchased a share in the PTB right to operate a taxi from a taxi company. Shares may be sold equal to one taxi, or one-half a taxi. The holder need not drive and may rent the use of the licence to shift-drivers.
- Owner Operator Taxi Driver: an active driver who is also the holder of a licence-share
- Lease Operator Taxi Driver: a driver who leases the right to operate a taxi from a licence-share holder, but is responsible for providing the vehicle, paying insurance and other costs, and making arrangements with other drivers to take the unused balance of shifts they do not use;
- Shift Driver: A driver who pays for the shift. The fee for renting the licence-share is usually bundled with vehicle rental and other services (p. 11).

As of June 6, 2018, there were approximately 3,350 licensed taxis in British Columbia, including over 300 in the Capital Regional District.¹⁵

Mr. Kahlon's father, Mr. Navroop Kahlon, is not a licence-share holder as described in the Hara Report, and in fact, it appears that none of the definitions in that Report accurately describes his situation. Mr. N. Kahlon started driving taxis with various independent taxi owners in 1985. In 1992, he purchased an individual licence from another individual owner. He explained that this was an MCC licence under the former *Motor Carrier Act* that was "grandfathered" during the transition to the *Passenger Transportation Act*, and that this type of licence is not tied to a particular taxi company. The individual from whom Mr. N. Kahlon purchased the licence had parked his vehicle with Bluebird Cabs in Victoria, so Mr. N. Kahlon continued in the same manner. He pays Bluebird Cabs for the right to use their name and to park his vehicle with Bluebird. He also provides Bluebird Cabs with a percentage of the taxi's earnings which go towards administration and dispatch fees. He said that he has no plans to move to a different company.

Mr. N. Kahlon is formally retired but still occasionally drives his taxi. His taxi runs on the road five days a week, with a morning and a night shift, and other drivers pay him per shift to use his taxi. If no driver takes a shift, he will sometimes drive it himself; he estimated he does so about once a week. Mr. N. Kahlon advised that he has no plans to sell his taxi licence or to stop occasionally driving the taxi when other drivers are not available. He said that he plans to continue to do this regardless of the introduction of ride-sharing. While he is not dependent on the income from his taxi business, it provides a regular flow of income and he enjoys the interactions with the public when he does take a shift.

Mr. N. Kahlon told me that he does not think that the introduction of ride-sharing will impact taxis in Victoria in the way that it will in other areas such as the Lower Mainland. In his view, Victoria has a substantial elderly demographic that is unlikely to switch to hailing rides through apps and

¹⁵ "BC Taxi Companies by Regional District", Passenger Transportation Board (June 6, 2018) Available online at <https://www.ptboard.bc.ca/documents/SA-licensees-by-rd-taxis.pdf>

rideshare companies rather than through the traditional taxi dispatch model. He also noted that taxi companies in Victoria have long-term, stable contracts (e.g. airport, government) which are not likely to be affected to a great extent by ride-sharing. Whether or not his prediction will ultimately be borne out, I accept that this is Mr. N. Kahlon's sincere belief.

Mr. N. Kahlon indicated that he is not familiar with the details of his son's role as MLA and was unaware that he was serving on the Committee until this matter arose in the media, while he was on a visit to India. He told me that he had no discussions with his son about his work on the Committee, and at no time asked him to advocate for a particular position that might be perceived as beneficial to himself or the taxi industry.

Mr. N. Kahlon also provided details of his income and assets, which indicate that he and his spouse are financially secure, and that the taxi licence and revenues are not a significant component of their financial well-being. Both Mr. Kahlon and his father confirmed that their financial affairs are completely separate and there is no interdependent financial relationship.

ANALYSIS

Section 3 of the Act prohibits a Member from exercising an official power or performing an official duty or function if the Member has a conflict of interest or an apparent conflict of interest.

The Act distinguishes between a real or actual conflict of interest as described in s. 2(1), and an apparent conflict of interest as described in s. 2(2). The mischief the first subsection aims to avoid is a situation in which a Member performs an official duty or function, knowing that there is an opportunity to further his or her private interest. However, the primary focus of s. 2(2) is not on the intentions or knowledge of the Member, but rather on the perception of a "reasonably well informed person" that a Member's ability to exercise his or her public duties must have been (or would in the future be) affected by his or her private interest. In other words, apparent conflict of interest turns on the perceptions of a reasonably well-informed observer, not on the actual intentions of the Member involved.

Definition of "private interest"

Members' private interests include but are not limited to pecuniary interests; non-pecuniary interests, too, may give rise to conflicts under the Act. Nor are private interests limited to the direct interests of the Member; they may also arise indirectly, from close proximate relationships.

In the early *Blencoe* Opinion (1993), Commissioner Hughes commented:

... private interest certainly includes any pecuniary interest or economic advantage. The pecuniary interest can be for even a small amount so long as it is not de minimus. Whether the pecuniary interest is remote or speculative is also a relevant factor that needs to be taken into account.

As I have said, private interest is not limited to a pecuniary or economic advantage. It can include any real or tangible benefit that inures to the personal benefit of the Member. (at p. 28)

Commissioner Oliver in the *Campbell* Opinion (2008) stated:

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. (at p. 8)

The circumstances that may be taken into account in determining whether a private interest is affected can include: the nature and proximity of a relationship and whether there is evidence of a *quid pro quo*; whether the connection between the Member’s performance of public duties and the furtherance of a private interest is remote or speculative; and whether the Member knew that such a connection existed.

I also note that the definition of “private interest” in section 1 of the Act does not include an interest “arising from the exercise of an official power or the performance of an official duty or function that ...affects a member as one of broad class of electors”.

s. 2(1) Conflict of interest

For conflict of interest to be found under s. 2(1), what must be established is whether the impact of a Member’s exercise of public duties could further his or her private interests (of whatever kind) and whether the Member knew this to be the case.

The range of official powers, duties and functions that Members engage in varies greatly in terms of their impact. At the higher-impact end of the spectrum are those exercises of official power that involve decision-making by a Minister, particularly those that have a narrow scope such as awarding a contract. In the middle are those official duties or functions where a Member participates in decision making, such as debating and voting on legislation. At the lower end of the spectrum are other activities that Members regularly engage in that contribute to the legislative process such as information gathering and analysis.

Here, Mr. Kahlon’s official duties were to participate in an eleven member committee whose mandate was to find facts and to make general, non-binding recommendations about ride-sharing. Mr. Kahlon’s activities on the Committee were at the lower end of the spectrum of possible impact.

There is no doubt that Mr. Kahlon would likely have personal loyalty and affection for his parents, and would wish his father well in his business dealings.

On the other hand, it does not appear that Mr. Kahlon has either a direct financial interest in his father's taxi licence, or an indirect financial interest. Further, it is highly unlikely that in the future Mr. Kahlon's parents will need financial support from him as a result of a decrease in the value of the taxi licence.

Mr. Kahlon's impact on the work of the Committee, the possible impact of the Committee's work (indirectly) on the taxi industry, and the possible impact of changes in the taxi industry on his father's fortunes, are a matter of speculation. The connection between Mr. Kahlon's participation in the Committee process and his private interests (in his father's wellbeing) is remote. In these circumstances I find that Mr. Kahlon was not (in the words of section 2(1)) in a position to know that the performance of his public duties gave him the opportunity to further his private interest and he did not thereby breach s. 3 of the Act through his participation on the Committee.

s. 2(2) Apparent conflict of interest

Consideration of whether Mr. Kahlon had an *apparent* conflict of interest under s. 2(2) is a more nuanced question. Past Commissioners have, in a handful of cases, given Opinions on questions of apparent conflicts of interest. (No assistance is to be found from other jurisdictions, as British Columbia's legislation is unique in its prohibition of acting when in apparent conflict of interest.)

In 1993, the meaning of "apparent conflict of interest" was examined in the first publicly released Opinion (*Blencoe*). In that case, the Honourable Robin Blencoe, Minister of Municipal Affairs, Recreation and Housing, was empowered to make a decision under the *Municipal Act* to approve bylaws respecting a development project. Two individuals (Tait and Milne), who had provided recent assistance and given contributions to Mr. Blencoe's election campaign, had a financial interest in the project.

Commissioner Hughes reviewed the origins of the inclusion of "apparent conflict of interest" in the Act, concluding that its purpose was to "promote public confidence in elected public officials as they conduct public business". (at p. 22)

The Commissioner emphasized that the mere fact that the Member's private interest was advanced did not by itself constitute a contravention of the Act. It was necessary to consider as well whether there was a reasonable perception, which a reasonably well informed person could properly have, that the Minister's ability to exercise his official power must have been affected by his private interest. After reviewing all the circumstances, Commissioner Hughes concluded that there was an apparent conflict of interest:

I accept the sincerity of Blencoe's above assertions and that he would exercise his power under s. 948 of the *Municipal Act* in good faith with only the public interest in mind. Likewise, I accept the sincerity of his statement that he would not be influenced or motivated by Milne or Tait's contribution or assistance to him in the election campaigns past or future. But, that is beside the point. It is the perception of a conflict of interest held by a reasonably well-informed person that Mr. Blencoe and I must be concerned with and for all of the reasons that I have given I am satisfied that there would be a perception of an

“apparent” conflict of interest if Blencoe were to proceed to act under s. 948 of the *Municipal Act*. (p.37-38 emphasis in original)

In that case, it was the accumulation of a number of factors that caused the Commissioner to conclude that the Member had an apparent conflict of interest. Key factors in arriving at that conclusion were that Tait and Milne’s contributions to Mr. Blencoe’s campaign were material and recent, and that they stood to benefit in a significant financial way as the direct result of a specific decision Blencoe was empowered to make.

In another early Opinion (*Harcourt*, 1995), Commissioner Hughes considered whether then-Premier Harcourt was in a conflict of interest or apparent conflict of interest in relation to certain government contracts granted to a communications firm (NOW). In that case, Commissioner Hughes determined that the Premier was not in receipt of any real or tangible benefit of significance from NOW or any of its principals, and that he exercised no official power nor performed any official function or duty in relation to NOW. In light of all of the facts and circumstances, he concluded that a reasonably well informed person would not perceive that the awarding of contracts to NOW must have been affected by the Premier’s private interest.

The *van Dongen* Opinion (2002) considered the issue of a private interest arising from a familial relationship involving the then Minister of Agriculture. An independent panel was considering and making recommendations regarding rezoning of agricultural land. The Minister’s brother and sister owned farms in areas being considered for rezoning. The rezoning could have affected the value of their properties. Minister van Dongen wrote a letter to the mayor of the municipality about compensation for farmers affected by the possible rezoning.

Commissioner Oliver noted that the mere fact of a blood relationship – however close or remote – does not in itself constitute evidence of a private interest, and made the following comments on the test to be applied under Section 2(2) of the Act:

I can understand how the existence of a blood relationship between the Minister and a brother and sister owning farms in the affected area may, at first sight, create suspicion. I must therefore consider carefully the definition in section 2(2) of the *Act* of “**apparent** conflict of interest”. 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. B.C. is the only jurisdiction which prohibits apparent (as well as actual) conflict of Interest (by section 2(2) of the *Members’ Conflict of Interest Act*. This section must be interpreted with great care in order to avoid the danger of finding the existence of an apparent conflict of interest based on mere suspicion. The question I am required by law to ask myself is whether there exists a reasonable perception which a reasonably well-informed person could properly have A suspicion by an uninformed or ill-informed person is no substitute for a reasonable perception by a reasonably well-informed person. I am satisfied that an ill-informed person upon becoming reasonably well informed of the facts relating to the business and property-owning relationship between the Minister and his siblings and thus becoming a well-informed person can not conclude that the Minister’s ability to exercise as official

power or perform an official duty or function must have been affected by a private interest.
(p. 8 emphasis in original)

After interviewing the Minister and his siblings, Commissioner Oliver was confident that the Minister did not have the slightest interest in his siblings' farmlands or operations. He also considered who would make decisions about compensation in the event that the farmland in question was impacted by rezoning. He found that decisions would be made by a totally independent designated body with no way for the Minister to properly intervene in the proceedings in the hypothetical event that the siblings applied for compensation in future. As such, he found that the complaints were premature. He found no apparent conflict of interest arising from the Minister's letter to the Mayor.

The 2004 *Campbell* Opinion also involved a family relationship at its centre. Then-Premier Gordon Campbell was alleged to have used influence in relation to the appointment of a person to the position of Deputy Minister at the suggestion of a relative (the spouse of a cousin-in-law) and to have influenced a decision to forgive certain debt in relation to that relative's dealings with the government.

The Commissioner found that the remote relationship between the Premier and the relative was insufficient to justify a finding of a "private interest", and that the Premier had not been involved in any decision in relation to the forgiveness of debt or in the appointment of the Deputy Minister named.

Unlike in the *Blencoe*, *Harcourt* and *Campbell* cases, the *de Jong* Opinion (1994) and *Campbell* Opinion (2009) involved the Member's own pecuniary interests.

The *de Jong* Opinion highlights the importance of examining the nature and implications of the official power, function or duty. In that case, the question was whether the Member should have recused himself from voting on amendments affecting legal aid, given that he engaged in legal aid work. Commissioner Hughes reviewed the proposed amendments and concluded that they did not in fact have an impact on Mr. de Jong's financial interest. He found that the reasonably well-informed person, who studied the amendments and was appreciative of the history and the facts the Commissioner had found to exist, would not conclude that the Member's ability to debate and vote as he did on the amendments must have been affected by the Member's private interest (p. 15).

Having recognized that Mr. de Jong was the only member of the Opposition who was a member of the Law Society of British Columbia and entitled to practice law in the province, Commissioner Hughes observed that Mr. de Jong undoubtedly had more expertise on the subject matter of the proposed legislation than did any other opposition member. He said, "The denial of the availability of that expertise to the House should not occur unless the standard of satisfaction that I have defined ["quite satisfied" that a Member has offended the Act], in fact, exists". (at p. 11)

The Commissioner noted that the Act is different from Standing Order 18 of the Legislature of the Province of British Columbia, which provides:

STANDING ORDER 18 – No member is entitled to vote upon any question in which he has a direct pecuniary interest, and the vote of any member so interested shall be disallowed.

The Commissioner indicated, however, that for Mr. de Jong to vote on an amendment that would necessarily reduce the income of private bar lawyers would likely not have been proper under the Act.

In *Campbell* (2009), Commissioner Fraser examined whether then-Premier Campbell was in an apparent conflict of interest by signing an Order in Council that allegedly benefited a company in which the Premier held shares. In that case, Commissioner Fraser noted the following:

To constitute a breach of the *Act*, a perception of conflict of interest cannot simply exist in the air or in the abstract, it must be established against a test of reasonableness. While the simple perception of conflict of interest may raise a “red flag” or give rise to suspicion, that is clearly not sufficient to support a finding of an apparent conflict of interest until the objective test of reasonableness, which is mandated by section 2(2), is applied to the particular circumstances under review. (p. 15)

Conclusion on apparent conflict of interest

By including apparent conflict of interest in the Act, the Legislature intended to promote public confidence in how elected officials conduct public business. Members must not only avoid using public office to further their private interests; they must also avoid the reasonable perception that they are doing so.

Mr. Kahlon was somewhat knowledgeable about the taxi business because of his father’s and uncles’ involvement in that business and may have had views about the potential impact of competing services on taxi drivers’ livelihoods. (Though in fact, he told me that he supports ride-sharing, and that he voted for the legislation enabling it.) The existence of previous knowledge of a subject, or even of predilections with respect to an issue, do not preclude a Member from participating in policy formation exercises such as that in which the Committee was engaged. Indeed, knowledge and experience can be a “plus”.

In the *de Jong* Opinion, Commissioner Hughes observed (at p. 11):

Because the very foundation of our democratic system rests on freedom of speech and action by those elected to represent us, no lesser standard than that is acceptable for determining when a muzzle is to be placed on a member’s participation. In a sense, what is required is a delicate balancing of a member’s right to fully participate against his/her obligations to comply with the provisions of the *Members’ Conflict of Interest Act*. Relevant as a factor for consideration, in arriving at what that balance ought to be, is an appreciation that a parliament is a conglomerate of individuals who each bring with them their experiences in life and the expertise they have acquired through training and experience. That expertise should not be denied to one’s colleagues in the House, as they grapple with serious legislative decisions, without meeting the standard I have specified.

It is understandable that the bare facts of this case might raise a “red flag”, given that Mr. Kahlon’s father is involved in the taxi industry, and Mr. Kahlon served on a committee that worked on the development of ride-sharing regulations that are likely to affect the taxi industry, by allowing the competitive model of TNCs into the market.

Mere suspicion is not sufficient to support a finding of an apparent conflict of interest under the Act. Neither is a Member’s sincere intention to act purely in the public interest sufficient to preclude such a finding. Rather, the test set out in the Act is whether a reasonably well-informed person could properly perceive that Mr. Kahlon’s ability to perform his official duties must have been affected by his private interest.

As discussed in the previous section of this Opinion, the term "private interest" may, in certain circumstances, be wide enough to include the interests of third parties and acts based upon personal loyalty or affection. Given that Mr. Kahlon has no direct or indirect financial interest in his father’s affairs or the taxi industry, the only private interest that might be said to exist is a desire to protect his father’s investment and future financial well-being based on familial ties.

Extending the definition of "private interest" beyond direct or indirect financial advantage to the Member calls for the exercise of caution and careful weighing of the particular circumstances of the case. For a reasonable person to perceive that a Member’s ability to perform his or her duties must be compromised, a nexus between the official duties performed and the Member’s ability to further the third party’s interests in a material way is required. There must also be evidence showing a clear personal motivation for the Member to assist the third person, for example, because of a close relationship. As noted in the *de Jong* Opinion, it is also important to consider the proper balancing of a Member’s right to participate in his or her official duties and to represent his or her constituents, against the need to avoid conflicts under the Act.

In *Blencoe*, the Member in question was solely empowered to make a decision on a discrete matter, the outcome of which very clearly and directly affected the financial interests of two individuals who had recently assisted him. There was a strong link between the decision to be made and the pecuniary interest of Mr. Blencoe’s associates, and evidence of a motivation for him to assist those associates. Thus, a reasonable and well-informed person could have perceived that the Minister’s ability to make the decision must be impaired, despite Mr. Blencoe’s intention to act in good faith.

The circumstances in Mr. Kahlon’s case are quite different. While Mr. Kahlon’s father has a more significant interest than a regular taxi driver (i.e. shift driver), he cannot be described as a major player in the taxi industry. The advent of ride-sharing is sure to have some impact on the taxi industry, but what the impact of a comprehensive regulatory regime might be on Mr. Kahlon’s father as one of several thousand licence holders is unknown. Regardless, given his stage of life and overall financial circumstances, Mr. N. Kahlon is unlikely to be significantly affected whatever the impacts on the taxi industry turn out to be.

There is no doubt that the reasonable person would perceive that Mr. Kahlon might be motivated to assist his father to preserve the value of his taxi licence. However, the existence of possible

motivation arising from a close relationship is not enough to found an apparent conflict of interest. The Act is aimed at situations such as that in the *Blencoe* matter, where there was a clear nexus between the official duties and the furthering of a private interest.

To summarize, the link between the exercise of Mr. Kahlon's official duties and any potential impact on his father's interests is remote in the extreme, given that:

- (a) the official duties performed involved the consideration of broad issues affecting a large industry, rather than the granting of individual entitlements;
- (b) Mr. Kahlon had no decision-making power and only limited ability to influence the shaping of the broad issues under consideration;
- (c) the impacts of the new regulatory scheme will be industry-wide and are highly speculative; and
- (d) Mr. Kahlon's father's financial stake in the taxi industry is not significant, and in any event whatever regulatory regime is ultimately adopted is unlikely to affect him significantly.

Taking into careful consideration all of these circumstances, I find that a reasonably well-informed person, with a basic understanding of the Committee's mandate and process and the nature of the official duties performed by Mr. Kahlon on the Committee, and appreciating the family circumstances I have related, could not properly perceive that Mr. Kahlon's ability to perform the official duties in question - i.e. to gather information and contribute to the Committee's report - must have been affected by a private interest based on loyalty and affection for his father.

CONCLUSION

In conclusion, Mr. Kahlon was neither in a conflict of interest nor in an apparent conflict of interest in relation to his Committee duties pursuant to section 2 of the Act. He was, however, prudent in withdrawing from the Committee's work while the facts were investigated. Having now investigated those facts and analyzed them in the light of the Act and its purposes, I conclude that Mr. Kahlon was not in contravention of section 3 and was not required to make a disclosure pursuant to section 10 of the Act.

Dated this 14th day of August, 2019
In the City of Victoria, British Columbia



Lynn Smith, Q.C.
Acting Conflict of Interest Commissioner