



March 31, 2017

PERSONAL & CONFIDENTIAL

Honourable Brad Wall
Premier of Saskatchewan
And President of the Executive Council
Room 226, Legislative Building
2405 Legislative Drive
Regina, SK S4S 0B3

Dear Premier Wall:

You have requested an opinion in respect to letters you sent to several Calgary based companies inviting them to relocate their headquarters to Saskatchewan. I understand that you and your wife Tami own a minute number of shares in three of the companies that received letters.

An email from your Senior Advisor, Reg Downs, dated March 31, 2017 states in part as follows:

As discussed, Premier Wall recently sent letters to a number of oil companies inviting them to consider moving their head offices from Alberta to Saskatchewan and outlining some of the incentives available in Saskatchewan to any company that wanted to move its head office here. Premier Wall has often spoken about his efforts to attract companies to Saskatchewan and the incentives available to companies that choose to relocate to Saskatchewan. This was simply the latest step in those efforts.

Premier Wall and his wife Tami own a small number of shares in three of the companies that received letters. Most of these shares are in Premier Wall's RRSP and Mrs. Wall's LIRA. Between the two of them, they own 1826 shares in Whitecap Resources with a current value of \$18,842; 600 shares in Crescent Point with a current value of \$8705; and 200 shares in Canadian Natural Resources Limited with a current value of \$8679. These shareholdings have been disclosed on his Member's Public Disclosure Statement.

As per our discussion, please confirm that this does not constitute any type of conflict of interest.

I further understand that you sent several similar letters to other oil companies in which neither you nor your wife have any interest.

The shareholdings of Whitecap Resources and Crescent Point were disclosed in your 2015 Public Disclosure Statement. You have already disclosed your interest in Canadian Natural Resources Limited in your 2016 Private Members Disclosure Statement. As these shares were not purchased until 2016 their disclosure will be publicly available in June, as required by the legislation.

The relevant provisions of the Act for the purposes of this opinion are:

Interpretation

2(1) In this Act:

(c) “commissioner” means the Conflict of Interest Commissioner appointed pursuant to section 18 and includes any acting commissioner appointed pursuant to section 19, 20 or 21;

(e) “family”, with respect to a member, means the member’s spouse and dependent children;

(g) “member” means:

(i) a member of the Assembly; or

(ii) a member of the Executive Council;

(h) “private interest” does not include an interest in a decision:

(i) that is of general public application;

(ii) that affects a person as one of a broad class of persons; or

(iii) that concerns the remuneration and benefits of a member or an officer or employee of the Assembly;

(j) “spouse” means a person who is the member’s spouse within the meaning of The Family Maintenance Act but does not include a person to whom the member is married if the member and that person are living separate and apart.

Conflict of interest

3 For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest, his or her family’s private interest or the private interest of an associate.

Influence

5 A member shall not use his or her office to seek to influence a decision made by another person to further the member’s private interest, his or her family’s private interest or the private interest of an associate.

Activities on behalf of public

6 This Act does not prohibit the activities in which members normally engage on behalf of members of the public.

Commissioner's opinion and advice

27(1) A member may request that the commissioner give an opinion and recommendation on any matter respecting the obligations of the member under this Act.

(2) The commissioner may make those inquiries that the commissioner considers appropriate to provide the member with a written opinion and recommendations.

(3) The opinion and recommendations of the commissioner are confidential, but may be released by the member or with the written consent of the member.

The only issue for consideration is whether the offer to the three companies constitutes a conflict of interest, given that your wife and you own shares in three of those companies. However, it is important to note that the offer was not exclusive to the three companies, but was made to several other companies. Furthermore, the general terms of the offer appear to be open to all companies considering a relocation of their head-office to Saskatchewan.

Based on the information provided, there are four principal reasons to conclude that you did not engage in a conflict of interest by sending the offer to the companies.

i. The Offer was protected under s. 6 of the Act

First, s. 6 of the Act stipulates that the Act does not prohibit activities in which members "normally engage on behalf of members of the public."

As has been pointed out, part of your job is to act on behalf of the public in attracting and encouraging investment in Saskatchewan. The offer neatly fits into this type of activity. The offer was a general offer to several companies to further invest in Saskatchewan. It did not specifically or exclusively target companies in which you or your family have investments.

The offer is protected under s. 6. As such, you did not commit a conflict of interest by making the offer.

ii. The definition of "private interest" in the Act

Pursuant to s. 3 of the Act, a conflict of interest only occurs where a member's decisions or actions have the opportunity to further his or her "private interest" or the "private interest" of his family or associates.

"Private interest" is expressly defined in s. 2(1)(h) of the Act to exclude interests in a decision of "general public application".

The decision to offer incentives for companies to move to Saskatchewan is a decision of general public application. The offer was not confined to companies in which you or your family have invested. Nor did

the actual offer exclusively advance the interests of the three companies. Instead, the offer was made to several companies, including companies in which you do not own shares. Furthermore, it appears that the offer, and the incentives contained therein, would generally be available to any company with an interest in relocating their head office to Saskatchewan. The fact that you and your wife happen to own shares in some of the companies to which the offer was directed is not a conflict of interest when one considers the overall context.

Additionally, the definition of "private interest" in s. 2(1)(h) of the Act excludes interests in a decision that affects the member as one of a "broad class" of persons. A review of the three companies' stock exchange profiles indicates that each company has millions of issued shares, and market capitalizations in the billions of dollars. Your wife and you respectively hold 2626 of total shares in all three companies for a combined value of approximately \$36,000. At its highest, the offer could potentially affect you and your wife as members of a "broad class" of minority shareholders with very limited investments in these large publicly traded companies.

The authorities demonstrate the need for a contextual approach to determining conflicts of interests in these kinds of circumstances. It is a common feature of modern life that individuals often invest in corporate stocks for their retirement. Public servants are not denied this opportunity. Members of the Legislative Assembly, especially those serving in the executive, will occasionally face decisions which could impact large companies in which the individual has relatively minor investments. If the investment is small, the member should not be faced with the stark option having to divest or declining to make in the decision. Nothing in the Act mandates such a choice.

iii. No evidence of "an opportunity" to further the private interests of the Premier or his family

Section 3 of the Act defines a conflict of interest as a situation where a member acts in execution of his or her office with knowledge that there is ***an opportunity to further*** his or her private interest or the private interest of his or family or associates. Similarly, s. 5 of the Act provides that a member cannot use his position to influence a decision to ***further*** the member's private interest.

The only way for you and your wife to benefit from the offer is if the actual relocation of the three companies on the terms outlined in the offer actually increases the publicly traded share value of the three companies.

Simply put, there does not appear to be any evidence that such a relocation, if it even occurred could plausibly increase the share price of the three companies.

The incentives outlined in the offer appear designed to ameliorate the necessary costs of relocating a company to Saskatchewan. There is no evidence that they would increase a company's share price.

There are too many variables to reasonably conclude that the offer could increase the share price of the three companies such that you had an opportunity to further your private interests. The possibility is too remote to establish a conflict of interest.

iv. The amount of the investments

As noted by the Canadian Judicial Council in its *Ethical Principles for Judges* manual at 51, ownership of shares in a corporation through mutual funds or other investment vehicles is generally not enough to establish a conflict of interest. This is particularly true where the value of the investments is relatively small.

The total amount of the investments is \$36,000. This is not a significant sum of money when compared to the total market capitalization of these companies. Therefore, this sum is clearly not to be considered enough to establish a conflict of interest.

For all these reasons I can state that you are not in breach of the *Members' Conflict of Interest Act*.

Yours truly,

A handwritten signature in blue ink, appearing to read "R. L. Barclay".

Ronald L. Barclay, Q.C.
Conflict of Interest Commissioner