



**THURSDAY May 17/2001**

**Place:** DNV Hall 355 W. Queens Rd V7N 2K6

**Time:** 7:00-9:00pm

**Chair:** Brian Platts - Edgemont Community Association - 985-5104

**NOTE THAT SPECIAL MEETING OF MAY 16th WITH PWC IS NOW TENTATIVELY SET FOR MAY 30th**

### 1) Order/content of Agenda

2) Adoption of Minutes of April 19/2001 (attachment #1)

### 3) Old Business

3.1 "Smart Growth" - attendee(s) to Wed-Thur June 6-7 meeting at SFU Harbour Centre? - \$50 - see [www.smartgrowth.bc.ca/events.html](http://www.smartgrowth.bc.ca/events.html)

3.2 Extracts from Hansard on Conflict-of-Interest

3.3 Report on Meeting with Dennis Back on District Policy of Web Links (esp. to community associations).

3.4 Eldon Park Tree Management Plan on web at <http://www.fonvca.org/agendas/may2001/Eldon-Park-Tree-Management-Plan.pdf>

### 4) Correspondence Issues

Email growth continues - they are grouped in topics/subject under "Additional Correspondence...".

4.1 Councillor Crist letter to FONVCA

Ernie\_Crist\_6may2001.pdf

4.2 Planning Department response to DVP process  
Hunter-Kost-Platts-Zerr-Platts-17apr2001.pdf

### New Business

5) Council and other District issues.

**5.1 Presentation with Q/A by Citizens' Finance and Budget Advisory Committee - subject to confirmation**

**5.2 Council/Staff relations** - when is it appropriate to:

- pay for a legal opinion
- call on the RCMP

**5.3 Overview of May8 council briefing with Price-Waterhouse-Coopers** - see

<http://www.fonvca.org/Issues/Planning-Process/may8-council-presentation.pdf>

and for overview provided by Margaret Fraser see

[http://www.fonvca.org/letters/2001/15apr-to/Margaret\\_Fraser\\_9may2001.pdf](http://www.fonvca.org/letters/2001/15apr-to/Margaret_Fraser_9may2001.pdf)

**5.3 Privatization of Public Utilities** - Good or Bad?

**6) Any Other Business**

**7) Chairperson & Date of next meeting.  
June 21/2001**

### Attachments

- FONVCA minutes of April 19/2001
- Extracts from Jan 13/98 Hansard on Conflict of Interest

### Additional Correspondence & Reference Material

**Agenda Item: Circulation of Incoming (Non-Personal) Correspondence addressed to the Mayors Office**

Ernie\_Crist\_20apr2001b.pdf

Agnes\_Hilsen\_7may2001.pdf

Corrie\_Kost\_6may2001.pdf

Elizabeth\_James\_6may2001.pdf

Ernie\_Crist\_9may2001.pdf

### Budget 2001: New \$15 million Lynn Valley Main Library

Angela\_Trudeau\_24apr2001.pdf

Bill\_Tracey\_23apr2001a.pdf

Bill\_Tracey\_23apr2001b.pdf

Dan\_Ellis\_23apr2001.pdf

Dave\_Sadler\_23apr2001.pdf

Denault-Crist-Sadler-Ellis-23apr2001.pdf

Elizabeth\_James\_23apr2001a.pdf

Elizabeth\_James\_23apr2001b.pdf

Ernie\_Crist\_24apr2001b.pdf

Ernie\_Crist\_25apr2001b.pdf (policy change)

Ernie\_Crist\_6may2001.pdf

### Updates

Brian\_Platts\_27apr2001.pdf

### Grouse Grind

Ernie\_Crist\_22apr2001.pdf

Ernie\_Crist\_23apr2001b.pdf

Dave\_Sadler\_24apr2001b.pdf

Dave\_Sadler\_24apr2001c.pdf

Bill\_Morrell\_25apr2001.pdf

Hilsen-Crist-Sadler-25apr2001.pdf

Karen\_Milne\_26apr2001.pdf

### Staff Report To Council Re: DVP Permit 76.00 -- 408 Newdale Court

Brian\_Platts\_17apr2001.pdf

Hunter-Kost-Platts-Zerr-Platts-17apr2001.pdf

### Authorized Occupations & Trespasses of District Owned Lands

Brian\_Platts\_22apr2001.pdf

### Using NVD facilities for electioneering purposes

Brian\_Platts\_25apr2001.pdf

### Apology requested from Councillor Harris

Dave\_Sadler\_19apr2001c.pdf 2nd request

Dave\_Sadler\_25apr2001d.pdf 3rd request

### **KPMG audit report on Parks and Engineering Division**

Elizabeth\_James\_20apr2001.pdf

Dave\_Sadler\_24apr2001.pdf

### **Waste Removal Bylaw - 2 can limit**

Dave\_Sadler\_22apr2001b.pdf

Kost-Hunter-Sadler-22apr2001.pdf

Corrie\_Kost\_29apr2001.pdf

### **Tax Rates for Industrial, Commercial, Residential Property Taxes**

Dave\_Sadler\_22apr2001c.pdf

Elizabeth\_James\_23apr2001.pdf

### **Council consistently shows a lack of business sense**

Corrie\_Kost\_8may2001.pdf

### **Lack of Return on District's Property Portfolio**

Dave\_Sadler\_8may2001b.pdf

### **Northlands Golf Course**

Dave\_Sadler\_19apr2001e.pdf

Dave\_Sadler\_1may2001.pdf

Ernie\_Crist\_6may2001.pdf

### **Complaint Regarding Lack of Public Process**

Dave\_Sadler\_25apr2001a.pdf

### **Rules of Procedure of Council Meetings**

Ernie\_Crist\_23apr2001.pdf

Ernie\_Crist\_2may2001.pdf

### **Sloped Lots**

Dave\_Sadler\_19apr2001d.pdf

### **Consultants Cost DNV \$1 million / Year**

Dave\_Sadler\_15apr2001b

Crist-James-Andersen-Sadler-16apr2001.pdf

Ernie\_Crist\_16apr2001b.pdf

James-Andersen-Sadler-16apr2001.pdf

James-Crist-17apr2001.pdf

### **Budget 2001: Budget Survey Dec. 2000**

Crist-James-Hunter-etc-21apr2001.pdf

Dave\_Sadler\_18apr2001.pdf

Hunter-Crist-19apr2001.pdf

### **Budget 2001: Shared Services Review**

Dave\_Sadler\_19apr2001a.pdf

Dave\_Sadler\_20apr2001.pdf

Ernie\_Crist\_20apr2001.pdf

Elizabeth\_James\_20apr2001b.pdf

Margaret\_Fraser\_20apr2001.pdf

Elizabeth\_James\_24apr2001.pdf

Ernie\_Crist\_24apr2001a.pdf

### **2001-2005 Financial Plan Approval Bylaw**

Dave\_Sadler\_22apr2001d.pdf

### **Strategic Plan**

Margaret\_Fraser\_13may2001.pdf

### **Value Analysis Task Force**

Dave\_Sadler\_19apr2001b.pdf

### **RCMP Police Cars - Budget Item**

Dave\_Sadler\_16apr2001.pdf

Ernie\_Crist\_16apr2001.pdf

### **West Van Youth Awards**

Dave\_Sadler\_10may2001.pdf

Elizabeth\_James\_10may2001.pdf

Margaret\_Fraser\_10may2001.pdf

### **The Monster That Ate Up District Hall**

Dave\_Sadler\_15apr2001c.pdf

### **Rules of Procedure of Council Meetings**

Dave\_Sadler\_22apr2001.pdf

### **Direct Democracy**

Dave\_Sadler\_12may2001.pdf

### **Gated Communities**

Dave\_Sadler\_15apr2001.pdf

### **Using NVD facilities for electioneering purposes**

Dave\_Sadler-25apr2001e.pdf

Margaret\_Fraser\_25apr2001.pdf

Ernie\_Crist\_25apr2001c.pdf

### **Parks Committee Review of the Maplewood Local Plan**

Dave\_Sadler\_25apr2001f.pdf

### **Down zoning of Private Land for Park**

Dave\_Sadler\_28apr2001.pdf

### **Request for clarification of District Policy**

Dave\_Sadler\_5may2001.pdf

### **Fire and Security Alarm Systems Bylaw Amendment**

Dave\_Sadler\_6may2001.pdf

Dave\_Sadler\_9may2001.pdf

See also <http://alarmsbc.com/PGFAFEES.HTM>

### **Private Funds for Public Structures/Facilities**

Dave\_Sadler\_6may2001b.pdf

### **Request For Information: Capilano Ridge Development**

Dave\_Sadler\_6may2001c.pdf

### **District's 39% Fringe Benefit Package**

Dave\_Sadler\_7may2001.pdf

### **RCMP Complaint regarding public mischief**

Ernie\_Crist\_5may2001.pdf

Dave\_Sadler\_7may2001b.pdf

Ernie\_Crist\_7may2001.pdf

Ernie\_Crist\_7may2001b.pdf

Dave\_Sadler\_8may2001.pdf

### **Provincial All Candidates Meeting**

Eric\_Andersen\_4may2001.pdf

### **Banning Books**

Ernie\_Crist\_15apr2001.txt

### **Summit of the Americas, Quebec City**

Ernie\_Crist\_26apr2001a.pdf

### **Seymour Filtration Plant - Privatization Aspects**

Ernie\_Crist\_1may2001.pdf

### **Fairness of Property Assessment**

Ernie\_Crist\_1may2001b.pdf

### **Citizens' Finance and Budget Advisory Committee**

Ernie\_Crist\_7may2001c.pdf

### **Agenda Addenda now on web**

Hilsen-Sadler-25apr2001.pdf

### **39% Fringe Benefit Package for District Staff**

Sadler-James-Sadler-7may2001.pdf

### **OUTSTANDING FUTURE FONVCA ITEMS**

- ◆ Status of petition list appearing in library copy of council package - Dave Sadler
- ◆ Sub-committee - models for community involvement in municipal election
- ◆ A process to follow outstanding issues of Council, for example, where is the "Joint Use Agreement", "Sign Bylaw", and "Cat Regulation Bylaw", to name a few.

# FONVCA MINUTES

Thursday, April 19<sup>th</sup> 2001

## Attendees:

Diana Belhouse (Chair)	Delbrook Comm. Assn.
Corrie Kost	Edgemont Comm. Assn.
Brian Platts	Edgemont Comm. Assn.
Cathy Adams	Lions Gate Neigh. Assn.
Val Moller	Lions Gate Neigh. Assn.
Eric Andersen	Blueridge Comm. Assn.
Dave Sadler	Seymour Comm. Assn.
John Hunter	Roche Point Comm. Assn.
Kitty Castle (Notes)	Sunset Gardens Neigh. Assn.
Bruce Ward	Sunset Gardens Neigh. Assn.
Margaret Fraser	Lynn Valley Comm. Assn.
Al Price	Pemberton Heights Comm. Assn.
Maureen Bragg	Save Lynn Canyon Park
David Knee	Norgate Park Comm. Assn.
Jenny Knee	Norgate Park Comm. Assn.

## 1) Order/Content of Agenda:

Chair Diana Belhouse called the meeting to order at 7:08 pm.

The following items were added to the agenda

- Item 3.8 TPAC and Dangerous intersections
- Item 6.2 email
- Item 6.3 Burns Bog
- Item 6.4 Increased Seating in Pubs

## 2) Adoption of minutes of March 15/2001.

There being no errors or omissions, the Chair declared the minutes of the March meeting adopted as written.

## 3) Old Business.

### 3.1 – Smart Growth

A FONVCA representative is needed to attend the Smart Growth Meeting during the day on Thursday, June 7 at SFU Harbour Centre.

Deadline for registration is May 23. In addition there is a free evening session on June 7. For information see

[www.smartgrowth.bc.ca/events.html](http://www.smartgrowth.bc.ca/events.html)

### Agreed:

1. FONVCA would fund the \$50 fee for one registration to attend the all day meeting on June 7;
2. Eric Anderson will inform Smart Growth of the names of Community Associations for direct mailings.

## 3.2 – Eldon Park Tree Management Plan

Bruce Ward gave an overview of the situation in Eldon Park, the meeting held with District Staff and area residents in January 2001 which resulted in the Management Plan and the history of tree work in the area. It is likely the principles in the plan will be applied to other similar areas such as the slope above the Bowser Trail in Lower Capilano.

Brian Platts expressed concern about the recent removal, by the Parks Department, of 20 “hazardous” trees next to the Mosquito Creek Trail.

Action: Kitty Castle will get a copy of the Eldon Park Tree Management Plan from the Environment Department which will be posted on the FONVCA website

## 3.3 – Council Workshop Feb 1 2001

Further to this Strategic Plan Workshop, two FONVCA members have provided input. The Strategic Plan will be coming back to Council for adoption.

## 3.4 – Violation of Conflict of Interest Guidelines

Information and discussion of issues surrounding various examples of conflict of interest and the conflict of interest guidelines. The January 13, 1998 Hansard in which Don Lidstone (Lidstone Young Anderson – Legal advisors to District) played a key role, is quite relevant and can be found at

<http://www.legis.gov.bc.ca/CMT13/hansard/so01113.htm>

Discussion focused on the conduct of APC meetings, the development proposals for the Larco site, and the accuracy of the minutes. Cathy Adams will meet on this matter with Mayor Bell in May. It is important for Community Associations to attend the relevant Advisory Committee or Commission if development proposals affect their area.

Agreed: FONVCA to bring forward recommendations as to the rationale why staff should be covered by a Code of Ethics

Action: Corrie Kost will do an extract from Hansard, January 13, 1998, concerning relevant sections of the Municipal Act

## 3.5 – District web links to Community Associations

Discussion mentioned the improvements made since the first staff report to Council on this issue. There were concerns about present links from DNV site to for-profit organizations and the need to consider fees for these links.

**Agreed:**

1. Notice should be given to the C. Assns before any link is broken
2. Corrie Kost to liaise with Dennis Back and FONVCA members to set up a joint meeting on the Draft Policy concerning web links from DNV site to Community Associations. Al, Brian, Margaret, John, and Corrie all expressed interest in attending such a meeting.

**3.6 – District Financial Plan (Budget) Update**

**Agreed:** Eric Anderson to invite the Chair of the Citizens' Finance and Budget Advisory Committee to the next FONVCA meeting for discussion of the Financial Plan.

**3.7 – Listing of Encroachments available on FONVCA web site.**

Alphabetical list of permission to occupy are available at <http://www.fonvca.org/Issues/Public-Land-Occupation/permissions-to-occupy.html>. Permission to occupy at present is granted at no charge to owner. No legal notification of encroachment to new owners. Corrie Kost provided a print out of licence to occupy agreements, (available at <http://www.dnv.org/council/reports/216455.pdf> which totaled \$23,000 rent per year. New policy is expected back at Council and hopefully more realistic rates will be charged and revenues increased.

**3.8 – TPAC and Dangerous intersections**

Allan Orr, Chair of TPAC, needs information from either FONVCA and/or individual community associations on dangerous intersections in their respective communities.

**Agreed:** Each community association to notify TPAC of dangerous intersections, in their community, which cause problems for pedestrian and bicyclists.

**4) Correspondence**

Discussion about the explosion of email correspondence and need to "compact" replies. Corrie has cut off date for letters to be included in the agenda package. (list of correspondence was attached to these minutes).

**5) New Business**

**5.1 – Bed and Breakfast Application for Class II (4-6 bedrooms).**

Cathy Adams and Corrie Kost attended and spoke at the April 3 public meeting for Plateau Drive B&B. Many problems emerged about the difficult lane access and parking at this B & B. It appears that the neighbours are not only opposed to the Class II application but also to the existing Class 1 licence.

Correspondence from District staff was circulated which stated that "only a simple majority is required to approve or deny the issuance of the B&B licence". At the B&B meeting staff stated that 2/3 of council is required to reject a licence, while a member of the public expressed the opinion that it required only a simple majority.

**5.2 – Staff changes at North Shore News**

Concern was expressed over the loss of Tim Renshaw, who is now freelancing, and the concentration of ownership in the media.

Note: 9:35pm John Hunter left meeting

**5.3 – Rating Council**

Lynn Valley Community Association would like the focus to be on issues rather than rating of individual council members. Discussion of the importance of having better all candidates meetings and need to consider providing a mid-term voters guide.

**5.4 – Return of funds to Heritage Funds –**

Concern raised by Lynn Valley Community Association about the return of funds to the Heritage Fund in particular the Northlands Golf Course repayment. Discussion also included the new Lynn Valley Library, where projected costs are in excess of the \$6million referendum funding.

**6) Any Other Business**

**6.1 – Access to Freedom of Information**

**is often denied on the basis of section 22 of the Act - eg.**

Unreasonable invasion of personal privacy. For reference see  
<http://www.fonvca.org/agendas/apr2001/FIO-section22.pdf> and for complete act refer to  
[http://www.qp.gov.bc.ca/bcstats/96165\\_01.htm](http://www.qp.gov.bc.ca/bcstats/96165_01.htm)

## 6.2 – E-mail concerns

covered under 3.6 above

## 6.3 – Burns Bog.

Information item: Grouse Mountain and Burns Bog share the same family ownership.

## 6.4 – Increased Seating in Pubs.

Recent council decision to increase seating by up to 50%. Despite the staff recommendation that a consultation process take place for pubs adjacent to residential areas, council decided there was no need to consult the affected neighbourhoods. This will not apply to the Raven Pub as they did not apply for increased seating.

## 7) Chairperson & Date of next meeting:

Brian Platts - May 17/2001

Note: May agenda to include an item on having a July or August FONVCA meeting.

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## Correspondence & Reference Material

### Artificial Turf Field:

[http://www.fonvca.org/recent-letters/Corrie\\_Kost\\_25mar2001.pdf](http://www.fonvca.org/recent-letters/Corrie_Kost_25mar2001.pdf)  
[http://www.fonvca.org/recent-letters/Corrie\\_Kost\\_25mar2001b.pdf](http://www.fonvca.org/recent-letters/Corrie_Kost_25mar2001b.pdf)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_26mar2001a.txt](http://www.fonvca.org/recent-letters/Dave_Sadler_26mar2001a.txt)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_27mar2001c.txt](http://www.fonvca.org/recent-letters/Dave_Sadler_27mar2001c.txt)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_2apr2001.txt](http://www.fonvca.org/recent-letters/Dave_Sadler_2apr2001.txt)  
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[http://www.fonvca.org/recent-letters/Elizabeth\\_James\\_3apr2001/pdf](http://www.fonvca.org/recent-letters/Elizabeth_James_3apr2001/pdf)  
[http://www.fonvca.org/recent-letters/John\\_Hunter\\_3apr2001.pdf](http://www.fonvca.org/recent-letters/John_Hunter_3apr2001.pdf)  
[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_4apr2001.txt](http://www.fonvca.org/recent-letters/Ernie_Crist_4apr2001.txt)

### Council Expenses:

[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_4mar2001.pdf](http://www.fonvca.org/recent-letters/Dave_Sadler_4mar2001.pdf)

[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_4mar2001d.pdf](http://www.fonvca.org/recent-letters/Dave_Sadler_4mar2001d.pdf)  
[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_24mar2001b.txt](http://www.fonvca.org/recent-letters/Ernie_Crist_24mar2001b.txt)  
[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_24mar2001c.txt](http://www.fonvca.org/recent-letters/Ernie_Crist_24mar2001c.txt)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_26mar2001b.pdf](http://www.fonvca.org/recent-letters/Dave_Sadler_26mar2001b.pdf)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_27mar2001d.txt](http://www.fonvca.org/recent-letters/Dave_Sadler_27mar2001d.txt)

### Deep Cove Sloped Lots Exemption:

[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_27mar2001a.txt](http://www.fonvca.org/recent-letters/Dave_Sadler_27mar2001a.txt)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_27mar2001b.txt](http://www.fonvca.org/recent-letters/Dave_Sadler_27mar2001b.txt)

### Proper Posting of District Meetings - Links to web sites:

[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_9mar2001d.pdf](http://www.fonvca.org/recent-letters/Dave_Sadler_9mar2001d.pdf)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_9apr2001.pdf](http://www.fonvca.org/recent-letters/Dave_Sadler_9apr2001.pdf)  
[http://www.fonvca.org/recent-letters/Agnes\\_Hilsen\\_9apr2001.pdf](http://www.fonvca.org/recent-letters/Agnes_Hilsen_9apr2001.pdf)  
<http://www.fonvca.org/recent-letters/Hilsen-Sadler-9apr2001.pdf>  
[http://www.fonvca.org/recent-letters/Agnes\\_Hilsen\\_10apr2001.pdf](http://www.fonvca.org/recent-letters/Agnes_Hilsen_10apr2001.pdf)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_9mar2001c.pdf](http://www.fonvca.org/recent-letters/Dave_Sadler_9mar2001c.pdf)

### Financial Plan - Maplewood Plan - Misc. Process:

<http://www.fonvca.org/recent-letters/Andersen-Hunter-Tracey-Sadler-6apr2001.pdf>  
[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_6apr2001c.pdf](http://www.fonvca.org/recent-letters/Ernie_Crist_6apr2001c.pdf)  
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[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_28mar2001a.txt](http://www.fonvca.org/recent-letters/Ernie_Crist_28mar2001a.txt)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_3apr2001b.pdf](http://www.fonvca.org/recent-letters/Dave_Sadler_3apr2001b.pdf)  
[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_4apr2001b.pdf](http://www.fonvca.org/recent-letters/Ernie_Crist_4apr2001b.pdf)  
[http://www.fonvca.org/recent-letters/Angela\\_Trudeau\\_24mar2001.pdf](http://www.fonvca.org/recent-letters/Angela_Trudeau_24mar2001.pdf)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_9mar2001.pdf](http://www.fonvca.org/recent-letters/Dave_Sadler_9mar2001.pdf)  
<http://www.fonvca.org/recent-letters/Sadler-Fraser-Hunter-4apr2001.pdf>

### Lease Income - Revenue Generators:

[http://www.fonvca.org/recent-letters/Don\\_Sigston\\_7mar2001.pdf](http://www.fonvca.org/recent-letters/Don_Sigston_7mar2001.pdf)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_7mar2001.pdf](http://www.fonvca.org/recent-letters/Dave_Sadler_7mar2001.pdf)  
[http://www.fonvca.org/recent-letters/Dave\\_Sadler\\_7mar2001c.pdf](http://www.fonvca.org/recent-letters/Dave_Sadler_7mar2001c.pdf)  
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[http://www.fonvca.org/recent-letters/Elizabeth\\_James\\_5apr2001.pdf](http://www.fonvca.org/recent-letters/Elizabeth_James_5apr2001.pdf)  
[http://www.fonvca.org/recent-letters/Elizabeth\\_James\\_5apr2001b.pdf](http://www.fonvca.org/recent-letters/Elizabeth_James_5apr2001b.pdf)  
<http://www.fonvca.org/recent-letters/James-Hunter-Tracey-Sadler-5apr2001.pdf>  
<http://www.fonvca.org/recent-letters/Sadler-Tracey-Hunter-5apr2001.pdf>  
[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_6apr2001b.pdf](http://www.fonvca.org/recent-letters/Ernie_Crist_6apr2001b.pdf)  
[http://www.fonvca.org/recent-letters/John\\_Hunter\\_9apr2001.pdf](http://www.fonvca.org/recent-letters/John_Hunter_9apr2001.pdf)

### Ernie Crist - David Peak on land Sales:

[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_18mar2001.txt](http://www.fonvca.org/recent-letters/Ernie_Crist_18mar2001.txt)

### Margaret Fraser - on Lynn Valley Ecology Centre

[http://www.fonvca.org/recent-letters/Margaret\\_Fraser\\_18mar2001.pdf](http://www.fonvca.org/recent-letters/Margaret_Fraser_18mar2001.pdf)

### Margaret Fraser - on development in District

[http://www.fonvca.org/recent-letters/Margaret\\_Fraser\\_25mar2001.txt](http://www.fonvca.org/recent-letters/Margaret_Fraser_25mar2001.txt)

### Ernie Crist - on release of KPMG report

[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_1apr2001.txt](http://www.fonvca.org/recent-letters/Ernie_Crist_1apr2001.txt)

### Ernie Crist - on Funding for Advertising

[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_24mar2001.txt](http://www.fonvca.org/recent-letters/Ernie_Crist_24mar2001.txt)

### Ernie Crist - on new mandate for Recreation Commission

[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_24mar2001d.txt](http://www.fonvca.org/recent-letters/Ernie_Crist_24mar2001d.txt)

[http://www.fonvca.org/recent-letters/Ernie\\_Crist\\_6apr2001.pdf](http://www.fonvca.org/recent-letters/Ernie_Crist_6apr2001.pdf)

### Ernie Crist - Ms. Bridgman on Translink

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### Ernie Crist - Reorganization of North Shore News

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**Ernie Crist - on verbal abuse**

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**Ernie Crist - on Lynn Valley Plan / Town Centre**

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**Canadian Tire - Big Box:**

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**Highlighting/Simplification/Insertions** (by Corrie Kost)  
of Jan 13/98 Hansard from the  
SUBCOMMITTEE ON THE SELECT STANDING COMMITTEE  
ON PARLIAMENTARY REFORM, ETHICAL CONDUCT,  
STANDING ORDERS AND PRIVATE BILLS

The chair was Tim Stevenson. Mayor John Ranta from Cache Creek made a presentation sitting as the chair of the conflict-of-interest committee and first vice-president of the Union of B.C. Municipalities; Harriet Permut, staff person, policy analyst for UBCM; and Don Lidstone, senior member of Lidstone, Young and Anderson. Among other the then current Conflict of Interest Commissioner H.A.D. Oliver was also present.

**J. Ranta:** Is there anybody who doesn't know what the UBCM is? It's probably the envy of Glen Clark. It's an organization that represents all 150 municipalities and all regional districts in the province. So we represent 100 percent of the people, which is an enviable spot to be in for any politician, I suppose. As an organization, we recognized during the change in about 1993 that the change was perhaps not beneficial, in changing from the old sections 82 and 83 of the Municipal Act, which contained conflict-of-interest guidelines in section 82 and some exceptions, which were easily understood, and listed exceptions that could benefit local elected officials. The exceptions were contained in section 83.

That was replaced, I think around 1993, with section 225 of the Municipal Act, and that change has resulted in what our members see to be some confusion related to conflict of interest. **In my experience, the overwhelming majority of local elected officials err on the side of caution and declare themselves in conflict a lot of times when they are not in conflict.** The organization, UBCM, felt that it was important, after that change happened in 1993 or 1994, to strike a committee to study the whole conflict-of-interest issue. We have prepared table-ready legislation which we felt would be appropriate for inclusion in the Municipal Act, where the rest of the rules governing local government are contained. We have worked over the last number of years and have had our document approved by the membership at the annual convention on two different occasions, with some amendments based on member comment.

I think everybody is too busy to read this at some later date, but I mentioned that section 225 does create a problem with the vagueness of the wording. This is substantially the motivation behind our efforts to craft appropriate legislation that will provide the necessary protection of the public interest. It has all been approved.

The three key issues, I think, are probably the best spot to start. Why do we believe that our conflict guidelines should be contained in the Municipal Act? Quite simply speaking, if a member of the public or a local elected official is curious about whether or not a local elected official has acted appropriately, **one should be able to go to the governing piece of legislation for local government -- namely, the Municipal Act -- to find what one needs to know.** If we have a portion of the conflict act applying to local government, then a member of the public who is curious about these things not only will have to get hold of the Municipal Act to see what the local government is supposed to be doing but will also have to go and find some lawyer who's got some other act and try to ferret through that to derive the information he or she needs in order to determine whether a local elected official has acted appropriately. Traditionally, we have enjoyed the benefit of conflict guidelines within the Municipal Act.

My understanding of the direction that this committee is exploring is that it's to potentially have the conflict act that applies to MLAs amended in some fashion or expanded to apply to local elected officials. As you are all undoubtedly -- maybe some more so than others -- painfully aware, the requirement for MLAs is to avoid an apparent conflict of interest; whereas in a local elected government's view or as required in the Municipal Act, you're required to avoid a direct or indirect pecuniary interest. They're quite different things. If you imagine yourself living, as I do, in a small community like Cache Creek with 1,200 people, it's very difficult to walk out your door and buy a loaf of bread without there being an apparent conflict of interest to somebody: "Oh, the gentleman who owns the store you're buying your bread from is another member on your council,"

and all these sorts of things. **It's very difficult to avoid an apparent conflict of interest, especially in a small-community atmosphere.** In the previous section 83, there was an exception that related to. . . . I'm sure Mr. Lali will recall the Norgaard case. The mayor of Merritt owned a cement company, and the city contracted with the cement company to get some work done. She was up on conflict charges, and under the Municipal Act she was found not guilty because she was the single supplier and dealt at arm's length with the municipality. It was an administrative decision. It was clear to her at the time, I believe, that she was not in conflict, and the courts bore that out.

The other matter of interest is that if the conflict act were to be expanded to apply to local government and Mr. Oliver was to be the overseer of all local elected officials -- there are in the neighbourhood of 1,200 local elected officials and roughly 180 local government bodies -- the workload that he would be forced to contend with would be, in our view, onerous. **Each municipality generally has a municipal lawyer, for better or worse.** If there is a problem on an agenda or if a member of council believes that there may be a conflict of interest, frequently a municipal lawyer will have sufficient knowledge of the elected officials themselves and the situation in the community. So if a councillor was to go to the administrator and say, "Gee, I can't make up my mind; am I in conflict of interest on this issue or not?" the administrator can get on the phone to a lawyer who knows the community and the circumstances much better than Mr. Oliver's staff would be able to know the situation. . . .

**G. Bowbrick:** What about the process? Perhaps you can correct me if I'm wrong. The remedy that is available if there is an alleged conflict of interest is through the courts, right?

**J. Ranta:** Yes.

**G. Bowbrick:** Can you tell me how that makes concerns about conflict of interest at the local level accessible to the average citizen? What we have right now is that an allegation can be made fairly simply to the conflict-of-interest commissioner; that is what we have at the provincial level. It is rather simple for any citizen to make that allegation, and the commissioner pursues that. Perhaps you could tell us a little bit about how that process would work at the local level and how easy it would be for a citizen to make such an allegation and have it followed through.

**D. Lidstone:** The simple answer to your question is that if you were to look at the codification of the case law and the previous statutory legislation and the best practices from all the other provinces that we have encapsulated in this proposal of the UBCM, **you would see that virtually any layperson -- a ratepayer, a ratepayers' group, an environmentalist, a taxpayer who comes to all the council meetings, someone who is suddenly concerned about a rezoning in their backyard, anyone -- could pick up the phraseology of this proposal. Because of the plain language and the way that it purports to encompass all of the issues, the layperson could, I think, fairly quickly come to a conclusion on their own as to whether or not the elected official would be in a conflict of interest.**

One of the principal purposes of our recommendations is not just to enact new legislation for the sake of enacting legislation. It is to try and open up the law to everyone -- to the staff of the municipality, to the elected officials of the municipality, to the people who are served by the elected officials -- in a way that is comprehensible. **It's plain language, and it's certainly comprehensive.**

**G. Bowbrick:** So let's assume that the person has looked at this plain-language law and has concluded in their mind that there is a conflict of interest, and they wish to make an allegation. Can you tell us how the process works from there?

**D. Lidstone:** Certainly. Under this set of recommendations, as well as the rest of the Municipal Act that already exists, there would be a number of options open to the individual. **Assuming that they have concluded that their elected official is in a conflict-of-interest situation, first they could raise the matter with the council of the**

municipality.

The council would have the responsibility under this legislation of then conducting a hearing with the person who has been accused of having the conflict of interest -- taking into account the rules of procedural fairness and **natural justice, which are built into the phraseology of the legislation**. Then they could pass a resolution. Now, there are three effects of such a resolution: one would be to exonerate the individual, in which case the complainant could go to another venue, if in the final analysis they felt that the council hadn't dealt with the matter. That's no different than if they were to go to Mr. Oliver, for example, and if he were to come to what he regarded to be the appropriate conclusion. **If the complainant did not like the result, then the complainant could go to another avenue, such as a court or such.**

G. Bowbrick: Actually, it's quite different, because in this case what is being proposed is . . . Whereas Mr. Oliver is an independent officer of the Legislature and he isn't a politician, what this process you're discussing suggests is that the person go to the politicians.

D. Lidstone: I'm saying that's one; there are numerous avenues. **They may want to go to the politicians because it may be appropriate for them in those circumstances. The council, when it convenes to consider the matter, has to give notice of all the details -- records and so on -- to the member of council who is accused, as well as to his or her lawyer, and they have to have an opportunity to be heard before the council. The council has to make a quasi-judicial decision. That decision is not final and binding in any way, shape or form because the individual council member may then appeal that decision if the council member feels aggrieved, or the complainant can go to another avenue if the complainant feels aggrieved.**

G. Bowbrick: What's the other. . . ?

D. Lidstone: Other avenues?

G. Bowbrick: Yes.

D. Lidstone: **The second avenue is to go to the inspector of municipalities**, which has been done on a number of occasions. The inspector of municipalities is an office that has been in existence, to my knowledge, since 1956. I'm sure some of you are familiar with the inspectors from your own operations and events in your own jurisdictions over the years. We have had Bill Long and Chris Woodward and Ken McLeod. They are independent in the sense that they are responsible for centralized invigilation from the perspective of Her Majesty. **They owe no duty to the municipality itself or to the individual who has made any complaint.**

So in the sense of independence and a rigorous interpretation of the legislation, the inspector has two avenues open. One is an informal investigation and rendering of an opinion, not unlike the situation affecting our commissioner under your MLA legislation. Secondly, a formal inquiry can be held; it's at the discretion of the inspector whether to call an inquiry and to ask cabinet for the authority to go ahead. That's been done on a number of occasions.

**For example, there was a conflict-of-interest allegation in Langley, and the inspector reviewed the facts and circumstances and ended up recommending that an inquiry be held.** The inquiry officer was an independent third party. They decided that the inspector should not hold it because they felt that the Ministry of Municipal Affairs and the province itself might have a conflict. **So they retained the services of Todd Stone, who is an eminent lawyer in the field. He conducted the formal inquiry, with the power to subpoena witnesses and to hear witnesses under oath and so on. That's the second option.**

The Chair: Excuse me. Can I ask you something on that? Why would you use the first option when you've got this second option which seems more independent. You're not going to politicians. It's almost a similar role to Mr. Oliver's role, anyway.

D. Lidstone: I quite honestly believe, based on my experience -- which is only since 1977 -- that most people in the public would go to the council, except where there are obvious ideological imbalances. You have on some councils seven or eight out of nine people who are all from one party stripe, and so you may feel that the politics would interfere. But generally speaking, on a council it's more balanced.

**The reason you would go to the council instead of to the inspector is that, first of all, you've got all of the optics, with the local media being there, on top of all the facts, issues and law. Secondly, you get the matter dealt with fairly quickly. Thirdly, you know that if it doesn't go the way that you would like, you always have opportunities to appeal further or to go to other avenues. But it's inexpensive, it's open, it's accountable, it's expeditious, and it doesn't cost anybody anything.**

The inquiry process or the informal inspector process -- either one -- would take a bit longer. It would give an objective, neutral, independent response, and it would give one that people would tend to rely on, in a sense that it would be a very considered rather than political response.

**The third option is that under the Municipal Act the complainant can ask the municipal council for an inquiry to be held locally.** That is held in circumstances, for example, where the council of the municipality would like to hire a former justice of the Court of Appeal or the Supreme Court to conduct an independent inquiry of the matter to find out what the facts were, to apply the law and to render a decision. That can be done informally, or it can be done on a formal basis. An example of informal was when Surrey dealt with the Jerry Huot allegations. An example of a more formal situation was when the Vancouver parks board was considering allegations regarding one of their members on a question of an indirect pecuniary interest.

G. Bowbrick: How are people going to be aware of these options that are available to them? At the provincial level it's fairly well known that there's a conflict commissioner and there's an office. The person going to that office -- and I'm assuming that they'll get some assistance in terms of an explanation as to how to make a complaint. . . . How would that work at the municipal level? You say that there are 1,200 different local politicians; I don't know how many councils. . . . What assurance is there under your proposal that a person who has a complaint and comes forward is going to receive full and independent advice from somebody about how to go about this? You've explained a number of options which to the average person are actually fairly technical, in my opinion. How would they get that kind of independent and full advice?

D. Lidstone: In these kinds of matters. . . . First of all, remember that the recommendations that we're making for the legislation are such that **the wording of the legislation is very clear, plain, direct and all-encompassing. The average person, who is normally scared away by all of these law books, would hopefully be able to simply read the legislation and identify what the issues are, what the process would be.**

Secondly, the UBCM and the municipalities, I believe, would do the same thing as they do with things like contaminated-site legislation and other innovations that impact on the daily lives of ratepayers, residents and other persons affected -- that is, provide detailed pamphlets, posters and other information. If an inquiry is made, for example, of a municipal officer or an elected official in respect of contaminated-site legislation right now, they are directed to the pamphlet or to the officer who is responsible. That person then provides the avenues that are open, the information that is necessary, and so on.

In this case, it would be probably one of the more simple approaches to dealing with new legislation. **All the complainant would have to do is write a letter to either the Minister of Municipal Affairs or the mayor and then get back a letter saying: "Here are your options. You can go the municipal council inquiry route, formal or informal; you can go the inspector of municipalities**



**route, formal or informal; you can complain directly to the council, and the council can hold one of its procedural fairness hearings and pass a resolution.**" It would be the same kind of resolution that unseated Mayor McKitka in Surrey in 1978. Then the individual council member -- this is new in the legislation, as well -- would have more opportunities for administrative and procedural fairness, natural justice, than exist at all in the legislation right now, including the right to make representations before their own council, to have a lawyer, to have all the information well in advance, to have notice and to appeal, if necessary.

J. Weisgerber: A couple of things. First of all, let me say for openers that I'm inclined to support legislation drafted by municipal politicians as opposed to some legislation that might be imposed on them by the province. As MLAs have drafted their conflict-of-interest legislation and probably would feel somewhat abused had the federal government passed legislation for provincial MLAs with respect to conflict of interest, so should MLAs be very careful about treading into the area of municipal government. I'm pleased, therefore, that you've come forward with some legislation for us.

[10:45]

In the area under "disqualification. . . ." I haven't had an opportunity to look at this very carefully, so if I've missed something, forgive me. But it seems to me that the options for the court are simply to decide that the official was in conflict and is therefore disqualified, or wasn't in conflict and could carry on.

The experience that we've had with Mr. Hughes and, I'm sure, with Mr. Oliver is that the areas of alleged conflict are neither black nor white. People aren't obviously and deliberately in conflict, but more often inadvertently stray into the area of conflict, believing they're doing the right thing.

I wonder if you considered some other options for the court, other than to say that you're right and you're wrong. Is there an opportunity. . . ? As the conflict-of-interest commissioner has said in a number of rulings: "Yes indeed, the member was in conflict, but in my opinion came into conflict with the very best of motives." Have you thought about that? Is there something in here that I'm perhaps missing?

D. Lidstone: We've considered the options that have been made available in all the other jurisdictions, and they involve the following: first of all, **a motion of censure** -- in other words, a resolution of the municipal council that states that in the opinion of council the individual has contravened either the legislation or the municipal guidelines that have been enacted by bylaw by the municipality to set up a process to deal with it. **Those censure motions have tremendous impact locally in the media** and I think would have the same effect in Dawson Creek, for example, if passed by council in respect of the mayor, as, for example, Mr. Hughes's decision respecting Mr. Vander Zalm had with the media and the public when that decision came down. That wasn't a binding. . . .

J. Weisgerber: Where is that, Don? Is it in the legislation?

D. Lidstone: **It's something that already exists. It's an inherent power of the council. It does not, in my opinion, need to be stipulated in the legislation.**

The second option that would be open is that of **disqualification from office**. Looking at the other legislation across Canada, we concluded that that **should only apply in the most egregious, high-handed, atrocious circumstances, such as where someone is benefiting privately, personally and monetarily by virtue of their office. So we've restricted it to those circumstances, and there are a number of exceptions provided so that it's only in the most heinous cases that the council or the court or the inquiry officer would finally come to the conclusion that there should be disqualification**. There are so many exceptions and outs. But in the process, the public becomes very well educated and aware as to exactly what the person did and how far into the precipice they started moving their feet.

J. Weisgerber: I'm just looking at section 213.1(5) and (6). If I were reading that, I would read it to suggest that the court at least, if not council, only had the two options: (a) or (b).

[*Application to court to declare council member disqualified*]

*213. (1) An application to the Supreme Court for a declaration that a council member is disqualified from holding office and that the office is vacant may be made in accordance with this section.*

*(2) Except as provided in this section, Division 15 of Part 3 [Declaration of Invalid Election], other than section 143*

*(7) [time for hearing application], applies in relation to an application under this section.*

*(3) An application may only be made by at least **4 electors** of the municipality.*

*(4) An application may be made at any time during the challenged person's term of office, but must be made within 30 days after the alleged basis of the disqualification comes to the attention of any of the persons making the application.*

*(5) Within 7 days after the petition commencing an application is filed, it must be served on the person whose right to hold office is being challenged and on the municipality.*

*(6) On the hearing of an application, the court may*

*(a) declare that the person is confirmed as qualified to hold office, or*

*(b) declare that the person is not qualified to hold office and that the office is vacant.]*

D. Lidstone: That's right. If you go through the option of electors of a municipality applying to the court to disqualify a member of council, that is probably going to get to that stage only after some of the other processes we've talked about have been addressed. **That is where you have ten persons -- and as you know, it's not an easy matter to get ten people to publicly put their names down to disqualify somebody from office.**

J. Weisgerber: Well, 40 percent is hard.

D. Lidstone: In a lot of communities in B.C., the population is not that great. Ten electors is what we felt to be the critical mass, and the process. . . . This is just one of the avenues we discussed, and under this avenue there is not even the necessity to go through a council hearing and a council resolution. This is where ten electors just feel that something terrible has happened, and they're willing to put their names on a petition to the court to apply to have that individual disqualified from office -- like McKitka, pure and simple.

In the circumstances, because of what it is considering, the court is only considering contravention of the part of the act that deals with direct or indirect pecuniary interest. And in that circumstance the court has the option of either allowing the member to stay in office or disqualifying that member, in which case a by-election occurs. This is sort of the end of the spectrum, where the most heavy-handed penurious result occurs.

J. Ranta: If I may comment, on reading 213.1(6), in layman's terms those are the two remedies. You're either qualified to hold office or you're disqualified, but a conflict does not necessarily mean that you are disqualified. The court may rule that you're still qualified to hold office in spite of the fact that you are mildly in conflict, and that's when something such as a censure motion could be applied. But I'd refer you to pages 13 to about 16 of the explanatory notes of the presentation, which discuss the disqualification intention of the proposed legislation.

J. Weisgerber: Yes. I apologize for, you know. . . . I haven't had an opportunity. I will study it.

My last question, and then I'll butt out, is: the other sections of the

act that are relevant -- that you referred to, Don -- are they adjacent to where this fits in the legislation? I mean, I've seen the Municipal Act, and if I thought somebody was encroaching on my back yard, I would have a tough time going into the Municipal Act and ferreting out the appropriate sections of the act. Particularly if they were 213, and then you go to 316 and find this other area that your remedy is. . . . Does the idea of inserting this under 213 bring all of the sections dealing with conflict and reprimands. . . ? Does it all fall under the same general area in the act? I don't have the act in front of me, obviously.

D. Lidstone: That's a very good question. Under the 1996 revised statutes, the way that our recommendations would fit in. . . . Everything would be almost, with the exception of two sections, codified into one block. Our recommendation now would be, under the new revised statutes of 1996, that we do in fact include it all in one block, so we have one-stop shopping. Also, UBCM publishes for citizens these kinds of bulletins that provide access for the public to complicated legislation.

The last point I'd make is that I think that a lot of your questions, which I think are very, very important, might be easier to address, from our perspective, if we were able to finish our overview in the next ten minutes, because then you could see the broad-brush large picture, rather than focusing on some of the details which may not make as much sense if you don't see the broad picture.

The Chair: If we might just. . . . Katherine, did you have a question you wanted to ask first?

K. Whittred: Yes. I wanted to go back to the process, and particularly to **the first option, which was to go before councils**. I was curious as to the sort of thinking or philosophy behind that option. To me, it **appears to kind of fly in the face of how we normally think of this kind of process, in terms of the need to be transparent and independent. It almost seems to me that it's asking councils to be in the position of. . .the same area as, you know, naming their own salaries. I think that if there's any principle that's important in this kind of legislation, it is this perception of independence and the need to be independent.** I'm wondering how the public would perceive that. I feel the public would perceive that as not being independent, and I'm just wondering what your thinking was as you were going through this policy.

D. Lidstone: Considering that you have all the other options, such as going to the inspector of municipalities, holding an inquiry -- going the independent route of having someone who is removed from the municipality, an expert, someone who is conducting the procedure in such a way that they get all the facts, issues and law and then render a decision. . . . Those options are all still available. The one that you're talking about is simply one of a number, and it just happens to be one that may be a threshold approach to dealing with the matter.

If I could analogize it to a situation where you as members of the Legislature decide, for whatever reason, to pass **a motion of censure**. . . . It has happened, historically. It doesn't mean that it's legally binding on the member to whom it is directed. It doesn't mean that it has any legal effect such as disqualification or suspension or anything like that. It just **simply records for history the position of the elected body, noting that a municipality has, under the protocol of recognition that was executed by the province and the UBCM two years ago, been recognized as an order of government**, unlike private companies or societies, or the Columbia Basin Trust, or community health councils or regional health boards, or any of those other entities -- school boards -- that you may be dealing with in terms of conflict-of-interest legislation.

**Municipalities are an order of government**, and all we're talking about in regard to the council resolution is a motion that brings to public attention councils' opinion respecting the matter. There are really **only three things that can occur** as a result of that. One is **exoneration** at the political level: at the council meeting, on Shaw or Rogers cable TV, in the newspaper and in the local coffee shops. The second option is a determination by the council that there has been a contravention and **that the person should be disqualified**, in

which case the council member then has to consider whether he or she wishes to appeal to a court, and then the legal decision is made by the court at that stage. The third situation is just simply where there's this political effect of **the motion of censure**.

But if I may, given that there are some time constraints, I wonder if we could just finish our broad-brush overview, and then I think the questions will be easier for us.

J. Ranta: On that question, there seems to be some concern I'm sensing that perhaps the remedy of going to a council to have the council determine whether or not there is a conflict is somehow seen by this committee to be an inappropriate venue. Most of you are duly elected officials, and I don't think there's anybody in this room who is intentionally going to do something wrong. In a lot of cases the conflict arises out of lack of knowledge or inadvertence or something like that.

An issue that comes to mind is when I was a relatively newly elected mayor and a working person -- a bus driver driving a Greyhound bus around the time of the Coquihalla highway opening. Greyhound talked about moving their depot out of Cache Creek, which would have meant I would have had to commute to Kamloops to go to work. That was going to be devastating for our community, to have 60 jobs move out of the community. I thought, as the mayor, that in order to protect my community, we should be doing something; we should be trying to convince the company not to move all of their employees out of the community. But that was where I worked.

[11:00]

I didn't know that I was in conflict. Clearly I was, because there was a pecuniary interest: I would be able to save if I didn't have to drive back and forth to Kamloops. I inadvertently made a motion that we should write a letter to try to prevent this move out of the community. I didn't know that I was in conflict, but if the council had endorsed that -- they didn't; they said, "Oh, you're in conflict," and I said, "Gee, I'm sorry" -- and then a member of the community had come to the council and said, "Gee, your mayor was in conflict there. . . ." What more appropriate place to go than to the council to say: "Don't you think this was wrong? This is a conflict of interest." I think the council would agree, and I would stand corrected.

G. Bowbrick: Is this part of your presentation, or is this the next ten minutes? If it's part of the overview. . . . The reason I'm asking is because you have raised some issues I'd really like to jump into.

J. Ranta: Sure. Why don't I try to conclude my remarks so that Don will have sufficient time. There is the potential here that we could wind up requiring a major amendment to the conflict act in order to make it apply to local government. There could be a significant additional cost to the commissioner's office in order to provide the staff to appropriately manage the expanded mandate. We see it as an unnecessary and inappropriate intervention into the local order of government and would respectfully request that this committee make a recommendation to support the UBCM proposal, rather than -- and I certainly do appreciate Mr. Weisgerber's comments -- having one order of government trying to create an amendment to an act that is seen by us to be an inappropriate intervention into the local government field. Let's leave the conflict provisions in the Municipal Act, where they rightfully belong. I'll turn it over to Don.

D. Lidstone: Mr. Chairperson, we have circulated to each of you a folder that contains what form highlights of an outline. In the interest of time it may be more expeditious if I simply proceed on the basis of you looking at these hard copies rather than the overhead. It's at your wish.

The Chair: No, that's fine.

D. Lidstone: In the overview we're going to deal with the existing legislation so that you understand, in as simple terms as possible, where we are right now with the Municipal Act legislation and

what the common law is -- in other words, the case law -- that apply right now. Then I'll deal with the UBCM recommendations and why they have arisen out of the existing situation.

The approach of the Union of B.C. Municipalities in respect of this legislation is to try and ascertain what all the problems have been over the history of this legislation and then, rather than creating new problems with new legislation, to try and set up a codified scheme that prevents problems from arising, instead of allowing local officials and their councils and citizens to simply react to problems. It's a more proactive, preventative approach in policy-making.

Secondly, our approach is based on three years of work by the committee, and the committee members are listed on the front. They're from all over British Columbia: Mayor Ranta from Cache Creek, the mayor of Penticton, the former mayor of West Vancouver, a municipal manager, a clerk of a municipality and a lawyer, as well as two senior policy analysts from the UBCM.

The committee considered submissions from numerous affected interest groups and widely circulated the drafts to persons who might be affected, and considered case law that exists and trends that are emerging, as well as existing and proposed legislation from other jurisdictions, including Newfoundland, Nova Scotia, Ontario, Manitoba, Alberta and the Territories.

**In terms of the existing legislation, I'm just going to give you a quick overview**, because I'm sure that a lot of you will have come into contact with this in your local communities. The existing legislation seems to focus on members of council and their pecuniary and non-pecuniary interests. When I say "council members," please consider that to be a reference throughout this morning to directors of regional boards as well, because they are incorporated by reference in the legislation.

It deals with pecuniary and non-pecuniary interests, essentially. It says that if a member has such an interest, the member must disclose the general nature of that interest and not discuss or vote on the matter. A contravention of that rule results in disqualification from office through one of the processes that are set out in the act. One process that's been in the act since 1956 is disqualification by resolution of council -- of your peers, of your own elected council -- which is subject to a vote by resolution. And then, if you are so disqualified, you have a certain number of days to apply to court to appeal that. That's the process to which we alluded earlier.

The other process is that **four electors in the municipality may bring the matter before the Supreme Court and have the person disqualified**, if that's what the court finds.

**If the member considers that he or she has an interest in a matter, he or she has to disclose that, has to leave the room, can't participate in the vote, can't discuss the matter and cannot try to influence the council members in any way, shape or form. This has to be recorded in the minutes. It doesn't really say anything about what happens if you just happen to be away when the matter came up on the agenda. We think that there should be some disclosure in such cases as well.**

Under the existing legislation, there's also a provision which says that if you don't have enough people for a quorum as a result of conflict of interest, and they've all left the room, you have to go and apply to the Supreme Court for an order that these people can hear the matter anyway.

This legislation was enacted in 1992 in response to a couple of problems, which I'll get to in a minute. The experience of the municipalities with this new legislation has been difficult at best, and I'll go over the problems that we've been facing in a minute, when we get to the reasons for our proposed legislation.

I should mention that the School Act contains pecuniary and non-pecuniary provisions, as well. It was enacted in 1989, based on the Ontario school legislation. The Financial Disclosure Act, with

which all of you are intimately familiar, came in in 1974. It also applies to municipal elected officials as well as municipal employees. It requires written disclosure with respect to assets and liabilities, as you know.

There are also conflict-of-interest provisions found in the Company Act, the Society Act, certain statutes applicable to Crown corporations, the Columbia Basin Trust Act and other legislation that deals with health authorities and numerous other organizations. **By way of a footnote, I'll mention that all of the legislation I've discussed in relation to municipal and regional district officials also applies to the greater Vancouver regional district, the Vancouver city council and the parks board in Vancouver.**

The Chair: Why would you be pointing that out in particular?

D. Lidstone: Because all of our references so far and in the overheads relate to the Municipal Act, whereas the Municipal Act does not apply to Vancouver city or the parks board. The Vancouver Charter applies to those.

Before 1992 the legislation was even worse than it is now. It made no distinction whatsoever between requirements for qualification, disqualification or conflict of interest. It was based on a list of prohibitions, and over the years those prohibitions were mitigated by longer and longer lists of exceptions. So I would say that that legislation was very difficult for a layperson or even a lawyer to attempt to reconcile or use in the real world. There are a number of examples of disqualification listed in former section 82 -- for example, if you're an employee of a municipality, if you receive remuneration from a municipality, if you have a contract with the municipality, if you are a judge or a mentally disordered person -- those are in separate subsections, by the way -- if you have been convicted, are a bankrupt, are not a Canadian citizen. . . . And then it had long, long lists of exceptions, and as I say, it was difficult to interpret or construe.

There are also problems under the Charter of Rights and Freedoms with respect to a number of those provisions. So the province -- in contemplation of the Charter of Rights and Freedoms and the difficulty of applying that legislation and as a result of a decision of the B.C. Supreme Court in a case called *Harwood v. Surrey* -- decided to bring in the 1992 legislation, which in our view was brought in without a lot of public input, without a lot of consultation, without the opportunities that your subcommittee is affording. Therefore it was ill considered and ill advised and has a lot of problems which, hopefully, we are trying to address in our proposed recommendations.

In addition to the existing legislation in relation to pecuniary and non-pecuniary, there is this issue of the oath of office. **There are two oaths that I want to bring to your attention. One is: "I will not allow any private interest to influence my conduct in public matters." That is analogous to section 2(2) of the Members' Conflict of Interest Act, and that was the section that Mr. Hughes referred to in his reasons for judgment in the Robin Blencoe decision. The second part of the oath is: "I will disclose any direct or indirect pecuniary interest in a matter and will not participate in the discussion of the matter and will not vote in respect of the matter."**

**That's the overview of the existing legislation. You can see that it doesn't deal with an apparent conflict. It doesn't deal with what a reasonable person would consider to be a conflict of interest.** It doesn't explain whether the result is disqualification, suspension, censure or invalidity of the bylaw or the resolution. It's very complex, and it's all over the Municipal Act. It's very difficult to find all the pieces and put them all together.

I'll be even more brief in regard to the common law, and I only mention it because section 2 of the MLA conflict-of-interest legislation attempts to codify a lot of the common law. Of course, the common law still applies.

First of all, trusts. **All municipal conflict-of-interest legislation in**

**Canada, in my opinion, has derived from the law of trusts.** Any of you who have been an executor on a will or an administrator where there has been no will or have been in a situation where you've been a trustee, understand the rules relating to that responsibility. **Local government elected officials, in law, occupy the position of a trustee with respect to municipal property and municipal governments. An elected official is subject to strict rules regarding trustees under the common law.** A member cannot make a profit by reason of public office. **The member's personal or private interests and public duty must not conflict,** and the remedy, of course, is an accounting of the profit to the municipality at the instance of any person who has rights affected.

For example, if somebody feels that an individual has made a profit as a result of their position, the law of trusts could be brought to bear. The remedy there is that you have to go to court and you have to spend money on a lawyer and court fees. You may get some costs back, but at the end of the day the municipality is the recipient of the profit that the individual elected official made as a result of their office.

**Bias is a very important but, I would say, emerging and growing area. It's not a ground for disqualification from office, but it is a disqualification-of-vote issue. In other words, the impact of a contravention is that the resolution or bylaw validity could be affected.** Bias can affect the individual vote of a member or the whole decision of the council or board, depending on the circumstances.

[11:15]

**There are two kinds of bias** in municipal law generally. One deals with prejudice. That's a situation where a person attacks the bylaw or resolution, and they have to establish **that the elected official had a closed mind or had prejudged the matter such that the individual was no longer amenable to persuasion.** That's a decision of the Supreme Court of Canada in the Richmond case involving Terra Nova Farms, which you may recall from 1991. That is the leading case in Canada. It is now referred to in all bias-prejudgment cases in municipal law.

**The other kind of bias deals with personal or private interests where there's a reasonable apprehension of bias or a likelihood of bias. Personal interest does not necessarily have to be pecuniary; it can be non-pecuniary. It includes, for example, personal friendship, professional relationships, indebtedness or family relationship.**

There's also common law dealing with conflict of interests in the area of what's called private or personal interest. These terms are familiar to you, when you look at section 2(2) of your legislation where you have an apparent interest, where a reasonable person apprehends or ought to apprehend in the circumstances that there may be a private interest. **At common law, the result or the remedy or the effect is not disqualification or suspension or prosecution or anything like that; it is the negating of the individual's vote,** which may be important if there's a split vote -- for example, 5-4 or 4-3. Or it may result in the setting aside of the entire bylaw or resolution of the council. For example, if the matter is quasi-judicial in nature as opposed to legislative, **it does not result in disqualification from office or repayment from the pockets of the individual who is accused. It does, though, affect the bylaw or resolution that was voted on.** There are two kinds of common-law conflict of interest. One deals with pecuniary, and that law has been in since 1854 -- the Boss case. There is also private or personal interest, and that was referred to in a case called L'Abbé, which was a Supreme Court of Canada decision in 1904.

Private or personal interests are dealt with by the courts on this basis: **would a reasonable person consider it probable or likely that the official having the interest would favour one position over another position?** For example, if the mayor owns a tavern in a hotel and the council is considering a business licensing bylaw that deals with the licensing of pubs and taverns, that's a situation where a reasonable person would consider it probable or likely that the individual would have an interest in one position over another.

Even if they don't, the fact is that a reasonable person would anticipate or apprehend that they might. **Another example is where a council member is voting on an issue affecting a non-profit board in respect of which that member is also a member of that board -- a director of that non-profit association.**

The Chair: I wonder if I might just stop you at this point. This is obviously going to be way more than the ten minutes that we . . . and you've already given a fair bit of detail. Before you move on to the recommendations, I wonder if there are questions that any committee members have at this point.

F. Randall: I've just got some concerns. We talked about ten taxpayers wanting to initiate an issue over some conflict of an elected person. I am just concerned that the whole thing sounds to me as if people are going to need legal advice right from the outset. It's not a matter of them writing a letter for a conflict-of-interest commissioner to take a look at and see whether he or she determines that they want to proceed with it. It just seems to me that you're not going to get the average taxpayer knowing how to get into this without a lawyer leading them all the way. It's very legalistic, in my opinion.

The point made by Katherine with regard to council hearing the case. . . . We're in the process -- and I'm on a committee right now -- of hiring a provincial police commissioner to investigate police complaints, or at least to make sure that the process is being done properly. The concern that people have is that when there's a complaint about police, the police investigate themselves, so we're currently looking to hire a person. **This is almost where the elected council are investigating themselves,** the same as the police. So it seems to me that that's a pretty important point. **It seems to me that it's a waste of time for council to be dealing with one of their own members.**

I am inclined to agree with Jack's comments with regard to the UBCM. If they had their own conflict-of-interest commissioner and a proper structure, I wouldn't have a problem -- providing that it's a structure where there is much easier access and that you have an independent commissioner who has common sense and the authority to deal with these right from the outset.

It's very hard. When I was on Burnaby council I had a case where I was voting on a rezoning. I nearly voted on it. Just at the last minute I thought, "Jeez, I may still have some of that stock," and I got up and got out before the vote. I had about 25 stocks at that time, and I couldn't remember which ones I had -- and I did have some of that stock. As I say, I could very easily have voted on that -- not intentionally, but not realizing I still had some stock.

There are some situations -- not legal situations -- where I think a commissioner has to look at the particular case and use some common sense with regard to the thing, because none of us are perfect. **I don't think anybody is going to do a thing deliberately, because it's just too dangerous to do it deliberately.** So I agree with the comments about 1,200 politicians to deal with. I think maybe you should look at a structure that is much easier, where you even hire your own commissioner, etc.

I'm just concerned about the access problem and that you aren't going to be able to do it without a lawyer. It's the same thing as when a person is accused of anything. They're going to have to hire a lawyer, and I don't think that should be necessary. **I think the commissioner can hear both sides of that and make a determination without everybody having to hire lawyers. I have a lot of respect for lawyers, and I think there's a time and place for them. But when you're dealing with these kinds of issues, I think there should be a process that will allow the accused or the accusers to at least go through a process without having to hire a lawyer.**

The Chair: Fred, do you have a question?

F. Randall: No, I'm finished.

The Chair: People are obviously wanting to ask questions; I have four people who want to ask you questions. Because people have

read a lot of the material, know some of it and are wanting to get at it, I'm wondering if we could hold the questions and if you could just move to the end of this a little more rapidly, without quite as much detail. It's very obvious that people want to engage you, so if we could do that, it may be helpful.

**D. Lidstone:** Let's deal with the problems of the existing legislation and why these recommendations of the UBCM are proceeding. First of all, section 201, which is the section that governs all of us under the Municipal Act, is uncertain. It's vague; it's difficult for lawyers to construe, let alone the average citizen. There's a need to reconcile some of the case law. Some cases deal with fathers and sons or husbands and spouses or such in ways that are different from other cases. The reconciliation is very difficult for a layperson.

The legislation and the case law do not deal with contemporary issues such as same-sex spouses or other numerous human rights, discrimination or Charter issues that have emerged in the past 15 years or so. To deal with all of this, the proposed legislation will define the concepts, codify the common law, deal with contemporary issues, apply to all meetings -- not just council meetings or committees -- provide clear identification of procedures and process, identify commonsense exceptions and identify all conflict and disqualification provisions in one place, so you have one-stop shopping instead of looking through all 1,158 sections of the Municipal Act.

First of all, we need to clarify the meaning of bias. We want to say right at the top that after a lot of work, we decided not to codify this, not to put it in the statute. It's possible to try and do that, but what you end up doing is unreasonably infringing on the rights of citizens. I think it should be the prerogative of the courts to apply the doctrine of bias, especially since it's an emerging issue. However, when you're dealing with concerns about possible conflicts when council members sit on other boards and organizations such as non-governmental organizations, or government-organized non-governmental organizations, or non-profit associations or organizations, we feel that the law should be very simple and straightforward. And that is: you got to public office politically by being in these organizations. As long as you're not receiving remuneration from them, you should be able to sit on both and vote, just the same as you can sit, according to the court, on the West Vancouver council and vote on a GVRD matter even though you're elected or appointed to both.

When implications of activities with community groups arise, we feel the legislation should clarify that there is no pecuniary interest as long as the member is just a volunteer and not receiving some remuneration. And if you're appointed to other boards by virtue of legislation or a liaison appointment by your council, you should be able to sit on both organizations and vote on both.

There is a need to resolve concerns where a council member has an interest in common with other electors. Right now the legislation just says that you've got a pecuniary interest if you have, for example, a sewer line coming down the road and it's going to connect to your house. The exception is if you have an interest in common with all the other electors of the municipality. That's different from three other provinces in Canada, where it says "an interest in common with people in your area, sub-area, region, specified area, local improvement area, defined area. . . ." If you have wards, which a lot of people would like to have in places like Vancouver or Surrey or Nanaimo, then you're going to run into a problem if you don't take our approach in our legislation, which is an interest in common with the people of your particular area, rather than the whole municipality. You run into the anomaly of people being elected by a particular area, but they can't represent the people because of this, I think, mistake in the legislation.

The next area we deal with is guidance on potential conflicts involving family and business interests. As I say, the law is all over the place on that. The legislation is not clear; in fact, it's silent on the issue. So we, in this case, would define pecuniary. We would define what is an associate of a member and how a member could have an indirect interest through a family member, a person they

live with or any other associations that exist or could exist under the law -- as well as business relationships with companies or business partners or clients.

There are a lot of issues that affect small communities. You can see, I hope, as we get into some of the details, that there is no possible way that general MLA conflict-of-interest legislation could deal with all these esoteric and unique -- but important -- considerations for local governments. For example, you might have a mayor being the only person in town who can provide cement or a councillor who is the only person in town who has a gravel truck or a front-end loader -- or who can cut hair. These kinds of issues always come up in smaller communities, and even in some of the larger ones.

[11:30]

We have to have a better remedy for problems of forming a quorum. We had a recent situation where every single member of a council would have been disqualified because they were a member of a cooperative. We had another case where rezoning of a Jehovah's Witnesses facility was coming up, and one member lived across the street and declared a conflict. Another member said that he had religious problems with the issue and didn't feel, in conscience, that he could vote on it. Two others were members of Jehovah's Witnesses and had to leave the room. There was no quorum. So you have to deal with that kind of an issue on a local level.

We need to clarify under what conditions business and contracting can take place. The solution to that, in our view, is to say that there has to be an open process -- competitive. If a member of council is successful, they have to disclose their interest and leave the room and not participate in any way in the decision. The decision has to be made in public, and the council has to pass a resolution that it's the best of all possible worlds to enter into the agreement with this person, with all the public ramifications of that decision. You have to clarify situations involving single suppliers. You need to clarify the matter of awarding employment contracts to relatives or friends that are existing council members and to former council members. We have an awful lot of situations where former councillors end up coming back as municipal officers or entering into contracts with the municipalities.

As I mentioned, cooperatives and credit unions are special cases. Just because you're a member and receive a dividend of \$4 every three years doesn't mean you should be disqualified from office for voting on a rezoning for the cooperative or the credit union.

You have to deal with volunteers. An awful lot of elected officials, especially in the smaller communities in British Columbia, are volunteer firefighters or volunteer with the sports, parks or recreation programs. We have to deal with clarifying whether a person can run in a by-election if they're disqualified. And finally, we need to clarify how conflict situations may affect the validity of a resolution or a bylaw where one of these elected officials is involved in the decision.

The next area is guidance on related issues involving the public trust. Currently the act, surprisingly enough, does not deal with gifts or what happens about lobbying or getting contracts as soon as you're out of office or other issues of ethical behaviour such as lobbying, exerting undue influence or profiting from insider information. All of these are dealt with in the new legislation.

**Finally, there's nothing whatsoever in the legislation about what happens if you contravene your oath of office, which is rather disturbing.** So we've dealt with that, as well.

In a nutshell, that's the approach that we've taken. I hope you can see from that that the issues we have to deal with at the local council tables are quite different from the situation where you have a discrete, finite number of MLAs who each have an opportunity to have an interview with the commissioner and who are each subject to the MLA legislation in a way that is very different from

the kinds of issues that arise on a weekly basis at the council tables in small communities.

The Chair: Thank you. I appreciate your presentation very much. Obviously some of our members are from small communities and are quite aware of the problems. They were elected in those regions before they went into provincial politics.

K. Whittred: I have a couple of short questions. One deals with bias, **and I am a little bit puzzled why you would even want to include it in the legislation. It seems to me that the whole basis of municipal councils is bias -- of any council, for that matter. To give you an example, in North Vancouver district right now we have a council that has an anti-development bias. That is the basis on which they were elected. It seems to me to be unusual that you would include in legislation the possibility that somebody could take those council members to court for having a bias** and. . .

The Chair: Doing what they were elected to do.

K. Whittred: . . .doing what they were elected to do, regardless of whether you agree with it or not. So that's my first question that I want to address.

D. Lidstone: Can I address that very quickly? **We agree, and we have decided not to put it in the legislation.** That was our point. **The fact of the matter is that no matter who you are, if you're an elected official you have an open mind because you're a good elected official. But an open mind is not an empty mind. That being the case, we have decided to leave the bias law out of the legislation altogether and leave it to the courts.**

K. Whittred: Well, that was really my question. Why would you leave it to anybody? Why include it?

D. Lidstone: If I may, because there is a huge body of law dealing with the concept of disabling bias and bias that goes to the validity of a decision of an elected body or of a tribunal or even of committees or organizations. That law, which has come down over the centuries and which in Canada involves literally hundreds and hundreds of decisions of the courts in the municipal context, seems to come down to two issues. One is prejudice. In other words, has the elected official already made up their mind in relation to a matter that's coming before them, for example, in a zoning public hearing? The other is where you might have an allegation of private or personal interest in a matter, where you're going to vote on a matter even though it affects your client, your creditor, a person who is indebted to you or a personal friend. These are all issues that are dealt with in the courts in the area of bias.

We certainly concur with your view that anybody who comes to a municipal council chamber has political predispositions; otherwise, they probably wouldn't have been elected, and they wouldn't have much to bring to the table. But the legal concepts of disabling bias are finely honed, fairly complex and constantly changing, emerging and growing. Because they're the prerogative of the court, in our view, we've decided not to try and codify it into a simple nutshell in the legislation.

K. Whittred: Thank you. I have one other brief question. You state here: "Proposed legislation would state there is no pecuniary interest of a member who has interest in common with persons generally within the area or in common with persons generally within part of an area." I would like to hear your comment on that particular segment.

In municipal government -- as you are well aware, probably more than I -- the issues hit very close to home. To be specific, I have a neighbour who is a councillor on city council, and he regularly absents himself from any vote that has to do with traffic in the area, with environmental issues on the waterfront which is adjacent to the community, etc. I think, personally, that is not necessary. My question to you is. . . I cannot think of a single, solitary issue in a community, other than dogs barking, that does not have at least an indirect pecuniary interest. At that level, virtually every single issue ultimately affects property value. If you improve the street, if

you improve garbage collection, if you clean up the noise at the waterfront, if you put in a park. . . . It doesn't really matter what you do, you are affecting property value.

J. Ranta: And you share that interest in common with others, and that doesn't create a conflict.

K. Whittred: Yes, but is that not in contravention with what you say here, if there is no pecuniary interest? I know this is a nitpicky little detail, but that's why I'm asking it.

D. Lidstone: No, it's a very important point. What our proposed legislation tries to do is explain that, number one, a situation such as you are describing is something that is shared in common with other people in the community. It's not just that elected official who is getting the advantage of the road being paved two blocks away or the traffic signalization devices going in at the corner or the new sewage treatment plant being expanded or those kinds of things. It's an interest in common, so therefore it's an exception to the pecuniary rule. Secondly, there's the test of remoteness, which is discussed in our legislation as well.

G. Bowbrick: I have a comment and a couple of quick questions. This committee has been obsessed, and I think rightly so, with the issue of public confidence. That's what this kind of legislation is all about. What we are examining here, and the basis for our inquiries around municipalities, is that Ted Hughes recommended that local governments be covered by conflict of interest. I don't have the exact wording of his statement, but it was one of his recommendations, and I know that members of this committee have taken Mr. Hughes's recommendations very, very seriously. That is just by way of background to my first question.

This is very much a political question, and I'm interested in the response. What do the people want? What is it that will increase their confidence the most? This gets back to the specific point that has been raised by a number of members of this committee about the issue around whether a council should be deliberating on the conflict of interest of one of its own members. Objectively speaking, if you were to poll people, would they really say: "This is the process that will increase my confidence the most"? We can understand the point that Mr. Ranta made about how the vast majority of politicians at all levels are motivated by the right things, and they don't mean to get themselves in trouble. I believe that; I really do. But that ultimately doesn't address the issue of public confidence in terms of how things are perceived. It's about appearances. That's one question: what do you really believe the people want to happen here?

The second question is -- and this hasn't been really raised today to this point, to my surprise -- apparent conflict of interest. I'd like to hear about why the standard which provincial politicians must live up to shouldn't be applied at the local level. I want to emphasize that I recognize many of the things that have been raised about the differences in the two levels of government. Many important points have been made, and I'm touching upon these points because I'm in basic agreement with most of what you've said. But when it comes to apparent conflict of interest, what you're talking about is codifying the common law. When I read through what you sent out to us on December 9, one of the points made was that the reason the law should be this way is basically because it has always been this way, because the courts have made these rulings. As a lawyer and a legislator, I understand that we can pass laws to supplant common law anytime. That's an opportunity that's available to us now in this review: to make such a recommendation.

Having said that, recognizing the differences, the two issues are: what do the people want -- which is an inherently political question -- and what about apparent conflict of interest? Why should there be a different standard at the local level on that specific point?

J. Ranta: In my view, I think what the public wants is accountability from their local body. I think the public generally has considerable confidence in the accountability of the local elected body, because especially in small communities, we share the streets with the people that are going to be voting in the next

election. They know us personally, which is not the same situation that the 75 members of the Legislature face. The average member doesn't walk and share the same streets and meet their constituents on a daily basis.

G. Bowbrick: Do you think they're more likely to run into the mayor of Vancouver than their local MLA in New Westminster?

J. Ranta: Vancouver is a unique circumstance and in the minority as far as the size of municipalities in the province. There are 44 villages, all with limited populations that personally know their mayor and every elected councillor in their community. There are 150 communities, and you're choosing the example of the largest one. In my view, that is perhaps not a fair and reasonable comparison -- to choose the largest one. We could choose the smallest one.

[11:45]

G. Bowbrick: We could choose mid-sizes. You represent a small community, and that makes total sense; with a community of 1,200 people, you're bound to know them all. But what about a mid-sized community like Prince George, which would be about the same size. . . ? Well, take New Westminster. I believe that the people of New Westminster are just as likely to bump into me on the street as they are the mayor, because I represent only the city of New Westminster. It is one provincial seat. What's the difference? Should the people expect a different standard from their mayor than they do from their MLA?

The Chair: Can I just remind you to debate through the Chair.

J. Ranta: Your question was: what does the public want? Sure, I think the public wants accountability and all those sorts of things. It relates to your second question, which is: why not apparent conflict of interest? Apparent conflict of interest, in our view and after much discussion in the committee, is something that simply will not work in the majority of municipal situations, because of the size of the communities.

The elected officials in small communities tend to be respected individuals, and the respected individuals tend to be the business owners or the. . . You can look at any community. It's generally not the bus drivers that get elected; it's the business owners and the influential people. Somehow, through their business interests, they've become influential and gained a profile in the community in order to get elected. If you say, "You must avoid apparent conflict," in a small community like that, with an individual that has significant interest in the community in order to get elected, he's going to be prevented from effectively governing the community, because no matter what that individual tries to do, in somebody's mind there will be an apparent conflict. In our view, it simply will not work.

D. Lidstone: I think that we've come before you with the view that we want the UBCM recommendations, in the final analysis, to accede to the highest level that may exist in British Columbia law with respect to conflict of interest of publicly elected officials. To the extent that there is a perception that the access of the public and the process available to the public are not of the highest standard in comparison to the MLA legislation, then we will have failed, and we would embrace any recommendations you would have in that regard -- similarly with respect to actual or apparent conflict of interest.

So following up on those two issues and your two questions. . . First of all, what does the public want? The only reason for having the council resolution avenue available is to provide one of a number of opportunities for public access to decision-making in this regard. It is probably the one that the individual complainant would least likely use, but it is something that I think is necessary. In my experience, there are a lot of situations where no one is willing, for whatever reason, to come forward with a complaint respecting a member of council. So it is incumbent on that councillor's peers at the council table to bring the matter into the public eye and to consider the issues, facts and law, and pass a

resolution. It's a situation where another opportunity exists for society to deal with a conflict or potential conflict of interest; it's not the only avenue.

Since this report was prepared almost two and a half years ago, we have certainly come around -- particularly in light of some of your deliberations, which are available on the Internet -- to the view that we would add to our proposals, given that as municipalities we've been recently recognized as an order of government, a situation where the UBCM would establish, preferably under the legislation, a commissioner's office to deal with the 1,200-odd elected officials in the province. That commissioner would have a direct relationship with the public and be independent of the UBCM elected body and independent of the member municipalities. In that way, there would be a further additional avenue available to the public to ensure that the highest standards are acceded to and to ensure that propriety prevails.

So if you as an MLA in New Westminster, for example, are approached by a citizen concerned about a member of New Westminster council, you could say: "Come to my office, and let's have a meeting and talk about it during one of my constituency opportunities, and **then let's take it forward to the commissioner under the Municipal Act**" -- **which has a process and it doesn't cost the citizen anything. "Or if you don't like that, we can take it to the inspector of municipalities, or we can do both. Or we can take it to the ombudsman, as in the Port Moody case, or we can take it. . . . If you feel that the New Westminster council should be looking at this, they can do that, as well. Or you can just go right to court. If you are one of these people who just wants to get right to the Supreme Court of British Columbia as soon as possible, that is another option that is available."**

There are numerous avenues that are open to the citizen to ensure that the matters are addressed and that the law is applied. If you had an institutional commissioner through the UBCM officially established under the legislation, that person could be in a position to apply the esoteric laws and situations that relate to municipalities -- which are very different from those that relate to MLAs -- and also the special rules that we've had to deal with in all of the many things that I mentioned, for example. The metaphor is that if you are a local elected official you can't just quit your job, because you don't get paid enough as a councillor to leave your regular job. If you were a lawyer in New Westminster and you wanted to run for council in New Westminster, you'd most likely retain your relationship with the Law Society and the Canadian Bar Association and keep your office doors open as a lawyer, because the \$15,000-odd a year that you make as a councillor -- I think it's even less than that. . . .

G. Bowbrick: No, it's about \$20,000, and one-third of it is tax-free.

D. Lidstone: It would probably not be enough to allow you to close your office.

But in this case, for example, the mayor is a professional driver. Most of the mayors in British Columbia are meat-cutters, members of unions, foresters, gardeners -- you name it. They can't give up their jobs. So there have to be special rules to deal with local council situations. I think that's what the public wants, and we're prepared to recommend in our legislation -- in addition to all the avenues that are already there -- that there be an independent commissioner's office to deal with the numerous complaints.

The other thing is: what about apparent conflict? It's a very important issue, since we want to accede to at least the level of the MLA legislation. There are two ways of dealing with that. One is to specify in the legislation that members of councils and boards are subject not only to conflict of interest but also to apparent conflict, and to define what that means. We're in the process of reviewing that right now, and I would venture to say that we don't like the wording of section 2(2) of your act. We like the intent, but we don't like the wording.

I doubt if legislative counsel, who were responsible for signing off on that legislation, put a green sticker on it, because I think the

word "apparent" is uncertain. It is not a word that has been considered by the courts on a regular basis in the same way as some other words in conflict-of-interest law have. I notice in Mr. Hughes's decision in the Blencoe matter. . . . For example, he gave numerous concrete examples of what he thought would be apparent, but he didn't base it on any case law.

Secondly, the reasonable-person test applies, and for a layperson or any of us trying to consider what that means, you can't apply a reasonable-person test unless you go to what the courts have defined the reasonable-person test to be over the years, the same as in tort law.

Thirdly, it refers to private interests. Again, it doesn't define in the act what a private interest is. It says what it is not, but it doesn't say what it is. So again, you've got to go to the courts.

I think the point is that you have to leave it up to an independent individual commissioner in each case and trust that individual. Fortunately, we've had two of the best legal minds in the history of the province -- Ted Hughes and the existing commissioner -- at the MLA level. But to ensure that we have the same level of efficacy and trust from the perspective of the public with respect to municipal elected officials, I think that our legislation should define a little bit more what is meant by apparent, how the reasonable-person test would apply and what a private interest is instead of what it is not.

The Chair: Thank you. I find what you said very helpful now. Just a couple of questions from myself, and there are two other people who also want to ask some questions.

I am wondering, when we're talking about apparent conflict, whether there might be a community threshold number. I don't know whether you might have considered that. What I'm hearing, basically, is that when you're in Quesnel or very small places, it's much more difficult than in, say, Kamloops or Prince George. I mean, there are many mid-sized communities. I'm wondering if that might be a consideration. Is there a breaking point around numbers in a community?

J. Ranta: It's something that we didn't, frankly, consider. We were focused on preparing legislation that could nicely fit into the Municipal Act rather than amending another act. As such, we felt that it would be appropriate for the legislation that we're proposing to apply to all communities equally, in spite of the fact that one community -- Vancouver -- exists under different legislation. We didn't consider that possibility.

I think Don's point that "apparent" is not a phrase that's well understood or established by case law is an important point to consider. You can say the word apparent, but what does it really mean? Unless you have a definition in the legislation, it's not going to be beneficial.

D. Lidstone: I concur. I just want to add a quick point. In the Sinc Stevens case, the word "apparent" came out. I think that was the genesis of our section 2(2). We feel that the "apparent" approach should be applicable to all municipalities without discrimination.

If you go back to the common law, to which I adverted earlier -- the trust and bias and common-law conflict of interest -- the concepts that are analogous to apparent interest are found in much of that case law as well. So our hope is that we could somehow put that in the legislation in terms that would be accessible to ordinary citizens, in terms of not only substantive law but also the process.

The Chair: I am really heartened to hear you talk about a commissioner. You used the words "as a further means." My inquiry is around why it wouldn't be the first and most important, and then there could be further means after that -- to the courts or, if necessary, to the inspector of municipalities or whatever. I mean, this seems like a very important concept that I think would give a lot more confidence to the public. It would mean that an ordinary person would know where to go and could approach someone who's in that position. I'm still struggling -- and obviously others

are -- around this idea of going to the council. You've heard this come up over and over. I am also personally struggling with that, wondering why there is any necessity for that at all. Why not go to other means and do away with this whole business of politicians ruling and judging on other politicians? It seems to be the direction we've gone everywhere else -- to remove any apparent conflict. Yet you keep saying: "Yes, but it will just be one; it will only be one of a number." Particularly in light of this commissioner, I would think that it might be helpful just to do away with that -- especially, I would think. . . .

[12:00]

Now, I'm not from a small town; I'm in Vancouver-Burrard. But I think it would be even more so in a very small place, where if you think one of your friends or associates or whatever down the street is in conflict, it must be a hell of a thing to go to the council -- even more so in a small town than in Vancouver.

J. Ranta: Generally speaking, you can resolve any problem related to conflict right within your own community. Ultimately, the courts are the final judge. Even if the respected commissioner makes a ruling, that can always be challenged in the courts. So there needs to be a spectrum of potential avenues that a concerned citizen could apply to for satisfaction.

In our view, in the majority of cases it can be handled at home. You just bring it up at the council, and the council says: "Oh, that council member was wrong." So I think you want to keep in mind that probably in this body's mind, conflict is something much more serious and much more blatant if it gets to the consideration of conflict as it relates to an MLA or something. In a little town, generally speaking, we can handle it at home. Then you go to the inspector of municipalities and have these other avenues to approach. I think that in the majority of cases, the solution can be found within the community.

The Chair: Paul, you had a . . .

P. Nettleton: Yes. It's by way of a suggestion, which may or may not interest the subcommittee. As well, it may or may not interest representatives of UBCM. It's my sense that while this meeting has been productive and helpful in terms of an overview of some of the issues from the point of view of UBCM, some of the questions raised were important enough that it may very well be that it would be productive and useful, even from the point of view of UBCM in terms of further input, if members of the subcommittee in particular had an opportunity to digest some of the materials which were distributed here today, review Hansard and perhaps pursue some of these issues that have been raised in more detail. That's my sense. We are under very limited time constraints here in terms of an ability -- and my ability, certainly, as a member of the subcommittee -- to pursue some of these issues. So from my point of view, as I say, I would certainly welcome that opportunity.

J. Ranta: I would also like to extend an invitation to all or a group of this committee to attend an executive meeting of the UBCM or attend a meeting of the table officers or something, if you choose to pursue the discussion further.

I think we are all looking at our watches and trying to get out of here any time now. I do want to thank you very much for allowing us the time to make a presentation to you. I strongly feel that perhaps we're exploring the wrong road if we're trying to get MLAs' legislation to apply to local elected officials. We feel that the more appropriate approach is to have the conflict legislation contained in the Municipal Act, and we hope you'll take the time to review the documentation we've provided.

The Chair: I think we hear you loud and clear on that.

J. Ranta: Thank you.

J. Weisgerber: In response to Graeme's question about what people want, I think public opinion has suggested pretty consistently that taxpayers -- voters -- have the highest confidence



in municipal politicians; and the farther away from home they are, the less the confidence is. I think we've got to think about that in terms of what's appropriate for conflict-of-interest legislation in order to build that confidence.

I gather that this notion of a commissioner is an emerging thing with respect to the UBCM, and I would encourage you to explore that and maybe come back to us.

With respect to apparent conflicts, I think it's worthwhile noting that British Columbia is the only jurisdiction that has legislation that deals with apparent conflict. While there has been no experience here to suggest that it's negative, jurisdictions such as Ontario looked at it and said: "We think you're getting into an area that's fraught with potential difficulty." So from my perspective, I wouldn't want to feel that members went away feeling that everyone here believed municipalities had to deal with apparent conflicts.

I would further suggest that if Vancouver is the exception there is the potential, bringing this legislation in, to vary the Vancouver Charter versus the Municipal Act which applies to the rest of the municipalities, for whatever. . . .

The Chair: I think that's very helpful, Jack.

G. Bowbrick: Just a really quick comment. I just wanted to thank you for coming today. I think it's fair to say there will be a fair amount of discussion amongst the committee members. Jack and I may have a good discussion. But I do appreciate what you've presented to us. I know there are a lot of differences between the provincial and local levels, so I take those comments to heart. I want to say, as well, that I may be very aggressive at times in my questioning, and I don't mean any offence by it. I just consider it part of my job, and you've done very well.

J. Weisgerber: It's the new-found freedom by being relieved of the chair. He's been biting his tongue for a year now, and he's just purging himself. I'm sure that by next meeting. . . .

The Chair: I'm generally known as Mr. Nasty, and I've been Mr. Nice Guy ever since I. . . .

J. Weisgerber: Being the Chair is a great constraint.

D. Lidstone: I have one procedural question, if I may. We understand the constitutional setting of this committee and the subcommittee thereof. We're also faced with a conflict between your role, function and duty and that of the joint council, which was established by the Premier's Office and the Ministry of Municipal Affairs in conjunction with the UBCM. Under the protocol of recognition of municipalities as an order of government, there is a protocol pursuant to which the province is to consider all new legislation or policy that relates to municipalities at the joint council table before it goes forward as policy through to cabinet. Given that "conflict of interest," we're just wondering if we could get some direction from you with respect to these two avenues.

The Chair: The fact is that we actually are only going to be producing a report. We're not putting forward legislation. So there really is no conflict.

I would like to thank you for the presentation, on behalf of the whole committee, and I think that Paul's suggestion is an excellent one and that possibly the subcommittee will meet with you again after we've gone through. . . . You've given us a lot of material, and it's been very helpful. I know that I myself and others on the subcommittee will go over the Hansard records as well, because there was a lot that came out of our debate. If you don't mind, we'll give you a call and have you come back again in the not too distant future.

J. Ranta: That would be great. Thank you very much.

F. Randall: I'm just wondering if a copy of Hansard is being made

available to the delegation.

The Chair: Yes. It's on the Internet as well.

The committee continued in camera at 12:10 p.m.