

Subject: [Fwd: Formal Complaint - Mayor Bell Conflict of Interest]

Date: Tue, 26 Mar 2002 12:06:35 -0800

From: Brian Platts <brian_platts@telus.net>

To: Corrie Kost <kost@triumf.ca>

Subject: Formal Complaint - Mayor Bell Conflict of Interest

Date: Tue, 26 Mar 2002 10:27:24 -0800

From: "Dave Sadler" <davesadler@telus.net>

To: "Agnes Hilsen" <ahilsen@district.north-van.bc.ca>,
"Mayor and Council - DNV" <Council@district.north-van.bc.ca>

CC: "FONVCA" <fonvca@fonvca.org>

Dear Ms. Hilsen:

Formal Complaint - Mayor Bell Conflict of Interest

This official bulletin released by the BC Provincial Government indicates to me that Mayor Bell was in a conflict of interest regarding the speed humps on Riverside Drive. This contradicts the legal opinion of the District's lawyer. As such I must question whether the lawyer was made fully aware of the Mayor's statements on this subject and whether transcripts were so provided.

Furthermore, I believe any rationale person would also conclude that the Mayor was in conflict when he chaired a subcommittee which addressed his own expense account violations and then afterwards participated in Council debate on the subject.

Because of the gravity of this situation and as a taxpayer in the District, I would like an independent municipal lawyer to render an opinion as to whether the Mayor was in conflict in either of these two incidences.

Yours truly, Dave Sadler

Date: December, 2000

Bulletin Number: **A.9.0.0**

Conflict of Interest

Rationale:

This bulletin sets out procedural rules and some practical considerations for conflicts of interest.

Minor amendments were made in the *Local Government Statutes Amendment Act, 1999* (Bill 88) to clarify section 231 (*Council member declaration if not entitled to vote*) regarding a council member's participation in meetings dealing with matters in which the member may have a direct or indirect pecuniary interest. These amendments respond to the *Municipal Act* Reform principle of **accountability**.

Section 791(10) applies the rules to regional districts.

New Provisions:

- Section 231 now clearly states that if an elected person considers that he or she is not entitled to discuss or vote on a matter for any reason, including that the person has a direct or indirect pecuniary interest, then he or she must:
- declare this and state the general reason;

- not take part in the discussion or vote on the matter;
- leave the meeting; and,
- not attempt to influence the voting.
- The legislation continues the exemption that applies when: the pecuniary interest of the elected person is one in common to electors of the municipality; when matters of council remuneration are being discussed and voted on; or when the pecuniary interest is so remote or insignificant that it is not likely to influence the elected person.
- Section 231(9) allows a local government to apply for a court order that all or specified council members may discuss and vote on a matter where there would otherwise not be a quorum and adds a new provision that the order may be sought if the number of councillors entitled to vote is less than the number required to adopt a bylaw or resolution (i.e., where a 2/3 vote is required).
- The rules apply to **council members, regional board directors and alternates** in relation to:
 - council and board meetings;
 - meeting of committees referred to in section 235 (1) (b) (*standing, select and other council or board committees*); and,
 - meetings of bodies that are subject to section 242.7 (*application to other municipal or regional district bodies*) (i.e., board of variance, a local court of revision, advisory committees, etc).
- In circumstances where committees or other bodies are made up of members of the council or board and non-members, the rules apply to the elected members only.
- A table showing the applicable *Local Government Act* provisions and actions required by elected officials is attached as Appendix A.

Related Provisions:

- Section 214 provides a remedy for a council or board that considers one of its members is disqualified from holding office, including where a member violates the provisions set out in section 231. Council may adopt a resolution declaring that the office is vacant. Unless the councillor makes an application to the Supreme Court within six days of the resolution being adopted the seat becomes vacant.
- In addition, section 213 provides a process for application to the Supreme Court to declare that a council or board member is disqualified. Such an application must be made by at least four electors of the municipality.

Practical Considerations:

- Only the elected person who considers he or she may have a conflict of interest is able to make a declaration to that effect. If other council or board members believe a member to be in a conflict they are not in a position to make that declaration on their colleague's behalf.
- However, if an elected person votes on a matter that he or she is not entitled to vote on, the decision could be invalid. There is a risk that any bylaws voted on by someone in a conflict of interest could be invalid and be overturned. That would be of concern for the entire council or board.
- Perhaps the best way to reduce these risks is by being prepared for discussions of conflict of interest is a good idea. Local governments have a number of options in this regard, as follows:
 - the UBCM course for newly elected officials held after each local government election includes some training on conflict of interest;
 - local governments may want to provide additional training for their councils and boards;
 - local governments could develop policies to help them determine what procedures will be followed when a council member is unsure whether he or she is in conflict. Some things to consider including in the policy are: when a legal opinion is required; who should seek it; and who will pay for it; and,

- in addition to statutory requirements regarding conflict of interest, there is a significant body of common law that sets out standards governing the behaviour of local government officials. Your lawyer can give you advice on that body of law. The common law also helps to determine what is a direct or indirect pecuniary interest.
- Most of the obligations relating to conflict of interest rest with the elected official who believes he or she has a conflict, but the person presiding at the meeting is obliged to ensure that the person who has made the declaration is not present at the meeting where the matter in question is being discussed. To avoid any subsequent allegations, ensure that the person leaves the room in which the meeting is being held.

Transitional provisions:

None

Appendix A -- Conflict of Interest provisions and actions

Action	Local Government Act provision	Comments
	<ul style="list-style-type: none">• If a council member attending a meeting considers that he or she is not entitled to <p>(a) participate in the discussion of a matter, or</p> <p>(b) vote on a question in respect of a matter</p> <p>because the member has a direct or indirect pecuniary interest in the matter or for any other reason, the member must declare this and state the general nature of why the member considers this to be the case [section 231(2)].</p>	<ul style="list-style-type: none">• "Any other reason" could include things like "bias", or belief that the action is an illegal expenditure, etc.
No participation	<ul style="list-style-type: none">• Whether or not a declaration is made under subsection (2), if a council member has a direct or indirect pecuniary interest in a matter, the member must not <p>(a) participate in the discussion of the matter,</p> <p>(b) vote on a question in respect of the matter, or</p> <p>(c) attempt in any way, whether before, during or after the meeting, to influence the voting on any question in respect of the matter [section 231(5)];</p> <p>unless:</p>	<ul style="list-style-type: none">• In the case of a direct or direct pecuniary interest, these obligations apply even if a declaration has not been made under section 231(2).

(a) the pecuniary interest is in common with electors of the municipality generally

(b) the matter relates to remuneration or expenses of council members

(c) the interest is remote or insignificant and cannot reasonably be regarded as likely to influence the member [section 231(5)]

Withdraw

- after making the declaration, the member must immediately leave the meeting or that part of the meeting during which the matter is under consideration [section 231(3)(b)]
- Note that under section 230(2), a council member present at the meeting at the time of the vote who abstains from voting is deemed to have voted in the affirmative
- Note that it is not acceptable for a member to simply state they have a conflict and then remain in the meeting and refrain from voting.
- the person recording minutes must note the times of the member's departure from the meeting room, and if applicable, the time of the members return [section 231(a)]
- the presiding member at the meeting has an obligation to ensure that the member is not present in the meeting at the time of any vote on the matter [section 231(4)(b)]

No influence

- the member must not attempt in any way, whether before, during or after the meeting, to influence the voting on any question in respect of the matter [section 231(3)(c) and (5)(c)]

Local Government Act References:

Primary Sections: 231, 791(10)

Bill 14 Sections:

For Contact: see [Regional Responsibility by Branch list](#)

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