

**Subject: Hansard: Vol. 18, Number 14: Municipalities Enabling and Validating (No. 3) Amendment Act, 2003**

**Date:** Wed, 26 Nov 2003 00:26:16 +0000 (GMT)

**From:** Elizabeth James <cagebc@yahoo.com>

**To:** "The Hon. Ted Nebbeling" <ted.nebbeling.mla@leg.bc.ca>, "Dan Jarvis, MLA" <dan.jarvis.mla@leg.bc.ca>

**CC:** Federation of North Vancouver Community Associations <fonvca@fonvca.org>

25 November 2003

Hon. Ted Nebbeling, MLA  
PROVINCE OF BRITISH COLUMBIA  
Legislative Buildings,  
VICTORIA, B.C.

**WITHOUT PREJUDICE**

---

Sir:

It was noted with concern that, in a Parliamentary Channel replay of the afternoon Legislative Proceedings of 24 November 2003, you tabled enabling legislation concerning actions of the past Council of the District of North Vancouver.

Concerns arise out of the fact that your supporting rationale for the motion contained incorrect information, information which is fundamental to any discussion on the motion. Excerpts from Hansard Vol. 18, Number 14 are quoted below, with the incorrect information underlined for your information:

**MUNICIPALITIES ENABLING AND  
VALIDATING (No. 3) AMENDMENT ACT, 2003**

**Hon. T. Nebbeling presented a message from Her Honour the Lieutenant-Governor: a bill intituled[sic] Municipalities Enabling and Validating (No.3) Amendment Act, 2003.**

**Hon. T. Nebbeling:**

**I move the bill be introduced and read for the first time now.**

**Motion approved.**

**Hon. T. Nebbeling: Five years ago the district of North Vancouver and Canlan Investment Corp. reached a deal to build and operate a new arena. The agreement, however, contained a technical error that until recently wasn't discovered. The district has realized the error and has since corrected it. The district has now followed the right process, including involving the electors. The agreement now fully complies with the Local Government Act, and as a result, through this legislation we are providing legal certainty for the period before the procedural error was corrected.**

**I move that the Municipalities Enabling and Validating (No. 3) Amendment Act, 2003, be placed on the orders of the day for second reading at the next sitting of the House.**

**Bill 97 introduced, read a first time and ordered to be placed on orders of the day for second reading at the next sitting of the House after today.**

There are two points to be discussed:

1. **"Technical Error:"** We are aware that current District Counsel, Mr. Don Lidstone of Lidstone, Young Anderson characterized District actions in 1998 as a "technical breach" but, with respect, it is suggested that this is a mischaracterization. *In this regard, we refer you to a letter on this matter from John Hunter, P. Eng., addressed and faxed to Hon. George Abbott, Minister of Community, Aboriginal and Women's Services on 26 March 2003.*
2. **Timing:** Your comments - confirmed in Hansard - claim that the so-called error "...until recently wasn't discovered." It can be proven, unequivocally, that this is not the case. You have been misinformed and we are not sure how such incorrect information can have reached the floor of the Legislature without first having been challenged and corrected. To explain.....

As far back as 1998, at the time the Canlan agreement was being considered, Council was warned by District citizens that the proposed term of the agreement would be in contravention of the Municipal Act of the day. In fact, one of the citizens even supplied the appropriate reference to that Council. The warning was not heeded.

Next, on February 27 2003, Mayor Don Bell of the District of North Vancouver told a North Shore Outlook reporter that the agreement between the District and Canlan Investment Corporation, "was crafted on the understanding that the soon-to-be-in-place Local Government Act [LGA] would provide for what the municipality was doing." [Translation: change the wording of the Act and 'make things all better.']

Unfortunately for District taxpayers, however, and as the Mayor continued, "...the new Act only removed the need to hold a referendum and replaced it with the right for citizens to hold a counter-petition on the proposal..... We did what we thought would be the right intention and, if for some reason it did not fall in line with the [provincial] legislation, we would address it." How? citizens have asked.

Later, at a 10 March 2003 meeting of Council, the Mayor is also quoted: "As a member of the Council who voted for this agreement in 1998, I believe Council did so on the basis of written legal advice from the law firm, Bull, Housser & Tupper, that was acting for the District at that time and that the District had authority to enter into the agreement." This egregious claim, of course, flies directly in the face of the February 27/March 6th statements volunteered to the North Shore Outlook - statements the Mayor has never refuted.

### Summary:

- Mayor Bell - as well as two councillors who remain on Council today - were advised that the Canlan agreement, if passed as proposed, would be in contravention of the Municipal Act.
- The terms of the *Municipal Act* - carried forward into Section 338 of the current Local Government Act - purports to provide citizens with protection under Paragraphs (1) (2) and (3), to the extent that any member of Council can be held personally liable, be required to resign and be barred from holding office for a period of five (5) years thereafter. [Please see excerpt from LGA below]

It cannot be deduced, therefore, that the LGA takes such actions lightly. Nor, from voluntary statements by the Mayor, can it be claimed that this was an innocent breach of the Municipal Act which happened in any degree of ignorance of the requirements of that Act.

Further, with respect to your statement in the Legislature "**the District has now followed the right process.**" This only applies to the fact that the remaining term of the agreement has been subjected to the requirements of a counter-petition.

It is respectfully suggested that the enabling legislation tabled for first reading yesterday does not remedy the original breach - an illegal act committed in 1998. The penalties allowed under the LGA should still apply if any District citizen[s] wish to press the matter. Council walked into this by-law in full knowledge of the facts and 'with eyes wide open.' The fact that citizens of Seymour are enjoying the facilities offered by the Canlan Ice Arena, is beside the original point.

- **Reliance on the advice of legal counsel:** This is another very important issue raised by the Canlan affair. The Mayor stated that members of Council relied on a - taxpayer-funded - legal opinion from Bull, Housser & Tupper, to the effect that it was permissible for Council to anticipate the - as yet unknown - wording of a new Act of Legislation. Apart from the fact that the LGA might have died on the table, it is difficult to believe that such a legal firm would have risked offering such advice.

Questions to Bull, Housser were turned back with a suggestion that it would be more appropriate for the District - the body in breach - to provide the answers. We have not yet decided whether to pursue this further with either the District or with Bull, Housser. Suffice it to say that such a finger-pointing exercise is not helpful and it is unsatisfactory to many citizens.

In closing, it respectfully requested that you bring the inaccuracies contained in your Motion to the attention of the Legislature immediately - together with a request that further discussion be deferred so as to allow the wording to be corrected prior to any vote being taken.

Should you wish copies of any further documentation, please do not hesitate to contact the undersigned at the email address or telephone number indicated below.

Thank you, in advance, for your early response.

Yours truly,

Liz James  
[604] 988-2066  
cagebc@yahoo.com

**Liabilities for use of money contrary to Act**

**338 (1) A council member who votes for a bylaw or resolution authorizing the expenditure, investment or other use of money contrary to this Act is personally liable to the municipality for the amount.**

**(2) As an exception, subsection (1) does not apply if the council member relied on information provided by a municipal officer or employee and the officer or employee was guilty of dishonesty, gross negligence or malicious or wilful misconduct in relation to the provision of the information.**

**(3) In addition to any other penalty to which the person may be liable, a council member who is liable to the municipality under subsection (1) is disqualified from holding municipal office for 5 years from the date of the vote.**

---

Want to chat instantly with your online friends? [Get the FREE Yahoo! Messenger](#)