



UNION OF  
BRITISH  
COLUMBIA  
MUNICIPALITIES

# Rethinking Conflict of Interest Legislation for Local Governments in B.C.:

## *A Discussion Paper*

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### 1.0 INTRODUCTION

Further to recommendations from a Study Session at the 1994 Convention, at its November, 1994 meeting the UBCM Executive authorized the formation of a small committee to prepare recommendations on legislative changes to provide clarity and direction with respect to municipal conflict of interest. It was agreed that the province should be asked to amend the *Municipal Act* for 1996 (a local election year), and that UBCM should be proactive on this issue of great importance.

The committee that was formed consisted of representatives of different areas, municipal sizes, and interests, and included the following:

Mayor John Ranta, Cache Creek (representing the UBCM Executive)  
Mayor Murray Coell, Saanich  
Mayor Mark Sager, West Vancouver  
Mayor Jake Kimberley, Penticton  
Donna Kenny, Manager, Legislative Services, Surrey  
Doug Allan, Municipal Manager, West Vancouver  
Donald Lidstone, Partner, Lidstone, Young, Anderson  
*Staff Support:*  
Frank Storey, Research Officer, UBCM  
Harriet Permut, Senior Policy Analyst, UBCM

On February 28th, 1995 the committee met, identified the concerns discussed below under the heading "Problems" and produced a draft of new legislation to address these concerns. The committee and the UBCM Executive have commented on and revised this document twice, culminating in the draft legislation dated September 22, 1995 which forms the Appendix to this paper.

It should be noted that this draft legislation is intended to be an amendment to section 225 of the existing *Municipal Act* and so it refers only to municipalities and not regional districts (although it would be applicable to regional districts under section 781(10) of the *Municipal Act*). As well, as in the case of the existing *Municipal Act*, the draft legislation is not gender neutral.

### 2.0 PROBLEMS WITH EXISTING LEGISLATION

The Committee concluded on February 28, 1995 that section 225 of the *Municipal Act*, which replaced the old sections 82 and 83 in 1993, is inadequate and ineffective. The reasons for the Committee's conclusion are discussed in detail below.

#### 2.1 *Difficulty determining when a conflict of interest exists*

It is not generally possible for an elected official or an elector in any particular case to determine whether there is a conflict of interest since section 225 is so vaguely worded and it is necessary to read numerous decisions of the courts in British Columbia and other jurisdictions before making a determination.

*What the proposed legislation will do:*

- it will provide definitions of significant concepts;
- it will codify the common law with respect to the definition of pecuniary conflict of interest;
- it will provide clear advice as to when a conflict exists and what procedures are to be undertaken to deal with the situation, which would include both oral and written disclosures of pecuniary interest; such disclosures would also have to be made following a meeting in which an item was discussed where the member had a pecuniary interest, even if the member was absent from the meeting;
- it will clearly list the common sense circumstances under which no pecuniary conflict exists and when members may participate in a vote without disclosure and without leaving the room;
- it will eliminate the concern of some elected officials that they might make a declaration of conflict inadvertently and then be unable to cast a vote; disqualification would only occur when there is an actual pecuniary interest in the matter being voted on;
- it will pull together important sections from different parts of the Act so they appear in a comprehensive format.

## **2.2 Need to clarify the meaning of “bias” in legislation**

Elected officials and electors in general do not understand the concept of “bias”, given that there may be “perceived”, “apparent”, and “apprehended” bias and that bias may be based on personal interest or prejudice.

*What the proposed legislation will do:*

- it will clarify that personal interest is only significant when there is direct or indirect pecuniary interest involved; where there is a pecuniary interest, the existing provisions for disclosure will continue.
- it will clarify that if a member has a closed mind (i.e., “prejudgment”) during a hearing (the types are listed specifically), then a vote by the member does not count and the decision may be set aside only if the member’s vote was needed for the decision to pass; this will apply to resolutions, bylaws, or orders passed by the council or board.

## **2.3 Need to resolve potential conflicts when council members are appointed to sit on other boards**

The existing legislation fails to allow elected local government officials to sit on the boards of societies or municipal corporations on behalf of the local government councils or boards.

*What the proposed legislation will do:*

- it will clearly state that there is no pecuniary interest on the part of a member who sits on another board by virtue of office or because of a council appointment.

#### ***2.4 Need to clarify that the MLAs' conflict of interest legislation does not apply to local government elected officials***

There is general confusion as to the distinction between the legislation governing provincial MLAs and legislation governing local government elected officials.

*What the proposed legislation will do:*

- it will be clear that the only rules of conflict of interest that apply to local government officials are those that are contained in the *Municipal Act* and in the federal Criminal Code (e.g., breach of trust, municipal corruption, selling or purchasing office);
- it will **not** contain any reference to "apparent conflict of interest", which is a term only used in the MLAs' legislation. This is not a term used by the courts.

#### ***2.5 Need guidance on potential conflicts involving family interests***

The implications of family pecuniary interests are not clear.

*What the proposed legislation will do:*

- it will clarify which family relationships can produce a conflict of interest; the circumstances that would produce a conflict; and the level of knowledge necessary on the part of the member to result in a conflict;
- it will enable a member to state an interest as his/her own, even if the interest is that of a spouse or child.

#### ***2.6 Need clarification on situations involving single suppliers***

The existing legislation does not deal with small communities where a member of a council or board may be the only service or materials provider.

*What the proposed legislation will do:*

- it will clarify that a member is not disqualified for having a pecuniary interest in a matter voted on; disqualification would only occur where the member fails to make full disclosure or where the member influences or participates in the voting or debate.

#### ***2.7 Need to clarify how conflict situations may affect bylaw validity***

The Act does not clearly deal with the effect of a conflict on the validity of a bylaw or resolution where an elected official is biased or where the person having the conflict had the casting vote.

*What the proposed legislation will do:*

- it will clearly spell out the "saving proceedings" – the circumstances under which a bylaw, resolution, order, contract or other proceeding may not be declared invalid, including the issues of pecuniary interest and bias (which are not currently dealt with under s. 312.1 of the *Municipal Act*); see also the second bullet point under 2.2.

#### ***2.8 Need to consider special problems of small communities***

There are not enough exemptions in the existing legislation to deal with the realities of smaller communities in British Columbia.

*What the proposed legislation will do:*

- it will consider the case of single service providers; the problems of having enough members who do not have a conflict to form a quorum; the problem of being a member of a credit union or co-operative; the problem of serving on other boards or societies (unpaid); having an interest in common with other electors in a specified area or other sub-district; having an interest in exempt farm land; and serving as a volunteer who is not an officer or employee.

### **2.9 *Need to provide better remedy for problems of forming a quorum***

Councils and boards do not like the requirement under section 225 that they must obtain an order of the court before allowing a vote to proceed where there are not enough elected officials without a conflict to form a quorum.

*What the proposed legislation will do:*

- it will specifically allow members to discuss and vote on a matter, even if there normally would not have been enough members without a pecuniary interest to have formed a quorum;
- it will eliminate the necessity of seeking the sanction of the Supreme Court, a current provision which is nearly impossible to make any practical use of, and still continue to conduct any business in the municipality.

### **2.10 *Need to clarify members' relationships with co-operatives and credit unions***

Existing legislation seems to prevent members of co-operatives or credit unions from voting on matters affecting those co-operatives or credit unions.

*What the proposed legislation will do:*

- it will specifically state that there is no pecuniary interest for a member who is a member, not an officer or director, of a credit union or co-operative; this is a situation typical in smaller communities where the only financial institution in the community may be a credit union, and the members of council are prohibited from becoming members because the municipality does business with the credit union.

### **2.11 Need to clarify when disqualification will take place**

Elected officials are sometimes surprised to learn when they are subject to disqualification, given the numerous but “hard to find” provisions in the *Municipal Act* that disqualify elected officials from office.

*What the proposed legislation will do:*

- it will provide clear guidance as to all the circumstances under which disqualification may take place;
- it will provide that a person who is disqualified is entitled to be nominated and elected in the by-election to fill the vacancy created by the disqualification, so long as they file a written disclosure of interest;
- it will change the current provision in the *Municipal Act* (section 213.1) which enables 4 electors to apply to the Supreme Court to disqualify a member; the proposal is to make the requirement 10 electors, which should somewhat discourage frivolous and malicious actions.

### **2.12 Need to provide guidance on related issues involving public trust**

There is currently no guidance for elected officials in the *Municipal Act* with respect to issues involving specific types of conduct which have been attracting increasing public attention and concern over abuse of office. There is a need to reassure the public and reinforce that elected officials recognize their positions of trust.

*What the proposed legislation will do:*

- it will provide clear guidance with respect to the acceptance of gifts;
- it will address the relationship between a local government and a former elected official in the 12 month period after leaving office, in terms of the awarding of contracts and benefits and in terms of lobbying;
- it will address concerns about elected officials abusing their office by exerting undue influence and profiting from insider information.

## **3.0 ANALYSIS OF DRAFT LEGISLATION**

### **3.1 Disqualification from office**

Proposed section 225.11 of the appended draft legislation codifies the circumstances in which a council or board member may be disqualified from holding office. Section 225.11 provides that a member may only be disqualified according to the procedures set out in section 225.12 or section 225.13 (where ten electors petition the court or where council resolves to disqualify). Both procedures give the subject member an opportunity to defend himself or herself in court. Although these two procedures are not new, section 225.11 provides that a member may only be disqualified “strictly according to” these two procedures so that no other mechanism would result in disqualification.

What is also new is the clarification that a member may only be disqualified for the reasons set out: in section 66(2) [persons who do not qualify to be nominated, elected or hold office]; section 91 [failure to file disclosure statement]; section 212 [failure to make oath or attend meetings]; section 347 [voting for bylaw or signing obligation in violation of “borrowing” provisions of Act]; section 361 [voting for bylaw or resolution authorizing expenditure contrary to borrowing bylaw]; section 384 [voting for use or investment of money contrary to Act]; section 393 [party to illegal expenditure]; or proposed section 225.7 [undue influence or insider information]; or section 225.8 [failure to disclose

pecuniary interest in matter]. This consolidation provides “one stop shopping” for elected officials or others who want to know whether disqualification applies.

### 3.2 *Bias*

The courts have identified actual bias, likelihood of bias, and apprehension of bias. The distinctions among these classes of bias have been blurred by the courts such that the rules are not clear to elected officials or the public.

A second concern with respect to the decisions of the courts relating to bias is that there is a distinction between partiality by reason of personal interest on the one hand and partiality by reason of prejudgment on the other hand.

A third problem is that it is difficult to predict what a court will do with a bylaw or resolution passed with the vote of a council or board member who exhibited partiality by way of personal interest or prejudgment. The courts have said that if the type of decision made is at one end of the scale (legislative), the tainted vote will only affect the bylaw or resolution in certain cases where the vote was necessary to form the majority. Where the decision was at the other end of the scale (affecting less than several persons or parcels), there is a possibility that the tainted vote will poison the entire decision.

The uncertainty relating to this area of the law is amplified by the fact that there is technically no deadline for setting aside a bylaw or resolution under the statutes.

Section 225.10 attempts to deal with these four sets of problems by taking the approach set out below.

1. Instead of attempting to codify the common law relating to the different kinds of bias, proposed section 225.10 proceeds without reference to bias at all (except in the heading).
2. Partiality by reason of personal interest is dealt with by proceeding on the basis that if there is no direct or indirect pecuniary interest in the matter that is the subject of the vote, there are no consequences for the member or the decision. If, however, there is a pecuniary interest, there must be disclosure under section 225.8 and failure to disclose could result in disqualification of the member.
3. Partiality by reason of prejudgment is dealt with on the basis of the decisions of the courts. That is, where a council or board member is involved in a hearing (the various classes of which are codified in proposed section 225.10), and if he or she had a closed mind during the hearing such that he or she was not amenable to any persuasion by the submissions, then a vote cast by the member does not count and the decision is only invalid and may be set aside only if the member’s vote was necessary for it to pass.
4. Under proposed section 225.14 (and section 225.10(d)), a resolution, bylaw or order passed by the council or board is only invalid and may be set aside only if the vote of the member who had a closed mind was necessary for the vote to pass.

There is no reference in the proposed legislation to “apparent conflict of interest” which is referred to in the Conflict of Interest legislation that governs provincial MLAs. This term has been confusing for local government elected officials, particularly as it has been applied to the conduct of provincial elected officials by the Conflict of Interest Commissioner. The term has also been difficult for lawyers to deal with because “apparent conflict of interest” is not a term used by the courts.

### 3.3 *Pecuniary conflict of interest*

Under the decisions of the courts, there is a common law conflict of interest where an elected official has a pecuniary interest distinct from that which he or she as a municipal subject has in common with

other municipal subjects and the pecuniary interest derives from the participation of the elected official in debating the issue prior to the vote, influencing other elected officials prior to the vote, or in fact voting on the bylaw or resolution in respect of which there is a private interest that can be measured pecuniarily. A definition of the term “pecuniary” will now be provided in the Act.

There are serious consequences to having a common law conflict of interest:

1. an injunction to prevent an official from voting;
2. the bylaw or resolution could be set aside.

The problems with common law conflict of interest are that it is somewhat unpredictable (given that a decision may or may not be set aside if the official’s vote was necessary to form the majority or in some cases where the interest of the official taints the entire decision) and conflicts can arise in decisions affecting the interests of other boards or councils on which the elected officials serve or community organizations in which the officials are directors or officers. This latter concern would prevent, for example, a councillor from voting on a matter affecting a community organization in respect of which he or she is a director.

The concerns with respect to common law conflict of interest, since they do not affect the qualifications of an elected official but do affect the validity of the decision are dealt with in proposed section 225.14 (b)(i) which provides that a decision may not be set aside on the basis that a person voting as a member of the board or council had an interest in the matter. Further, section 225.9(g) and (h) provides that there is no pecuniary interest and therefore no potential for disqualification of the member in any matter that a member may have as a member or office holder of any body when it is required by law or by virtue of office or results from an appointment by council or board or as a director or senior officer of a corporation incorporated by or for the municipality or regional district.

The scheme of the pecuniary conflict of interest provisions in proposed section 225.6 to section 225.9 is as follows:

1. a member is not disqualified for having a pecuniary interest in a matter voted on – the disqualification only occurs where the member has a pecuniary interest and either fails to make full disclosure or after making full disclosure somehow influences or participates in the voting or debate;
2. there is a list of exemptions or exclusions based on the common sense realities of communities in British Columbia to allow the member to participate or vote without disclosure if the pecuniary interest falls within the list of exemptions or exclusions;
3. there is an attempt to codify the common law with respect to the definition of pecuniary interest; and
4. for the purposes of the definitions of pecuniary interest, the exclusions and the disclosure and non-participation rules, certain words and terms are defined.

Proposed section 225.8 deals with the only circumstances where “conflict of interest” law will result in disqualification from office. This is because of proposed section 225.11, discussed above, which provides that a council or board member may only be disqualified for the reasons set out in section 225.8 (in relation to conflict of interest). Section 225.8(6) is the key provision: a person who contravenes the section is disqualified from holding office, unless the contravention was through inadvertence or by reason of an error in judgment made in good faith.

The member must not contravene the following rules:

1. the member must not have a pecuniary interest (defined in proposed section 225.6); and
2. the member must disclose the interest, orally and then in writing; and

3. the member must not take part in the discussion of or vote on any question in respect of the matter or attempt to influence any person or the council or board in respect of the matter; and
4. the member must leave the meeting and remain absent until the matter is no longer under consideration.

The new aspects of the proposed section 225.8 that are not reflected in the existing legislation are:

1. the member is only disqualified if there is in law a pecuniary interest and the member breaches any of the rules set out in section 225.8;
2. even if the interest is that of a spouse or child, the disclosure does not have to refer to the spouse or the child but may state the interest as being that of the member;
3. the person disqualified is entitled to be nominated and elected in the by-election to fill the vacancy created by the disqualification; and
4. if as a result of persons leaving the meeting there is no quorum, there is no need to go to the Supreme Court of British Columbia for an order to allow the vote to proceed – proposed section 225.8 simply provides that the members who would not otherwise be entitled to attend the meeting or vote may discuss and vote on the matter if as a result of the section there is no quorum.

Proposed section 225.6 defines pecuniary interest. This definition, or attempt to codify the law, is not found in the existing section 225. As well, the existing legislation does not define a number of ambiguous or important words or terms whereas there are definitions in proposed section 225.

Section 225.9 sets out the list of exemptions or exclusions from pecuniary interest that enable members in the prescribed circumstances to participate or vote without disclosure and without leaving the room. Some of the exclusions or exemptions will be familiar to British Columbians from the repealed section 83 of the *Municipal Act*. Others are based on suggestions of the Conflict of Interest Review Committee or on the Manitoba, Nova Scotia and Ontario legislation. Some of the more useful exclusions include the situation where the member has an interest in common with persons generally within the area or part of the area (which does not apply under the existing section 225), where the member is a user of any public utility service under similar conditions as other users, where the person is on a community body board by virtue of office or an appointment of the local government, where the person is a member but not an officer or director of a credit union or co-operative, and where the member is merely a volunteer (but not an officer or an employee).

### 3.4 *New issues*

The draft legislation addresses four issues not dealt with in other provincial local government legislation. Section 225.2 prohibits elected officials from accepting gifts connected with the performance of their duties. There is an exception for gifts that are protocol incidents. Section 225.3 prohibits local governments from conferring a benefit on or awarding a contract to a former elected official within 12 months of leaving office. Section 225.4 prohibits lobbying or receiving benefits or contracts within the 12 months. Section 225.7 prohibits influence peddling or abuse of insider information.

## 4.0 CONCLUSION

The draft legislation would be the most comprehensive and onerous local government conflict of interest legislation in Canada. At the same time, it is intended to provide people with an easy to understand, complete code to govern elected officials' conduct. It is also specifically written with

British Columbia local governments in mind, and covers concerns pertinent to communities of all sizes.

## 5.0 RECOMMENDATION

*That UBCM endorse the positions taken in this discussion paper with respect to local government conflict of interest and that the paper and the appended proposed new legislation be submitted to the provincial government with the request that the proposed amendments to the Municipal Act be made during the 1996 Legislative Session.*

## CONFLICT OF INTEREST

### Voting

225. (1) If the votes of the members present at the meeting at the time of the vote are equal for and against a question, the question shall be negatived and the presiding member shall so declare.
- (2) A member present at the meeting at the time of the vote, including the presiding member, who abstains from voting shall be deemed to have voted in the affirmative.

### Interpretation

- 225.1 (1) In this section and sections 225.2 to 225.14

"child" means a person under 18 years of age born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her own family;

"committee" means a group of persons established by a council to make recommendations to or advise the council which group is comprised of members from one or more councils;

"corporation" means an incorporated association, company, society, municipality or other incorporated body where and however incorporated, and includes a corporation sole other than Her Majesty or the Lieutenant Governor;

"meeting" includes a regular, special or other meeting of a council, or a meeting of a committee;

"member" means a person holding office and sitting on a council or a person sitting on any body referred to in subsection (2);

"Minister" means the Minister of Municipal Affairs;

"pecuniary interest" means

- (a) an interest consisting of money, exacted in money, relating to money or of which money is the object;
- (b) an interest capable of being measured in terms of financial value, cost, benefit, advantage or disadvantage; or
- (c) an interest affecting, or having the potential to affect, a person's financial position or worth, or a person's assets or the value of the assets;

"senior officer" means the chair or vice-chair of a board of directors, the president, vice-president, secretary, treasurer or general manager of a corporation or any other person who performs functions for the corporation similar to those normally performed by a person occupying an office of the corporation.

- (2) Sections 225 to 225.2 and 225.6 to 225.14 apply to a meeting of a council, to a committee of a council, a commission or board appointed in whole or in part by a council or a company incorporated by a council or in which the municipality holds more than 50% of the voting shares.

### Gifts

- 225.2 (1) A member must not accept a gift except compensation or remuneration authorized by an enactment, that is connected with the performance of the member's duties of office.
- (2) Subsection (1) does not apply to
- (a) a gift having a value of less than \$500.00 that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office;
  - (b) a contribution authorized under this Act to be made to a person who is a candidate for election under this Act; or
  - (c) compensation authorized by law.

### **Benefits**

- 225.3 (1) A council must not knowingly award a contract or grant a benefit to
- (a) a former mayor or councillor until at least 12 months after the mayor or councillor ceased to hold office;
  - (b) a former mayor or councillor who has made submissions respecting the contract or benefit during the 12 months after he ceased to hold office; or
  - (c) a person on whose behalf a former mayor or councillor has made representations respecting the contract or benefit during the 12 months after he ceased to hold office.
- (2) Subsection (1) does not apply
- (a) where there is no other inhabitant other than the former mayor or councillor of a municipality capable of providing specific goods or service and where the former mayor or councillor contracts with the approval of two-thirds of the members of council to provide the specific goods or service to the municipality; or
  - (b) where the former mayor or councillor is employed by the municipality.

### **Lobbying**

- 225.4 (1) A former mayor or councillor must not
- (a) accept a contract or benefit from the council;
  - (b) make representations on his behalf with respect to a contract or benefit; or
  - (c) make representations on behalf of another person with respect to a contract or benefit,
- unless 12 months have expired from the date he ceased to hold office.
- (2) Subsection (1) does not apply
- (a) where there is no other inhabitant other than the former mayor or councillor of a municipality capable of providing specific goods or service and where the former mayor or councillor contracts with the approval of two-thirds of the members of council to provide the specific goods or service to the municipality; or

- (b) where the former mayor or councillor is employed by the municipality.

### **Repayment**

- 225.5 (1) A person who contravenes section 225.3 or 225.4 must
- (a) pay the value of or return the contract or benefit to the municipality; and
  - (b) compensate the municipality for any damages arising from the contravention.
- (2) The liability of a person under subsection (1) is a debt recoverable by the municipality by action in a court of competent jurisdiction.

### **Pecuniary interest**

- 225.6 For the purposes of sections 225.7 and 225.8, a member is be deemed to have a pecuniary interest in a matter in which a body of which he is a member is concerned, if
- (a) the member
    - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
    - (ii) has a controlling interest in, or is a director or senior officer of, a corporation that offers its securities to the public,
    - (iii) is a partner or agent of a person, or
    - (iv) is a member of another body,that has a pecuniary interest in the matter;
  - (b) the member or the member's spouse or child is an employee of a person or another body and the member knows that the person or other body has a pecuniary interest in the matter;
  - (c) the member knows that the member's spouse or child has a direct or indirect pecuniary interest in the matter; or
  - (d) the member knows that the member's spouse or child
    - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
    - (ii) has a controlling interest in, or is a director or senior officer of, a corporation that offers its securities to the public,
    - (iii) is a partner or agent of a person,
    - (iv) is a member of another body,that has a pecuniary interest in the matter.

### **Influence and insider information**

- 225.7 (1) A member must not use the member's office to seek to influence a decision to be made by another person, to further the member's pecuniary interest.

- (2) A member must not use information that is gained in the execution of the member's office, and is not available to the general public, to further the member's pecuniary interest.
- (3) A member who contravenes subsection (1) or (2) is disqualified from holding office, unless the contravention was through inadvertence or by reason of an error in judgment made in good faith.

## Disclosure

- 225.8 (1) A member who has a pecuniary interest in any matter and is present at a meeting at which the matter is the subject of consideration
- (a) shall, before any consideration of the matter at the meeting, orally disclose the interest and its general nature;
  - (b) shall not, at any time, take part in the discussion of, or vote on, any question in respect of the matter;
  - (c) shall immediately leave the meeting and remain absent from it until the matter is no longer under consideration;
  - (d) shall not, at any time, attempt, either on his own behalf or while acting for, by or through another person, to influence the voting on any such matter or influence employees of or persons interested in a contract with the council in respect of the matter; and
  - (e) shall, as soon as possible after the meeting, complete and file with the clerk of the municipality a written disclosure, in the prescribed form, setting out the interest and its general nature.
- (2) If a member is absent from a meeting in which he has a pecuniary interest in a matter being considered, paragraph (1)(c) applies to that member and he shall
- (a) disclose the interest in the manner described in paragraph (1)(a) at the next meeting of the council that the member attends;
  - (b) in the case of a committee meeting, disclose the interest in the manner described in paragraph (1)(a) at the next meeting of the committee that the member attends; and
  - (c) file a written disclosure in the manner prescribed in paragraph (1)(e) within 30 days of the next meeting that the member attends.
- (3) Where a disclosure omits reference to a member's spouse or child, the interest shall be stated as being that of the member.
- (4) If a member of a committee is required to file a written disclosure under this section, the member shall file it in the manner described in paragraph (1)(e) with the clerk of the municipality.
- (5) A member who contravenes this section is disqualified from holding office, unless the contravention was through inadvertence or by reason of an error in judgment made in good faith.
- (6) If otherwise qualified, and if the member has complied with paragraph 1(e), a member disqualified under subsection (5) is qualified to be nominated and elected in the by-

election to fill the vacancy created by this disqualification and, if elected, is qualified to hold the office.

- (7) If as a result of this section there is no quorum for a meeting, the members who would otherwise not be entitled to attend the meeting or vote are deemed to constitute a quorum and may, despite subsections (1) to (5), discuss and vote on the matter.

### Exceptions

225.9 Section 225.3 does not apply to a pecuniary interest in any matter that a member or the member's spouse or child, as applicable, may have

- (a) as a user of any public utility service supplied to the member by the municipality under similar conditions as other users;
- (b) as a recipient of any service or commodity or any subsidy, loan or other benefit offered by the municipality on terms common to other persons;
- (c) as an owner of a debenture or other security of or issued by the municipality;
- (d) as a depositor of money with the municipality if the whole or part of the deposit is or may be returnable to the member in like manner as a deposit is or may be returnable to other persons under similar conditions;
- (e) in any property affected by a drainage, specified area, local improvement or service area work or service;
- (f) in farm land that is exempt from taxation;
- (g) as a director or senior officer of a corporation incorporated by or for the municipality or to carry on business on behalf of the municipality or as a person nominated by the council as a director or officer of a corporation;
- (h) as a member or office holder of a council, board or other body when it is required by law or by virtue of office or results from an appointment by a council;
- (i) as a recipient of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled as a member;
- (j) in common with persons generally within the area of jurisdiction or, if the matter under consideration affects only part of the area, in common with persons generally within that part;
- (k) as a member or volunteer for a charitable organization or a not-for-profit organization with objects substantially similar to those provided by the *Company Act* or *Society Act* if the member receives no remuneration or other financial benefit from the organization and the pecuniary interest is in common with other persons in the organization;
- (l) as a recipient of remuneration, consideration or an honorarium under or as a volunteer who is not an officer or employee;
- (m) that is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member;
- (n) as a member, who is not an officer or director, of a credit union or co-operative.

## **Bias**

225.10 Where in respect of a hearing that a council might elect to hold

- (a) under section 956(1); or
- (b) to consider the submissions of a person or persons before making a decision affecting the rights of a person, including in respect, of
  - (i) discipline,
  - (ii) dismissal,
  - (iii) demolition or other decision under sections 735 or 936,
  - (iv) expropriation, injurious affection or other taking,
  - (v) business license issuance, or
  - (vi) agricultural land exclusion or exemption,

it is established that a mayor or councillor has such a closed mind during the hearing that he is or was not amenable to any persuasion by the submissions, then

- (c) the vote cast by the member after the hearing on the matter that was the subject of the hearing is disqualified; and
- (d) a resolution, bylaw or order passed by the council in respect of the matter that was the subject of the hearing is only invalid and may be set aside only if the member's vote was necessary for it to pass.

### **Disqualification from office**

225.11 A mayor or councillor shall not be disqualified from holding office except

- (a) strictly according to the procedures set out in sections 225.12 or 225.13; and
- (b) for the reasons set out in sections 66(2), 91, 212, 225.7, 225.8, 347, 361, 384 or 393.

### **Disqualification by resolution**

225.12 (1) If the council considers that a mayor or councillor is disqualified from holding office, the council may adopt a resolution declaring that the office is vacant.

(2) Before taking action under subsection (1), the council must give the mayor or councillor affected

- (a) 15 days' written notice of the proposed action;
  - (b) information to be considered by the council before determining whether to adopt the resolution; and
  - (c) an opportunity to be heard with or without legal counsel before council determines whether to adopt the resolution.
- (3) Unless an application to the Supreme Court is made under subsection (4), an office declared vacant under subsection (1) becomes vacant 6 days after the resolution is adopted.
- (4) A mayor or councillor whose office is declared vacant under subsection (1) may apply to the Supreme Court for a determination of whether he is qualified to hold the office, but the application must be commenced within 5 days after the resolution is adopted.
- (5) Within 7 days after the petition commencing an application under subsection (4) is filed, it must be served on the clerk of the municipality.
- (6) On the hearing of an application under subsection (4), the court may declare that the mayor or councillor is
- (a) confirmed as qualified to hold office; or
  - (b) not qualified to hold office and that the office is vacant.
- (7) Section 147 applies in relation to an application under subsection (4) of this section.

### **Disqualification by court**

225.13 (1) An application to the Supreme Court for a declaration that a mayor or councillor of council 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 2, other than section 143(7), applies in relation to an application under this section.

(3) An application may only be made by at least 10 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 15 days after the petition commencing an application is filed, it must be served on the mayor or councillor whose right to hold office is being challenged and on the clerk of the municipality.
- (6) On the hearing of an application, the court may declare that the mayor or councillor is
  - (a) confirmed as qualified to hold office; or
  - (b) not qualified to hold office and that the office is vacant.

### **Saving Proceedings**

225.14 A bylaw, resolution, order, contract or other proceeding of a council may not be set aside or declared invalid by reason only that

- (a) a person sitting or voting on council at a council meeting was not qualified to be or has been disqualified from sitting or voting at or before the time of the proceeding;
- (b) a person sitting or voting on the council
  - (i) had a pecuniary or other interest in the matter, or
  - (ii) was biased in any way, except under section 225.10(d);
- (c) the mayor or councillor resigned from or renounced claim to office;
- (d) an election for council was set aside or declared invalid after the proceeding; or
- (e) an election of a mayor or councillor was set aside or declared invalid after the proceeding.