



# Recommendations for Reform of B.C. Local Government Conflict of Interest Legislation: *Policy Paper*

## 1.0 INTRODUCTION

This is the third in a series of discussion papers which were prepared by the UBCM Conflict of Interest Review Committee to examine the concerns that UBCM's members had expressed regarding the issue of conflict of interest rules for local government elected officials in B.C. The Committee's mandate is to prepare recommendations for legislative changes that will provide clarity and direction with respect to the application and operation of conflict of interest rules.

UBCM's members have agreed that it is appropriate and necessary for the organization to be proactive in this regard, and to ensure that the needs and desires of local government are made apparent to those who are charged with the responsibility of amending the legislation that is the framework for local government in this province. UBCM members made it clear that the current lack of specific direction in the Act with respect to conflict of interest makes it difficult for members and the public to recognize when a conflict has occurred, or worse, when it may occur inadvertently. Prevention (via explicit rules) was preferred over fixing problems after they have taken place.

This exercise in studying conflict of interest has been one of the most extensive undertaken by UBCM in recent years. The Committee noted issues that had arisen over the years, as contributed by members; studied case law from B.C. and other provinces; studied the trends in legislation and legislative reform across the country and in other relevant jurisdictions; and drew on the collective experience of Committee members as to the public's concerns on this issue.

The membership has had the opportunity to provide input to three formal proposals, at two consecutive conventions. This is indicative of the UBCM's desire for open and widespread airing of issues and ideas, and a recognition of the need to evaluate the appropriateness and workability of possible solutions. The papers have also been circulated widely outside of the organization to those that have requested them, and any comments from interested academics, ratepayers' groups, members of the media, provincial officials, and members of the general public have been gratefully accepted. The Committee has also approached this exercise as an educational opportunity – both to educate our members about conflict of interest rules and concepts, and to educate the public about local government's concerns, needs, and point of view.

UBCM recognizes that the task of crafting new rules requires a delicate balance among: the public's right to honest and fair government; the need for elected officials to understand, accept and live by the rules; a politician's entitlement to a private life and a means of making a living apart from elected office; and the ability of local government authorities to continue to carry out the business of serving the public in their communities. The Committee was mindful of the need for workable rules, applicable to small, medium and large communities, that are not so onerous as to dissuade good candidates from seeking locally elected office, or which are so lax as to engender abuse of the public's trust. The proposed legislation does not try to solve all the problems and situations that arise, but it does attempt to provide guidance and lay out a clear framework for behaviour, so that many ethically difficult situations, with a reasonable amount of forethought, might be avoided.

With this in mind, the Committee submits the following paper and recommended new legislation to the UBCM membership for review and discussion during the 1996 Annual Convention. The intent is to arrive at a formal proposal that will be forwarded to the Provincial government as an endorsed UBCM position.

## **2.0 WHAT THIS PROPOSAL IS AND IS NOT**

### **2.1 RELATIONSHIP TO EXISTING STRUCTURE OF THE *MUNICIPAL ACT***

It should be noted that this draft legislation is intended to be an amendment to section 225 and other related sections of the existing *Municipal Act* and so, in the manner of the Act, 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. When the current *Municipal Act* is replaced, we trust that the language and style will be updated. In the meantime, the proposed new sections dealing with conflict of interest maintain the same language style as the rest of the statute for consistency.

### **2.2 SCOPE OF THIS REVIEW**

In addition, the Committee, given the complexity of the issues and scarcity of resources, has focussed its attention on only making recommendations for changing the legislative provisions associated with elected officials. The Committee recognizes the need for consideration of updated provisions for related matters including:

- an updated Code of Ethical Conduct for Elected Officials;
- Conflict of Interest Guidelines (or Legislation) for Local Government Staff; and
- Conflict of Interest Legislation for Non-Elected Appointees to Local Government Committees and Boards.

These matters will be pursued with the appropriate input and consultation once the process for recommending legislative changes for elected officials has been completed.

## **3.0 PROBLEMS WITH EXISTING LEGISLATION**

Following its research and consultation processes, the Committee concluded 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.

### **3.1 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 to eliminate ambiguity as to intent;

- it will codify the common law with respect to the definition of pecuniary conflict of interest;
- it will introduce provisions to deal with more contemporary societal values and situations;
- it will apply to all authorized meetings of elected members, including council and regional board meetings, committee meetings, or meetings of local government corporations or agencies;
- it will provide very clear advice as to when a conflict exists and what procedures are to be undertaken to deal with the situation. These procedures would include oral disclosures of pecuniary interest during a meeting and recording of such in the minutes. If a member is absent from a meeting at which a matter is discussed in which the member has an interest, the member must disclose the interest in writing following the meeting, and again orally within two meetings that the member attends. This practice will require council members to be vigilant about reviewing their meeting agenda and minutes for potential pecuniary conflicts, especially when they were absent from a meeting;
- it will clearly list the common sense circumstances under which no pecuniary conflict exists and when members may participate in a vote without disclosing an interest and 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; and
- it will cross reference important sections from different parts of the Act that are related to conflict of interest and disqualification, so as to make the legislation a more integrated package.

### **3.2 NEED TO CLARIFY THE MEANING OF “BIAS” IN LEGISLATION**

Elected officials and electors in general do not understand the legal concept of “bias”, given that there may be “perceived”, “apparent”, and “apprehended” bias and that bias may be based on personal interest or prejudice. The legislation is currently silent regarding bias and the case law is often confusing and principles often difficult to apply because of their somewhat subjective nature.

The Committee gave serious consideration to proposing legislation that would clarify and codify the law relating to bias. Unfortunately, the Committee concluded that such legislation is not possible without unreasonably infringing the rights of persons affected by local government decisions. Accordingly, it would remain the prerogative of the Courts to apply the doctrine of bias they deem appropriate.

### **3.3 NEED TO RESOLVE CONCERNS ABOUT POSSIBLE CONFLICTS WHEN COUNCIL MEMBERS SIT ON OTHER BOARDS**

There are two distinct issues involved here:

- when council members, as community leaders, sit on the boards of or belong to community associations and non-profit societies, as they did prior to being elected; and
- when council members are appointed to sit on other boards by their councils or sit on other boards by virtue of their office.

#### **3.3.1 Implications of Council Members’ Activities with Community Groups and Their Boards**

Prior to 1993, the old section 83(b) of the *Municipal Act* contained a reference to the effect that a person would not be disqualified if he was a member of an incorporated association or society which had dealings or contracts with the municipality, provided that, if he or she was an officer or employee of the association or society, he or she did not vote on council decisions affecting that organization. The same language applied to members of credit unions (see issue 3.6.5). Even though this section has disappeared, there persists much confusion as to whether a member of council who is only a member of an incorporated association or society has a pecuniary interest in the local government’s dealings with that group.

A second consideration is whether a member of council who is a director or officer of a community group on an unpaid, volunteer basis has a pecuniary interest apart from any other member of the organization.

The Committee felt that in both of these instances, there is no pecuniary interest on the part of a council member in dealings with the community groups in question, when a matter involving them comes before council. This should be clearly spelled out in legislation.

*What the proposed legislation will do:*

- it will clearly state that there is no pecuniary interest on the part of a member of council who is a volunteer, member, board member of a charitable or non-profit organization, if the council member receives no remuneration or other financial benefit from the organization.

### **3.3.2 Council Members Who Are Appointed to Sit on Other Boards**

There is similar confusion regarding conflict of interest in dealings with another organization when a member of council is appointed to sit on the board of another organization, or does so by virtue of office. Common situations that have been brought to the attention of the Committee include:

- appointments to municipal corporations or agencies (e.g., non-profit housing corporations, utility boards, library boards, recreation commissions);
- members of Treaty Advisory Committees (TACs);
- municipal appointees to the new Community Health Councils (CHCs) or Regional Health Boards (RHBs);
- municipal appointees or nominees to other government boards or agencies (e.g., PNE board, Fraser Basin Management Board, airport authorities, police boards, Farm Practices Board)
- members of the UBCM Executive

There is an unfortunate precedent from Calgary of 1975 (*Starr v. Puhach*) where the court said that a city councillor's vote on a matter affecting the Stampede was invalid because he also sat as the City's appointee to the Stampede board. The Committee felt that this was a precedent that should not continue to apply to B.C. local government.

The requested legislative change would clearly allow council members to sit on the boards of municipal corporations or other organizations on behalf of their local government councils or boards, without their being in a conflict of interest situation if an issue comes up for discussion or decision which involves the local government or the board of the organization on which they sit. Logic says that there can be no conflict of interest when a member has been elected to a council, and that council appoints the member to represent council's interest to some other body. Similarly, the member should be allowed to speak to council about issues that come before it involving the other organization on whose board the member sits.

*What the proposed legislation will do:*

- it will clearly state that a council member's vote and the bylaw or resolution on which he or she voted are not invalid only because he or she sits on another board by virtue of office or because of a council appointment.

### **3.4 NEED TO RESOLVE CONCERNS WHERE A COUNCIL MEMBER HAS AN INTEREST IN COMMON WITH OTHER ELECTORS**

Section 225(8)(a) states that a council member can participate in a discussion or vote on an issue in which the member has a pecuniary interest if the interest is in common with electors of the municipality generally.

The concern has been raised in larger communities that there are many cases where a member has an interest in common with a large area of a municipality about which a decision is being made, but the legislation only allows an exception for situations where the interest is in common with all electors. This seems to be fair in smaller communities, but unfair to larger ones. For instance, an Official Community Plan review may break a community down into its neighbourhoods, each of which may be larger than many towns in this province. A council member should not be seen to be in a conflict of interest by voting on an OCP amendment which affects his or her entire neighbourhood. A similar problem would exist if a local government were to implement a system of neighbourhood constituencies. The curious situation would arise whereby a council member (assuming he or she is a resident of that area) could be elected by a given district of the community, but could not vote on issues that affect that area.

*What the proposed legislation will do:*

- it will clearly state that there is no pecuniary interest on the part of a member who has an interest in common with persons generally within the area of jurisdiction or, if the matter under consideration affects only part of an area, in common with persons generally within that part.

### **3.5 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); and
- 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.

### **3.6 NEED GUIDANCE ON POTENTIAL CONFLICTS INVOLVING FAMILY AND BUSINESS INTERESTS**

The implications of family and business pecuniary interests are not clear.

*What the proposed legislation will do:*

- it will clarify which family and business relationships can produce a conflict of interest, and the circumstances that would produce a conflict; and
- it will enable a member to state an interest as his/her own, even if the interest is that of a spouse, child, or other associate as defined by the proposed legislation. This will enable some measure of privacy for the member, while still ensuring his or her non-participation in debate and voting.

#### *The Committee's Dilemma*

This particular section provided the Committee with a most difficult dilemma: how to deal with the situation where the spouse of a council member has an independent business and wishes to appear before council on a matter in which the spouse has a pecuniary interest (e.g., rezoning of a property owned by the spouse), which requires a decision by council. This is not an uncommon scenario in today’s world of double income families.

The legislation today does not provide very much explicit guidance in this situation. It is generally thought that, under section 225 and the common law, the spouse in such a situation could not appear before council, even if the affected member declared a conflict and left the chamber. The spouse’s appearance, or that of an agent or counsel, would still be viewed as influencing the vote. Many feel that this situation is unfair to a spouse who is an independent business person in the community, and particularly where the member is not a partner in the business.

The other side of that argument is the situation where a politician puts a business in the spouse’s name once elected but continues to participate in that business, although not overtly. If there were no rules against awarding contracts or benefits to “associates” – be they spouses, children, or business partners – then there could be more abuses taking place by having businesses being transferred into the spouse’s name and benefits legally being conferred by councils in that way. The law cannot easily distinguish between legitimate independent businesses being operated by spouses or where the spouse’s name is being used as a way of obscuring the true ownership situation of a business belonging to a sitting member. The *Financial Disclosure Act* also does not explicitly require the disclosure of business interests of a member’s spouse, although this statute does refer to “trustees”, which may include family members in some cases, but not necessarily. Therefore, the business relationships between spouses may not be well known or publicly disclosed. There may be a case here to suggest greater clarity in the

language of the *Financial Disclosure Act* with respect to the expectations for disclosing assets of family members.

The Committee could not think of a way to legislate fairness for the spouse as independent business person while still ensuring that abuses do not take place. In the end, the Committee chose to support the current situation whereby spouses (or other associates) of members could not influence a vote of council by speaking to an issue, even if the member had declared the conflict and left the chamber. There did not seem to be a way to compromise without sacrificing the integrity of the original principle. This particular issue had also come to the attention of the Committee as a matter of public concern from several outside sources, and it was not considered an issue on which a compromise would be acceptable.

The Committee wants to emphasize that the council member can stay in the room if the member's spouse is addressing council a matter in which the spouse has no pecuniary interest.

### **3.7 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. It should also be recognized that some of the problems outlined below may not be peculiar only to small communities.

#### **3.7.1 Need to Provide a 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 eliminate the necessity of seeking the sanction of the Supreme Court, a current provision which is nearly impossible to apply practically, and still continue to conduct any business in the municipality;
- it will specifically allow remaining members (including those not present at the meeting) without a pecuniary interest to discuss and vote on a matter, even if the number of remaining members would not normally have been enough to have formed a quorum. This may entail tabling the vote until a future meeting if absent members would be eligible to vote; and
- it will further provide a limitation that a vote can be held over only until the next meeting, at which point a vote must be taken by those present and eligible to vote. This restriction will ensure that the business of the local government isn't held up indefinitely because of the absence of members from council meetings.

#### **3.7.2 Need to Clarify Under What Conditions Business and Contracting with Local Government May Take Place in an Open and Ethical Manner**

Unlike the situation prior to the 1993 legislative changes, the current legislation allows a member of council to have a pecuniary interest in a contract with the member's local government, so long as the member declares the interest and leaves the chamber, prior to any discussion or voting, and does not influence other members in any way.

These provisions have given rise to criticism from the public, from some members of councils, and even from some local government staff, that allowing members to have an interest in a contract provides the potential for abuse. There is a perception of impropriety.

However, there have also been comments made by elected officials from small communities to the effect that disallowing them from doing any business with their local government could give their competitors a significant advantage in business and seriously hurt their ability to make a living, a situation which is unlikely to occur in larger communities. These comments came from members who were not the single supplier of a particular good in their community, but one of only a handful of local suppliers. The case of single suppliers is noted below.

*What the proposed legislation will do:*

- it will explicitly state that except for a limited set of exceptions (proposed section 225.4), no council member will be allowed to have an interest in any agreement entered into with the member's local government. The legislation will provide for grandfathering of agreements or contracts in existence prior to the commencement date of the legislation;
- it will provide an exception that a member may enter into an open tendering process. If the member's bid is considered the best on merit, according to established criteria set down by council policy, and if the local government decides to award the contract to the member, the council must resolve to make the award in a public council meeting; and further declare that it is in the local government's interest to award the contract to the member. The member must declare an interest, and not participate in any way with the process of drafting the bid specifications, reviewing bids received, or the decision to award the contract; and
- it will provide a transparent process which is totally open to public scrutiny and comment.

### **3.7.3 Need to Clarify Situations Involving Single Suppliers**

The existing legislation does not deal with the specific case of small communities where a member of a council or board may be the only service or materials provider. The old section 83(c), which was in effect prior to 1993, made provision for the case of single suppliers, but only in the case of villages. The proposed legislation does not make reference to the municipal status of the community. The Committee felt that the size and location of the community is more relevant to the issue than is its municipal status.

*What the proposed legislation will do:*

- it will provide a council with the ability to resolve at a public council meeting prior to the awarding of a contract to a single supplier, that the member (or an associate) is the only person reasonably capable of performing the contract and that the making of the contract is in the best interest of the community. This would enable a public and open debate on the merits of awarding this contract, if this is perceived as necessary by the public. The member being awarded a contract would declare the interest and not participate in the debate and vote.

### **3.7.4 Need to Clarify the Matter of Awarding Employment Contracts to Former Council Members or Associates of Members**

It is not uncommon for a small or remote community to offer a temporary employment contract to a former elected official because it is often difficult to fill a staff vacancy. Without this assistance during the recruitment period, the local government would find it difficult to carry on business, given the typically small staff complements in many small local governments.

The Committee received some comment on the need to ensure that in fulfilling the intent of helping out small communities with their short-term staffing problems, the language of the proposal didn't inadvertently foster abuses. A recent case in Ontario came to mind where an elected official used the influence of his office to establish a position, and then resigned in order to fill it himself.

It is also not uncommon to grant employment or temporary employment contracts to members' associates (providing the member does not participate in the selection decision) or former members' associates. The situation is common in smaller communities whereby a spouse or child is employed by the local government, presumably following normal recruitment practices (e.g., summer jobs). The public's concern is to avoid nepotism and to ensure that fair hiring practices are followed.

As in the case of other contracts with local governments, the legislation will provide for grandfathering of employment contracts that were in existence prior to the commencement date of the legislation.

*What the proposed legislation will do:*

- it will provide a council with the ability to resolve at a public council meeting prior to the awarding of a temporary employment contract, that the former member (or an associate of a member) is the only person reasonably capable of performing the contract and that the making of the contract is in the best interest of the community. This would enable a public and open debate on the merits of awarding this contract, if this is perceived as necessary by the public;
- it will specify that in order for a former member or the member's associate to accept a full-time employment contract or permanent employment, a former council member must be out of office for at least twelve months; and
- it will provide for grandfathering of contracts which were in existence prior to the commencement date of the new legislation.

### **3.7.5 Need to Clarify Members' Relationships with Co-operatives and Credit Unions**

Prior to 1993, the old section 83(b) of the *Municipal Act* contained a reference to the effect that a person would not be disqualified if he or she was a member of a credit union which had dealings with the municipality, provided that, if he or she was an officer or employee of the credit union, he or she did not vote on council decisions affecting the credit union. The same language applied to other associations or societies that had dealings or contracts with the local government.

There persists much confusion as to whether a member of council who is a member (not a director or officer) of a credit union, co-operative, or other society or association has a pecuniary interest in the local government's dealings with that group. Many council members find themselves in an unfortunate situation when a member of the public accuses them of having an interest in these kinds of organizations, even though the law does not preclude this. 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. There have also been instances where all members of council had some connection, albeit distant, to a consumer co-operative.

*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.

### **3.7.6 Need to Clarify the Situation of Council Members Who Serve as Volunteers, But Who Are Not Officers or Employees of a Local Government**

Prior to 1993, section 83(k) of the *Municipal Act* stated that a council member would not be disqualified because he receives remuneration as a member of the municipal volunteer fire brigade, volunteer ambulance service, or volunteer emergency measures organization.

The replacement of old section 83 with section 225 left the situation of volunteer firefighters and other local government volunteers in question, with respect to their eligibility to be elected to council. The reason for the doubt about their status is complex. Current section 67 of the *Municipal Act* defines what an employee is and stipulates, in effect, that an employee cannot run for or hold office in the jurisdiction where he or she is employed. However, section 156(2)(b) allows the Minister to pass a regulation which would specify certain classes of persons as being "employees" of a municipality, and could also except a class of persons as excluded from the definition of "employees."

At the time that this new legislation was passed in 1993, UBCM's understanding was that it was the Ministry of Municipal Affairs' intention to bring in a regulation under section 156(2)(b)(ii) which would exclude volunteer firefighters, among others, from the definition of "employees"

of a local government. As of the time of drafting this report, there has been no such regulation passed.

*What the proposed legislation will do:*

- it will specifically state that there is no pecuniary interest for a council member who is a volunteer, not an officer or employee of the local government, who receives remuneration, consideration or an honorarium.

### **3.8 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 in one provision 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 (maintains current provisions), 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 is intended to reflect a more substantial initiative and serious intent on the part of the community;
- it will incorporate improved measures of procedural administrative fairness into the process of disqualification by resolution or by petition to the Courts.

### **3.9 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. The case law is varied and is often subject to conflicting interpretation.

The Committee heard the concern that under the existing law, it is difficult for a council member who is uncertain about his or her status with respect to conflict of interest on the issue in question, to know the effect of staying in the room during a vote. The Committee believes that codifying the law would enable council members to know what the rules are ahead of time.

*What the proposed legislation will do:*

- it will clearly spell out the “saving proceedings” – the circumstances under which a bylaw 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 3.2. Also note that existing section 312 defines bylaw to include an order or resolution.

### **3.10 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 misuse of office. There is a need to reassure the public and reinforce that elected officials recognize and respect their positions of trust.

*What the proposed legislation will do:*

- it will provide clear regulations with respect to the acceptance of gifts;
- it will clarify that campaign contributions, awards of Freedom of the Municipality, and compensation authorized by law, do not qualify as “gifts” in the meaning of this section;

- it will address the relationship between a local government and a former elected official and that person's associates in the 12 month period after leaving office, in terms of the awarding of contracts and benefits;
- it will enshrine principles of ethical behaviour for elected officials by clearly stating that it is inappropriate for a council member to lobby or exert undue influence over decisions made by council, committees, or staff, to and to profit from insider information; and
- it will make a new provision in the legislation that a council member will be disqualified for contravening the oath of office or swearing the oath under false pretenses. With respect to the Oath of Office itself, the Committee would like to see the Oath written into the *Municipal Act* itself, rather than in a Regulation as is currently the case, so that it is more visible and readily accessible to members of the public, elected officials, staff, and candidates. Secondly, the Committee believes that in order to make the Oath a more meaningful and enforceable document, it should be rewritten to be more specific and clear in its intent. This would be necessary to ensure that it is apparent when and if the Oath has been violated. UBCM has not provided suggested wording for a new Oath, but would be willing to assist in the drafting process.

## 4.0 ANALYSIS OF DRAFT LEGISLATION

The following portion of the paper will provide a more technical discussion on how the principles and issues described in the previous section have been translated into a legislative format.

### 4.1 DISQUALIFICATION FROM OFFICE

Proposed section 225.10 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 213.1 (where ten electors petition the court) or section 213.2 (where council resolves to disqualify). Both procedures give the subject member an opportunity to defend himself or herself in court and provide a greater level of procedural administrative fairness in terms of specifying time periods for appeal, notification requirements, the opportunity to make submissions to council, and the ability to submit evidence. Although these two procedures are not new, section 225.10 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 in one provision 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 failure to attend meetings, proposed provisions regarding swearing oath under false pretenses or contravening the oath];
- 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];
- proposed section 225.7 [undue influence or insider information]; or
- proposed section 225.8 [failure to disclose pecuniary interest in matter].

This consolidation provides "one stop shopping" for elected officials, the public, the media, or others who want to know whether disqualification applies.

### 4.2 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 prejudice 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 prejudice. 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.

The Committee gave serious consideration to proposing legislation that would clarify and codify the law relating to bias. Unfortunately, the Committee concluded that such legislation is not possible without unreasonably infringing the rights of persons affected by local government decisions. Accordingly, it would remain the prerogative of the Courts to apply the doctrine of bias they deem appropriate.

There is also 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 commonly used by the Courts.

#### **4.3 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. In addition, 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 interest” 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 setting aside of the bylaw or resolution.

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 council member 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 312.1(a) 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. Section 312.1(b)(ii) similarly protects the validity of decisions made by council where a member is also a director of another body affected by the vote, but where the member holds the directorship by law or by virtue of office or as a result of appointment by council. Further, section 225.9(d) and (e) 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 sections 225.7 and 225.8 deal with the only circumstances where “conflict of interest” law will result in disqualification from office. This is because of proposed section 225.10, discussed above, which provides that a council or board member may only be disqualified for the reasons set out in sections 225.7 and 225.8 (in relation to conflict of interest). Section 225.10(1) is a key provision: a person who contravenes sections 225.7 or 225.8 is disqualified from holding office, unless the contravention was through inadvertence (now explicitly defined) or by reason of an error in judgment made in good faith, or if an exemption under section 225.9 applies. The first two exceptions have been in the B.C. *Municipal Act* for some years and in the Ontario *Municipal Act* for more than a decade. There are also a number of court cases which have laid down simple rules with respect to the meaning of these terms. The list of exceptions provided by section 225.9 is based on provisions of the *Municipal Act* prior to 1993, and augmented by other common sense circumstances.

The member must not contravene the following rules:

1. the member must not have a pecuniary interest (defined in proposed section 225.6) if the member intends to participate in the discussion of and vote on a matter; and
2. the member must disclose an interest in a matter before council, orally and in writing, as required depending on the circumstances; and
3. if the member has a conflict of interest, 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 room in which the meeting is being held 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 sections 225.7 or 225.8;
2. even if the interest is that of a spouse, child, or other associate, the disclosure does not have to refer to the spouse, child, or associate but may state the interest as being that of the member;
3. 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. If a member who would otherwise be eligible to vote is absent from the meeting, the vote may be held over only until the next meeting. The vote must then take place, whether the member absent from the previous meeting is present or not.

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 organization 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) of the local government in question.

#### **4.4 ISSUES NOT ADDRESSED IN OTHER PROVINCIAL LOCAL GOVERNMENT LEGISLATION**

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, and a list of things that do not qualify as “gifts” for purposes of this section. Section 225.3 prohibits local governments from conferring a benefit on or awarding a contract to a former elected official within twelve months of leaving office. Section 225.3 further prohibits receiving benefits or contracts within the twelve months. Section 225.7 prohibits influence peddling or abuse of insider information.

## **5.0 OBSERVATIONS REGARDING OTHER APPROACHES TO RESOLVING LOCAL GOVERNMENT CONFLICTS OF INTEREST**

Over the years, a suggestion has come from a variety of sources that the *Members’ Conflict of Interest Act* should be amended to extend the powers of the Commissioner of Conflict of Interest to include local government. This would include education, primary disclosure, advisory, and investigative responsibilities. This suggestion had been made as an alternative to the current situation where conflict of interest provisions for local governments are included in the *Municipal Act*.

The UBCM Conflict of Interest Review Committee thoroughly weighed and examined the merits of this suggestion. After much discussion and for a variety of reasons, the Committee could not agree to recommend the extension of the Commissioner’s powers to cover local government, and instead decided to undertake to recommend revisions to the *Municipal Act*. The following are the issues and concerns that were at the heart of the Committee’s determination.

### **5.1 LOCAL GOVERNMENT CONTEXT IS VERY DIFFERENT THAN THAT ASSUMED FOR MLAS’ LEGISLATION**

The existing *Members’ Conflict of Interest Act*, which governs the actions of Members of the Legislative Assembly with respect to conflict of interest, was written very specifically with the provincial legislative structure in mind. The Act could not be applied to local government without extensive rewriting. As the Act is now, it makes no sense in a practical way for local government officials, because the context is inappropriate. For instance:

- the concept of “apparent” conflict of interest is not recognized at the local level because it is not a term commonly used by the Courts, which has been the historical basis for the current application of conflict of interest law at the local level;
- the sections that discuss the behaviour of Cabinet Ministers, Parliamentary Secretaries, and former Ministers and Parliamentary Secretaries, have no equivalent at the local level;
- the legislation’s comments regarding not prohibiting “the activities in which members normally engage on behalf of constituents”, does not translate well into the local context where there is no constituency system currently in place in most local governments, and because of this, it would be difficult to distinguish a council member’s general activities from that of “constituency” related

activities, since all electors are constituents. The distinction between Legislative and Executive roles is not as clearly drawn at the local level as it is in the provincial tradition; and

- the legislation prohibits a Cabinet Minister from having a job or business, or being affiliated with any group that might put the Minister in conflict with his or her public duties. This would clearly be unacceptable if applied in the local government context, where elected members are rarely full-time council members and who could not afford to give up their livelihoods to serve on council.

## **5.2 RELEVANT CONCEPTS HAVE BEEN INCORPORATED**

The Committee notes that the relevant concepts from the *Members' Conflict of Interest Act* and from other more recent sources of guidance have been translated so that they are relevant to the local government context in the legislative proposal being made by this paper. The Committee emphasizes that the *Municipal Act* remains the single most important piece of legislation in the local government world, and that it should continue to contain the provisions respecting local government conflict of interest, as has always been the case. Furthermore, as conflict of interest is a matter involving the behaviour of elected local government officials, it should not be severed from the overall legislation that governs the actions of councils and their members. The *Municipal Act* is the historical source of this kind of information, both for local government officials as well as the public, and should remain so.

## **5.3 HUGE POTENTIAL WORKLOAD FOR COMMISSIONER'S OFFICE IF MANDATE IS EXTENDED**

The Commissioner's Office is currently responsible for giving advice and resolving complaints involving only the 75 Members of the Legislative Assembly. Adding in local governments (and possibly other locally elected bodies) would potentially extend the Office's mandate to cover several thousand locally elected and appointed council and board members. It is unlikely that sufficient resources would be granted to the Office to carry out this substantially increased workload.

## **5.4 CONCERNS ABOUT QUALITY OF ADVICE THAT WOULD BE AVAILABLE**

In addition to sheer volume, there were concerns raised about the ability of the Commissioner's Office to provide quality advice in respect of local government problems. Even experienced municipal lawyers often require several hours of legal research before advice is given. The Commissioner's office would require several staff who are intimately familiar with municipal law to be able to provide the kind of advice that is required on a regular basis.

## **5.5 CONCERNS ABOUT THE AVAILABILITY OF TIMELY ADVICE**

In the case of local governments, the experience has been that conflict of interest questions inevitably arise on "council days" and that definitive advice is required on the same day so that the business of council can carry on. It is unlikely that an augmented Commissioner's Office could provide the timely advice to the several hundred local bodies that might be covered. The Committee was seriously concerned that the delay in receiving advice from the Commissioner's office would grind local government decision making to a halt. This would also be true if a large number of investigations of alleged conflicts of interest were instigated.

## **5.6 WOULD THIS SOLVE OUR PROBLEMS?**

It is uncertain whether the existence of such an office would be able to resolve some of the more difficult situations that arise. The concern is that advice given by a conflict of interest commissioner is not the law, and so any affected councillor who does not agree with the commissioner's advice, or any council that does not agree with the advice given to the councillor, could:

- ignore the advice, since it is not binding; or
- take the matter to a court for a declaration and an order (which would take some months, and legal certainty would not be available until long after the council had considered the matter in respect of which the conflict was alleged).

## **6.0 CONCLUSION**

The draft legislation as proposed would be the most comprehensive and would require the highest standards of integrity of any 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. The proposed legislation is certainly more lengthy and detailed than the existing provisions. The Committee believes, however, that the situation warrants this level of specificity because of the uncertainties that have been expressed by elected officials about the lack of guidance associated with the existing legislation. A well-written legislative framework will provide a high degree of advice and guidance, whenever it is needed and without reference to an outside party. This is surely the intent of good legislation.

## **7.0 RECOMMENDATION**

*That UBCM:*

- 1. approve in principle the policy directions with respect to local government conflict of interest advocated in this paper;*
- 2. endorse the draft legislation (as amended) that follows the paper as Appendix A; and*
- 3. submit the paper and draft legislation to the provincial government with the request that the proposed amendments to the Municipal Act be made during the 1997 Legislative Session.*



## **PROPOSED CONFLICT OF INTEREST AMENDMENTS TO THE *MUNICIPAL ACT***

1. *Subsection 212(1) is repealed and the following is substituted:*

212. (1) If a person elected or appointed to office on a council does not make the required oath under section 211 within the time limit set by that section, swears an oath under false pretenses or contravenes the oath, the office is deemed to be vacant and the person is disqualified from taking and holding office on a local government or on the council of the City of Vancouver until the next general local election.

2. *Section 213.1 is repealed and the following is substituted:*

### **Disqualification by court**

- 213.1 (1) An application to the Supreme Court for a declaration that a member of council is disqualified from holding office and that the office is vacant may be made in accordance with this section.
- (2) An application may only be made by 10 or more electors of the municipality.
- (3) An application may be made at any time during the challenged member'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.
- (4) Within 15 days after the petition commencing an application is filed, it must be served on the member whose right to hold office is being challenged and on the clerk of the municipality.
- (5) On the hearing of an application, the court may declare and order that the member is
- (a) qualified to hold office; or
  - (b) not qualified to hold office and that the office is vacant.

3. *Section 213.2 is repealed and the following is substituted:*

### **Disqualification by resolution**

- 213.2 (1) If the council considers that a member 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 shall give the member affected
- (a) not less than 15 days' written notice of the time and place of the proposed action, and include in the notice a copy of the proposed resolution and the identities of any witnesses who may be heard;
  - (b) material information to be considered by the council before determining whether to adopt the resolution; and
  - (c) an opportunity to make submissions and present evidence, orally or in writing, with or without legal counsel before the 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 8 days after the resolution is adopted.

- (4) A member whose disqualification is being or has been considered 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 7 days after the resolution is adopted.

- (5) Within 7 days after 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 and order that the member is
  - (a) 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.

4. *Section 225 is repealed and the following is substituted:*

**Voting**

225. (1) If the votes of the members of the council 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 of council present in the room where the meeting is held 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 sections 225.1 to 225.10

“associate”, when indicating a relationship with a member or former member, as applicable, means

- (a) a corporation of which the member or an associate of the member beneficially owns more than 20% of the shares which may be voted for the election of the directors of the corporation;
- (b) a trust or estate in which the member or an associate of the member has a beneficial interest or is a trustee, unless the interest is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member;
- (c) a spouse or child of or a person in a same sex relationship with the member;
- (d) a relative of the member, or of the spouse of the member, who resides with the member;

“child” means a person of whom the member is a parent, or to whom the member has demonstrated a settled intention to treat as a child of his or her own family;

“committee” means a group of persons established or appointed in whole or in part by the mayor or a council to make recommendations to or advise the council;

“inadvertence” means carelessness, negligence and inattention but does not include ignorance of the law;

“matter” means any contract, benefit or right taken under consideration, proposed, offered, approved, granted or revoked by the applicable body referred to in subsection (2);

“meeting” includes any authorized meeting of a council or a committee of the council;

“member” means a person holding elective office under this Act in respect of the time he holds office;

“pecuniary interest” means an interest or benefit

- (a) consisting of money, exacted in money, relating to money or of which money is the object;
- (b) capable of being measured in terms of financial value, cost, benefit, advantage or disadvantage; or
- (c) 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,

but does not include any remuneration or benefit to which a member is expressly entitled under this Act;

“senior officer” means the chair or vice-chair of a board of directors, a president, vice-president, secretary, treasurer or general manager of a corporation and any other person who performs executive or management functions for the corporation;

- (2) Sections 225, 225.8 and 225.9 apply to a member in respect of a meeting of
  - (a) a council;
  - (b) a committee of the council; or
  - (c) the board of a company or society incorporated by a council or in which the municipality holds more than 50% of the voting shares.

#### **Gifts**

- 225.2 (1) A member shall not accept a gift as a consequence of 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 \$300.00 that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of a member under this Act;
  - (b) a contribution authorized under this Act to be made to or for the benefit of a member who is a candidate for election under this Act;
  - (c) the bestowal on a member of the Freedom of the Municipality under section 279; or
  - (d) compensation authorized by law.

#### **Benefits and Lobbying – Members and Former Members**

- 225.3 (1) A council shall not award a contract or grant a benefit to
  - (a) a member or associate of the member;
  - (b) a former member or associate of the member until at least 12 months after the former member ceased to hold office; or
  - (c) a person on whose behalf a member or associate of the member has made representations respecting the contract or benefit.
- (2) Subject to section 225.4, a member or an associate of the member is prohibited from
  - (a) accepting a contract or benefit from the council;
  - (b) making representations on his behalf with respect to a contract or benefit; or
  - (c) making representations on behalf of another person with respect to a contract or benefit,during the member's term of office.

## **Exceptions**

225.4 Section 225.3 does not apply where

- (a) the contract is
  - (i) for the supply of goods and services by a member, associate of a member, former member or associate of a former member, or
  - (ii) a contract of employment of an associate of the member, former member or associate of the former member, andthe council before making the contract resolves at a public council meeting, consistent with a council purchasing policy established by resolution at a previous meeting, that the making of the contract is in the best interest of the municipality;
- (b) in the case of a former member or associate of the former member, 12 months have expired from the date the former member ceased to hold office;
- (c) the contract is a contract of employment for less than five months; or
- (d) the contract was entered into before the coming into force of this section.

## **Repayment**

225.5 Subject to section 225.4, a member, associate of the member, former member or associate of the former member who contravenes section 225.2 or 225.3 shall

- (a) account for and pay to the municipality the amount of any benefit he receives or return the benefit to the municipality; and
- (b) compensate the municipality for any damages arising from the contravention.

## **Pecuniary interest**

225.6 For the purposes of sections 225.7 and 225.8, a member is deemed to have a pecuniary interest in a matter if the member or an associate of the member

- (a) is a director or officer of, or beneficially owns more than 20% of the shares which may be voted for the election of the directors of a corporation;
- (b) is a director or officer of a corporation that offers its securities to the public, or beneficially owns more than 20% of the shares which may be voted for the election of the directors of the corporation;
- (c) is a partner or agent of a person;
- (d) is a member of another corporation, society, or other organization;
- (e) is an employee of a person; or
- (f) supplies goods, services or credit to a person,

having a pecuniary interest in the matter.

## **Influence and insider information**

- 225.7 (1) A member shall not use the member's office to influence or attempt to influence a decision, recommendation or other action to be made by a council, a committee of the council, the approving officer, an employee of the municipality, or the board of a company or society incorporated by the council or in which the municipality holds more than 50% of the voting shares if the member or an associate of the member has a pecuniary interest in the decision, recommendation or other action.
- (2) No member shall use information or a record that
- (a) is obtained in the performance of the member's office;
  - (b) is not available to the general public,
- to derive a pecuniary interest, or for any purpose other than for the performance of the duties of the member.

## **Disclosure**

- 225.8 (1) A member who has a pecuniary interest in any matter and is present in the room at a meeting at which the matter is to be considered
- (a) shall, before any consideration of the matter at the meeting, orally disclose the existence of the interest and its general nature and request that the disclosure be recorded in the minutes of the meeting;
  - (b) shall immediately leave the meeting and remain absent from it until the matter is no longer under consideration;
  - (c) shall not, at any time, take part in the discussion of, or vote on, or attempt, personally or by or through another person, to influence the voting on the matter.
- (2) A member who has a pecuniary interest in a matter and was absent from a meeting at which the matter was considered shall, as soon as it is possible after the meeting
- (a) complete and file with the clerk a written disclosure, setting out the interest and its general nature;
  - (b) disclose the interest in the manner described in paragraph (1)(a) within two meetings of the council that the member attends, provided that a disclosure in respect of a matter considered at a meeting from which the public was excluded need only be made within two meetings from which the public is excluded.
- (3) A member need not disclose the interest of an associate of the member.
- (4) Where a disclosure omits reference to the member's associate, the interest shall be stated as being that of the member.
- (5) If as a result of paragraph (1)(b) the quorum for a meeting is lost, the members who are entitled to vote at the same meeting or the next
- (a) subject to paragraph (b), regular meeting of the council, or
  - (b) special meeting of the council if the matter is included on the agenda for the special meeting,
- shall constitute the quorum.

- (6) It is an express condition of every agreement entered into with a municipality that, unless exempted under section 225.4 or 225.9, no member shall be admitted to any interest in the agreement.

## Exceptions

- 225.9 (1) Sections 225.7 and 225.8 do not apply if section 225.4 applies or if the pecuniary interest of a member or of the member's associate in any matter is
- (a) as a user or recipient of any service, commodity, right or benefit supplied to the member by the municipality under similar conditions as other users or offered by the municipality on terms common to other persons;
  - (b) as an owner of a debenture or other security of or issued by the municipality;
  - (c) 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;
  - (d) as a director or officer of a corporation or society incorporated by or for the municipality or as a person nominated by the council to be a director or officer of such a corporation;
  - (e) as a director or officer of another body who holds office as required by law or by virtue of office or resulting from an appointment by a council;
  - (f) 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;
  - (g) 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;
  - (h) as a member or volunteer for a charitable organization or a not-for-profit organization 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;
  - (i) as a volunteer, not an officer or employee of the municipality, who receives remuneration, consideration or an honorarium of less than \$2,000 per year;
  - (j) as a member, who is not an officer or director, of a credit union or co-operative;
  - (k) is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.
- (2) Nothing in this Act prohibits or otherwise affects the right of a member's associate to make submissions to or influence the council on a matter, whether or not the member is in attendance at the meeting at which the matter is considered or is voting on the matter, unless the matter affects the pecuniary interest of the associate.

## Disqualification from office

- 225.10 (1) A member who contravenes section 225.7 or 225.8 is disqualified from holding office, unless the contravention was through inadvertence, or by reason of an error made in good faith, or as exempted by section 225.9.
- (2) If otherwise qualified, and if the member has complied with section 225.8(1)(a) or (2)(a), a member disqualified under subsection 225.10(1) is qualified to be nominated and elected in the by-election to fill the vacancy created by disqualification under subsection 225.10(1) and, if elected, is qualified to hold the office.

## Disqualification procedure and grounds

- 225.11 A member shall not be disqualified from holding office except
- (a) after the strict application of the procedures set out in sections 213.1 or 213.2; and
  - (b) for the reasons set out in sections 66(2), 91, 212, 225.10(1), 347, 361, 384 or 393.

5. *Section 312.1 is repealed and the following is substituted:*

### **Saving Proceedings**

- 312.1 A bylaw adopted by a council may not be set aside or declared invalid by the Supreme Court by reason that
- (a) a member at the council meeting was not qualified to sit or vote at the time of the meeting, unless the member had a pecuniary interest in the bylaw and his vote was necessary for it to pass;
  - (b) a member voting at a council meeting
    - (i) was biased in any way; or
    - (ii) was also a director or officer of another body affected by the vote, where the holding of the directorship or office was required by law or by virtue of office or resulted from an appointment by the council;
  - (c) a member resigned from or renounced claim to office;
  - (d) an election for council was set aside or declared invalid after the meeting; or
  - (e) an election of a member was set aside or declared invalid after the meeting.