

From: Steven Carey <scairey@crd.bc.ca>
Sent: February 22, 2022 4:25 PM
To: Marie-Térèse Little <mtliddle@metchoshin.ca>
Subject: RE: VFCYJC nominations for elected positions "Conflict of Interest"

Marie-Terese:

I write with a response to the January 16 e-mail relating to conflict of interest. The matters raised are not a conflict of interest. This may be of assistance to VFC&YJC at a future meeting.

A governance body, like a regional district commission, society board, or unincorporated association, cannot exclude an individual appointee from participation at or eligibility for an officer position, absent clear language permitting such action in its governance documents or governing legislation.

Local government representatives can and regularly do have different positions than that of the other members on a board or other body, or potentially even their appointing local government. As an extreme example, some could even hold positions that are adverse to youth or families involved the justice system (say, by opposing a youth detention centre or the opening of a transition house). Neither of those are conflicts, nor would either typically attract sanctions at the committee level. The second example may attract removal of the member by the appointing organization. Differing viewpoints are normal and it is up to commissioners to convince each other of particular positions and vote as a whole to come to a resolution as an assembly.

A conflict is personal and is declared by the individual. They are typically financial (pecuniary, say an interest in the success of a particular grant application) or personal (non-pecuniary, say a degree of relation to a grant applicant). There are no explicit conflict provisions in the *Provincial Court Act* or the *Youth Criminal Justice Act*. As a CRD Commission/Committee, the general pecuniary/non-pecuniary conflict rules from the *Community Charter* and the CRD Procedures Bylaw set out generally when a conflict has to be declared. The VFC&YJC Commission Bylaw has conflict provisions written into it, to make it easier on members to understand a conflict may occur and must be declared. Even where unwritten, for most commissions, pecuniary and non-pecuniary conflicts must be declared, unless a conflict of interest exemption applies (things like community of interest or appointed by a local government to a non-profit board to avoid duelling fiduciary duties, etc).

Advisory bodies, for example, are not subject to conflicts rules as no final decisions are made. Some members may even be at the committee or commission because of their particular knowledge (e.g. a waste hauler advising on tipping fees and the impact such fees make on their business is in a pecuniary conflict, but they are providing no final decision, meaning the conflict does not arise). Given few final decisions are actually made by the VFC&YJC (except for granting) I do not believe conflicts are likely to arise.

The matters raised in the January 16 e-mail are more akin to director-on-director/commissioner-on-commission sanctions. Being a director of an organization or a councillor on a local government body carries with it certain responsibilities as well as a certain rights (right to agenda packages, right to notice, right to vote, right to speak). Where organizations try to sanction or restrict those rights, unless very clear in the incorporating documents (governance bylaw, society bylaws, corporate articles), it will very likely be reviewed and overturned by a Court.

In relation to sanctions between commissioners or inability to run or remain an officer, CRD commissions have no ability to sanction other members and no restrictions on officer qualifications (unless otherwise set out in a commission bylaw). Sanctions, if any, would be done by the CRD Board or the appointing organization removing their representative or reorganizing the commission bylaw. The *PCA* and *YCJA* are silent on this issue, and silence in relation to sanctions between directors has been held to exclude the ability for director-on-director sanctions in the corporate / societies law context.

I also attach the pages on conflicts from the Commission Handbook.

Best regards,

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