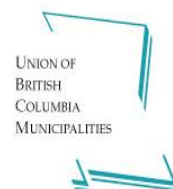


Local Government Elections Task Force Candidate Eligibility Discussion Paper

March 2010



Local Government Elections Issue:

Eligibility of some local government employees for elected office

ISSUE SUMMARY

Employees of a local government are disqualified from elected office in that local government or in a related local government¹ unless they take leave of absence before seeking office and, if elected, resign their job. This paper examines the issue of possible exceptions to that rule – in particular, for volunteer firefighters and for local government employees seeking elected office in a related local government. Both issues came before the UBCM in the fall of 2009—the former after a 2008 court ruling that volunteer firefighters in Cultus Lake are employees for the purposes of elections legislation; the latter after a regional district employee was found to be ineligible for elected office in a member municipality.

Local government employees are generally ineligible for local government office in these circumstances, based on the balance between ensuring accessibility to office while preserving accountability, fairness, transparency and efficiency. Conflict of interest disclosure rules are generally relied on to make elected office accessible to those who might face conflicts during their term, but local government employees remain ineligible because of the many actual and perceived conflicts they would face if elected. Whether exceptions should be made also goes to the balance between consistency and flexibility.

“Volunteer firefighters” are considered to be local government employees for the purposes of election disqualification laws because they share many characteristics with paid on-call employees. Some would argue that the community service element and lack of economic obligation of volunteer firefighters reduce conflicts of interests and that following the lead of other provinces with exceptions for such firefighters is important, especially in smaller communities. Others would argue that the same pecuniary and non-pecuniary conflicts of interest that make other local government employees ineligible for office would be present for volunteer firefighters and that such persistent conflicts would lower public confidence in the local government. Considering a disqualification exemption would also raise practical and design issues (e.g. all volunteer firefighters or only some types?).

Regional districts and their member municipalities are uniquely connected, as each regional district is a federation providing a different combination of services to its members. Some would argue that exceptions should be made because conflicts would arise so infrequently that the “disclose and absent yourself” rules are sufficient. Others would argue that a local government employee serving in elected office for a related local government faces the same conflicts of interest as an employee seeking elected office in their own local government. Contemplating exceptions would also raise practical and design issues (i.e. “one size fits all” solution is likely not possible, and situations calling for tailor-made exceptions may be difficult to anticipate).

¹ A related local government would be a regional district in which a municipality is located or a municipality that forms part of a regional district.

Both exemption issues raise additional questions, such as whether accompanying changes to the conflict of interest rules would be necessary.

BACKGROUND

This paper discusses the ineligibility of local government employees for elected local government office and considers circumstances where some have suggested that an exception to the disqualification rules may be warranted—namely in the case of volunteer firefighters and in the case of people who work as an employee for one local government and wish to serve in elected office for a related local government.

1. The local government employee ineligibility rule in BC

The rules governing the eligibility of local government employees for elected office appear in the *Local Government Act*. The *Vancouver Charter* contains similar provisions. Anyone who is an employee or salaried officer of a local government is disqualified from holding office in it or in a related local government.² Specifically, an employee of a municipality is disqualified from being nominated for, being elected to, or holding office on the council of that municipality or on the board of the regional district within which that municipality is located. An employee of a regional district is likewise disqualified from the board of that regional district or the council of any municipality within that regional district.

Employees of local government can become qualified by taking a leave of absence during their period as a nominee and election candidate. If they are elected, they must resign from their employment prior to taking their oath of office.

Since the legislation does not substantively define the term “employee”, the term has the meaning ascribed to it by the courts. In a recent B.C. case, volunteer firefighters in one specific community were classified as employees by the court, thereby disqualifying them from office unless they take a leave of absence to run for office and resign their position if elected.

The legislation empowers the Minister to make regulations deeming a described class of persons to be employees for the purposes of the local government election disqualification provisions. The Minister is also empowered to exclude a described class of persons from those who are “employees” for the purposes of those provisions. Both sorts of regulation may be different for specified municipalities and regional districts. To date, no such regulations have been made.

An individual’s eligibility to be nominated or elected may be challenged in court on the ground that they were a local government employee who did not take leave. Eligibility may be challenged during the nomination or campaign period or after an individual has been elected.

² The term “local government” encompasses both municipalities and regional districts. The eligibility rules apply to elections to some other local bodies as well, but not to school board elections, which are governed by the *School Act* (although its rules currently mirror local government eligibility rules).

2. Expanded eligibility with conflict of interest disclosure requirements since 1993

Prior to 1993, anyone who received remuneration or payment from a local government or had any interest in a contract with or for a local government was disqualified from office, unless they fell within a list of exceptions. For instance, members of credit unions who did business with the municipality were exempted, as were debenture holders. Volunteer fire brigade and ambulance service workers were one of the groups exempted from disqualification. In 1993 many of the disqualifications were lifted because financial dealings with a local government no longer disqualified a person. Local government employees continued to be disqualified from elected office, but were entitled to take a leave of absence to be a candidate, with a requirement to resign if elected.

With expanded eligibility rules came new potential conflicts of interest. For example, a municipal council about to vote on whether or not to contract out its road maintenance might now have among its members the owner of a road paving business whose business has contracts with the municipality, whereas previously this contractual interest would have disqualified that councillor from running. To deal with these new possibilities, the voting rules for council meetings were strengthened in 1993 to clarify that all elected officials who consider that they have a direct or indirect pecuniary (financial) interest in a matter coming before the council or board must declare they are in conflict, refrain from participating in meetings discussing the matter, leave the meeting for the duration of the discussion, and abstain from voting on the matter. The conflict of interest rules in the *Community Charter* have been strengthened further to prohibit attempts to influence a decision before or after formal proceedings in council and to prohibit activities such as outsider and insider influence. Councillors may also declare and absent themselves in relation to conflicts of interest other than pecuniary interests; however, only conflicts related to pecuniary interests trigger the mandatory requirement to declare and leave the meeting and disqualification if that requirement is not met.

Elected officials who fail to declare themselves in a conflict of interest are disqualified under the *Community Charter* from holding office until the next general local election unless the contravention was done inadvertently or because of an error in judgment made in good faith. This disqualification can be implemented through a court process initiated by council or 10 electors.

3. B.C.'s provincial election eligibility rules for government employees

Every Canadian citizen has a constitutional right to seek election to their provincial legislative assembly, including Crown employees, and there is no legislation disqualifying Crown employees, other than superior court judges, from being candidates in a provincial election. Members of the BC Public Service are entitled to leave without pay to seek office, and the requirements of impartiality within their standards of conduct would likely prevent such employees from campaigning without taking leave. However, once elected, an MLA is prohibited by B.C.'s *Constitution Act* from accepting any money from the provincial government for the supply of services or work other than his or her salary and other authorized compensation. These prohibitions preclude an MLA from undertaking any paid work for the government of B.C. outside of his or her position as an MLA.

MLAs who find themselves in a conflict situation have obligations under the *Members Conflict of Interest Act* similar to their local government counterparts to disclose the conflict and remove themselves from related proceedings in the Legislature.

4. Employee eligibility rules for local government office in other provinces

a. Volunteer Firefighters

Local government elections legislation in other provinces follows a similar approach to that of British Columbia. In every province except parts of Prince Edward Island³, local government employees are disqualified from running for or holding office unless they take leave. Also, every province requires councillors who may be in a conflict of interest to disclose it, to remove themselves from the meeting, and to refrain from voting on or attempting to influence the decision.

Provinces with an employee disqualification rule (*i.e.* 9 provinces) explicitly exempt volunteer firefighters, except B.C., Saskatchewan, and New Brunswick. Volunteer firefighters may be able to serve in the latter two provinces, because New Brunswick's disqualification rule extends only to officers and fulltime employees, and Saskatchewan's legislation deems elected councillors not to have a pecuniary interest only by reason of being appointed a volunteer firefighter (See **Appendix 1** for a summary of employee disqualification rules and conflict disclosure rules for local governments in other provinces).

Of the six provinces with explicit exemptions for volunteer firefighters, three have volunteer firefighters as the only explicitly exempted class of volunteers (Ontario, Nova Scotia, and Newfoundland and Labrador). Alberta exempts firefighters and other emergency response personnel, Quebec exempts these two groups and volunteers who are "employees only for the purposes of the law", and Manitoba exempts all volunteers.

b. Regional Authority Eligibility Rules

Quebec and Ontario have multi-tiered municipal structures in which two or more "local" or "lower-tier" municipalities belong to an "upper-tier" or "regional" municipality. In Ontario, for example, if an employee of an upper-tier municipality is elected to a lower-tier council position that includes a responsibility to sit on an upper-tier council, they are deemed to have resigned from their employment, but not if the lower-tier council position brings no such upper-tier responsibility. An employee of a lower-tier municipality can sit on an upper-tier municipal council or board without resigning.

Caution is necessary when comparing B.C.'s rules for holding elected office while employed by a related local government with rules in other provinces, as B.C. is the only province with a federation-based approach to regional governance. Many of the positions on upper-tier municipal councils in Ontario are filled through election, not appointment from a lower-tier council, and upper-tier jurisdiction over many services is assigned directly by provincial statute, not through agreement among constituent members, as is done in B.C.

³ The Charlottetown area has its own legislation, and it disqualifies municipal employees from office.

5. Experiences with local government employee disqualification provisions

Nearly all of the feedback received by the Ministry of Community and Rural Development on the current employee disqualification rules deals with one of two areas -- namely volunteer firefighters seeking elected office or employees of a local government wishing to serve in elected office in a related local government.

a. Volunteer Firefighters

The issue of volunteer firefighters running for office attracted considerable attention during the 2008 general local election. A number of jurisdictions encountered situations where volunteer firefighters wished to run for office, and the Ministry received comments from the public, local officials and local government staff suggesting that volunteer firefighters should be permitted to do so.

In October of 2008, the chief election officer appointed by the Cultus Lake Park Board (which follows the election provisions of the *Local Government Act*) applied to the Provincial Court of British Columbia for a judicial order to determine whether a particular volunteer firefighter in the district was eligible to be nominated for election to the Park Board Commission. The court held that the volunteer firefighter was an employee for the purposes of the election provisions of the *Local Government Act* and thus disqualified, as he had failed to take leave of absence.⁴ This decision was consistent with the view taken by the electoral officers of some other municipalities towards volunteer firefighters seeking office.

UBCM Resolution: A resolution was brought before the Union of British Columbia Municipalities (UBCM) in the fall of 2009 requesting the provincial government to amend the *Local Government Act* to exempt volunteer firefighters from being designated as employees for election purposes. The resolution was referred by the UBCM Resolution Committee to the UBCM Executive, who in turn referred it to the Task Force. The Resolution committee commented that the resolution arose as a result of the court's decision in the Cultus Lake Park Board case. (See attached **Appendix 2** for a copy of the resolution)

b. Local government employees serving in elected office in a related local government

During the 2008 election, a situation arose in the Village of Anmore, a semi-rural residential community situated north of Port Moody in the Greater Vancouver Regional District. A member of Anmore council who became a candidate for mayor was discovered to be ineligible for candidacy due to his employment with the GVRD. The Ministry received requests to amend the legislation to allow employees of a regional district to run for municipal office in a member municipality.

UBCM Resolution: The Village of Anmore also submitted a resolution to the UBCM for debate in the fall of 2009 asking that the *Local Government Act* be amended to allow regional district employees to be nominated for, elected to, or hold office as a member of the council of a municipality that is within the regional district. The UBCM resolutions committee referred the resolution to the Executive Committee with a recommendation that it not be endorsed, noting that the request directly opposes provisions in the *Local Government Act* and querying how such a change would deal with situations where a regional district employee, once elected, were to be appointed to the regional district board. The Executive

⁴ *Cultus Lake Park Board v. Charles* (31 October 2008) Chilliwack C6621 (B.C.P.C.(Civ.))

Committee in turn has referred the resolution to the Task Force. (See **Appendix 2** for a copy of the resolution)

Similar situations have arisen. For example, a council member in a small town was asked to sit as its member on the regional district board. He was not able to do so, because he was also employed by a nearby municipality that is a member of the same regional district. The Ministry received requests that he should be eligible for appointment to the regional district board. On another occasion, a mayor who was also an employee of the local water district became ineligible for office when, as a result of a restructuring, the service he worked for came under the authority of the regional district encompassing the municipality for which he was mayor. He petitioned the Minister of the day to make an exception in his case, but no exemption was made.

DISCUSSION

A. Principles of Candidate Eligibility

Balancing accessibility to office with accountability, fairness, and transparency

Election laws need to respect the principle of democracy, whereby electors may vote the people into office who they choose as their civic leaders. Also, where possible, people wishing to seek public office should be able to do so. As well, the number of individuals willing and able to serve in elected positions can be limited, especially in smaller communities. Restrictions on office due to employee-like activities may deprive some communities of candidates who could provide effective leadership, thereby limiting accessibility and voter choice.

Accessibility and voter choice must be balanced with accountability, fairness, and transparency during elections and afterwards. All three are threatened when those elected to office are called upon to make decisions in situations where they have conflicting interests.

To address these principles, laws have been put in place to prevent elected officials from exercising their authority in situations where such biases actually arise or could reasonably be perceived. Some laws disqualify people who have conflicts of interest from elected office altogether (on the basis that they are inherently conflicted); other laws restrict the involvement of elected officials as conflict situations arise. These laws aim to guard the accountability, fairness, and transparency of democratic governance while still making elected office accessible to as many as possible and respecting voter choice.

Transparency also relates to the clarity of the rules. Candidates, election administrators and the public must be in a position to readily determine who must take leave of absence in order to be eligible for elected office, and those in office need to know whether they can vote on a matter or are conflicted.

Consistency balanced with flexibility

There is a need for consistency in laws governing candidate eligibility and the right to hold elected office, so that those subject to the rules are dealt with consistently and fairly. At the same time, sometimes flexibility may be necessary to accommodate differing groups or regions. Two types of

volunteers may have sufficiently different relationships with local government as to justify different treatment by election law. Special situations may justify different rules in some areas of the province or for specific types of local government employees.

Efficiency

If conflict of interest questions arise too frequently, they can pose a challenge to the efficient functioning of a local government. Precious time may be spent dealing with conflict questions rather than local government issues, and the need to obtain legal opinions and deal with court challenges can raise legal costs that erode scarce financial resources.

B. Applying these principles to employee eligibility questions generally

The general approach to eligibility

The current approach to candidate eligibility seeks a balance between two unacceptable extremes. One extreme would be to make elected office accessible to nearly all electors while relying on electors to identify those in conflict situations. This approach has many problems – for example, for elected offices filled by acclamation or in circumstances where electors cannot reasonably be aware of potential conflicts. As well, it places a burden on the public.

The opposite extreme would be to disqualify everyone from elected office who might face a conflict of interest during their term. This approach would disqualify many capable candidates due to situations that might not arise or that could be dealt with in other ways. B.C. and other jurisdictions have moved away from this approach in recent times, for both provincial and local governments.

The current rules take a middle course. They erect relatively few barriers to eligibility, but when conflicts of interest do arise, elected leaders must declare them, remove themselves from proceedings, and abstain from voting or attempting to influence the outcome of the vote. Under this system, the only individuals disqualified are those whose conflicts of interest are likely to be so inherent or frequent that “declare and absent yourself” requirements would not be effective.

Local government employees normally disqualified

Employees of local governments have long been regarded as having so many private interests in conflict with the public interest that they should not serve as elected officials unless they first resign from their employment. They are paid by local government, meaning they have a direct pecuniary interest. As well, they likely would have indirect or non-pecuniary interests– for example, career promotion or loyalty to their own work department. Perhaps most importantly, there could be a public perception of inherent bias – and such perceptions can be as damaging to the perceived accountability, fairness and transparency of a local government system as actual conflicts.

Should there be exceptions?

One might imagine a continuum. On one side are prospective candidates with few or no potentially conflicting interests. Next are individuals who have occasional business dealings with government, such as material suppliers etc. Such individuals were previously disqualified from office but are no longer (instead, they must declare and absent themselves). At the other end of the continuum are full time

local government employees and officers, who are disqualified unless they take leave during the election and resign if elected. The question is: where do volunteer firefighters and local government employees seeking elected office in a related local government fall along this continuum?

C. Volunteer Firefighters in Elected Office: Cases For and Against

1. Some background on volunteer fire-fighters

The classification of “volunteer firefighters” as employees for the purpose of election legislation flows from the nature of their work and their relationship with fire service management. In the Cultus Lake case, the court found that although volunteer firefighters do not work a set number of hours per day or week, they are paid for time spent training and when on calls providing fire department services. When training and performing their duties, volunteer firefighters are under the control and direction of their deputy chief and chief fire officers, who have authority to discontinue their services. The local government also owns the fire hall, fire trucks, and equipment used by the firefighters; it makes deductions from their remuneration for income taxes, Canada Pension and Employment Insurance; and it provides coverage under the *Workers Compensation Act* and where applicable, employment standards legislation. The above factors are all characteristic of an employee-employer relationship at law.

Many of these employee-like features appear to be typical throughout the province. Volunteer firefighters typically receive Worksafe BC benefits and liability coverage. Most of the equipment and materials used by volunteers are owned by local government, not the volunteers. Many local governments provide some form of remuneration or gratuity for service calls and training time, though some direct at least a portion of these payments to the volunteer firefighter association rather than to individual volunteers. Departments tend to have selection guidelines for volunteers and to subject prospective volunteers to an application, interview and testing process. Those accepted become part of an organization that requires training sessions to meet accreditation standards, and they are expected to remain in the community and be available when on call.

The role played by volunteers within local government firefighting services varies greatly. The firefighting force in a smaller community may be made up entirely of volunteers. A force in a large centre may be comprised entirely of career firefighters. A mid-sized urban or suburban community may rely entirely on a roster of on-call volunteers or may have a blended force of career (*i.e.* employed fulltime) and voluntary firefighters. Surrey, for example has career halls, volunteer halls, and composite halls. In some communities, certain volunteer firefighters may be on call for significant blocks of time each week, so that their volunteer firefighting work is like a second job, not a traditional volunteer task.

Volunteer firefighting has long been regarded as a stepping stone to a career position. Volunteers who have developed their skill and experience, received accreditation, and become known to their peers are often desirable candidates to fill career vacancies as they arise in their community or nearby. In recent years, due to increasing training standards and difficulties recruiting volunteers, there has been a trend away from “true” volunteers toward more paid, on-call “volunteers.”

2. The case for permitting volunteer firefighters to run for elected office without taking leave and resigning if elected

Community service element may remove some pecuniary conflicts

Although firefighters receive remuneration for training and calls, the primary motive for many, some might argue, is not to earn money but rather to serve their community. The purpose of paying them is not to enable them to make a living, but rather to assist them to defray the costs of their service and to express the community's appreciation for that service.

According to this argument, even if it is conceded that an elected volunteer firefighter ought to remove themselves when matters impacting directly on their remuneration are being considered, the pecuniary interest of a volunteer in such broad matters as the municipal budget and its capital expenditures may be of such minor significance as to not give rise to an actual conflict. Some would argue that a volunteer firefighter may not need to declare and absent themselves on as many matters as a career counterpart.

Lack of contractual obligation and economic reliance may reduce other conflicts of interest

Some may say that few if any volunteer firefighters rely primarily on their firefighting work to sustain themselves and their families. They are still volunteers in the sense that they can walk away at any time without facing the sort of economic vulnerability that one faces when leaving a job. While they are expected to attend regular training and to respond immediately when on call, these expectations flow from the nature of their work, not from their obligation to an employer.

To this way of thinking, since volunteer firefighters do not have the same contractual obligations and economic vulnerability as career firefighters, they can be relied upon to exercise their discretion in what they believe to be the public good when sitting in office. Elected officials are involved in all types of sporting, civic and charitable organizations; those personal interests are part of who they are when they run for office. Some may argue that such involvement ensures that a local government reflects competing visions of what is good for the community, with the choice between them left to voters.

Legal test for employment status serves a different purpose

Although the courts have judged volunteer firefighters to be employees in a court case, some would argue that this should not be what determines their eligibility for elected office. The legal tests for whether someone is an employee were designed for a different purpose -- to determine eligibility for severance pay and employment insurance. Volunteer firefighters are more tightly controlled and directed than most volunteers and are provided with insurance coverage because they do dangerous and complicated work. Some might contend these features do not necessarily make volunteer firefighters more prone to conflicts of interest than other sorts of volunteers whose work has fewer employee-like features.

Avoid creating disincentives for public volunteer service or elected public service

Some would argue that a prohibition against volunteer firefighters serving in office impedes accessibility and voter choice, especially in smaller communities. Resigning from the force is a more costly choice for volunteer firefighters than for many other sorts of volunteers, because they may have spent months or years training, and they can also lose seniority within a specialized and stratified hierarchy.

Also, effective volunteer forces need a significant roster of highly committed and capable volunteers. Even the smallest of community forces may aim, optimally, to have several dozen trained volunteers. Some argue that the pool of capable, willing, civic-minded volunteers is limited in many communities, and forcing people to choose between elected office and firefighting may deprive both civic institutions of capable participants. Note that the fall 2009 proposed UBCM resolution referenced the essential nature of adequate emergency fire response services in many small /rural communities and the difficulty in finding and retaining volunteer firefighters in these communities.

There may be good reasons for a unique exemption

Some might contend that the unique disqualification exemption for volunteer firefighters in other jurisdictions' local government election rules is justified because of the critical nature of firefighting in every community and the extensive amount of time and commitment invested by volunteers. Others might contend that there is a need to make a unique exemption for firefighters because so far it is those types of volunteers who have been found to be employees by the courts.

3. The case against permitting volunteer firefighters to run for elected office without taking leave and resigning if elected

Potential pecuniary conflicts of interest

Since volunteer firefighters often receive significant remuneration for time spent training and on call outs (i.e. they are more on call casual employee than traditional volunteer), some may say that a volunteer firefighter on a council or board would face the same pecuniary conflicts of interest as regular local government employees—so many that it would not be practical for them to serve without first resigning. This would be especially true of individuals who rely on firefighting income to significantly supplement part-time or seasonal salaries (e.g. in a resort area).

The argument is made that any matters involving the operation and management of the fire department could create conflicts for such persons. In a municipality, for example, the municipal budget may create conflicts, as it provides for a force's operational and capital budget. The firefighting force is also impacted by municipal decisions on labour relations matters, such as collective bargaining questions, all forms of employment policy and practices, and other personnel matters. The force would also be impacted by issues such as equipment tenders. In one court case involving firefighter eligibility for election, the clerk for the City of Windsor, Ontario estimated that these matters would comprise roughly 30% of all municipal business.⁵

Other potentially conflicting interests

Like their career firefighter counterparts, volunteer firefighters depend upon the favourable opinion and good will of their superiors for continued service on the force, for increased responsibility and promotion and, for those seeking it, eventual access to a career position. Some would argue that this "employee-like" sense of obligation has the potential to give rise to significant conflicts of interest, even

⁵ *Jones v. Ontario (Attorney General)*, (1988) 40 M.P.L.R. 17, 65 O.R. (2d) 737, 53 D.L.R. (4th) 273 (Ont. S.C. (H.C.J)), affirmed (1992) 9 M.P.L.R. (2d) 87, 7 O.R. (3d) 22, 89 D.L.R. (4th) 11, 39 C.C.E.L. 238, 54 O.A.C. 211 (Ont. C.A.), leave to appeal refused, 142 N.R. 160 (S.C.C.)

without direct pecuniary conflicts of interest. Some would argue that faced with challenging budget choices, a volunteer firefighter on council, for example, may feel a sense of obligation to promote interests related to firefighting rather than necessarily looking more broadly at the best balance of interests for the community generally.

A volunteer firefighter's dual role as an elected official and a subordinate of fire prevention service officers could also give rise to broader conflicts of interest. For example, some might argue that decision-making would be compromised when a senior officer must exercise authority over a volunteer firefighter who is also a council member. Conversely, part of an elected councillor's job is to provide overall direction for the municipality, including its employees, and that may be difficult in relation to someone to whom that councillor answers in another capacity.

“Declare and absent yourself” rule may not be adequate

Given these potential forms of conflict, some may argue that the “declare and absent yourself rule” may not be adequate to protect the public interest. To avoid potential conflicts, volunteer firefighters may need to remove themselves from participation and voting so frequently that their ability to perform as elected officials would be seriously compromised. Depending on the frequency of such occurrences, or the number of members in this situation, a council or board's normal functioning could be compromised (i.e. raising quorum issues). Finally, some might argue that having an employee of any kind on the elected body for whom they work is so fundamentally at odds with the public's interest in a neutral public service that no amount of declaring and absencing oneself will resolve the conflict.

Increased expense and legal uncertainty, decreased public confidence

If there are frequent potential conflict of interest situations, some may point to the costs associated with getting legal advice and responding to court challenges and the related legal uncertainties as real concerns both for the individuals involved and the local government. They would argue that those costs, along with the tendency of allegations of conflicting interest to lower the public's confidence in its elected governance, are reasons for disqualifying volunteer firefighters from elected office without leave.

Consistent treatment

In several provinces, volunteer firefighters are the only employee-like volunteer group expressly exempted from employee disqualification election rules, and in several others, firefighters form part of a small group of exempted organizations most of which carry out emergency response activities. Election laws should treat relevantly similar cases the same, and some might see exemption of volunteer firefighters as raising the question of why other “employee-like” volunteer or auxiliary groups, such as police reserves, emergency rescue program members or perhaps even others are not also exempted.

4. Other considerations related to volunteer firefighters

If consideration were given to creating an exemption for volunteer firefighters, this would raise a number of design and practical considerations:

Scope of exempted volunteers

Would an exemption be made only for volunteer firefighters or would other emergency responders be covered, or volunteers generally? Further, if the need for volunteers is more pressing in rural or small communities, would the exemption be restricted to such areas, or would it be a general restriction?

Terms and conditions

If an exemption were made, would there need to be some conditions on its scope—for example, a condition that defines the characteristics of which types of volunteer firefighters can/cannot be exempted (i.e. not all on-call firefighters, but only those who are in some sense “true” volunteers)? How would that be defined? Would there need to be accompanying changes to conflict of interest rules?

Mechanism for providing an exemption

The Minister may make regulations to exclude a described class of persons from the definition of “employee”. Would it be appropriate to use this power to make a general exception for volunteer firefighters or other groups, regardless of whether they are employees at common law? Or is that choice more appropriately made by the Legislature? If a regulation were appropriate, does the current authority have sufficient scope to enable it to be used either generally or on a case-by-case basis, or to impose some other obligations in return for the exception?

D. Holding office while employed by a related local government: Cases for and Against

1. Some context on Regional District governance

Regional districts are local government authorities unique to B.C. that are designed to meet the needs of both municipalities and adjacent unincorporated areas. There are currently 27 regional districts across B.C.. Regional districts are a federated form of governance made up of municipalities, referred to as member municipalities, and unincorporated areas, referred to as electoral areas. Regional districts exist to play three important roles: they act as the local government for their electoral areas; they provide inter-jurisdictional services, (e.g., a recreation centre service for two member municipalities and an electoral area); and they provide services for the region as a whole (e.g., region-wide parks or water supply services). Regional district services are founded on the principles of voluntariness and flexibility – meaning that the bundle of services provided, and their scale, is different in each regional district, based on the needs and willingness of regional district members and their citizens to pay for services.

A regional district is governed by a board of directors comprised of members from each of the jurisdictions within its boundaries (i.e. municipalities and electoral areas). Municipalities appoint a director to the regional district board from among their municipal councillors. In the electoral areas, however, citizens directly elect their representative to the board. In order to ensure parity in decision-making, municipalities may be entitled to appoint more than one director and those directors may have more than one vote for certain matters.

2. Three disqualification scenarios

These are the three most typical scenarios in which a local government employee wishing to hold office as an elected representative in a related local government would be disqualified from doing so.⁶

1. An individual who works for a regional district wishing to hold office on the council of a member municipality within that regional district would be ineligible to do so. (*i.e.*, the Anmore example)
2. A municipal employee is disqualified from being on the council of the municipality where that individual works but is not disqualified from holding office in another municipality. However, in the case where both municipalities are part of the same regional district, the municipal elected official would be disqualified from being appointed by that other municipality as its representative to the regional district board.
3. An individual who is an employee of a member municipality of a regional district is disqualified from holding office on the regional district board as an electoral area director.

3. The case for allowing someone to hold elected office while employed by a related local government

Some would argue that there are many instances under each of the three scenarios noted above where an individual who is an employee at one local government and an elected official at a related local government would face conflicts so infrequently that the “disclose and absent yourself” rules would be adequate in those instances, leaving a large field remaining in which the elected person could operate free of conflict. Some would argue that, depending on what the employee does and what services the regional district in that area provides, principled exceptions are warranted.

Fewer conflicts if employed in a service not undertaken by the government to which elected

Some would argue that employment-related conflicts of interest would arise less frequently and be of less concern for an elected official who works for a local government service that is not undertaken by the local government on whose governing body he or she is sitting. For example suppose a municipal councillor in town “A” works as a guard at the city jail in nearby town “B”. The current rules would bar him or her from being appointed to the regional board, even though that board might have no involvement at all in the delivery of law enforcement services. Some would say that only on rare occasions would any matter coming before the regional board give rise to a conflict of interest for such an individual, and in such cases, the councillor in question could simply remove him or herself.

Similar situations could arise under the other two scenarios. Some might contend that a regional district employee who works as a public works equipment operator, for example, would face few conflicts if elected to a municipal council, and some might similarly contend that an individual who works, for example, as a librarian in the nearby town would face few or no conflicts if elected as an electoral area representative to the regional district board.

⁶ As noted earlier, employees of local government can exempt themselves from disqualification by taking a leave of absence during their period as a nominee and election candidate and if elected, must resign their position prior to taking office.

Non-pecuniary conflicts may not be as great a concern in such instances

Some might argue that, depending on what their job is, such employees would not face the same potential conflicts flowing from the sense of obligation created by an employer-employee relationship. For example, a municipal councillor's jail guard job at the nearby town would entail little or no involvement with the regional district staff that he or she would be responsible for overseeing as a regional district board member.

4. The case against allowing someone to hold elected office while employed by a related local government

Those opposed to exceptions to the employee disqualification rules under the three scenarios described above might argue that in each scenario, an individual's employment relationship with their local government would give rise to the same sorts of conflicting loyalties for elected office in the related local government as that relationship would for elected office in the same local government. In other words, the same types of issues as were noted in relation to volunteer firefighters could arise.

Similar pecuniary conflicts of interest may arise

Some might argue that local government employees would face too many pecuniary conflicts of interest even though the government department they work for might not answer directly to the governance body they sit on. A person has an indirect pecuniary interest in any matter in which their employer has a pecuniary interest, and there are many interlocking pecuniary interests between a regional district and a municipality. Suppose for example that a water engineer who works for a regional district were permitted to serve on the council of a member municipality without resigning. Even if that municipality did not provide water services, his or her pecuniary interests or those of the regional district could still be impacted by many decisions before council that have direct or indirect consequences for water management at the regional level (e.g. votes on such items as capital expenditures on related municipal water works, labour relations issues that could impact regional district employees, and motions to consent to or approve actions of the regional district related to water management). Also, municipal councils are called upon from time to time to make far-reaching decisions about how to structure municipal services and about whether or not to co-operate with other jurisdictions to provide such services. A regional district employee may have a pecuniary interest in such matters when they come before council.

Similar other types of potentially conflicting interests may arise

Some might argue that such employees would also face the same types of non-pecuniary conflicts that employees would face if elected to the local government for which they work. For example, if a municipal councillor were employed as a regional district water engineer for the water supply service, it might be argued that when faced with a tough budgetary decision, they would feel a sense of obligation to support the construction of municipal water works to improve water distribution rather than necessarily looking more broadly at the interests of the community generally.

Similar problems over declaring and absenting, expense and public confidence

Some might argue that such employees would also face such conflicts of interest so frequently that “declare and absent yourself” rules would not suffice. Also, such frequent potential conflicts would, it is argued, increase legal expenses and uncertainty and decrease public confidence.

5. Other considerations relating to employees of a local government holding office on a related local government

If consideration were given to creating an exemption for local government employees serving on a related local government, this would raise a number of design and practical considerations:

A “one size fits all” solution is likely not possible

When a specific instance under any of the three scenarios noted above arises, the degree of conflicting interest generated by that individual’s dual role depends on the specific context. The degree of conflict generated will be a function of the specific job the individual in question performs and the services provided by the municipalities and regional districts involved. These services differ among regional districts and within regional districts. Furthermore, the services provided by a given regional district evolve over time, as illustrated by the earlier example where an elected municipal official found himself ineligible for re-election after the water district he worked for became a regional district service during his term of office (in that case, due to an act of the provincial government).

Possible exceptions difficult to anticipate

It may not be possible to anticipate every possible situation in advance with enough clarity to pass a general regulation making exceptions to the general ineligibility rules for local government employees. “One off” regulations could be made (e.g., for a specific municipality or regional district); however, that could raise timing issues. In cases where a councillor wishes to sit on a regional board, there may be considerable time to consider the issue, but if a decision regarding candidate eligibility is needed at the onset of a campaign period, the timeframe could be quite short. Furthermore, this “one off” approach would require significant ongoing involvement from the province (i.e. to bring forward the regulations).

Appointments once elected

As the UBCM Resolution Committee noted in its recommendation of non-endorsement for the resolution proposed by Anmore, if an exception were made, a regional district employee elected to municipal office could be appointed to the regional district board. Could a regulation making the exception include terms and conditions to limit that possibility?

E. Other Considerations

Role of chief electoral officer

Under current practices, the chief electoral officer of a local government is not required to screen nominations to disqualify ineligible candidates. The obligation is on the candidate. Although many chief electoral officers routinely review nomination papers and point out deficiencies or question the information provided, the lack of a requirement can lead to situations where a candidate might run for office or even be elected and serve out his or her term without that candidate or the local electoral officer or anyone else realizing that the elected official was disqualified all along by virtue of their

employment. Were regulations to be adopted containing “one off” exemptions across classes of employees or geographic areas or both, such regulations would add another layer of complexity to the rules that citizens, electoral officers, and potential candidates must understand (and thereby create potential confusion).

Conflict of interest rules

If more reliance needs to be placed on conflict of interest rules to preserve the public interest, then some might wish to see if there are any ways for those rules to be further strengthened or clarified. If exceptions to the employee disqualification rule were considered, would non-pecuniary interests (such as those that flow from the sense of obligation in an employment relationship) need to be added to pecuniary interests as a trigger for mandatory “declare and absent yourself” rules? Alternatively, would conflict of interest rules need to be modified to ensure that excepted employees are not subject to some of those rules – for example, allowing such employees to vote on the budget generally but not on aspects directly related to their employment?

Volunteer firefighters as regional district employees

Like other services, firefighting can be provided by a regional district. Of particular potential concern is the possible scenario where two electoral areas within a regional district create a rural firefighting service. If the member municipalities within the district had their own firefighting services, which is not uncommon, two regional directors would have all of the votes on the operation and maintenance of the rural firefighting service. If one of the directors were a paid on-call firefighter, conflict of interest rules would mean that an alternate director would have to replace the director for that portion of the meeting, and if the alternate is absent, there would be no quorum.

School trustee issues

The employee disqualification rules for board of education trustee elections and conflict of interest disclosure provisions under the *School Act* closely resemble those under the *Local Government Act*. Changes to the latter would not necessarily impact the former, as there is no legal requirement for the eligibility rules for boards of education to mirror those for local governments. However, since local governments generally run board of education elections, differing rules may have the potential to create more confusion in the minds of candidates and administrative officials. Also, an exception for volunteer firefighters in local governments could increase interest by some in exceptions for substitute teachers seeking election to boards of education.

DIRECTION QUESTIONS AND NEXT STEPS

The following questions are intended to assist the Task Force to determine whether it wishes to give further consideration to any aspects of local government employee eligibility for elected office.

Principles

- What principles assist in determining whether volunteer firefighters should be exempted from provisions disqualifying local government employees from elected office?
- What principles assist in determining whether any sorts of local government employees should be exempted from provisions disqualifying them from elected office in a related local government?

Practical Considerations

- On what bases would exceptions be made for volunteer firefighters?
- Are those bases equally relevant to local government employees seeking office in a related local government, or are there additional considerations, depending on the region?

Further Work

- Is further work needed on issues, such as the scope of the regulation-making power for exemptions and other design considerations?

Appendix 1 - Cross-jurisdictional Analysis of Local Government Candidate Eligibility Rules

PROVINCE	Employees ineligible ⁷	Right to candidacy if take leave ⁸	Disqualification exception for volunteer firefighters ⁹	Disclosure process for pecuniary interests ¹⁰	Comments
Alberta	✓	✓	✓	✓	<p>The ineligibility rule does not apply to people by reason only that they are a volunteer chief, officer or member of a fire, ambulance or emergency measures organization or a volunteer for another purpose who performs duties under the direction of the local jurisdiction.</p> <p>It is not immediately clear whether this disqualification exception would apply to volunteers who are employees at common law.</p> <p>Councillors are deemed not to have a pecuniary interest only by reason of being appointed a volunteer chief or officer of a fire or ambulance service or emergency measures organization or other volunteer organization or service.</p>
Saskatchewan	✓	✓		✓	<p>The election disqualification provision contains no exception for volunteers.</p> <p>However, once elected, councillors are deemed not to have a pecuniary interest only by reason of being appointed a volunteer chief or officer of a fire or ambulance service or emergency measures organization or other volunteer organization or service, or by reason of remuneration received as a voluntary member of those organizations or services.</p>
Manitoba	✓	✓	✓	✓	<p>Municipal “employee” is defined not to include a person who volunteers services to the municipality, whether or not they receive reasonable compensation or expense money for their voluntary service.</p> <p>The City of Winnipeg’s charter does not exempt volunteers from the employee disqualification, but it gives the city the power to do so by bylaw.</p>

⁷ *i.e.*, local government employees generally are ineligible to be nominated as a candidate for or to be elected to local government office.

⁸ *i.e.*, local government employees have the right to take a leave of absence in order to run for elected office. If they do so and are successful, some provinces extend their leave of absence, while others require them to resign their position or deem to have done so.

⁹ *i.e.*, the province’s laws contain an explicit exception to the disqualification rule for volunteer firefighters, allowing them to hold elected local government office without resigning.

¹⁰ *i.e.*, elected members with a direct or indirect *pecuniary interest* in a matter must disclose it before a meeting discussing it, remove themselves from the meeting, and refrain from participating in discussions, voting on, or attempting to influence the vote on the matter; and their disclosure is recorded in the meeting minutes.

PROVINCE	Employees ineligible ⁷	Right to candidacy if take leave ⁸	Disqualification exception for volunteer firefighters ⁹	Disclosure process for pecuniary interests ¹⁰	Comments
Ontario	✓	✓	✓	✓	<p>A “volunteer firefighter” is not an employee for the purpose of eligibility and disqualification.</p> <p>“Volunteer firefighter” is defined to include those who provide fire protection services voluntarily or for nominal consideration, honorarium, training or activity allowance.</p> <p>However, both municipal employees and “anyone holding an administrative position” are ineligible for office. Thus, a volunteer firefighter who holds an “administrative position” may still be ineligible.</p> <p>Toronto’s legislation mirrors that of the rest of the province.</p>
Quebec	✓	✓	✓	✓	<p>Officers and employees are ineligible for office as council members, but an exception is made for “those who provide their services to fight fires on an occasional basis and are commonly called ‘volunteer firemen’”.</p> <p>The exception also extends to first responders providing pre-hospital emergency services and to those who are “considered only for the purposes of the law to be officers or employees of the municipality”.</p>
New Brunswick	✓	✓		✓	<p>Legislation makes no special provision for firefighters, but the disqualification extends only to municipal officers and fulltime employees.</p> <p>The provisions mention disclosure of the conflict and withdrawal only.</p>
Nova Scotia	✓	✓	✓	✓	<p>Any person who accepts office or employment or who accepts any allowance or remuneration is disqualified, unless they take leave of absence, with the exception of “a volunteer fireman with a municipal firefighting organization.”</p>
Prince Edward Island		N/A	N/A	✓	<p>Members of municipal council with a pecuniary interest in or affected by any matter before council must declare their interest and abstain from voting and discussion. Once elected to council in Charlottetown, a person cannot be employed by or hold any office within the city, but volunteer firefighters are exempted from this requirement.</p>
Newfoundland & Labrador	✓	✓	✓	✓	<p>Neither employees of council, nor persons holding a remunerated office under council, nor administrative officers of bodies whose budgets are approved by council qualify for nomination, but this disqualification does not apply to a volunteer firefighter of a municipality who is not a fire chief.</p>

Appendix 2

UBCM Resolutions Related to the Eligibility of Local Government Employees for Elected Local Government Office

2009 B98 Elected Officials as Volunteer Firefighters

Text:

WHEREAS volunteer firefighters are essential for providing adequate emergency fire response services in many small / rural communities, and there is great difficulty in finding and retaining volunteer firefighters in these communities;

AND WHEREAS volunteer firefighters are deemed to be employees for election purposes requiring them to take a leave of absence to be nominated for elected office and then to resign from being a volunteer firefighter to hold office:

THEREFORE BE IT RESOLVED that the Union of BC Municipalities request the provincial government to amend the Local Government Act, Division 5, Section 67 to exempt volunteer firefighters from being designated as employees for election purposes.

Recommendation:

Refer to UBCM Executive

Resolutions Committee comments:

The Resolutions Committee advises that UBCM members have not previously considered a resolution on this topic. The issue arose as the result of a court decision that identified a volunteer firefighter as a local government employee.

Where a volunteer firefighter has received some form of remuneration from a local government, he or she has been considered to be a local government employee. A recent example is a court decision from October 2008 that ruled two volunteer firefighters from Cultus Lake ineligible to run as commissioners for the Cultus Lake Parks Board.

The Committee acknowledges that there are various models for volunteer fire fighting services, and in light of this, suggests that further discussion is necessary around the definition a volunteer in the specific context of volunteer fire fighting. Because of the complexities of the issue, the Committee recommends that this resolution be referred to the UBCM Executive so that the Executive may undertake further discussions with the Province.

Text:

WHEREAS regional district employees are disqualified from being nominated for, elected to or holding office as a member of the council of a municipality that is within the regional district;

AND WHEREAS citizens with excellent leadership qualities are prevented from serving their communities simply on account of their employment:

THEREFORE BE IT RESOLVED that the Union of British Columbia Municipalities encourage the Province of British Columbia to amend the *Local Government Act* to allow for regional district employees to be nominated for, elected to or hold office as a member of the council of a municipality that is within the regional district.

Recommendation:

Not Endorse

Resolutions Committee comments:

The Resolutions Committee advises that the UBCM membership has not previously considered a resolution calling for amendments to the Local Government Act to allow regional district employees to be nominated for, elected to or hold office as a councilor of a municipality that is within the regional district.

The Committee notes that this resolution's request directly opposes section 67 of the Local Government Act, which states in part that:

“(2) Unless the requirements of this section are met, an employee of a municipality is disqualified from being nominated for, being elected to or holding office

(a) as a member of the council of the municipality, or

(b) as a member of the board of the regional district in which the municipality is located.

(3) Unless the requirements of this section are met, an employee of a regional district is disqualified from being nominated for, being elected to or holding office

(a) as a member of the board of the regional district, or

(b) as a member of the council of a municipality, including the City of Vancouver, that is within the regional district.

(4) Before being nominated for an office to which subsection (2) or (3) applies, the employee must give notice in writing to his or her employer of the employee's intention to consent to nomination.

(5) Once notice is given under subsection (4), the employee is entitled to and must take a leave of absence from the employee's position with the employer [...]

[...]

(8) Before making the oath of office, an employee on a leave of absence under this section who has been elected must resign from the person's position with the employer.”

In the event that regional district employees were to become eligible to be nominated for, elected to or hold office as a member of the council of a municipality that is within the regional district, the Committee wonders how the sponsor would propose to deal with a situation whereby a regional district employee, elected as a councilor of a municipality within the regional district, was then appointed to the regional district board.