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VIA E-MAIL

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Ref: 35273/45025

Re: School District #40 Board of Education and Trustee Lori Watt – Alleged Conflict of Interest

Dear Mr. O'Connor:

You requested our opinion regarding a potential conflict of interest on the part of Trustee Lori Watt regarding two matters which the Board of Education for School District #40 (the "Board") expects to address shortly: (1) approval of a new collective agreement with CUPE Local 409; and (2) a motion to ban bottled water in School District #40 facilities.

In our opinion, Ms. Watt would be in conflict of interest in respect of both matters due to her employment with the B.C. division of the Canadian Union of Public Employees ("CUPE BC"). If Ms. Watt votes on either matter, a court could remove her from office. We outline the factual and legal reasons for our opinion below.

A. Facts

The relevant facts as we understand them are as follows¹:

1. Ms. Watt works as the Confidential Secretary of CUPE BC at its Burnaby head office. CUPE BC facilitates negotiations between locals and employers to promote uniformity in collective agreements among similar bargaining units. CUPE Servicing Representatives working at CUPE BC's head office assist locals such as Local 409 in negotiating collective agreements. The majority of CUPE BC's revenue is comprised of financial contributions from its locals and their members.
2. During the 2008 Board election campaign, Ms. Watt accepted campaign donations from CUPE BC, Local 409 and other locals. Ms. Watt also received a public endorsement from CUPE BC. CUPE BC supports political candidates who it believes will reflect its interests, including in maintaining public water facilities. If an incumbent does not reflect CUPE BC interests while in office, the incumbent may not receive CUPE BC's support in the following election.
3. Local 409 represents various personnel employed by School District #40. Local 409 is affiliated with CUPE BC, and pays CUPE BC for its services based on a prescribed formula. Local 409 is

¹ If any of these facts are inaccurate or change, please advise us promptly as our opinion may also change.

presently in negotiations with the Board for a new collective agreement. It is expected that a new agreement will be presented to the Board for approval shortly.

4. At its January 12, 2010 meeting, the Board carried a motion, introduced by Ms. Watt, to discontinue providing bottled water at public events hosted by the Board, and related matters (the “Motion”). The rationale provided by Ms. Watt in support of the Motion was very similar to that provided by CUPE BC in support of a motion it introduced at the 2008 BC Federation of Labour convention.
5. CUPE BC actively opposes bottled water in part because CUPE BC considers privately-supplied bottled water a threat to its members’ jobs at municipally-operated water treatment facilities. On March 21, 2010, CUPE BC sponsored a World Water Day event to promote tap water from publicly-operated facilities. At the event, the president of CUPE BC presented a “Tappie” award to Ms. Watt, who accepted it on behalf of the Board (though without its knowledge or approval), for the Motion.
6. Local 409 supported the Motion and the elimination of bottled water. On September 14, 2010, Marcel Marsolais, President of Local 409, spoke to the Board in favour of a bottled water ban.

B. The *School Act* and related court decisions

The *School Act* governs the conduct of school trustees in British Columbia. The Act provides that a trustee has a duty to disclose any “pecuniary interest” in any matter at a board meeting, and must not participate in any discussion or attempt to influence the vote on any aspect of that matter. A pecuniary interest includes any interest that could monetarily affect the trustee or that of her employer.² Courts have held that an employee has a pecuniary interest in promoting her employer’s interests, and in seeking to avoid “incurring even the slightest displeasure of [her] employer”.³ Proof of actual financial impact is unnecessary.

If the interest is “so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the trustee”, then the trustee is not bound to disclose it, and is not restricted from participating in the board’s decision.⁴ This exemption only applies to trivial interests, so it would not apply here.

If a trustee discusses or votes on a matter in which the trustee has a pecuniary interest, on application to court by an elector, the court must declare the office of the trustee vacant unless it concludes the breach was done through inadvertence or because of an error in judgment made in good faith.⁵

Courts deem that an employee’s interests are aligned with those of her employer. For example, in *Wynja v. Halsey-Brandt*, two trustees of the Richmond School Board were also members of the Vancouver teachers’

² *School Act*, R.S.B.C. 1996, c. 412, ss. 55-56.

³ *Levy v. Knight (No. 1)*, [1975] 2 W.W.R. 621 (Alta. Dist. Ct.) at para. 18. See also *Guimond v. Sornberger* (1980), 25 A.R. 18 (C.A.).

⁴ *School Act*, s. 59(d).

⁵ *School Act*, ss. 62-63.

union and the B.C. Teachers Federation (“BCTF”). The court concluded that the trustees were in a conflict of interest when they discussed and voted on a collective agreement with the Richmond teachers’ union.⁶

C. Analysis of Ms. Watt’s situation

Ms. Watt has a pecuniary interest in the contract between the Board and Local 409 by virtue of her employment with CUPE BC. CUPE BC has a direct and close relationship with its affiliated locals. It represents and receives payments from Local 409. Servicing Representatives working at CUPE BC’s office, alongside Ms. Watt, may be assisting Local 409 in its negotiations with the Board. Common sense indicates that the terms of Local 409’s contract could affect other CUPE BC locals’ collective agreements.

Similarly, Ms. Watt has a pecuniary interest in the bottled water matter by virtue of her employment with CUPE BC. CUPE BC promotes a ban on bottled water, and publicly acknowledges Ms. Watt and other officials who support such a ban. If Ms. Watt took a position on the Board that conflicted with CUPE BC’s policy, she would risk negative consequences in her employment, and could lose CUPE BC’s support in any re-election campaign. From the perspective of an objective observer, it would appear difficult for Ms. Watt to exercise independent judgment given CUPE BC’s clearly expressed interest in the matter.

The interest of CUPE BC (and therefore Ms. Watt) in these matters is neither remote nor insignificant. Regarding the Local 409 contract, there is a substantial relationship between CUPE BC and its locals, similar to the relationship between the unions in the *Wynja* matter. Regarding the bottled water issue, CUPE BC’s public campaign against bottled water, Ms. Watt’s participation in that campaign, and her senior position with CUPE BC all demonstrate that her interest is publicly aligned with that of CUPE BC.

If Ms. Watt votes on either matter, a court would probably remove her from office unless she can prove that she acted in good faith in reliance on a legal opinion. A further possible defence is “inadvertence”, but it is unlikely that a court would accept such a defence here. This is not a case where Ms. Watt is unaware of her connection to Local 409, or CUPE BC’s public position against bottled water.

* * *

We trust this opinion is satisfactory, and would be pleased to address any concerns you may have.

Yours truly,

BLAKE, CASSELS & GRAYDON LLP

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⁶ *Wynja v. Halsey-Brandt* (1991), 62 B.C.L.R. (2d) 22 (S.C.), aff’d (1993), 78 B.C.L.R. (2d) 72 (C.A.).