

ITEM 19

MANAGER'S REPORT NO. 37

COUNCIL MEETING May 13/74

Re: Bill 85 - Public Officials and Employees Disclosure Act

Attached to Council's reports is a copy of Bill 85 - Public Officials and Employees Disclosure Act. This information is submitted in accordance with a request that was made at the May 6, 1974 meeting of Council.

It has been ascertained that the subject Bill has received first reading.

This is for the information of Council.

HON. ATTORNEY-GENERAL

No. 85]

BILL

[1974

Public Officials and Employees Disclosure Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Interpre-
tation.

1. In this Act, unless the context otherwise requires,
- "business" includes a profession, calling, trade, manufacture, undertaking of any kind, and an adventure or concern in the nature of trade, but does not include an office or employment;
- "debt" does not include
- (i) a mortgage, lease, or agreement for sale on land ordinarily occupied by the debtor for, or as incidental to, residential purposes; and
 - (ii) current and ordinary household and personal living expenses;
- "disclosure clerk" means
- (i) where a Provincial official files a written disclosure, the clerk of the Legislative Assembly of the Province;
 - (ii) where a municipal official files a written disclosure, the clerk or secretary of the council of the municipal official's municipality or school district, or of the board of the municipal official's regional or other district, as the case may be; and
 - (iii) where a public employee files a written disclosure, the Provincial Secretary;
- "employment" means the position of an individual in the service of some other person;
- "interest" means an interest specified, or required to be specified, notwithstanding the date on which a written disclosure is required under section 3 to be filed, in a written disclosure;
- "land" does not include, except in the definition "debt", land ordinarily occupied by an owner for, or as incidental to, residential purposes;
- "municipal official" means a person who is a
- (i) mayor, alderman, or member of the council of a city, district, town, or village municipality, or of a regional or other district; or
 - (ii) member of a board of school trustees constituted under the *Public Schools Act*;
- "office" means the position of a person, other than a corporation, entitling him to a fixed or ascertainable stipend or remuneration;
- "Provincial official" means a person who is a
- (i) member of the Executive Council of the Provincial Government; or
 - (ii) member of the Legislative Assembly of the Province;

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"public employee" means a person who is designated by the Lieutenant-Governor in Council and who is

- (i) employed by the Provincial Government, or any of its boards, agencies, or commissions, under the *Public Service Act* or by an order of the Lieutenant-Governor in Council; or
- (ii) employed by or appointed to a board, agency, or commission where such employment or appointment requires, under an Act, an order or approval of the Lieutenant-Governor in Council; or
- (iii) a member of a board, agency, or commission established under an Act or by order of the Lieutenant-Governor in Council,

but does not include a judge of a court; and

"written disclosure" means a written disclosure required to be made and filed under this Act.

Require-
ment to
make
written
disclosure.

2. (1) Every person who is, on the first day of June, 1974, a Provincial official, municipal official, or public employee shall make and file, not later than the fifteenth day of July, 1974, a written disclosure.

(2) Every person who becomes, at any time after the first day of June, 1974, a Provincial official, municipal official, or public employee shall make and file, not later than the fifteenth day of the month following the month during which he becomes a Provincial official, municipal official, or public employee, a written disclosure.

(3) Every person who is a Provincial official, municipal official, or public employee shall make and file, between the first and fifteenth days of January and of July in every year during which he is a Provincial official, municipal official, or public employee, a written disclosure.

(4) Every person who ceases, for any reason other than his death, to be a Provincial official, municipal official, or public employee shall make and file, not later than the fifteenth day of the month following the month during which he ceases to be a Provincial official, municipal official, or public employee, a written disclosure.

(5) Nothing in this section requires a person to file more than one written disclosure during any one month.

Contents
and filing
of written
disclosure.

3. (1) A written disclosure made under section 2 by a Provincial official or public employee shall specify

- (a) the name of every corporation in which the Provincial official or public employee, or a trustee on his behalf, holds one or more shares;
- (b) the name of every business situated or carrying on business in the Province and financially remunerating the Provincial official or public employee for services performed by him as an employee, officer, owner or part owner, director, trustee, or partner;
- (c) the name of the creditor in respect of every debt in which the Provincial official or public employee is a debtor; and

- (d) the description and location of land situated in the Province and in respect of which the Provincial official or public employee, or a trustee on his behalf, holds an ownership interest or has entered into an agreement under which he is entitled to acquire an ownership interest,

and shall be filed, in such form as the Lieutenant-Governor in Council may prescribe, with the appropriate disclosure clerk.

(2) A written disclosure made under section 2 by a municipal official shall specify

- (a) the name of every corporation in which the municipal official, or a trustee on his behalf, holds one or more shares;
- (b) the name of every business, situated or carrying on business in the regional district in which the municipality for which the municipal official is elected is situated, and financially remunerating the municipal official for services performed by him as an employee, officer, owner or part owner, director, trustee, or partner;
- (c) the name of the creditor in respect of every debt in which the municipal official is a debtor; and
- (d) the description and location of land, situated in the regional district in which the municipality for which the municipal official is elected is situated, and in respect of which the municipal official, or a trustee on his behalf, holds an ownership interest or has entered into an agreement under which he is entitled to acquire an ownership interest,

and shall be filed, in such form as the Lieutenant-Governor in Council may prescribe, with the appropriate disclosure clerk.

(3) Where shares of a corporation carrying more than thirty per cent of the votes for the election of directors are held, other than by way of security only,

- (a) by a Provincial official, municipal official, or public employee, or by a trustee on his behalf; or
- (b) jointly by a Provincial official, municipal official, public employee, or trustee on his behalf, and one or more of his spouse, child, brother, sister, mother, or father,

the written disclosure made under section 2 by the Provincial official, municipal official, or public employee, as the case may be, shall be accompanied by

- (c) a copy of the most recently audited financial statement required to be kept by the corporation under section 186 (1) (s) of the *Companies Act*; and
- (d) a list and description, including the location, of every asset owned by the corporation or by a subsidiary, within the meaning of section 1 (3) of the *Companies Act*, of the corporation.

(4) For the purposes of subsections (1), (2), and (3), a person shall be deemed to be a trustee on behalf of a Provincial official, municipal official, or public employee where the person

- (a) holds a share in a corporation, or holds an ownership interest in land for the benefit of the Provincial official, municipal official, or public employee; or
- (b) holds a share in a corporation, or holds an ownership interest in land, and the Provincial official, municipal official, or public employee is liable to pay, under the *Income Tax Act* (Canada), income tax on income received by him in respect of the share or ownership interest; or
- (c) has entered into an agreement under which he is entitled to acquire, for the benefit of the Provincial official, municipal official, or public employee, an ownership interest in land.

(5) A provincial official, municipal official, or public employee may at any time make and file a supplementary written disclosure in accordance with subsections (1), (2), and (3).

**Access to
written
disclosures.**

4. (1) The disclosure clerk with whom a written disclosure is filed under section 3 shall produce for inspection, upon request made to him during normal business hours, the written disclosure filed by a Provincial official or municipal official.

(2) Subject to subsection (3) and sections 8 (3) and 9 (2), no person shall have access to a written disclosure filed by a public employee.

(3) Upon receipt of a written disclosure filed under section 3 by a public employee, the Provincial Secretary shall send a copy of the written disclosure to the member of the Executive Council of the Provincial Government who, in the opinion of the Provincial Secretary, is responsible to the Executive Council for the administration of the Act under or in respect of which the public employee is employed or appointed.

**Other
disclosure
require-
ments.**

5. The provisions of this Act are supplementary to and do not affect any duty or obligation to disclose an interest under any other law.

**Proceedings
not invali-
dated.**

6. The failure of a Provincial official, municipal official, or public employee to comply with this Act shall not, of itself, invalidate any matter, proceeding, vote, or contract.

Regulations.

7. For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant-Governor in Council may make such regulations and orders as are ancillary thereto and not inconsistent therewith; and every regulation shall be deemed to be part of this Act and has the force of law.

Offence
and
penalty.

8. (1) Every person who
(a) is a Provincial official, municipal official, or public employee; and
(b) fails to make and file, in accordance with this Act, a written disclosure,

is guilty of an offence and is liable on summary conviction to a fine of not more than ten thousand dollars.

(2) It is a defence to a charge under subsection (1) to show that the Provincial official, municipal official, or public employee complied with section 3 to the best of his knowledge or belief.

(3) Where a public employee is prosecuted under subsection (1), the Provincial Secretary, upon the request of the court, shall send to the court the written disclosure of the public employee.

Liability
for
damages.

9. (1) Where the Supreme Court, upon application, is of the opinion that a Provincial official, municipal official, or public employee

(a) knowingly and wilfully contravened this Act by not disclosing an interest; and

(b) made a financial gain resulting from his involvement in a matter, proceeding, vote, or contract in respect of the interest,

the court may order the Provincial official, municipal official, or public employee to pay to the public employee's employer, or to the Provincial or local government to which the Provincial or municipal official is elected, as the case may be, such amount as the court may determine to be the amount of the financial gain.

(2) Where an application under subsection (1) is made in respect of a public employee, the Provincial Secretary, upon the request of the court, shall send to a court the written disclosure of the public employee.

Commence-
ment.

10. This Act comes into force on the thirty-first day of May, 1974.

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in right of the Province of British Columbia.
1974

EXPLANATORY NOTES

The purpose of this Bill is to enact the *Public Officials and Employees Disclosure Act* to require members of the Legislative Assembly and Cabinet, mayors, aldermen, school trustees, and such public employees as the Lieutenant-Governor in Council may designate, to disclose certain holdings specified in this Act.

(This statement is submitted by the Legislative Counsel
and is not part of the legislation.)