

**CENSURE**

**MOTIONS**

*April 2009*

**YOUNG,  
ANDERSON**

**BULLETIN**

On April 9, 2009, the B.C. Supreme Court released its decision in *Barnett v. Cariboo Regional District* (2009 BCSC 471), striking down the Board's resolution prohibiting a Director from communicating directly with the Regional District's staff. Not only did the judge express his "serious concerns" with the Board's "disingenuous approach" to technical issues like how the Board put the resolution on the agenda and the alleged grounds for meeting in-camera, he also awarded special costs against the Regional District for acting with a "complete disregard for any fair process".

A previously undisclosed report about the Director's alleged mistreatment of staff was distributed at an in-camera Board meeting held for unrelated reasons. This was the first that the Director heard of the report or the proposed resolution. It was adopted at that meeting and all copies of the report were collected back from the directors. Director Barnett subsequently made several unsuccessful efforts to get a copy of the report and to have the Board reconsider its resolution. When the new Board confirmed the resolution shortly after the 2008 local government election, he commenced the legal action challenging the Regional District's authority for and procedure used in adopting the censure resolution.

The bulk of the Court's decision reviews what the Board was obliged to do before adopting a resolution designed to discipline an elected official for alleged misconduct. The Court confirmed that an elected official is entitled to procedural fairness, which includes the right to be heard and the right to an impartial hearing before a resolution of that nature is adopted. The Court concluded the Regional District's actions fundamentally failed to satisfy both rights because the Director was not given any or sufficient information about the specific complaints levied against him. Also, he was not provided a reasonable opportunity to respond to those allegations or to consult with legal counsel before the resolution was considered.

The Court also awarded special costs against the Regional District. Normally, special costs are used by the Court to penalize improper conduct by a party in the course of the litigation itself. Here, the Court's reasons for awarding the increased costs are brief and not based not on the Regional District's litigation

conduct but rather based on the Court's finding that the Chair of the Board had a "clear bias" against the Director and took the lead in adopting the procedurally flawed censure resolution. This case is a clear reminder that before adopting a censure or other similar resolution, a council or board must provide its affected member with proper notice of the proposed resolution, fully disclose all of the reasons or allegations giving rise to the proposed resolution, and provide the opportunity for an impartial hearing before any decision is made.

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