



## OFFICE OF THE CHAIR

February 11, 2021

Director Noba Anderson  
Box 394  
Whaletown, BC V0P 1Z0

Dear Director Anderson:

**RE: COMMUNICATIONS WITH STAFF - STATEMENT OF EXPECTATIONS**

Further to the representations made on your behalf during the January 27 Board meeting dealing with the application of section 102 of the *Community Charter* to your December 17, 2020 email to staff, the Board wishes to notify you of this statement of expectations. The purpose of this statement is to provide a warning and notice of the Board's expectations of Director conduct with Regional District staff members and other members of the Board.

The use of personal email does not immunize a director from the application of section 102 of the *Community Charter*. In cases where the influence or attempted influence is taking place between the elected official and an officer or employee of the local government or at a meeting of the local government as provided for in section 102(1)(a), the person receiving the communication will undoubtedly know the person is an elected official. Therefore, the use of a personal email by itself cannot stand as immunity from section 102.

Also, take notice that the LGMA Toolkit on Freedom of Information and Protection of Privacy recommends that elected officials use their local government email addresses for local government business in order that local government staff be in a position to be properly responsive to a Freedom of Information request. Your use of your personal email addresses for Regional District business is not advisable.

Stating that you are acting in your personal capacity does not necessarily mean that you are not using your office and does not immunize an elected official from the application of section 102 of the *Community Charter*. Imagine the application of s.102(1)(a) of the *Community Charter* to a meeting where the elected official has a pecuniary interest in the matter before the board or committee and the elected official in making submissions says: "I am doing this in my personal capacity; I want you do me a personal favour".

There are a number of instances where an elected official could communicate with a staff member in his or her personal capacity that would not be a breach of section 102 but not every instance would be immunized by a statement that you are acting in your personal capacity. An elected official could pay taxes, purchase a dog licence or apply for a building permit without violating section 102. These are interactions where the staff member is not exercising discretion such that influence would make any difference to their decisions, recommendations or actions. However, a situation where an elected official says they are acting in their personal capacity but uses

information they have gained as an elected official to persuade a staff member to make a certain decision or takes advantage of access to the staff member that others would not have, might well fall under section 102 of the *Community Charter*.

Careful consideration of section 102 must be made by a director before communicating with Regional District staff to ensure that the communication does not fall under section 102. It is better to err on the side of caution and act prudently in this regard. If there are any questions that the communication might fall under section 102, it is best to seek advice from Senior Management beforehand, remembering the Regional District does have a policy about Directors' direct communication with staff members.

The Regional District has a policy that should a director communicate directly with a staff member who is not Senior Management, that staff member is to advise Senior Management of the communication forthwith and make no response themselves. Take notice of this policy in future communications with staff members.

As a repeated reminder, the Regional District Code of Conduct says at section 21 that elected officials are not to direct or influence, or attempt to direct or influence, or issue instructions to staff members in the exercise of their duties or functions. Further, at section 24(2), The Board as a whole, not individual directors, gives direction to staff through passage of Board resolutions.

#### Interactions with Staff

21. The Regional Board, acting as a whole, has the sole responsibility to govern the Regional District in accordance with the Local Government Act, Community Charter and other relevant legislation and, as such, directors must not:
  - (a) direct or influence, or attempt to direct, influence or issue instructions to any member of staff in the exercise of their duties or functions;
  - (b) contact or issue instructions to any of the Regional District's contractors, tenderers, consultants or other service providers; or
  - (c) make public statements attacking or reflecting negatively on staff or invoke staff members for political purposes.

#### Board is the Governing Body

24.
  - (1) The Regional District as a corporate body represents the entire Regional District and the Board as a whole is the local government for individual electoral areas.
  - (2) The Board as a whole, not individual directors, gives direction to staff through passage of Board resolutions.

It is the opinion of the Board that in sending your email of December 17, 2020 to a member of staff you did not consider carefully section 102 of the *Community Charter*, the Code of Conduct or Regional District policy. The Board expects you to conduct yourself in accordance with this legislation, and the Regional District bylaws and policies. This information is provided so there can be no mistakes about what is expected to avoid future possible contraventions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Unger', with a long horizontal flourish extending to the right.

Brad Unger  
Chair