use only where a clearly certain amount has been gained. Property or profits confiscated in this manner should be destined for a particular repository and it would be appropriate if this were a national fund. There are certain shortcomings inherent in this solution which limit its applicability. For example, it may be difficult in the case of a company shareholding to determine how much profit or advantage has accrued. A profit may have been derived by all the shareholders as a result of the actual or apparent use of information derived from the public office.

It may, alternatively, be recommended that an individual divest himself of particular objectionable interests.

Conclusion

The above guide might be employed by any organization attempting a continuous review of conflicts of interests with the aim of avoiding situations endangering the organization. The formulation of rules is unlikely to resolve all the problems. It will be necessary for the letter and the spirit of certain principles to be observed before a solution will be achieved. The relevant principles will vary according to position and circumstance. However, to grant a suitable tribunal some discretion within defined limits would assist in preventing detrimental conflict of interest situations.

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THE MUNICIPAL GOVERNMENT ACT, 1968 S.A. c. 68, ss. 383-389— NOTICE OF INTENTION TO COMMENCE AN ACTION IN TORT AGAINST A MUNICIPALITY

Although the time period for commencing an action in tort was standardized in 1966[1] there still remain several statutory provisions relating to notice of intention to commence such an action. The provisions most commonly encountered are those contained in The Municipal Government Act.[2]

The provisions of The Municipal Government Act[3] set out various time periods within which notice of an accident and its cause must be served upon the municipal secretary. It is most important that notice required to be given within the specified time period to the specified municipal official. There is a supplementary provision[4] in The Municipal Government Act which provides that failure to give the required notice is not a bar to an action where the person required to give notice has died or if he has a reasonable excuse for the want of notice and the municipality has not been materially prejudiced in its defence. The courts have indicated that they will strictly interpret such notice provisions and have also indicated that "reasonable excuse" has a very restricted meaning.

1 S.A. 1966, c. 49.
2 S.A. 1968, c. 68.
3 S.A. 1968, c. 68, s.s. 383 to 389.
4 S.A. 1968, c. 68, s. 389.

In a recent Alberta decision *Kaughman* v. *City of Calgary*[5] Milvain J. (as he then was), in considering section 695 of The City Act;[6] which was subsequently replaced by section 385 of The Municipal Government Act[7]; applied strict rules of statutory interpretation and allowed a technical objection to defeat an otherwise meritorious action.

The matter came before Milvain J. pursuant to an order that an issue be tried; the operative portion of the order stated two issues for the consideration of the court:

> 1. 'Whether or not written notice of an accident and the cause thereof served upon the claims department of a city within six months of the happening of the accident, is sufficient compliance with Section 695(1) of The City Act, being Chapter 42 of the Revised Statutes of Alberta, 1955, and amendments thereto, so as to entitle the claimant to commence action for damages arising out of the said accident it being admitted that the solicitor of the city has been informed of he said accident and cause thereof within the said six-month period."
> 2. "If the said notice is not deemed sufficient compliance as above, whether or not the Plaintiff had reasonable excuse for not giving proper notice within the six month period required."

The essential facts of the case were agreed upon by the parties and are stated concisely in the judgment:

> "All essential facts were agreed before me. The plaintiff's ownership of the property and its situation within the city are admitted. It is also admitted that on March 7, 1966, the property was flooded by water. At about 11:30 p.m. that night the plaintiff contacted agents of the city and workmen were sent to shut off the water supply. The next morning, city workmen excavated the service lines and the following day the main, where a break was found and repaired. A notice was given in writing to the clams department and on some occasions during the six months following the event, the plaintiff or her agents did have some conversation with the city solicitor's office. No notice was ever given to the city clerk."[8]

There has been a tendency to consider notice sufficient if it is sent to any municipal department. This decision should encourage members of the profession to become familiar with the provisions of The Municipal Government Act in order to submit such notices in a manner which fulfills the statutory requirements.

The want or insufficiency of notice is not a bar to an action if the court considers that there is "reasonable excuse" for such want or insufficiency of notice and that the municipality has not been materially prejudiced in its defence. In order to obtain relief under the provision both "reasonable excuse" and "no material prejudice" must be proven in order to obtain relief under the section.[9]

Milvain J. did not consider question of prejudice as the City of Calgary admitted that it had suffered no prejudice. In considering the question of "reasonable excuse" Milvain J. relied upon and followed *Varty* v. *Rimbey (Town)*[10] and concluded:

> "In my view the legislation is plain and unambiguous. It says clearly and precisely that notice shall be served upon the city clerk. It clearly contemplates no one else. When a statute speaks in clear terms it should be so interpreted."
> "In this case I cannot find any evidence of someone within the city fold having misled the plaintiff into giving notice to the claims department rather than to the city clerk as demanded, in plain terms, by the statute. Her real excuse in this connection, if any, is that she did not know notice must be given to the city clerk. The law is plain. Such ignorance is not an excuse acceptable to any

5 (1968) 63 W.W.R. 367.
6 R.S.A. 1955, c. 42.
7 S.A. 1968, c. 68.
8 (1968) 63 W.W.R. 367, at 368.
9 *Id.*, at 369.
10 (1952-53) 7 W.W.R. (NS) 681, affirmed (1954) 12 W.W.R. (NS) 256.

> court. She has no excuse of having been misled, and none of any physical impossibility. In fact, she has nothing but inattention to plain and unmistakable statutory words."

The words used in the judgment lead to the conclusion that in order to prove "reasonable excuse" the plaintiff must prove either that he has been misled by the municipality into not giving notice or into giving improper notice or that it was physically impossible for him to give such notice. Mere inadvertence or inattention is not "reasonable excuse".

The statutes governing municipal corporations in Alberta have been radically altered since 1967. A review of these statutes is essential before dealing with such municipal corporations in order that reasonable claims and actions will not be defeated by technical errors.

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SURROGATE COURT'S POWER TO GRANT PROBATE TO A FOREIGN EXECUTOR

Does The Alberta Surrogate Court have the power to grant probate to a foreign executor of an estate of property in Alberta? This question arises out of a decision of Tavender, D.C.J. in *Re Alder Estate,*[1] which dealt with an executor's application for probate of the will of a deceased who had resided and held assets in Calgary, Alberta. The deceased's will appointed his brother, who resided at Waterloo, Indiana, U.S.A., as his executor. The learned judge held that as Alberta only has reciprocal arrangements with the Proivnces and Territories of Canada, the United Kingdom and other British Dominions, States, Provinces, Colonies and Dependencies for application for grants of probate, he had no power to make a grant to an executor residing in the United States of America.[2] The learned judge suggested that the foreign executor, if temporarily out of jurisdiction, appoint an attorney within the province *durante absentia* or otherwise renounce probate and execution of the will. With respect, this decision seems to be contrary to previous law and practice both in Alberta and elsewhere.

This historical background of the law which applies to executors in Alberta is briefly discussed in the case of in *Re Rutherford Estate; Rutherford* v. *McCuaig and Royal Trust Company*[3] as stated by Lunney, J.A.:

> The Northwest Territories Act, R.S.A. 1886, c. 50, s. 11 provides that the Laws of England relating to civil and criminal matters as the same existed on July 15, 1870, shall be in force in the Territories, in so far as the same are applicable to the Territories.
>
> By the Alberta Act, 1905, c. 3, s. 16, all laws and all orders and regulations are in force until repealed by competent authority.

With respect to foreign executors, the Law of England as at July

1 (1963) 42 W.W.R. 697.

2 Under Rule 886 of *The Alberta Rules of Court,* for the purpose of an application for resealing Letters Probate or Letters of another Court, only grants from "a court of competent jurisdiction in the United Kingdom or in any other province or territory of the Dominion or in any other British Dominion, state, province, colony or dependency" can be accepted by the Clerk of the Surrogate Court of Alberta.

3 (1942) 1 W.W.R. 567.