

Conduct of Local Elected Officials

Newly Elected Officials Seminar
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Conduct Rules

- *Community Charter* “ethical conduct” rules for council members
- Basic and longstanding conflict of interest rules
- Newer rules based in part on *Members Conflict of Interest Act*
- Apply to councillors and members of regional district boards
- Local meeting procedure bylaw may contain additional rules of conduct at meetings

What is a Conflict of Interest?

A conflict of interest exists if:

- the elected official has a special, personal interest in a matter that differs from the general community interest; and
- a reasonable observer would conclude that the special interest could influence the elected official's position or vote on the matter

A conflict of interest is pecuniary if the elected official's special interest is a financial interest

Conflict of interest is about perception

- Whether an elected official has a conflict of interest does not depend on whether the official considers that their special interest would influence their position on the matter (their subjective judgment)
- What matters is whether a reasonable observer would consider that it could influence their position (an objective judgment)

What is not a conflict of interest?

- an interest that the elected official has in common with local electors generally (e.g. annual tax bylaw)
- an interest related to remuneration as an elected official, or indemnification
- an interest so remote and insignificant that it cannot reasonably be regarded as likely to influence the official in relation to the matter
- an interest in common with other persons subject to a local service tax
- an interest prescribed by provincial regulation (e.g. Sun Peaks Mountain Resort Municipality Regulation)

Examples of conflict of interest

- Owner of land that is subject to development application or expropriation
- Neighbour of land that is subject to development application
- Director of society or company doing business with the local government
- Family member of person subject to bylaw enforcement proceedings

Managing a conflict of interest

- A council or board member must:
 - declare both pecuniary and non-pecuniary conflicts at the meeting – minutes must record the declaration
 - leave the meeting where the matter will be discussed
 - not attempt to influence the voting on the matter either before or after the meeting
- Conflict of interest declarations can be withdrawn on the basis of legal advice to the elected official
- Court order available if conflict of interest declarations make a quorum impossible

Please remember ...

- All elected officials should expect to be in a conflict of interest situation from time to time
- The only thing you can do wrong, is fail to deal with the conflict properly
- Declare that you are not entitled to participate because of a stated interest in the matter that you think constitutes, under the *Charter*, a conflict of interest
- Don't declare that other people think you have a conflict of interest

Other “ethical conduct” rules

- Inside influence
- Outside influence
- Restrictions on accepting gifts
- Disclosure of acceptable gifts
- Disclosure of contracts
- Insider information
- Confidentiality

Inside and outside influence

- council or board member cannot attempt to influence decisions, recommendations or other actions by an officer or employee or a delegate of the council or board on a matter in which the member has a conflict of interest
- council and board members may not use their office to influence decisions made by persons outside the local government organization

Gifts

- general ban on gifts to local elected officials
- exception for gifts received “as an incident of the protocol or social obligations that normally accompany the responsibilities of office” e.g. sister city souvenirs
- obligation to report all gifts exceeding \$250 in value, or if total value of gifts from one source exceed \$250 in 12-month period
- reports to be available for public inspection

Disclosure of contracts

- Contracts between the local government and a council or board member or former member (previous 6 months) must be reported as soon as reasonably practical at an open meeting (duty of the local government)
- Council or board member or former member (last 6 months) must advise corporate officer of such contracts as soon as reasonably practicable (presumably so they can be reported at an open meeting)

Insider information

- Council and board members and former members prohibited from using insider information for a direct or indirect pecuniary gain
- Information obtained in the performance of official duties and that is not available to the general public

Confidentiality

- Council and board members and former members must keep in confidence records held in confidence by the local government, and information considered in a closed meeting, until the information is released to the public
- No statutory sanction provided for breach of duty
- Local sanctions may include censure motion
- Local government may recover damages from the member for any loss or damage it suffers as a result of contravention of the confidentiality rule
- *Offence Act* prosecution for breach of FIPPA privacy rules

Remedies: Disqualification

- Disqualification from office for breaching the ethical conduct rules regarding:
 - Disclosure of conflicts of interest
 - Inside influence
 - Outside influence
 - Gifts
 - Disclosure of contracts
 - Insider Information
- Local government or electors may initiate w/i 45 days
- Restrictions on holding office subsequently
- Court costs may be ordered against the disqualified member or the local government

Remedies: Disgorgement of financial gain

- Court order for former member to pay to the local government any financial gain realized as a result of a contravention of the *Charter* conduct rules
- Local government or an elector may initiate application
- Court can order local government to pay costs of elector-initiated application and may order recovery of costs from former member who contravened conduct rules