

CONFLICT OF INTEREST, CONFIDENTIALITY AND LIABILITY: WHAT EVERY ELECTED OFFICIAL NEEDS TO KNOW

Local Government Leadership Academy
Legal Clinic

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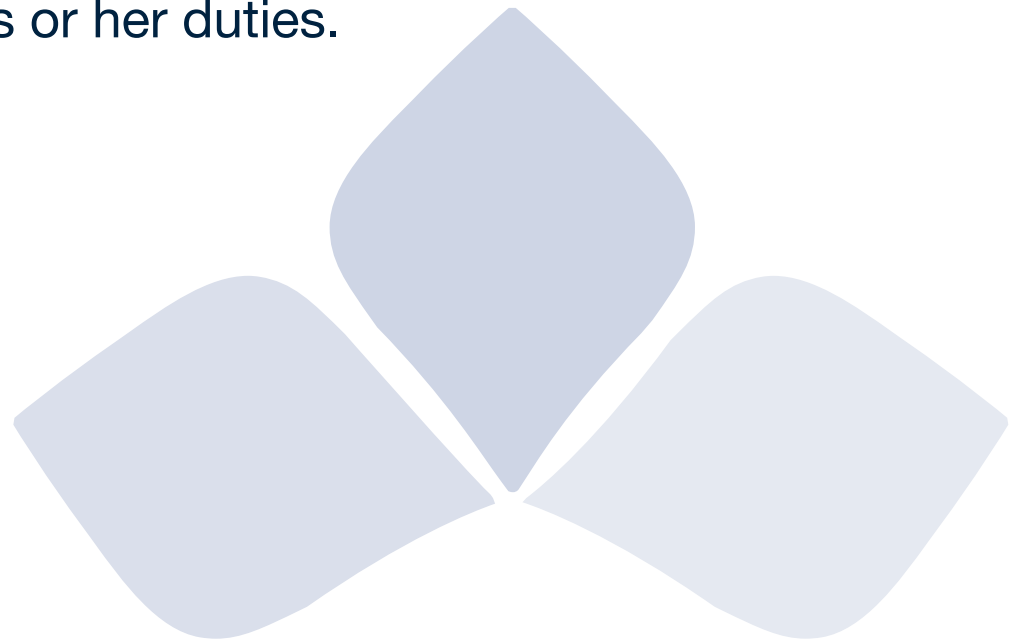


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CONFLICTS OF INTEREST, CONFIDENTIALITY AND LIABILITIES FOR ELECTED OFFICIALS

What is a conflict of interest?

- a personal interest in a matter that goes beyond the interests of other members of the community, and might reasonably be expected to influence the elected official's performance of his or her duties.



CONFLICTS OF INTEREST, CONFIDENTIALITY AND LIABILITIES FOR ELECTED OFFICIALS

*Old St. Boniface Residents Association Inc. v.
City of Winnipeg (1990)*

“It is not part of the job description that municipal councillors be personally interested in matters to come before them beyond the interests that they have in common with the other citizens in a municipality. Where such an interest is found, both at common law and by statute, a member of council is disqualified if the interest is so related to the exercise of a public duty that a reasonably well informed person would conclude that the interest might influence the exercise of that duty. This is commonly referred to as a conflict of interest.”

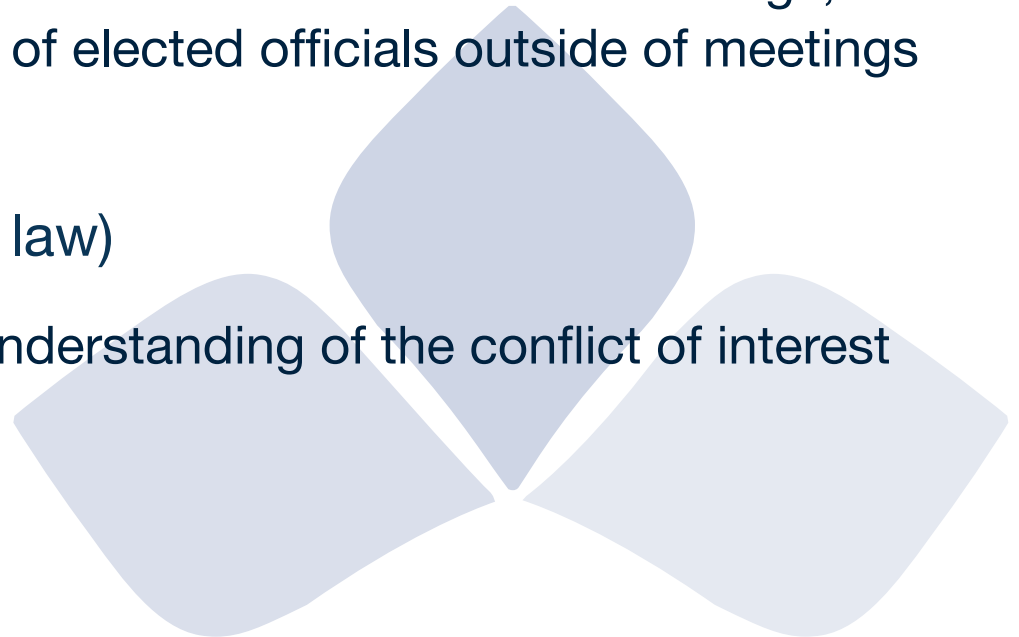
CONFLICTS OF INTEREST, CONFIDENTIALITY AND LIABILITIES FOR ELECTED OFFICIALS

Community Charter - Part 4, Division 6 & 7

- sets out statutory rules respecting conflict of interest for municipal councillors, regional district directors
- applies to elected officials in relation to meetings of council, board, committee and commission meetings, etc.
- regulates conduct of elected officials outside of meetings as well

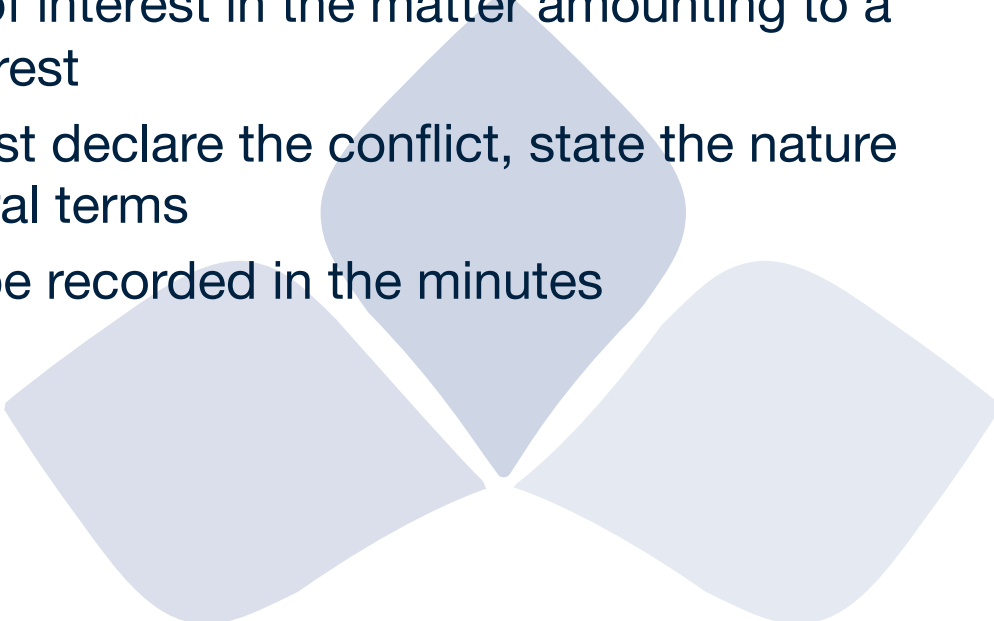
Common Law (case law)

- also informs our understanding of the conflict of interest rules



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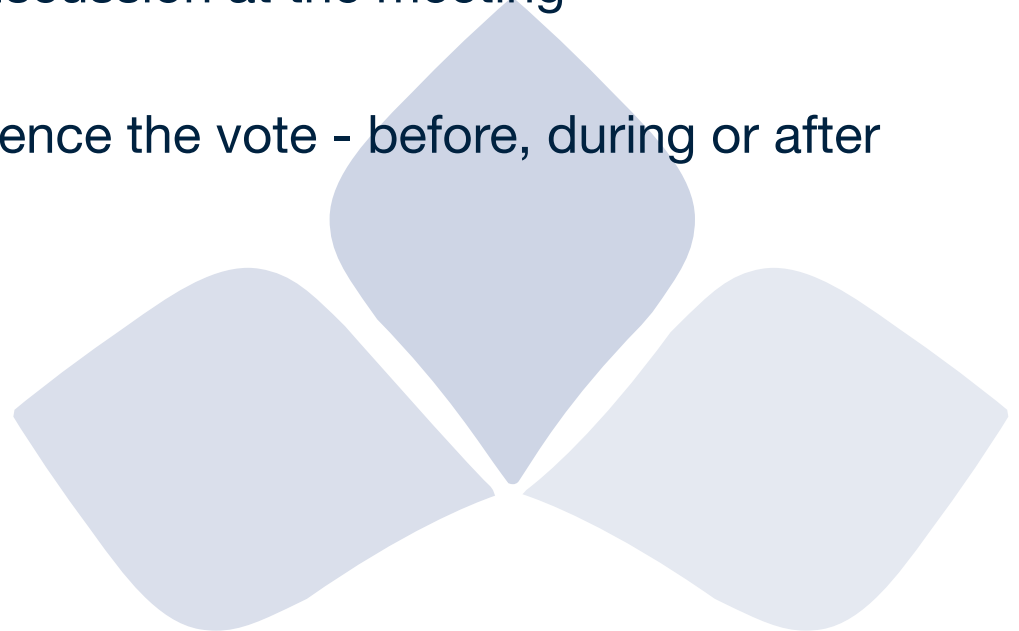
Disclosure of Conflict (*Community Charter* s. 100)

- required where an elected official attends a meeting and has:
 - a direct or indirect pecuniary interest in a matter; or
 - another form of interest in the matter amounting to a conflict of interest
 - elected official must declare the conflict, state the nature of conflict in general terms
 - declaration must be recorded in the minutes
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CONFLICTS OF INTEREST, CONFIDENTIALITY AND LIABILITIES FOR ELECTED OFFICIALS

Restrictions on Participation (*Community Charter* s. 101)

- after declaring the conflict, elected official must not:
 - remain at the meeting
 - participate in discussion at the meeting
 - vote
 - attempt to influence the vote - before, during or after the meeting



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Withdrawing the Declaration of Conflict

- may be withdrawn where elected official determines the declaration was wrong and has received legal advice
- must state the basis on which the elected official is entitled to participate
- may then participate, vote
- *Godfrey v. Bird* - elected officials must obtain their own, independent legal advice



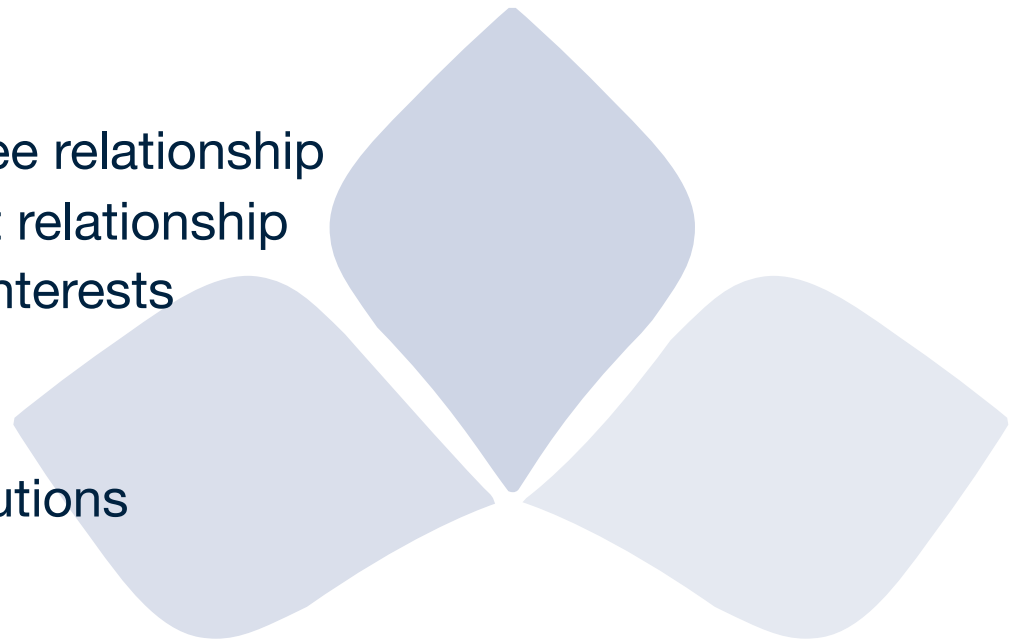
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Pecuniary Conflicts of Interest

- what is a pecuniary interest?
- direct vs. indirect

Examples:

- employer/employee relationship
- professional/client relationship
- business or land interests
- contracts
- family/friendship
- campaign contributions



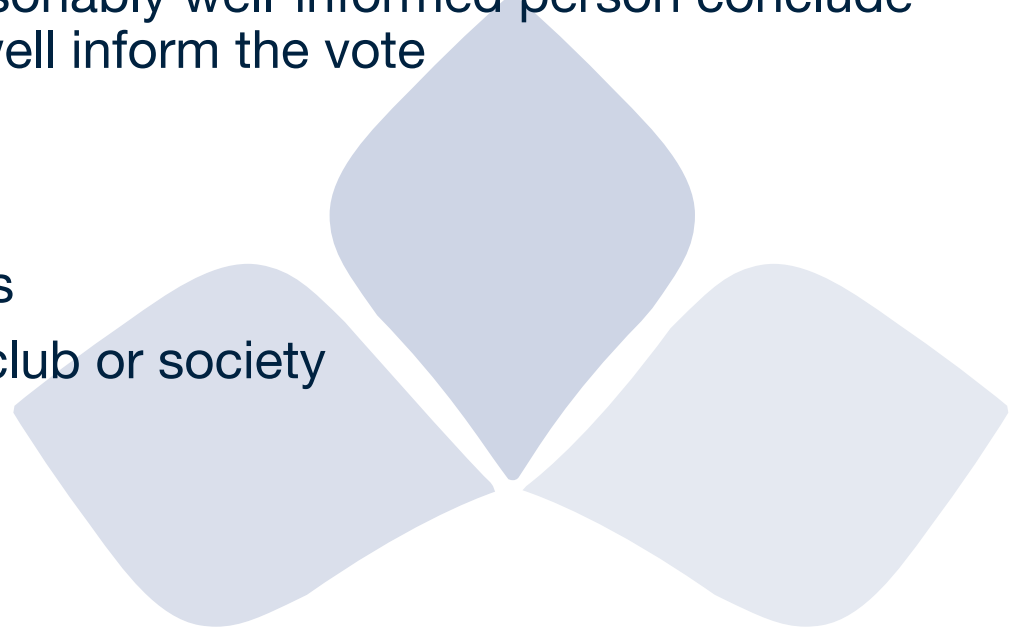
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Non-Pecuniary Conflicts of Interest

- bias arising from a (non-pecuniary) personal interest in a matter
- interest must be “substantial”
- test - would a reasonably well-informed person conclude the interest may well inform the vote

Examples:

- family connections
- membership in a club or society



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Non-Pecuniary Conflicts of Interest (cont'd)

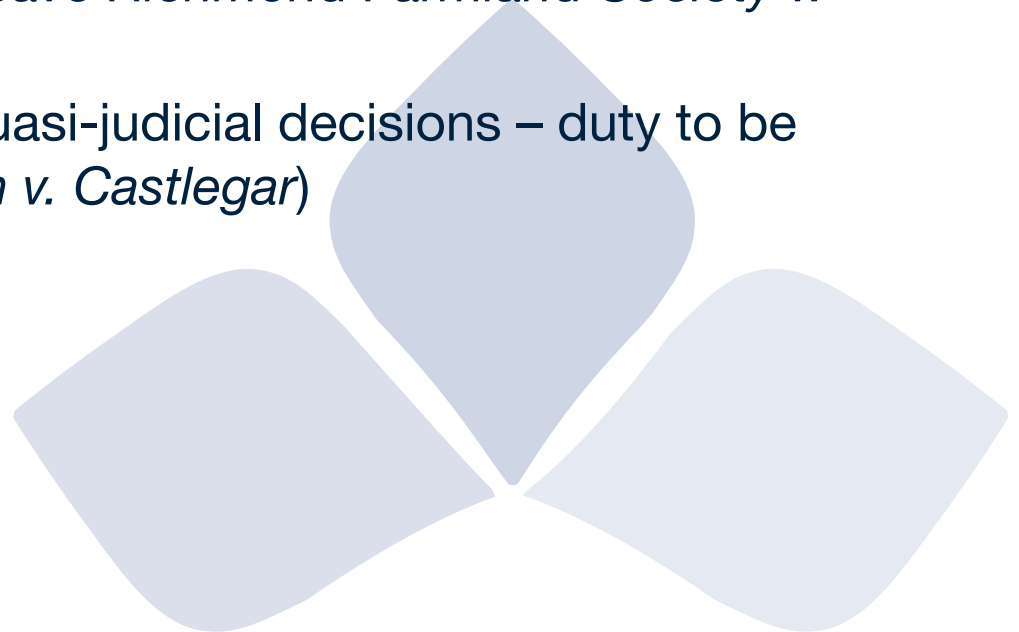
- institutional conflicts - appointment to outside boards, agencies
- *Save St. Ann's Coalition v. Victoria*
- *Schlenker v. Torgrimson et al.*



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Non-Pecuniary Conflicts of Interest – Political Bias

- “closed mind” – may lead to disqualification from voting
- “capable of persuasion” test – applies to legislative and policy decisions (*Save Richmond Farmland Society v. Richmond*)
- for adjudicative/quasi-judicial decisions – duty to be impartial (*McLaren v. Castlegar*)



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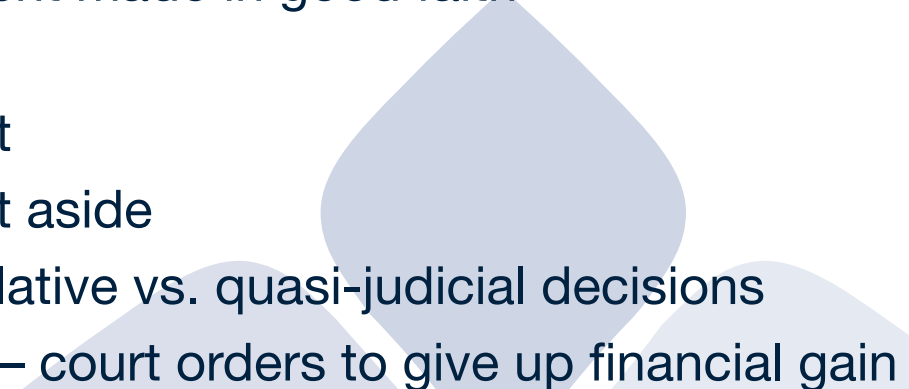
Statutory Exceptions:

- community of interest
- local services
- remuneration/benefits payable to elected officials
- remote, insignificant pecuniary interests
- interests prescribed by regulation



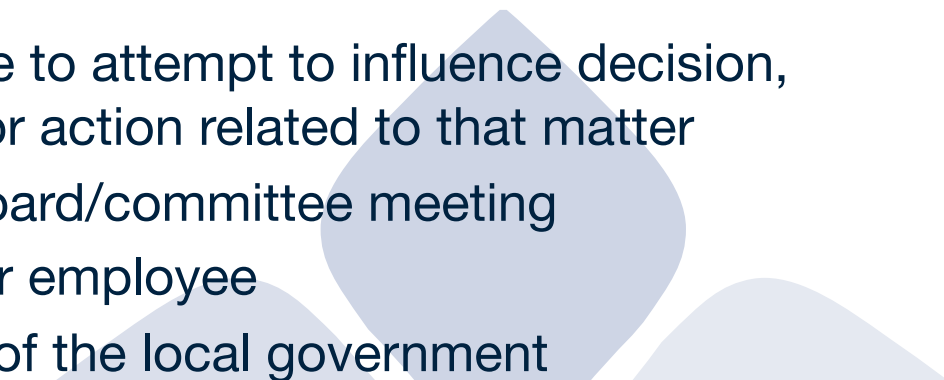
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Consequences

- pecuniary conflicts - disqualification from holding office
 - exceptions:
 - errors in judgment made in good faith
 - inadvertence
 - vote does not count
 - decision may be set aside
 - administrative/legislative vs. quasi-judicial decisions
 - pecuniary conflicts – court orders to give up financial gain
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CONFLICTS OF INTEREST, CONFIDENTIALITY AND LIABILITIES FOR ELECTED OFFICIALS

Restrictions on Influence

- *Community Charter* s. 102, 103
 - apply where elected official has a direct/indirect pecuniary interest in a matter
 - must not use office to attempt to influence decision, recommendation or action related to that matter
 - at a council/board/committee meeting
 - by an officer or employee
 - by a delegate of the local government
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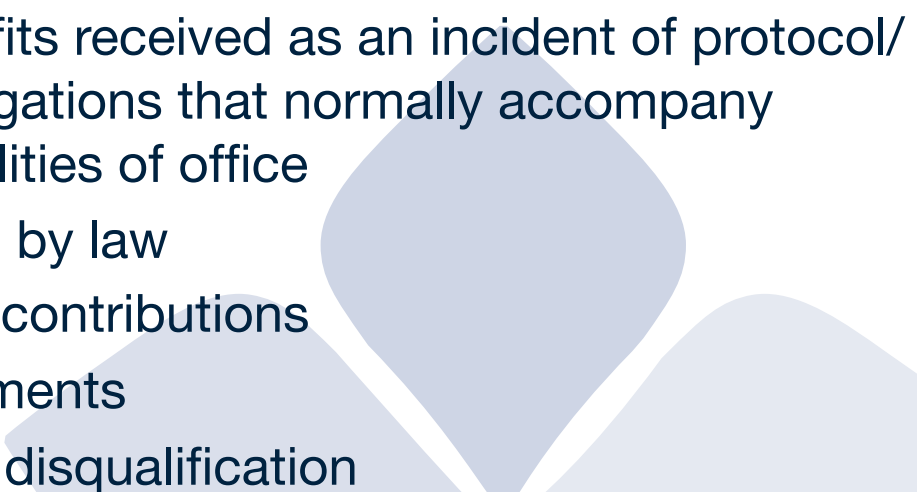
Restrictions on Influence (cont'd)

- must not use office to influence a decision, recommendation or action of a person outside the local government (outside influence)



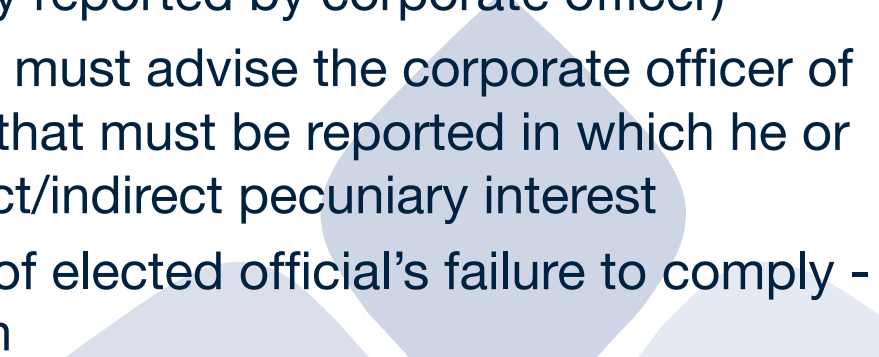
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Gifts (*Community Charter* s. 105, 106)

- applies to fees, gifts, personal benefits offered in connection with official's performance of duty
 - exceptions:
 - a) gifts/benefits received as an incident of protocol/ social obligations that normally accompany responsibilities of office
 - b) authorized by law
 - c) campaign contributions
 - disclosure requirements
 - failure to comply - disqualification
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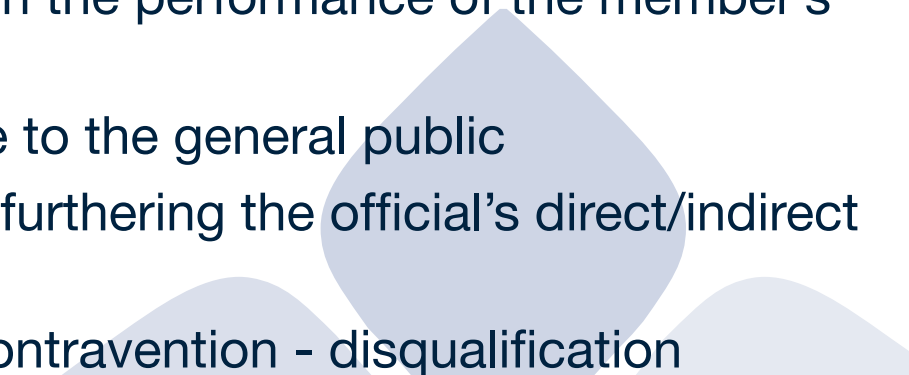
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Disclosure of Contracts (*Community Charter s. 67*)

- where local government enters contract in which an elected official has a direct/indirect pecuniary interest:
 - this must be reported at an open meeting of board/ council (usually reported by corporate officer)
 - elected official must advise the corporate officer of any contracts that must be reported in which he or she has a direct/indirect pecuniary interest
 - consequence of elected official's failure to comply - disqualification
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Confidentiality/Insider Information (*Community Charter* s. 108)

- elected official must not use information or a record that:
 - was obtained in the performance of the member's office
 - is not available to the general publicfor the purpose of furthering the official's direct/indirect pecuniary interest
 - consequence of contravention - disqualification
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Confidentiality – In Camera Meetings

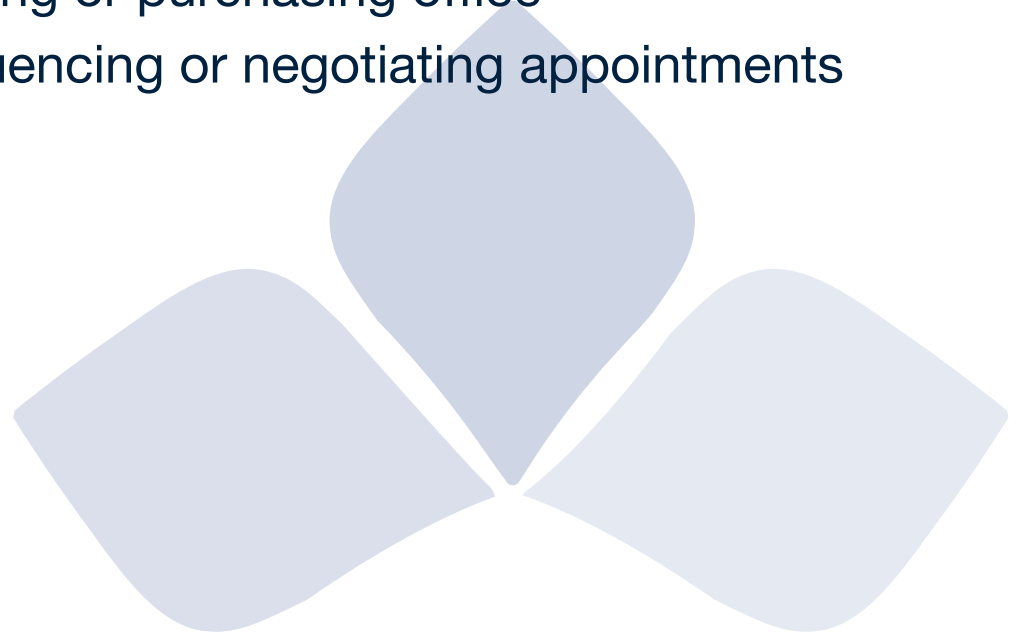
- even where an elected official has no pecuniary interest in a matter, it is unlawful to disclose information obtained at a closed meeting of council or board, unless with approval of council or board, where required by court order, etc.



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Criminal Code Offences

- Section 122 – breach of trust by public officer
- Section 123 – municipal corruption
- Section 124 – selling or purchasing office
- Section 125 – influencing or negotiating appointments



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Other Forms of Liability of Elected Officials

- abuse of office
- libel/slander
- bad faith
- unlawful expenditure or investment of local government funds

