

Valkyrie Law Group LLP

Local Government Elected Officials: Legal Clinic

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Conflict of Interest

- Pecuniary Interests
- Bias
- Penalties
- Implications for Elected Officials

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Types of Conflicts

- Pecuniary
 - direct or indirect financial interest
- Bias
 - personal interest
 - “closed mind” or pre-judgment


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Pecuniary Interests

- Direct interest
 - elected official owns land which is the subject of a rezoning application
 - elected official is a principal in a company bidding for a municipal project
- Indirect interest
 - member of a society receiving a grant from the municipality
 - member of a business or other club doing business with a municipality

Pecuniary Interests

- *Schlenker v. Torgrimson, 2013 BCCA 9*
 - Fiduciary duty to society/corporation may give rise to an indirect pecuniary interest even where no personal financial gain, due to conflict of duty
 - Conflict is pecuniary when voting on a matter relating to money or financial benefits
 - Implications for elected officials sitting on corporate and society boards



Exemptions

- No conflict of interest where
 - pecuniary interest in common with electors of the municipality generally (community of interest)
 - remuneration of elected officials
 - interest so “remote or insignificant” that it “cannot reasonably be regarded as likely to influence the member”

Conflict Exceptions



- Conflict exceptions (s. 104)
 - ability for exceptions for pecuniary interest to be established by regulation
 - if council member has a right to be heard but is excluded by conflict, may appoint representative to exercise that right

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Campaign Contributions

- Campaign contribution does not, by itself, create a conflict of interest
 - context of contribution
 - conduct of recipient



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Bias



- Non-pecuniary personal interest
 - types of personal interest include applications/ contracts dealing with
 - family members
 - business associates or friends
 - charitable organizations of which elected official is a director, etc.
 - other affiliations, e.g. religious, fraternal

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Pre-judgment Bias

- Where elected official has
 - made his/her decision in advance
 - is not capable of being persuaded
- “closed mind” indicates pre-judgment
 - can have honest opinions strongly held
 - an “open” mind is not an empty mind
 - amenable to persuasion



AP/Photo Bank

Penalties

- Pecuniary conflict
 - disqualification unless
 - contravention inadvertent
 - error of judgment made in good faith
- Bias
 - does not result in disqualification



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Penalties

- Local government or 10 or more electors may commence an application for Supreme Court order for disqualification
- if electors bring successful action, local government must pay electors’ costs



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Where Conflict Exists

- Where elected official considers that he or she is in a conflict of interest
 - conflict must be declared
 - general nature of conflict must be described
 - must not take part in discussion nor vote, must immediately leave the meeting and must not attempt to influence the vote

AP/Chris Miller

Where Conflict Exists

- Post-declaration
 - following declaration of conflict of interest, council member may return to the meeting if he or she, following legal advice, determines not in conflict




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Effect on Bylaws/Decisions

- Quasi judicial decision may be void if conflict found
 - decision maker not impartial
- Administrative decision
 - bylaw or resolution may still be valid if quorum would have existed, and sufficient votes cast, to carry vote without member

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Example

Councillor Grafton sells his property to the Prestons for \$200K and takes a mortgage back in the amount of \$50K. The Prestons then apply to Council to rezone their property. They want to build a leather goods boutique.

Councillor Grafton, who often wears leather, votes in favour of the rezoning.

Example

- The owner of “Back in the Saddle” applied to the City for a permit to paint a 40 foot mural of a horse on the side of his building. Councillor Green, who worked as a trail guide at “Back in the Saddle” every summer, voted in favour of the application.
- Should Councillor Green be voting?
- What if the mural contained advertising?




Example

Councillor Merchant is newly elected. Her best friend of 20 years, Angela Mueller, is the local real estate agent. The two women vacation together every year.

This year, Angela insists on paying for their trip to Club Med. Angela has had a great year selling Rwandan rangeland to disaffected Europeans.


Just back from their trip, Angela appears before Council seeking to rezone one of her properties.

- Should Councillor Merchant be voting?



Example

- The Village of Smallville recently amended its OCP to change the designation of its one of its most highbrow neighbourhoods from single family to multi-family residential. Councillor Harry Braggs, a long-time resident of the neighborhood, voted against the amendment.
- Should he have been voting?




Example


The Jingle Bells Music School leases its building from the City. Councillor Phyllis Steen has no musical talent, but her son John has been taking glockenspiel lessons at the school for years (he is a slow learner).

The Music School asks the City Council for a rent deduction.

- Should Councillor Steen vote?
- Does it matter if John is on a music scholarship?



Example



- Councillor Smith loved the expansive views from the balcony of her high-rise apartment. When an application to rezone the property directly in front of her building came before council, she declared a conflict and removed herself from the discussion. This did not, however, prevent her from venting to the local media about her opposition to increased densification in the community.
- Any issues?

