

CONFLICT OF INTEREST

SECTION 14

Policy

In order to maintain strong public confidence in the government and of administration of local governments, persons in elected office must be, and appear to be, free of conflict and from personal interest and benefit when carrying out their duties and exercising their authority. The rules apply to members of council and of regional district boards.

Sources of Law

A. *Community Charter*, RSBC 2003, Chapter 26

(a) Disqualification for Conflict of Interest (Division 6)

Direct or Indirect Pecuniary Interest

A person is disqualified from continuing to hold office as a member of council or a regional board if he or she participates in the discussion of or votes on a question in respect of a matter in which the member has a direct or indirect pecuniary interest, unless the contravention was in good faith or through inadvertence. Good faith or inadvertence may not apply if the person deliberately chooses not to disclose a pecuniary interest or proceeds against legal advice that there is a pecuniary interest [s. 101-108].

(i) Declaration of Interest

If a member has a direct or indirect pecuniary interest or another interest that constitutes a conflict of interest they must not participate in the discussion of a matter or vote on a question in respect of the matter. The member must declare this and state in general terms the reason for the declaration and must not discuss or vote on the matter, must immediately leave the meeting and must not attempt to influence the vote in any way whether before, during, or after the meeting where the interest is disclosed [s. 100(2)].

(ii) Exceptions

No conflict exists if:

- the pecuniary interest is in common with electors of the municipality (or regional district) generally or where a local service is involved in common with others liable for the local service tax;
- the matter relates to remuneration or expenses payable to elected officials;
- the pecuniary interest is of a nature prescribed by regulation; or

- the pecuniary interest is so remote or insignificant that it cannot be reasonably regarded as likely to influence the Council member [s. 104].

(b) Disqualification (Other than for Conflict of Interest)

Many circumstances, other than conflict of interest, may lead to disqualification. These include:

- an employee of a municipality (as defined in the Regulations) is disqualified from holding office [LGA s. 81(2)];
- failure to file a campaign contribution disclosure statement or filing a false or incomplete statement [*Local Elections Campaign Financing Act*];
- commission of election offences listed in sections 161 and 162 [LGA] (vote buying, and intimidation);
- failure to take the required oath of office [*Community Charter* s. 120(1.1) *Local Government Act*, s. 202(4)] or failure to attend four consecutive regularly scheduled council meetings, or being absent from council meetings for 60 consecutive days [*Community Charter* s. or absent from board meetings for the longer of 60 consecutive days or 4 consecutive regular meetings *Local Government Act*, s. 204(1)];
- voting for a bylaw or resolution which authorizes the expenditure, investment or other use of money contrary to the *Community Charter* [*Community Charter* s. 191] or the *Local Government Act*; and
- violation of restrictions on use of inside or outside influence, restrictions on accepting and disclosure of gifts, disclosure of contracts [*Community Charter* s. 110(1)(c)].

(c) Removal from Office for Disqualification

- 10 or more electors or the municipality may bring an application to the Supreme Court for a declaration that a member is disqualified and the office is vacant; or
- council may, by resolution passed on a 2/3 vote of all council members, bring an application to the Supreme Court for a declaration that a member is disqualified and the office vacant.

In either case, the council member subject to disqualification must be served, and may appear and respond in the Supreme Court [s. 111].

B. Common Law

A member must be aware of the trust principles (developed through court decisions), which require a high standard of conduct. While an elected official is not a trustee in the strict sense of the word, an elected official may not use public funds for personal benefit, or authorize payment of funds to someone not entitled to receive them. Like a trustee, an elected official is not to profit from his or her position or to be a judge in his or her own cause.

In addition to common law trust principles based on the fiduciary duty of a member of council to the municipality, s. 109 of the *Community Charter* creates an entitlement for any elector, or for the council to apply to the Supreme Court to compel any council members to pay to the municipality an amount equal to all or part of that council members financial gain arising from the conflict of interest, inside or outside influence, gifts, failure to disclose gifts, or contracts, and from use of insider information.

An elected official must be aware of basic principles of administrative decision-making. A member must have an open mind to the extent he or she is amenable to persuasion before voting on matters that involve public hearings on land use planning matters. Evidence of a closed mind could give rise to a court finding the member is biased such that the court may set aside the member's vote or, in some cases, the entire bylaw or resolution.

C. *Criminal Code*, RSC 1985, Chapter C-46

Extreme conduct such as breach of trust, fraud, using the office for personal gain or accepting bribes may lead to criminal conviction [s. 121: accepting a benefit; s. 122: Breach of Trust by Public Officer; s. 123: Municipal Corruption].

Typical Situations

Conflicts often occur between the member's public duty and his or her personal, business or property interests. The courts treat personal, business or property interests of a spouse, child, parent, partner, client (or in some cases, a corporation) of the member the same way they treat the interests of the member. If the member is in any way involved in a matter before council that actually advances (or appears to advance) any of these interests, a conflict of interest may arise. By keeping key common examples in mind, it should be easier for the member to recognize a conflict.

Business Interests

A member has a conflict of interest if he or she votes on a matter that helps or is reasonably capable of helping or hindering his or her own business, or hinders or is reasonably capable of helping or hindering the competition.

Property Interests

If a member votes on a land use bylaw that makes his or her own property subdividable, or more or less valuable in any way, a conflict arises unless one of the exceptions apply, likely an interest in common with electors generally.

Family Interests

If a member votes on a matter that is to the benefit or disadvantage of a spouse, child or parent, as in increasing salary or increasing or decreasing property values, a conflict arises.

Membership on Boards of Society Directors or Corporate Boards

Competing loyalties may arise when an elected official sits as a member of a board or directors of a non-profit society or organization, and where questions or money arise, the conflict may be characterized as a pecuniary one. Conflicts may also arise where an elected official is on the board of directors of a corporation.

Other Conflicts

In addition to pecuniary conflict, elected local government officials may have conflicts of interest arising from matters related to family relationships, close friends or even competing loyalties. The latter may arise when elected officials are involved in non-profit societies or organizations in an executive capacity. In such cases, there is automatically in law a clash of legal duties. Such conflicts not involving any direct or indirect pecuniary interest, while not giving rise to disqualification from office, are nonetheless conflicts, and may lead to disqualification of the councillor's vote on matters, and possibly to the setting aside of the bylaw or resolution involved.

Consequences of a Conflict of Interest

1. A member may be held to account for any personal profit made as a result of any breach of trust in office.
2. A member may be disqualified and removed from office.
3. A member may be subject to *Criminal Code* proceedings (e.g., fraud, breach of trust, bribery, etc.).
4. A member's vote may be invalid on the matter (in some cases such a vote invalidates the bylaw or resolution).

Financial Disclosure

Local Elections Campaign Financing Act

This legislation requires disclosure of campaign contributions and expenditures on or before the 90 days of general voting day (4:30 p.m. January 18, 2019).

Consult the Local Elections Campaign Financing Act for actual requirements.

Financial Disclosure Act, RSBC 1996, Chapter 139

Requires a candidate for office to disclose fully any corporate, business, or property interest held, in addition to naming all creditors, at the time of being nominated. If elected, similar disclosures must be made once a year thereafter, on or before January 15th. (A similar but not as comprehensive disclosure is required for designated local government employees not later than the 15th day following the month they become a local government employee and on or before January 15th in each year of their employment with the local government.) Persons who cease to be elected officials or local government employees, for reasons other than death, must file a written disclosure not later than the 15th day of the month following the month in which the person ceases to be elected or an employee.

Failure to name such interests and profits is an offence liable on conviction to a fine of not more than \$10,000. The Court may also order the offender to repay to the local government the amount of the financial gain.

Consult the Financial Disclosure Act for actual requirements.

Conclusion

It is important to recognize the potential conflict **as it arises** so the member may seek advice on the appropriate course of action. If any conflict arises, it is not sufficient that the member take no part in the proceedings. He or she must declare his or her interest and exclude himself or herself from the place where the proceedings are being carried on during the applicable portion of the meeting. The open declaring of the interest, not attending the relevant portion of the council meeting, not participating in the discussion or vote, and not attempting to influence the vote in any way before or after the declaration are the statutory strictures designed to insulate the member from the statutory consequences of a conflict.

Updated November 2018

UBCM thanks Stewart McDannold Stuart Barristers & Solicitors for their assistance in updating this Fact Sheet.