

Backgrounder

Conflict of Interest Rules

The *Community Charter* (Charter) conflict of interest rules provide that local government elected officials who have a financial (pecuniary) interest in a matter that will be discussed or voted on at their council or board meetings must declare that interest in the matter. Following their declaration, they may not participate in discussions, vote or exercise influence on the matter. The Charter conflict of interest provisions apply to municipal council members, regional district board directors and Island Trust trustees; the *Vancouver Charter* has parallel rules for City of Vancouver members.

Schlenker vs Torgimson Court Cases

In 2011, two Islands Trust trustees voted at a local trust committee meeting to give money to societies but they did not declare their roles as directors of those societies. They were challenged, and the BC Supreme Court found that they did not have a financial interest. On January 11, 2013, the BC Court of Appeal (BCCA) reversed the decision and found the trustees did have an indirect financial interest. The key basis for this decision was the “divided loyalty” the court found inherent in being both a local elected official and serving on a society/corporate board that may receive financial benefit from the local government.

Based on the broad language in the BCCA decision, the resulting interpretation was that sitting both as a local elected official and as director on the board of a society or corporation that receives funding from a local government creates a potential conflict due to an indirect pecuniary interest. The result was that local elected officials were stepping back from society and corporate director roles to protect themselves from potential disqualification.

Quick Facts

- The regulations are necessary to address the impact of the 2013 BCCA decision. Local governments routinely provide services through societies or corporations and make financial decisions affecting them. The BCCA decision caused challenges for local governments trying to effectively use societies or corporations to provide services including confusion and delays at council and board meetings when important financial decisions were being made.
- The regulations will be applicable to local government elected officials when they are appointed to any society and some types of corporate boards by their local government. Appointments to society and corporate boards must be done by the governing body (i.e. a municipal council, a regional district board, or the Islands Trust council). This helps to ensure accountability and reinforces that the appointed elected official is serving a public interest as their local government’s representative (rather than a personal interest).

- Under the regulations, when those representatives are officially appointed by their respective local governments, they will not be in a pecuniary conflict simply by virtue of their appointment when discussing and voting on matters concerning the society or corporation at their respective meetings (and thus no risk of disqualification if challenged on the basis of that appointment).
- A council or board can appoint a representative to any society incorporated or registered under the *Society Act*. All societies are included because of their non-profit nature, their focus on local communities, and their common role as local government service providers.
- Corporations that were incorporated by public authorities (e.g. government bodies), and which provide a service to the appointing local government, are covered by the regulations.
- In order to appoint a representative to a society or board, a municipal council/regional district board/or the Islands Trust Council must adopt a resolution by a majority vote. The appointment is then on public record and the resolution makes it official. The appointed representative is then acting in their capacity as a local elected official when they sit on that board, rather than as a private individual.
- There is a separate, though similar, regulation for the City of Vancouver because the City's conflict of interest rules (and authority for a regulation for conflict of interest exceptions) are in the *Vancouver Charter*.