

CITY OF VICTORIA COUNCIL SEMINAR: ADVANCED CONFLICTS ISSUES

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Conflicts of Interest and Bias: Recap

- Conflicts of interest are regulated in Division 6 of Part 4 of the *Community Charter* (ss. 100- 109)
- Two types: pecuniary (financial) and non-pecuniary (personal interest)
- Council members must report conflicts and refrain from participating
- Consequences for breaching conflict rules:
 - Pecuniary: disqualification from office
 - Non-Pecuniary: vote could be set aside
- **Bias:** Separate doctrine from COI. Focus is on whether an elected official has *pre-judged* a matter. If so, disqualified from voting.

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Advanced "Conflicts" Issues: Communications with the Public

1. Types of communications that can create risks
2. Legal Principles / Framework
3. Potential Consequences
4. Best Practices

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Examples of Risky Communications

- One or more Council members unilaterally communicate with a potential proponent (developer, property owner) and purport to negotiate or make commitments on the City's behalf
- One or more Council members communicate with a development proponent following a public hearing and prior to adoption of relevant bylaws
- A quorum of Council meets with/communicates with an interested party outside of a duly constituted Council meeting

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Relevant Legal Principles / Framework

1. Governance vs. Operational Roles of Council and Staff

- Council is the governing body and acts by resolution or bylaw: s. 122 CC
- No individual Council member has the authority to act on the City's behalf, except in limited circumstances: ss. 114, 122 CC
- Staff exercise operational authority
 - Staff have subject matter expertise regarding planning and development requirements
 - Staff typically engage in exploratory discussions with developers
 - Staff review proposals , write reports, make recommendations to Council

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Relevant Legal Principles / Framework (cont'd)

2. Council's legislative discretion cannot be fettered

- Example: if a development proposal requires the adoption of a zoning bylaw, Council must be free to exercise that legislative authority without constraint
- No property owner can be guaranteed a particular outcome in terms of a zoning or OCP amendment
- An agreement that purports to fetter Council's discretion will be struck as invalid

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Relevant Legal Principles / Framework (cont'd)

3. Procedural Fairness Requirements and Public Hearings

- All relevant material considered by Council in relation to matters discussed at a public hearing must be made available to the public so they can comment
- Receipt by Council of new material or information after a statutory public hearing may be considered a breach of procedural fairness requirements
- A zoning bylaw adopted in circumstances where procedural fairness requirements have not been met may be struck by the courts

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Relevant Legal Principles / Framework (cont'd)

4. Open meeting requirements in the *Community Charter*

- Meetings must be open to the public, unless the requirements to hold a meeting in-camera have been satisfied: s. 89
- If a quorum of Council meets and moves a matter along the spectrum of decision-making, that may constitute a "meeting", which requires notice, agenda, minutes
- A quorum of Council should not be meeting with interested parties to discuss municipal business outside of a duly constituted meeting

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Risks Associated with Unauthorized Communications

1. Allegations of Conflict/Bias
2. Bylaws may be challenged and set aside
 - Breach of procedural fairness requirements
 - Unlawful meetings
3. Civil claims against the Municipality
 - Negligent misrepresentation
 - Unjust enrichment

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Negligent Misrepresentation

- If a municipal official provides advice or makes a representation to a property owner which is inaccurate or misleading and the property owner reasonably relies on that advice to their detriment, the municipality may be liable for negligent misrepresentation

Example: *Windsor Motors Ltd. v. Powell River* (1969, BCCA)

- The City's business licence inspector advised an individual that he could lawfully open a used car business in a certain location in the City
- The individual relied on that advice and opened up a business at that location
- The zoning did not permit a car business at that location and the individual was subsequently forced to move locations, incurring significant damages
- The municipality was held vicariously liable for the negligent misrepresentation

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Best Practices re Communications with Public

1. Bring ideas/proposals to Council for discussion/consideration. Council can direct staff to explore the idea and report back to Council.
2. Do not communicate on the City's behalf unless specifically authorized to do so.
3. If expressing an opinion about City business, be clear that the opinion is your own view (unless authorized to speak on the City's behalf).
4. If you are authorized to communicate on behalf of the City, take reasonable steps to ensure your communication is accurate.

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Questions?

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