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January 12, 2021

**BULLETIN**

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**CAMPAIGN CONTRIBUTIONS, IN-STREAM DEVELOPMENT APPLICATIONS AND CONFLICTS**

In *Allan v. Froese*, 2021 BCSC 28, released on January 11, 2021, the BC Supreme Court dismissed a petition seeking the removal of the mayor and two current council members of the Township of Langley due to an alleged pecuniary conflict of interest. The petitioners argued that campaign contributions made to the respondents' 2018 local election campaigns by individuals who were connected to development companies who had various projects before Council for consideration and approval amounted to a breach of section 101 of the *Community Charter*.

The Court noted that a multi-step inquiry is required to determine whether a council member should be disqualified on the basis of a conflict of interest. First, the petitioner must prove that the elected official has a direct or indirect pecuniary interest in the matter under consideration. Next, if a pecuniary interest is established, the petitioner must prove that the exceptions listed under section 104(1) of the *Community Charter* do not apply. Third, if none of the exceptions under section 104(1) apply, the onus then shifts to the elected official to demonstrate that they should not be disqualified because their contravention of the *Community Charter* was either inadvertent or due to an error in judgement made in good faith.

The Court confirmed previous caselaw that, while a campaign contribution itself does not constitute a pecuniary interest, it could constitute such an interest if combined with "something more". In this case, the petitioners argued that there was "something more" and pointed the Court to a number of cases where the connection went beyond the receipt of a campaign contribution.

The Court applied the above analysis to the facts of this case and concluded that the respondents did not have a pecuniary interest. There was no evidence that any of the respondents had a direct or indirect pecuniary interest in the developers' projects. Additionally, there was no evidence of an agreement or *quid pro quo* between the developers and the respondents to vote on their various projects. There was also no evidence to suggest that the respondents' votes on the matter before them was influenced by campaign contributions from any source. Finally, the Court noted that the respondents did not conceal the campaign contributions in question, having disclosed the particulars of all contributions in the time frame required pursuant to the *Local Elections Campaign Financing Act*.

The Court noted that if the petitioners had established that the respondents had a pecuniary interest in the matter, it would have dismissed the petition on the basis that the petitioners had not established that the exception listed under section 104(1)(d) of the *Community Charter* did

not apply. Pursuant to section 104(1)(d), a conflict does not exist if “the pecuniary interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member in relation to the matter”.

Further, the Court stated that “[t]he Township and the respondents have established that each of the impugned developers’ projects fell within the bounds of the Township’s legislative authority, had been considered by Township staff (which in some instances began well before the 2018 election), and were recommended to Council by the Township staff charged with the responsibility to vet each project” (at para 90). The respondents’ votes were also consistent with staff recommendations and the respondents’ well-known campaign platforms.

In summary, this case, along with others, suggests that a campaign contribution made by a developer, assuming it has been accepted in accordance with other applicable legislation such as the *Local Elections Campaign Financing Act* and even if made while the developer has an “in-stream” application before council, is not a ground in and of itself for a disqualification of a council member on the basis of the conflict of interest provisions in the *Community Charter*.

***Kathleen Higgins & Sarah Strukoff***