

Governance: Common Issues

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Overview

- Council Meetings
 - The open meeting rule
 - What is a “meeting”
 - Meeting with First Nations
 - Codes of Conduct and Censure Hearings
- Conflicts of Interest
 - What is a conflict
 - Exceptions
 - Public Hearings
- Public Right to Participate
 - Procedural Fairness
 - Freedom of Expression
 - Procedure Bylaws

Council Meetings: The Open Meeting Rule

- *Community Charter, s. 89(1): a meeting of a council must be open to the public, except as provided in this Division.*



Meetings that may be closed to the public

- Section 90(1) of the *Community Charter* contains an exhaustive list
- Includes meetings where the subject matter considered relates to:
 - types of personal information (90(1)(a) and (b))
 - the acquisition of land, if council considers disclosure could harm the municipality's interests (90(1)(e))
 - litigation or potential litigation affecting the municipality (90(1)(g))

Meetings that must be closed to the public

- A request under FIPPA, if the council is designated as head of the local public body
- Information received and held in confidence relating to negotiations between the municipality and a higher level of government
- A matter investigated under the *Ombudsperson Act*
- A matter that, under another enactment, is such that the public must be excluded from the meeting

London (City) v. RSJ Holdings

- Council considered 32 bylaws in a closed meeting
- Later, during an open meeting, Council gave first, second, and third readings to these bylaws without debate, citing solicitor-client advice as the reason the earlier portion of the meeting was closed
- SCC: “when a municipal government improperly acts with secrecy, this undermines the democratic legitimacy of its decision.”



What is a Meeting?

- Whether something is a meeting is a contextual exercise that looks at:
 - the nature of the group
 - the nature of the discussion
 - the nature of the gathering
- *Southam v. Ottawa*: a “retreat” with a structured agenda is a meeting
- *Yellowknife Property Owner Assn v. Yellowknife*: staff briefings which provide council opportunity to discuss are meetings



“Government-to-Government” Meetings

- It remains to be seen whether discussions between a local government and an indigenous governing body must take place in an open meeting
- *Kits Point Residents Association v. Vancouver (City)*: principles from UNDRIP will apply



Codes of Conduct and Censure Hearings

- There is encouragement from the Province for local governments to adopt regulatory bylaws and policies dealing with elected official conduct
- Uncertainty with how investigation reports ought to be presented to Council
- Must be an existing basis in section 90 to close such a meeting

Conflicts of Interest

- *Community Charter* s. 101: **if a council member has a direct or indirect pecuniary interest**, they must not attend, participate in, vote on, or otherwise influence voting on the matter
- Section 100(2): If a council member considers that they are not entitled to participate in discussion of a matter because of
 - a) **a direct or indirect pecuniary interest**, or
 - b) another interest that constitutes a conflict of interest,the member must declare this and state why they consider this to be the case

Conflicts of Interest Penalties

- *Community Charter* s. 101(3):

“a person who contravenes this section is disqualified from holding office... unless the contravention was done inadvertently or because of an error in judgment made in good faith.”

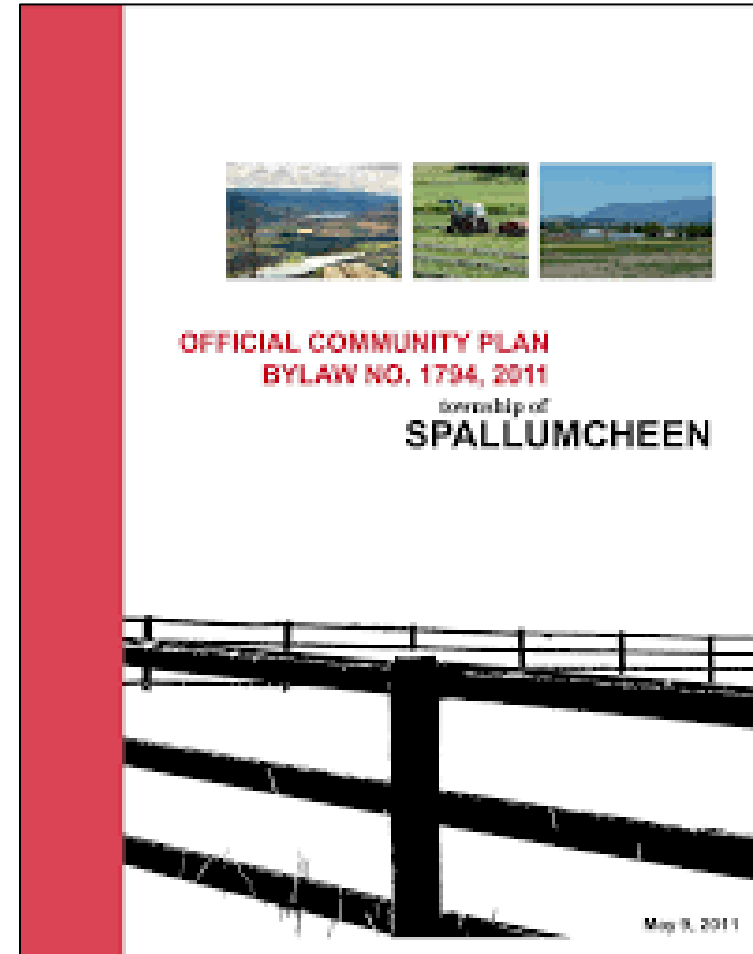
What is a Conflict?

- “Pecuniary”: relating to or consisting of money
- Plenty of examples where conflict is clear
- However, lots of grey areas
 - Whether a pecuniary interest constitutes a conflict is extremely fact specific

“where a council member has a personal interest in a matter that is so related to the exercise of their public duties that a reasonably well-informed person would conclude that the interest might influence the exercise of that duty”

Fairbrass v. Hansma

- 39 electors seeking court declaration that Mayor's vote on OCP amendment should disqualify him from office
- Amendment adopted a policy to allow subdivision of land in area where Mayor and his children owned properties



Fairbrass v. Hansma cont'd.

- The pecuniary interest: amendment would allow the Mayor or his children to apply for rezoning and subdivide their properties and sell parcels at a profit
- HOWEVER: the amendment did not actually rezone the land – just set out a policy to permit it in the OCP
- Court found that (1) no evidence the amendment, in and of itself, made the lots in question more valuable and (2) the fact that rezoning *could* be sought was too speculative

Casson v. Reed

- Alberta case where councillor voted in favour of building a recreational complex near his property
- Before, during, and after the matter was under consideration, councillor was subdividing and selling his land for “substantial profit”
- Court found a clear and direct pecuniary interest



Conflict of Interest Exceptions

- *Community Charter* s. 104(1) sets out five circumstances where conflict of interest rules **do not** apply:
 - a) the interest is held in common with the electors of the municipality generally;
 - b) the matter under consideration relates to a local service;
 - c) the matter relates to councillor remuneration;
 - d) the pecuniary interest is too remote or insignificant to be influential;
 - e) prescribed by regulation.

The “Community of Interest” Exception

■ *Redmond v. Wiebe*

- City of Vancouver considering adoption of a temporary patio permit program during COVID
- Councillor owned two bars that could apply for permits, voted to approve the program
- Definitely a conflict – issue was whether the exception applied
- Court of Appeal says **no** – the number of applicants (452) was too small to establish an interest in common with electors generally



Public Participation: Legislation

- No General Public Right to Participate

Public Participation: Procedural Fairness

- No Procedural Fairness in Legislative Decisions

Public Participation: Freedom of Expression

- No General Obligation to Provide Particular Platforms for Expression

Public Participation: Procedure Bylaws

- Delegations and Public Input Sessions
- Issues for Public Hearings