

## Conflicts of Interest Exceptions Regulation

The Provincial Government has recently enacted the Conflict of Interest Exceptions Regulation in response to the British Columbia Court of Appeal's decision in *Schlenker v Torgrimson, 2013 BCCA 9* ("Schlenker"). In that decision the Court clarified that a local government elected official (i.e. councillor, director, or trustee) who is also a director of a society or a corporation, has an indirect pecuniary interest in local government matters relating to the expenditure of local government funds to that society or corporation.

The Court found that in those situations, the conflict of interest provisions in [Sections 100 and 101 of the Community Charter](#) apply and the councillor must not participate in the matter.

Local governments commonly incorporate entities such as societies and corporations to assist in carrying out their objectives. Examples of these types of entities are: economic development societies, tourism societies and forestry corporations. Quite often, and for good reason, elected officials are appointed to the boards of these entities (for example, as a measure of oversight and control over the expenditure of publically-sourced funds).

The Provincial Government enacted the Regulation to ensure that those elected officials appointed by local governments to the boards of societies, or corporations incorporated by their local governments, would not be deemed to be in a conflict of interest if they participate in decisions to expend public funds to these entities.

To fall within the new exceptions, the following criteria must be met:

1. The local government elected official in question must have been appointed by their local government to serve on the board of a directors of one of the following entities:
  - (a) a society; or
  - (b) a corporation that their local government has incorporated to provide a service to that local government; and
2. The subject matter discussed by the municipal council or regional board is a "specified interest" in relation to the same entity, which is defined by the new regulations as any of the following:

- (a) an expenditure of public funds to or on behalf of the entity;
- (b) an advantage, benefit, grant or other form of assistance to or on behalf of the entity;
- (c) an acquisition or disposition of an interest or right in real or personal property that results in an advantage, benefit or disadvantage to or on behalf of the entity; or
- (d) an agreement respecting a matter described in paragraphs (a), (b) or (c).

Therefore, in the following circumstances the new targeted exceptions will not apply:

1. Where a “specified interest” relating to an entity is discussed and a local government official sits on the board of that entity, but was not appointed to that position by his or her local government; or
2. Where the local government official was appointed by his or her local government to sit on a board of an entity, but the decision being discussed is outside the scope of a “specified interest” as described in the Regulation.

To summarize, the implications of the new Conflicts of Interest Exceptions Regulation for local governments and their elected officials are as follows:

3. The Regulation allows elected local government officials to be appointed by their local government to certain society and corporation boards without the risk of disqualification due to financial conflict interests, only if the subject matter discussed at a meeting is a “specified interest”; and
4. The Regulation establishes narrow exceptions only. Therefore:
  - (a) Even if a local government elected official has been appointed by their local government to a board he or she sits on, there still remains a potential for conflict of interest (e.g. where the local government official otherwise receives a personal pecuniary benefit as the result of a local government decision relating to the society or corporation); and
  - (b) A local government elected official sitting on a society or corporation board, without having been appointed by their local government to this position, continues to be subject to conflicts of interest arising from “divided loyalty” between that local elected

official's fiduciary duties to both the entity and their local government (as found in the *Schlenker* decision).

Local governments and their elected officials still need to be cognizant of the potential conflict of interest for elected officials due to their roles as directors of societies or companies. Where appropriate, legal advice should be sought relating to potential conflicts of interests in order to avoid the risk of disqualification.

**Please contact us should you wish to discuss the implications of this decision in more detail.**