



Islands Trust

**December 2011 Islands Trust Council
Session G**

Staying out of Trouble

10:05 – 11:20 a.m., Thursday, December 8, 2011

- Purpose:**
1. To ensure that Trustees are aware of their statutory obligations regarding conduct.
 2. To introduce Trustees to some guidelines and best practices in regards to conduct or legal obligations

Resources: Linda Adams, Chief Administrative Officer

- Islands Trust Policy Manual
- Open Meeting Requirements
- Standards of Conduct
- Conflict of Interest
- Freedom of Information/Protection of Privacy
- Keeping Records and Correspondence
- Handling Email
- Using Legal Advice
- Fettering Discretion
- Using Resolutions

FOLLOW UP

Further sessions about statutory standards of conduct and meeting procedures are planned for 2012.

Reference Material

- *Resolutions to close a meeting*
- *Is this a meeting? (flowchart)*
- *Policy 2.1.i Statutory Rules of Conduct*
- *Policy 2.1.ii Standards of Conduct*
- *Ministry of Community, Sport and Cultural Development information re open meetings and ethical conduct*

Staying out of Trouble

Islands Trust Council
Thursday, December 8, 2011
10:05 – 11:20 a.m.



Topics

- Islands Trust Policies and Bylaws
- Conduct of elected officials
 - Statutory Rules
 - Standards of Conduct

More topics...

- Open Meeting Requirements
- Freedom of Information/Protection of Privacy
- Keeping Records and Handling Correspondence
- Email
- Using Legal Advice
- Fettering Decisions
- Using Resolutions
- External Communications
- Local Trust Committee expenditures
- Indemnification

Policies and bylaws... and where to find them

- ◉ Trust Council (and the Trust Fund Board) create policies and bylaws to guide trustees and staff
 - Usually based on legislation or 'best practices'
 - Can be amended by Trust Council (or the Trust Fund Board), provided amendments comply with legislation
- ◉ Why do we need bylaws?
- ◉ Why do we have policies?
 - Why follow them?

Policies and Bylaws (cont'd.)

- ◉ Where can you find policies and bylaws?
 - Each trustee provided with a flash drive
 - Available to the public on our website*
- ◉ Planning team orientation sessions
 - ◉ Discussion of policies of most significance to LTCs
- ◉ Policy revision program underway to address policies that need up-dating

*<http://www.islandstrust.bc.ca/tc/policy/default.cfm>

Statutory Rules of Conduct

- ◉ **Conflict of Interest**
 - Nothing wrong with having a conflict, but you must handle it correctly
 - Types of Conflict of Interest
 - ◉ Pecuniary (financial) interests (direct or indirect)
 - ◉ 'common law' (conflict of loyalties)
 - ◉ Would the decision benefit your relatives, close friends or associates?
 - ◉ Does it involve a group that you lead?
 - ◉ Would islanders think they won't be able to change your mind because your decision is a foregone conclusion?

Conflict of Interest (cont'd)

- Exemptions from Pecuniary Conflict
 - Interests in common with the community
 - Decisions about remuneration, expenses and benefits
 - So remote or insignificant a benefit that it is unlikely to influence you.
- What to do if you have a conflict (or are uncertain):
 - Declare you have a conflict and leave the meeting each time the topic comes up - make sure this is recorded in the minutes
 - applies to trustee participation in meetings of advisory groups too (ie. APC)
 - Don't participate in any discussion of the topic with other LTC members
 - Don't vote on the topic
 - Don't try to influence how other trustees vote, either before, during or after the meeting, directly or indirectly

Conflict of Interest (cont'd)

- Advice:
 - Resign from leadership positions (i.e. board member, director, executive) in any community group that is likely to interact with your Local Trust Committee or Islands Trust Council
 - A group that might want to influence LTC decisions
 - A group that might want to seek financial benefits from the LTC
 - A group that might make a land use application of some kind
 - Do not take on a leadership position in such a group during your term.
 - If not sure you have a conflict: declare, declare, declare
 - Free legal advice is available
 - Contact the CAO
 - Leave some time – not after the meeting has already begun!
 - Don't expect planning staff to give you advice on the spot
 - If the legal advice indicates you do not have a conflict, you can make a declaration and begin to participate again

Statutory Rules (cont'd.)

- ⦿ Don't use insider information for personal gain
- ⦿ Don't use your influence inside the Islands Trust for your personal gain
- ⦿ Don't use your office to influence people outside the Islands Trust for your personal gain
- ⦿ Don't accept gifts or personal benefits that is connected to your performance as a trustee
 - ⦿ Gifts or benefits received as part of protocol or social obligations can be received, but must be declared if an individual gift is worth more than \$250 or if several gifts from one source exceed a value of \$250 in a 12-month period
 - ⦿ File a disclosure with the Legislative Services Manager

Statutory Rules (cont'd)

- ⦿ Disclose any financial interests in a contract with the Islands Trust
- ⦿ Maintain the confidentiality of Islands Trust information and records
- ⦿ Be sure you are using public funds properly
 - ⦿ Especially Local Trust Committee local expense funds

Standards of Conduct

- Created by Trust Council to provide guidance for trustees and staff
- Performance of Duties
 - Serve public
 - Advocate for Islands Trust mandate
 - Adhere to policy
 - Avoid situations that could impair judgment
 - Conduct that enhances the image, integrity and responsibilities of the Islands Trust
 - Impartial and equal service, without fear or favour

Standards of Conduct (cont'd)

- Organizational Responsibility
 - Respect opinions of others
 - Cooperative, informed, responsible decisions
 - Don't undermine other trustees or staff
 - Respect management's authority to direct staff
 - Direct actions appropriately
 - Staff are not involved in politics; trustees are not involved in administration
 - Communicate Council consensus vs. individual opinion
 - Consult with local or municipal trustees before becoming publicly involved in issues in another part of the trust area

Standards of Conduct (cont'd)

- **Personal Interests**
 - Maintain high ideals of honour and integrity
 - Avoid lobbying for personal interests
 - Declare conflicts of interest
 - Avoid special privileges, favours or exemptions
 - Islands Trust resources are only for official business

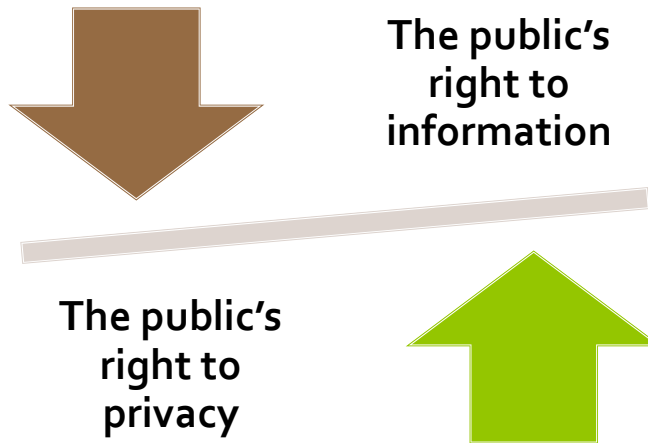
Open Meetings

- What is a meeting?
- Reasons for open meetings
- When can/must a meeting be closed to the public?
- Who else can attend a closed meeting?
- Keeping records of meetings
- Advisory group meetings follow the same rules

(See Policy Manual Section 2.1.ix for more information)



Freedom of Information and Protection of Privacy Act (FOIPPA)



FOIPPA – Your responsibilities

- You must give records to FOIPPA staff, if requested
- Protect the privacy of people whose private information you may receive:
 - Addresses, phone numbers, email addresses
 - People's 'opinions' about others
 - Personnel information
- Only use private information for the purpose it was collected
 - Islands Trust mailing lists

Keeping Records and Correspondence

- Keeping track of the paperwork
- Handling mail
- Using letterhead
 - Islands Trust letterhead – by resolution
 - Local Trustee letterhead – if needed
- Using the Islands Trust logo
- What to do with 'confidential' information

Email

- Use your Islands Trust email address for Islands Trust business
- Forward email that is intended for others
 - Forward public input to staff so it is included in the public record
- Email etiquette
- Maintain the privacy of your email contacts
- Deleting email

Using Legal Advice

- Legal advice contract
- How do we get legal advice?
- Advice from other lawyers
- Who owns Islands Trust legal advice?
- Who can see written opinions?

YA YOUNG ANDERSON
BARRISTERS & SOLICITORS



Using legal advice (cont'd)

- Legal advice is confidential unless approved for release by the Executive Committee (rare)
- Why keep it confidential?
- Special versions can be written for public release
- Avoiding 'implied waiver' of confidentiality

Fettering Decisions

- ◉ **Make your decisions at the right time (and not before)**
 - **Keep an open mind (but not an empty mind!) until it's time for a decision**
 - **Don't commit to decisions in exchange for other things or actions**
 - **Don't commit to decisions until it is time to do so**

Procedural Certainty - Using Resolutions -

- **Making your decisions count**
 - act by resolution or bylaw
- **Individual trustees have no authority on their own**
 - staff act on resolutions, not on private instructions from trustees
- **Resolutions without Meeting**
 - Can be used for some decisions

External Communications

- Who speaks for Trust Council?
- If your opinion differs
- Who speaks for a Local Trust Committee?
- Speaking to the media
- Correcting incorrect media reports



External Communications

- Creating news releases
- Advertising in local media
- Website protocols
- Local trustee newsletters, websites and blogs



Using LTC Local Expense Funds

- Proper use of LTC Local Expense Funds
 - Not for 'grants-in-aid' to community groups or individuals
 - Must be used to purchase goods or services under contract developed and supervised by staff
 - Must be related to the legitimate functions of the LTC

You can be disqualified from office for:

- Failure to take oath of office
- Failure to file campaign financing disclosure statements
- Unexcused absence from meetings
 - Maximum of 4 consecutive meetings
- Participation in a vote if you have a pecuniary (financial) conflict
- Inside influence for gain

More reasons for disqualification:

- Outside influence for gain
- Accepting/not disclosing gifts
- Not disclosing pecuniary interest in contracts
- Use of insider information for gain
- Improper expenditure of government funds

Other consequences

- Costs
 - Costs to the Islands Trust (and the taxpayer)
 - legal costs
 - insurance costs
 - costs to staff time and resources
 - delays to other work



More consequences

Costs to you

- some legal costs may not covered:
 - Response to applications to the court to have you disqualified from office for breaching conduct standards
 - Legal defense of gross negligence, dishonesty, defamation
- time, energy, reputation
- potential for Islands Trust to recover legal costs from you

Indemnification

- The Islands Trust can indemnify you for:
 - Payment of costs of legal defense if an action or prosecution is brought against you for the exercise of your duties
 - Payment of any judgments or awards imposed in relation to the above
 - Other related legal costs
- Islands Trust Indemnification Bylaw

Important Reminders

- ⦿ Please fill out your *Campaign Financing Forms* by **March 19, 2012** to avoid an automatic \$500 penalty
 - IF YOU HAVEN'T DONE THIS BY **April 18, 2012**, YOU WILL BE DISQUALIFIED FROM OFFICE. If you are filing late, the \$500 penalty is due on this date (non-negotiable).
- ⦿ You will **ALSO** need to fill out *Financial Disclosure Forms* each year that you are a trustee.
 - ⦿ For 2012, the deadline is **January 13**.

We will do a more complete legal session about Statutory Rules of Conduct in March 2012.

In the meantime (and any time), when in doubt....

Please ask for advice!

Questions



(Please remember to fill out your evaluation form
for this session)

**Islands Trust
Resolutions to Close Meetings to the Public**

That the Islands Trust Council (or _____) close this meeting to the public subject to Section 90(1) [or 2] ____, ____, and ____ of the Community Charter in order to consider matters related to

_____, _____,
and _____ and that the following individuals
be invited to remain in the meeting:

_____ :

- (a) personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality or another position appointed by the municipality;
- (b) personal information about an identifiable individual who is being considered for a municipal award or honour, or who has offered to provide a gift to the municipality on condition of anonymity;
- (c) labour relations or other employee relations;
- (d) the security of the property of the municipality;
- (e) the acquisition, disposition or expropriation of land or improvements, if the council considers that disclosure could reasonably be expected to harm the interests of the municipality;
- (f) law enforcement, if the council considers that disclosure could reasonably be expected to harm the conduct of an investigation under or enforcement of an enactment;
- (g) litigation or potential litigation affecting the municipality;
- (h) an administrative tribunal hearing or potential administrative tribunal hearing affecting the municipality, other than a hearing to be conducted by the council or a delegate of council;
- (i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (j) information that is prohibited, or information that if it were presented in a document would be prohibited, from disclosure under section 21 of the *Freedom of Information and Protection of Privacy Act*;
- (k) negotiations and related discussions respecting the proposed provision of a municipal service that are at their preliminary stages and that, in the view of the council, could reasonably be expected to harm the interests of the municipality if they were held in public;

(l) discussions with municipal officers and employees respecting municipal objectives, measures and progress reports for the purposes of preparing an annual report under section 98 [*annual municipal report*];

(m) a matter that, under another enactment, is such that the public may be excluded from the meeting;

(n) the consideration of whether a council meeting should be closed under a provision of this subsection or subsection (2);

(o) the consideration of whether the authority under section 91 [*other persons attending closed meetings*] should be exercised in relation to a council meeting.

(2) A part of a council meeting **must** be closed to the public if the subject matter being considered relates to one or more of the following:

(a) a request under the *Freedom of Information and Protection of Privacy Act*, if the council is designated as head of the local public body for the purposes of that Act in relation to the matter;

(b) the consideration of information received and held in confidence relating to negotiations between the municipality and a provincial government or the federal government or both, or between a provincial government or the federal government or both and a third party;

(c) a matter that is being investigated under the *Ombudsman Act* of which the municipality has been notified under section 14 [*ombudsman to notify authority*] of that Act;

(d) a matter that, under another enactment, is such that the public must be excluded from the meeting.

Legislative reference (from Community Charter – applies to all Islands Trust bodies including subcommittees and advisory groups through s. 11(2) of Islands Trust Regulation 119/90)

General rule that meetings must be open to the public

89 (1) A meeting of a council must be open to the public, except as provided in this Division.

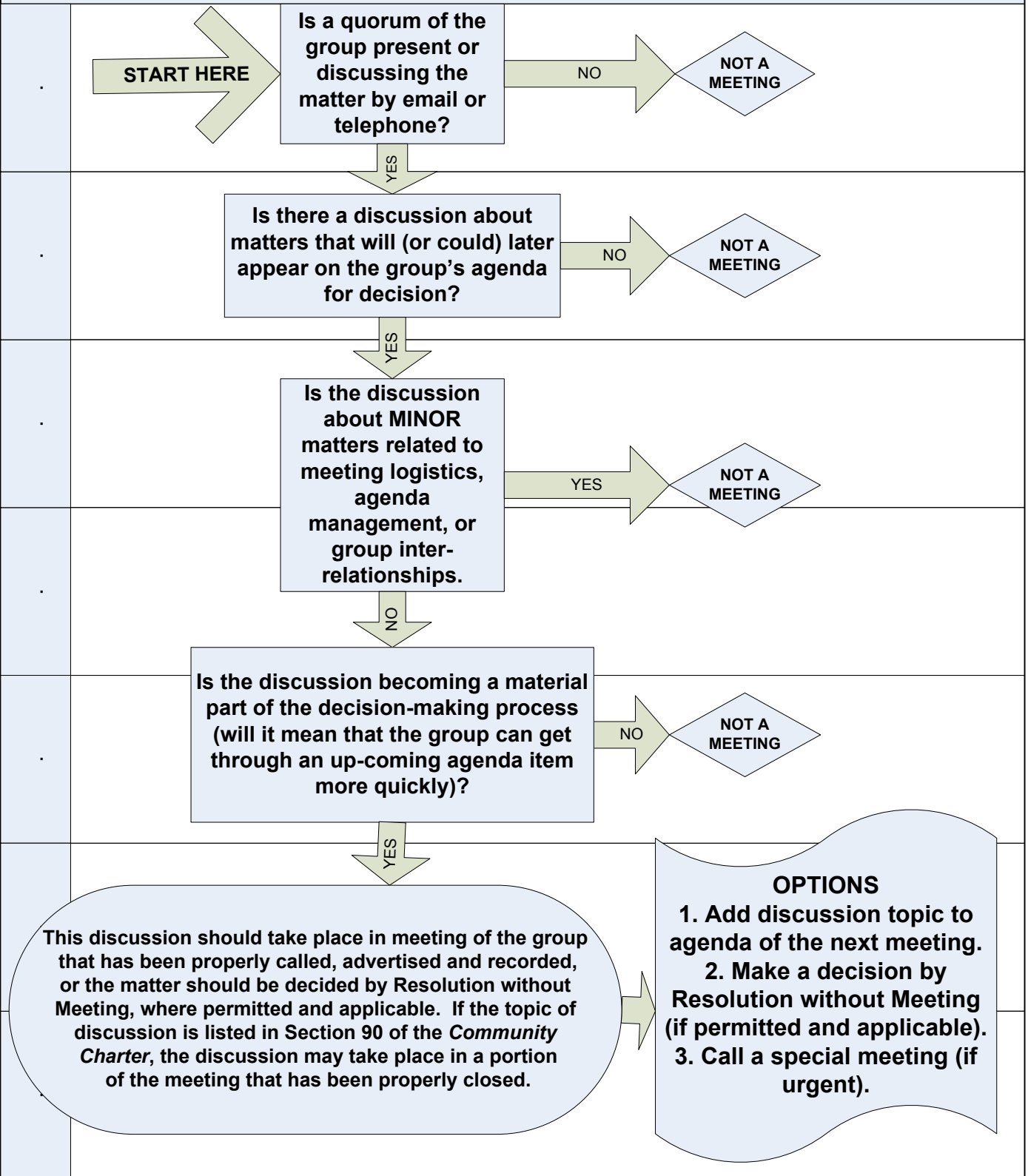
(2) A council must not vote on the reading or adoption of a bylaw when its meeting is closed to the public.

Meetings that may or must be closed to the public

90 (1) A part of a council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following: (see above list)

FLOW CHART 1 - IS THIS DISCUSSION A MEETING?

(This applies to Trust Council, Council committees, Local Trust Committees, Trust Fund Board, any committees or advisory groups established by these bodies and to Boards of Variance.)



2.1.i Guidelines

STATUTORY RULES OF CONDUCT

Trust Council: June 11, 1994

Amended: March 9, 1996

Amended: September 19, 1997

Amended: December 5, 2003

PURPOSE:

To acknowledge and facilitate compliance with the ethical conduct rules in accordance with the *Community Charter* and *Islands Trust Act*. The applicable statutory provisions are attached as Appendix A.

DETAILS

Interpretation

1. In these guidelines

"**Executive Committee**" means the committee referred to in section 20(1) of the *Islands Trust Act*;

"**Local Trust Committee**" means the committee referred to in section 23(2) of the *Islands Trust Act*;

"**Meeting**" includes a meeting of the Trust Council, a Local Trust Committee, the Trust Fund Board, or a committee of any of them, or a resolution without meeting under sections 13 and 26 of the *Islands Trust Act*;

"**Trust Council**" means the Islands Trust Council referred to in section 5 of the *Islands Trust Act*;

"**Trust Fund Board**" means the board referred to in section 40(1) of the *Islands Trust Act*;

"**Trustee**" means under section 1 of the *Islands Trust Act* a local trustee, municipal trustee and a trustee of the Trust Fund, or any of them, as the context requires.

Conflict of Interest

2. a. Subject to Section 104 of the *Community Charter*, a trustee must not participate in the discussion of, or vote on, a resolution or bylaw in respect of which the trustee has a direct or indirect financial or monetary interest.
- b. In addition to the disqualification for the financial or monetary interest, having a direct or indirect financial or monetary interest in the decision could result in the trustee's vote

on the decision being invalid. In some cases, the decision itself will be invalid where the vote is invalid.

Declarations

3. a. If a trustee believes he or she is not entitled to participate in a decision, he or she must declare this under Section 100(2) of the *Community Charter*, subject to Sections 100(4) and (5).
- b. Having made such a declaration, if a trustee determines on the basis of legal advice that they in fact may participate and vote, the trustee may do so after making a further declaration stating in general terms the basis on which they have determined that they may participate and vote.

Recording Declaration

4. a. If a trustee makes a declaration under Section 100 of the *Community Charter*, the person recording the minutes of the meeting must record the member's declaration, the reasons given for it, and the times of the member's departure from the meeting room and, if applicable, of the member's return.
- b. In the case of a resolution without meeting vote, if a trustee makes a declaration under Section 100 of the *Community Charter*, the trustee, or the person recording a resolution without meeting vote must complete a Declaration Form (Appendix "B") to record the member's declaration, the reasons given for it, and the time of the member's declaration.
- c. A Declaration form must be completed for each resolution without meeting relating to a matter in which a trustee makes a declaration under Section 100 of the *Community Charter*.
- d. The completed Declaration Form must be filed with the Deputy Secretary, and a copy of the completed form must be affixed to the Resolution Without Meeting Call for the Vote and Conducting the Vote forms.

Insider Information

5. A trustee must not use information that is gained in the execution of his or her office, and is not available to the general public, to further or seek to further the trustee's financial, monetary, personal, or private interest.

Influence

6. Subject to Section 104 of the *Community Charter*, a trustee must not use his or her office to seek to influence a decision to be made by another person, to further the trustee's financial, monetary, personal or private interest.

Gifts

7. A trustee must not accept a gift or personal benefit, except compensation authorized by the *Islands Trust Act* and the Islands Trust Regulation 119/90, as amended, that is connected directly or indirectly with the performance of his or her duties of office.

Exceptions and Disclosure of Gifts

8.
 - a. As an exception, a trustee may accept a gift or personal benefit having a value of less than \$250.00 that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.
 - b. If the value of a gift accepted under this exception equals or exceeds \$250, or the value of such gifts from any single source exceeds that amount in any 12-month period, the trustee must file a disclosure statement in accordance with Section 106 of the *Community Charter*.

Contracts with the Islands Trust

9. A trustee, or person who was a trustee within the previous six months, must report to the Islands Trust Secretary any contract with the Islands Trust in which the trustee or former trustee has a direct or indirect financial or monetary interest, in accordance with Section 107 of the *Community Charter*.

Confidentiality

10. A trustee must keep in confidence any record held in confidence by the Trust Council, Trust Fund Board or a local trust committee, until the record is released to the public, and must keep in confidence any information considered in any part of a Trust Council, Trust Fund Board, Executive Committee or Local Trust Committee meeting that was lawfully closed to the public, until the information is discussed at a meeting that is open to the public or released to the public.

Review Process

11. Trustees and staff may, at the cost of the Trust Council, communicate directly with the Trust's Legal Counsel to discuss matters pertaining to statutory standards of conduct.

Disqualification

12. Trustees violating statutory rules of conduct in relation to conflict of interest, use of insider information, inside or outside influence, receipt of gifts, disclosure of gifts, and disclosure of contracts are subject to disqualification from office under s.110 of the *Community Charter*.

APPENDIX "A"**Section 100 Community Charter**

Disclosure of conflict

100 (1) This section applies to council members in relation to

- (a) council meetings,
- (b) council committee meetings, and
- (c) meetings of any other body referred to in section 93 [*application of open meeting rules to other bodies*].

(2) If a council member attending a meeting considers that he or she is not entitled to participate in the discussion of a matter, or to vote on a question in respect of a matter, because the member has

- (a) a direct or indirect pecuniary interest in the matter, or
- (b) another interest in the matter that constitutes a conflict of interest,

the member must declare this and state in general terms the reason why the member considers this to be the case.

(3) After making a declaration under subsection (2), the council member must not do anything referred to in section 101 (2) [*restrictions on participation*].

(4) As an exception to subsection (3), if a council member has made a declaration under subsection (2) and, after receiving legal advice on the issue, determines that he or she was wrong respecting his or her entitlement to participate in respect of the matter, the member may

- (a) return to the meeting or attend another meeting of the same body,
- (b) withdraw the declaration by stating in general terms the basis on which the member has determined that he or she is entitled to participate, and
- (c) after this, participate and vote in relation to the matter.

(5) For certainty, a council member who makes a statement under subsection (4) remains subject to section 101 [*restrictions on participation if in conflict*].

(6) When a declaration under subsection (2) or a statement under subsection (4) is made,

- (a) the person recording the minutes of the meeting must record
 - (i) the member's declaration or statement,
 - (ii) the reasons given for it, and
 - (iii) the time of the member's departure from the meeting room and, if applicable, of the member's return, and

(b) unless a statement is made under subsection (4), the person presiding at that meeting or any following meeting in respect of the matter must ensure that the member is not present at any part of the meeting during which the matter is under consideration.

Restrictions on participation if in conflict

101 (1) This section applies if a council member has a direct or indirect pecuniary interest in a matter, whether or not the member has made a declaration under section 100.

(2) The council member must not

(a) remain or attend at any part of a meeting referred to in section 100 (1) during which the matter is under consideration,

(b) participate in any discussion of the matter at such a meeting,

(c) vote on a question in respect of the matter at such a meeting, or

(d) attempt in any way, whether before, during or after such a meeting, to influence the voting on any question in respect of the matter.

(3) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Restrictions on inside influence

102 (1) A council member must not use his or her office to attempt to influence in any way a decision, recommendation or other action to be made or taken

(a) at a meeting referred to in section 100 (1) [*disclosure of conflict*],

(b) by an officer or an employee of the municipality, or

(c) by a delegate under section 154 [*delegation of council authority*],

if the member has a direct or indirect pecuniary interest in the matter to which the decision, recommendation or other action relates.

(2) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Restrictions on outside influence

103 (1) In addition to the restriction under section 102, a council member must not use his or her office to attempt to influence in any way a decision, recommendation or action to be made or taken by any other person or body, if the member has a direct or indirect pecuniary interest in the matter to which the decision, recommendation or other action relates.

(2) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Exceptions from conflict restrictions

104 (1) Sections 100 to 103 do not apply if one or more of the following circumstances applies:

- (a) the pecuniary interest of the council member is a pecuniary interest in common with electors of the municipality generally;
- (b) in the case of a matter that relates to a local service, the pecuniary interest of the council member is in common with other persons who are or would be liable for the local service tax;
- (c) the matter relates to remuneration, expenses or benefits payable to one or more council members in relation to their duties as council members;
- (d) 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;
- (e) the pecuniary interest is of a nature prescribed by regulation.

(2) Despite sections 100 to 103, if a council member

- (a) has a legal right to be heard in respect of a matter or to make representations to council, and
- (b) is restricted by one or more of those sections from exercising that right in relation to the matter,

the council member may appoint another person as a representative to exercise the member's right on his or her behalf.

Restrictions on accepting gifts

105 (1) A council member must not, directly or indirectly, accept a fee, gift or personal benefit that is connected with the member's performance of the duties of office.

(2) Subsection (1) does not apply to

- (a) a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office,
- (b) compensation authorized by law, or
- (c) a lawful contribution made to a member who is a candidate for election to a local government.

(3) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Disclosure of gifts

106 (1) This section applies if

- (a) a member receives a gift or personal benefit referred to in section 105 (2) (a) that exceeds \$250 in value, or
- (b) the total value of such gifts and benefits, received directly or indirectly from one source in any 12 month period, exceeds \$250.

(2) In the circumstances described in subsection (1), the council member must file with the corporate officer, as soon as reasonably practicable, a disclosure statement indicating

- (a) the nature of the gift or benefit,
- (b) its source, including, if it is from a corporation, the full names and addresses of at least 2 individuals who are directors of the corporation,
- (c) when it was received, and
- (d) the circumstances under which it was given and accepted.

(3) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Disclosure of contracts with council members and former council members

107 (1) If a municipality enters into a contract in which

- (a) a council member, or
- (b) a person who was a council member at any time during the previous 6 months,

has a direct or indirect pecuniary interest, this must be reported as soon as reasonably practicable at a council meeting that is open to the public.

(2) In addition to the obligation under section 100 [*disclosure of conflict*], a council member or former council member must advise the corporate officer, as soon as reasonably practicable, of any contracts that must be reported under subsection (1) in relation to that person.

(3) A person who contravenes subsection (2) is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Restrictions on use of insider information

108 (1) A council member or former council member must not use information or a record that

- (a) was obtained in the performance of the member's office, and
- (b) is not available to the general public,

for the purpose of gaining or furthering a direct or indirect pecuniary interest of the council member or former council member.

(2) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Court order for person to give up financial gain

109 (1) If a council member or former council member has

- (a) contravened this Division, and
- (b) realized financial gain in relation to that contravention,

the municipality or an elector may apply to the Supreme Court for an order under this section.

(2) Within 7 days after the petition commencing an application under this section is filed, it must be served on

- (a) the council member or former council member, and
- (b) in the case of an application brought by an elector, the municipality.

(3) On an application under this section, the Supreme Court may order the council member or former council member to pay to the municipality an amount equal to all or part of the person's financial gain as specified by the court.

(4) In the case of an application made by an elector, if the court makes an order under subsection (3), the municipality must promptly pay the elector's costs within the meaning of the Rules of Court.

(5) The court may order that costs to be paid under subsection (4) may be recovered by the municipality from any other person as directed by the court in the same manner as a judgment of the Supreme Court.

(6) Except as provided in subsection (4), the costs of an application are in the discretion of the court.

Division 7 -- Disqualification

Circumstances in which a person is disqualified from office on council

110 (1) A person elected or appointed to office on a council is disqualified from holding that office if any of the following applies:

- (a) the person does not make the required oath or affirmation of office within the time established by section 120 (1) [*oath or affirmation of office*];
- (b) the person is absent from council meetings for a period of 60 consecutive days or 4 consecutive regularly scheduled council meetings, whichever is the longer time period, unless the absence is because of illness or injury or is with the leave of the council;

(c) the person is disqualified under any of the following:

section 101 [*restrictions on participation if in conflict*];

section 102 [*restrictions on inside influence*];

section 103 [*restrictions on outside influence*];

section 105 [*restrictions on accepting gifts*];

section 106 [*disclosure of gifts*];

section 107 [*disclosure of contracts*];

section 108 [*restrictions on use of insider information*];

(d) the person is disqualified under section 191 [*liabilities for use of money contrary to Act*];

(e) the person is disqualified under section 66 (2) [*who may hold elected office*] of the *Local Government Act* or section 38 (2) [*who may hold elected office*] of the *Vancouver Charter*.

(2) A person disqualified under subsection (1) is disqualified from holding office on a local government, including office on the council of the City of Vancouver, as follows:

<i>Applicable provision</i>	<i>Period of disqualification</i>
(1) (a) [<i>failure to take oath</i>]	until the next general local election;
(1) (b) [<i>unexcused absence</i>]	until the next general local election;
(1) (c) [<i>conflict</i>]	until the next general local election;
(1) (d) [<i>unauthorized use of money</i>]	for 3 years from the date of the vote to which the disqualification relates;
(1) (e) [<i>election disqualifications</i>]	in accordance with Part 3 [<i>Electors and Elections</i>] of the <i>Local Government Act</i> .

Application to court for declaration of disqualification

111 (1) If it appears that a person is disqualified under section 110 and is continuing to act in office,

(a) 10 or more electors of the municipality, or

(b) the municipality,

may apply to the Supreme Court for an order under this section.

(2) As a restriction, a municipality may only make an application under subsection (1) if this is approved by a resolution that

(a) is adopted by a vote at least 2/3 of all council members, and

(b) identifies the grounds for disqualification under section 110 which the council considers apply.

- (3) Sections 100 [*disclosure of conflict*] and 101 [*restrictions on participation if in conflict*] do not apply to the council member who is subject to a resolution referred to in subsection (2) of this section in relation to that resolution.
- (4) An application under this section may only be made within 45 days after the alleged basis of the disqualification comes to the attention of
- (a) any of the electors bringing the application, in the case of an application under subsection (1) (a), or
 - (b) any member of council other than the person alleged to be disqualified, in the case of an application under subsection (1) (b).
- (5) Within 7 days after the petition commencing an application under this section is filed, it must be served on
- (a) the person whose right to hold office is being challenged, and
 - (b) in the case of an application under subsection (1) (a), the municipality.
- (6) On the hearing of the application, the court may declare
- (a) that the person is qualified to hold office,
 - (b) that the person is disqualified from holding office, or
 - (c) that the person is disqualified from holding office and that the office is vacant.

Status of person subject to an application

- 112** (1) A person who is subject to an application under section 111 and who considers that he or she is qualified to hold office may continue to act in office pending the determination of the Supreme Court respecting the application.
- (2) If a person who is declared disqualified from holding office by the Supreme Court appeals the decision, the appeal does not operate as a stay of the declaration and the person is disqualified pending the final determination of the appeal.
- (3) If a declaration of disqualification referred to in subsection (2) is overturned on final appeal and the term of office for which the person was elected has not ended,
- (a) the person is entitled to take office for the remainder of the term if otherwise qualified, and
 - (b) for this purpose, any other person elected or appointed to the office since the declaration of disqualification ceases to hold office at the time the person declared qualified takes office.

Costs of an application

- 113** (1) In the case of an application under section 111 made by a group of electors, if the court declares that the person challenged is not qualified to hold office, the municipality must promptly pay the electors' costs within the meaning of the Rules of Court.

(2) The court may order that costs to be paid under subsection (1) may be recovered by the municipality from the person who was declared disqualified or any other person as directed by the court in the same manner as a judgment of the Supreme Court.

(3) Except as provided in subsection (1), the costs of an application are in the discretion of the court.

Duty to respect confidentiality

117 (1) A council member or former council member must, unless specifically authorized otherwise by council,

(a) keep in confidence any record held in confidence by the municipality, until the record is released to the public as lawfully authorized or required, and

(b) keep in confidence information considered in any part of a council meeting or council committee meeting that was lawfully closed to the public, until the council or committee discusses the information at a meeting that is open to the public or releases the information to the public.

(2) If the municipality suffers loss or damage because a person contravenes subsection (1) and the contravention was not inadvertent, the municipality may recover damages from the person for the loss or damage.

APPENDIX "B"

ISLANDS TRUST

Declaration Form

This form must be completed when a trustee declares that he or she is not entitled to vote on a matter being considered by Resolution Without Meeting, or having made such a declaration subsequently determines on the basis of legal advice that they may in fact vote. This form complies with the requirements of Section 100 of the *Community Charter*, and applies to Local Trust Committee, Trust Fund Board, Trust Council, and Executive Committee Resolutions Without Meeting.

Under Section 100(2) of the *Community Charter*, I declare that I will not participate or make decisions in the matter contained in the draft resolution as shown in the attached Resolution Without Meeting form for the following reason(s):

Under Section 100(4) of the *Community Charter*, I declare that I have obtained legal advice and have determined that I am entitled to participate and make decisions in the matter that was the subject of my declaration of conflict of interest dated _____ for the following reason(s):

Corporate Entity

Trustee's/Trust Fund Board Member's Name

Trustee's/Trust Fund Board Member's Signature
OR Telephone Declaration

Date and Time of Declaration

Name of Recorder (if applicable)

(Staff to complete)

Received by the Islands Trust Secretary this _____ day of _____, ____.

SECRETARY'S or DESIGNATE'S Signature

Resolution Without Meeting No. _____

2.1.ii. Policy & Guidelines

STANDARDS OF CONDUCT

Trust Council: September 12, 1992

(Amended: December 6, 1997, June 17, 2000, December 5, 2003 and
December 8, 2010)

A: PURPOSE:

1. A trustee elect, by his/her declaration, and/or a staff person, by way of employment, is obliged to execute the duties of his/her office. The purpose of this policy is to present standards of conduct to guide elected and appointed officers in carrying out their duties to ensure: impartial and equal service to all, faithful discharge of their duties without fear or favour, and democratic processes which are duly responsible to the public and which foster public confidence in the Trust's integrity. These standards are in addition to those established in provincial law.

B: REFERENCES:

1. Policy Manual:
 - 1.1. Statutory Rules of Conduct (2.1.i.)
 - 1.2. Governance Principles (2.1.iii.)
2. LTC Procedural Bylaw
3. Trust Council Procedural Bylaw
4. Personnel Management Policies and Procedures: Chapter 1 - General Policies, Section 3 - Standards of Conduct.

C: POLICY:

Certain ethical principles shall govern the conduct of any elected official, appointed official or staff member of the Islands Trust organization, who shall:

1. PERFORMANCE OF DUTIES

- 1.1. Recognize that the chief functions of a Trust official are to serve the public, advocate the Trust mandate, and adhere to the Trust Policy.
- 1.2. Avoid situations which could impair his/her judgement in the performance of his/her duties, or give that impression to others.
- 1.3. Conduct him/herself in a manner that does not detract from the image, integrity or responsibilities of the Islands Trust.
- 1.4. Carry out his/her duties with impartiality and equality of service to all.
- 1.5. Discharge his/her duties without fear or favour.

2. ORGANIZATIONAL RESPONSIBILITY

- 2.1. Respect the opinions of other organizational members, encourage others to utilize their individual strengths in a cooperative fashion, and make informed and responsible decisions.
- 2.2. Be committed to strive for excellence and quality service in implementing Islands Trust policies and directions.
- 2.3. Refrain from deliberately undermining Trust officials or staff.
- 2.4. As an elected or appointed official, respect Management's authority to direct staff.
- 2.5. Direct requests for action by staff to either the Chief Administrative Officer or Manager involved and/or to staff by way of an appropriate resolution.
- 2.6. As a staff person, refrain from becoming involved in the politics of governance - policy setting, decision-making and constituent representations, and as an elected/appointed official, refrain from becoming involved in management - operational supervision, personnel matters and approved budgeted resource allocations.
- 2.7. As an elected official, respect local autonomy and avoid becoming publicly involved in the local politics or controversial local issues in an area outside a local trust area or island municipality that he or she represents unless the elected official first consults with the local trustees or municipal trustees.

- 2.8. Clearly communicate Trust Council's consensus on decisions when and as differentiated from individual member opinions.
- 2.9. When he/she becomes aware of reasonable grounds to believe that transgression of the Standards of Conduct is taking place on the part of any other official, report the transgression to the Executive Committee and/or the Chief Administrative Officer.

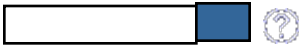
3. PERSONAL INTERESTS

- 3.1. Maintain the highest ideals of honour and integrity in the discharge of his/her duties.
- 3.2. Avoid lobbying activities toward any Trust body on behalf of another leaving office for personal interests or profit and/or for any other person.
- 3.3. Declare to the relevant Chairperson and/or Chief Administrative Officer his/her direct or indirect interest or the known interests of any close relatives in any enterprise which proposes to transact business with the Islands Trust.
- 3.4. Declare his/her interest, direct or indirect, or the known interests of any close relatives in any property which is subject to an application to the Islands Trust to the Executive Committee.
- 3.5. Avoid situations, related to his/her duties, which could result in secured special privileges, favours or exemptions for themselves, or any other person.
- 3.6. Not commit organizational resources of any kind for activities that are not directly related to the official business of the Islands Trust.

4. REVIEW PROCESS

- 4.1. The Standards of Conduct Review Panel dealing with matters of trustees or appointed officials of Trust Council shall be comprised of Executive Committee with Chief Administrative Officer and/or legal counsel acting in an advisory capacity.
- 4.2. Matters of a staff nature shall be dealt with by the Chief Administrative Officer with legal counsel and/or the appropriate Manager in accordance with established employee union candidates (see Personnel Management Policies and Procedures: Chapter 1 - General Policies, Section 3 - Standards of Conduct).

Open Meetings



Business Improvement Areas	
Boundary Extensions	»
Board of Examiners	
Community Charter	»
Elections	»
First Nations	»
Green Communities	»
Improvement Districts	»
Local Government	
Restructure	»
Maps	
Municipal Incorporation	
Municipal Restructure	
Nominal Rent Tenure	
Resort Associations	»
Restructure Program	»
Sponsored Crown Grants	
Voting Strength	
West Nile Virus	

Governance & Structure	
Infrastructure & Finance	
Intergovernmental Relations & Planning	
Policy & Research	
University Endowment Lands	

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Community Relations	»
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Structure	»

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Public accessibility to the decision-making process of elected officials is an important principle in local government. [Division 3, Part 4](#) of the *Community Charter* augments this principle, but also recognizes the need for council to discuss certain matters in a closed meeting.

The open meetings provisions apply to the City of Vancouver, regional districts, the Islands Trust and greater boards.

What is required

All meetings of council and its committees, commissions and other subsidiary bodies must be open to the public. However, under certain circumstances [section 90](#) (meetings that may or must be closed to the public) provides that council **may** close a meeting or part of a meeting by passing a resolution that sets out the basis for closing the meeting to discuss any of the following:

- personal information about individuals appointed to or being considered for appointment as an officer, employee or agent of the municipality;
- personal information about individuals being considered for a municipal award or who have offered a gift to the municipality on condition of anonymity;
- labour/employee relations;
- security of property of the municipality;
- acquisition, disposition or expropriation of land or improvements if municipal interests could be harmed by disclosure;
- law enforcement if disclosure could harm an investigation or enforcement of an enactment;
- litigation or potential litigation impacting the municipality;
- a hearing or potential hearing by an outside administrative tribunal (e.g., Gaming Commission, Motor Carrier Commission, Utilities Commission) affecting the municipality;
- the receipt of legal advice;
- information that is prohibited or information that if it were presented in a document would be prohibited, from disclosure under [section 21](#) of the *Freedom of Information and Protection of Privacy Act*;
- municipal service negotiations and related discussions that are at their preliminary stages and that could harm the interests of the municipality if held in public;
- objectives, measures and progress reports with municipal officers and employees for the purposes of preparing the municipality's annual report;
- a matter that under another enactment is such that the public can be excluded;
- whether or not the meeting should be closed; and
- whether or not council wishes to use the authority under [section 91](#) to exclude or allow municipal staff or other persons to attend a closed meeting.

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Council **must** close a meeting by passing a resolution that sets out the basis for closing the meeting to discuss any of the following:

- confidential information that relates to negotiations between the municipality and the federal/provincial government, or between the federal/provincial government and a third party (i.e.

- negotiations with a First Nation under the Treaty Process);
- FOIPP request directed at the municipality;
- a matter related to the municipality that is being investigated by the Ombudsman; and
- a matter that, under a separate enactment, must be discussed in a closed meeting.

Under [section 91](#) [other persons attending closed meetings], the attendance or exclusion of non-council members at a closed meeting is generally a matter for council to decide. Council may choose to include individuals who are considered necessary to advise council on the matters being discussed, or council may choose to exclude municipal officers from a closed meeting. This would likely only occur where council is discussing specific staffing issues.

All council votes on the reading or adoption of a bylaw must be made in an open meeting, even if the issues that gave rise to the bylaw were discussed in a closed meeting.

[Section 117](#) (duty to respect confidentiality) requires a council member or former council member, unless specifically authorized by council, to keep in confidence:

- any record held in confidence by the municipality until the municipality authorizes its release; and
- information considered in a lawfully closed council meeting or council committee meeting, until council discusses the information at an open meeting.

This means that confidentiality must be maintained until the municipality makes the information public.

If the municipality suffers loss or damage because a person contravenes the requirement to respect confidentiality and the contravention was not inadvertent, the municipality may seek damages through the courts. The duty to respect the confidentiality provision applies only to municipalities and regional districts.

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What to consider

Council Resolution

The municipal council resolution required to close a meeting or part, must be passed in the open part of a meeting and the resolution must state:

- the fact that the meeting or part of the meeting is to be closed; and
- the basis under Section 90 for which the meeting or part is to be closed.

At a minimum, the resolution should reference the specific wording in Subsections 1 and 2 of Section 90 in order to explain why the meeting or part is being closed.

What is a Council Meeting?

The general rule that all meetings of council be open to the public is intended to be applied broadly, in keeping with the principle of openness and court decisions on the types of gatherings that are deemed to constitute a meeting. Based on some court interpretations, a council meeting is any gathering:

- to which all members of council have been invited; and
- that is a material part of council's decision-making process.

Council gatherings where all council members could be seen to be making decisions, or moving towards making decisions, would meet this two-part definition. All such gatherings should be held in accordance with the *Community Charter's* open meeting provisions.

Briefings by Staff

Staff briefings to further council's understanding of an issue that do not constitute a material part of council's decision making process would not typically be considered to be a meeting of council.

Minutes

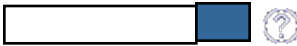
The *Community Charter* requires that a municipality's procedure bylaw provide for the taking of minutes of council and committee meetings, including requiring certification of those minutes. Minutes of closed meetings must record the names of all persons in attendance. All minutes must be available to the public in accordance with [section 97](#) (other records to which public access must be granted), except for those taken at a meeting or part of a meeting that is closed to the public. The corporate officer is assigned responsibility for ensuring that accurate minutes of the meetings of council and council committees are prepared and that the minutes are maintained and kept safe.

Attendance at Closed Meetings

If council excludes officers from closed meetings, the minutes of the meeting must be taken by someone in attendance at the meeting. However, the corporate officer is still responsible to ensure that these minutes are accurate. Assigning minute-taking responsibility to an elected official may impact the ability of the corporate officer to fulfill this responsibility. For this reason, councils may want to limit the circumstances in which the corporate officer or another staff person versed in taking minutes is excluded from closed meetings.

Please direct questions or comments to [Advisory Services Branch](#).

Ethical Conduct



The broad powers given to municipalities in the *Community Charter* are balanced, in part, by the enhanced ethical standards for elected officials in [Part 4 Division 6](#). They were designed in consultation with the Union of British Columbia Municipalities (UBCM) and are in keeping with the provisions of the provincial [Members Conflict of Interest Act](#).

These standards apply to all municipal and regional district elected officials. This includes elected officials from the City of Vancouver and the Islands Trust.

What is required

The legislation addresses conflict of interest; inside influence; outside influence; exceptions from conflict restrictions; gifts; contracts; and use of insider information.

Conflict of Interest

[Section 100](#) (disclosure of conflict) of the *Community Charter* requires a council member to declare a conflict of interest if he or she has a direct or indirect pecuniary interest in a matter under consideration. A member must also declare a conflict if he or she has some other, non-pecuniary type of interest that places the person in a conflict position (e.g., bias). This could include any benefit obtained by relations, close friends, or associates of a member who is in conflict. Examples may include a rezoning application by a relative or close personal friend or a business license decision involving a competitor business to one operated by a close friend. The facts of each situation will be unique and will need to be considered when determining if a member is in a non-pecuniary conflict of interest situation.

[Section 101](#) (restrictions on participation if in conflict) sets out the basic rules that, if a council member has a direct or indirect pecuniary interest in a matter, the member must not:

- remain or attend any part of a meeting during which the matter is under consideration;
- participate in any discussion of the matter; or
- vote on the matter or attempt in any way to influence the voting of the matter, whether before, during or after a meeting.

These rules apply at all times, not just when a person makes a declaration of conflict under section 100.

Once a declaration has been made, the member of council must not do any of the things referred to in section 101 (e.g., remain or attend any part of the meeting during which the matter is under consideration, participate in any discussions of the matter, vote on the matter or attempt in any way to influence the voting of the matter whether before, during or after a meeting). These rules are in effect for council members in relation to meetings of councils, boards, committees and any other body created by the municipality or established pursuant to legislation.

A member of council who determines, after declaring a conflict of interest, that he or she is, in fact, not in a conflict position, may withdraw the original declaration and participate in subsequent discussions and vote on the matter being considered. The member must, however, obtain legal advice on the question of conflict before withdrawing the declaration.

Business Improvement Areas	
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Board of Examiners	
Community Charter	»
Elections	»
First Nations	»
Green Communities	»
Improvement Districts	»
Local Government	
Restructure	»
Maps	
Municipal Incorporation	
Municipal Restructure	
Nominal Rent Tenure	
Resort Associations	»
Restructure Program	»
Sponsored Crown Grants	
Voting Strength	
West Nile Virus	

Governance & Structure	
Infrastructure & Finance	
Intergovernmental Relations & Planning	
Policy & Research	
University Endowment Lands	

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Inside Influence

[Section 102](#) (restrictions on inside influence) prohibits a member of council from using his or her office to attempt to influence a decision of the municipality. For example, a council member would likely be in contravention of the inside influence restriction if he or she as a council member, lobbied the municipal approving officer regarding an application to subdivide land owned by the council member. The restriction states that a member of council who has a direct or indirect pecuniary interest in a matter must not use his or her office to attempt to influence a decision, recommendation or action to be made or taken on the matter:

- at a board, council, committee or other meeting of another body of the local government;
- by officers and/or an employee of the local government; and
- by a person to whom the local government has delegated authority.

Outside Influence

[Section 103](#) (restrictions on outside influence) prohibits a member of council from using his or her office to attempt to influence a decision of any other person or body. The restriction states that a member who has a direct or indirect pecuniary interest in a matter must not use his or her office to attempt to influence a decision, recommendation or other action to be made or taken on the matter by any other person or body. For example, a council member would likely be in contravention of the outside influence restriction if he or she lobbied a provincial regulator on behalf of a business partner using the municipality's letterhead in correspondence with the regulator.

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Exceptions from conflict restrictions

[Section 104](#) (exceptions from conflict restrictions) provides for some exceptions to the conflict and inside/outside influence restrictions which include:

- the council member's pecuniary interest is an interest in common with the electors of the municipality;
- the council member's pecuniary interest, related to a local service, is in common with other persons who are or would be liable for the local service tax;
- the matter under consideration relates to the remuneration, expenses or benefits payable to local government officials in their capacity as members of council of the municipality;
- the pecuniary interest is so remote or insignificant that it cannot reasonably be viewed as likely to influence the member; and
- the council member has a legal right to be heard in respect of a matter or to make representations to council, in which case, the member may appoint a representative to exercise that right.

Gifts

[Section 105](#) (restrictions on accepting gifts) prohibits a member of council from directly or indirectly accepting a gift, fee or personal benefit that is connected in some way to his or her performance as an elected official, unless it is:

- a gift or benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office;
- compensation authorized by law; or
- a lawful campaign contribution.

[Section 106](#) (disclosure of gifts) requires members of council to disclose any gift or benefit, which they are permitted to receive, that is worth more than \$250. This does not include gifts which are personal and not connected to the member's performance as an elected official. If the combined value of lesser gifts from one source over any 12-month period exceeds \$250, those gifts must also be disclosed. Disclosure must be by filing with the corporate officer as soon as reasonably practicable the following information: a description of the gift; when it was received; the circumstances under which it was given and received and the name of the giver.

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Contracts

[Section 107](#) (disclosure of contracts) requires public disclosure of any contract in which an existing council member, or a person who was a council member during the previous six months, has a direct or indirect pecuniary interest. This requirement applies to contracts between the municipality and the specific member or former member, as well as to contracts between the municipality and persons or companies with whom the member or former member is connected. This includes contracts with a company in which the member is a director, officer, significant shareholder or senior employee. It could also include contracts where the member's spouse or partner or other close relative is the party that contracts with the municipality.

The council member or former council member is required to advise the corporate officer as soon as reasonably practicable of any such contracts.

Use of Insider Information

[Section 108](#) (restrictions on use of insider information) restricts existing or former council members from using information that was obtained during the member's time in office, which is not available to the general public, for gaining or furthering a direct or indirect pecuniary interest of the member or former member. It is significant to note that the legislation does not specify a time limit for this restriction. As such, the restriction applies indefinitely – or until the information is available to the general public.

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What to consider

When reviewing the rules on ethical behaviour, council members should consider the following areas.

Declaration of Conflict of Interest

Under section 100, a council member is able to withdraw a declaration of conflict of interest, if he or she has obtained legal advice on the question of conflict. The legislation is silent on the issue of who should pay for the council member's required legal advice.

There is no requirement for a member of council to obtain legal advice on the question of conflict prior to making a declaration. However, where the question of conflict is not clear, a policy to encourage and enable council members to seek legal advice may be in the public interest.

Below are some considerations in establishing a policy:

- At what point should a member of council seek legal advice?
- How can council assist members (e.g., directory of solicitors)?
- Will the opinion obtained by a member be disclosed to the rest of council prior to making a decision about whether to declare a conflict of interest?
- Should council consider paying for the legal advice? If so, what criteria should be used to determine if the municipality should pay for it?
- If council pays for legal advice, should there a maximum budget for legal advice for each member of council over a set time period? Per request? Per member?

Conflicts of interest can be very challenging to identify. Non-pecuniary conflicts that, by definition, do not involve the potential for financial benefit, can be just as damaging to the sense of public trust as conflicts that involve financial gain.

In broad terms, a council member has a non-pecuniary conflict of interest if:

- the member's interest in the matter is immediate and distinct from the public interest;
- it can be reasonably determined that the member's private interest in the matter will influence his or her vote on the matter;
- the member, or one of his or her relations or associates, stands to realize a personal benefit from a favourable decision on the matter; and

- the potential benefit to the member is not financial in nature.

The key consideration for members is whether a reasonable person would conclude that the decision-making could be influenced or affected by the connection, such that a private interest could conflict with a member's public duties. When in doubt it is advised that members err on the side of caution and declare any real or perceived non-pecuniary conflict of interest.

The concept of pecuniary and non-pecuniary conflict of interest is constantly evolving in common law. When faced with uncertainty, municipalities and council members are encouraged to seek legal advice.

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Court Order to Achieve Quorum

There will be instances when more than one council member is required to declare a pecuniary or non-pecuniary conflict of interest. The removal of several council members may result in a loss of quorum and the inability to make decisions. In such cases, the municipality may wish to consider applying to the Supreme Court for an order. Using the authority granted in section 129 (quorum for conducting business), the Supreme Court may order that all or specified council members may discuss and vote on the matter, despite the concerns of conflict, and set any conditions it deems appropriate on the participation of council members.

Gift Disclosure Policies

The challenge for members of council will be to distinguish between items which are strictly prohibited as a gift or benefit and those which might be considered as a gift or benefit that has been received as an incident of the protocol of office or social obligations that normally accompany the responsibilities of office.

Members of council may want to consider the following questions in determining if a gift or benefit might be considered as an incident of the protocol of office or a social obligation that normally accompanies the responsibilities of office:

- Is the item a gift or benefit to the councillor personally either directly or indirectly (e.g., will the councillor or a member of his or her family take personal possession of the gift or is it a gift over which the municipality will take control and custody)?
- Is the gift or benefit being given with any expectation whatsoever that the councillor will either currently or at some point in the future take some action (e.g., vote on a matter, intervene with municipal officials on the gift giver's behalf, etc.) that will benefit the giver of the gift?
- Is the value of the gift or benefit likely to influence any decision or action of the councillor?

If the answer to all three questions is yes, then the member should not accept the gift or benefit. If, however, the answer to the first question is yes, but the answer to the others is no, then the gift might be considered to be incidental to the duties of office. What precisely those are differs for each community. In recognition of the need for sensitivity, councils may want to adopt policies regarding receiving gifts and benefits. In particular, councils may want to set out the criteria for what constitutes, for that community, the type of gift or benefit that can be considered as an incident of the protocol or social obligation that normally accompanies the responsibilities of office.

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Contracts

Council members and members who have held office in the previous six months may want to consider the following in determining whether to disclose any contract(s) with the municipality:

- Is there an understanding or arrangement (written or not) that a good or service will be provided to the municipality?
- Is there regularity to the provision of the good or service?
- Is the provision of the good or service so remote or insignificant as to be unlikely to influence the actions of the member?
- Is there a public perception that a good or service is being provided, regardless of whether this is really the case?

The contract provision in the *Community Charter* is intended to deal with situations where there is materiality to a contract (i.e., the intent is that it does not apply where a contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member in relation to the matter). Along with materiality, members of council will need to be aware of public perception about any business relationship between themselves and the municipality. Members and former members are advised to apply a practical approach to disclosing contracts - when in doubt, err on the side of disclosure.

Penalties

A person who contravenes the ethical standards provisions in the *Community Charter* may be disqualified from holding public office unless the contravention was done inadvertently or because of an error in judgement made in good faith. [Section 110](#) (circumstances in which a person is disqualified from office) sets out that a person who is disqualified cannot run until the next general local election if the Supreme Court finds that he or she is found to be in contravention of the rules related to the:

- restrictions on participation if in conflict;
- exercise of inside influence;
- exercise of outside influence;
- acceptance of gifts;
- disclosure of gifts over \$250 in value;
- disclosure of contracts; and
- use of insider information.

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[Section 111](#) (application to court for declaration of disqualification) sets out the procedure for making application to the Supreme Court to have a member declared disqualified. A municipality, by a 2/3 vote of council, or 10 or more electors of the municipality may make the application to the Supreme Court to have a person disqualified.

In addition, under [section 109](#) (court order for person to give up financial gain), the legislation introduces the ability of the municipality or an elector to apply to the Supreme Court for an order requiring a member, or former member, to pay to the municipality all or part of the member's financial gain that was obtained as a result of contravening the rules governing ethical conduct.

Please direct questions or comments to [Advisory Services Branch](#).