



## Advisory Planning Commissions<sup>1</sup>, Conflict of Interest and Bias

### Guidelines for Members of Advisory Planning Commissions at the Islands Trust

#### 1. What is a Conflict of Interest?

As noted in *Managing Conflict of Interest in the Public Sector*<sup>2</sup>, a Conflict of Interest arises “when a public official has private-capacity interests which **could** improperly influence the performance of their official duties and responsibilities”. It is important to remember that there is nothing improper with having a Conflict of Interest, provided it is managed properly and does not result in any improper actions. Very few citizens serve a term as a public official without encountering a conflict of interest situation of some kind.

#### 2. Do Conflict of Interest rules ‘apply’ to Advisory Planning Commission members?

Under the BC *Community Charter*, a person elected to a local government position (e.g. a local trustee) who has a special private interest in a topic under consideration must declare their interest when the topic comes up, leave the meeting and not participate in the discussion or attempt to influence the vote in any way. If trustees do not follow these rules, they could be disqualified from their elected office and the local trust committee’s decision on a bylaw or application could be jeopardized. In some situations, an elected official could even be required to pay back any financial gains they may have realized, if they improperly voted on a matter in which they have a Conflict of Interest.

While the *Community Charter* does not apply these restrictions to members of advisory bodies that make recommendations to local trust committees, similar ‘Conflict of Interest’ situations can occur, related to the topics that local trust committees refer to their advisory bodies. For example, an APC member could be the applicant for a rezoning that is referred to the APC; or an APC member could be an agent for an applicant, or may have provided professional services (e.g. as an engineer, architect or realtor) in preparing the application. Where a Conflict of Interest situation arises, it is important that the

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<sup>1</sup> While these guidelines refer to Advisory Planning Commissions for simplicity, the advice is also relevant to other advisory groups (i.e. Advisory Design Panels) that make formal recommendations to local trust committees

<sup>2</sup> Whitton, H. 2005. [Managing Conflict of Interest in the Public Sector – A Toolkit](#). Published by the Organisation for Economic Co-operation and Development.

APC member manage it carefully. To do otherwise can undermine the integrity of the APC's recommendations, and public confidence that the APC is acting on behalf of the broader community.<sup>3</sup>

While some local trust committee bylaws<sup>4</sup> and/or APC Terms of Reference within the Islands Trust Area have been updated to provide specific guidance to APC members in handling Conflict of Interest situations, other local trust committee bylaws are silent on the topic, or give the Chair the responsibility to 'rule' on Conflicts of Interest (if asked) and/or to ensure that the meeting is conducted in accordance with the principles of procedural fairness. Where an APC bylaw or Terms of Reference are silent on the topic, *Roberts Rules of Order* can be referred to. They include a general provision<sup>5</sup> that members of groups should not vote on questions where they have a direct personal or pecuniary interest.

This guide has been written to help APC members, including APC Chairs, to handle situations where Conflicts of Interest or bias may arise. The overall objective is to ensure that APC meetings are handled in a manner that is (and is seen to be) procedurally fair, for APC members, for development applicants and for community members.

### **3. What is the difference between a pecuniary Conflict of Interest and a non-pecuniary Conflict of Interest?**

If a Conflict of Interest involves money, it is a **pecuniary** interest. As noted in Stewart McDannold Stuart's [guide for local governments](#),<sup>6</sup> '*pecuniary interests most frequently arise in relation to property, business interests, employment relationships, professional/client relationships, and spousal employment interests. Non pecuniary interests may arise in relationship to family relationships where there is no pecuniary interest involved (children, siblings, parents) and relationships with other organizations like not-for-profit societies, church congregations or community groups*'. A recent court decision indicates that directors of societies may also have **pecuniary** interests in their societies, even if they don't have a direct personal monetary interest. The difference between pecuniary and non-pecuniary interest is significant in situations where the *Community Charter* applies, because the consequences for the public official are different if the conflict is not properly managed. The difference is not as significant in situations involving advisory bodies; pecuniary interests may simply be easier to identify.

### **4. What are some examples of a pecuniary Conflict of Interest that an APC member might face?**

An APC member would have a *pecuniary* Conflict of Interest if the APC was asked to make recommendations regarding the following situations, or similar ones:

- An application where the APC member is the owner or tenant of the subject property.

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<sup>3</sup> *Managing Conflict of Interest in the Public Sector – A Toolkit* suggests that Conflict of Interest guidelines should apply to 'public servants, civil servants, public employees, elected officials or any other kind of official who performs public functions or duties on behalf of... government'. It notes that 'public officials should make decisions and provide advice on the basis of relevant law and policy and the merits of each case, without regard for personal gain'.

<sup>4</sup> See Salt Spring Island Advisory Planning Commission Bylaw 467 and Term of Reference

<sup>5</sup> Robert's Rules of Order Newly Revised. 11<sup>th</sup> Edition.s.45

<sup>6</sup> Stewart, C. 2012. *A guide for municipal council members and regional directors in British Columbia under the Community Charter and Local Government Act*. Stewart McDannold Stuart. January 5, 2012. Victoria, BC.

- An application where the APC member has provided professional services to the owner of the subject property to prepare or present the application.
- An application where the APC member is an employee of the property owner or an employee of someone who provided professional services in preparing or presenting the application.
- An application where the APC member is a neighbour of the subject property and whose property value could be affected (positively or negatively) by the outcome of the application<sup>7</sup>.
- An application where the APC member was is on the board of directors of the corporation or society making a land use application<sup>8</sup>.
- A land use bylaw amendment initiated by the local trust committee that would affect the APC member' property (positively or negatively) but the same could not be said about a sufficiently large number of properties in the community.

#### **5. What are some examples of a non-pecuniary Conflict of Interest that an APC member might face?**

An APC member would have a *non-pecuniary* Conflict of Interest if the APC was asked to make recommendations in the following situations, or similar ones:

- An application where the APC member is a close relative, friend or business associate of the owner or tenant of the subject property.
- An application where the APC member is a close relative, friend or business associate of someone who provided professional services in preparing or presenting the application.

#### **6. What if my interests are the same as the rest of the island's?**

Concerns about Conflicts of Interest focus on matters that are *personal* to an individual, not on ones that are broadly shared with the community or a large sector of it (often called a 'community of interest'). For example, an APC member might benefit from amendments to a land use bylaw that would permit secondary suites on their island, or an expanded range of permitted home-based businesses. However, if such a bylaw amendment would affect everyone else with similar properties (or a large part of the community), then there would be a 'community of interest', rather than a personal interest. For elected officials, rules about Conflict of Interest do not apply if the elected official has an interest in common with the community generally (or a large part of it); the same can be said for APC members.

#### **7. Is there anything wrong with having a Conflict of Interest?**

While sometimes misunderstood, it is important to recognize that Conflicts of Interest are relatively common and often unavoidable, particularly in small communities. They can be particularly common

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<sup>7</sup> Case law indicates that, neighbours who are eligible to receive individual notices about an application, as distinct from reading a public notice in a newspaper, would be assumed to have a special 'interest' in the matter; otherwise they would not have been individually notified. However, any APC member whose property value could reasonably be expected to be changed, either positively or negatively, by a land use decision, would have a Conflict of Interest regarding the matter whether or not they received, if the same could not be said about a sufficiently large number of properties in the community.

<sup>8</sup> This would not apply if the APC member was simply a 'rank and file' member of the organization, with no decision-making or leadership role.

among active community members who volunteer their time in many different ways. Having a Conflict of Interest (COI) is not, in itself, an ethical problem, provided it is identified and managed appropriately. As noted by [Dr. Chris MacDonald](#) (Ethics Consultant):

*It is crucial to see that a COI is a situation, not an accusation. Being in a COI is not the same as being corrupt, and pointing out that someone is in a COI is not the same as accusing them of bias or lack of integrity. A COI, if not dealt with properly, may leave doubt about the objectivity of a particular decision-making process.*

Further background information is provided here:

*The presence of a Conflict of Interest is independent of the occurrence of impropriety. Therefore, a conflict of interest can be discovered and voluntarily defused before any corruption occurs. A widely used definition is: "A conflict of interest is a set of circumstances that creates a risk that professional judgment or actions regarding a primary interest will be unduly influenced by a secondary interest." Primary interest refers to the principal goals of the profession or activity, such as the protection of clients, the health of patients, the integrity of research, and the duties of public office. Secondary interest includes not only financial gain but also such motives as the desire for professional advancement and the wish to do favours for family and friends, but conflict of interest rules usually focus on financial relationships because they are relatively more objective, fungible, and quantifiable. The secondary interests are not treated as wrong in themselves, but become objectionable when they are believed to have greater weight than the primary interests. The conflict in a conflict of interest exists whether or not a particular individual is actually influenced by the secondary interest. It exists if the circumstances are reasonably believed (on the basis of past experience and objective evidence) to create a risk that decisions may be unduly influenced by secondary interests.<sup>9</sup>*

## **8. What should I do if I believe I have (or might have) a Conflict of Interest?**

If you believe you have a Conflict of Interest, check your APC bylaw or Terms of Reference to see if there are specific procedures to follow. Even if there are no specific guidelines in these documents, *Roberts Rules of Order* suggest that those who have a private personal or pecuniary interest in a situation should not be involved in decisions about that topic (including decisions about what recommendations to provide to a decision-maker).

If you believe you have a Conflict of Interest in regards to a specific matter that has been referred to your APC for consideration, the easiest way to manage the situation properly is to:<sup>10</sup>

- Disclose the Conflict of Interest to other members of the APC as soon as you become aware of it.
- Leave the meeting before the discussion of the issue begins, in order to avoid any possibility of influencing the debate or the vote and to avoid making it awkward for other members to speak frankly and fully in the discussion.

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<sup>9</sup> Wikipedia [http://en.wikipedia.org/wiki/Conflict\\_of\\_interest](http://en.wikipedia.org/wiki/Conflict_of_interest)

<sup>10</sup> These guidelines are based on those provided in: Mina, E. 2009. *101 Boardroom Problems and How to Solve Them*. Published by American Management Association

- Avoid any overt or covert attempt to influence the decision in any way, whether at the meeting or outside the meeting.
- Return to the meeting when the APC proceeds to the next agenda item
- Ensure that your going and coming from the meeting is accurately recorded in the APC minutes.<sup>11</sup>

It is not necessary to resign from the APC, provided the Conflict of Interest situation is related to a single matter that the APC is asked to consider, or one that may only come up infrequently during your term of appointment. If for some reason, personal Conflict of Interest situations continually arise for you, you may wish to consider whether you can fulfil the role of an APC member effectively.

### **9. What should I do if I think someone else on the APC has a Conflict of Interest and doesn't recognize it?**

Best practices for managing Conflicts of Interest suggest that it is important to create a climate where everyone can express valid concerns about Conflict of Interest. Nevertheless, it is also important to recognize that publicity about high profile Conflict of Interest situations may have left some with the impression that having a Conflict of Interest is, in itself, some sort of ethical breach, even if properly managed. And, it can be difficult for even the most well-meaning individual to recognize Conflict of Interest situations that may arise for them, particularly if there is little prior notice or details about a topic to be discussed at a meeting. For these reasons, concerns about Conflict of Interest on the part of others should be approached carefully and respectfully, and not in a way that suggests any impropriety on their part. If you feel comfortable mentioning your thoughts to the person affected, then do so privately and recommend they seek further advice if questions remain (see contacts in Section 17). If you don't feel comfortable approaching the other person, you should seek advice, preferably in consultation with the APC Chair to resolve the situation. If you feel a Conflict of Interest situation is going unresolved, it is better to address it proactively than to ignore it. Each APC member shares a duty to take reasonable steps to ensure the integrity of the APC's procedures and recommendations.

### **10. What should I do if someone else says I have a Conflict of Interest?**

First of all, don't get angry or defensive! As noted in *101 Boardroom Problems and How to Solve Them*<sup>12</sup>, 'when individuals react defensively to suggestions of conflict of interest, it becomes difficult for others to express valid concerns'. As there is nothing wrong with having a Conflict of Interest, and it may be difficult for you to identify such a situation when you are personally involved, it is best to carefully consider another person's perspective and seek further advice, if you are in any doubt. As noted above, a Conflict of Interest situation could exist whether or not you are actually influenced by any secondary interests you may have, and whether or not you believe you can be influenced. Any certainty on your part that a private interest that you know exists cannot possibly influence you is beside the point. A Conflict of Interest exists if the circumstances create a *risk* that your decisions and advice at the APC could be unduly influenced by your secondary interests.

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<sup>11</sup> The *Islands Trust Minutes Guidelines*, used by all minute takers, include directions about this topic

<sup>12</sup> : Mina, E. 2009. *101 Boardroom Problems and How to Solve Them*. Published by American Management Association

**11. What are the consequences for an APC member with a Conflict of Interest, if they continue to participate in developing recommendations related to a topic referred to the APC?**

Unlike the situation for elected officials, there are no legal consequences for APC members who participate in developing recommendations related to a matter in which they have a Conflict of Interest. However, there can be risks to an individual's reputation if they continue to participate in providing advice about a topic despite a Conflict of Interest, or an apparent Conflict of Interest. There can also be risks to the APC's reputation and the public's trust that its advice considers the community's broader interests.

Some local government APC bylaws provide for potential termination of an APC member's appointment, if the member participated in discussions where they have a Conflict of Interest. As of the date that these guidelines were prepared, the [Salt Spring Island APC Bylaw 467](#) is the only one within the Islands Trust Area that makes formal reference to this potential outcome.

For APC members who are also members of professional organizations, there may be consequences that arise from that organization's bylaws, codes of ethics or other guidelines. For example, the Code of Ethics for the Architectural Institute of BC indicates that members cannot participate in Advisory Design Panels when they have a Conflict of Interest regarding an application being considered. If you are a member of a professional organization, you should check with it to find out if there are any guidelines or codes of ethics that you should be aware of.

**12. What are the consequences for an LTC if an APC member with a Conflict of Interest or a bias continues to participate in developing recommendations related to a topic referred to the APC?**

If a trustee participates in a decision, despite a Conflict of Interest, there is a risk that the local trust committee's decision could be set aside by a court. This is not likely to happen to a local trust committee's decision, simply because it was informed by an APC recommendation that had been developed with the participation of an APC member with a Conflict of Interest. However, if APC members with Conflicts of Interest routinely participate in the development of advice about land use planning matters, there are risks to the reputation of the local trust committee and to the public's trust that its decisions are made in the broader public interest.

**13. What responsibilities does an APC Chair have in regards to Conflict of Interest?**

Within the Islands Trust Area, APC bylaws vary as to the Chair's responsibilities regarding Conflict of Interest. For example, some bylaws indicate that the Chair is responsible for conducting meetings in accordance with the 'principles of procedural fairness' (one of which is that those with a personal or pecuniary interest in a matter should not vote on it), or for 'ruling on the existence of a conflict or potential Conflict of Interest of a member when requested to do so'.

Chairs should refer to their APC bylaw and Terms of Reference for advice. If these documents are silent on the topic, then Roberts Rules of Order should be followed (i.e. those with a direct personal or pecuniary interest in a matter should not vote on that matter). As a Chair may not be aware of every

member's personal interests, it is a good practice for Chairs to remind APC members periodically that they should declare any Conflicts of Interest they may have.

Chairs can contact Islands Trust staff (see Section 17), if they need more detailed advice in managing a Conflict of Interest situation. Where an APC member declares a Conflict of Interest and leaves a part of the meeting, the Chair should ensure that this has been properly recorded in the APC meeting minutes.

#### **14. What is Bias?**

Some definitions of Bias include:

*'a tendency to believe that some people, ideas, etc., are better than others that usually results in treating some people unfairly'*<sup>13</sup>

*'a predisposition or prejudice'*<sup>14</sup>

*'an inclination of temperament or outlook to present or hold a partial perspective and a refusal to even consider the possible merits of alternative points of view. People may be biased toward or against an individual, a race, a religion, a social class, or a political party. Biased means one-sided, lacking a neutral viewpoint, not having an open mind.'*<sup>15</sup>

One of the principles of procedural fairness is that an applicant for any type of land use approval is entitled to an unbiased decision-maker. Thus the application of procedural fairness principles to APC deliberations raises the issue of bias on the part of individual APC members.

#### **15. What are some examples where an APC member might be biased?**

It is important to remember that an APC member would not be considered 'biased' if they simply have a point-of-view or a known 'leaning' – for example, 'in favor of marine conservation' or 'supportive of local food production'. However, they could be considered biased in the following situations:

- As a member of another community group, they had promised to vote a certain way at the APC meeting, regardless of what information was provided to the APC.
- They had declared publicly many times (e.g. at public meetings or in newspaper opinion pieces) that they would 'always' oppose (or support) something that the APC has been asked to consider.

#### **16. How does bias affect the role and participation of an APC member?**

If an elected official (such as a trustee) is truly 'biased' (closed-minded) about a topic, this can have legal consequences for local trust committee decisions, which are subject to review by the courts on 'procedural fairness' grounds (under the *Judicial Review Procedure Act*). For example, if a trustee had made a firm commitment (in advance of a public hearing) to vote in a particular way, the trustee's vote could potentially be found to have been improperly cast. Whether or not that vote was critical to the local trust committee's decision, the decision could also be overturned if it was challenged in court.

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<sup>13</sup> Miriam Webster dictionary

<sup>14</sup> Oxford Concise dictionary

<sup>15</sup> Wikipedia

The decisions of APCs are not, generally, subject to review by the courts under the *Judicial Review Procedure Act*, and there are no legal repercussions for an individual APC member for improper participation. However, community members may lose faith in an APC's recommendations if its members are clearly closed-minded about matters presented to the APC. Such participation would be contrary to the principles of procedural fairness, which suggest those participating in an official capacity should base their decisions and advice on the evidence received, not on pre-conceived opinions.

APC members should do their best to remain open-minded about topics on their agenda until the meeting when they will make a recommendation to the local trust committee. After they have the information provided, heard from the applicant (where applicable) and listened to their fellow APC members, it will be time to decide how to vote. Before an APC meeting, APC members should not make advance commitments or indicate how they will vote about a topic.

### **17. What if I need advice about a potential Conflict of Interest or bias?**

If you are concerned about an existing Conflict of Interest or bias situation related to your role on an Islands Trust APC, and if this document does not answer your questions, please contact:

- Islands Trust Chief Administrative Officer Russ Hotsenpiller at 250 405 5160 or [rhotsenpiller@islandstrust.bc.ca](mailto:rhotsenpiller@islandstrust.bc.ca)
- Islands Trust Legislative Services Manager Carmen Thiel at 250 405 5188 or [cthiel@islandstrust.bc.ca](mailto:cthiel@islandstrust.bc.ca)

Please note that not all Islands Trust trustees and staff have received training regarding Conflict of Interest or bias, so cannot provide advice on the topic.

### **18. What if I need legal advice?**

If the Islands Trust staff contacts mentioned above cannot answer your questions about Conflict of Interest or bias that arise from your role as an APC member, the Islands Trust's Chief Administrative Officer can arrange access to legal advice through Islands Trust legal counsel, if necessary. In most cases, this will not be necessary, but if it is, you can speak directly to Islands Trust legal counsel about your situation and your questions<sup>16</sup>. As a legal assessment about Conflict of Interest or bias depends on evaluation of the material facts, it is important to disclose them fully, to ensure a proper assessment can be made. In some cases, Islands Trust staff may also provide legal counsel with relevant information about the circumstances (such as a maps or application information), with a copy to you.

If you receive legal advice from Islands Trust legal counsel about Conflict of Interest or bias and your participation in an Islands Trust advisory body, you will be expected to follow it.

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<sup>16</sup> The Islands Trust Executive Committee, which makes decisions about access to Islands Trust legal advice, passed Resolution EC-2014-130 on July 29, 2014 to enable this, where necessary.



If you believe you need advice about your role on an Islands Trust advisory body because of your membership in a professional organization, you should contact that organization directly for advice and assistance.

**19. What happens to the legal advice provided to an APC member by Islands Trust legal counsel?**

If you do obtain legal advice from the Islands Trust’s legal counsel, you will be given a written summary of it and can refer to it publicly if you wish to explain your decision to withdraw or to continue participating in APC deliberations. The advice will also be provided to your APC Chair, members of the local trust committee and Islands Trust staff working in your local trust area. The legal advice is the property of the Islands Trust Council, meaning it is also available, on a confidential basis, to Islands Trust trustees and other Islands Trust staff members. A reference copy will also be kept in Islands Trust files.

**20. What if I want to get my own legal advice?**

While it would be unusual for you to need personal legal advice in relation to your role on an Islands Trust APC, nothing prevents you from obtaining it if you wish. Such advice would be your property and any related discussions would be subject to solicitor-client privilege between you and your lawyer. Because the Islands Trust would not be involved in your choice of counsel, would not provide any instructions or information to the lawyer and would not own any of the advice obtained, it would not contribute to the costs of such advice.

**21. How can I give my local trust committee input on topics of importance to me, if I have a Conflict of Interest or bias and therefore can’t do it at an APC meeting?**

Even if you decide to withdraw from APC discussions due to a Conflict of Interest or bias, you could still provide input as an individual in a non-official capacity, by writing or speaking directly to the local trust committee about the topic.

**22. Why are the bylaws different for different Local Trust Committees?**

Under the *Islands Trust Act* and *Local Government Act*, each Local Trust Committee adopts its own bylaw to guide its Advisory Planning Commission. These bylaws have been adopted at different times and reflect the approach taken by the Local Trust Committee when it adopted its bylaw.

**23. Where can I learn more about Conflict of Interest topics?**

If you are interested in reading more about the topic of Conflict of Interest, here are some helpful references:

OECD, 2003. [Managing Conflict of Interest in the Public Sector – OECD Guidelines and Overview](#). Published by the Organisation for Economic Co-operation and Development (OECD)

Whitton, H. 2005. [Managing Conflict of Interest in the Public Sector – A Toolkit](#). Published by the Organisation for Economic Co-operation and Development (OECD).

Wikipedia: [http://en.wikipedia.org/wiki/Conflict\\_of\\_interest](http://en.wikipedia.org/wiki/Conflict_of_interest)

**24. What if I have suggestions for these Guidelines?**

If you have suggestions for additions or amendments to these guidelines, please send them to:

Islands Trust Legislative Services Manager Carmen Thiel at 250 405 5188 or [cthiel@islandstrust.bc.ca](mailto:cthiel@islandstrust.bc.ca)