IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Schlenker v. Torgrimson,*
2012 BCSC 41

Date: 20120113
Docket: 11-4036
Registry: Victoria

Between:

Norbert Fred Schlenker, Ted Bartrim, Allan Leslie Crane, Alison Mary Cunningham, William Patrick Curtin, Wayne Moise Joseph Fraser, Harold Derek Hill, Malcolm George Legg, Dietrich Luth, Victoria Linda Mihalyi, Gilbert William Mouat, Richard Gerald Ringrose, Mark Lyster Toole, Alan Rosson Wiggan and Elizabeth Susan Wood

Petitioners

And:

Christine Torgrimson, George Ehring and Garth Hendren

Respondents

Before: The Honourable Mr. Justice B. D. MacKenzie

Reasons for Judgment

(In Chambers)

Counsel for the Petitioners:	L. J. Alexander
Counsel for the Respondents Christine Torgrimson, George Ehring:	R. E. Young, Q.C.
Counsel for the Respondent Garth Hendren:	S. Beach
Place and Dates of Hearing:	Victoria, B.C. November 16, 17 and 18, 2011
Place and Date of Judgment:	Victoria, B.C. January 13, 2012

[1] The petitioners seek the respondents' disqualification from office at the local government level on the basis that the respondents failed to disclose a direct or indirect pecuniary conflict of interest. As such, the petitioners say the respondents have breached the conflict of interest provisions of the *Community Charter*, S.B.C. 2003, c. 26. Alternatively, the petitioners allege a conflict of interest at common law and ask the court to make a declaration to that effect and order that the respondents' offices be vacated.

[2] I have already dealt with the petition as it pertains to Mr. Hendren and concluded that in these circumstances, Mr. Hendren, a Capital Regional District ("CRD") director representing Salt Spring Island, was not in a pecuniary conflict of interest or in a common law conflict of interest. As a result the petition was dismissed as against Mr. Hendren (*Schlenker v. Hendren*, (18 November 2011), Victoria 11-4036 (S.C.)).

[3] I now turn to the petition as against Ms. Torgrimson and Mr. Ehring. As I outlined in the *Hendren* decision, the petitioners say the respondents have a direct or indirect pecuniary interest in that, while they were elected to governing organizations, they voted to provide money to two non-profit societies of which all three respondents were directors and members. The petitioners say these respondents erred as trustees by voting to dedicate public funds to the societies they "controlled." The petitioners submit that "where each of the Respondents fails is in not disclosing their director positions."

[4] The two societies in question are the Water Council Society and the Climate Action Council. Initially, these were groups of citizens interested in water and climate issues.

BACKGROUND

[5] Ms. Torgrimson and Mr. Ehring were elected in November 2008 as two of the three trustees who constitute the Salt Spring Island Local Trust Committee ("LTC") at the Islands Trust Council pursuant to the *Islands Trust Act*, R.S.B.C. 1996, c. 239,

s. 23. The two respondent trustees did not stand for re-election in the November 2011 election.

[6] The LTC is a statutory corporation within the scheme of the *Islands Trust Act*. According to the respondents, the LTC has primary local government responsibility for land use planning and regulation.

[7] The Salt Spring Island LTC has adopted an Official Community Plan ("OCP") which recognizes the importance of climate control and growth and development on Salt Spring Island. In addition, Mr. Brody Porter, the regional planning manager for the Salt Spring Island Local Trust area from 1990 to June 30, 2011, deposed:

> Water conservation and the finite capacity of fresh water in the Southern Gulf Islands have always been major issues of concern in planning for sustainability and for growth. Water conservation is a significant and prominent concern on many of the Gulf Islands including Salt Spring Island.

He then went on to depose:

> Addressing water conservation is a prominent part of the Salt Spring Island OCP.

[8] As discussed in the *Hendren* decision, the LTC funded initiatives of the groups that became the Water Council Society and the Climate Action Society from March 4, 2010, to March 3, 2011. During this period, neither community group was an incorporated society or incorporated entity of any kind. Rather, both were affiliations of citizens working towards common goals.

[9] It is clear from the evidence presented in this case that Mr. Ehring and Ms. Torgrimson were actively involved in the common goals and objectives of these two groups from these early days onwards. When the LTC provided money to the groups, the respondents were trustees and voted to approve these contracts.

[10] Ms. Torgrimson deposed that, as a trustee, and prior to the incorporation of these societies, she "actively worked with, participated with and encouraged local citizens on Salt Spring Island to be active about" planning issues such as climate change and water quality, supply and conservation.

[11] To further these activities, both Ms. Torgrimson and Mr. Ehring confirmed they voted to "expend Islands Trust" moneys to fund initiatives of one or the other of the two "unorganized and unincorporated groups of citizens" to assist them in undertaking community initiatives relating to climate or water issues.

[12] The Water Council received funds through contracts with the LTC in March and December 2010. Likewise, the Climate Action Group received funds through contracts with the LTC in July and October 2010 as well as March 2011. These contracts were for the purpose of undertaking various projects relating to water and climate concerns. The parties completed their contracts.

[13] However, the Water Council became incorporated as a non-profit society on July 4, 2011. The Climate Action Council incorporated as a society on April 20, 2011. Both respondents deposed that it was their understanding that incorporation of these two groups was driven by requirements of the CRD, which "wished to provide grants in aid only to organized societies."

[14] Both Ms. Torgrimson and Mr. Ehring were applicants for incorporation of both societies. They became directors of both the Climate Action Society and the Water Council Society. The petitioners emphasize that because the by-laws of both societies allow for remuneration to be paid to directors for "professional services," there is the potential for the respondents to have a pecuniary interest in the affairs of the societies.

[15] However, both Ms. Torgrimson and Mr. Ehring, like Mr. Hendren, deposed that they never received any remuneration from either of these organizations, either before or after incorporation as a society. Indeed, there is no issue on this point. The petitioners have led no evidence of remuneration or a monetary benefit being received by the respondents from either of these two groups, before or after incorporation.

THE VOTE

[16] The incident that was the catalyst for the petition against Ms. Torgrimson and Mr. Ehring occurred on September 1, 2011. The LTC held a meeting at which Ms. Torgrimson and Mr. Ehring were present along with the third trustee, Ms. Malcolmson.

[17] At the time of the vote on September 1, 2011, both respondent trustees were directors of the newly incorporated Water Council Society.

[18] On September 1, 2011, Ms. Torgrimson moved and voted in favour of a resolution to "dedicate" $4,000 to fund a project by which the Water Council Society would organize and run a workshop to raise awareness of water issues on Salt Spring Island. Mr. Ehring was present and voted in favour of the resolution as did the third trustee.

[19] During the discussion and eventual vote on the matter, neither Ms. Torgrimson nor Mr. Ehring disclosed that they were now directors of the newly incorporated societies.

[20] On this point, both deposed, "I consider it part of my role as an elected trustee to participate and provide leadership and support for community initiatives relating to the official community plan."

[21] As I have established, the petitioners do not contradict the assertion that neither Ms. Torgrimson nor Mr. Ehring received any remuneration for their work with these two groups, both pre- and post-incorporation.

[22] However, the petitioners say that the actions of the respondents at the September 1, 2011, meeting are such that the court should conclude that Ms. Torgrimson and Mr. Ehring had an indirect pecuniary interest when they voted. Therefore, the two trustees should have disclosed their conflict and refrained from participating in the discussion and the ensuing vote.

[23] There was another meeting of the LTC on October 6, 2011. Again Ms. Torgrimson and Mr. Ehring were present with the third trustee. At this time Ms. Torgrimson made a motion to dedicate $4,000 to the Climate Action Society for the purpose of providing a progress report on greenhouse gases. Again, there was no mention that both respondents are directors of the Climate Action Society. As on September 1, 2011, the motion was not on the agenda. Given the similar conduct of the respondents on October 6, 2011, whatever decision I make with respect to what occurred September 1, 2011, would be the same decision for the October 6, 2011, transaction.

[24] The petitioners also seek an order that these respondents repay the "expenditure" authorized at these meetings. With respect to this issue, the respondents have deposed that no contract has been entered into and no moneys paid out. There is no dispute on that point.

PECUNIARY INTEREST

[25] Clearly, the dedication of funds to any recipient is a pecuniary matter. The dedication of funds to these two societies falls into the category of pecuniary matter. However, the petitioners submit that the societies' pecuniary interest creates a pecuniary interest in the directors of those societies. Alternatively, the petitioners submit that the respondents were in a common law conflict of interest for this reason:

> Not only do they fail to disclose their personal interests when participating in a public matter, but they maintain an appearance of superficial disinterest when considering the matter of funding for the societies in which they act as directors in their formal capacity.

[26] Given how matters unfolded at these two meetings, it is understandable that the petitioners had some concerns about the actions of Ms. Torgrimson and Mr. Ehring. I will come back to this issue at the end of my judgment.

[27] However, even in these particular circumstances, the issue is whether the petitioners have established that the respondents had a direct or indirect pecuniary

interest such that they should have disclosed this interest and not participated in the discussion, let alone voted to dispense funds.

[28] As stated in *Mondoux v. Tuchenhagen*, 2010 ONSC 6536, 79 M.P.L.R. (4th) 1 at para. 46, citing *Re Greene and Borins*:

> The question which must be asked and answered is "Does the matter to be voted upon have a potential to affect the pecuniary interest of the municipal councillor?..."

[29] Pecuniary means having to do with money: "The phrase 'direct or indirect pecuniary interest in the matter' has no technical significance, the common usage of it is to be given effect, and the phrase is to be interpreted in light of its purpose to prevent conflict between interest and duty" (*Godfrey v. Bird*, 2005 BCSC 626, 42 B.C.L.R. (4th) 90, at para. 99. See *Angrignon v. Bonnier,* [1935] S.C.R. 38; and *R. ex rel. Charles J. Gillespie v. Wheeler*, [1979] 2 S.C.R. 650.) The test is objective (*Mondoux*, para. 55).

[30] In this case, as in the situation involving director Hendren, there is no evidence that either Ms. Torgrimson or Mr. Ehring had a direct personal pecuniary interest, whether actual or potential, in the funds granted to the Water Council. Nor is there any evidence that the respondents received any "gifts" as alleged in the petition.

INDIRECT PECUNIARY INTEREST

[31] I now turn to whether the petitioners have established that the respondents had an indirect pecuniary interest. On this point the respondents submit that even if they have a general interest in the matter of funding for the societies, given their participation in advancing the goals of both groups prior to incorporation, there still must be evidence of a pecuniary interest personal to these elected officials for the petition to succeed.

[32] The petitioners suggest otherwise. They say that by holding the position of directors and members of the newly incorporated societies while also holding public

office in an organization that at times funds these societies, the trustees have an indirect pecuniary interest. The petitioners say because the respondents are directors, they are "linked" to the pecuniary interests of the societies.

[33] This court and our court of appeal recently dealt with a pecuniary interest in *Fairbrass v. Hansma*, 2009 BCSC 878, 97 B.C.L.R. (4th) 167 at para. 44 ("*Fairbrass BCSC*"), aff'd 2010 BCCA 319, 5 B.C.L.R. (5th) 349 at para. 14 ("*Fairbrass BCCA*"). In dealing with the *Community Charter*'s conflict of interest provisions, the trial judge pointed out that the authorities establish that there must be:

> … at least some evidence showing a link between the pecuniary interests of the official and the pecuniary interests of the party whose affairs were affected by the matter under discussion.

[34] The judge in *Fairbrass BCSC* at para. 43 also stated:

> More generally, I do not understand any of the cases upon which the petitioners rely to say that a direct or indirect pecuniary interest may be inferred out of thin air and in the absence of any evidence showing a link between the pecuniary interests of the official and the matter under discussion by his council. And there lies the flaw in the petitioners' case: they say the court should infer that the mayor has a pecuniary interest in his sons' development of their land, and that the inference may be based upon the familial relationship *simpliciter*.

[35] The Court of Appeal in *Fairbrass BCCA* approved of both these statements by the trial judge. In its decision at para. 20, the court said:

> Unlike the rather more amorphous terms that may be recited in proceedings challenging a discrete action of a council, the ground for disqualification is restricted to a person holding a pecuniary interest in the outcome of the matter under consideration, whether direct or indirect.

[36] The petitioners say that the respondents, by becoming directors of the same newly formed organizations and voting on these particular issues, thereby acted in a conflict as outlined in the authorities.

[37] In support of this submission, the petitioners cite *Watson v. Burnaby (City)* (1994), 22 M.P.L.R. (2d) 136, 48 A.C.W.S. (3d) 1023 (B.C.S.C.), where Shaw J.

found an official not to be in a conflict after observing that the councillor was not a member of the group whose application was before council.

[38] However, as I found in the case of Mr. Hendren, I cannot conclude this statement by Shaw J. stands for the proposition that when a person is a "member" of the group that has a matter before a local board or council, that this will be sufficient to establish a personal interest in the matter. In *Watson*, Shaw J. in fact considered other factors that outweighed the councillor's personal connection, especially, in my opinion, the fact that ultimately "there [were] no personal ends to be gained by Councillor Young over and above the benefits to his fellow citizens in Burnaby." I will return to Shaw J.'s reasoning below when I discuss common law conflict of interest relating to non-pecuniary matters.

[39] In this case, the petitioners invite the court to draw the inference that these trustees have an indirect pecuniary interest based upon the fact of their being directors *simpliciter*.

[40] I am not satisfied this is an appropriate inference to be drawn given the court's comments in *Fairbrass BCCA*. Granted, directors are the operating minds of a society. However, the society exists as a separate legal person from the individuals who in this case work for no remuneration to guide it.

[41] In my opinion, *Fairbrass BCCA* supports the respondents' position: the fact that they are directors of societies that received the funds, in the absence of sufficient evidence to establish a personal pecuniary interest between themselves and the societies, does not permit the inference to be drawn that they have an indirect pecuniary interest in the dedication of funds to the societies.

[42] Again, as I decided in the Hendren judgment, the law in British Columbia cannot be read in the spirit of the Ontario legislation. The Ontario statute raised by counsel for the petitioners, the *Municipal Conflict of Interest Act*, R.S.O. 1990, Chapter M.50, ss. 2(a)(iii), 4(k), and 5, sets a low threshold for indirect pecuniary interest. It includes within the category of indirect pecuniary interest situations where

an individual is a member of a body that in turn has a pecuniary interest in the matter (s. 2(a)(iii)).

[43] I am satisfied that in British Columbia, disqualification on the grounds of indirect pecuniary interest requires evidence sufficient that there can be "a readily recognizable pecuniary incentive to vote other than for planning reasons." (See *Re McCaghren and Lindsay* (1983), 144 D.L.R. (3d) 503 at 510 (Alta. C.A.).) In our circumstances, reason to vote without conflict would not be "for planning" but for public education on water issues.

[44] Moreover, even though the society depends to a certain extent on grants it receives from the LTC, as well as other sources, to advance its goals and objectives and to assist in the viability of the society, I do not conclude that Ms. Torgrimson and Mr. Ehring had an indirect pecuniary interest in the issue that was before the LTC on September 1, 2011. The petitioners need not show an actual pecuniary interest being affected, yet there still must be evidence of the potential "to affect the member's financial interest." (See *Mondoux*, para. 46; and *Tolnai v. Downey* (2003), 40 M.P.L.R. (3d) 243 (Ont. Sup. Ct.) at para. 25.) Therefore, the fact that the respondents are directors is not sufficient to establish an indirect pecuniary interest.

[45] I am fully cognizant of the classic statement made by the court in *Re Moll and Fisher et al.* (1979), 96 D.L.R. (3d) 506 at 509, 23 O.R. (2d) 609 (H.C.), that "no man can serve two masters," and that the conflict of interest rules and enactments recognize that even if elected officials are well-meaning, their judgment may be impaired "when their personal financial interests are affected." Yet I underline that it is personal economic self-interest that must be in conflict with the official's public duty. While the vote on September 1, 2011, would provide the Water Council Society with funds to set up a workshop in order to pursue its objectives and educate the community with respect to water issues, the evidence does not establish that the grants had the potential to affect the personal financial interests of Ms. Torgrimson or Mr. Ehring. Indeed, there is possibly less pecuniary connection between a non-

profit society and its directors as private individuals than there was between the mayor and his sons in *Fairbrass*.

[46] Given the totality of the evidence, I am not able to conclude that the petitioners have established that Ms. Torgrimson and Mr. Ehring had an indirect personal pecuniary interest when they voted for the dedication of money to the Water Council Society on September 1, 2011.

[47] As a result, where the petition seeks a declaration that Ms. Torgrimson and Mr. Ehring have violated s. 101 and s. 107 of the *Community Charter* because of a failure to disclose a direct or indirect pecuniary interest, the petition is dismissed.

COMMON LAW NON-PECUNIARY CONFLICT OF INTEREST

[48] I now turn to the petitioners' alternative argument that the actions of the two trustees constituted a non-pecuniary conflict of interest or a conflict of interest at common law. As I found in *Hendren*, this argument was somewhat limited, the primary focus being on pecuniary interest.

[49] In their amended response, the respondents say that "the petitioners do not plead and do not lead any evidence of a non-pecuniary conflict such as associational conflict or attitudinal bias."

[50] However, I determined in the *Hendren* decision that the petition sufficiently pleads the common law conflict of interest issue and should be decided. I note, however, that in spite of the petitioners' request for an order declaring the respondents offices vacant, I agree with the respondents when they say "disqualification from office is purely a statutory remedy" (see also *Fairbrass BCCA* at para. 20) and that there is no basis for disqualification even where petitioners can establish a common law conflict. Therefore the petitioners' suggested remedy -- namely, that I declare the respondents' offices vacant -- is not available.

[51] Neither the petitioners nor the respondents treat this allegation of common law non-pecuniary conflict of interest in detail. The petitioners merely confirm that

the common law conflict of interest survives any statutory provisions on pecuniary conflicts of interest, as noted in *Watson*.

[52] In response, the respondents state in their written submissions:

> There is at common law no conflict whatsoever if the interests of an elected official is one of advocacy of a political position that he or she may reasonably (even passionately) advance as a position held in common with large segments of the public in general.

The respondents cite *Waste Management of Canada Corp. v. Thorhild No. 7 (County)*, 2008 ABQB 762, 463 A.R. 36, for this proposition. At para. 65, the court said:

> There is no evidence to suggest that he was motivated by a relationship with or interest in this organization or its members, apart from their mutual beliefs about what was in the best interests of their community.

[53] The respondents conclude their written submission by stating:

> The respondent trustees also say in respect of any associational bias that their position was a political policy question and that such position was one legitimately held in common by many in the community and in respect of which their votes conferred absolutely no pecuniary interest on themselves.

[54] Counsel for the respondents here refers to what is properly termed common law conflict of interest through association, not bias. This concept of common law conflict of interest is seemingly simple in its enunciation, but complex and difficult when applied to the world of local government politics. Generally speaking, local government officials are elected because of their engagements with certain local issues and matters, engagements which frequently entail association with community groups. In local communities, their views on these issues are often widely known. It is frequently the reason they were elected to public office in the first place. The Supreme Court of Canada reviewed this issue in *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170, and the concurrently released *Save Richmond Farmland Society v. Richmond (Township)*, [1990] 3 S.C.R. 1213.

[55] It appears that our common law applies two tests to situations in which an official might have public duties conflicting with non-pecuniary personal interests. The first of these tests is the closed mind test. It applies when the official has expressed opinions in advance of a decision to such a degree that he or she might have bias. The closed mind test protects the doctrine of natural justice that translates from the Latin as “Hear the other side.”

[56] The second test resembles the pecuniary interest test. It applies when the official has associations or connections within the community such that the official’s own interest might override the public interest when making a decision. This test asks, first, whether the official’s interest is particular to the official, or whether it is held in common with other citizens in the electoral area. If the interest is particular to the official, then the court considers, at a second stage, whether:

> ... the interest is so related to the exercise of public duty that a reasonably well-informed person would conclude that the interest might influence the exercise of that duty. (*Old St. Boniface* at 1196).

This second test -- used for associational conflict -- protects the doctrine of natural justice that translates from the Latin as “No one [should be] a judge in his own cause.”

[57] Given the respondents’ views on certain subjects and issues, the closed mind test might seem appropriate, since their ultimate decisions on such matters could appear to be a foregone conclusion.

[58] However, the second test is applicable in these circumstances. The petitioners do not allege that the respondents made public statements in advance of a contentious decision by the LTC, but rather that the respondents’ connections with the societies render their decisions suspect.

[59] I agree with the petitioners when they say this is a very important issue. In local government, elected people generally have been, and continue to be, engaged in public community roles in societies and clubs as well as through public office. Further, I agree with petitioners’ counsel when he says that citizens are entitled to

know the limits of their personal involvement once they become responsible for public funds.

[60] The early Ontario case of *In re L'Abbé and the Corporation of Blind River* (1904), 7 O.L.R. 230 (H.C.), focused on pecuniary interest. However, it also pointed to circumstances in which a public official might hold a personal "substantial interest other than pecuniary" (234) -- in other words, a common law non-pecuniary conflict of interest through association. The court defined such an overlapping interest as drawing suspicion where it "exists separate and distinct as to the individual in the particular case -- not merely some interest possessed in common with his fellows or the public generally" (233-234).

[61] The SCC dealt with this taxonomy of personal interests -- pecuniary and non-pecuniary -- in *Old St. Boniface* and *Save Richmond Farmland Society*. Within the category of non-pecuniary interest, the SCC in turn briefly distinguished "partiality by reason of pre-judgment" (to which it would apply the closed mind test) from partiality "by reason of personal interest" (to which it would apply a test from the view of a reasonably well-informed person). The SCC said in *Old St. Boniface* at 1196:

> It is not part of the job description that municipal councillors be personally interested in matters that come before them beyond the interest that they have in common with the other citizens in the municipality. Where such an interest is found, both at common law and by statute, a member of Council is disqualified if the interest is so related to the exercise of public duty that a reasonably well-informed person would conclude that the interest might influence the exercise of that duty. This is commonly referred to as a conflict of interest. [emphasis added]

[62] But even this "reasonably well-informed person" test underscores the need for petitioners first to establish a personal interest in the official that goes "beyond the interests that they have in common with the other citizens in the municipality."

[63] When an elected official has a connection to an issue or a group through personal status, such as being a director or member of the group, the courts have asked whether the elected official's interest is "peculiar to the councillor, in effect, something which will serve his or her own personal ends." (See *Watson* at para. 50.)

[64] In *Watson*, Shaw J. of this court applied the non-pecuniary interest test to a Masonic councillor. A petitioner alleged that the councillor was acting in conflict of interest when he voted to grant funds to a replica of a Masonic Lodge for a local outdoor village museum in Burnaby. The replica was proposed by a Masonic historical society. I observe that Shaw J. noted that while the councillor was not a member of the historical society, he was "however, a Mason" (para. 55). This is enough to establish a personal connection with an applicant group. However, I note more importantly that the test for the councillor's breadth of interest comes in asking whether there are "personal ends to be gained by Councillor Young over and above the benefits to his fellow citizens in Burnaby" (para. 56). Mr. Justice Shaw found not, based on the benefits of public historical education that would flow from the project.

[65] In *Waste Management*, the Alberta Queen's Bench also addressed this question. The court considered the actions of a councillor who was both a vocal advocate against a landfill and a leader of a citizens' group against the landfill. Therefore the court applied both tests of non-pecuniary interest to the councillor: the bias test, which comprises the bulk of that section of *Waste Management*, and the test relating to conflict of interest through association or connection, which arises near the decision's close. In applying the second test based on association with the citizens' group, the court at para. 65 determined that the councillor's significant advocacy and even actions resembling leadership within the citizens' group:

> ... arose from shared views regarding the merits of the landfill, and nothing more. There is no evidence to suggest that he was motivated by a relationship with or interest in this organization or its members, apart from their mutual beliefs about what was in the best interests of their community.

[66] In other words, a common law conflict of interest (as opposed to common law bias or prejudgment) arises where the interests are particular to the official, where they are not shared by or would not benefit others in the community, and, where -- if the interest is particular to the official -- a reasonably well-informed person would find that the elected official might be influenced in the exercise of public duty by his or her personal interests.

[67] The petitioners say Ms. Torgrimson and Mr. Ehring would clearly be influenced by their connection to these groups and by funding them, any reasonable person would expect them not to participate. As the court in *L'Abbé* stated at 234:

> it appears to be a question of fact in each instance of the administration of public trusts to say whether the person voting in the exercise of the trust has such a disqualifying interest as should estop him from taking part and as should nullify his vote.

[68] In this instance, however, it is clear Ms. Torgrimson and Mr. Ehring had shared their concerns about water and climate issues with members of the unorganized and unincorporated groups prior to incorporation as societies. Again, it appears the only reason for incorporation as a society was to meet the concerns of the CRD, one of the more obvious sources of funds and grants for such groups.

[69] These persons would still be voting to support the goals of two groups they have long been associated with, and to advance issues which are important to the community, even though the actual number of initial members in these societies was five or six people. The question is: Was the respondents' support for these goals, through their decision to fund two societies that further those goals, in itself a conflict? Given the concern of the public at large with respect to water and climate issues that have been acknowledged in the OCP and in the deposition of Mr. Porter, I am of the opinion the answer is "no."

[70] In *Watson*, Shaw J. concluded that the funding a replica of a Masonic Lodge would benefit the public education of the community. In this instance, the fact that this funding for the Water Council Society and the Climate Action Society, along with funding from other groups, will assist these societies in carrying on with their stated objectives and aspirations is not sufficient for me to conclude that these trustees were participating and voting in order to advance their own personal ends and not to advance community interests.

[71] I return to the comments of the court in *Waste Management*. There, the court did not castigate the councillor in question for his active advocacy within the citizens' group. Instead, the court emphasized that:

> Councillor Croswell is ... an example of the type of individual whose participation in municipal policies is to be encouraged. He held strong views on an issue of public importance ... and he stated them clearly and forcefully.

[72] Similarly, as the SCC observes in *Old St. Boniface* at 1192, it is precisely due to strong opinions and active engagements that many officials are elected.

[73] In short, a non-pecuniary conflict of interest must go beyond that which elected officials may have in common with other members of the community; it must be a substantial interest peculiar to their personal interest that will serve his or her own needs. Following the principles outlined in the relevant authorities pertaining to the issue of elected officials advancing, indirectly or otherwise, an interest shared by the public, I agree with the respondents' submission. I am not satisfied on the totality of the evidence that the petitioners have established that the respondents' votes for these allocations of funds do not serve the public interest. There is insufficient evidence to establish a personal interest "peculiar to the councillor" that is distinct from community interests. Therefore, I am unable to conclude that the petitioners have established a common law conflict. The petition is dismissed.

PROCEDURAL FAIRNESS

[74] Finally, even though I have found that the petitioners have failed to establish pecuniary or non-pecuniary conflict of interest in this instance, I note that many of the issues raised by the petitioners may fall in fact under another aspect of natural justice, namely statutory standards for procedural fairness. (See *Old St. Boniface* at 1191; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 24; and *Waste Management* at para. 26).

[75] The petition asserts that the respondents contravened the open meeting provisions of the *Community Charter*, yet -- as counsel for the petitioners properly acknowledged -- the petitioners ask for no relief under this heading. The petitioners

might very well have argued that the manner of the motion and vote could invoke a finding of procedural irregularity which could result in the vote being set aside.

[76] This observation is based on the conduct of the trustees, especially Ms. Torgrimson.

[77] What transpired at the September 1, 2011, meeting of the LTC was filmed by an Island resident, Ms. Treewater. This video was played in court with the consent of counsel.

[78] The relevant portions of Ms. Treewater's statutory declaration, Exhibit C to the affidavit of Mr. Schlenker, are not in dispute. She declared the following:

> Trustee Torgrimson introduces the topic of allocating money to an organization called the "Salt Spring Island Water Council Society." It is noted by Chair Malcolmson that there is no formal report or other documentation regarding the request for funding nor was it on the agenda. Chair Malcolmson asks Trustee Torgrimson if the two-page document which was just handed to her by Torgrimson should be added as a handout to the agenda. Trustee Torgrimson responds that nearer to the workshop, "they", meaning the Water Council Society, will prepare materials and the workshop will be advertised. It is noted by Chair Malcolmson that this allocation of public money to the Water Council Society was not on the agenda for the meeting and she mentions that it would be "nice for the LTC to receive some documentation" from the Water Council Society if the LTC is going to be passing resolutions to release funds.

[79] Trustee Ehring seconded the motion to fund this workshop.

[80] This issue was not on the agenda nor even on the late agenda available at the meeting. This fact, coupled with other observations made by Ms. Treewater, suggests that the committee procedure itself seems to have neglected to fulfill certain statutory provisions in the *Community Charter* pertaining to open meetings, notice of agenda items, and sufficient minute-taking from which to draw a record of expenditures.

[81] As I mentioned earlier, in these circumstances, the petitioners' concerns are understandable. In the sphere of local government politics, it would be in everyone's best interests to ensure that future local government meetings follow properly transparent procedures.

COSTS

[82] As I concluded in the decision involving Mr. Hendren, counsel may speak to costs if they cannot agree.

"B. D. MacKenzie, J."
The Honourable Mr. Justice B. D. MacKenzie