

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN**

JOHN ALLAN, PENNY LYNNE ALLAN, JANICE LORRIANE BRADDELL, JOHN FULLERTON,  
JULIE FULLERTON, GRIT HIGH, ALEXANDER GRANT SCHIERMAN, NORA ELIZABETH  
SCHIERMAN, GARY DAVID SAWATSKY and LINDA ELIZABETH TEMPLE

**PETITIONERS**

**AND**

STANLEY JACK FROESE, BLAIR GARNET WHITMARSH, ROBERT LONG and ANGELA  
DAWN QUAALE

**RESPONDENTS**

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**SUBMISSIONS OF THE RESPONDENTS**

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## A. INTRODUCTION

1. The Petitioners are electors within the Corporation of the Township of Langley (the “Township”).
2. The Township is a “municipality” pursuant to the provisions of the *Community Charter*, [SBC 2003, c 26](#) (the “*Community Charter*”).
3. The Respondents are, or were, elected officials with the Township:
  - a. Stanley Jack Froese has served as the Mayor of the Township since 2011;
  - b. Blair Garnet Whitmarsh has served as a councillor of the Township since 2014;
  - c. Robert Long has served as a councillor of the Township since 1999; and
  - d. Angela Dawn Quaale served as a councillor of the Township from 2014 to 2018.
4. The Petitioners have brought a petition pursuant to Section 111 of the *Community Charter* seeking a declaration that the Respondents are disqualified from holding office, specifically in relation to the Conflict of Interest provisions within Division 6 of the *Community Charter*.
5. The Petitioners allege that the Respondents failed to disclose a direct or indirect pecuniary interest relating to certain applications brought before the Township’s council (the “Impugned Matters”) and failed to recuse themselves from discussions and votes relating to the Impugned Matters.
6. The Respondents deny the allegations of conflicts of interest. Although the Petitioners avoid an express pleading of “bribery”, the implication of their pleading is that the current mayor of the Township, two sitting council members, and one former council member all voted in favour of various development-related approvals as a *quid pro quo* for financial contributions made by various individuals to their respective re-election campaigns.
7. To put the breadth of the Petitioners’ allegations into context, they allege:
  - a. that 39 “bribes” were received by the Respondents;
  - b. from 19 electors; and
  - c. relating to 16 development-related matters before council,

without evidence that any of the Respondents agreed, even implicitly, to vote in a certain way in exchange for a campaign contribution or otherwise had any sort of interest in the developments.

8. The Petitioners appear to ask that the Court abandon the civil standard of proof and take the unprecedented step of inferring culpability on the part of elected officials on the basis that they “might” have been influenced by campaign contributions, or “might” have accepted money in return for votes.
9. As opposed to this lower speculative standard of proof advocated by the Petitioners, the weight of judicial authority supports the opposite conclusion. Given the significant civil consequences of such allegations, the Court must apply a degree of probability commensurate with the seriousness of the alleged wrong and only attribute bad faith to an elected official where there is no other rational conclusion.
10. The Petitioners’ implication of “bribery” is based on unsupported speculation whereas the evidence before the Court supports the conclusion that the Respondents each had a history of supporting appropriate development in the Township, each campaigned on re-election platforms supportive of sustainable development, and each followed the written recommendations of the Township’s professional planning staff in voting to approve the subject development-related applications within the Impugned Matters. In the absence of sufficient evidence supporting alleged conflicts of interest, the Petition should be dismissed.

## **B. ISSUES BEFORE THE COURT**

11. The Respondents identify the following issues for determination by the Court:
  - a. What is the appropriate test for the finding of a pecuniary interest in the context of election campaign financing contributions?
  - b. Have the Petitioners proven that the Respondents had pecuniary interests in the Impugned Matters?
  - c. If so, are the pecuniary interests significant enough to reasonably be regarded as likely to influence the member in relation to the Impugned Matters?
  - d. If so, did the Respondents’ contravention of the conflict of interest provisions of the *Community Charter* occur inadvertently or because of an error in judgment made in good faith?

## C. LEGAL FRAMEWORK

### (a) *Conflict of Interest Legislation*

12. Section 111 of the *Community Charter* permits 10 or more electors of the municipality to apply to the Supreme Court to seek a declaration that a council member is disqualified from holding office due to, *inter alia*, a conflict of interest.

➤ *Community Charter*, [s. 111](#) – BOA tab XX

13. By virtue of s. 112 of the *Community Charter*, a person who is subject to an application under s. 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.

➤ *Community Charter*, [s. 112](#) – BOA tab XX

14. The *Community Charter* represents a complete code for the determination of issues relating to pecuniary conflicts of interest. That code is set out in sections [101](#), [104](#), and [110](#) of the *Community Charter*.

➤ ***Fairbrass v. Hansma***, [2009 BCSC 878](#) [***Fairbrass BCSC***], appeal dismissed, at para 16 – BOA tab 8

➤ See, also, ***Colbert v. Bond***, [2016 BCSC 1703](#) at para 9 and ***Grand Forks (City) v. Butler***, [2016 BCSC 349](#) at paras 3 – 4 – BOA tabs 6 and 15

15. Section 101, 104 and 110 of the *Community Charter* state:

#### **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 office as described in [section 108.1](#) [*disqualification for contravening conflict rules*] 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.

[...]

### **Disqualifications to which this Division applies**

**110** This Division applies to the following disqualifications from holding office on a council:

- (a) disqualifications under the following provisions of this Act:
  - (i) Division 6 [*Conflict of Interest*] of this Part;
  - (ii) section 120 (1.1) [*failure to make oath of office*];
  - (iii) section 125 (5) [*unexcused absence from council meetings*];
  - (iv) section 191 (3) [*unauthorized expenditures*];
- (b) disqualifications under section 81 (2) [*persons disqualified from holding local government office*] of the [Local Government Act](#), other than disqualifications referred to in [section 81 \(2\)](#) (h) [*disqualifications under the Local Elections Campaign Financing Act*].

➤ Community Charter, ss. [101](#), [104](#), and [110](#) – BOA tab 32

16. The legal rationale underlying the conflict of interest provisions in the *Community Charter* was articulated by the Court of Appeal in **Schlenker v. Torgimson**, [2013 BCCA 9](#) [**Schlenker**]:

[38] The purpose of such legislation was eloquently described by Robins J. (later J.A.) speaking for the Ontario Divisional Court in *Re Moll and Fisher* (1979), 1979 CanLII 2020 (ON SC), 96 D.L.R. (3d) 506 at 509:

This enactment, like all conflict-of-interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well-meaning men and women may be impaired when their personal financial interests are affected. Public office is a trust conferred by public authority for public purpose. And the Act, by its broad proscription, enjoins holders of public offices within its ambit from any participation in matters in which their economic self-interest may be in conflict with their public duty. The public's confidence in its elected representatives demands no less.

Legislation of this nature must, it is clear, be construed broadly and in a manner consistent with its purpose.

[Emphasis in *Schlenker*]

➤ **Schlenker** at [para 38](#) – BOA tab 29

17. The existence of a pecuniary interest in a matter is the sole ground for the remedy of disqualification under s. 101 of the *Community Charter*:

[20] The conflict of interest provisions of the *Community Charter* in issue concern the personal status of the impugned party to continue to hold office. The provisions are intended to enhance and protect the integrity of local government, with the myriad benefits that flow from achieving that objective shared by the community broadly. However, at the same time, addressed as those provisions are to the capacity of the decision makers to fulfill the term of their elected office and thereby to respect the election process, the criteria for disqualification are determinate. **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.** Further sections elaborate on this theme, for example s. 105 relating to gifts and s. 108 relating to use of insider information, but **the common thread of the disqualification provisions is the requirement of pecuniary interest or gain.**

[emphasis added]

➤ **Fairbrass v. Hansma**, [2010 BCCA 319](#) [**Fairbrass BCCA**] at para 20 – BOA tab 9

18. This issue of what constitutes a “direct or indirect pecuniary interest” was summarized by this Court as follows:

[99] 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 et al v. Bird and District of North Saanich*, [2005 BCSC 626](#)  
at para 99 – BOA tab 14

19. The Ontario Court of Appeal has further articulated that a pecuniary interest is “restricted to a financial, monetary, or economic interest”. Further, while conflict of interest legislation should not be construed too narrowly,

[10] ...The competing policy imperative is that “pecuniary interest” must not be construed so broadly that it captures almost any financial or economic interest such that it risks needlessly disqualifying municipal councillors... from participating in local matters of importance to their constituents.

➤ *Ferri v. Ontario (Attorney General)*, [2015 ONCA 683](#) [*Ferri*]  
at paras 9-10 – BOA tab 11

20. To that end, the BC Court of Appeal has specifically held that the receipt of campaign contributions from a developer does not constitute “a direct or indirect pecuniary interest” in that developer’s applications. In overturning the decision of the chambers judge who had found that campaign contributions had given rise to an “indirect interest in the outcome of the votes”, Mr. Justice Esson in *King v. Nanaimo (City)*, [2001 BCCA 610](#) [*King*] concluded:

[12] That conclusion, in my respectful view, is wrong in law. What was prohibited by s. 201(5)<sup>1</sup> is participation in the discussion or vote on a question in respect of “... a matter in which the member has a direct or indirect pecuniary interest.” The “matter” (or matters) in respect of which questions arose before Council were, in this case, the various applications by Northridge Village and its associates. **Nothing in the facts established in this proceeding could justify the conclusion that Mr. King had a pecuniary interest, direct or indirect, in any of those matters. The mere fact that Northridge made campaign contributions could not, in and of itself, establish any such interest.** There could, of course, be circumstances in which the contribution and the “matter” could be so linked as to justify a conclusion that the contribution created a pecuniary interest in the matter. Indeed,

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<sup>1</sup> *Municipal Act*, RSBC 1979, c 323, s. 201(5) “... a council member must not participate in the discussion of or vote on a question in respect of a matter in which the member has a direct or indirect pecuniary interest.” A prohibition now contained in *Community Charter*, s. 101

the learned chambers judge took note of an example of such a situation when he said in his reasons:

There is no evidence of a direct pecuniary interest in the sense that he agreed to vote for these projects in return for their campaign contribution of \$1,000.00.

- [13] It would not be useful to speculate as to what circumstances could create an indirect pecuniary interest. It is enough to say that the mere fact of the applicant having made a campaign contribution is not enough. **In the absence of any factual basis for finding that Mr. King had a pecuniary interest in the matter**, the finding based on s. 201(5) is wrong in law and must be set aside.

[emphasis added]

➤ *King* [at paras 12-13](#) – BOA tab 22

➤ See, also, *Fearnley v. Sharp*, [1999 CanLII 1553 \(BC SC\)](#) [*Fearnley*] at para 37 – BOA tab 10

21. In *Schlenker*, the British Columbia Court of Appeal again characterized the campaign contribution argument raised in *King* as “a remote and tenuous connection”.

➤ *Schlenker* [at para 55](#) – BOA tab 29

22. Furthermore, excepting the financial contribution limits set by the legislature in the *Local Elections Campaign Financing Act*, SBC 2014, c 18 (“*LECFA*”), the size of the contributions or percentage of the total contributions received is irrelevant. Rather, the Courts have consistently held that a “further link” beyond a campaign contribution must be proven to establish a pecuniary interest. As concluded by Mr. Justice Macaulay in *Highlands Preservation Society v. Corp. of the District of Highlands*, [2005 BCSC 1743](#) [*Highlands*]:

- [55] ...**The question is not whether there is a magical number which campaign contributions cannot exceed, but whether there is any evidence of contributions coupled with a promise, implicit or otherwise, to deliver a vote.** If the evidence revealed that a councillor agreed to sell her vote for a campaign contribution of five dollars, the size of the bribe, or the percentage of overall contributions, would be superfluous. In such a case, **it is the link to dishonest conduct that is reprehensible.**

- [56] Similarly, if a councillor happens to receive only one campaign contribution from a single person, it does not automatically follow that the councillor must have agreed to sell his vote in exchange. **Absent such an arrangement, the contributor is simply exercising the democratic right to make a campaign contribution to a candidate that she or he chooses to support. There is nothing reprehensible**



**in that so long as the councillor did not agree, implicitly or otherwise, to vote a certain way.**

[57] **There should be a further link beyond a campaign contribution to establish an indirect pecuniary interest.** I would not infer any appearance of impropriety from the campaign contributions here.

[58] In *King v. Nanaimo*, [2001 BCCA 610 \(CanLII\)](#), [2001] B.C.J. No. 2107 (C.A.), Esson J.A., for the court, rejected the conclusion that accepting a campaign contribution from a particular company meant that an alderman had a direct or indirect pecuniary interest that disentitled him from voting on various applications by the contributor. He expressly found that “the mere fact of the applicant having made a campaign contribution is not enough” (para. 13) to create an indirect pecuniary interest. **There was no evidence in that case of any agreement to vote for the projects in exchange for the contributions.**

[59] Further, Esson J.A. did not comment, as had the chambers judge, on the size of the contribution relative to the overall amount received. In *Guimond v. Vancouver (City)*, [1999] B.C.J. No. 2529 (S.C.), heard before the Court of Appeal decision in *King*, the judge distinguished the chambers judgment in *King*, in part on the basis that the campaign contribution in that case was substantially greater. **Any attempt to draw an inference based on the size, relative or otherwise, of the campaign contributions in the case at bar would be dangerous.**

[60] **I am not persuaded that there is any evidence respecting the purpose of the campaign contributions capable of supporting the contention that the councillors had an indirect pecuniary interest. The contributions were never hidden from public view. I repeat that there is no evidence that they were anything but legitimate.**

[emphasis added]

➤ **Highlands** [at paras 55-60](#) – BOA tab 20

23. In *Helten v. Robertson*, 2015 BCSC 599, Mr. Justice Myers was also faced with an argument that the court should infer a pecuniary interest out of the mere fact of a campaign contribution. In that case, Justice Myers held:

[29] ...I will, for the sake of completeness say this: there is no evidence before me indicating that Local 1004's contribution was anything other than a lawful political contribution. **There is no evidence of an agreement between the respondents and Local 1004 to the effect that if a contribution was made, the respondents would take a particular position or that if a contribution was not made they would not take that position.** Rather, the respondents' long-standing view, one made public well before the current election, was against contracting out of union positions...

...

[35] **While a court may draw inferences from facts in evidence, I cannot draw an inference of the agreement alleged by the petitioners.**

[36] As the petitioners' counsel acknowledged during argument, and the cases establish, **there is nothing wrong with a politician stating his policy in the hopes of obtaining votes or campaign contributions. There is also nothing untoward with contributions being made by supporters of that position. There can also not be anything wrong with a politician carrying out a campaign promise if elected. The petitioners have not demonstrated anything beyond this.**

[emphasis added]

➤ *Helten v. Robertson*, [2015 BCSC 599](#) [*Helten*] at paras 29 and 35-36 – BOA tab 19

(b) *Petitioners Burden of Proof*

24. It is fundamental that the onus is on the Petitioners to prove that a council member had a direct or indirect pecuniary interest in a matter before council that ought to have been declared. Mere speculation is insufficient to discharge this burden.

➤ *Fairbrass BCCA* at [para. 22](#) – BOA tab 9

➤ *Helten* at [paras 34-35](#) – BOA tab 19

25. It is not enough for the Petitioners to speculate or raise suspicions in an attempt to shift the burden of proof to the Respondents to disprove the allegations of conflict. As concluded by Mr. Justice Macaulay in *Highlands*:

[30] There is no requirement that the respondents must place evidence from all potential witnesses before the court to avoid an adverse inference being drawn. **Given the absence of reliable evidence from the petitioner, imposing such a requirement would inappropriately shift the burden of proof to the respondent and raise an artificial bar.** I accept the evidence of the respondents that there was no discussion of the rezoning or the development with representatives of the corporation in the restaurant following the public hearing.

[emphasis added]

➤ *Highlands* at [para 30](#) – BOA Tab 20

26. In dealing with the *Community Charter's* conflict of interest provisions in ***Fairbrass BCSC***, Mr. Justice Rogers commented as follows:

[43] ... 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.

➤ ***Fairbrass BCSC*** [at para 43](#) – BOA tab 8

27. In ***Lee v. Jacobson***, [1994 CanLII 1419 \(BC CA\)](#) [***Lee***], the Court of Appeal addressed the difference between inferences and speculation:

[26] The leading case distinguishing between conjecture on the part of the finder of fact and the drawing of an inference is *Caswell v. Powell Duffryn Associated Collieries Ltd.*, [1940] A.C. 152 (H.L.). In that case the plaintiff was the mother of a mine worker killed while at work in the respondent's colliery. The precise manner in which the accident occurred could not be determined. At issue was whether the negligence of the employer was the substantial cause of the accident. Lord Wright discussed the role of the trier of fact in drawing inferences from the known facts at pp. 169-70:

My Lords, the precise manner in which the accident occurred cannot be ascertained as the unfortunate young man was alone when he was killed. The Court therefore is left to inference or circumstantial evidence. **Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish.** In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases the inference does not go beyond reasonable probability. **But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.**

[emphasis added]

➤ ***Lee*** [at para 26](#) – BOA tab 23

28. Further, the Court of Appeal has held that, while a trial judge is entitled to draw inferences from properly led evidence, there is:

[31] ...a duty in law when reviewing the evidence to apply "a degree of probability... commensurate with the occasion" — here, allegations of serious wrongdoing by public officials and a civil servant, the latter acting in a quasi-judicial capacity.

- ***First National Properties Ltd. v. McMinn***, [2001 BCCA 305](#) [***First National***] at para 31, leave to appeal refused– BOA tab 12

29. More recently, the Court of Appeal has reiterated that proof must be commensurate with the seriousness of the alleged wrong:

[108] A judge must scrutinize the relevant evidence with care when making factual determinations, particularly where, as here, the allegations are serious: *F.H. v. McDougall*, 2008 SCC 53 at paras. 40, 49. An allegation that a public official abused his or her office for an ulterior motive is an extremely serious claim and proof commensurate with the seriousness of the alleged wrong is required: *J.P.* at paras. 329, 338.

- ***Rain Coast Water Corp. v. British Columbia***, [2019 BCCA 201](#) at para 108 – BOA tab 26

30. In Alberta, the *Local Authorities Election Act*, contains similar conflict of interest legislation to BC but in that legislation specifically refers to the term “bribery”. There, the courts have similarly held that when considering allegations of bribery, “a high standard of proof is required”. Given that an allegation of bribery “is a matter which has serious civil consequences”, the standard of proof “amounts to practically a criminal standard”.

- ***Babiuk v. Chrapko***, [1993 CanLII 7051](#) (AB QB) – BOA tab 4

- ***Gullion v Gottfried***, [2018 ABQB 531](#) at para 26 – BOA tab 18

- *Local Authorities Election Act*, [RSA 2000, c L-21](#), s. 116 [LAEA] – BOA tab 33

31. Returning to British Columbia, Chief Justice Finch, explained the rationale for proof commensurate with the occasion in ***Macmillan Bloedel Ltd. v. Galiano Island Trust Committee***, [1995 CanLII 4585 \(BC CA\)](#) [***Macmillan Bloedel***] as follows:

[153] The words bad faith have been used in municipal and administrative case law to cover a wide range of conduct in the exercise of legislatively delegated authority. Bad faith has been held to include dishonesty, fraud, bias, conflict of interest, discrimination, abuse of power, corruption, oppression, unfairness, and conduct that is unreasonable. The words have also been held to include conduct based on an improper motive, or undertaken for an improper, indirect or ulterior purpose. In all these senses, bad faith describes the exercise of delegated authority that is illegal, and renders the consequential act void. And **in all these senses bad faith must be proven by evidence of illegal conduct, adequate to support the finding of fact.**

[emphasis added]

- ***Macmillan Bloedel*** [at para 153](#) – BOA tab 24

32. The Court of Appeal further warned in **First National** that “courts should be slow to impute bad faith to elected officials unless there is no other rational conclusion”.

➤ **First National** [at para 38](#), leave to appeal refused– BOA tab 12

(c) *Appropriate Legal Test*

33. The Respondents take issue with the approach for the finding of a pecuniary conflict of interest advocated by the Petitioners. The Respondents submit that the appropriate test is comprised of two elements:

- a. First – whether, in the balance of probabilities, the elected official has a direct or indirect pecuniary interest in the matter under consideration; and, if so
- b. Second – whether a reasonably well-informed person would conclude that such a pecuniary interest would influence the elected official in the exercise of his or her public duty.

34. The Petitioners rely on the reasons of Sopinka J. in **Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)**, 1990 CarswellMan 235 (S.C.C.) [**Old St. Boniface**], where Sopinka J. commented generally, in obiter, on conflict of interest legislation for local governments:

I would distinguish between a case of partiality by reason of pre-judgment on the one hand and by reason of personal interest on the other. It is apparent from the facts of this case, for example, that some degree of pre-judgment is inherent in the role of a councillor. That is not the case in respect of interest. There is nothing inherent in the hybrid functions, political, legislative or otherwise, of municipal councillors that would make it mandatory or desirable to excuse them from the requirement that they refrain from dealing with matters in respect of which they have a personal or other interest. 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.]

➤ **Old St. Boniface** [at p. 1196](#) – BOA tab 25

35. As the Respondents understand the position of the Petitioners, their particular interpretation of this passage from *Old St. Boniface* would have the Court not inquire in the first instance whether a pecuniary interest is found on the balance of probabilities, but rather, proceed directly to an inquiry as to whether a reasonably well-informed person would conclude that the elected official *might* have been influenced by campaign contributions in the manner in which a vote was cast.
36. In the submission of the Respondents, the “reasonably well-informed person” inquiry, as articulated by Mr. Justice Sopinka, relates only to whether an interest, the existence of which has already been proven at the first stage of the inquiry, would be sufficient or of the kind so as to support a conclusion that such an interest might have influenced the elected official in the exercise of his or her duty.
37. The Petitioners’ argument that they need not adduce evidence of an agreement or promise so as to link campaign contributions with a corresponding agreement to vote in a certain manner is, respectfully, contrary to all judicial findings and guidance on this subject and is patently contrary to the interests of fairness and justice.
38. The Petitioners’ complaint that it is difficult to adduce evidence to prove a claim of bribery should not result in the burden of proof being reduced to what a reasonably well-informed person *might* conclude – as doing so invites the Court to enter a realm of adjudication based on suspicion, speculation and mere possibility. This, the Respondents argue, was not the intent of the Court in *Old St. Boniface*.
39. As observed and concluded by Mr. Justice Roger is ***Fairbrass BCSC***,

[29] ... Writing for the majority [in *Evans v. Holt*, [1982] A.J. No. 703 (C.A.)], Lieberman J.A. said this:

20. “Indirect pecuniary interest” within the meaning of s. 30(2)(d) of the Act has been considered in a number of recent decisions of this court: *Wanamaker v. Patterson*, [1973 ALTASCAD 60 \(CanLII\)](#), [1973] 5 W.W.R. 193; *Casson v. Reed*, [1975 CanLII 939 \(AB CA\)](#), [1975] 6 W.W.R. 431; *Lukas v. Peden*, [1974 ALTASCAD 73 \(CanLII\)](#), [1975] 3 W.W.R. 673; *Guimond v. Sornberger* (1980), [1980 ABCA 216 \(CanLII\)](#), 13 Alta. L.R. (2d) 228; 25 A.R. 18; *Russell v. Toney*, [1982 ABCA 173 \(CanLII\)](#), 38 A.R. 244. **These decisions make it clear that an indirect pecuniary interest may be inferred but that such inference must be based upon facts. The circumstances surrounding an individual case may be such as to arouse suspicion about the motives and conduct of a member of council, but even a reasonable apprehension of bias is insufficient to disqualify a person** under s. 30(2)(d). In *Guimond v. Sornberger*, *supra*, Clement, J.A. said at p. 236: [A.L.R.]:

**Neither the words of Vaughn Williams, L.J., nor the words of s. 30 contemplate as a ground for disqualification from office a reasonable apprehension of bias on the part of a**

**councillor**, such as was applied in *Committee for Justice & Liberty v. Nat. Energy Bd.* (1976), [1976 CanLII 2 \(SCC\)](#), 68 D.L.R. (3d) 716, 9 N.R. 115 (S.C.C.). **To import the concept of reasonable apprehension of bias into s. 30 would result in an amendment of its terms, not an exercise of interpretation with limits allowed by authority.**

...

- [30] **What I take from this lengthy passage is that a suspicion, even a reasonable suspicion in all the circumstances, is not sufficient to underwrite a finding that an official has an indirect pecuniary interest in a matter. According to *Evans*, before such a finding can be made, there must be facts to support it.**

[emphasis added]

➤ ***Fairbrass BCSC*** [at para 43](#) – BOA tab 8

➤ And with said approach and reasons approved by the Court of Appeal in ***Fairbrass BCCA*** [at paras 21 and 24](#) – BOA tab 9

40. In any event, the test for conflicts of interest has now been codified by statute. As observed by Justice Sopinka in *Old St. Boniface* immediately following the passage cited above:

Statutory provisions in various provincial Municipal Acts tend to parallel the common law but typically provide a definition of the kind of interest which will give rise to a conflict of interest...

➤ ***Old St. Boniface*** [at pp. 1196-1197](#) – BOA tab 25

41. In British Columbia, the *Community Charter* contains a complete code for the determination of issues relating to pecuniary conflicts of interest of local government elected officials.

➤ ***Fairbrass BCSC*** [at para 16](#) – BOA tab 8

42. The *Community Charter* requires that the Petitioners prove that:

- a. “a council member has a direct or indirect pecuniary interest” (Section 101(1)); and, if so
- b. the pecuniary interest is not “so remote or insignificant” that it can “reasonably be regarded as likely to influence the member in relation to the matter” (Section 104(1)(d))

➤ *Community Charter*, [s. 101 and 104](#) – BOA tab 32



43. In **Schlenker**, Mr. Justice Donald's approach to the interpretation of these *Community Charter* provisions included a consideration of Mr. Justice Sopinka's passage from *Old St. Boniface* in the context of, importantly, having already found that the two respondent elected trustees had a pecuniary interest in the matters under contemplation by virtue of "the fulfillment of their fiduciary obligation to their societies". His Lordship then articulated the remaining question and analysis as follows:

[41] I think a reasonably well-informed elector on Salt Spring Island would conclude that the respondents' interest as directors **would** influence their decision to authorize and pay for contracts with their Societies. The respondents themselves initiated the resolutions that directly benefitted their Societies, and then voted in favour of those resolutions, without disclosing that they were directors of the very Societies that were obtaining the benefit.

....

[49] In several ways in the course of these reasons, I have endeavoured to make the point that so long as the "matter" involves the expenditure of public funds and the respondents have "an interest" in the matter which a well-informed elector **would** conclude conflicts with their duty as councillors, it makes no difference that they put no money into their own pockets.

[emphasis added]

➤ **Schlenker** [at para 41](#) – BOA tab 29

44. Accordingly, in **Schlenker**, Mr. Justice Donald:
- a. Firstly – found on the evidence that the respondents had a pecuniary interest in the matters under consideration; and
  - b. Secondly – found the interest to be of a kind that **would** influence their respective votes (and not "**might** influence the exercise of that duty" as Mr. Justice Sopinka suggested).
45. This is consistent with the approach taken by the courts in Ontario under their equivalent legislation, the *Municipal Conflict of Interest Act*, [R.S.O. 1990, c. M.50](#). First, it must be proven that there is a pecuniary interest. Next, it must be considered whether the pecuniary interest is sufficiently above the threshold of "remote or insignificant". In considering the ameliorating "remote or insignificant" provision of their statute (s. 4(k)), the courts in Ontario have articulated the following analysis to be applied only after a presumptive pecuniary interest has been found:

[10] ...Would a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councilor as likely to influence that councilor's action and decision on the question? In



answering the question set out in such test, such elector might consider whether there was any present or prospective financial benefit or detriment, financial or otherwise, that could result depending on the manner in which the member disposed of the subject matter before him or her.

- *Municipal Conflict of Interest Act*, [R.S.O. 1990, c. M.50](#), s. 4(k) [MCIA] – BOA tab 36
- ***Whiteley v. Schnurr***, 1999 CarswellOnt 2123 at para 10 – BOA tab 31
- See, also, ***Ferri*** [at para 16](#) – BOA tab 11

46. Accordingly, not only must the Petitioners first prove, on a balance of probabilities, the existence of a pecuniary interest in a matter before Council, but upon proving that, they must secondly establish that a well-informed elector would conclude that the pecuniary interest is significant enough that it conflicts with the councillor's duty.
47. Lastly, even if the Petitioners are able to prove that there was a contravention of the conflict of interest provisions in the *Community Charter*, the Respondents are entitled to respond by showing that the contravention was done "inadvertently or because of an error in judgment made in good faith".

- *Community Charter*, [s. 101\(3\)](#) – BOA tab 32

48. The ability for members of council to show that a contravention was done in good faith is important and must be contrasted with older legislation or case law, such as ***Re Moll and Fisher et al.***, 1979 CanLII 2020 (ON SC), a case relied on by the Petitioners, where the Court commented:

There is no need to find corruption on his part or actual loss on the part of the council or board. So long as the member fails to honour the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motive, he is in contravention of the statute.

- ***Re Moll and Fisher et al.***, [1979 CanLII 2020](#) (ON SC) at pp. 5-6 – BOA tab 27

49. The legislature in BC has specifically incorporated a good faith exception. Accordingly, if the court is to find that there has been a contravention of the conflict of interest provisions of the *Community Charter*, and that such contravention cannot be saved by s. 101(3), the implication is that contravention must have been done intentionally and with bad faith.

(d) *Right to Campaign on Platforms and Right to Contribute to Campaigns*

50. Electors possess a "democratic right to make a campaign contribution to a candidate that she or he chooses to support", that is, a candidate whose platforms, outlooks or campaign promises are believed to align with their own interests.

- ***Highlands*** [at para 56](#) – BOA tab 20

51. Moreover, “a lawful contribution made to a member who is a candidate for election to a local government” is expressly excluded from the statutory prohibition against council members “directly or indirectly, accept[ing] a fee, gift or personal benefit that is connected with the member's performance of the duties of office” and for which the remedy of disqualification from office otherwise applies.

➤ *Community Charter*, [s.105](#) – BOA tab 32

52. As Chief Justice Williams said in ***Fearnley***:

[35] ...it is clear that every elector should be eligible to run for office in the municipality regardless of their status, their wealth, or occupation of their spouse. Elections cost money and they are most frequently funded by contributions from friends, family and political or other supporters of the candidate. **It is a fact in the real world that contributions are made by those who frequently hope that the candidate, if elected, will think as they do and support those ideals, policies and projects which they support. This is so whether the contributors be trade unions, corporations, institutions or wealthy individuals.**

[emphasis added]

➤ ***Fearnley*** [at paras 35-36](#) – BOA tab 10

53. These comments were echoed by Mr. Justice Myers in ***Helten***:

[36] ...there is nothing wrong with a politician stating his policy in the hopes of obtaining votes or campaign contributions. There is also nothing untoward with contributions being made by supporters of that position. There can also not be anything wrong with a politician carrying out a campaign promise if elected. The petitioners have not demonstrated anything beyond this.

➤ ***Helten*** [at para 36](#) – BOA tab 19

54. More broadly as it relates to communications between elected officials or candidates for office and members of the public, it has also been observed that:

[19] The mayor of any large city will invariably interact with a wide variety of individuals and corporations during his or her tenure. Such interaction is a necessary part of the mayoral role, and is hoped to be of benefit to the city's residents and voters. It is also unlikely to be the sort of activity that will create a direct or indirect pecuniary interest or an interest that constitutes a conflict of interest within the ambit of s. 145.2(2) of the Vancouver Charter

➤ ***Chernen v. Robertson***, [2014 BCSC 1358](#) at para 19 [***Chernen***]– BOA Tab 5

(e) *Discretion on Development Applications*

55. As set out in the Factual Background below, the Impugned Matters raised by the Petitioners involve several different types of land use development-related applications which required a decision by the Township's council. These included OCP Amendment, Rezoning, Development Permit, and Development Agreement applications.
56. All of these types of development applications involved some level of discretion; however, the extent of that discretion varies based on the nature of the application.
57. Rezoning and OCP Amendment applications fall within a municipality's legislative discretion. Under Part 14 [*Planning and Land Use Management*] of the *Local Government Act*, RSBC 2015, c 1 ("*LGA*"), the term "adopt" is defined to include "an amendment or repeal". This is further legislated by s. 137(1) of the *Community Charter*:

**137** (1) Unless otherwise provided,

(a) the power to adopt a bylaw under this or any other Act includes the power to amend or repeal such a bylaw,

(b) the included power to amend or repeal must be exercised by bylaw and is subject to the same approval and other requirements, if any, as the power to adopt a new bylaw under that authority, and

(c) a bylaw may include provisions that, at a future date set by the bylaw, amend or repeal the bylaw.

➤ *LGA*, [s. 455](#) – BOA tab 35

➤ *Community Charter*, [s. 137](#) – BOA tab 32

58. Accordingly, so long as a proposed OCP Amendment or Rezoning Application falls within the bounds of the municipality's legislated authority, it is open to the discretion of the council to adopt.
59. Development Agreements relate to a municipality's authority, set out in s. 559 of the *LGA*, to impose and collect development cost charges ("DCC") for infrastructure in new developments. A local government "has a discretion to decide how DCC rates are to be imposed", subject only to the limits imposed by s. 564 of the *LGA*.

➤ *LGA*, ss. [559](#) and [564](#) – BOA tab 35

➤ ***Fraser Mills Properties Ltd. v Coquitlam (City)***, [2017 BCSC 2008](#)  
at paras 76-77 – BOA tab 13

60. With regard to the issuance of a development permit or a heritage alteration permit, the discretion is much narrower. The Court in **0742848 B.C. Ltd. v. Squamish (District)**, 2011 BCSC 747, succinctly summarized a municipal council's discretion on such decisions as follows:

[13] The municipality's power to issue a development permit can only be exercised "in accordance with the applicable guidelines specified" in its OCP (s. 920(3)).

And later:

[95] The guidelines define the limits of Council's discretion, in order to prevent the Council from "improperly assuming for itself an undefined, uncontrolled and unpredictable discretion": *Washi Beam, supra*, at para. 35.

➤ **0742848 B.C. Ltd. v. Squamish (District)**, [2011 BCSC 747](#)  
at paras 13 and 95 – BOA tab 1

(f) *Role of Staff Reports*

61. In the context of land-use or development approval decisions, the council or board of a local government may receive a report containing recommendations prepared by members of its planning staff.
62. While the council is not bound to follow the recommendations of planning staff in voting for or against an application, where the council accepts the recommendations, the court can infer that council has considered the appropriate guidelines in accordance with the report. If council departs from planning staff's recommendations, there must be evidence that relevant and proper matters were considered in reaching its decision.

➤ **48 Fr Hwy Land Ltd. v. Langley (Township)**, [1999 CanLII 6476](#) (BC SC)  
at para 34 – BOA tab 3

63. It is reasonable to conclude that there is "a valid land use management rationale" for a decision when it is set out in a well-reasoned staff report.

➤ **1120732 B.C. Ltd. V. Whistler (Resort Municipality)**, [2020 BCCA 101](#)  
at para 86 – BOA tab 2

(g) *Local Elections Campaign Financing Act*

64. The *Local Elections Campaign Financing Act* ("LECFA") sets out the legislative scheme with regard to, *inter alia*, elections under the LGA.

➤ LECFA, [s. 1](#) – BOA tab 34

65. Section 26 of the *LECFA* establishes that a campaign contribution:

- a. must be directly from an “eligible individual”;
- b. must be made to a candidate’s or elector organization’s financial agent or an individual authorized by the financial agent to receive such contributions; and
- c. must not exceed the applicable campaign contribution limit.

➤ *LECFA*, [s. 26](#) – BOA tab 34

66. Section 1 of the Schedule to the *LECFA* defines “eligible individual” as follows:

**“eligible individual”** means an individual who is

- (a) a resident of British Columbia, and
- (b) a Canadian citizen or a permanent resident as defined in the *Immigration and Refugee Protection Act* (Canada);

➤ *LECFA*, [Schedule, s. 1](#) – BOA tab 34

67. Section 30.01 of the *LECFA* establishes that for the 2018 general local election, the annual campaign contribution limit for each of 2017 and 2018 was \$1200.

➤ *LECFA*, [s. 30.01](#) – BOA tab 34

68. Section 29 of the *LECFA* sets out the contribution information that must be recorded by the financial agent for each campaign contribution made to a candidate or elector organization.

➤ *LECFA*, [s. 29](#) – BOA tab 34

69. No Respondent is alleged to have breached any requirement of the *LECFA*, including there being no allegation that any Respondent failed to report campaign contributions in accordance with the legislative requirements. While the Petitioners criticize the legislative requirements pertaining to:

- a. the timing of disclosure of campaign contributions (see petition Part 3, para 9), and
- b. the fact that one or more electors whose interests may be aligned with a corporation’s interests may contribute to an election campaign,

these are not questions before the Court or questions which impugn the Respondents.

## D. FACTUAL BACKGROUND

70. In British Columbia, municipal elections are held every four years on the third Saturday of October.

➤ LGA, [s. 52](#) – BOA tab 35

71. All four Respondents ran for office as elected officials of the Township in the election held on October 20, 2018.

### (a) *The Elected Officials*

72. Stanley Jack Froese was first elected as mayor of the Township in 2011 and has served in that role continuously since. He successfully ran for re-election as mayor in the elections held on October 20, 2018. Part of Mayor Froese's 2018 election campaign was based on his belief that the Township is need of additional housing in the community.

➤ Affidavit #1 of Stanley Jack Froese at paras 2-4 ("Froese #1")  
– Petition Record ("PR") tab 14

73. Blair Whitmarsh was first elected as a councillor for the Township in 2014 and has served in that role continuously since. He successfully ran for re-election as councillor in the elections held on October 20, 2018. Part of councillor Whitmarsh's 2018 election campaign was "achieving smart and sustainable development" within the Township.

➤ Affidavit #1 of Blair Whitmarsh at paras 2-4 ("Whitmarsh #1") – PR tab 17

74. Robert Long was first elected as a councillor for the Township in 1999 and has served in that role continuously since. He successfully ran for re-election as councillor in the elections held on October 20, 2018. Part of councillor Long's 2018 election campaign was "achieving sustainable growth with an emphasis on whole communities" and he campaigned on the belief that "properly planned development of our urban communities is needed".

➤ Affidavit #1 of Robert Long at paras 2-4 ("Long #1") – PR tab 15

75. Angela Quaale was elected and served as councillor for the Township from 2014-2018. She ran for re-election in 2018 but was not re-elected. Part of councillor Quaale's 2018 campaign platform included emphasis on "enhancing economic development and building sustainable neighbourhoods.

➤ Affidavit #1 of Angela Quaale at paras 2-4 ("Quaale #1") – PR tab 16

(b) *2018 Campaign Contributions*

76. During his 2018 campaign, Mayor Froese appointed Kate Amangoulova as his financial agent and Deborah Sylvester as his campaign manager. On or about January 18, 2019, Mayor Whitmarsh signed and filed an Elections BC disclosure statement, which he believes accurately recorded the full name and address of each contributor to his 2018 campaign. To the best of Mayor Froese's knowledge, before depositing the contributions, his financial agent checked that the contributions met the legislative requirements.

➤ Froese #1 at paras 5-10 – PR tab 14

➤ Affidavit #1 of John Allan at exhibit "C" ("J. Allan #1") – PR tab 4

77. On January 10, 2019, Councillor Whitmarsh signed and filed an Elections BC disclosure statement, which he believes accurately recorded the full name and address of each contributor to his 2018 campaign. Before depositing the contributions, Councillor Whitmarsh checked that the contributions met the legislative requirements. Overall, Councillor Whitmarsh was overfunded for his 2018 campaign and ended up refusing contributions later in his campaign.

➤ Whitmarsh #1 at paras 5, 9 -11 – PR tab 17

➤ J. Allan #1 at exhibit "C" – PR tab 4

78. During his 2018 campaign, Councillor Long appointed Karen Long as his financial agent. On or about December 31, 2018, Councillor Long signed and filed a disclosure statement, which he believes accurately recorded the full name and address of each contributor to his 2018 campaign. To the best of Councillor Long's knowledge, before depositing the contributions, his financial agent checked that the contributions met the legislative requirements.

➤ Froese #1 at paras 5-10 – PR tab 14

➤ J. Allan #1 at exhibit "D" – PR tab 4

79. On or about January 10, 2018, Councillor Quaale signed and filed an Elections BC disclosure statement, which she believes accurately recorded the full name and address of each contributor to her 2018 campaign. Before depositing the contributions, Councillor Quaale checked that the contributions met the legislative requirements. Overall Councillor Quaale was overfunded for her 2018 campaign and ended up returning or destroying some contribution cheques during her campaign.

➤ Quaale #1 at paras 5, 8, and 9 – PR tab 16

➤ J. Allan #1 at exhibit "E" – PR tab 4

80. At no time did any contributor to the Respondents' respective campaigns indicate to any of them directly, indirectly, expressly, or implicitly, that a contribution was being made with any intention or expectation of securing the respective Respondent's agreement to vote in any particular way on matters before council. At no time have the Respondents ever voted at council on the basis of a campaign contribution that they had received but, rather, they voted independently in accordance with their determination of what is in the best interest of the Township. Each of the Respondents have sworn or affirmed as follows:

At no time did any Contributor indicate to me, directly, indirectly, expressly, implicitly, through my Agent, or in any way at all, that the Contributor was making their Contribution with any intention, hope or expectation of securing my support at Council for my agreement to vote in any particular way on matters before Council. Had any Contributor done so, I would have refused their Contribution and would have immediately returned their Contribution to them.

- Froese #1 at paras 11-13 – PR tab 14
- Whitmarsh #1 at paras 12-14 – PR tab 17
  - Long #1 at paras 10-12 – PR tab 15
  - Quaale #1 at paras 10-12 – PR tab 16

*(c) No Conflicts of Interest*

81. The Petitioners allege that the Respondents accepted campaign funding in return for supporting land-use or development applications brought to the Township by the following businesses:
- a. The "Mitchell Group" – Mitchell Group Investments Inc.
  - b. The "Beedie Group" – Beedie Group Developments Ltd., BDC (Langley Property) Ltd. or 161884 Canada Ltd.
  - c. "Vesta" – Vesta Properties Ltd.
  - d. "Lanstone" – Lanstone Homes (Murrayville) Ltd.
  - e. "Infinity" – Infinity Properties Ltd.
  - f. "Polygon" – Polygon Homes Ltd. or Polygon Union Park Homes Ltd.
  - g. "Essence" – Essence Properties Inc.



i. Mayor Froese

82. Mayor Froese acknowledges that he received campaign contributions from Ken Mitchell, Dianne Mitchell, Jacilyn O'Shea and Ryan O'Shea, who are involved with the Mitchell Group, but he has no specific recollections of their contributions. Until reviewing the materials in this proceeding, he was not even aware that Jacilyn O'Shea or Ryan O'Shea were involved in the Mitchell Group. Mayor Froese has no direct or indirect interest, financial or otherwise, in the Mitchell Group.

➤ Froese #1 at paras 14-17 – PR tab 14

83. Mayor Froese acknowledges that he received campaign contributions from Robert Fiorvento, Jason Tonin, Ryan Beedie and Todd Yuen, who are involved in the Beedie Group, but he has no specific recollections of their contributions. Mayor Froese is aware that the Beedie Group is the owner of multiple commercial and industrial properties in the Township. In the Mayor's experience, applications from the Beedie Group are before council on a regular basis. Mayor Froese has no direct or indirect interest, financial or otherwise, in the Beedie Group.

➤ Froese #1 at paras 21-24 – PR tab 14

84. Mayor Froese acknowledges that he received campaign contributions from Kent Sillars who is involved in Vesta. Mayor Froese has no specific recollections of Mr. Sillars' contribution. Mayor Froese is aware that Vesta is a real estate developer in the Township. In the Mayor's experience, applications from Vesta are before council on a regular basis and these applications are generally well-developed. Mayor Froese has no direct or indirect interest, financial or otherwise, in Vesta.

➤ Froese #1 at paras 26-29 – PR tab 14

85. Mayor Froese acknowledges that he received campaign contributions from John Tilstra but until reviewing the materials filed in this proceeding Mayor Froese had no knowledge of Mr. Tilstra's involvement with Lanstone. Mayor Froese has no specific recollections of Mr. Tilstra's contribution. Mayor Froese has no direct or indirect interest, financial or otherwise, in Lanstone.

➤ Froese #1 at paras 31-33 – PR tab 14

86. Mayor Froese acknowledges that he received campaign contributions from Timothy Bontkes, who is involved in Infinity. Mayor Froese has no specific recollections of Mr. Bontke's contribution. Mayor Froese has no direct or indirect interest, financial or otherwise, in Infinity.

➤ Froese #1 at paras 35-37 – PR tab 14

87. Mayor Froese acknowledges that he received campaign contributions from Scott Baldwin but, until reviewing the materials filed in this proceeding, Mayor Froese had no knowledge of Mr. Baldwin's involvement with Polygon. Mayor Froese has no specific recollections of Mr. Baldwin's contribution. Mayor Froese has no direct or indirect interest, financial or otherwise, in Polygon.

➤ Froese #1 at paras 39-41 – PR tab 14

ii. Councillor Whitmarsh

88. Councillor Whitmarsh acknowledges that he received campaign contributions from Ken Mitchell, Dianne Mitchell, and Ryan O'Shea, who are involved in the Mitchell Group, but he has no specific recollections of their contributions. These contributions were likely received at a large fundraiser event where cheques were left at a table and then provided to councillor Whitmarsh in an envelope after the event. Councillor Whitmarsh has no direct or indirect interest, financial or otherwise, in the Mitchell Group.

➤ Whitmarsh #1 at paras 7, 15-17 – PR tab 17

89. Councillor Whitmarsh acknowledges that he received campaign contributions from Todd Yuen and Ryan Beedie but he has no specific recollections of their contributions. These contributions were likely received as cheques in the mail. Until after the 2018 election, councillor Whitmarsh was not even aware that Todd Yuen was involved with the Beedie Group. Councillor Whitmarsh is aware that the Beedie Group is the owner of multiple commercial and industrial properties in the Township. In the councillor's experience, applications from the Beedie Group are before council on a regular basis. Councillor Whitmarsh has no direct or indirect interest, financial or otherwise, in the Beedie Group.

➤ Whitmarsh #1 at paras 21-25 – PR tab 17

90. Councillor Whitmarsh acknowledges that he received campaign contributions from Kent Sillars, Braedon Sillars, and Marlene Best, who are involved in Vesta, but has no specific recollections of their contributions. These contributions were likely received at a large fundraiser event where cheques were left at a table and then provided to councillor Whitmarsh in an envelope after the event. Councillor Whitmarsh is aware that Vesta is a real estate developer in the Township. In the councillor's experience, applications from Vesta are before council on a regular basis and these applications are generally well-developed and often receive wide support. Councillor Whitmarsh has no direct or indirect interest, financial or otherwise, in Vesta.

➤ Whitmarsh #1 at paras 7, 27-30 – PR tab 17

91. Councillor Whitmarsh acknowledges that he received campaign contributions from Lanson Foster but until reviewing the materials filed in this proceeding councillor Whitmarsh had no knowledge of Mr. Foster's involvement with Lanstone. Councillor Whitmarsh has no specific

recollection of the contribution from Mr. Foster but believes that it was likely received at a large fundraiser event where cheques were left at a table and then provided to councillor Whitmarsh in an envelope after the event. Councillor Whitmarsh has no direct or indirect interest, financial or otherwise, in Lanstone.

➤ Whitmarsh #1 at paras 7, 32-34 – PR tab 17

92. Councillor Whitmarsh acknowledges that he received campaign contributions from Timothy Bontkes, but until reviewing the materials filed in this proceeding councillor Whitmarsh had no knowledge of Mr. Bontkes' involvement with Infinity. Councillor Whitmarsh has no specific recollection of the contribution from Mr. Bontkes but believes that it was likely received at a large fundraiser event where cheques were left at a table and then provided to councillor Whitmarsh in an envelope after the event. Councillor Whitmarsh has no direct or indirect interest, financial or otherwise, in Infinity.

➤ Whitmarsh #1 at paras 7, 36-38 – PR tab 17

### iii. Councillor Long

93. Councillor Long acknowledges that he received campaign contributions from Todd Yuen and Ryan Beedie, who are involved in the Beedie Group, but he has no specific recollections of their contributions. Councillor Long believes these contributions received by his campaign in the mail. Councillor Long is aware that the Beedie Group is the owner of multiple commercial and industrial properties in the Township. In the councillor's experience, applications from the Beedie Group are before council on a regular basis. Councillor Long has no direct or indirect interest, financial or otherwise, in the Beedie Group.

➤ Long #1 at paras 13-16 – PR tab 15

94. Councillor Long acknowledges that he received campaign contributions from Dennis Wiemken, Kent Sillars, Braedon Sillars and Julie Sillars, who are involved in Vesta. Councillor Long recalls that he picked up the contributions in person from Dennis Wiemken and then passed the contributions on to his campaign's financial agent. Councillor Long is aware that Vesta is a real estate developer in the Township. In the councillor's experience, applications from Vesta are before council on a regular basis and these applications are generally well-developed. Councillor Long has no direct or indirect interest, financial or otherwise, in Vesta.

➤ Long #1 at paras 19-23 – PR tab 15

95. Councillor Long acknowledges that he received campaign contributions from Kevin Dhaliwal and Seeta Dhaliwal, but until reviewing the materials filed in this proceeding, councillor Long had no knowledge of the Dhaliwals' relationship to Essence Properties Inc. ("Essence"). Councillor Long has no specific recollection of the contributions made by Kevin Dhaliwal

and Seeta Dhaliwal but believes that they were made to his campaign by way of e-transfer. Councillor Long has no direct or indirect interest, financial or otherwise, in Essence.

➤ Long #1 at paras 25-28 – PR tab 15

iv. Former Councillor Quaale

96. Councillor Quaale acknowledges that she received campaign contributions from Ken Mitchell, Dianne Mitchell, and Ryan O'Shea, who are involved in the Mitchell Group, but she has no specific recollections of their contributions. Councillor Quaale has no direct or indirect interest, financial or otherwise, in the Mitchell Group.

➤ Quaale #1 at paras 13-15 – PR tab 16

97. Councillor Quaale acknowledges that she received campaign contributions from Todd Yuen, who is involved with the Beedie Group, but she has no specific recollections of his contribution. Councillor Quaale is aware that the Beedie Group is the owner of multiple commercial and industrial properties in the Township. In the councillor's experience, applications from the Beedie Group are before council on a regular basis. Councillor Quaale has no direct or indirect interest, financial or otherwise, in the Beedie Group.

➤ Quaale #1 at paras 19-22 – PR tab 16

98. Councillor Quaale acknowledges that she received campaign contributions from Marlene Best, Braedon Sillars and Julie Sillars, who are involved in Vesta. Councillor Quaale is also personal friends with Ms. Best, who volunteered with councillor Quaale's 2018 campaign. Councillor Quaale does not have any specific recollection about the contributions made by Julie Sillars or Braedon Sillars. Councillor Quaale is aware that Vesta is a real estate developer in the Township. In the councillor's experience, applications from Vesta are before council on a regular basis and these applications are generally well-developed and often receive wide support. Councillor Quaale has no direct or indirect interest, financial or otherwise, in Vesta.

➤ Quaale #1 at paras 24-28 – PR tab 16

99. Councillor Quaale acknowledges that she received campaign contributions from Lanson Foster, who is involved in Lanstone. Councillor Quaale does not have any specific recollection about the contribution made by Mr. Foster. Councillor Quaale has no direct or indirect interest, financial or otherwise, in Lanstone.

➤ Quaale #1 at paras 30-32 – PR tab 16

100. Councillor Quaale acknowledges that she received campaign contributions from Timothy Bontkes, who is involved in Infinity. Councillor Quaale does not have any specific recollection about the contribution made by Mr. Bontkes. Councillor Quaale has no direct or indirect interest, financial or otherwise, in Infinity.

➤ Quaale #1 at paras 34-36 – PR tab 16

(d) *Types of Applications to Council at Issue in this Petition*

101. The Impugned Matters raised by the Petitioners involve several different types of land use development-related municipal applications which required a decision by the Township's council. Each of the types of proceedings raised within the Impugned Matters is described below.

i. OCP Amendment Applications

102. Part 14 of the *LGA* contains the authority for a local government to adopt an official community plan. According to section 471 of the Act:

An official community plan is a statement of objectives and policies to guide decisions on planning and land use management, within the area covered by the plan, respecting the purposes of local government.

➤ *LGA*, Part 14, Division 4, [s.471 and 472](#) – BOA tab 35

103. Where an owner of property in the Township wishes to develop land in a way that would not be consistent with existing land use designations in the Township's Official Community Plan (the "OCP"), the owner may apply to council for an amendment to the Township's OCP (an "OCP amendment").

➤ Affidavit #1 of Ramin Seifi at para 12 ("Seifi #1") – PR tab 18

104. OCP amendments must proceed by way of an amending bylaw. Assuming a vote passes at each stage, council generally gives the proposed amending bylaw first and second reading at the same meeting. A public hearing is then held before council gives the proposed amending bylaw a third reading. Lastly, assuming the proposed amending bylaw has passed all previous readings, the council gives the proposed amending bylaw a final reading, at which time the proposed amending bylaw is adopted.

➤ Seifi #1 at para 14 – PR tab 18

## ii. Rezoning Applications

105. Part 14 of the *LGA* contains the authority for a local government to adopt zoning bylaws. According to the act, a zoning bylaw may “divide the whole or part of the municipality or regional district into zones” and, *inter alia*, regulate the use and density of land, buildings and other structures.

➤ *LGA*, Part 14, Division 5, [s.479](#) – BOA tab 35

106. Where an owner of property in the Township would like to develop its land in a way that would not be consistent with existing zoning bylaw, the owner must apply to council for an amendment to the Township's zoning bylaw (a "rezoning").

➤ Seifi #1 at para 13 – PR tab 18

107. As with an OCP amendment, a rezoning application proceeds by way of an amending bylaw. An amending bylaw for a rezoning matter will follow the same procedure as an OCP amendment. Assuming a vote passes at each stage, council generally gives the proposed amending bylaw first and second reading at the same meeting. It is generally required to hold a public hearing, followed by a third reading of the proposed amending bylaw, and finally a final reading, at which time the proposed amending bylaw is adopted.

➤ Seifi #1 at para 14 – PR tab 18

## iii. Development Permit Applications

108. Part 14 of the *LGA* contains the authority for a local government to designate, through its OCP, one or more “development permit areas”. Local governments are authorized to establish development permit areas relating to a range of purposes identified in section 488(1) of the Act.

➤ *LGA*, Part 14, Division 7, [s.488](#) – BOA tab 35

109. Some land within the Township is located in a “development permit area”, which are areas designated by the Township in its OCP for the purpose of, among other things, establishing special objectives for the form and character of development. In such areas, a development permit ("DP") is generally required before an owner may, *inter alia*, apply to construct buildings.

➤ Seifi #1 at para 15 – PR tab 18

110. Where a “form and character” DP is required, an owner applies to council for a DP, which generally sets terms and conditions respecting the form, character, and siting of the proposed development. If the proposed development is already consistent with applicable OCP and land use regulations, then the DP application may be voted on by council at a single meeting. If the proposed development requires an OCP amendment or a rezoning,

then the DP application may go before council at each reading of the proposed amending bylaw (as described above). The DP will generally be voted on by council only after the amending bylaw is adopted.

➤ Seifi #1 at paras 17-18 – PR tab 18

#### iv. Heritage Alteration Permit Applications

111. Part 14 of the *LGA* contains the authority for a local government to designate, through its OCP, one or more “heritage conservation areas”.

➤ *LGA*, Part 14, Division 5, [s.614](#) – BOA tab 35

112. Similar to “development permit areas”, some land within the Township is located within “heritage conservation areas”, which are areas designated by the Township in the OCP for the purpose of, *inter alia*, establishing special objectives for the form and character of development in order to conserve the heritage value of the area. In such areas, a heritage alteration permit (“HAP”) is generally required before an owner may, *inter alia*, demolish or alter an existing building or construct a new building.

➤ Seifi #1 at para 16 – PR tab18

113. Where a HAP is required, an owner applies to council for a HAP, which would set terms and conditions respecting the form, character, and siting of the proposed development.

➤ Seifi #1 at para 18 – PR tab 18

114. As with a DP application, if the proposed development is already consistent with applicable OCP and zoning designations, then the HAP application may be voted on by council at a single meeting. If, however, the proposed development also requires an OCP amendment or a rezoning, then HAP application will generally be voted on by council only after the OCP or rezoning amending bylaw is adopted.

➤ Seifi #1 at paras 17-18 – PR tab 18

#### v. Development Agreement Applications

115. Part 14 of the *LGA* contains the authority for a local government to enter into a “development works agreement” with a developer.

➤ *LGA*, Part 14, Division 19, [s.570](#) – BOA tab 35

116. Where a developer commits to constructing significant off-site infrastructure or services that will benefit the broader community, the developer may apply to council for approval of a

Development Works Agreement ("DW Agreement") and/or a Development Cost Charges Frontending Agreement ("DCC Frontending Agreement").

➤ Seifi #1 at para 19 – PR tab 18

117. Under a DW Agreement, a developer agrees to provide significant off-site infrastructure or services, at its cost, and the Township, through the adoption of bylaws, agrees to collect a portion of the cost of those services from owners in the broader benefiting area, and to subsequently forward those funds to the developer. DW Agreements are adopted by bylaw and must be supported by at least 50% of the owners of parcels that have at least 50% of the assessed value of the lands, as confirmed by a formal petition process of those owners.

➤ Seifi #1 at para 20 – PR tab 18

118. A DCC Frontending Agreement is a related way for the developer to recover its costs of off-site infrastructure or services, and generally provides for a development cost charge credit to the developer (that is, a reduction in the development cost charges otherwise payable by the developer) for each additional lot created in the area benefiting from the infrastructure. DCC Frontending Agreements are adopted by resolution of council, rather than through a bylaw passed by council.

➤ Seifi #1 at para 21 – PR tab 18

119. While there is no specific statutory provision for a DCC Frontending Agreement generally, municipalities have powers of a natural person under section 8 of the *Community Charter*. When this is combined with the authority of s. 566(2)(e) ("to pay a person subject to a development cost charge for some or all of the capital costs the person incurred in completing a project"), a municipality is entitled to use money already collected in a development cost charges reserve fund to pay the developer that installs the works under an agreement, even if the developer did not do the work under a construction contract with the local government

➤ *Community Charter*, [s. 8](#) – BOA tab 32

➤ *LGA*, [s. 566](#) – BOA tab 35

(e) *Staff Reports*

120. Before proceeding to council, development-related applications, including applications for OCP amendments, rezonings, DPs, HAPs, DW Agreements and DCC Frontending Agreements, (collectively, "Development Applications") are received by the Township's Community Development Division.

➤ Seifi #1 at para 23 – PR tab 18



121. Upon receipt of completed Development Applications, staff in the Community Development Division review the applications for consistency with Township requirements, including the OCP, land use regulations, and other planning requirements and policies. Staff in the Community Development Division may also seek input on Development Applications, where necessary, from other internal Township departments, such as the Fire Department or Public Works Department, as well as from external sources, such as school districts or the Ministry of Environment & Climate Change Strategy.

➤ Seifi #1 at paras 24-25 – PR tab 18

122. If staff determine that a particular Development Application may not meet applicable requirements or policies, staff may contact the applicant and request further information or application amendments from the applicant. For more complicated and complex projects, staff may go back to the applicant multiple times.

➤ Seifi #1 at para 26 – PR tab 18

123. Generally speaking, by the time that a particular Development Application goes before Council, that application has been extensively reviewed by Township staff.

➤ Seifi #1 at para 26 – PR tab 18

124. Before a Development Application goes before Council, staff in the Community Development Division will draft a “Report to Mayor and Council” containing, *inter alia*, staff recommendations relating to the disposition of the application.

➤ Seifi #1 at para 27 – PR tab 18

125. Many Development Applications come before Township council every year. Between December 8, 2014 and October 1, 2018, council voted 433 times on land-use and development-approval related applications. On these applications:

- a. 406 were approved by Council;
- b. Mayor Froese voted in favour 412 times (95% in favour);
- c. Councillor Quaale voted in favour 412 times (95% in favour);
- d. Councillor Whitmarsh voted in favour 406 times (94% in favour);
- e. Councillor Long voted in favour 405 times (93.5% in favour);
- f. Councillor Fox voted in favour 403 times (93% in favour);
- g. Councillor Sparrow voted in favour 372 times (86% in favour);
- h. Councillor Davis voted in favour 315 times (86% in favour);

- i. Councillor Arnason voted in favour 224 times (52% in favour); and
- j. Councillor Richter voted in favour 220 times (51% in favour).

➤ Seifi #1 at paras 31, 32, 35 and exhibit O – PR tab 18

126. Accordingly, in the four years prior to the 2018 election, each of the Respondents had established a track records as local elected officials who voted overwhelmingly in favour of land-use and development-approval related applications. Based on this record:

- a. It would come as no surprise to see the Respondents continue in a similar voting pattern during and following the 2018 election campaign period; and
- b. Any member of the electorate with a prospective interest in seeing such applications approved by council may look at this voting record and identify the Respondents as favourable candidates.

127. Between January 1, 2014 and February 7, 2020, there were 15 applications made to council for DCC Frontending Agreements and/or DW Agreements. Council approved all of those agreements.

➤ Seifi #1 at paras 37-38 and exhibit Q – PR tab 18

(f) *The Applications to Council*

128. A Report to Mayor and Council was prepared by Township staff for each of the Development Applications identified in the Impugned Matters (the “Applications to Council”). A summary of the Applications to Council, including the type of Development Application, the timing of each stage of the Development Application, and the result of each vote, with references to affidavit exhibit page numbers, is appended to these submissions as Schedule “A”.

➤ Seifi #1 at para 28 – PR tab 18

➤ Schedule “A” to these Submissions

129. Each example of the “Reports to Mayor and Council” which have been prepared by Township staff and are attached to the Seifi affidavit as exhibits follow a similar format of:

- a. Identifying the application before council;
- b. Setting out the recommendation of staff as to the application;
- c. Describing the rationale for the recommendation; and
- d. Providing relevant background information and addressing any policy considerations.

➤ Seifi #1 at para 28 – PR tab 18

130. As set out below, all of the Respondents' votes on each of the Applications to Council followed the recommendations of staff contained in the Reports to Mayor and Counsel. Further, the vast majority of the votes on each of the Applications to Council passed either unanimously or by a wide margin in favour.

i. Williams Neighbourhood Plan

131. The Williams Neighbourhood Plan and its many elements had been in development for many years prior to its final approval by council. On or about September 14, 2015, council of the Township directed staff to initiate a neighbourhood planning process for the Williams area of the Township, which is approximately 110 hectares (274 acres) in size. The preparation of the proposed Williams Neighbourhood Plan incorporated input from professional planners and engineers, community members, residents, landowners and other stakeholders.

➤ Seifi #1 at paras 5-6 – PR tab 18

132. The Mitchell Group is the owner of certain lands in the Township that are located in the Williams Neighbourhood Plan Area.

➤ Froese #1 at para 18 – PR tab 14

133. On April 9, 2018, Report to Mayor and Council No. 18-41 was presented to council regarding, *inter alia*, an OCP Amendment application. Report No. 18-41 recommended that council give first and second readings to Bylaws 5334 and 5335 (the "Williams Neighbourhood Plan Bylaws") which would amend the OCP by changing certain land use designations and incorporating the Williams Neighbourhood Plan into the OCP. By a vote of 7:1, the Williams Neighbourhood Plan Bylaws were given first and second reading.

➤ Seifi #1 at para 8 and exhibits A & O (p. 370) – PR tab 18

134. On May 7, 2018, third reading was given to the Williams Neighbourhood Plan Bylaws. During the meeting, council voted on eleven proposed amendments to the Williams Neighbourhood Plan, as well as various proposed amendments to the amendments. Proposed amendment #1 related to adding, *inter alia*, a maximum floor area for grocery use (there had been no maximum initially specified in the draft policy). The first version of the proposed amendment would have set a maximum floor area for grocery use at 30,000 square feet; however, Council voted 5:4 instead to amend the proposed maximum to be 40,000 square feet. The final version of proposed amendment #1, which was to add a maximum floor area for grocery use of 40,000 square feet, was carried 6:3. Ultimately, the OCP amending bylaws passed third reading by a vote of 8:1.

➤ Seifi #1 at para 9 and exhibit O (p. 370) – PR tab 18

➤ J. Allan #1 at exhibit K (pp. 113-118) – PR tab 4

➤ Froese #1 at para 19 – PR tab 14

135. On October 1, 2018, council gave final reading to and adopted the Williams Neighbourhood Plan Bylaws by a vote of 8:0.

- Seifi #1 at para 11 and exhibit O (p. 376) – PR tab 18
- J. Allan #1 at exhibit L (p. 144) – PR tab 4

136. After the Williams Neighbourhood Plans passed final reading, a motion was raised to direct staff to add additional park space to the neighborhood plan. The motion to amend the already passed Williams Neighborhood Plan was defeated by a vote of 4:5.

- J. Allan #1 at exhibit L (p. 144) – PR tab 4
- Froese #1 at para 20 – PR tab 14

137. The particulars of the matters regarding the Williams Neighbourhood Plan are summarized as follows:

Williams Neighbourhood Plan	
Nature of application:	OCP amendment
Proponent:	N/A
Staff recommendation:	Adopt proposed amending bylaws
Voting record of council:	
i. Apr 9, 2018 – First and Second Reading:	Passed 7:1
ii. May 7, 2018 –	
a. Amendment to Amendment #1:	Passed 5:4
b. Amendment #1 (as amended):	Passed 6:3
[10 other amendments also voted on]	
c. Third Reading:	Passed 8:1
iii. Oct 1, 2018 –	
a. Final Reading and Adoption:	Passed 8:0
b. Post-adoption amendment:	Failed 4:5

ii. DP Application No. 100920

138. On July 9, 2018, Report to Mayor and Council No. 18-99 was presented to council regarding DP Application No. 100920 submitted by the Beedie Group. Report No. 18-99 recommended that council authorize issuance of DP No. 100920 subject to certain conditions.

- Seifi #1 at para 28(a) – PR tab 18
- J. Allan #1 at exhibit Q (p. 168) – PR tab 4

139. DP Application No. 100920 was approved by a unanimous vote of 9:0 on the conditions set out in Report No. 18-99.

- J. Allan #1 at exhibit R (p. 187-188) – PR tab 4
- Seifi #1 at exhibits O (p. 373) – PR tab 18

140. The particulars of the matters regarding DP Application No. 100920 are summarized as follows:

DP Application No. 100920	
Nature of application:	Development Permit
Proponent:	Beedie Group
Staff recommendation:	Authorize issuance of DP
Voting record of council:	
i. Jul 9, 2018 – Issuance of DP No. 100920:	Passed 9:0

iii. DP Application No. 100959

141. On July 23, 2018, Report to Mayor and Council No. 18-107 was presented to council regarding DP Application No. 100959 submitted by the Beedie Group. Report No. 18-107 recommended that council authorize issuance of DP No. 100959 subject to certain conditions.

- Seifi #1 at para 28(b) – PR tab 18
- J. Allan #1 at exhibit S (p. 205) – PR tab 4

142. DP Application No. 100959 was approved by a unanimous vote of 9:0 on the conditions set out in Report No. 18-107.

- J. Allan #1 at exhibit T (p. 232-234) – PR tab 4
- Seifi #1 at exhibits O (p. 375) – PR tab 18

143. The particulars of the matters regarding DP Application No. 100959 are summarized as follows:

DP Application No. 100959	
Nature of application:	Development Permit
Proponent:	Beedie Group
Staff recommendation:	Authorize issuance of DP
Voting record of council:	
i. Jul 23, 2018 – Issuance of DP No. 100959:	Passed 9:0

iv. DP Application No. 100913

144. On September 17, 2018, Report to Mayor and Council No. 18-129 was presented to council regarding DP Application No. 100913 submitted by the Beedie Group. Report No. 18-129 recommended that council authorize issuance of DP No. 100913 subject to certain conditions.

- Seifi #1 at para 28(c) – PR tab 18
- J. Allan #1 at exhibit U (p. 240) – PR tab 4

145. DP Application No. 100913 was approved by a unanimous vote of 9:0 on the conditions set out in Report No. 18-129.

- J. Allan #1 at exhibit V (p. 264-266) – PR tab 4
- Seifi #1 at exhibits O (p. 375) – PR tab 18

146. The particulars of the matters regarding DP Application No. 100913 are summarized as follows:

DP Application No. 100913	
Nature of Application:	Development Permit
Proponent:	Beedie Group
Staff Recommendation:	Authorize issuance of DP
Voting Record of Council:	
i. Sep 17, 2018 – Issuance of DP No. 100913:	Passed 9:0

v. DP Application No. 101004

147. On October 1, 2018, Report to Mayor and Council No. 18-140 was presented to council regarding DP Application No. 101004 submitted by the Beedie Group. Report No. 18-140 recommended that council authorize issuance of DP No. 101004 subject to certain conditions.

➤ Seifi #1 at para 28(d) and exhibit B (p. 140) – PR tab 18

148. DP Application No. 101004 was approved by a unanimous vote of 8:0 on the conditions set out in Report No. 18-140.

➤ J. Allan #1 at exhibit L (p. 134-135) – PR tab 4

➤ Seifi #1 at exhibits O (p. 376) – PR tab 18

149. The particulars of the matters regarding DP Application No. 101004 are summarized as follows:

DP Application No. 101004	
Nature of Application:	Development Permit
Proponent:	Beedie Group
Staff Recommendation:	Authorize issuance of DP
Voting Record of Council:	
i. Oct 1, 2018 – Issuance of DP No. 101004:	Passed 8:0

- vi. OCP Amendment and Rezoning Application No. 100150 and DP Application Nos. 100854 & 100870
150. On March 5, 2018, Report to Mayor and Council No. 18-27 was presented to council regarding OCP amendment and rezoning Application No. 100150 and DP Application Nos. 100854 and 100870 submitted by Vesta. Report No. 18-27 recommended council give first and second reading to amending bylaws No. 5339, 5340 and 5349 subject to certain prerequisites being satisfied prior to final reading and that council authorize issuance (at the time of the final reading of Bylaw No. 5349) of DP Nos. 100854 and 100870.
- Seifi #1 at para 28(e) and exhibit C – PR tab 18
151. On March 5, 2018, the amending bylaws associated with OCP amendment and rezoning Application No. 100150 passed first and second reading by a vote of 7:2. On April 9, 2018 they passed third reading by a vote of 6:2 (councillor Fox absent).
- J. Allan #1 at exhibits CC (pp. 324-325) & H (pp. 87-88) – PR tab 4
  - Seifi #1 at exhibit O (pp. 369-370) – PR tab 18
152. On April 15, 2019, OCP amendment and rezoning Application No. 100150 came back before council for final approval. Councillor Long was absent from the April 15, 2019 meeting and councillor Quaale was no longer a member of the Township council. OCP amendment and rezoning Application No. 100150 was approved by a vote of 7:1. DP Application No. 100854 was approved by a vote of 8:0 and DP Application No. 100870 was approved by a vote of 7:0.
- J. Allan #1 at exhibit DD (pp. 359-361) – PR tab 4
  - Seifi #1 at exhibit P (pp. 379-380) – PR tab 18
  - Long #1 at para 24 – PR tab 15
153. The particulars of the matters regarding OCP Amendment and Rezoning Application No. 100150 and DP Application Nos. 100854 & 100870 are summarized as follows:

OCP Amendment and Rezoning Application No. 100150 and DP Application Nos. 100854 & 100870	
Nature of Application	OCP Amendment and Rezoning
Proponent:	Vesta
Staff Recommendation:	Adopt proposed amending bylaws and authorize issuance of DPs



Voting Record of Council:	
i. Mar 5, 2018 – First and Second Reading:	Passed 7:2
ii. Apr 9, 2018 – Third Reading:	Passed 6:2
iii. Apr 15, 2018 – Final Reading and Adoption:	Passed 7:1
iv. Apr 15, 2018 – Issuance of DP No. 100854:	Passed 8:0
v. Apr 15, 2018 – Issuance of DP No. 100870:	Passed 7:0

vii. OCP Amendment and Rezoning Application No. 100165 and DP Application Nos. 100929 & 100934

154. On June 25, 2018, Report to Mayor and Council No. 18-96 was presented to council regarding OCP amendment and rezoning Application No. 100165 and DP Application Nos. 100929 and 100934 submitted by Vesta. Report No. 18-96 recommended council give first and second reading to amending bylaws No. 5386 and 5387 subject to certain prerequisites being satisfied prior to final reading and that council authorize issuance (at the time of the final reading of Bylaw No. 5387) of DP Nos. 100929 and 100934.

➤ Seifi #1 at para 28(f) and exhibit D – PR tab 18

155. On June 25, 2018, the amending bylaws associated with OCP amendment and rezoning Application No. 100165 passed first and second reading by a vote of 8:1. On July 23, 2018, they passed third reading by a unanimous vote of 9:0.

➤ J. Allan #1 at exhibits EE (pp. 377-380) & FF (pp. 408-409) – PR tab 4

➤ Seifi #1 at exhibit O (pp. 369-370) – PR tab 18

156. The particulars of the matters regarding OCP Amendment and Rezoning Application No. 100165 and DP Application Nos. 100929 & 100934 are summarized as follows:

OCP Amendment and Rezoning Application No. 100165 and DP Application Nos. 100929 & 100934	
Nature of Application:	OCP Amendment and Rezoning
Proponent:	Vesta
Staff Recommendation:	Adopt proposed amending bylaws and authorize issuance of DPs
Voting Record of Council:	
i. Jun 25, 2018 – First and Second Reading:	Passed 8:1
ii. Jul 23, 2018 – Third Reading:	Passed 9:0

157. As of February 7, 2020, OCP amendment and rezoning Application No. 100165 and DP Application Nos. 100929 and 100934 had not gone before council for final approval.

➤ Seifi #1 at para 29 – PR tab 18

viii. OCP Amendment and Rezoning Application No. 100146 and DP Application No. 100889

158. On June 25, 2018, Report to Mayor and Council No. 18-97 was presented to council regarding OCP amendment and rezoning Application No. 100146 and DP Application No. 100889 submitted by Vesta. Report No. 18-97 recommended council give first and second reading to amending bylaws No. 5398 and 5399 subject to certain prerequisites being satisfied prior to final reading and that council authorize issuance (at the time of the final reading of Bylaw No. 5399) of DP No. 100889.

➤ Seifi #1 at para 28(g) and exhibit E – PR tab 18

159. On June 25, 2018, the amending bylaws associated with OCP amendment and rezoning Application No. 100146 passed first and second reading by a vote of 8:1. On July 23, 2018, they passed third reading by a vote of 8:1.

➤ J. Allan #1 at exhibits EE (pp. 380-383) & FF (pp. 410-411) – PR tab 4

➤ Seifi #1 at exhibit O (pp. 373-374) – PR tab 18

160. On July 22, 2019, OCP amendment and rezoning Application No. 100146 came back before council for final approval. By that time, councillor Quaale was no longer a member of the Township council. OCP amendment and rezoning Application No. 100146 was approved by a vote of 8:1. DP Application No. 100889 was approved by a vote of 7:2.

➤ J. Allan #1 at exhibit GG (pp. 452-453) – PR tab 4

➤ Seifi #1 at exhibit P (p. 382) – PR tab 18

161. The particulars of the matters regarding OCP Amendment and Rezoning Application No. 100146 and DP Application No. 100889 are summarized as follows:

OCP Amendment and Rezoning Application No. 100146 and DP Application No. 100889	
Nature of Application:	OCP Amendment and Rezoning
Proponent:	Vesta
Staff Recommendation:	Adopt proposed amending bylaws and authorize issuance of DP
Voting Record of Council:	
i. Jun 25, 2018 – First and Second Reading:	Passed 8:1
ii. Jul 23, 2018 – Third Reading:	Passed 8:1
iii. Jul 22, 2019 – Final Reading and Adoption:	Passed 8:1
iv. Jul 22, 2019 - Issuance of DP No. 100889:	Passed 7:2

- ix. OCP Amendment and Rezoning Application No. 100153 and DP Application Nos. 100937 & 100938

162. On July 23, 2018, Report to Mayor and Council No. 18-123 was presented to council regarding OCP amendment and rezoning Application No. 100153 and DP Application Nos. 100937 and 100938 submitted by Vesta. Report No. 18-123 recommended council give first and second reading to amending bylaws No. 5394 and 5395 subject to certain prerequisites being satisfied prior to final reading and that council authorize issuance (at the time of the final reading of Bylaw No. 5395) of DP Nos. 100937 and 100938.

➤ Seifi #1 at para 28(h) and exhibit F – PR tab 18

163. On July 23, 2018, the amending bylaws associated with OCP amendment and rezoning Application No. 100153 passed first and second reading by a vote of 8:1. On October 1, 2018, they passed third reading by a unanimous vote of 8:0.

➤ J. Allan #1 at exhibits FF (pp. 398-402) & L (pp. 138-139) – PR tab 4

➤ Seifi #1 at exhibit O (p. 374) – PR tab 18

164. As of February 7, 2020, OCP amendment and rezoning Application No. 100153 and DP Application Nos. 100937 and 100938 had not gone before council for final approval.

➤ Seifi #1 at para 30 – PR tab 18

165. The particulars of the matters regarding OCP Amendment and Rezoning Application No. 100153 and DP Application Nos. 100937 & 100938 are summarized as follows:

OCP Amendment and Rezoning Application No. 100153 and DP Application Nos. 100937 & 100938	
Nature of Application:	OCP Amendment and Rezoning
Proponent:	Vesta
Staff Recommendation:	Adopt proposed amending bylaws and authorize issuance of DPs
Voting Record of Council:	
i. Jul 23, 2018 – First and Second Reading:	Passed 8:1
ii. Oct 1, 2018 – Third Reading	Passed 8:0

- x. OCP Amendment and Rezoning Application No. 100132 and DP Application Nos. 100808, 100822 & 100843

166. On March 27, 2017, Report to Mayor and Council No. 17-26 was presented to council regarding OCP amendment and rezoning Application No. 100132 and DP Application Nos. 100808, 100822 and 100843 submitted by Vesta. Report No. 17-26 recommended council give first and second reading to amending bylaws No. 5267 and 5268 subject to certain prerequisites being satisfied prior to final reading and that council authorize issuance (at the time of the final reading of Bylaw No. 53268) of DP Nos. 100808, 100822 and 100843.

➤ Seifi #1 at para 28(i) and exhibit G – PR tab 18

167. On March 27, 2017, the amending bylaws associated with OCP amendment and rezoning Application No. 100132 passed first and second reading by a vote of 7:2. On April 24, 2017, they passed third reading by a vote of 7:1.

➤ J. Allan #1 at exhibits HH (pp. 458-463) & II (pp. 476-480) – PR tab 4

➤ Seifi #1 at exhibit O (p. 364) – PR tab 18

168. On May 7, 2018, OCP amendment and rezoning Application No. 100132 and DP Application Nos. 100808, 100822 and 100843 came back before council for final approval. OCP amendment and rezoning Application No. 100132 was approved by a vote of 6:3. DP Application Nos. 100808, 100822 and 100843 were approved by a vote of 6:3.

➤ J. Allan #1 at exhibit K (pp. 121-125) – PR tab 4

➤ Seifi #1 at exhibit O (p. 371) – PR tab 18

169. The particulars of the matters regarding OCP Amendment and Rezoning Application No. 100132 and DP Application Nos. 100808, 100822 & 100843 are summarized as follows:

OCP Amendment and Rezoning Application No. 100132 and DP Application Nos. 100808, 100822 & 100843	
Nature of Application:	OCP Amendment and Rezoning
Proponent:	Vesta
Staff Recommendation:	Adopt proposed amending bylaws and authorize issuance of DPs
Voting Record of Council:	
i. Mar 27, 2018 – First and Second Reading:	Passed 7:2
ii. Apr 24, 2018 – Third Reading:	Passed 7:1
iii. May 7, 2018 – Final Reading and Adoption:	Passed 6:3
iv. May 7, 2018 – Issuance of DP Nos. 100808, 100822 & 100843	Passed 6:3

- xi. DCC Frontending Agreement for Northeast Phase of Latimer Neighbourhood Plan Area

170. On July 9, 2018, Report to Mayor and Council No. 18-105 was presented to council regarding a DCC Frontending Agreement with Vesta. Report No. 18-105 recommended that council authorize staff to execute the Development Cost Charges Frontending Agreement with Vesta, for the provision of off-site drainage infrastructure (stormwater detention facility) for the northeast phase of the Latimer Neighbourhood Plan area.

➤ Seifi #1 at para 28(j) and exhibit H – PR tab 18

171. On July 9, 2018, council voted 8:1 to authorize staff to execute the Development Cost Charges Frontending Agreement with Vesta.

➤ J. Allan #1 at exhibit JJ (p. 488) – PR tab 4

➤ Seifi #1 at exhibit O (p. 371) – PR tab 18

172. The particulars of the matters regarding the subject DCC Frontending Agreement are summarized as follows:

DCC Frontending Agreement	
Nature of Application:	DCC Frontending Agreement
Proponent:	Vesta
Staff Recommendation:	Authorize execution of Agreement
Voting Record of Council:	
i. Jul 9, 2018 – DCC Frontending Agreement	Passed 8:1

xii. DW Agreement for Northeast Phase of Latimer Neighbourhood Plan Area

173. On July 9, 2018, Report to Mayor and Council No. 18-103 was presented to council regarding a DW Agreement Bylaw. Report No. 18-103 recommended council give first, second and third reading to Drainage DW Agreement Bylaw No. 5401 and that council authorize, upon adoption of Bylaw 5401, the execution of a DW Agreement with Vesta for the provision of off-site drainage infrastructure for the northeast phase of the Latimer Neighbourhood Plan area.

➤ Seifi #1 at para 28(k) and exhibit I – PR tab 18

174. On July 9, 2018, Drainage DW Agreement Bylaw No. 5401 passed first, second and third reading by a vote of 8:1. It was moved and carried that council authorize, upon adoption of Bylaw 5401, the execution of a DW Agreement with Vesta for the provision of off-site drainage infrastructure for the northeast phase of the Latimer Neighbourhood Plan area.

➤ J. Allan #1 at exhibit JJ (pp. 499-500) – PR tab 4

175. On July 23, 2018, Drainage DW Agreement Bylaw No. 5401 came back before council for final reading. Drainage DW Agreement Bylaw No. 5401 was approved by a unanimous vote of 9:0.

➤ J. Allan #1 at exhibit FF (pp. 415) – PR tab 18

176. The particulars of the matters regarding Drainage DW Agreement Bylaw No. 5401 and the subject DW agreement are summarized as follows:

Drainage DW Agreement Bylaw No. 5401 and DW agreement	
Nature of Application:	DW Agreement
Proponent:	Vesta
Staff Recommendation:	Adopt proposed DW Agreement bylaw and authorize execution of DW Agreement
Voting Record of Council:	
i. Jul 9, 2018 – First, Second & Third Reading:	Passed 8:1
ii. Jul 23, 2018 – Final Reading and Adoption:	Passed 9:0

- xiii. OCP Amendment and Rezoning Application No. 100148 and HAP Application No. 100893

177. On June 11, 2018, Report to Mayor and Council No. 18-76 was presented to council regarding OCP amendment and rezoning Application No. 100148 and HAP Application No. 100893 submitted by Lanstone. Report No. 18-76 recommended council give first and second reading to amending bylaws No. 5351, 5352 and 5353 subject to certain prerequisites being satisfied prior to final reading and that council authorize issuance of HAP No. 100893, subject to certain conditions.

➤ Seifi #1 at para 28(I) and exhibit J – PR tab 18

178. On June 11, 2018, the amending bylaws associated with OCP amendment and rezoning Application No. 100148, with one amendment, passed first and second reading by a vote of 6:1. On July 9, 2018, they passed third reading by a vote of 8:1.

➤ J. Allan #1 at exhibits MM (pp. 518-521) & KK (pp. 502-504) – PR tab 4

➤ Seifi #1 at exhibit O (pp. 372-373) – PR tab 18

179. On April 1, 2019, the amending bylaws associated with OCP amendment and rezoning Application No. 100148 came back before council for final reading. By that time, councillor Quaale was no longer a member of the Township council. OCP amendment and rezoning Application No. 100148 was approved by a unanimous vote of 9:0. HAP Application No. 100893 was approved by a unanimous vote of 9:0.

➤ J. Allan #1 at exhibit NN (pp. 549-550) – PR tab 4

➤ Seifi #1 at exhibit P (p. 379) – PR tab 18

180. The particulars of the matters regarding OCP Amendment and Rezoning Application No. 100148 and HAP Application No. 100893 are summarized as follows:

OCP Amendment and Rezoning Application No. 100148 and HAP Application No. 100893	
Nature of Application:	OCP Amendment and Rezoning
Proponent:	Lanstone
Staff Recommendation:	Adopt proposed amending bylaws and authorize issuance of HAP
Voting Record of Council:	
i. Jun 11, 2018 – First & Second Reading (as amended):	Passed 6:1
ii. Jul 9, 2018 – Third Reading:	Passed 8:1
iii. Apr 1, 2019 – Final Reading and Adoption:	Passed 9:0
iv. Apr 1, 2019 – HAP No. 100893	Passed 9:0

- xiv. OCP Amendment and Rezoning Application No. 100447 and DP Application Nos. 100816 and 100819

181. On January 29, 2018, Report to Mayor and Council No. 18-04 was presented to council regarding OCP amendment and rezoning Application No. 100447 and DP Application Nos. 100816 and 100819 submitted by Infinity. Report No. 18-04 recommended council give first and second reading to amending bylaw No. 5294 subject to certain prerequisites being satisfied prior to final reading and that council authorize issuance of DP Nos. 100816 and 100819 at the time of final reading of bylaw No. 5294.

➤ Seifi #1 at para 28(m) and exhibit K – PR tab 18

182. On January 29, 2018, the amending bylaws associated with OCP amendment and rezoning Application No. 100447 passed first and second reading by a unanimous vote of 8:0 (Mayor Froese absent). On March 5, 2018, they passed third reading by a unanimous vote of 9:0.

➤ J. Allan #1 at exhibits PP (pp. 562-564) & CC (pp. 328-330) – PR tab 4

➤ Seifi #1 at exhibit O (pp. 368-369) – PR tab 18



183. On July 23, 2018, the amending bylaws associated with OCP amendment and rezoning Application No. 100447 came back before council for final reading and was approved by a unanimous vote of 9:0. DP Application Nos. 100816 and 100819 were also approved by a unanimous vote of 9:0.

- J. Allan #1 at exhibit FF (pp. 419-420) – PR tab 4
- Seifi #1 at exhibit O (p. 375) – PR tab 18

184. The particulars of the matters regarding OCP Amendment and Rezoning Application No. 100447 and DP Application Nos. 100816 and 100819 are summarized as follows:

OCP Amendment and Rezoning Application No. 100447 and DP Application Nos. 100816 and 100819	
Nature of Application:	OCP Amendment and Rezoning
Proponent:	Infinity
Staff Recommendation:	Adopt proposed amending bylaws and authorize issuance of DPs
Voting Record of Council:	
i. Jan 29, 2018 – First and Second Reading:	Passed 8:0
ii. Mar 5, 2018 – Third Reading:	Passed 9:0
iii. Jul 23, 2018 – Final Reading and Adoption:	Passed 9:0
iv. Jul 23, 2018 – Issuance of DP Nos 100816 & 100819:	Passed 9:0

- xv. OCP Amendment and Rezoning Application No. 100144 and DP Application No. 100875

185. On June 25, 2018, Report to Mayor and Council No. 18-87 was presented to council regarding OCP amendment and rezoning Application No. 100144 and DP Application No. 100875 submitted by Polygon. Report No. 18-87 recommended council give first and second reading to amending bylaws Nos. 5383 and 5384 subject to certain prerequisites being satisfied prior to final reading and that council authorize issuance of DP No. 100875 at the time of final reading of bylaw No. 5384.

- Seifi #1 at para 28(n) and exhibit L – PR tab 18

186. On June 25, 2018, the amending bylaws associated with OCP amendment and rezoning Application No. 100144 passed first and second reading by a vote of 8:1.

- J. Allan #1 at exhibit PP (pp. 383-387) – PR tab 4
- Seifi #1 at exhibit O (pp. 373) – PR tab 18

187. On July 23, 2018, the amending bylaws associated with OCP amendment and rezoning Application No. 100144 came on for third reading. Based on comments and concerns raised at the public hearing on July 9, 2018, including with respect to density, building interface and traffic concerns, council voted 7:2 to refer the application back to staff.

- Froese #1 at para 43 – PR tab 14
- J. Allan #1 at exhibit FF (pp. 411-412) – PR tab 4

188. On September 17, 2018, a Report to Mayor and Council No. 18-135 was presented to council regarding OCP amendment and rezoning Application No. 100144 and DP Application No. 100875, following the feedback raised at the public hearing. Report No. 18-135 recommended that council give third reading to the revised amending bylaws Nos. 5383 and 5384 subject to certain prerequisites being satisfied prior to final reading and that council authorize the issuance of DP No. 100875 at the time of final reading of bylaw No. 5384.

- Seifi #1 at para 28(o) and exhibit M – PR tab 18

189. On September 17, 2018, the amending bylaws associated with OCP amendment and rezoning Application No. 100144 passed third reading by a vote of 8:1.

- J. Allan #1 at exhibit TT (pp. 596-599) – PR tab 4
- Seifi #1 at exhibit O (pp. 374) – PR tab 18

190. On Oct 1, 2018, the amending bylaws associated with OCP amendment and rezoning Application No. 100144 came back before council for final reading and were approved by a vote of 7:1. DP Application No. 100875 was approved by a vote of 7:1.

- J. Allan #1 at exhibit L (pp. 146-147) – PR tab 4
- Seifi #1 at exhibit O (p. 376) – PR tab 18

191. The particulars of the matters regarding OCP Amendment and Rezoning Application No. 100144 and DP Application No. 100875 are summarized as follows:

OCP Amendment and Rezoning Application No. 100144 and DP Application No. 100875	
Nature of Application:	OCP amendment and rezoning
Proponent:	Polygon
Staff Recommendation:	Adopt proposed amending bylaws and authorize issuance of DP
Voting Record of Council:	
i. Jun 25, 2018 – First and Second Reading:	Passed 8:1
ii. Jul 23, 2018 – Refer back to staff to amend:	Passed 7:2
iii. Sep 17, 2018 – Third Reading (as amended):	Passed 8:1
iv. Oct 1, 2018 – Final Reading and Adoption:	Passed 7:1
v. July 23, 2018 – Issuance of DP No. 100875	Passed 7:1

xvi. Rezoning Application No. 100496 and DP Application No. 100916

192. On June 25, 2018, Report to Mayor and Council No. 18-88 was presented to council regarding Rezoning Application No. 100496 and DP Application No. 100916. Report No. 18-88 recommended council give first and second reading to amending bylaw No. 5381 subject to certain prerequisites being satisfied prior to final reading and that council authorize issuance of DP No. 100916 at the time of final reading of bylaw No. 5381.

➤ Seifi #1 at para 28(p) and exhibit N – PR tab 18

193. On June 25, 2018, the amending bylaws associated with Rezoning Application No. 100496 passed first and second reading by a unanimous vote of 9:0. On July 23, 2018, they passed third reading by a unanimous vote of 9:0.

➤ J. Allan #1 at exhibits EE (pp. 372-375) & FF (pp. 406-407) – PR tab 4

➤ Seifi #1 at exhibit O (pp. 372, 374) – PR tab 18

194. On December 10, 2018, the amending bylaws associated with Rezoning Application No. 100496 came back before council for final reading. By that time, councillor Quaale was no longer a member of the Township council. Rezoning Application No. 100496 was approved

by a unanimous vote of 9:0. DP Application No. 100916 was also approved by a unanimous vote of 9:0.

- J. Allan #1 at exhibit VV (pp. 613-314) – PR tab 4
- Seifi #1 at exhibit P (p. 377) – PR tab 18

195. The particulars of the matters regarding Rezoning Application No. 100496 and DP Application No. 100916 are summarized as follows:

Rezoning Application No. 100496 and DP Application No. 100916	
Nature of Application:	Rezoning
Proponent:	Essence
Staff Recommendation:	Adopt proposed amending bylaw and authorize issuance of DP
Voting Record of Council:	
i. Jun 25, 2018 – First and Second Reading:	Passed 9:0
ii. Jul 23, 2018 – Third Reading:	Passed 9:0
iii. Dec 10, 2018 – Final Reading and Adoption:	Passed 9:0
iv. Dec 10, 2018 – Issuance of DP No. 100496:	Passed 9:0

(g) *The Legal Opinion*

196. The Petitioners have adduced and rely on a legal opinion prepared for the Township dated June 8, 2016 (the "Legal Opinion"). The Legal Opinion related to specific rezoning applications that were then before council for the Township and did not relate to any of the Impugned Matters.

197. While the author of the Legal Opinion opined that "there *could* be a conflict if the Council member was personally or privately connected to the developer, if development was in-stream at the time of the election, or if the developer made a contribution after the rezoning application was made" [*emphasis added*], he does not:

- a. Cite any authority for such a proposition;
- b. Suggest that the latter two identified considerations alone would support the conclusion of the existence of a pecuniary conflict of interest.

- J. Allan #1 at exhibit WW (p. 629) – PR tab 4

198. Rather, the Legal Opinion more definitely states that:

In order to find a conflict, there has to be a factual basis, for example, **linking the money to the member's participation in a Council deliberation (such as where the member agrees to vote in return for the donation).**

[emphasis added]

➤ J. Allan #1 at exhibit WW (p. 628) – PR tab 4

199. Finally, the Legal Opinion was provided to the Township some two years prior to the Impugned Matters at issue in this petition and in relation to different factual circumstances. In contrast to the respondent in **Godfrey et al v. Bird and District of North Saanich**, [2005 BCSC 626](#) [**Godfrey**] who requested and received an opinion on his exact conflict, there is no evidence that the Respondents in this proceeding were even consciously aware of the Legal Opinion in the context of the Impugned Matters.

➤ See, **Godfrey** at para 33 – BOA tab 14

## E. ANALYSIS

### (a) Summary of Principles

200. The following principles arise from the authorities outlined above:

- a. Sections 101, 104 and 110 of the *Community Charter* provide a complete code for the determination of issues relating to pecuniary conflicts of interest.

➤ **Fairbrass BCSC** [at paras 16-21](#) – BOA tab 8

- b. These provisions of the *Community Charter* must be construed broadly and in a manner consistent with their purpose but not so broad that it risks needlessly disqualifying municipal councillors.

➤ **Schlenker** [at para 38](#); **Ferri** [at para 10](#) – BOA tabs 29 and 11

- c. The onus is on the Petitioners to prove that a council member had a direct or indirect pecuniary interest in a matter before council that ought to have been declared. The existence of a pecuniary interest in a matter is the sole ground for a remedy under s. 101 of the *Community Charter*.

➤ **Fairbrass BCCA** [at paras 20 and 22](#) – BOA tab 9

- d. Importantly, where the allegations are of serious wrongdoing by public officials and a finding would result in their disqualification from office, the Court must apply a degree of probability “commensurate with the occasion” in finding a pecuniary interest.

➤ **First National** [at para 31](#) – BOA tab 12

- e. In the context of factual allegations amounting to the criminal offence of bribery, there is persuasive authority supporting the conclusion that the standard of proof ought to be very high, and approaching a criminal standard.
  - ***Gullion v. Gottfried***, [2018 ABQB 531](#) – BOA tab 18
- f. Campaign contributions do not, in and of themselves, justify the conclusion that the Respondents had a pecuniary interest, direct or indirect, in any of the Impugned Matters. Rather, there must be a further link.
  - ***King*** [at para 12](#) – BOA tab 22
- g. The court will not infer a pecuniary interest “out of thin air”. To discharge its burden, the Petitioners must prove that the contributions were coupled with a promise, implicit or otherwise, to deliver a vote. Even a “reasonable suspicion” is insufficient to discharge this burden and the burden does not shift to the Respondents merely by the Petitioners raising suspicions or conjecture.
  - ***Fairbrass BCSC*** [at paras 30 and 43](#); ***Highlands*** [at paras 30 & 55](#); and ***Helten*** [at paras 34-35](#) – BOA tabs 8, 20, and 19
- h. A finding of a contravention of the conflict of interest provisions implicitly requires that the Respondent acted intentionally and in bad faith. The Court must be slow to attribute bad faith to elected officials unless there is “no other rational conclusion”.
  - ***Community Charter***, [s. 101\(3\)](#); ***First National*** [at para 38](#) – BOA tabs 32 and 12
- i. If a pecuniary interest is found, the question is then whether a reasonably well-informed elector would conclude that such a pecuniary interest would influence the Respondent’s decision.
  - ***Community Charter***, [s. 104\(1\)\(d\)](#); ***Schlenker*** [at para 41](#) – BOA tab 29
- j. Elected municipal officials are expected to have opinions on civic priorities and policies and to campaign on those positions. There is nothing untoward with contributions being made by supporters of those positions. There is also nothing wrong with a politician carrying out a campaign promise if elected.
  - ***Fearnley*** [at paras 35-36](#); ***Helten*** [at para 36](#) – BOA tabs 10 and 19
- k. Electors have a democratic right to make a campaign contribution to a candidate that she or he chooses to support.
  - ***Highlands*** [at para 56](#) – BOA tab 20

(b) *The Petitioners Have Failed to Meet the Evidentiary Burden of Establishing a Pecuniary Interest*

201. In order to find that the Respondents, or any of them, had a disqualifying conflict of interest, the Court must find on a balance of probabilities that:

- a. the Respondent had a direct or indirect pecuniary interest in one or more of the Impugned Matters;
- b. the Respondent attended meetings, participated in discussions, voted, or attempted to influence voting in relation to the Impugned Matter in which they had a pecuniary interest;
- c. the Respondent's pecuniary interest is significant enough to reasonably be regarded as likely to influence the member in relation to the respective Impugned Matter; and
- d. the Respondent's contravention was not done inadvertently or because of an error in judgment made in good faith.

➤ *Community Charter*, ss. [101](#) and [104](#) – BOA tab XX

202. The onus is on the Petitioners to prove elements (a), (b), and (c) of the above list. If those are proven, the Respondents may rebut the Petitioners' case by establishing element (d).

203. The Courts have consistently stated that there must be a "further link" beyond a mere campaign contribution (**Schlenker** [at para 52](#); **Highlands** [at para 57](#); **Fairbrass BCSC** [at para 43](#) (and with the Court of Appeal having found no error in such analysis, **Fairbrass BCCA** at 21 and 24 ) – BOA tabs 29, 20, 8 and 9). There is nothing unlawful about giving or receiving campaign contributions, rather there must be evidence of "contributions coupled with a promise, implicit or otherwise, to deliver a vote" in order to form "the link to dishonest conduct that is reprehensible" (**Highlands** [at para 55](#) – BOA tab 20).

204. The necessary evidence that the Petitioners must bring forward in order to succeed in their case is, respectfully, missing here. A finding that the Respondents had a conflict of interest, "must be proven by evidence of illegal conduct, adequate to support the finding of fact" (**Macmillan Bloedel** [at para 153](#) – BOA tab 24). There is no evidence of any illegal conduct on the part of the Respondents.

205. The present case must be contrasted with the decision of **Godfrey**, relied on by the Petitioners (at Petition, Part 3, para 5). In **Godfrey** the court found that the respondent councillor had "a pecuniary interest, albeit indirect, in the Application which related to a property owned by his good friend, his business partner, his some-time lender, and his principal in a number of purchases and sales of properties on Vancouver Island..." (**Godfrey** [at para 121](#) – BOA tab 14). Based on both the councillor's personal relationship with the proponent of the application and his relationship to the subject property, the Court found

that there was a reasonable probability that the councillor would be influenced in his vote at council.

206. Similarly, in **Guimond v. Sorenberger**, [1980 ABCA 216](#), (Petition, Part 3, para 5) the Court found the councillors had an indirect pecuniary interest in the by-laws at issue because they were all employees of a company which opposed the by-laws at issue as adversely affecting its interests
207. In this case, the Respondents' evidence, and the only evidence before the Court on this issue, is that the Respondents did not enter any agreements, explicit, implicit or otherwise, to vote in any particular way with respect to the Applications to Council in return for receiving the campaign contributions, or otherwise. In many cases, the Respondents were not even aware until this proceeding that the individuals who made the impugned contributions had any relationship with the corporations which brought the Applications to Council.
208. Further, the Court will not infer an agreement to vote in a certain way "out of thin air" (**Fairbrass BCSC at para 43** – BOA tab 8); rather, there must objective facts from which to infer the other facts which the Petitioners seek to establish (**Lee** at para 26 – BOA tab 23). As the Court of Appeal has cautioned not to attribute bad faith to elected officials unless there is "no other rational conclusion" (**First National at para 38** – BOA tab 12), the Respondents submit that the mere timing of contributions cannot support a conclusion of such bad faith conduct.
209. In essence, the Petitioners contend that the timing of the impugned campaign contributions ought to be enough for the Court to infer bad faith on the part of the Respondents (see, Petition, Part 3, para 8). However, there exist numerous alternative conclusions arising from the circumstantial evidence led by the Petitioners that are consistent with the Respondents' lawful exercise of the duties of their offices, which include the Respondents:
  - a. having track records of overwhelmingly voting in support of development applications;
  - b. having campaigned as being favourable to sustainable development in the community; and
  - c. having voted in a manner which consistently followed recommendations contained in Staff Reports; and

all or any of which explains their voting. This is compared against an absence of even any suspicious circumstances which ought to alert the Court to the possibility of a bribe.
210. In the absence of any sufficient evidence appropriate for the court to draw an inference, let alone of a sufficient level to be commensurate with the seriousness of the allegations, the Court must conclude that the Respondents did not have a pecuniary interest in any of the Impugned Matters.



211. In the absence of a conflict of interest, the Respondents had no obligation under s. 100 of the *Community Charter* to declare a conflict or remove themselves from participation in the Impugned Matters.

*(c) The Respondents Campaign Financing Reporting Does Not Assist the Petitioners*

212. All of the Respondents lawfully reported their campaign contributions during their 2018 re-election campaigns in their respective Elections BC Disclosure Statements in accordance with the *LECFA*. The contributions were never hidden from public view.
213. Further, there is no allegation that any of the contributions violated the provisions of the *LECFA*. Specifically, none of the contributions exceeded \$1,200 and none of the contributions were from corporations. Moreover, “a lawful contribution made to a member who is a candidate for election to a local government” is expressly excluded from the statutory prohibition against council members accepting gifts in s. 105 of the *Community Charter*.
214. If the Petitioners believe that campaign financing transparency would be improved by amending the reporting requirements, they have the right to seek such a legislative change. There is no current basis in law, however, to impose such enhanced requirements on the Respondents and no basis to suggest that it gives rise to a conflict of interest.

*(d) The Contributions Made by the Contributing Electors Does Not Assist the Petitioners*

215. The Petitioners raise the argument that individuals whose financial interests are tied to that of a corporation should be dissuaded from making campaign contributions, as this represents a “loophole” to the *LECFA*. With respect, that issue is not before the Court. Those who made the contributions are not before the Court, and it would not be appropriate for the Court to make findings which impugn their conduct. Further, such an argument does not assist the Petitioners in establishing a conflict of interest.
216. The *LECFA* and the regulations thereunder do not prohibit individuals who share interests with a corporation and each other from supporting election campaigns. Again, if the Petitioners feel this is a mischief that needs to be addressed, it is open to the legislature to prohibit this if it so chooses.

*(e) The 2016 Legal Opinion Does Not Assist the Petitioners*

217. The Petitioners rely upon the Legal Opinion prepared for the Township some two years prior to the Impugned Matters at issue in this case and ask the Court to accept that this deprives the Respondents of any good faith defence under s. 101(3) of the *Community Charter*.

218. The Legal Opinion offered qualified advice on an unrelated matter and cannot be considered an opinion on this issue. Further, there is no evidence that the Respondents in this proceeding were even consciously aware of the specific aspect of the Legal Opinion identified by the Petitioners at the time the Impugned Matters came before council.
219. Further, the present case stands in contrast to the case of **Godfrey**, relied on by the Petitioners in their written submissions. In that case, the local government had requested and received multiple legal opinions and the respondent sought his own legal opinion on the exact matters before the council. The Court accepted that the respondent had “referred to these opinions shortly after they were received and on a number of subsequent occasions” (**Godfrey at para 94** – BOA tab 14). As such the court could not conclude that his participation “was as a result of inadvertence or an error in judgment made in good faith” (**Godfrey at para 94** – BOA tab 14). On its facts, **Godfrey** is clearly distinguishable from the present case.

*(f) If There is a Conflict of Interest, it Was Done Inadvertently or Because of an Error in Judgment Made in Good Faith*

220. As the Petitioners admit at paragraph 3 of their written submissions: “To date, the jurisprudence on conflicts of interest arising out of campaign contributions has held that a contribution, and a later vote in favour of an application, does not constitute a conflict of interest without ‘something more’”.
221. The Petitioners now ask, on a new standard not based on a balance of probabilities, but rather on what a reasonably well-informed elector *might* conclude, that the Court find the Respondents guilty of illegal conduct and disqualified from holding office.
222. This is a significant change in the standard and, if it were the law, it would no doubt inform a new approach to scrutiny and vetting of campaign contributions so as to avoid any possibility that such a contribution might be perceived or suspected to be a conflict.
223. Put otherwise, the Petitioners do not identify any conduct on the part of the Respondents which is contrary to any statute, regulation or common law principle.
224. Given the absence of any prior authority standing for the proposition, that either:
- a. a reasonable person test for the finding of a pecuniary interest in a matter based on mere suspicion of a conflict of interest alone; or
  - b. that campaign contributions *simpliciter*, without evidence of a *quid pro quo* agreement, amount to an indirect pecuniary interest based merely on their timing,

the Respondents submit that any contravention of such a new standard sought by the Petitioners was done inadvertently and in good faith.

225. The Respondents should be presumed to have had a good faith belief in the law and standard of proof as they understood it at the time of their re-election campaigns. This is particularly so given the absence of any evidence of culpability for accepting a bribe. Accordingly, the Respondents submit that s. 101(3) provides a statutory defence to any alleged contravention.

**F. CONCLUSION**

226. There is no evidence before the Court on this petition which rises to the degree of probability commensurate with the seriousness of the alleged wrongs. Mere speculation is insufficient to find the Respondents guilty of bad faith. Therefore, the Respondents submit the Court must find they have not contravened s. 101 of the *Community Charter*.
227. In the alternative, if the Court finds that the Respondents contravened the *Community Charter*, which is not admitted but is expressly denied, then any such contravention was based on a change in the law and ought to be presumed to have been done inadvertently or because of an error in judgment made in good faith.
228. Accordingly, the Respondents are not disqualified from holding office.
229. The Respondents ask that the Petitioners' petition be dismissed with costs to the Respondents.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 30<sup>TH</sup> DAY OF NOVEMBER 2020.



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Jeffrey W. Locke and Andrew W. Buckley  
Lawyers for the Respondents,  
Stanley Jack Froese, Blair Garnet Whitmarsh,  
Robert Long, and Angela Dawn Quaale

**SCHEDULE “A” to the RESPONDENTS’ SUBMISSIONS**

*Allan et al v. Froese et al*

**Summary of Applications to Council**

Proponent	Project	Type of Application	Appn No	Report No	First and Second	Public Hearing	Third	Approval
N/A (Mitchell Group - Developer of the Williams Business Park and Retail Complex)	Williams Neighbourhood Plan	OCP Amendment	Bylaw Nos 5334 & 5335	18-41 ( <u>Seifi p 1</u> )	Apr 9, 2018 ( <b>c 7:1</b> Fox absent; Richter opposed – <u>Allan p 85 &amp; Seifi p 370</u> )	Apr 23, 2018 ( <u>Allan pp 99-105</u> )	May 7, 2018 ( <b>c as amended 8:1</b> Richter opposed – <u>Allan p 113-118 &amp; Seifi p 370</u> )	Oct 1, 2018 ( <b>c 8:0</b> Richter absent; subsequent amendment to add park space defeated – <u>Allan p 144 &amp; Seifi p 376</u> )
Beedie Group	9228 – 200 St	DP	DP No 100920	18-99 ( <u>Allan p 168</u> )	—	—	—	Jul 9, 2018 ( <b>c 9:0</b> – <u>Allan pp 187-188 &amp; Seifi p 373</u> )
Beedie Group	27200 Block of 60 Ave	DP	DP No 100959	18-107 ( <u>Allan p 205</u> )	—	—	—	Jul 23, 2018 ( <b>c 9:0</b> – <u>Allan pp 232-234 &amp; Seifi p 374</u> )
Beedie Group	5910 – 274 St	DP	DP No 100913	18-129 ( <u>Allan p 240</u> )	—	—	—	Sep 17, 2018 ( <b>c 9:0</b> – <u>Allan pp 264-266 &amp; Seifi p 375</u> )
Beedie Group	5864 – 274 St	DP	DP No 101004	18-140 ( <u>Seifi p 140</u> )	—	—	—	Oct 1, 2018 ( <b>c 8:0</b> Richter absent – <u>Allan pp 134-135 &amp; Seifi p 376</u> )

Allan = Affidavit #1 of John Allan  
Seifi = Affidavit #1 of Ramin Seifi

**SCHEDULE “A” to the RESPONDENTS’ SUBMISSIONS**

*Allan et al v. Froese et al*

Proponent	Project	Type of Application	Appn No	Report No	First and Second	Public Hearing	Third	Approval
Vesta	20100 Block 84 Ave	OCP amendment and Rezoning	RO No 100150	18-27 ( <u>Seifi p 149</u> )	Mar 5, 2018 ( <b>c 7:2</b> Arnason & Richter opposed – <u>Allan pp 324-327</u> & <u>Seifi p 369</u> )	Mar 19 2018 (not in record)	Apr 9, 2018 ( <b>c 6:2</b> Fox absent; Arnason & Richter opposed – <u>Allan pp 87-88</u> & <u>Seifi p 370</u> )	Apr 15, 2019 ( <b>c 7:1</b> Long absent; Richter opposed – <u>Allan pp 359-360</u> & <u>Seifi p 379</u> )
		DP	DP Nos 100854 & 100870		—	—	—	Apr 15, 2019 ( <b>c 8:0 &amp; 7:0</b> Long absent; Richter absent for DP No 100870 – <u>Allan pp 360-361</u> & <u>Seifi pp 379-380</u> )
Vesta	20059 – 82 Ave	OCP amendment and Rezoning	RO No 100165	18-96 ( <u>Seifi p 172</u> )	Jun 25, 2018 ( <b>c 8:1</b> Richter opposed – <u>Allan pp 377-380</u> & <u>Seifi p 373</u> )	Jul 9, 2018 ( <u>Allan pp 193-195</u> )	Jul 23, 2018 ( <b>c 9:0</b> – <u>Allan pp 408-409</u> & <u>Seifi p 374</u> )	—
		DP	DP Nos 100929 & 100934		—	—	—	—

Allan = Affidavit #1 of John Allan  
Seifi = Affidavit #1 of Ramin Seifi

**SCHEDULE “A” to the RESPONDENTS’ SUBMISSIONS**

*Allan et al v. Froese et al*

Vesta	8304, 8336, 8384 – 200 St & 200800 – 84 Ave	OCP amendment and Rezoning	RO No 100146	18-97 ( <u>Seifi p 191</u> )	Jun 25, 2018 ( <b>c 8:1</b> Richter opposed – <u>Allan</u> <u>pp 380-383 &amp;</u> <u>Seifi p 373</u> )	Jul 9, 2018 ( <u>Allan</u> <u>pp195-</u> <u>197</u> )	Jul 23, 2018 ( <b>c 8:1</b> Richter opposed – <u>Allan pp 410-</u> <u>411 &amp; Seifi p</u> <u>374</u> )	Jul 22, 2019 ( <b>c 8:1</b> Richter opposed – <u>Allan</u> <u>p 452 &amp; Seifi p</u> <u>382</u> )
		DP	DP No 100889		—	—	—	Jul 22, 2019 ( <b>c 7:2</b> Richter & Arnason opposed – <u>Allan</u> <u>pp 452-453 &amp;</u> <u>Seifi p 382</u> )
Vesta	20039 – 84 Ave & 20088 – 86 Ave	OCP amendment and Rezoning	RO No 100153	18-123 ( <u>Seifi p 214</u> )	Jul 23, 2018 ( <b>c 8:1</b> Richter opposed – <u>Allan</u> <u>pp 398-402 &amp;</u> <u>Seifi p 374</u> )	Sep 17, 2018 ( <u>Allan</u> <u>pp 271-</u> <u>274</u> )	Oct 1, 2018 ( <b>c 8:0</b> Richter absent – <u>Allan pp 138-</u> <u>139 &amp; Seifi p</u> <u>374</u> )	—
		DP	DP Nos 100937 & 100938		—	—	—	—
Vesta	82 to 84 Ave from 202 to 203 St	OCP amendment and Rezoning	RO 100132	17-26 ( <u>Seifi p 238</u> )	Mar 27, 2017 ( <b>c 7:2</b> Arnason & Richter opposed – <u>Allan pp 458-463</u> <u>&amp; Seifi p 364</u> )	Apr 10 , 2017 (not in record)	Apr 24, 2017 ( <b>c 7:1</b> Sparrow absent; Richter opposed – <u>Allan pp 476-</u> <u>480</u> <u>&amp; Seifi p 364</u> )	May 7, 2018 ( <b>c 6:3</b> Arnason, Davis & Richter opposed – <u>Allan</u> <u>pp 121-125 &amp;</u> <u>Seifi p 371</u> )

Allan = Affidavit #1 of John Allan  
Seifi = Affidavit #1 of Ramin Seifi

**SCHEDULE “A” to the RESPONDENTS’ SUBMISSIONS**

*Allan et al v. Froese et al*

		DP	DP Nos 100808, 100822, & 100843		—	—	—	May 7, 2018 ( <b>c 6:3</b> Arnason, Davis & Richter opposed – <i>Allan</i> <i>pp 121-125 &amp;</i> <i>Seifi p 371</i> )
Vesta	Stormwater detention facility – Northeast phase of Latimer Neighbourhood Plan area	DCC Frontending Agmt	DCC Front Ending Agmt	18-105 ( <i>Seifi p 267</i> )	—	—	—	Jul 9, 2018 ( <b>c 8:1</b> Richter opposed – <i>Allan</i> <i>p 488 &amp; Seifi p</i> <i>386</i> )
Vesta	Offsite drainage infrastructure - Northeast phase of Latimer Neighbourhood Plan area	DW Agmt	DDW Agmt Bylaw 5401	18-103 ( <i>Seifi p 270</i> )	Jul 9, 2018 (1,2&3) ( <b>c 8:1</b> Richter opposed – <i>Allan</i> <i>pp 499-500</i> )	—	— (with 1&2 on Jul 9, 2018)	Jul 23, 2018 ( <b>c 9:0</b> – <i>Allan p</i> <i>415 &amp; Seifi p</i> <i>386</i> )
Lanstone	21812 48 Ave	OCP amendment and Rezoning	RO No 100148	18-76 ( <i>Seifi p 273</i> )	Jun 11, 2018 ( <b>c as amended</b> <b>6:1</b> Long & Richter absent; Arnason opposed - <i>Allan pp 518-</i> <i>521 &amp; Seifi p 372</i> )	Jun 25, 2018 (not in record)	Jul 9, 2018 ( <b>c 8:1</b> Arnason opposed – <i>Allan pp</i> <i>502-504 &amp;</i> <i>Seifi p 373</i> )	Apr 1, 2019 ( <b>c 9:0</b> – <i>Allan pp</i> <i>549-550 &amp; Seifi</i> <i>p 378</i> )
		HAP	HAP No 100893		—	—	—	Apr 1, 2019 ( <b>c 9:0</b> – <i>Allan pp</i> <i>549-550 &amp; Seifi</i> <i>p 379</i> )
Infinity	6910 200 St	OCP amendment and Rezoning	RO No 100447	18-04 ( <i>Seifi p 293</i> )	Jan 29, 2018 ( <b>c 8:0</b> Froese absent – <i>Allan pp</i> <i>562-564</i> <i>&amp; Seifi p 368</i> )	Feb 19, 2018 (not in record)	Mar 5, 2018 ( <b>c 9:0</b> – <i>Allan</i> <i>pp 328-330</i> <i>&amp; Seifi p 369</i> )	Jul 23, 2018 ( <b>c 9:0</b> – <i>Allan pp</i> <i>419-420 &amp; Seifi</i> <i>p 374</i> )

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**SCHEDULE “A” to the RESPONDENTS’ SUBMISSIONS**

*Allan et al v. Froese et al*

		DP	DP Nos 100816 & 100819		—	—	—	Jul 23, 2018 ( <b>c 9:0</b> – <i>Allan p 420 &amp; Seifi p 375</i> )
Polygon	20712 82 Ave & 8117, 8151 & 8173 St	OCP amendment and Rezoning	RO No. 100144	18-87 ( <i>Seifi p 312</i> )  18-135 ( <i>Seifi p 329</i> )	Jun 25, 2018 ( <b>c 8:1</b> Arnason opposed – <i>Allan pp 383-387 &amp; Seifi p 373</i> )	Jul 9, 2018 ( <i>Allan pp 198-203</i> )	Jul 23, 2018 ( <b>Referral to Staff c 7:2</b> Long & Richter opposed – <i>Allan pp 411-412</i> )  Sep 17, 2018 ( <b>c 8:1</b> Davis opposed – <i>Allan pp 596-599 &amp; Seifi p 374</i> )	Oct 1, 2018 ( <b>c 7:1</b> Richter absent; Davis opposed – <i>Allan p 146 &amp; Seifi p 376</i> )
		DP	DP No 100875		—	—	—	Oct 1, 2018 ( <b>c 7:1</b> Richter absent; Arnason opposed – <i>Allan pp 146-147 &amp; Seifi p 376</i> )
Essence	20235 – 20263 72 B Ave & 20276 – 20348 73 A Ave	Rezoning	RO No 100496	18-88 ( <i>Seifi p 336</i> )	Jun 25, 2018 ( <b>c 9:0</b> – <i>Allan pp 372-375 &amp; Seifi p 372</i> )	Jul 9, 2018 ( <i>Allan p 189</i> )	Jul 23, 2018 ( <b>c 9:0</b> – <i>Allan pp 406-407 &amp; Seifi p 374</i> )	Dec 10, 2018 ( <b>c 9:0</b> – <i>Allan pp 613-614 &amp; Seifi p 377</i> )
		DP	DP No 100916		—	—	—	Dec 10, 2018 ( <b>c 9:0</b> – <i>Allan pp 613-614 &amp; Seifi p 377</i> )

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