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BARRISTERS AND SOLICITORS

BULLETIN

TO: Clients
FROM: Will Pollitt
DATE: July 14, 2022
RE: Conflicts of Interest
Redmond v. Wiebe, 2022 BCCA 244

The British Columbia Court of Appeal recently released its decision [in *Redmond v. Wiebe*](#). The appeal is significant to local governments and elected officials in articulating how to apply the ‘interest-in-common’ exception to conflicts of interests.

Background

In 2020, the City of Vancouver introduced its ‘Temporary Patio Program.’ This program was a response to the COVID-19 Pandemic and restrictions on indoor dining. It essentially created an expedited system of patio permitting for bars and restaurants. A City Councilor, Michael Wiebe, participated in and voted on several Council motions related to the matter. Councillor Wiebe at the time also owned or operated two bars or restaurants in Vancouver, both of which eventually received permits under the program.

In 2021, a group of electors petitioned the Supreme Court to disqualify Wiebe. The petitioners argued Councillor Wiebe had a direct or indirect pecuniary interest in the Council motions regarding the program.

On July 19, 2021, the [Supreme Court dismissed the petition](#). The application judge found that Councillor Wiebe participated in various Council matters in which he held a pecuniary interest. The judge also found Councillor Wiebe’s pecuniary interest was in common with the electors of the City generally and was therefore exempted from the conflict provisions. In considering commonality with the electors, the judge held that Councillor Wiebe held an interest in common with the ‘comparator group’ of 3,127 licensed restaurants and bars in the City. The petitioners appealed.

Legal Framework

This decision considered the *Vancouver Charter*. However, the conflict provisions and interest-in-common exception are largely identical in the *Community Charter*. Both acts create a two-stage process for determining disqualification. First, the petitioners must establish that an elected official

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held an indirect or direct pecuniary interest in a matter and participated in Council proceedings despite that interest. If proven, the respondent elected official must establish they were exempted from the requirement on one of the grounds set out in the legislation. These are set out in Section 104 of the *Community Charter* and include circumstances where the “pecuniary interest of the council member is a pecuniary interest in common with electors of the municipality generally” (the ‘interest-in-common’ exception).

The Appeal Decision

The Court of Appeal found Councillor Wiebe did not hold an interest in common with *all* bars and restaurants in the City of Vancouver. Instead, the appropriate comparator group was “that segment of the 3,127 restaurant and bar licensees who were ready and considered themselves able to take advantage of the [*program*] during its initial limited availability (June to November 2020).” There was no evidence about the size of that group, but the court referred to the number of applications received (452) and permits issued (334) under the program. The Court found that this was too small to engage the interest-at-common exception.

The Court also considered Councillor Wiebe’s conduct in City proceedings. It found he actively participated in developing the program and was then “very active in pursuing the benefits he obviously perceived in” it. He “celebrated [*motions regarding the program*] with direct reference to his own business operation. He was among the first 14 businesses awarded [*a permit under the program*] literally days after the inauguration of the program and within eight days of the vote on the critical by-law amendments.”

The Court allowed the appeal and remitted the matter to the Supreme Court. The parties there may make arguments about whether other conflict exemptions - the remoteness exception or good-faith excuse - apply. Councillor Wiebe is not disqualified from office at this time.

In our view, the following aspects of the decision will assist local governments and elected officials consideration of potential conflicts:

- First, the Court upheld the chambers judge’s finding that the ‘comparator’ group is not all electors in the municipality.
- Second, when considering the appropriate comparator group, elected officials must carefully consider who *actually* shares the interest in common, not merely *could* share the interest. The program here was open to all restaurants and bars. However, program requirements significantly limited the number that could and did apply to the program.
- Third, the community or group which an elected official holds an interest in common with must represent a “significant share of the public.” This question is “not a simple exercise of numbers” and must

consider the purpose of conflict legislation, which is maintaining public confidence in elected officials. This analysis will vary in smaller versus larger communities.