



# News Release

Troublemakers  
109 Frazier Road, Salt Spring Island, BC  
[ericbooth@shaw.ca](mailto:ericbooth@shaw.ca)  
[www.islandstrust.org](http://www.islandstrust.org)

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## **COURT OF APPEAL RELEASES DECISION IN SCHLENKER CASE**

VICTORIA The British Columbia Court of Appeal released its decision today in a case that sought to have two former trustees on Salt Spring Island disqualified from office for conflict of interest.

The decision found the two former trustees were guilty of conflict of interest as they voted in a manner contrary to section 101 of the Community Charter.

The case began in October 2011, when a group of brave Salt Spring Island electors petitioned the court, seeking to have then-trustees Christine Torgrimson and George Ehring, and then-Electoral Area Director Garth Hendren of the Capital Regional District (CRD) disqualified from holding elected office. Their petition arose because the three elected officials were founders and Directors of both the Salt Spring Island Water Council Society and the Salt Spring Island Climate Action Council Society, but had (a) not declared conflicts of interest before voting to allocate funds to the two community groups, (b) not disclosed they were Chairs and/or Directors of the two societies, and (c) had not placed the proposed resolutions on the Agenda of the meetings.

In his decision about the case last January, the Honourable Mr. Justice Brian D. MacKenzie of the BC Supreme Court declared that “there is no basis for disqualification” of Ehring and Torgrimson from elected office.

Eight of the fifteen original petitioners appealed the court’s decision regarding the former trustees, claiming the Supreme Court judge had made several errors in law. In the words of Justice Donald, which was concurred by Justices Newbury and Hinkson, The question on appeal is whether the respondents were in a conflict when they voted to award two service contracts to societies of which they were directors. In the words of s. 101(1) of the Community Charter, S.B.C. 2003, c. 26, did they have “a direct or indirect pecuniary interest in the matter[s]”

The successful appellants were Norbert Fred Schlenker, Ted Bartrim, Alison Mary Cunningham, Harold Derek Hill, Malcolm George Legg, Dietrich Luth, Victoria Linda Mihalyi and Mark Lyster Toole.

The appeal case was argued in court on November 26, 2012 and the Court of Appeal released its decision today.

The ruling focuses on the period in 2011 after the two Trustees decided to help convert the Water Council and Climate Action groups into private societies under the Society Act, with limited membership. Because the former trustees were Founders, Directors and Chairs of the two newly-formed societies, the Court of Appeal ruled their responsibilities as society directors conflicted with their duties as elected officials.

As Justice Donald stated, "In my judgment, the pecuniary interest of the respondents [Ehring and Torgrimson] lies in the fulfillment of their fiduciary obligation to their societies. When they voted for the expenditure of public money on the two contracts, which master were they serving, the public or the societies? In these circumstances, a reasonable, fair-minded member of the public might well wonder who got the better bargain.... As directors of the Societies, the respondents were under a fiduciary duty to put the Society's interests first.... When the respondents moved and voted in favour of resolutions that benefitted their Societies through the granting of contracts, arguably contracts the Societies might not have been awarded had the councillors not also been directors, their duties as directors to put the Society's interests first were in direct conflict with their duties as councillors to put the public's interests first. These circumstances encompass the mischief the legislation was aimed at, namely, a conflict of interest in deciding money resolutions. The public is disadvantaged by the conflict, whether the respondents derived any personal gain or not, because the public did not have the undivided loyalty of their elected officials."

Simply put, they could not serve two masters. It is unfortunate they did not consider their first master was the public who had elected them to office long before they founded and directed their private societies.

This case has established new case which will be applicable to all municipal councilors throughout BC.

Former Islands Trustee Eric Booth stated, "I congratulate the Appellants on their victory. I was personally at the two meetings in question and was appalled at the conduct of the two Trustees. I was further taken aback that the Trustees did not do the right thing by admitting the conflict and thereby saving taxpayers the unnecessary expense of taking court action. The Salt Spring public owes a debt of gratitude to the Plaintiffs and Appellants for standing up as citizens and demanding our elected representatives follow the conflict of interest rules as set down within the Community Charter. It is now up to the Islands Trust Council to ensure current and future Trustees are made aware of the existing policies...the very same policies which the former Trustees were aware of. This is a great day for democracy and transparency in local government."