defence of qualified privilege was defeated by malice. *Sarachman v. Whitehead* (December 21, 2012), Doc. Toronto 229/12, Corbett J., Swinton, Wilton-Siegel JJ. (Ont. Div. Ct.)

Zoning – Definition of "Utility"

The respondent regional district sought to establish and operate a recycling facility on its own property. The petitioner opposed the location of the recycling facility, arguing that it was contrary to the applicable zoning by-law. The regional district took the position that the recycling facility was permitted under the zoning by-law as a "utility" which was expressly defined by a list of uses that did not explicitly refer to a recycling facility (but which did refer to "facilities established or licensed by a government"). The petitioner argued that the definition of "utility" in the by-law did not expressly include recycling facilities, and that recycling facilities could not be included or read into the definition of "utility."

Held - The petition was allowed.

There was no genuine ambiguity regarding the definition of "utility". A plain reading of the definition indicated that the drafters of the zoning by-law intended to create five enumerated categories of services that could be considered a "utility" under the by-law. The words "facilities established or licenced by a government" did not create a sixth category of utility under which the recycling facility could fall. Furthermore, the implied exclusion principle of statutory interpretation applied. Because recycling facilities were comparable to the enumerated facilities listed in the definition of "utility," an inference could be drawn that the drafters of the by-law intended to exclude recycling facilities from that definition. *Quast v. Cowichan Valley (Regional District)* (December 31, 2012), Doc. Victoria 11-2945, Gaul J. (B.C. S.C.)

Community Charter – "Indirect Pecuniary Interest"

The appellants, a group of Salt Spring Island electors, appealed a trial decision regarding an apparent conflict of interest which arose when the two respondents, acting as elected trustees of a local trusts committee, introduced a resolution and voted to award to service contracts to non-profit environmental societies of which they were directors. At the time of voting, the respondents failed to disclose their roles as directors of the environmental societies. At trial, the chambers judge had held that, pursuant to subsection 101(1) of the Community Charter, the respondents did not have a "direct or indirect pecuniary interest in the matter[s]", because they derived no personal financial benefit from the contracts.

Held - The appeal was allowed.

The object of subsection 101(1) of the Community Charter is to prevent elected officials from having divided loyalties in deciding how to spend public funds. The respondents owed fiduciary duties to their respective societies and their duties as directors to put the societies' interests first were in direct conflict with their duties as elected officials to put the general public's interest first. It made no difference that the respondents derived no personal financial benefit from the contracts. The public was disadvantaged by their conflict because the public did not have the undivided loyalty of their elected officials. *Schlenker v. Torgrimson* (January 11, 2013), Doc. Vancouver CA039685, Donald, Newbury, Hinkson JJ.A. (B.C. C.A.)

Res Judicata – Re-litigation Is Abuse of Process

The appellant city sought to re-litigate an issue regarding the compliance of the respondent corporation's property with a property standards by-law. Identical litigation had been brought unsuccessfully in 2005 under a former version of the same property standards by-law. The respondent brought a motion to have the city's appeal of a decision of its property standards committee set aside in order to avoid a new trial on the merits. The respondent argued that the matter was *res judicata*, and that re-litigation was barred by the doctrines of issue estoppel and/or abuse of process.

Held - The motion was granted.

The amendment to the property standards by-law created a new legislative basis for the city's appeal that did not exist at the time of the original decision. The by-law amendment intervened to change the issue to a sufficient degree such that issue estoppel did not apply. However, the courts have an inherent jurisdiction to prevent any abuse of process that might arise from unnecessary duplication of proceedings. As a new trial would result in the same evidence and testimony to be brought forward as was tendered in the original trial, to allow the city's appeal to proceed would amount to an abuse of the court's process. The city's appeal of the property standards committee's decision was accordingly dismissed. *Toronto(City) v. Rexlington Heights Ltd.* (January 10, 2013), Doc. CR-12-00000091-00AP, Morgan J. (Ont. S.C.J.)

Municipal Elections Act-Power to Reject Nomination Papers

The individual applicants sought election as municipal councilors. Two weeks before the election, the respondent returning officer revoked the applicants' candidacies and removed their names from the ballot because they were volunteer members of municipal committees. The applicants brought an application to have the elections for their respective districts declared void pursuant to s. 158(1) of the Municipal Elections Act, on the basis that the returning officer did not have jurisdiction to reject the applicants' nomination papers after having accepted them.

Held - The application was allowed.

The Municipal Elections Act does not grant returning officers the power to reject a candidacy after accepting nomination papers. Once nomination papers have been accepted, the determination of whether a candidate is qualified is to be made by the court. By rejecting the applicants' candidacies outright, the returning officer breached a duty of procedural fairness owed to the applicants. Volunteer members of municipal committees, whose relationship with those committees is not in the nature of an employment-like relationship, are not disqualified from being nominated for municipal elections pursuant to s. 18(1)(d) of the Municipal Elections Act. In light of the facts that (i) the applicants were not disqualified by reason of their volunteer membership with municipal committees, (ii) the returning officer's revocation of the applicants' candidacies was without jurisdiction, and (iii) the election results were likely affected by the returning officer's decision, the elections for the position of municipal councilor in the applicants' respective districts was declared void. *Winsor v. Kings (County)* (December 21, 2012), Doc. Ken 408859, Warner J. (N.S. S.C.)