

**Integrity in Local Governments Conference:
Mitigating the Risks of Conflict of Interest, Fraud & Corruption**

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Notes of Proceedings

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Introduction

Welcoming Remarks: Honourable Anne Rowles

- Good morning everyone, to those who are here in the UBC Robson Square Centre and those joining us by Webinar.
- My name is Anne Rowles and I'm the Chair of the Board of Directors of the International Centre for Criminal Law Reform.
- I am delighted to introduce Elder Larry Grant to deliver a welcome from the Musqueam people.
- We wish to acknowledge that we are currently on the unceded lands of the Musqueam people.
- We are lucky to have Elder Grant with us today.
- Before moving into our Integrity in Local Government Program the International Centre wishes to acknowledge that we are on the traditional ancestral territory of the Musqueam People who have long inhabited this land. This morning we are honoured to have Elder Larry Grant with us who has graciously agreed to bring a welcome on behalf of the Musqueam People. Elder Grant is the Elder-in Residence at the First Nations House of Learning and is a well-known teacher with respect to the Musqueam people, their language, history, culture and self-governance.

Elder Larry Grant

- Thank you for having me here.
- As our ancestors did in the past, I raise my hands in welcoming you to the unceded lands of the Musqueam people.
- This provides is an important opportunity to acknowledge that our people have lived in this delta for approximately 10,000 years, and we have lived on the lands underlying UBC for approximately 4,000 years.
- Thank you.

Anne: Please thank Elder Grant for coming this morning to bring greetings from the Musqueam People.

Welcoming Remarks: Honourable Anne Rowles

- I am pleased to introduce Sonia Le Bel, Chief Prosecutor of the Charbonneau Commission.
- As many you know, the federal government has announced its intention to spend substantial sums—billions, in fact—on infrastructure in the coming years.

- In light of this, it is important that local government be prepared to guard against the risk of corruption.
- Sonia brings a remarkable depth of knowledge about the issues surrounding corruption.
- We are delighted to have Sonia here to share her knowledge and experience.
- I turn it over to Sonia.

Sonia Le Bel, Chief Prosecutor, Charbonneau Commission | Keynote Speaker

- I would not call myself an expert in the field of corruption.
- I was brought into the Commission back in 2011 after having worked as a prosecutor on files of a very different nature.
- I had to develop knowledge quickly on the job.
- I will first provide a brief timeline of the Commission's history and activities.
- The Commission was a highly significant development in Quebec, and it formed a major part of my life.
- In 2009, there were revelations made by the media about public elected officials in Quebec having cozy relationships with those being awarded procurement contracts.
- Some Cabinet ministers, for example, were vacationing on the yacht of a prominent businessman who led a firm that had succeeded in being awarded very valuable government contracts.
- This gave rise to significant tensions, and that pressure was built up through the media.
- Considerable pressure was placed on the government to start an inquiry.
- Yet, there was also resistance from those who felt that a commission would bring them under scrutiny.
- Inquiries must be used only in cases where the matter is targeted and specific.
- *Inquiries can be useful, but they can also cause considerable damage to the reputations of individuals involved in the issue being investigated.*
- Parties were seen to be "guilty" in the public eye.
- In 2011, after two years of media and public pressure, the government announced the creation of a commission.
- The Commission was not created under public inquiry laws; rather, it was put in place in an informal manner.
- Then, after three weeks, the Commission was formalized.
- *Although the Commission focused on the construction industry, the lessons learned can be translated into other public procurement processes.*
- The Commission was in place for four years.
- It was initially intended to remain in place for two years, but it was quickly discovered that two years would be insufficient.
- *The Commission held over 263 days of hearings, examined over 3,000 documents, and heard from over 300 witnesses.*
- This all culminated in the production of a 1,700-page report.
- Today, I will highlight the insights most relevant for our participants.
- It is important to understand that the goal of the Commission was to make recommendations, not "chase the bad guys", though this is how the media often framed the Commission.

- ***The goal of the Commission was to understand systems: to understand why and how these issues arose, and how to prevent them in the future.***
- The Commission examined the existence of schemes involving collusion, as well as links to political funding organizations.
- Criminal law’s definition of “corruption” is narrower than the definition adopted by the Commission.
- The Commission had a number of police officers working for it (on secondment) to investigate the issues.
- Thus, most of the individuals involved in investigation were familiar with criminal processes, procedures, and definitions.
- ***But the Commission needed to move away from the standard definition of corruption, what is commonly seen as simply “giving money for some illegitimate benefit”, and embrace a broader conception of corruption.***
- ***The “link of causality” required under the criminal model does not translate easily into a system of corruption.***
- ***Put differently, when there is a system of corruption, one cannot always show a direct link evidencing corruption.***
- Directing money through political party financing groups constitutes one means of indirectly engaging in corruption.
- The Commission recognized that it would not get anywhere if it limited its analysis to the criminal law conception of corruption, which is a relatively narrow conception.
- The Commission also explored the infiltration of organized crime into the construction industry.
- The Commission also made recommendations as to how to prevent corruption in public procurement contracts in the construction industry.
- We performed a number of case studies.
- We met with over 1,000 people.
- We first examined the situation in Montreal, and we stayed in Montreal for six months.
- Because the matter was treated as a criminal investigation in the media, there were few witnesses willing to come forward.
- As such, to some extent, we had to persuade people to talk to us.
- The first allegations of wrongdoing in Montreal concerned evidence that municipal authorities were getting too cozy with certain key figures whose organizations had been awarded lucrative contracts.
- ***We found in Montreal that there were four cartels that shared a high proportion of the public contracts awarded in Montreal.***
- These four cartels were involved in a bid-rigging process, pursuant to which they shared the contracts, rotating which firms were awarded contracts.
- ***The Commission also discovered links with the mafia.***

- The mafia took a share in the profits of the contract; the mafia helped the cartels in keeping the market closed, to ensure no outside firms would submit a bid.
- Consequently, only the cartel members were able to put forward a bid; it was not a truly open, public bidding process.
- In addition to collusion, there was corruption.
- Corruption is not necessarily the same as collusion.
- ***Corruption is not an essential ingredient of collusion, but when you have both, that is the “perfect storm”.***
- ***In 2015, the Commission discovered that the cost of public works in Montreal were 30-35% higher than in Toronto or Quebec City.***
- ***When the Commission was physically present in Montreal, fascinatingly, public works costs dropped 35%.***
- Perhaps this justifies our salaries!
- The mere fact of having the witness hearings in the City was sufficient to bring down the cost of public works projects.
- In Montreal, when a bidder prepares the blueprints for a proposed project, the City will also make a *pro forma* estimate of the costs.
- This is a control mechanism that assists in raising red flags: if the cost estimate by the bidder is, say, 20% higher than the City’s estimate, that might indicate a problem with the bid.
- When there was a contract awarded for the paving of a road, for example, the City of Montreal would plan the project, estimate the costs, and add a contingency (called an “envelope”) for any unforeseen events.
- The value of this contingency would be voted for in advance of the project.
- This contingency was typically worth about 10% of the project.
- One engineer had the role of valuing whether this contingency amount was legitimate, and problems arose in this respect.
- The Commission also uncovered a widespread practice of “greasing the wheels”.
- ***Corruption ultimately facilitated the existence of the cartels and their scheme of collusion.***
- ***It was described as “the perfect storm” by one of the witnesses.***
- ***The intention of the cartel members when they initiated their scheme of collusion was not to do the public any harm; the cartel members simply wanted to ensure they had work.***
- It was difficult for the Commission to understand the context as it was experienced 15 years ago; we have a different understanding of these matters today.
- Understanding the context in which these scheme arose was one of the key obstacles the Commission had to overcome.
- ***In an insidious way, collusion led to corruption.***

- The following represents the key lessons that we learned, focusing on the question of integrity:
 - ***The culture of the organization is critically important***
 - When you work everyday with others, the way those people behave profoundly influences your conduct.
 - This could become a driver of deviant behaviours.
 - We saw this in Montreal.
 - One engineer who came to Montreal was shocked by the culture in Montreal.
 - He recounted his first Christmas in Montreal, remembering how contractors drove to greet City staff and officials in trucks overflowing with gifts.
 - ***This was simply “the way things were done”.***
 - ***This engineer realized that the contractors became the City’s clients; staff and officials had forgotten that were working for the City and for the people of that City.***
 - ***Certain elected officials tolerated this cultural milieu and ignored the issue—this paved the way for corruption.***
 - ***It starts very small—nobody starts out with the intention of becoming corrupt.***
 - ***This notion is captured within “the paperclip theory”: it starts with something small, and it gets bigger and bigger over time.***
 - Corruption has a snowball effect.
 - ***In the public sector, it is crucial to remember that you are not handling your own money; you are handling everybody else’s money (i.e., the public’s money).***
 - ***What is “normal” or “OK” in the private sector is not necessarily permissible or appropriate in the public sector.***
 - As a Crown prosecutor, for example, I am keenly aware of what I can and cannot do.
 - ***The dividing line between proper and improper conduct is different in the public and private spheres.***
 - ***As a public servant, simply going out for lunch of someone else’s dime can be the start of an insidious cycle.***
 - Nobody falls into this trap on purpose, of course.
 - ***We have to raise awareness about these dangers both in the public service and also in the private sector.***
 - It is a matter of (1) education and (2) developing a clearer understanding that the two spheres are inherently different.

- *The process of establishing good conduct within organizations is largely influenced by leaders.*
- *One must not treat those who accept small gifts as “criminals”; rather, we should focus on explaining the dangers inherent in these situations.*
- *The issue is never black and white.*
- The Commission found that when people eventually realized that they were caught in a web of corruption, it was too late.
- *Conflicts of interest are a key issue.*
 - Conflicts of interests are bound up with issues of corruption.
 - There are several issues to consider related to conflicts of interest:
 - **(1) Proximity of relationships**
 - Public servants and private sector participants in Quebec developed close relationships.
 - The gifts exchanged in these relationships start small, but later snowball.
 - It starts with lunches, but it grows into expensive tickets, luxurious vacations, etc.
 - Caught in between a choice between someone we know and someone we do not know, we tend to lean towards favouring those we know.
 - This fed into the awarding of contracts to those with close relationships with decision makers.
 - *These close relationships became normalized.*
 - *This then leads to a key challenge: it is difficult to say no to a friend.*
 - *These close relationships are normal in the private sector, but they become problematic when public representatives are involved, as public funds are then interposed in the relationship.*
 - *These tight-knit relationships can serve as a barrier to good decision making where judgment calls have to be made by public servants.*
 - *Also, it is important to remember that the benefits we are speaking of do not always take a monetary form—they extend to non-monetary benefits.*
 - **(2) Revolving doors between private actors and public actors**
 - Public actors may be more inclined to award benefits to private actors who offer them potential benefits (e.g., employment) in the future.

- The Commission made a recommendation to regulate this “revolving door”.
- The Commission did not call for these employment arrangements to be ceased entirely, but it did call upon the government to regulate them appropriately.
- **(3) Length of service**
 - We saw individuals (e.g., mayors) serving for unusually lengthy periods.
- **(4) Union officials were also serving as chairs of committee**
 - This can cause undue influence in decision making.
- ***Lack of expertise was identified as a key issue***
 - If expertise is lacking in the public sector, how can the public authority properly supervise the process?
- ***Protection of whistleblowers was identified as a centrally important issue***
 - The Commission encountered persistent problems in getting individuals to come forward.
 - Although there are some mechanisms by which to protect whistleblowers from the consequences of coming forward, these protections are not perfect.
 - For example, a number of engineers lost their licences because they did not enjoy immunity from the licencing organization in coming forward with information.
 - *We heard people say, “I did not feel at ease to raise a red flag”.*
 - *If you take away one lesson from today, it should be this: if someone wants to come forward with information, do everything you can to help.*
 - *We saw that those who came forward with information were ostracised, transferred from their position, or denied promotions.*
 - ***Corruption is a silent crime; we need people to empower people to come forward with information.***

Questions from Participants:

- *Question 1:*
 - You mentioned that the City of Montreal has in place a procurement policy pursuant to which the lowest bid is selected, and you mentioned this played a role in fostering corruption. Is there anything that can be done to formulate a better policy?
- *Response:*
 - We made a recommendation to make the market less predictable.

- We gave examples of what we saw in Europe and elsewhere of how contracts are awarded.
- We found that it was too easy to collude under the policies in place in Montreal.
- Since few companies could bid, it was too easy to rig the market.
- We did not tell the government *how* to change its procurement processes, but we recommended that a change be made.
- *Question 2:*
 - Does electronic procurement help?
- *Response:*
 - It could help, but it is no silver bullet.
- *Question 3:*
 - With respect to collusion, how are red flags raised?
- *Response:*
 - Collusion is a “silent crime”, but red flags do get raised.
 - When bid rigging has gone on for 15 years, flags are certainly raised.
 - When one examines the bids submitted, one can detect complementary bids.
 - People get careless.
 - Expertise inside of the public office is important in detecting cartels.
- *Question 4:*
 - Gifts are fairly common in BC—such gifts often take the form of hospitality suites, conference perks, etc.
 - Is BC on dangerous ground?
- *Response:*
 - Asking the question is answering it.
 - ***Individuals should always ask themselves whether something is improper.***
- *Question 5:*
 - It sound like the collusion/corruption situation in Montreal was so well known, yet nobody took action for such a long time. Why was this the case?
- *Response:*
 - The collusion itself could not have survived without complicity from the public offices.
 - The relational proximity, the way in which contracts were awarded, and other contextual factors encouraged corruption.
 - The signs were ignored—or, alternatively, the expertise in detecting the collusion was lost.
 - This was unfortunate.
 - The public sector needs to be as expert as the private sector.
 - How else can the two sectors negotiate on the same level?
 - The collusion would have subsided if it weren’t for the complicity of the public sector.

- The focus of the public and the media turned to corruption in 2009.
- *The spotlight the Commission shone on issues of collusion and corruption was critically important—it raised awareness.*
- *And we have to keep talking about these issues—they must remain on the public agenda.*
- *Question 6:*
 - Is there evidence that the makeup of local councils impacts the way in which business is done?
- *Response:*
 - Yes, the people in an organization have an influence on the way business is done.
 - But this is not a reason to throw in the towel.
 - It is, however, a reason for being more prudent.

Conflict of Interest: Legal Standards and Issues | Maegen Giltrow and Nathalie Baker

Maegen Giltrow:

- Today, we will be examining the key legal definitions and standards applicable to issues of fraud, corruption, and conflict of interest.
- This will serve as a foundation for navigating the “grey areas”.
- I would encourage you think about the areas in which the law is not responding to a particular issue (i.e., an issue that is “falling through the cracks”).
- ***There may not always be a legal remedy for a particular issue.***
- If we can identify these gaps, this would be a productive outcome of the Conference.
- There are four key sources of legal standards:
 - (1) **Statutory**: these apply to elected officials
 - (2) **Common law conflict of interest rules**: apply to elected officials and staff
 - (3) **Criminal Code**: offences against the administration of law and justice apply to “officers and office holders”
 - (4) **Equity**: fiduciary duties applicable to First Nations elected officials and to directors
- *Community Charter* Conflict of Interest Provisions:
 - Section 100(2) governs conflicts of interest.
 - ***If the council member has a conflict of interest, that member must not take part in a discussion of a matter or vote, and must not influence the vote.***
 - These constraints exist whether or not the council member has disclosed a conflict.
- Pecuniary vs. Common Law Conflicts:
 - Pecuniary interest:
 - A financial or monetary interest of sufficient significance.
 - Common law conflict of interest:
 - Need not be pecuniary.
 - A conflict may be found where:
 - (a) There is an interest particular to the official, or
 - (b) A reasonably well-informed person would conclude that the interest might influence the exercise of the official’s public duty.
 - ***These offences against public trust have at their core the need to ensure integrity and confidence in the government.***
- Indirect Pecuniary Interests:
 - *King v Nanaimo*:
 - ***Prior campaign contributions do not constitute a conflict of interest.***
 - In *King v Nanaimo*, it was found that there was no *current* interest, and there was no direct causal link established.

- This connects back to Sonia’s observation that the law insists upon the demonstration of a direct link, and this can be difficult to establish.
 - *Fairbrass v Hansma*:
 - A benefit to the Mayor’s sons was not enough to constitute a conflict of interest.
 - There was no demonstrated financial link between the Mayor and his sons.
 - *Schlenker v Torgrimson*:
 - Two directors of societies, who were also councillors, were under a fiduciary duty to put the society’s interest first, and this gave rise to a conflict of interest.
 - The director/councillors had an *indirect* pecuniary interest when the societies’ financial matters came before council, and as such they should not have been involved in discussions or votes on such matters.
- Inside and Outside Influence:
 - ***Where a councillor has a pecuniary interest in a matter, that councillor must not vote on the matter or make recommendations on the matter.***
 - ***In addition, a councillor with a pecuniary interest in a matter must not use his or her office to influence others outside council.***
- Confidentiality:
 - Councillors must not breach confidentiality.
- Gifts:
 - ***Council members must not, directly or indirectly, accept a fee, gift, or personal benefit.***
 - Remember that the *Community Charter* only governs elected officials; it does not govern staff.
- Local Government Staff:
 - The key legal source here is the common law, namely (a) conflict of interest law and (b) employment law.
 - The employee owes a duty of fidelity and loyalty to his or her employer, and the employee may be in breach of this duty where a conflict of interest arises.
 - Staff can be liable personally if they act in a grossly negligent manner, though instances of gross negligence have been rare in the jurisprudence.
- Transparency:
 - ***Transparency will in many cases be a local government’s best friend.***
 - ***Through transparency, the government avoids lawsuits and unnecessary delays.***
 - Also, local governments need to shine the light internally.
 - Doing so can reveal vulnerabilities and improve internal governance.
- *Criminal Code*:
 - The key provisions are sections 122 and 123.
 - Municipal corruption is not defined in the *Criminal Code*.

- These are indictable offences, punishable by up to first years' imprisonment.
- ***If the goal is to root out systemic vulnerability to corruption, one should not rely on the criminal law.***
- Proving a criminal case is incredibly difficult and complex.
- The criminal standard of proof is an onerous and burdensome one.
- Other responses are needed in addition to the criminal law response.
- Municipal Corruption:
 - This captures both the demand and supply side of the transaction.
 - It casts a broad net.
 - Note that one is guilty of an offence one suppresses documents—this comes back to transparency.
- Breach of Trust by Public Officer:
 - The Supreme Court of Canada has recognized this as an ancient and important sanction in law.
 - The elements of the crime remain uncertain.
 - However, the Court in *Boulanger* clarified the law in this area.
 - The Supreme Court of Canada has been clear that there is “soft” regulation in place that will capture improper conduct that does not reach the level of being criminal in nature.
 - ***The courts have also been clear that there is room for honest errors; the courts are deferential towards those who make decisions in good faith, even if those decisions are not perfect.***
 - The line between a “right” decision and a “wrong” decision is not always clear.
 - Generally, courts will not interfere with a decision unless there is truly something “rotten” at the core of the decision.
- Application in Small Communities:
 - ***There is some flexibility in terms of how strictly legal standards will be applied in small communities.***
 - This is an important consideration, particularly in Aboriginal communities.

Nathalie Baker:

- I will be discussing the tools in the hands of the public to ensure the government is acting appropriately and within its powers.
- The first tool is the enabling legislation of the municipality.
- ***Municipalities are “creatures of statute”, meaning that their power derives entirely from the province through enabling legislation.***
- Legislation provides for a mechanism by which persons can challenge a municipality’s decision on the basis of illegality.
- There is a significant flaw, however: the time limits are very, very short.

- By the time the public has had the time to digest the effect of a decision, the time limit may have expired.
- For example, the *Charter* imposes a one-month time limit to commence an action.
- However, an alternative route is judicial review.
- In BC, we have the *Judicial Review Procedures Act* (JRPA).
- This applies not only to council decisions, but also to staff decisions (e.g., refusal of a licence).
- ***There is no time limit under the JRPA.***
- ***In Dunsmuir, the Supreme Court of Canada explained that the purpose of judicial review is to ensure the legality, reasonableness, and fairness of public decisions.***
- There are four grounds on which a given action or decision can be challenged.
- **(1) Jurisdiction**
 - **Key question:** Does the decision maker have the power to do what he or she purports to have done?
 - These issues arise when the decision maker is called upon to interpret the enabling legislation to decide whether he or she has a certain power.
 - ***The court accords no deference to the decision maker on such questions—the standard is one of correctness.***
 - These cases focus on interpretation of the legislation, and the court engages in its own inquiry.
- **(2) Reasonableness**
 - **Key question:** Was the decision reasonable?
 - ***The rationale for the reasonableness review is that local municipalities do not have unfettered discretion and cannot be permitted to make unreasonable decisions: Catalyst Paper.***
 - The delegator of the power is presumed to have intended that the power would be exercised only in a reasonable manner.
 - The decision maker cannot, for example, take into consideration irrelevant factors.
 - However, it is not easy to set aside a decision on grounds of unreasonableness—it is a high bar.
 - This is particularly the case when the subject matter is a bylaw.
 - ***Only if the bylaw is one that no reasonable body could have passed will the bylaw be set aside: Catalyst Paper.***
 - This is all the more true in the City of Vancouver, as bylaws in Vancouver cannot be set aside for unreasonableness unless there is bad faith: *Vancouver Charter*.
 - Bad faith is extremely difficult to demonstrate; in fact, there is a presumption of good faith, and a finding of good faith precludes a finding of bad faith.
 - We are seeing a shift in judicial decisions towards increasing deference.
 - The courts have even applied this deferential standard to unelected actors.

- This is curious, as an unelected staff member cannot be “voted out” (i.e., the “ballot box” remedy is not available).
- **(3) Procedural Requirements**
 - **Key question:** Have the necessary procedural requirements been satisfied?
 - If not, the decision may be set aside.
 - *London (City) v RSJ Holdings:*
 - Council held two *in camera* meetings and then approved a bylaw.
 - The Court set aside the decision for failing to meet procedural requirements.
 - *Meetings must be held in a manner that is open to the public—the decision must be transparent.*
 - *When council acts in secrecy, it undermines the legitimacy of its decisions.*
 - *Even where they have the power the do so, municipalities ought not act in secrecy.*
 - Secrecy can tip the balance in favour of setting aside a decision.
 - *The takeaway is that transparency is critical from a risk management perspective.*
- **(4) Fairness**
 - **Key question:** Was the decision fair?
 - This often arises in the context of public hearings, licencing, etc.
 - *Although there is no requirement in the enabling legislation, the common law imposes a requirement that the public have access to the documents used by the council in making its decision.*
 - The Court in *Pitt Polder* highlighted that there must be full disclosure.
 - *Transparency tends to enhance the public’s acceptance of a municipality’s decisions.*
 - *If the public has been given full disclosure, then even if the public does not ultimately agree with the decision, they will accept its legitimacy.*
 - The remedy where there is a disagreement with the substance of a decision is often found at the ballot box.
 - *In terms of risk management, the most simple and fundamental tool is transparency.*
 - *Jordan v City of Vancouver:*
 - Had the City extended the “simple courtesy” of responding to Mr. Jordan, this expensive and time-consuming litigation could have been avoided.
 - The Court refused to award costs to the City, despite the fact that the defamation claim made against it was ultimately dismissed, because the City deliberately failed to reply to the complainant and was not open and transparent.

Ethical Behaviour from a Practitioner's Perspective | Jerry Berry

- ***Traditional tools and policies may no longer be sufficient to prevent corruption.***
- It is said that “Canadian municipal government is a mess”.
- I am concerned that if people lose faith in their elected officials, they will lose faith in democracy.
- Local governments can only raise money through a referendum.
- This necessitates that there be faith in local governments—otherwise, nothing can get done.
- ***To deal with pressing public issues, we need the public to trust in its local government.***
- “Corruption” is any use of authority that harms the public interest (i.e., the RCMP definition).
- *Question 1:*
 - Which agency/office is responsible for ethical monitoring and enforcement in BC?
- *Answer:*
 - Nobody.
- Who defines responsible behaviour in the first place?
- Local government is fundamentally different from both senior government and private business.
- The entire system of local government is based on shared and collective accountability.
- Everything in local government is determined by majority vote.
- ***But the majority must respect minority rights.***
- ***If there is no respect for minority rights, we end up with a tyranny of the majority.***
- We operate by the Westminster Model, which relies heavily on “convention”.
- Unfortunately, there is no guiding theory for public administration.
- In the municipal sphere, employees are accountable to elected officials.
- Council is supreme, whether its actions are ethically supportable or not.
- ***One of the problems with the shared accountability model is that it can translate into no accountability.***
- What is the role of staff?
- ***Nothing is more dangerous than a public service that is technically fit but ethically flabby.***
- It is unfortunate that we do not do any training for public servants on ethics.
- The moral responsibility of individual public servants is not a feature of the Westminster model.
- It comes down to this: as a staff member, whom do you serve?
- The staff serve the council, and problems arise where the council itself is not acting ethically.

- If a staff member takes the view that his or her superiors are acting improperly, and the individual decides to speak up, that can be a career-limiting move.
- ***Your options in the face of ethically questionable behaviour are to quit or submit.***
- If you submit, you may well lose your job.
- There are no whistleblower protections for staff, unless council has put in place such rules.
- Yet, there are numerous examples of bad behaviour in public service.
- There are, however, improvements with respect to harassment policies: staff now have a positive duty to report in the face of harassment.
- However, there may not be adequate protections in place.
- We are seeing a trend towards lack of civility and respect in local government.
- We do not have laws or policies that deal with changes in technology, and this is a problem.
- We have not adjudicated the balance between freedom of expression and other values.
- Two weeks ago, municipalities in BC held a conference on respectful leadership—this is an encouraging development and a step in the right direction.
- What do you do when a municipality sees no need to adopt a code of conduct?
- ***I believe there should be a provincial code of conduct for local government officials, something to provide guidance.***
- The law says that election contributions are not a conflict.
- But nothing is absolute.
- Each case must be looked at in light of the surrounding circumstances.
- ***We need an independent body that can assist with navigating issues involving potential conflicts.***
- ***Political neutrality is necessary, and staff members should not be involved in electioneering.***
- Special interest groups have figured out that they can elect their own councils.
- In Britain, there is a three-tiered system that provides guidance on which positions can be involved in electioneering.
- Such a system is preferable compared to the model currently in place.
- *Question:*
 - Who is responsible for determining whether a conflict of interest exists in local government?
- *Answer:*
 - The individual.
- ***The only party that is responsible for determining whether a conflict of interest exists is the individual.***
- The BC Conflict of Interest Commission provides a great deal of helpful, useful information.

- The reality is that nobody understands the balance between the Freedom of Information regime and privacy rights.
- An increasing trend, and one that is problematic, is the use of confidentiality agreements to preclude staff from speaking in a transparent manner about potential problems.
- There is also a huge problem with council members having no distinction between their public and private lives (this is most acute in the sphere of social media).
- How do we rebuild public trust in government?
- I am concerned about the centralization of media and the shutting down of local media organizations.
- ***We need to do a better job on ethics training.***
- We ought to teach civics in school.
- ***Education is essential.***
- ***Walking the talk is important: good behaviours are just as contagious as bad.***
- ***The law is merely the minimum standard.***
- Recusing oneself in the face of a potential conflict of interest is a prudent choice where there is any lingering doubt.
- Finally, we need meaningful consequences for misconduct.

Fraud Detection Methods for the Public Sector | Jacklyn Davies

- Fraud Risk Management framework
 - (1) **Prevention**
 - (2) **Detection**
 - (3) **Response**
- Environment
 - *An **ethical environment** is the number one prevention mechanism for avoiding fraud.*
 - There are both internal and external pressures acting on an organization.
 - Consider what is unique to the public sector:
 - Highly structured
 - Complex
 - Public accountability and scrutiny
 - “Resource squeeze” (i.e., “having to do less with more”)
 - *Question:*
 - Which of the following most strongly influences the decisions you make?
 - Expectations of superiors?
 - Internal controls and policies?
 - Personal ethics?
 - Other?
 - *Answer:*
 - 63% selected personal ethics.
 - Red flags in the environment
 - Weak ethical environment
 - Pressure to achieve a given result.
 - Who commits fraud?
 - Studies show that the group most vulnerable to committing fraud are: aged 36 to 45, male, 1 to 5 years of employment, manager/employee.
 - Cressey’s fraud triangle
 - Consists of three elements:
 - (1) pressure,
 - (2) rationalization, and
 - (3) opportunity.
 - Whenever there is fraud, these three elements exist.
 - (1) **Pressure**
 - External influences on an individual that cannot be solved by other means (e.g., keeping up appearances, maintaining status, personal relationships, addiction, illness).

- Elected officials want to get re-elected—that is the overriding pressure on them.
 - Pressure is separate and distinct from the organization itself.
- (2) **Rationalization**
 - Internal reasoning to convince oneself that the act is justified:
 - Lack of fear of being caught
 - Passed over for promotions or awards
 - Taken for granted in their role
 - “Everyone else is doing it”
 - “Just this one time”
- (3) **Opportunity**
 - Does the person have the opportunity to commit fraud?
 - This is the element over which the organization has the greatest influence.
 - *Often it is the element of controls that is lacking.*
 - *Local governments must ensure controls are in place, and that those controls are robust.*
- Behavioural red flags:
 - Changes in an individual’s behaviour
 - Domineering or “wheeler-dealer” attitude
 - Control issues
 - Secretive or social isolation
- Organizations at risk
 - Reliance on trust as a control
 - *Trust is not a control.*
 - Lack of controls
 - Significant changes in the organization without reassessment of risks.
- Fraud Schemes
 - *Question:*
 - Which is the biggest threat to your organization
 - Fraudulent financial reporting
 - Procurement fraud
 - Fraudulent disbursements
 - Payroll or misreported time
 - *Answer:*
 - 27% selected payroll or misreported time.
 - The rest were spread relatively evenly among the remaining options.
 - *Asset misappropriation is the leading type of fraud in terms of frequency of occurrence.*

- *However, the dollar value is greatest with respect to financial statement fraud (i.e., the Enrons of the world).*
- Example fraud schemes
 - (1) **Procurement fraud**
 - This is a huge problem in the public sector.
 - The RFP or competitive bid process can be manipulated.
 - A best practice is often adopted: any contract worth over \$25,000 is made subject to an RFP process.
 - But this often gets abused, as the project gets broken up into multiple pieces so as to fall below the triggering amount.
 - Red flags:
 - Bid tailoring to preselect the vendor
 - Unusually close relationships with the vendor
 - Bid amounts are suspiciously close
 - Same vendor for excessive timeframe
 - Variances to budget and contract
 - (2) **Performance fraud**
 - This type of fraud occurs when the contract is being executed, and may involve:
 - Non-conforming goods or services
 - Change order abuse
 - Cost mischarging
 - *In terms of controls, the local government needs to monitor and provide oversight—there must be someone responsible for ensuring that the contract is being executed according to the terms of the agreement.*
 - Red flags:
 - The contractor is slow or does not provide adequate support for charges
 - Unusually high incidence of product failure
 - Employee is acting outside scope of duties
 - Questionable documentation
 - (3) **False/ghost vendors**
 - This may involve setting up a vendor in the system that is not a valid vendor.
 - It may be that invoices are received for goods or services not actually provided.
 - This is typically only seen outside the formal RFP process
 - *To detect these, local governments should examine the vendor list closely, as well as ensure there is a segregation of duties between (a) the*

person setting up the vendors and (b) the person processing the payments.

- Red flags:
 - Invoices are produced from off-the-counter accounting programs
 - Lack of detail for goods or services on the invoices
 - Contact information is vague or the address for the vendor is in a residential area or is a post office box
- (4) **Program, grant, or benefit fraud**
 - Situation in which monies identified for a specific purpose are not used for that purpose.
 - This could relate to funds received by the local government or granted by the local government.
 - Improper transfers from trust accounts are not uncommon.
 - Red flags:
 - Information supporting the expenditures is not provided or is incomplete
 - Supporting documents do not conform to expectations
 - Large unexplained variances
- (5) **Cash and cheque fraud**
 - This includes the following:
 - Skimming
 - Lapping
 - Cheque altering
 - This often arises where an individual is paying down his or her own credit card.
 - *The organization needs not only to set up appropriate controls, but also to apply those controls in a fair and equitable manner.*
 - Red flags:
 - Cash receipts do not match volume of usage
 - Adjustments to cash reports
 - Delayed deposits
 - Missing documentation
 - Customer complaints
 - *Having in place a mandatory vacation policy is important: it helps uncover lapping schemes.*
- (6) **Payroll-related fraud**
 - Payroll fraud can include the following:
 - Ghost employees
 - Often this will be a family member
 - Misreporting of time

- This is increasingly prevalent
 - Lack of performance
 - Red flags:
 - Person does not have an email account
 - There is no visible work product
 - Lack of performance
 - Not able to contact employee
 - Internet traffic
- (7) **Expense claims**
 - This form of fraud requires the individual to submit a false claim for expenses that were not incurred during the execution of their duties:
 - Claiming for personal items
 - Duplicate claims
 - “Lost” receipts
 - This is a common form of fraud because it is easy to carry out.
 - Red flags:
 - Copies of receipts rather than originals
 - Duplicate receipts
 - Providing credit card statements rather than the transaction receipt
 - Unusual number of adjustments to expense claims
 - Occurrence of expense does not match calendar
- Methods of Detection
 - The following are the top three detection methods:
 - (1) **Tips – employees or third parties**
 - *Nearly 70% of fraud is uncovered through tips.*
 - *Employees must be educated and empowered to identify when something is wrong, and there must be a culture that encourages and protects those who speak up.*
 - (2) **Management review**
 - The tone needs to be set from the top.
 - This falls by the wayside where leaders get “too busy”.
 - (3) **Internal audit**
 - There is said to be a 20/60/20 rule:
 - 20% will never do wrong
 - 60% use “situational ethics” to make decisions
 - 20% will always find a way to “game the system”
 - The 60% group presents an opportunity to make a big difference.

Questions from Participants:

- *Question 1:*
 - In your list of red flags, you do not mention policies and procedures—is there a reason for this?
- *Response:*
 - The existence of policies and procedures is certainly important.
 - The relevant red flag would probably be non-adherence to policies.
 - ***However, you can have the best policies and procedures in place, but if employees do not know how to access them, those measures are meaningless.***
 - ***Also, the fact that there are policies and procedures in place does not necessarily mean people are following them.***
 - ***The organization needs to ensure those policies and procedures are being used in fact.***
- *Question 2:*
 - Many individuals appear to be unaware of the issues related to the digital world—do you have comments on this?
- *Response:*
 - Data analytics are a powerful way to detect fraud.
 - This can assist in uncovering forced entries, round numbers, entries that do not make sense in the context, etc.
 - There is also an issue that arises where there are incompatible systems: where a person has to manage a transition from one system to another, that is a juncture where fraud can arise.
 - There needs to be a segregation of duties.
- *Question 3:*
 - What was the name of the law of numbers?
- *Response:*
 - Benford's law. This law pertains to n
 - .
 -
 - umber distributions. As humans, we tend to select the same numbers again and again when asked to provide a random digit. This goes against that natural distribution of numbers when selected in a truly random manner, and as such this discrepancy can be used to uncover fraud.

Mitigating the Risks of Fraud: Due Diligence Requirements | Yvon Dandurand

- I will present a risk mitigation approach to fraud and corruption prevention.
- We will consider why it is important to emphasize prevention and how this is relevant to municipal governments in particular.
- We will also discuss the main elements of a robust fraud and corruption risk-mitigation strategy.
- UNCAC
 - The UN Convention Against Corruption was adopted in 2003.
 - It is the only legally binding universal instrument.
 - It is a unique tool for developing comprehensive responses to a complex problem.
 - There is an important connection between corruption and organized crime.
 - The link between the two is made explicit in other UN instruments, and preventing corruption is seen as a key means of discouraging organized crime.
- Types of corruption listed in the UNCAC:
 - (1) Bribery in the public sector
 - (2) Bribery in the private sector
 - (3) Fraud
 - (4) Trading in influence
 - (5) Abuse of functions
 - (6) Illicit enrichment
 - *The first five listed above must be criminalized in each state; the sixth is not necessarily criminalized in any given state.
- ***The use of the criminal law should be viewed a last resort.***
- ***But that does not mean the criminal law should not be a potential tool in response to wrongdoing.***
- The UNCAC acknowledges this.
- ***International conventions are an important means by which to force governments to adopt measures they would not otherwise adopt.***
- But who makes laws and policies? It is precisely those upon whom we are trying to impose restrictions (i.e., political leaders/elected officials).
- Many countries actually create exceptions in their laws favouring politicians and judges; this undermines the very purpose animating those laws (i.e., to place constraints on government officials and ensure that they carry out their duties in a fair and just manner).
- Accordingly, international conventions can be an effective way of demonstrating that certain laws are unjust.
- The UN provides a useful checklist for preventing fraud and corruption in major events (e.g., Olympics, World Cup).
- *Question:*

- Has your organization been embroiled in the last three years in a matter involving fraud or corruption?
- I am willing to bet that the answer is yes, and that there were many red flags, but those red flags were ignored.
- I am also willing to bet that there were people who came forward in an attempt to bring the issue to light, but they too were ignored.
- ***The minute we start talking about corruption, it makes people uncomfortable—simply talking about the issue can lead others to assume that the organization discussing the matter is corrupt, even if that is not the case.***
- It is a matter of optics.
- A municipal council does not want to bring negative attention to itself.
- All organizations face immense pressures, and all organizations are concerned about their brand.
- Risk Management
 - ***Risk management is about developing a readiness to deal with unexpected emergencies or events.***
 - ***Managing risks of fraud and corruption needs to be part of a broader risk management strategy.***
 - ***It must be an integrated approach.***
 - Corruption and fraud proofing your organization, its processes, systems, operations, and standard practice.
 - Six questions to ask when “proofing” an organization:
 - (1) What are the risks?
 - (2) How vulnerable is your organization to those risks?
 - (3) What is your organization’s actual exposure?
 - (4) What is your organization’s appetite for risk?
 - (5) What is your organization willing to do about these risks?
 - (6) What is it that your organization cannot afford *not* to prevent?
 - Understanding organizational vulnerability:
 - ***Municipal and other organizations are vulnerable in different ways.***
 - Corruption and fraud are only two types of risks; there are many others.
 - ***It makes no sense to have a risk prevention strategy solely for fraud and corruption; the organization must instead adopt an integrated approach.***
 - Risk management is a continuous cycle:
 - (1) Identify risks
 - (2) Analyze exposure
 - (3) Develop a risk mitigation strategy
 - (4) Implement the risk mitigation strategy
 - (5) Monitor compliance
 - (6) Conduct integrity testing

- *Think about it this way: if you have built a canoe to cross a river in the event of a flood, you had better test that canoe before the flood comes; the same goes for risk management systems.*
- Testing the system is a form of auditing.
- *Sometimes, unfortunately, a worthwhile measure will create a risk through the backdoor.*
- *The goal is not simply to have a high number of risk mitigation measures; the goal is to ensure the measures implemented are cohesive and effective.*
- *Question:*
 - Does your organization have an explicit plan for risk mitigation?
- *Response:*
 - 21% responded yes.
 - 54% responded no.
 - The remainder responded that they did not know.
- If you answered “no”, why the hell not?
- If you answered “I don’t know”, what does that tell you about your organization?
- If you answered “yes”, we must ask further questions (e.g., Has the plan been tested? How old is it? Is it comprehensive?)
- ***Risk identification and assessment is the foundation for fraud and corruption prevention.***
- *Question:*
 - Has your organization recently gone through a process to identify the nature of the fraud/corruption risks it is facing and the extent of its own exposure?
- *Response:*
 - 11% responded yes.
 - 71% responded no.
 - The remainder responded that they did not know.
- This tells us that something needs to change.
- The Building Blocks of a Risk Management Strategy:
 - (1) General prevention measures
 - (2) Personnel and human resources management (including the role of unions)
 - (3) Financial management
 - (4) Public procurement
 - (5) Major project management (e.g., infrastructure, major partnerships, etc.)
 - (6) Electoral financing
 - (7) Detection and response
- Municipalities often have a grant program—such programs raise fraud and corruption risk.
- Municipal governments also have responsibility for policing, and police have responsibility for investigating corruption—this too raises knotty complexities.

- Other types of organizations do not necessarily face similar risks.
- General Prevention Measures:
 - Are your leaders and managers demonstrating a commitment to corruption prevention? (optics)
 - ***This commitment needs to be a visible one.***
 - Has the responsibility for anti-corruption and fraud prevention planning and activities been clearly established in your organization?
 - Often, such responsibilities are dispersed widely.
 - ***The problem with such an approach is this: where everyone is responsible, no one is responsible.***
 - Are anti-corruption policies in place? (proofing)
 - ***There needs to be proofing of all regulations and policies, one by one, to test whether they are creating opportunities for corruption.***
 - Are these policies well known and understood within the organization?
 - Has the organization conducted its own risk assessment exercise (recently)?
 - Has the organization adopted a plan or strategy to mitigate fraud and corruption? Is it being implemented? Is it being reviewed (regularly)?
 - Is someone monitoring compliance with related policies?
 - *Question:*
 - On a scale of one to five (with five being very strong), how well is your organization doing in terms of setting in place these essential general prevention measures?
 - *Response:*
 - 8% responded 1
 - 27% responded 2
 - 35% responded 3
 - 15% responded 4
 - 15% responded 5
 - ***There needs to be someone responsible for monitoring compliance.***
 - What about management override (i.e., management’s ability to “call off” general prevention measures in specific circumstances)?
 - ***There is a temptation to avoid reputational risk by overriding the whole risk mitigation system.***
 - ***Overriding the system does not assist in preventing future corruption.***
 - Are managers and superiors recognizing their role in ensuring compliance and in detecting and reporting issues?
 - Are effective supervision and checking practices in place?
 - ***There must be measures in place to encourage whistleblowing.***
 - ***But whistleblower measures, on their own, will not be sufficient.***

- *There must also be in place proactive means of detecting corruption—through data analytics, internal audits, checks, etc.*
- *The largest number of cases of detected wrongdoing come from tips, internal or external.*
- *Ask yourself: how safe is it in your organization to report suspicious incidents?*
- Those who blow the whistle are subject to many forms of retaliation.
- Organizations should take steps to protect whistleblowers.
- *Question:*
 - If you had reason to suspect that someone in your organization was involved in corruption or fraud, would you report them?
- *Response:*
 - 52% said they would report them.
 - 22% said they probably would report them.
 - 15% said they were not sure.
 - 5% said they would not report them.
- Other vulnerabilities:
 - Partners and associates (choice of partners, due diligence, blacklisting)
 - Dealing with consultants, agents, intermediaries
 - Paying attention to lobbyists
 - Attention to politically exposed persons
 - Political campaign financing
- *Question:*
 - Has your organization adopted and implement effective measures concerning politically exposed persons?
- *Response:*
 - 70% responded no.
- Human Resources:
 - Recruitment
 - Conflicts of interest policies
 - Compulsory disclosure systems
 - Professional standards
 - Training
 - Identifying vulnerable positions
 - Identifying vulnerable persons within the organization (early intervention here is critical)
- *Question:*
 - How confident are you that your organization is well-equipped to defend itself against the risk of fraud and corruption?
- *Response:*
 - 41% said they are somewhat confident.

- 21% said they are terrified.

Tools and Mechanisms for Responding to Conflict of Interest, Fraud & Corruption | Panel Discussion

Panellists:

- **Jay Chalke**, Ombudsperson, BC
- **Inspector Trevor Dusterhoft**, RCMP
- **Mark Tatchell**, Chief Administrative Officer, Village of Tahsis
- **Mayor Richard Walton**, District of North Vancouver

Jay Chalke:

- *We like to think of fraud and corruption as things that happens somewhere else.*
- *But we must realize that fraud and corruption are a lot closer to home than one might think.*
- Fraud and corruption are not “somebody else’s problem”.
- *The resonating message from the Charbonneau Commission is that it is easier to prevent fraud and corruption than to vanquish it after it takes hold.*
- The Office of the Ombudsperson is doing its part to investigate fraud and corruption.
- I monitor reports of other ombudspersons around the world, and it is clear that fraud and corruption are key areas of investigation for all ombudspersons.
- There is a tendency to think of fraud and corruption as something more grand and sinister than what happens in our own communities.
- But corruption is simply “giving or accepting some kind of advantage that is inconsistent with a public duty”.
- Thus, corruption is a more ordinary occurrence than one might think.
- Mundane matters can nonetheless constitute corruption.
- The Office of the Ombudsperson is well positioned to investigate corruption-related issues, as it has a broad mandate, encompassing any act of a public authority.
- The Office has broad investigative and procedural powers.
- Where a complaint is substantiated, the Office has considerable persuasive power to bring about positive change.
- The Office balances competing concerns, and the Office will consider the role it can play and whether it will undertake an investigation.
- The Office must neither be too quick to discount allegations nor be too quick to refer matters to the police.
- *The Office’s focus in an investigation is on the remedial aspect: how to prevent future incidents and how to build better systems.*
- The focus is on whether there is merit to the allegation and whether there are positive recommendations that could be made to lead to organizational improvements.

- Turning to conflicts of interest, our approach would generally be the same.
- Often, conflicts of interest arise as a result of inadvertent behaviour.
- There is a legal structure for declaring a conflict, and the goal of that scheme is to create certainty.
- However, it is clear that one might not fall within the legal definition of being in a “conflict of interest”, yet still be in a questionable position.
- The key is to ensure the public’s confidence in public decision making.
- The Office has released guidance on when having a closed meeting is appropriate.
- **In camera meetings should be used sparingly.**
- In March, the Office will be releasing guidance on conflicts on interest in small communities.

Inspector Trevor Dusterhoft:

- When allegations of fraud arise, often one must dig deeper below the surface.
- The RCMP has anti-fraud as a central focus of its operations.
- There are four key points:
- (1) What do the police do when they are informed of an allegation of fraud or corruption?
 - ***Rarely do complainants come forward.***
 - ***Typically, prospective complainants fear losing their job.***
 - ***Individuals are more likely to come forward post-employment.***
 - ***One of the hardest elements to prove when dealing with allegations of fraud is that there was a marked departure from the norm, and that there is truly wrongful conduct, not simply a poor judgment call.***
- (2) Are there thresholds that must be met before the RCMP takes on a case?
 - There are no such thresholds.
 - For example, there are no monetary thresholds.
 - ***As we have discussed today, matters of fraud and corruption tend to snowball (i.e., the “paperclip theory”).***
 - Accordingly, the RCMP may investigate matters that may be relatively small in terms of monetary value.
- (3) What information does the RCMP like to know before taking on a case?
 - The RCMP wants to ensure there are witnesses willing to provide information.
 - Fraud and corruption investigations can be lengthy due to the efforts needed to collect witnesses, obtain search warrants, receive documentation (e.g., bank records), etc.
 - ***Fraud investigations are not a short-term matter.***
 - This is why it is important to keep expertise in the police force.
 - The RCMP has struggled to retain expertise.
- (4) What is the significance of whistleblowing?

- The *Criminal Code* does contain protections for whistleblowers, but those protections are not sufficient.
- Whistleblowing is critically important.

Mark Tatchell:

- I will be discussing the *Auditor General for Local Government Act* (AGLG Act).
- I will also discuss the risks endemic to small municipal governments.
- ***The AGLG Act, which was enacted in 2012, provides for performance audits of local governments and makes those audits public.***
- Performance audits are distinct from financial audits or forensic audits.
- The AGLG Act now allows for the sharing of potential evidence of a provincial offence uncovered during the performance audit.
- The AGLG Act does not, however, contain provisions empowering members of the public to bring forward complaints to the AGLG.
- But, the Office of the AGLG tracks emerging issues affecting local governments, and this can potentially respond to concerns of individuals.
- With respect to conflict of interest, the AGLG has identified conflicts in at least three reports, though it has not taken any action in response to these issues.
- The AGLG Act does not explicitly give the AGLG to pronounce on conflicts of interest.
- One key value in having the audit process is that it assists in laying out a given story clearly and comprehensively.
- ***The AGLG has the power to enter into agreements with local governments in order to perform an audit.***
- This means that a local government could proactively come to the AGLG to request that an audit be performed.
- ***In 2017, the Minister will be reviewing the AGLG Act—this will be an important opportunity to assess whether the AGLG Act is fulfilling its potential.***
- ***It can be particularly challenging for small local governments to meet demands to develop and implement robust policies and procedures.***
- ***Capacity is a huge issue.***

Mayor Richard Walton:

- The District of North Vancouver is one of the few municipalities that have a full-time internal auditor.
- One of the challenges we encountered in the past was that one councillor was constantly trying to undermine the council.
- It wreaked havoc with trust in the council.

- As mayor, part of my role was to restore trust in the local government.
- ***With one mistake, a local government's image can be marred.***
- ***Those in public office have an important duty to ensure that the organization's culture is based on trust.***
- ***A good control system is a way of protecting your employees from suspicion.***
- ***The worst thing an employer can do is to leave employees out to dry by not having a robust control system in place.***
- The District of North Vancouver's conflict of interest policy applies to *everyone* in the organization.
- The reporting of incidents of improper behaviour is critical.
- ***If somebody within the organization wants to blow the whistle, he or she needs to know clearly who to go to.***
- And the individual should not be forced into the awkward position of having to go to someone who is involved in the alleged misconduct or who may be in a position to bring about adverse consequences for the individual.
- ***The internal audit function is critical.***
- In the District of North Vancouver, the internal auditor reports to the CFO and CAO, and is not bound by political considerations.
- Election funding is another important consideration.
- I, for one, do not accept political contributions.
- ***The human resources function is also essential.***
- ***The best prevention against fraud or corruption is to develop a strong culture.***

Questions from Participants:

- ***Question 1:***
 - Are there things we can do to address the issue of campaign financing?
- ***Richard Walton:***
 - It is difficult to legislate anything other than the transparent disclosure of campaign financing.
- ***Question 2:***
 - In the case of a small aboriginal community, is it necessarily the case that "wearing more than one hat" is a conflict of interest?
- ***Mark Tatchell:***
 - It is sub-optimal to be in that position.
 - As a council member, you are making decisions that could lead to your own enrichment, and that is problematic.
- ***Question 3:***

- Where a city has its own police force, is there a way to deal with complaints where the city is responsible for police?
- *Trevor Dusterhoft:*
 - If there were to be a conflict of interest, the matter may be investigated by a neighbouring police force.
- *Question 4:*
 - Codes of conduct are important. What sort of central direction from the province might be helpful in ensuring that municipalities have in place robust codes of conduct?
- *Jay Chalke:*
 - When I think about provincial leadership, I think that the time has come to create a safe conduit for disclosure and investigation of allegations on behalf of the public.
 - Codes of conduct are important, but we also need a mechanism by which we can encourage people to come forward with their concerns and to then investigate those concerns.
- *Mark Tatchell:*
 - In some of the AGLG reports, there is mention of an opportunity for the AGLG to put forward best practices for how to “raise the bar” with respect to codes of conduct.
 - This might be seen as a preferable solution as compared to a statutory response.
- *Richard Walton:*
 - Where there is behaviour that goes against a code of conduct, that taxes the system.
 - Having a good employee and council code of conduct provides an important framework.
 - There needs to be a tool to bring behaviour back in line.
 - It is questionable whether a code of conduct can truly be enforced to shape human behaviour, but it does provide an important baseline.
- *Jay Chalke:*
 - What starts as a code of conduct for council can become a code of conduct for the public.
 - There needs to be civil discourse from both sides.
 - Codes of conduct can, however, be seen by members of the public as potentially stifling.

Scaling Operations for Community Growth and Significant Projects | Panel Discussion

Panellists:

- **Mindy Smith**, General Manager of Corporate Services, Fort St. John
- **Ken Bjorgaard**, Principal, K&E Business Services Inc.
- **Dianne Hunter**, City Manager, Fort St. John
- **Heather Avison**, Chief Administrative Officer, City of Terrace

Mindy Smith:

- We will be providing the practitioner's perspective on integrity and ethics.
- As practitioners in local government, we must always ask: what are we trying to achieve?
- ***In local government, the end goal is to achieve a certain quality of life.***
- Quality of life focuses on creating a vibrant, safe, healthy, active, and sustainable community.
- The government's role is to deliver essential and necessary services that promote community well-being.
- As civil servants, we are there to assist in pursuing these goals.
- Public trust rests on cost-effective service delivery (i.e., "value for money").
- Stakeholders in development include, primarily, developers and the public.
- The developer is typically interested in profits, and the public is typically interested in the health and well-being of the community.
- Processes and Regulations:
 - Municipalities are subject to a suite of legislative and other instruments.
 - Development:
 - There are six categories related to development:
 - (1) OCP amendments
 - (2) zoning amendments
 - (3) development variance permits
 - (4) development area permits
 - (5) subdivision applications
 - (6) building permits
 - Residential development varies by type and jurisdiction.
 - ***The legislated requirements are there to (1) ensure the public interest and (2) ensure consistent application of procedures.***
 - ***As much as possible, approval must be free from political influence.***
 - Challenges:
 - (1) Regulatory compliance
 - (2) Developer pressure

- Developers often challenge municipalities for not processing applications swiftly enough.
 - The direction given to staff, however, is to focus on maintaining compliance.
 - We simply will not cut corners.
 - ***The integrity of the process is of overriding importance.***
- (3) Council pressure
- (4) Added workload
- Mitigation:
 - (1) Approving Officer role as legislated
 - (2) Additional resources
 - (3) Emphasis on maintaining compliance
 - (4) Council majority required for approval
- Large Projects:
 - The large project process involves four stages:
 - (1) Budget approval
 - (2) Purchase request
 - (3) Service/goods received
 - (4) Payment
 - ***We are seeing that budgets for infrastructure are being expanded, particularly due to the broadening availability of “Build Canada” funding.***
 - ***This leads to new risks: municipalities are taking on larger projects, but they lack the capacity to handle those projects.***
- Procurement Process Best Practices:
 - (1) Best value
 - Consider lifecycle costing, quality, and expertise.
 - (2) Internal controls
 - Include separation of duties, supervisory review, and compliance audits.
 - (3) Purchasing expertise
 - Consider source product, best value assessment, and risk mitigation.
- Challenges of Large Projects:
 - (1) Regulatory compliance
 - (2) Purchasing expertise
 - (3) Tight timeframe and deadlines
 - (4) Cost escalation (market)
 - (5) Stakeholder communication

- *For all stakeholders to feel confident that we are doing the job right, we need to constantly communicate with stakeholders.*
- Mitigation:
 - (1) Pre-planning and business case development
 - (2) Follow the process
 - (3) Hire/contract expertise
 - (4) Reports to council – transparency

Heather Avison:

- Terrace has experienced astronomical growth in recent years.
- Estimates suggest that Terrace’s population might double within the next 10 years.
- ***One emerging issue for Terrace that opens up the potential for abuse of power or conflict of interest is this: LNG has changed everything, and there is a great deal of speculation.***
- As a result of the rise in new opportunities, council may tend to get a bit excited at times.
- Challenges:
 - (1) Land speculation
 - (2) Developer pressure
 - (3) Council pressure
 - (4) Added workload
- Mitigation:
 - (1) Additional resources
 - (2) Emphasis on maintaining compliance
 - (3) Council majority required for approval
 - (4) Option to re-purchase
- Skeena Industrial Development Park Case Study:
 - Terrace holds land that was historically intended to be put towards high-value uses.
 - But now, there is considerable demand for low-value uses of land (e.g., for placing pipelines).
 - There is a temptation to give in and to put the land towards a low-value use.
 - We are now in a position where we have to remind councillors that this land must not be put towards such low-value use.
 - ***This gives rise to a further difficulty: lack of internal expertise.***
 - We did not have the expertise to protect the land from becoming subject to speculation.
 - ***At its core, this issue is about ensuring that short-term interests do not prevail over long-term interests.***

- *Finally, transparency is critical.*

Dianne Hunter:

- We have experienced fraud and corruption at both the staff and the council level in Fort St. John.
- ***More work needs to be done around education and the development and implementation of robust policies.***
- Terrace and Fort St. John are in similar positions in the sense that both are subject to powerful external pressures.
- While Terrace is involved in LNG, Fort St. John is involved in natural gas.
- ***The Icarus phenomenon for local government: sometimes, in trying to do the right thing for your community, you are flying pretty close to the sun. One must be careful not to get burned.***
- Large projects are not always solely under the municipality's influence.
- The projects in which Fort St. John is involved are multi-billion dollar projects, comprising a range of stakeholders and competing interests.
- The Site C project, for example, is one such project.
- ***The process of building relationships can be precarious.***
- One approach is to build a relationship with the *regulators*.
- An alternative approach is to build a relationship with the *proponents*.
- ***The only way the municipality can get to the bargaining table is to try to build relationships.***
- There is not duty at law to accommodate municipalities.
- ***Proximity in relationships, however, can lead to problems.***
- ***One can go too far in trying to establish a relationship.***
- ***The question then becomes: who is influencing whom?***
- The City attempts to influence industry to protect the community, and industry attempts to influence the City to advance industry's interests, and this creates a cycle.
- It quickly becomes a slippery slope.
- ***As they say, "The road to hell is paved with good intentions."***
- There is no clear guidance as to when one crosses the line.
- This is the reality that we face, everyday.
- It is important for all municipalities to have a robust discussion about ethics.
- Doing so often feels uncomfortable, but it needs to be done.
- It can be hard to say "no" to someone else.
- The day I worry first and foremost about keeping my job is the day I am not doing my job right.
- Doing the right thing can be hard, but it needs to be done.

- ***Take pride in doing the right thing.***
- My goal is to keep it simple—this is done by always being guided by one’s principles.
- ***Culture is extremely important.***
- How do we mitigate the challenges?
- First, be transparent.
- ***Transparency is the overriding principle.***
- As Louis Brandeis once said, “Sunlight is the best disinfectant.”
- If there are social events involving both public and private representatives, Fort St. John has a policy that all costs will be covered by the City, not the private parties.
- We also have a policy that all travel by council must be approved, and that no councillor has his or her own travel budget.
- This is for the individual’s own protection.
- But some have criticized this policy, as it is more strict compared to the policies of other municipalities.
- ***Transparency is a mitigation measure to which we should all adhere.***

Ken Bjorgaard:

- I will touch on the difficulties large projects bring along.
- Without fail, every developer thinks that its project is doing the community good.
- There are several key considerations when considering development:
 - (1) Is new construction or growth in itself a sufficient community good?
 - (2) Developers and local governments are looking for certainty
 - (3) Impact of development on the community
 - (4) Development costs charges pay only for core infrastructure
 - (5) Incremental impact of growth on communities.
- Both the developer and the municipality are trying to achieve a balance.
- Under the *Local Government Act*, council must consider the impact of large projects.
- Council also must deal with public pressures.
- There are certain developments that the public opposes.
- ***Council must hear both sides of the story.***
- This is fundamentally what the process is about: ensuring council hears both sides.
- There are complexities in managing projects:
 - (1) Lack of time and expertise (especially in smaller communities)
 - (2) Hiring external expertise versus internal accountability
 - (3) Transfer of external knowledge
 - (4) Practical application of procurement policies (guidelines)
- How do we manage those risks?
 - (1) Solid agreements needed to define relationships and keep projects on track

- (2) Rules for approving changes in scope and costs
- (3) Assign local government person with a vested interest to oversee the project
- (4) Minimize political involvement
- (5) Project management policies and procedures

Mindy Smith:

- It comes back to the 20/60/20 rule adverted to earlier.

Questions from Participants:

- *Question 1:*
 - The YMCA in downtown Vancouver provides an example of an important community benefit being successfully brought in. How do we deal with the issue of treating projects of a social nature differently from a private development project that may not have the same social benefit aspect?
- *Dianne Hunter:*
 - ***At the local government level, you fundamentally have a social agenda.***
 - ***The core focus is on the common good.***
 - The YMCA project would be weighed differently as compared to a private development project, and I think this aligns with the social agenda inherent in municipal governance.
 - It is not a matter of constructive bribery; it is a matter of understanding your community's needs.
 - Development projects may receive differential treatment based on whether there is a social aspect to the project.
- *Question 2:*
 - Terrace is presented with major new opportunities. Is this an important juncture for developing a robust approach to mitigating corruption and fraud risk?
- *Heather Avison:*
 - In a sense, we got caught flat-footed when these opportunities arose.
 - Getting those policies in place now is critical.
- *Question 3:*
 - Team-building is valuable. Do you have any comments on how to foster team-building without compromising your ethics and integrity?
- *Mindy Smith:*
 - It all depends on the organization.
 - Some municipalities adopt a policy that they do not engage in such team-building; others say that such activities are permissible, within limits.
- *Question 4:*

- “Public interest” is a problematic concept, as what is in the “public interest” is perceived differently by different people. Do you agree?
- *Mindy Smith:*
 - It is indeed complicated.
 - ***Determining what is in the public interest involves a balancing act.***
 - We simply do the best we can—that is all we can do.
- *Dianne Hunter:*
 - ***There is no such thing as a single “public interest”.***
 - There are as many “public interests” as there are stakeholders.
 - When faced with one particularly divisive issue, we decided to be Noah: we were not in favour of the flood but we were going to build the ark nonetheless.
 - When you are the decision maker, and you are called upon to make a decision for the public good, council does its best to consider all the competing perspectives on what is in the “public interest”, weigh those interests, and make a decision.
 - ***As long as the process is open and transparent, the decision will be seen as legitimate, whether or not one agrees with the substantive outcome.***
- *Question 5:*
 - Have any of you dealt with putting in place disposal of assets policies that deal with conflicts of interest and fraud?
- *Mindy Smith:*
 - Our disposal of assets policy ensures that those within our organization cannot end up acquiring the asset.
 - We use a public auction in order to avoid favouritism.
- *Question 6:*
 - Have any of the panellists had experience with someone from a foreign state bribing a local government?
- *Answer:*
 - No.

Closing Remarks

Honourable Anne Rowles

- Notes from the proceedings will be provided on the Conference, and these will be made available within a couple of weeks.
- We are interested in your suggestions as to future conference themes, how to improve our conferences, or any other insights.
- The different perspectives brought to bear on these issues were useful; even though presenters spoke to similar issues, it was not mere repetition, as they approached the issues from different perspectives.
- I wish to thank all the individuals who were involved in organizing this Conference.
- The Planning Committee has done an incredible amount of work in putting this conference together.
- Thank you to our speakers.
- Thank you to all.