

## **Liability for Misfeasance, Bad Faith and Abuse of Public Office**

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- “Bad Faith” is a ground for challenging the validity of a local government action or decision.
  - It does not require a corrupt motive.
  - Procedurally, it can be raised in an action by judicial review.
  
- Misfeasance in public office is a tort - a civil wrong entitling one to compensation for damages.
  - Procedurally, it requires an action for damages.
  - It is an intentional tort requiring deliberate unlawful conduct or intention to cause injury.
  
- Claims alleging misfeasance can raise issues for defendants and lawyers that are less routinely addressed including:
  - Representation and conflicts;
  - Insurance;
  - Availability of indemnities; and
  - Terms of indemnities.
  
- Things to Consider to help avoid claims:
  - Understand the nature of a decision and the legal authority for it:
    - Relevant considerations;
    - Limits on the authority;
    - Technical conditions or requirements.
  - Appropriately document basis for the decision, including its authority.
  - Consider making/clarifying indemnity bylaws to address allegations of misfeasance to ensure your local government is able to properly defend any claims against it and its public officers and consider if bylaw excludes misfeasance from the scope of indemnity.
  - Try not to include extraneous considerations when making a decision.
  - Try not to link a decision to inappropriate “asks”.
  - Do not delegate decisions to others unless explicitly authorized to do so.
  - Be careful with what is said and recorded.