

Conflict of Interest, Bias and Corrupt Practices

by Neil Robertson, QC

Introduction

Members of Council are elected to three year terms.^[1] Barring death or voluntary resignation, you should look forward to serving your full term. Your term of office can be cut short, however, if you are disqualified from continuing to hold office. You can be disqualified for any of the following reasons: you were not or ceased to be eligible for nomination or election; you missed all regularly scheduled Council meetings for three consecutive months, unless excused by Council; you were convicted of a serious criminal offence; you contravened an election financing bylaw, authorized by s. 145.1 of The Local Government Election Act; you failed to provide the public disclosure statement or declare a conflict of interest, when required; you ceased to reside in the city;^[2] you knowingly spent City money not authorized by Council or legally required to be paid;^[3] or you knowingly authorized borrowing in excess of the City's debt limit or a loan or guarantee that caused the City to exceed its debt limit.^[4]

This paper is confined to discussion of laws related to conflict of interest. As the quotation above shows, the foundation of the law of conflict of interest is of ancient origin. The modern expression for members of municipal council in Saskatchewan is found in the statutory law of conflict of interest, as expressed in the provincial statutes, the criminal offences of breach of trust and the common law of bias. This paper will examine these laws, with reference to case law.

The Public Trust

As a newly elected member of Council, you have been chosen by your fellow citizens to serve your community by participating as a member of its municipal government. In our representative democracy, you occupy a position of public trust. Those who voted for you presumably believe that you possess the good judgment to decide what is best for the community in the many issues you will face over the next three years. As long as you honestly try to act in the public interest, you maintain that public trust. That public trust may be impaired, however, if it appears that you are unduly influenced by private or personal interests. This can create a perception of conflict of interest between public duty and private interest, which can harm your good reputation and diminish respect for municipal government. To avoid this harm, the Saskatchewan Legislature has established laws governing conflict of interest for municipal councillors. These laws find their origin in the common law, going back hundreds of years.^[5] Adherence to these laws should preserve and promote the integrity and reputation of both municipal government in general and the individual members of council.

The Municipal Statutes

The Legislature of Saskatchewan has established rules to regulate the conduct of members of municipal council in the statutes under which Saskatchewan municipalities operate.^[6] The common purpose of these laws is to avoid any appearance of conflict on the part of members of council between their private interests and their duty to act in the public interest. The common method is to require members to disclose their private interest and then depart from council meetings whenever conflicts of interest arise. The serious nature of these laws is reflected in the penalty prescribed for deliberate breach of the rules --> This paper will try to explain the basis of the law, define its terms and discuss its application.

What is a Conflict of Interest?

Conflict of interest, as defined in the municipal statutes, is restricted to the possibility of financial gain. It may be that a member of council has a closed mind or is the captive of some special interest group on certain issues. As long as no possibility for financial gain is involved, however, that is not a matter governed by conflict of interest (although it may be relevant to legal bias or bad faith). Generally speaking, in our democracy, those questions are believed better left to be decided by the electors at the ballot box.

Defining the Terms:

A **conflict of interest** arises if you have a pecuniary interest in any matter before Council (or a committee of Council).

You have a **pecuniary interest** in a matter if you or a member of your immediate family (spouse, parent or child) or your agent or partner could make or lose money from a decision of council. This also applies if any one of them is a senior officer or has a controlling interest in a corporation which could make a financial profit or be adversely affected financially by a decision of Council.

A person is a **senior officer** of a corporation if they are the chairman or vice-chairman or the board of directors, the president, vice-president, secretary, treasurer or the general manager (whether in name or in fact).

A person has a **controlling interest** in a corporation if they own more than 25% of the voting rights to the corporation.

The **bottom line** is that if you or your family stand to make or lose money from a decision of Council, then you have a conflict of interest. Your judgment as to the public interest could be seen to be affected by your private interest.

There are, however, a number of exceptions provided in the statutes:

Statutory Exceptions to Pecuniary Interest:

- community of interest with other electors (i.e., when council sets the mill rate, you are affected the same as all other taxpayers).
- as consumer of public utility services.
- as member of non-profit organization or service club.
- any services or benefits offered by the municipality on terms common to other persons (i.e., lower transit rates for seniors and students).
- bylaw that applies to class of business, unless only business affected.
- interest in land affected by local improvements.
- member of board appointed by council (i.e., per diem payment for board of police).

- publisher of newspaper which publishes municipal advertising, provided that the regular advertising rate is charged.
- salary as council member and per diem allowances.
- shareholder in credit union or cooperative carrying on business with the municipality (since widely held company).

These exceptions recognize that there are matters which, although strictly defined may amount to a conflict of interest, are so common and inevitable that they must be accepted if council is to be able to function effectively.

Your Intention:

Finally, it must be emphasized that your intention or motive is not relevant. You may have the best of intentions and still find yourself in breach of the rules regulating conflict of interest. The courts do not consider intention of the member as a factor in deciding whether the rules have been contravened; only in determining the penalty.[\[7\]](#)

What do you do when a conflict arises?

If you believe you are in a conflict of interest on any matter which council or any of its committees is considering then you must, when the matter comes up at the meeting, disclose that you have a pecuniary interest **and** leave the meeting room while the matter is under discussion. Your departure does not affect quorum, as long as at least two members remain.

This sounds simple enough, but it assumes that you recognize your conflict beforehand. You should review the meeting agenda before the meeting and, if it appears you are in a conflict of interest on any item, advise the Clerk who will be keeping the minutes. There are two reasons for this: first, it is a poor time to be deciding whether you are in a conflict when the meeting is underway; and second, it is important that the Clerk note your declaration and departure in the minutes. This is the only official record of the meeting. Check to ensure that the minutes are complete. If it doesn't appear in the minutes, the presumption is that it did not happen. The minutes, as the official record of proceedings, are your protection against future accusations. The public disclosure of pecuniary interest and departure from the meeting while the matter is under discussion ensures that the member will not be seen to be influencing the decision of council. Your conduct in private must be just as scrupulous. It is also a breach of the law for a member to attempt in any way, whether before, during or after the meeting, to influence the voting on any question involving a matter in which the member has a pecuniary interest. You should refrain from any discussion of the matter with your colleagues on Council. Indeed, breach of this rule against private discussion may raise more suspicions of motive than participating in the public discussion at Council meetings.

If a contravention of the above rules occurs, there can be consequences both for the decision which was the subject of the pecuniary interest and for the member who breached the rules.

How is a contravention determined?

Any elector may apply to a judge of the Court of Queen's Bench to determine whether a member of Council has contravened these rules. There is a three-year limitation period for such an

application.[\[8\]](#)

The Judge hearing such an application must determine three issues:

- 1) whether the member of council has contravened the law;
- 2) whether the contravention has resulted in personal financial gain; and
- 3) whether the contravention was made through inadvertence or by reason of an honest mistake.

The answer to these three questions determines the range of consequences.

What are the consequences?

There are no legal consequences to a finding of a contravention alone. Your reputation, however, will not be enhanced.

If the contravention has resulted in personal financial gain, then the judge may require restitution. If the contravention resulted in personal financial gain and was deliberate, then the judge must declare the seat of the member of council vacant. The judge may also disqualify the member from holding municipal office for up to three years and may award costs of the court application.

Public Disclosure of Land Holdings

There is another requirement in the municipal statutes for disclosure of property holdings which applies only to cities and to those other municipalities which have, by bylaw, provided that the requirement applies to them.[\[9\]](#) This requires every member of council to complete a form listing all land and buildings owned by the member or the member's spouse or any corporation of which they are a director or senior officer or have a controlling interest. This form must be filed with the clerk or administrator and updated within thirty days of any disposal or acquisition of land or buildings.

Contravention of this requirement is an offence, punishable by the fine. If the judge finds that the contravention was deliberate, the member must be removed from office and may be disqualified from holding municipal office for up to three years.

Want to read more? [Click here](#) to download the entire documentation.

References

[1] Section 5 of The Local Government Election Act S.S. 1982-83, c. L-30.1

[2] Section 120 of The Cities Act S.S. 2002, c. C-11.1; s. 147 of The Municipalities Act S.S. 2005, c. M-36.1

[3] Section 131 and 162(1) and (5) of The Cities Act; s. 159 and 192(1) and (5) of The Municipalities Act

[4] Section 162(2) and (5) of The Cities Act; s. 192(2) and (5) of The Municipalities Act

[5] See: *Re L'Abbe and Corporation of Blind River* (1904) 3 Ontario Weekly Reporter 162; 7 O.L.R. 230 (Ont. Div. Crt):

“This fundamental rule in the administration of the law is equally venerable and pervasive in the consuetudinary practice of parliaments and legislative bodies. No better expression of it can be found in this regard than in the language of a very learned and distinguished Speaker of the English House of Commons in 1811. Mr. Speaker Abbott said ‘the rule was very plain; if they opened their journals they would find it established 200 years ago, and then spoken of as an ancient practice, that a personal interest in a question disqualified a member from voting. But this interest, it should be further understood, must be a direct pecuniary interest and separate belonging to the persons whose votes are questioned, and not in common with the rest of His Majesty’s subjects, or on a matter of state policy.’ Hansard (1) XX. P. 1011.”

[6] S. 116 – 124 of The Cities Act; ss. 141 -151 of The Municipalities Act (Similar provisions appeared in the predecessor statutes in sections 31-35 of The Urban Municipality Act, 1984 enacted in 1984, sections 32-36 of The Northern Municipalities Act enacted in 1983 and sections 45-47 of The Rural Municipality Act, 1989 enacted in 1990)

[7] S. 122 of The Cities Act; s. 149 of The Municipalities Act.

[8] S. 121(4) of The Cities Act; s. 148(4) of The Municipalities Act.

[9] S. 116 of The Cities Act; s. 142 of The Municipalities Act