Leading with Accountability: Conflicts and the Code of Ethics

Regional Meetings 2017
Who wants change?

Who wants to change?

Who wants to lead the change?
The Changes

• *Final Report of the Inspection and Inquiry Into the RM of Sherwood No 159* (“Sherwood Report”)

• Provincial action on those recommendations
  – Amendments to conflict of interest rules (2015)
  – Changes to Oath of Office and Code of Ethics (2016)
Sherwood Report

• In February 2015, the Sherwood Report on the investigation into allegations of inappropriate conduct with respect to the Wascana Village development in the RM was released

• Wascana Village:
  – 14,000 people
  – 736 acres
  – Profit of $400 million over 13 years
Conflict of Interest

• Expanded definition of conflict of interest:
  – Members are not to vote, deal, gain, or appear to gain private advantage out of matters over which the member supervises for the benefit of the public

• Meeting procedure bylaws required

• Employee code of conduct
Conflict of Interest

• Declaring interests rules
  – DECLARE your interest
  – DISCLOSE key facts about your interest
  – DEPART from the room until discussion ends
  – DON’T DISCUSS the issue

• Prepare and file public disclosure form
Conflict of Interest

• Failure to declare a conflict can result in:
  – Disqualification
  – Reimbursing any money received

• Disqualification for up to 12 years
Exceptions

• Twelve listed exceptions, including:
  – Expenses, honorarium, and wages paid by council

  – “Community of interest” exception
    • If matter at issue affects the member as a voter, taxpayer, or utility customer of the municipality

  – “Remote and insignificant” exception
    • Remote: how direct is the benefit of the interest?
    • Insignificant: what is the amount or size of the benefit?
Community of Interest

• *Siurko v Candle Lake (Resort Village), 2006 SKQB 421*
  – Mayor not in conflict for voting on a bylaw granting a tax exemption on 31 lots (including one he owned) – he was one of several lot owners who were all affected equally

• *Stewart v Yorkton (City), (1982) 16 Sask R 258 (QB)*
  – Two council members, one a store manager and the other a store owner, not in conflict for voting on a store hours bylaw – affected all businesses equally
Remote and Insignificant

• *Kruse v Sauter*, 2015 SKQB 378
  – Councillor occasionally filling in for a summer student opening municipal recycling bins lids for collection – “insignificant” as cost to community was $45.33

• *Duncan v Thurlow*, 2012 SKQB 179
  – Councillor not in conflict voting on sale of Trans Canada Trail land to adjoining landowners, including herself – the lands were impacted and worthless
Having a conflict is not a crime

Donald Trump has more potential business conflicts than anyone ever elected president.

Trump's potential business conflicts are unprecedented
money.cnn.com
Conflict of Interest

• *Peasley v Westerhaug*, 1998 CanLII 13783 (SK QB)
  
  – Councillor who owned business that provided municipal transit services to the city not in conflict
  
  – When transit matters were discussed at council, he declared his interest and left meetings, and did not attempt to influence other members
  
  – He did not participate in transit service matters until after the city did not renew his contract
Conflict of Interest

• *Shellbrook (Rural Municipality) No. 493 v Muller*, 2015 SKQB 346
  – Council member in conflict for failing to remove himself from council discussions on lawsuit he had against the RM
  – The lawsuit was a financial interest and the member’s participation was not inadvertence or an honest mistake
  – The court decided to not remove the member but directed him to absent himself in future
Conflict of Interest

- *Scorgie and Hamel v Morin, 1993 CanLII 8781 (SK QB)*
  - Mayor removed from office for participating in decisions on developing a parcel of land
  - The land was originally owned by his business, then his sister, then a corporation owned by his common law wife
  - Mayor opposed getting a legal opinion on issue
Conflict of Interest

- *Brisebois v Chabot, 1988 CanLII 5324 (SK CA)*
  - Mayor removed from office for failing to disclose his financial interest and voting on resolutions:
    - 1984 motion to pay the mayor’s business the expenses for leasing a photocopier
    - 1985 motion to increase the mayors wages as he was also caretaker of the village’s water system
  - “The evidence discloses that Chabot treats the village as his own personal fiefdom.” (para. 16)
Ombudsman

• Can review municipal decisions:
  – Was the decision made in a fair and open manner?
  – Was a council member in a conflict of interest

• Works to resolve issues or investigate complaints

• May make recommendations after an investigation, but no sanction power
Ombudsman Decisions

• Village of Manor
  – Village sold land to then-mayor’s son, conflicts not declared
  – Recommendation: pass bylaw to deal with conflicts of interest

• RM of Sherwood
  – RM had meeting on recovering money paid pursuant to a legal reimbursement bylaw that was quashed
  – Two councillors that received money participated in the meeting
  – Recommendation: council to vote on applying to court for an order declaring remaining councillor disqualified
Future Decisions

RM of Sherwood goes to court to remove its own councillor

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Future Decisions

RM of McKillop, citing undeclared conflicts, takes court action to remove councillor

Published on: August 2, 2017 | Last Updated: August 2, 2017 2:59 PM CST
Code of Ethics

• Sets basic ethical standards for council members:
  – Honesty
  – Objectivity
  – Confidentiality
  – Transparency and accountability
  – Respect for public, employees, and other council members

• A “baseline” version is included in municipal regulations – municipalities can adopt their own as well

• Municipalities can sanction members, but cannot unreasonably infringe them from carrying out duties or disqualify them
Code of Ethics

• City of Sarnia
  – Staff complaints against mayor investigated by municipal Integrity Commissioner and workplace investigator
  – October 2016 workplace investigation report found verbal abuse and inappropriate behaviour towards four city staff complainants was harassment:
    • “engaged in ... verbal abuse, psychological abuse, supervisory abuse, relational aggression and character assassination”
    • Example: mayor learned of private matter involving city manager’s family and brought it up unnecessarily to humiliate her
Code of Ethics

• *Schmeiser v Bruno (Town)*, 2004 SKQB 207
  – The town exceeded municipal powers by requiring a councillor to attend meetings solely by telephone
  – The court offered suggestions on dealing with misconduct:
    • The chair can expel any attendee at a council meeting for improper conduct – including councillors
    • If a member makes unreasonable demands or bullies staff, staff member could submit a written complaint to the mayor, who would then call a meeting to deal with the complaint
Code of Ethics

• Skakun v Prince George (City), 2011 BCSC 1796
  – Municipalities can regulate misconduct of a council member short of disqualification, including sanctions such as censure in serious situations
  – The court emphasized procedural fairness and ensuring any notice, investigations, and hearings were fair
How to Lead the Change

• When making decisions:
  – Be aware of the rules and your obligations
  – Take care and follow the right process
  – Be fair when considering the facts and making your decision
How to Lead the Change

• Be aware:
  – **Get informed** – access SUMA and Government of Saskatchewan materials, read the legislation and your bylaws
  – **Ask for advice** – ask your administrator or lawyer if you have questions
How to Lead the Change

• Take care:
  – Apply what you know – once you’ve learned about it, use that knowledge – but always recognize that each situation is unique
  – Listen to your gut – if you are worried about something, there’s probably something wrong
  • If you think you’re in conflict, you probably are
How to Lead the Change

• Be fair:
  – **Follow the golden rule** – treat others as you would like to be treated, and treat yourself as you would like others treated
  – **Engage your colleagues** – talk about issues and try to proactively resolve them
Thank You

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