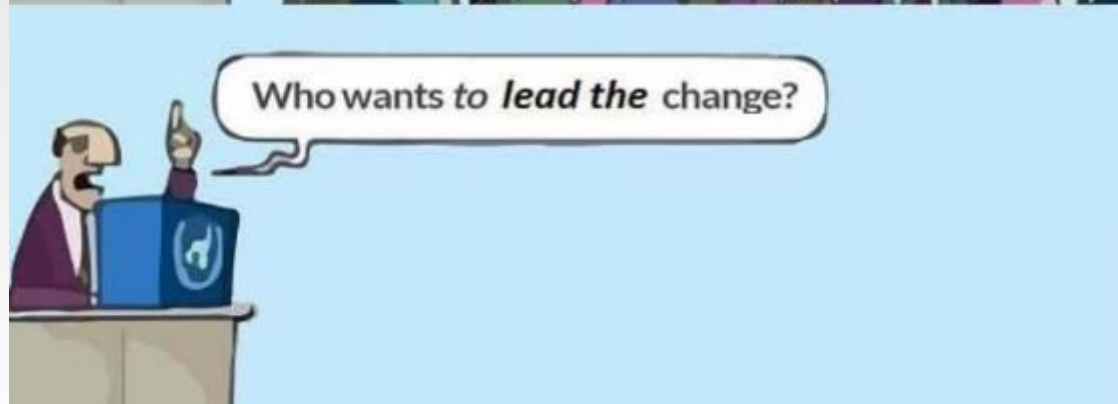




# **Leading with Accountability: Conflicts and the Code of Ethics**

Regional Meetings 2017

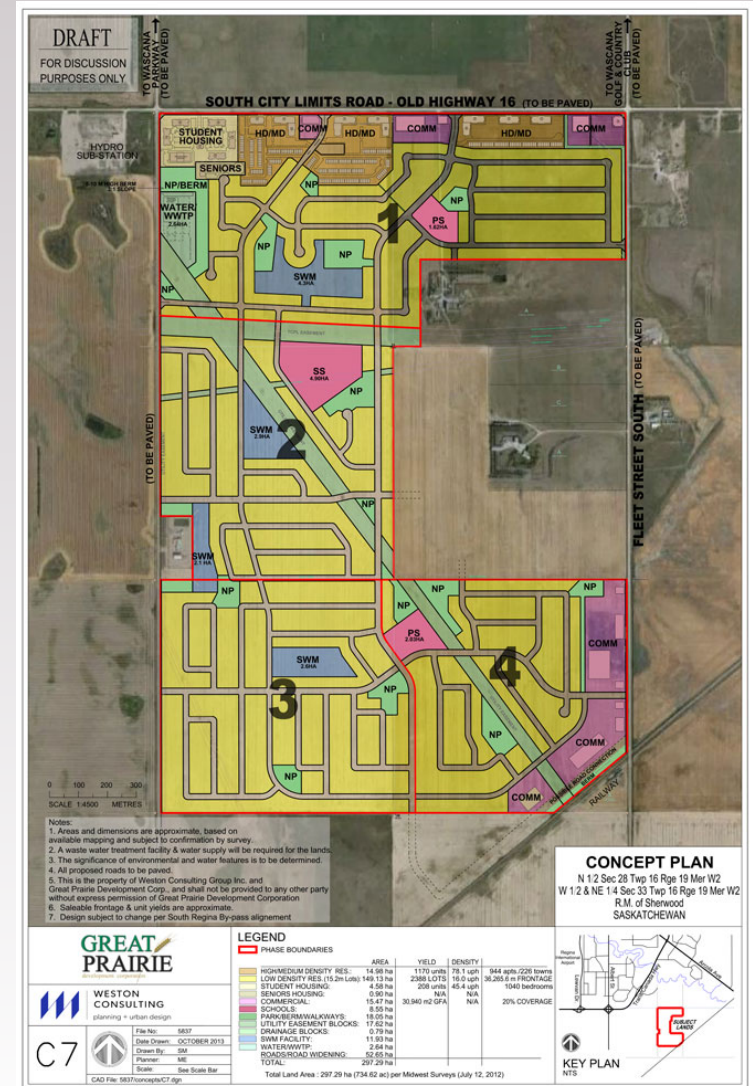


# The Changes

- *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)
  - Expansion of jurisdiction of Ombudsman (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



A screenshot of a tweet from CNNMoney (@CNNMoney). The tweet text reads: "Donald Trump has more potential business conflicts than anyone ever elected president." Below the text is a video thumbnail showing Donald Trump speaking at a podium. The background of the video shows a banner with the text "TRUMP INTERNATIONAL HOTEL WASHINGTON, D.C." and "TRU INTERNATIONAL WASHING". Below the video, the tweet text continues: "Trump's potential business conflicts are unprecedented" and includes the URL "money.cnn.com".

**CNNMoney** @CNNMoney

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

TRUMP® INTERNATIONAL HOTEL WASHINGTON, D.C. TRU INTERNATIONAL WASHING

Trump's potential business conflicts are unprecedented  
[money.cnn.com](http://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

Published on: July 19, 2017 | Last Updated: July 19, 2017  
4:13 PM CST



# 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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