



The New Municipal Conflict of Interest Rules: Meeting Your Duty of Fairness

Regional Meetings 2016

2016: “Post-Sherwood”

- **The world is a different place.**
 - *Final Report of the Inspection and Inquiry Into the RM of Sherwood No 159 (“Sherwood Report”)*
 - Provincial action on those recommendations
 - Amendments to municipal conflict of interest legislation (2015)
 - Expansion of jurisdiction of Ombudsman (2015)
 - **Changes to Oath of Office and Code of Ethics (2016)**



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

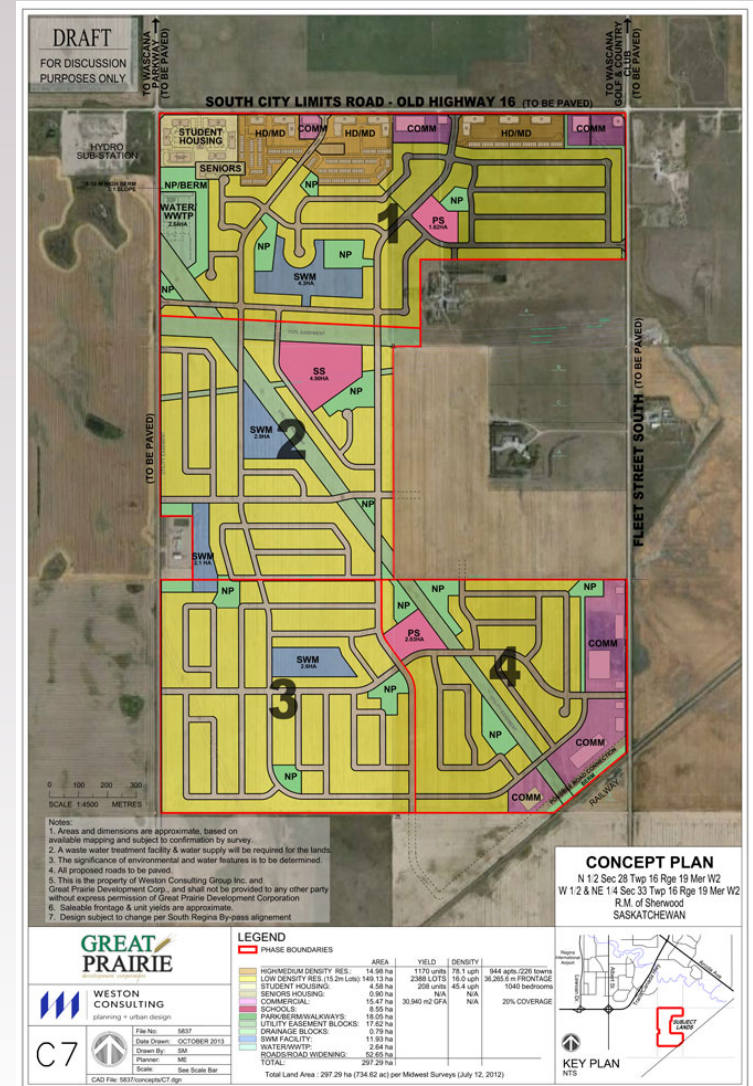


Trump's potential business conflicts are unprecedented

money.cnn.com

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



Sherwood Report

- **Findings:**
 - The RM approved a massive development without due diligence: **“the elapsed time between the motion being tabled and then voted on was roughly one minute.”**
 - The RM and developer failed to deal with serious challenges: **“never satisfying the biggest impediment, the location of a water source. ”**
 - Reeve Eberle entered into an agreement with the developer worth \$58 million but **failed to disclose the extent of his interest and actively and secretly influenced the process**

Sherwood Report

- Standards for Assessing of Conduct (page 66)
 - **Pecuniary interest sections of *The Municipalities Act***
 - *Judgment of members may be impaired when personal financial interests are affected*
 - **The official oath sworn pursuant to the act**
 - *Pledge to “truly, faithfully, and impartially” perform duties*
 - **The municipal code of ethics**
 - **The “common law” conflicts of interest principles**
 - *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*

Post-Sherwood (2015)

- **Conflict of interest amendments**
 - Expanding “financial interests” to 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*

Post-Sherwood (2015)

- **Conflict of interest amendments (continued)**
 - Declaration of interest rules revised:
 - **DECLARE** your interest
 - **DISCLOSE** key facts about your interest
 - **DEPART** from the room until discussion ends
 - **DON'T DISCUSS** the issue before, during, or after the meeting

Post-Sherwood (2015)

- **Conflict of interest amendments (continued)**
 - Council members must prepare and file public disclosure document
 - Meeting procedure bylaws required
 - Employee code of conduct

Post-Sherwood (2015)

- **Tougher penalties**

- Having a conflict is not a crime, but hiding or ignoring a conflict carries stiff penalties
- Failure to declare a conflict or file a completed disclosure form can result in a vacated council seat and paying back any money received from the conflict
- Disqualification from holding office for up to 12 years from the date of disqualification and court costs

Post-Sherwood (2015)

- **Expanded Ombudsman mandate**
 - Can review municipal decisions:
 - Was a council decisions made in a fair and open manner?
 - Was a council member in a conflict of interest?
 - Can informally resolve issues or investigate complaints
 - May make recommendations following an investigations

Post-Sherwood (2016)

- **Mandatory Code of Ethics**
 - Sets out basic ethical standards for members of council:
 - 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 code or will be deemed to have adopted the version in the regulations

Post-Sherwood (2016)

- **Revised Oath of Office**
 - Required to pledge:
 - You are qualified to hold office
 - You have read, understand, and will abide by:
 - the code of ethics,
 - conflict of interest, and
 - procedures set out in the act and municipal bylaws

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 only 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***
 - Council member had from time to time filled in for a summer student who was tasked with opening municipal recycling bins for the recycling company
 - She did not disclose her interests or depart from council discussions on payments totalling \$544 from the village for 45 hours of work over two and a half years
 - Financial interest was found to be “insignificant”: total cost to community was \$45.33 as most of the payments (\$11 per hour) were covered by recycling company

Inadvertence and Honest Mistake

- ***Shellbrook (Rural Municipality) No. 493 v Muller, 2015 SKQB 346***
 - RM applied to remove a council member who failed to remove himself from council discussions on lawsuit he had brought 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



How to Avoid Conflicts

- The best way to deal with conflicts of interest is by treating these rules as part of a larger “duty of fairness” owed to your residents.
- The duty of fairness comes down, basically, to two golden rules:
 - Treat others as you would like to be treated
 - Treat yourself as you would like others to be treated

Duty of Fairness

- **Treat others as you would like to be treated**
 - Look at issues with an open mind, free from bias and bad faith.
 - Make decisions in the best interests of your community — not your own interest or to the advantage of those of those close to you.
 - When listening to residents and working with your council and administration, your first consideration should always be: **If I was in their shoes, how would I want to be treated?**

Duty of Fairness

- **Treat yourself as you would like others to be treated**
 - If you *think* you are in conflict — or, if others were in your position, thought *they* would be in conflict — then you probably are in conflict.
 - Your reputation as a fair and trusted community leader is at risk if you do not deal with conflicts of interest appropriately.
 - Imagine you are watching someone else do what you are considering: **If I would disapprove, why do it?**



Duty of Fairness

- 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

Duty of Fairness

- A cornerstone of democracy is elected officials serving the people and treating residents, staff, and colleagues in a fair manner.
- By treating others as you would like to be treated, you ensure you are treating others fairly.
- By treating yourself as you would like others treated, you maintain a high standard of transparency and accountability.
- **Decisions may be tough, but they should never be unfair.**

Thank You

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