



# **Introduction to Municipal Law**

**Municipal Leaders' Roles and  
Responsibilities – November 2016**

# What is municipal law?

- **Legislation**
  - government-made law, statutes  
(Example: *The Municipalities Act*)
- **Common law**
  - based on precedents – court decisions over a long period of time
- Legislation may originate from the common law, introduce an entirely new legal principle, or upend existing common law
- In all cases, the courts interpret what legislation means or what common law principle fits



# Why do we have municipal laws?

- **Grants powers**
  - Municipalities set out as local order of government
  - Council members are empowered to govern
  - Administration empowered to manage
- **Imposes responsibilities**
  - Open governance with fair rules and clear procedures

# What legislation is there?

- **The Big Three**
  - ***The Municipalities Act***
    - towns, villages, and resort villages
  - ***The Cities Act***
    - cities
  - ***The Northern Municipalities Act, 2010***
    - northern municipalities (towns, villages, and hamlets)
- **KNOW YOUR ACT**

# What legislation is there?

- **Role of municipality**
  - “Natural person powers”
  - Used to be prescriptive (“you shall”), now permissive (“you may”)
- **Role of council and council members**
  - Representative of the people
  - Decision maker
- **Role of Administrator**
  - Informs discussions and carries out decisions

# Any other acts I should know about?

- *The Assessment Management Agency Act*
- *The Controverted Municipal Elections Act*
- *The Emergency Planning Act*
- *The Environmental Management and Protection Act, 2010* and its associated regulations:
  - *The Saskatchewan Environmental Code*
  - *The Municipal Refuse Management Regulations*
  - *The Waterworks and Sewage Works Regulations*
- *The Fire Safety Act*
- *The Government Relations Administration Act*
- ***The Local Authority Freedom of Information and Protection of Privacy Act***
- ***The Local Government Election Act, 2015***
- *The Local Improvements Act, 1993*
- ***The Municipal Board Act***
- *The Municipal Expropriation Act*
- *The Municipal Financing Corporation Act*
- *The Municipal Grants Act*

# Any other acts I should know about?

- ***The Ombudsman Act, 2012***
- *The Pest Control Act*
- ***The Planning and Development Act, 2007***
- *The Police Act, 1990*
- *The Regional Parks Act, 2013*
- *The Saskatchewan Employment Act* and its associated regulations:
  - *The Occupational Health and Safety Regulations, 1996*
- *The Saskatchewan Human Rights Code*
- *The Stray Animals Act*
- *The Summary Offences Procedure Act, 1990*
- *The Tax Enforcement Act*
- *The Traffic Safety Act*
- *The Uniform Building and Accessibility Standards Act*
- *The Urban Municipal Administrators Act*
- *The Weed Control Act*



# Role of council

- **Duties of council**
  - Governs municipality
  - Holds meetings open to the public
    - closing portions of meetings only permitted in limited circumstances
  - Decisions must be authorized by a bylaw or resolution
  - Decisions made by majority vote

# Role of council members

I, \_\_\_\_\_, having been elected to the office of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_,

DO SOLEMNLY PROMISE AND DECLARE THAT:

1 I will truly, faithfully and impartially, to the best of my knowledge and ability, perform the duties of this office;

2 I am qualified to hold the office to which I have been elected;

3 I have not received and will not receive any payment or reward, or promise of payment or reward, for the exercise of any corrupt practice or other undue execution or influence of this office;

4 I have read, understand and agree to abide by the code of ethics, rules of conduct and procedures applicable to my position as a member of council required of me by The Municipalities Act and any other Act and by the council;

5 I will:

- (a) perform the duties of office imposed by *The Municipalities Act* and any other Act or law and by the council;
- (b) disclose any conflict of interest within the meaning of Part VII of *The Municipalities Act*; and
- (c) comply with the code of ethics, rules of conduct and procedures applicable to the office I now hold that are imposed by *The Municipalities Act* and any other Act and by the council.

# Role of council members

- **Legislative duties of council members**
  - Represent the public and consider the well being of the municipality
  - Develop and evaluate policies, services, and programs
  - Participate in council meetings
  - Ensure administrative practices and procedures are in place to implement council decisions
  - Keep matters discussed in private confidential
  - Maintain financial integrity of municipality

# Role of council members

- **The power entrusted to council members – the power to decide:**
  - Legislator
  - “Quasi-judicial” adjudicator – a judge
- **Legislator**
  - Representative of the people
  - Passing bylaws that affect entire community
- **Adjudicator**
  - Judge deciding the outcome of a matter (such as bylaw contraventions appeal hearings)
  - Decisions on individual cases affecting only the individual in question

# Legal risks to council members

- Council members have duties set out in legislation and common law.
- Failing to meet these obligations can lead to risk of liability for the member or to the municipality:
  - Damages
  - Quashing of council decision
  - Vacating council seat

# Legal risks to council members

- No action lies against council members for any loss or damages suffered by a person for things done or not done in good faith in carrying out duties in municipal legislation.
- A plaintiff must prove an absence of good faith in the council member's actions — that the actions were the result or consequence of malicious intentions or expressions of vindictiveness.

# Legal risks to council members

- Only applies to actions taken as council member as part of duties under municipal legislation
- Does not apply to contractors with the municipalities

# Legal risks to council members

- Common law claims:
  - Defamation
  - Misfeasance in public office
- These claims are subject to the statutory immunity section in municipal legislation – need bad faith.



# Legal risks to council members

- Council members can be personally liable if they:
  - fail to annually obtain fidelity bond (insurance for fraudulent or dishonest acts) for administrator and any municipal employees dealing with money or securities;
  - knowingly make an unauthorized expenditure or investment; or
  - knowingly vote for a borrowing without approval or a loan that exceeds debt limits.

# Legal risks to council members

- The Ombudsman may investigate allegations of unfairness, conflict of interest, or breach of municipal code of ethics.
- Investigation could result in recommendations.

# Legal risks to council members

- The Information and Privacy Commissioner may investigate allegations of misuse of private information
- Investigation could result in recommendations or, in extreme cases, prosecution
- Section 56 of *The Local Authority Freedom of Information and Protection of Privacy*: every person found guilty of knowingly collecting, using, or disclosing personal information could be fined up to \$1,000 and/or imprisoned for up to three months



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



Trump's potential business conflicts are unprecedented  
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# 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.
- Broader than simply a financial advantage — includes any private, personal advantage not available to the public

# Conflict of interest

- Council members cannot act in matters if their personal interest (or the interests of people closely connected to the member) could be seen to influence the member.
- Closely connected person includes:
  - Agent
  - Business partner
  - Family (spouse and dependent children)
  - Employer

# Conflict of interest

- You have a financial interest in a matter if:
  - you or someone in your family has a controlling interest in or is a director or senior officer of a corporation that could make or lose money as a result of a municipal body decision; or
  - you or a closely connected person could make or lose money as a result of municipal body decision.

# Conflict of interest

- **It is your duty**
  - **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
- Must prepare and file public disclosure document



# Conflict of interest

- **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

# 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?

# Exceptions

- ***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
- ***Kruse v Sauter, 2015 SKQB 378***
  - Council member who occasionally filled in for a summer student who was tasked with opening municipal recycling bins for the recycling company not in a conflict
  - Financial interest was found to be “insignificant:” total cost to community was \$45.33 as most of the payments were covered by recycling company

# Conflict of interest

- **How to avoid conflicts of interest:**
  - Be aware of potential issues and treat them seriously
  - Review the agenda and let the administrator know before the meeting about any issues
  - Review the minutes and make sure your declaration and departing was noted
  - Get advice if you have questions
  - **If you think you might have a conflict, then you have a conflict**

# Conflict of interest

- **Hiding or ignoring a conflict carries penalties:**
  - Vacating of council seat and paying back any money received from the conflict
  - Disqualification from holding office for up to 12 years from date of disqualification and court costs
  - The Minister of Government Relations has the power to order an inquiry into allegations and remove council members





# Duty of fairness

- The best way to stay out of trouble is by knowing and upholding your “duty of fairness.”
- 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.
  - 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.
  - 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

- **Notice:** Let the individual affected know when you are considering their matter or right to appeal.
- **Compliance:** The decision must conform to legislative and bylaw requirements.
- **Disclosure:** Disclose any reports that form the basis of the order.
- **Adjournment:** Consider the merits.
- **Reasons:** Brief summary explaining why council came to its 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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