

Conflict of Interest for Municipalities

Manitoba Ombudsman

What is conflict of interest?

Simply stated, conflict of interest occurs when the personal interest of a council member conflicts with the public interest (what is in the best interest of the entire municipality), or with his or her duty as a public official.

Conflict can arise from pecuniary (financial) interests, where a council member might benefit financially from a decision or action of council. This could involve using insider information gained in the course of their official duties for financial gain,

or purposefully influencing council to enter into a contract or some other transaction for financial gain.

Conflict, or the perception of conflict, can also occur even when there is no financial interest, such as when a council member is seen to be too close to the parties on one side of a dispute or proposal, or when a council member is seen to be at odds with one of the parties. In any situation where a council member has a personal interest in a matter beyond

the interest that they have in common with other citizens of the municipality, it could be concluded that the interest might influence the exercise of his or her public duties.

In many cases, the appearance or perception of conflict can be as harmful to public confidence as actual conflict. Once a connection between personal interests and public decisions is made, it can be difficult to demonstrate that a decision was not influenced by personal interest.

Why does conflict of interest matter?

Fair decision making

All decision making bodies, including municipal councils, are required to afford procedural fairness to those affected by their decisions (see the side box for standards of procedural fairness).

When making a procedurally fair decision, a decision maker must be impartial or unbiased and without a personal interest in the outcome of a decision. This standard means that when decisions are made by councils, each individual council member must be impartial, unbiased and without a personal interest in the matter under consideration.

If a council member has a personal interest in the matter under consideration by council, and that council member participates in the decision-making process, it could be determined that such a decision was made in a procedurally unfair manner or the decision itself was unfair, if scrutinized by the courts or the ombudsman.

Under *The Ombudsman Act*, Manitoba Ombudsman has the authority to investigate actions or decisions relating to matters of administration made by a municipality, its employees or officers. At the conclusion of such an investigation in which conflict of interest has been alleged, the ombudsman could find that the participation of a council member was sufficiently self-interested or tainted by bias as to render the decision or the process by which it was made unreasonable, unjust, oppressive or improperly discriminatory. The ombudsman could also determine that such a decision was contrary to law. If the ombudsman makes any of these findings, the ombudsman can then make recommendations to a municipal council that any decision be cancelled or varied, or that any other steps be taken to remedy the situation.

Procedural fairness relates to the process by which a decision is made. At a minimum, procedural fairness requires that:

- persons who will be affected by a decision are given advance notice that a decision will be made
- persons affected by a decision are given the information that will be considered when a decision is made
- persons affected by a decision are given a meaningful opportunity to state or present their case
- persons affected by a decision are given an opportunity to challenge or dispute any information that might be contrary to their position when a decision is being made
- the decision maker be thorough and thoughtfully review all the information provided by persons affected by a decision
- **the decision maker be impartial (unbiased and without a personal interest in the outcome of the decision) and open to persuasion**
- the decision maker give meaningful reasons for the decision that are understandable to persons affected

Municipal Council Conflict of Interest Act

The Municipal Council Conflict of Interest Act (MCCIA) deals primarily with conflict arising from financial (pecuniary) interests. It requires all council members to disclose matters where they might have a direct or indirect financial interest. It also requires that council members annually file a “statement of assets and interests” with the municipality. If a court determines that a council member has violated the MCCIA, the council member may be disqualified from council and may be required to make restitution to any person or the municipality affected by the financial gain.

Manitoba Ombudsman encourages municipal councils to view MCCIA requirements as minimum standards that must be met. We promote a best practice model where decisions reflect the highest standards of integrity, transparency and accountability. Our experience tells us that this is the best way to maintain public confidence in elected officials.

What if you believe you have a conflict of interest?

There will be occasions when council members are in actual or perceived conflict of interest situations. In fact, these situations are not unusual. When they do occur, a council member should declare his or her interest and withdraw from the decision-making process. There are several steps council members can take:

- Disclose the interest before the matter is discussed at a meeting. A written disclosure signed by the municipality's CAO will provide recorded evidence of such a disclosure. If a matter arises during a meeting, disclosures can be made orally and recorded in the minutes.
- Withdraw from the meeting without voting or participating in the discussion on the matter. Meeting minutes should record this withdrawal.
- Refrain from attempting to influence the decision on the matter. A council member who has declared a conflict of interest should leave the room when council debates the matter.

An interest in a matter must be disclosed on every occasion when the matter is before council. If a council member is absent from a council meeting at which the matter was discussed, the council member must disclose his or her interest at the next council meeting.

Council members may face situations where the interests of someone they are particularly close to (for example, friends or relatives) will be affected by a decision of council. If the relationship is such that a council member believes he or she cannot vote impartially, or if there is reasonable likelihood that it will be perceived as a conflict with public duties, consider declaring a conflict. Consider how voting on the matter would be perceived in the community if the personal connection was known.

If a council member is uncertain about whether or not he or she has a conflict of interest, advice could be sought. While ultimately identifying and declaring a conflict is up to each individual council member, we encourage leaders of council and chief administrative officers who become aware of potential conflicts to raise such matters with their council members.

Conflict of interest checklist

Use the following checklist to identify a possible conflict of interest. A “yes” to any of the questions might indicate a possible conflict or lead to the perception of conflict:

- ✓ Am I, a relative of mine or a member of my family likely to be directly affected by this matter?
- ✓ Is my property or that of a relative or family member likely to be directly affected?
- ✓ Am I or a member of my family likely to gain or lose in any way that can be measured in financial terms?
- ✓ Do I or a member of my family own shares in a company or organization that is likely to be directly affected?
- ✓ Do I or a member of my family hold a position in a company or organization that is likely to be directly affected?
- ✓ Am I or a member of my family employed by a person, company or organization that is likely to be directly affected?
- ✓ Have I or a member of my family received any gifts in money or otherwise from a person, company or organization that is likely to be directly affected?
- ✓ Will someone I am close to (friends, relatives) be directly affected by a decision of council?
- ✓ Am I uncertain of my ability to act impartially and in the public interest?
- ✓ Would a fair and reasonable person perceive that I was influenced by a personal interest in performing my public duty?