

**CONFLICTS OF INTEREST  
A GUIDE FOR ADMINISTRATORS AND COUNCILLORS**

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**A. INTRODUCTION**

A number of years ago, changes were made to each of the municipal statutes and to the Council Member's Handbook for Municipalities.

The changes relate to an effort by the provincial government to tighten the obligations of municipal councillors to avoid conflicts of interest, to better define when those conflicts arise, and to allow for more scrutiny of potential conflict situations by the public and by the government.

***I propose to deal with those by beginning with disclosure statements, proceeding to deal with conflicts of interest generally, and then look closer at corporate and employment conflicts. Lastly, a checklist is included to help councillors manage conflicts moving forward.***

**B. DISCLOSURE STATEMENTS**

**1. Introduction – Disclosure Statements**

The first of these changes confronted by a newly elected or re-elected member of Council is the requirement that council members provide disclosure of potential conflicts of interest. This is accomplished by requiring each member of council to prepare a disclosure statement.

There are a number of reasons that this requirement exists. These include:

- (a) The process by which such a statement is prepared requires new councillors to immediately take stock of their personal situation and identify circumstances where they may find themselves in a conflict of interest. This permits councillors to be prepared for such possibilities and to take stock of and give consideration to the manner in which they will deal with those conflicts when they arise;
- (b) The process requires re-elected councillors to re-evaluate their personal situation and to reconsider potential conflicts; and
- (c) The process requires periodic update and periodic reflection.

In addition, there are other reasons for this requirement:

- (d) This is a process by which councillors will inform the public of any direct or indirect interests which they may have in businesses and with people who could benefit from or be adversely affected by a decision of Council;
- (e) This will also inform the public of the land locations in which a Councillor may be interested that may benefit or be adversely affected by a council determination; and
- (f) This advance notice gives the public advance notice of and an ongoing ability to monitor impartiality in the decision-making process of Council, and where Councillors may have a potential conflict of interest.

The public disclosure statement is the first step taken in discharging the moral and ethical duties associated with being a municipal councillor.

**2. What Must Be Disclosed?**

Councillors must disclose any relationship they have with a business or with an individual that could possibly conflict with their duty to impartially participate in decisions on behalf of the municipality.

Pursuant to section 142 of *The Municipalities Act* (the "Act"), the following information must be disclosed in a public disclosure statement:

#### 2.1 Family Disclosure Requirements:

The provisions of the Act that require councillors to make a disclosure statement and address some specific conflict situations make reference to members of your family. Fortunately, the Act gets more specific about who is a member of a councillor's family for those purposes.

For the purposes of the Act, **family members** include the spouse and any dependant children of the Councillor. Dependant children are normally children under the age of 18, and children 18 and over who depend on the councillor for necessities (such as students).

#### 2.2 Employers:

Councillors are required to disclose the name of every business, association, board and person from whom they receive payment for services or work performed. They must make the same disclosure for each family member. For each of these employers they must:

- (a) Disclose the name of the employer and whether the Councillor, or a member of their family, are employed. There is no need to provide any details about how much the Councillor is paid.
- (b) If a Councillor works on a contract or even informal basis for a person or organization, they must disclose that relationship. For example, if they keep the books for a local board such as a recreation board and are paid for this work, they must disclose that relationship.
- (c) Even if the Councillor performs casual work for another person or business, such as maintenance work for a local landlord, they need to disclose the name of the person or business.

#### 2.3 Corporate interests:

Councillors must disclose the name of every corporation in which they or a family member owns 25% or more of the voting shares, and every corporation of which they or a family member are a director or officer. For example:

- (a) If they own 25% of the voting shares in a corporation, they disclose the name of the corporation.
- (b) If a spouse owns 20% of the shares in a corporation, the Councillor does not need to disclose this as the spouse does not have a controlling interest (25% or more of the voting shares) in the corporation. If the spouse later acquires shares such that they own 30% of the shares, then this would have to be disclosed within 30 days, as will be explored further below.
- (c) If a councillor is the director of a corporation, you must disclose the name of the corporation.

#### 2.4 Partnerships/Firms:

Councillors must disclose the name of every partnership or firm (including a joint venture) of which they or a family member are a member. A partnership is a group of two or more people who carry on business in common with a view to a profit. Partnerships can be formed between corporations as well. Joint ventures are like partnerships but are businesses where the members bring their own assets with them and make their own profit while working together. While most partnerships and many joint ventures are registered, any unregistered partnership or joint venture or firm must be disclosed as well. Examples of partnerships include construction partnerships between members of various trades and outfitting partnerships where the partners have decided not to incorporate.

#### 2.5 Others:

Councillors must disclose the name of any corporation, enterprise, firm, partnership, organization, association, or body that they or a family member directs, manages, operates, or is otherwise involved in that:

- (i) Does business with the municipality; or

- (ii) Council considers necessary or appropriate to disclose (this should be by bylaw, so it is preserved in the bylaw book); or
- (iii) Is prescribed by regulations. Currently, nothing is prescribed in the regulations.

This is essentially a catchall category to catch any other interest which should be disclosed. Basically, if a councillor or a family member are involved in any organization, whatever the nature, that does business with the municipality, this must be included in the disclosure statement. For example, if a spouse manages but does not own a local store which routinely provides goods to the municipality, this will have to be disclosed.

#### 2.6 Property:

Councillors must disclose the municipal or legal address of any property located in the municipality or an adjoining municipality that is owned by them or someone in their family. They also must disclose the address of any property owned by a corporation which they or a family member are a director or officer of or own at least 25% of the voting shares in.

#### 2.7 Contracts/Agreements:

In regard to contracts/agreements which involve a councillor or a family member, they must disclose those which may be affected by municipal business. They must disclose the nature of the contract and any details which could be relevant to impartiality in making decisions.

For example, at the time of the election, if a spouse has a contract to provide cleaning services for municipal facilities, this should be disclosed. Similarly, a renovation contract with a business that potentially does business with the municipality should also be disclosed.

### 3. Disclosure of Non-Specified Matters

A councillor may determine that, in the interests of disclosure and public transparency, they will disclose matters that might be seen to impact the ability to participate in decisions on an impartial basis. Note that the provisions of most municipal codes of conduct define conflict situations more broadly than does the Act.

For example, consider a situation where a spouse owns 24% of the shares in a corporation. The councillor is not required to disclose this by the Act; not because they personally do not own the shares, but because their spouse does not exercise enough control over the corporation (they do not own at least 25% of the voting shares). Neither would the Act preclude participating in decision making involving that corporation. However, there may be reason (possibly very good reason) for the councillor to come to the conclusion that if anything were to arise involving the corporation, members of the public may suggest that they are relying on a "mere technicality" and accuse them of breaching more broad, general provisions in the Code of Conduct. That may motivate a councillor to disclose the existence of the shareholding anyway and to refuse to participate in future decisions involving the corporation.

The problem of course, is that without a hard boundary, there is an argument that many types of interests should be disclosed. When considering whether to disclose it is likely best to err in the direction of full disclosure. But, consideration should also be given by a councillor to the fact that if the interest is disclosed and a matter later comes up, you have likely already made a decision not to participate, since there is a very good argument that by disclosing, you have already admitted you should not be involved in such decisions.

The general objective of the public disclosure statement is to ensure that members of the public, and other councillors, are aware of any situations which could affect your ability to make decisions in the best interests of the municipality.

If your spouse owns a piece of land that the municipality is looking to purchase, the public, and other councillors, should know about your connection to the land as this is a clear conflict of interest. If your employer is bidding on a contract with the municipality, other members of council should be aware of this. There are many situations in which your judgment as a councillor could be compromised; the public disclosure statement is one way to hold you and other councillors accountable.

Ultimately, if you are unsure if any matter should be disclosed, discuss the matter with the rest of the council to determine if it should be disclosed. If you are still uncertain, raise the issue with legal counsel.

#### 4. Timing of Disclosure?

1. The Act requires a public disclosure statement within 30 days of being elected. The form of statement is approved by council.
2. A public disclosure statement is also required to accompany nomination papers for those running in elections to join council. Section 67(6)(d) of *The Local Government Election Act, 2015* imposes this requirement. So, not only must the disclosure statement be completed before being elected, but it must also then be completed again and/or updated within 30 days of being elected under *The Municipalities Act* as well.
3. Councillors must submit an annual declaration, on or before November 30 in each year. At that time, they should review all of the foregoing requirements (and the attached checklist), and:
  - (a) If nothing material has changed since the last statement or declaration, then they need only submit a declaration stating that no material change has occurred; or
  - (b) If there has been a material change since the last declaration was submitted or your initial disclosure statement was filed, they must submit a declaration explaining the changes that have occurred. For example:
    - (i) If they purchased a piece of land in the municipality since the last statement was submitted, this would need to be disclosed in the next annual declaration;
    - (ii) If they began work with a new employer since the last statement was submitted, this would need to be disclosed in the next annual declaration;
    - (iii) If they have sold land, or interests in a corporation, you should delete the reference from your disclosure statement.
4. While there are specific dates for disclosure referenced above there is an ongoing duty of disclosure. Councillors *must update their public disclosure statement* each time there is a material change, or a conflict of interest arises:
  - (a) If a conflict of interest arises, they must update their public disclosure statement as soon as possible;
  - (b) If a material change occurs since the last time they submitted an annual declaration, they must update a public disclosure statement within 30 days; and
  - (c) If they notice that there is an error or something they accidentally did not include in the public disclosure statement, they must update it as soon as possible.

#### 5. What Happens with Disclosure?

The initial public disclosure statement and all annual declarations are submitted to the CAO. When the CAO receives an annual declaration, they are to note any changes on the councillor's public disclosure statement and retain the disclosure statement together with each annual declaration for each councillor. Members of the public are allowed to inspect the disclosure statements and annual declarations during regular office hours.

#### 6. Conclusion

The public disclosure statement sets the table for a council's approach to potential conflicts of interest as a councillor. It acts as a ruler by which later decisions and conduct may be measured. If the ruler is well constructed and sound, and if actions measure up to that ruler during the council term, while no-one will be in a position to avoid disagreement from time to time around the council table, nor with electors, council will be able to conduct its discussions and disagreement from a solid base where it may be possible to disagree, but it cannot be reasonably said that council lacks integrity.

## C. CONFLICTS OF INTEREST

### 1. Introduction – Conflicts of Interest

As noted above the purpose of disclosure statements is to have councillors take stock of their personal situations to identify circumstances where they may find themselves in a conflict of interest. In this part of the paper, we will further explore when conflicts of interest may arise and how to ensure councillors properly deal with them. The ultimate goal is to ensure that each councillor is impartial and transparent in all decisions they make as a councillor.

As a municipal councillor, each member of council has ongoing moral and ethical duties to fulfill. Understanding when they may be in a conflict-of-interest situation, how to avoid conflicts of interest in the first place, and what to do when in a conflict of interest will assist in fulfilling those moral and ethical duties.

### 2. When do conflicts of interest arise?

Pursuant to section 141.1 of the Act, a conflict of interest arises when a councillor makes a decision or participates in making a decision as a councillor when they ought to know that there is some opportunity to further their own private interests, those of your family members, or closely connected persons.

- (a) “Family members” include a spouse and dependent children;
- (b) “Closely connected persons” include business partners, family members, employers, or someone who acts on the councillor’s behalf as your agent.

Essentially, if council has to make a decision on an issue and a councillor or a “closely connected person” could stand to benefit from the outcome, then they are in a conflict-of-interest situation and need to take steps to address it, which will be explored below.

If uncertain about conflict of interest, take a step back and think about how a taxpayer would assess the situation; would they think impartiality in decision making will be impacted? If so, there is likely a conflict of interests which must be avoided. Section 144.2 of the Act specifically provides that no member of council shall use his or her office to try and influence another person to that member’s own benefit.

The Act mandates that councillors pay close attention to their financial interests, as it specifically provides that all financial interests always result in a conflict of interest. Councillors are deemed to have a financial interest where:

- (a) They or their spouse or dependant child has a controlling interest in or are a director or senior officer of a corporation that could make a profit or be negatively affected by a decision of council; or
  - (i) “Controlling interest” occurs where you or your spouse or dependent child owns or in some way can control more than 25% of the voting shares of a corporation. For example, if your spouse owns 30% of the voting shares of a corporation, you yourself are considered to have a controlling interest in that corporation.
  - (ii) “Senior officer” includes the chairperson or vice chairperson of the board of directors, the president, vice president, secretary, treasurer, or general manager, or anyone who performs the tasks normally performed by people in those positions.
- (b) They or their spouse, dependant child, business partner, or employer could make a profit from or be negatively affected by a decision of council. For example, council is considering hiring the spouse of a councillor to perform some clerical work for the municipal office.

However, the Act limits the circumstances in which a councillor is deemed to have a financial interest. In the following situations, a councillor would not be deemed to have a financial interest unless there is something more to the situation:

- (c) They or their spouse, dependant child, business partner, or employer are a voter, taxpayer, or utility customer of the municipality;
- (d) They or their spouse, dependant child, business partner, or employer have been appointed as a director of a company incorporated to carry on work on behalf of the municipality or represent the council on

another body. Even if you or your spouse, dependant child, business partner, or employer are provided remuneration or benefits as a result of this work, it is still not deemed a financial interest;

- (e) They receive an allowance, honorarium, remuneration, or some other benefit for being a councillor;
- (f) They or their spouse, dependant child, business partner, or employer are employed by the federal or provincial governments or a Crown corporation, unless the decision council is making directly affects the ministry or Crown corporation which you or your spouse, dependant child, business partner, or employer are employed by;
- (g) A spouse or dependant child works for an employer which is monetarily affected by the decision of the municipality;
- (h) They or their spouse, dependant child, business partner, or employer are a director of a non-profit corporation;
- (i) They or their spouse, dependant child, business partner, or employer have been appointed as the volunteer fire chief or other officer of an ambulance or emergency service or other volunteer organization, even if you or your spouse or dependant child receive remuneration;
- (j) They or their spouse, dependant child, business partner, or employer hold some right in common with the majority of voters of the municipality or part of the municipality;
- (k) The interest is very remote or insignificant such that it cannot reasonably be seen as likely to influence decision making;
  - (i) It is particularly important to think of this scenario as an outsider looking in. The question is not whether the councillor would think the interest is very remote or insignificant, but if a neutral person looking in would think the same.
- (l) They or their spouse, dependant child, business partner, or employer has an interest in a business and council is voting on a bylaw which will affect businesses, unless the only business affected is they/their spouse/their dependant child's business;
- (m) They publish a newspaper which the municipality publishes advertisements in as long as you are charging the same rate they charge others and the advertisement is required to be made by law.

If a councillor falls into any of the scenarios described above, they would not be deemed to have a financial interest by that fact alone- there must be something more to make this a conflict of interest. For example, the fact that a spouse is employed by an employer which may be affected by a decision of council does not alone mean the councillor is in a conflict of interest. However, if the spouse is also the sole shareholder of that corporation and employs themselves, then there would be a financial interest. This can happen with people like dentists, doctors, or lawyers, who may be employed by their own corporations.

Other examples of situations in which a councillor would not need to declare a conflict of interest is in setting tax policy for the municipality or setting the compensation for council members, as these are part of their duties as councillors.

A councillor may determine that, in the interests of disclosure and public transparency, they will disclose matters that might be seen to impact the ability to participate in decisions on an impartial basis even if they are technically not a conflict. Note that the provisions of most municipal codes of conduct define conflict situations more broadly than does the Act.

### **3. What to do in a conflict of interest:**

If a councillor is uncertain if they are in a conflict-of-interest scenario, they might discuss the matter with the rest of the council to determine if it should be disclosed. Of course, the councillor will have to be careful to only discuss what the conflict is and their general interest in the matter without discussing the details of the matter or influencing council in any way. If still uncertain, the councillor may raise the issue with legal counsel (their counsel, rather than municipal counsel, is preferable).

If a councillor determines that they are in a conflict of interest in a matter before council, they must do the following:

- (a) Before the matter is considered or discussed by council, they must let council know that they have a conflict of interest;
- (b) Explain to council what the general nature of the conflict of interest is and any important details which could affect impartiality;
- (c) They cannot vote in any decision related to the matter;
- (d) They cannot participate in any discussion of the matter, unless the matter before council is a question which they, as a taxpayer, voter, or owner, have a right granted by law to be heard by council. In such situation, they must remove themselves from the council table, although they can remain in the room, and can exercise the right to be heard by council in the same manner as any other citizen would. However, they can still not vote in the matter;
- (e) Leave the room until the discussion and voting on the matter have completed, unless it is a matter described in the preceding paragraph (d);
- (f) They cannot in any way attempt to influence the discussion or voting of the matter either before, during, or after the council meeting; and
- (g) They must immediately update the public disclosure statement.

The declaration of the conflict of interest must be recorded in the meeting minutes, including the general nature of the conflict of interest. It is also a good idea to include the steps taken to address the conflict, such as whether the councillor left the room, refrained from discussing the matter, etc.

It is also important to note that the person presiding over the meeting must ensure the above requirements are met.

If a councillor has a conflict of interest but are not present at the meeting during which the matter was last discussed, they must disclose the conflict of interest at the next council meeting and comply with all other requirements listed above. They cannot discuss the matter with other councillors, vote on the matter, and must not be present in the room when council is discussing the matter. They must also do the same at all future meetings in which the matter is discussed, including declaring the conflict of interest at each such meeting and complying with all steps described above.

In terms of forming quorum at the meeting to make a decision regarding a matter one or more councillors are conflicted from, those councillors who are conflicted are not counted in forming quorum. If there is then a loss of quorum due to the number of councillors conflicted, the remaining councillors are deemed to form quorum and can make the decision pursuant to section 164 of the Act, unless there is only one councillor remaining. If all of the councillors, or all but one, are conflicted on the matter, then the council may resolve to apply to the Court of King's Bench or to a provincial court judge for authorization to discuss and vote on the matter. A judge can then make an order allowing all or some of the councillors to vote, with or without conditions.

#### **4. Consequences for failure to disclose a conflict of interest:**

If a councillor does not disclose a conflict of interest, there are consequences for both the municipality and the councillor personally and financially.

Section 148 of the Act provides that, if a councillor does not disclose a conflict of interest and follow the steps outlined above, the decision of council made at that meeting is not invalidated, but the council may, within 3 years of the decision, bylaw, or resolution passed, declare it to be void. This could have serious impact to the municipality if, for example, a bylaw which was passed is no longer valid and the municipality has to spend more taxpayer dollars and municipal resources to address the issue. Or a citizen could challenge the bylaw due to a conflict of interest, which could cost the municipality, and taxpayers, significant money to address the situation.

If a councillor does not disclose a conflict of interest, they will be considered disqualified from being a councillor pursuant to section 147 of the Act. They will not be eligible to be nominated or elected as a councillor for 12 years from the date of disqualification and will have to immediately resign as councillor. If they do not resign, council can resolve to declare their position vacant or seek a court order declaring that they are disqualified. A judge can also order that the councillor

pay any financial gain they may have received relating to the matter in which they did not declare their conflict of interest to the municipality or any other appropriate person.

If there is a conflict of interest which councillors have failed to declare, the minister could also order an inquiry into the matter pursuant to section 418 of the Act.

## **5. Conclusion**

Councillors have an ongoing duty to be vigilant for conflicts of interest as they arise. When you identify such a conflict, you must be sure to declare the conflict of interest and take all further steps required by the Act, discussed above. Being transparent with council and your taxpayers will maintain your integrity and help to ensure that all decisions of council are valid and binding.

## **D. CORPORATE CONFLICTS**

### **1. Introduction**

Public disclosure statements and conflicts of interest in general are discussed above.

A particular area of interest is where conflicts of interest may arise in dealings between the municipality and corporations, and how to ensure councillors properly deal with them. The ultimate goal is to ensure that council is impartial and transparent in all decisions it makes.

The discussion above on disclosure statements and financial interests deals with many issues that may arise. However, in some circumstances, even where the financial interest provisions are not engaged, there may be issues arising from conflict.

In the corporate context, if you are acting for a corporation, a conflict of interest could arise where the corporation has dealings with the municipality and a councillor's duty to the corporation conflicts with their duty of impartiality as a councillor.

### **2. Controlled Corporations**

A controlled corporation is one in which:

- (a) a municipality (or multiple municipalities) holds shares with more than 50% of the votes that may be cast to elect a majority of the directors of the corporation; or
- (b) all or a majority of its member or directors are appointed by a municipality or a group of municipalities.

An example would be a controlled corporation used to provide utilities to the municipality. Another example might be a corporation established to own or operate recreational facilities. Yet another might be an economic development authority.

A councillor may be appointed as a director of a controlled corporation. This can lead to conflicts of interest since the councillor owes a duty of loyalty to the corporation and a duty of impartiality in making decisions for the municipality, which duties may compete with each other. Below, we will explore what the general duties of a corporate director are to allow a better understanding as to how these duties could conflict with decision-making as a councillor.

### **3. General duties of directors**

Directors act as agents of the corporation and are considered the "controlling mind" of the corporation. The directors make decisions on behalf of the corporation, such as whether to enter into a contract, who to hire and fire (although the directors can delegate this power to employees of the corporation), and the general direction of the corporation's business and affairs.

Every director of a corporation, in exercising their powers for the corporation, has a duty to act honestly and in good faith and always with a view to the best interests of the corporation. Directors also have a duty of care in that they must exercise the care, diligence, and skill that a reasonably prudent person would exercise. This means that directors must avoid making hasty, foolish decisions for the corporation, and must do their due diligence before making decisions.

Directors of corporations must not place their own interests before the interests of the corporation, just as councillors must not place their own interests before those of the municipality.

Generally, directors vote in meetings to make decisions on behalf of the corporation, make bylaws for the corporation, and transact any other business.

There are restrictions on who can act as a director of a corporation. The following persons are disqualified:

- (a) Anyone less than 18 years of age;
- (b) Anyone found by a court to lack capacity;
- (c) A person who is not an individual (e.g. another corporation cannot act as a director);
- (d) A person with the status of bankrupt.

When acting as a director for a corporation, including a controlled corporation, a person will have to be vigilant for any conflicts of interest which could arise. For example, if a councillor acts as a director for a controlled corporation operating a facility, and their spouse runs a cleaning service, a conflict of interest could arise. If the corporation is looking for someone to clean the facility and the spouse submits a tender, there is an obvious conflict of interest scenario. The duty to act in the best interests of the corporation by getting the best bang for its buck is in direct conflict with the director's personal interest in seeing their spouse obtain a work contract.

If a councillor should find that they are in a conflict of interest regarding a corporate decision to be made, they must disclose this conflict to the other directors and refrain from discussing or voting in the matter, similar to what must be done when in a conflict of interest as a councillor with a decision to be made by council.

#### **4. Conflicts of interest in corporate dealings with municipality**

Now that we have reviewed what a controlled corporation is and what the general duties directors of corporations have, we can discuss situations where potential conflicts of interest may arise between a councillor's role as director of a corporation and as councillor for the municipality.

Aside from their role as a councillor, a councillor may be a director of a corporation or director of a controlled corporation. In either case, they must be vigilant for conflicts of interest which may arise between their duties in these two roles.

We previously discussed situations in which councillors may be considered to have a financial interest under the Act and, where such financial interest exists, it probably means they are in a conflict-of-interest situation. In this context, they are considered to have a financial interest where they are a director of a corporation that could make a profit or be negatively affected by a decision of council. There are two limitations in the corporate context:

- (a) The councillor is appointed as a director of a corporation created to carry on work on behalf of the municipality, such as a controlled corporation; or
- (b) The councillor act as a director of a non-profit corporation.

In these two situations, a councillor is not deemed to have a financial interest by that fact alone- there would have to be something more to the situation in order for it to be a conflict of interest.

- (a) For example, if a councillor were to act as director of a controlled corporation, they may not be in a conflict of interest if the corporation was negotiating with the municipality for funds to build a housing complex to be managed by the corporation. As a director of the corporation, the councillor is trying to further its mandate by building more housing and, as a councillor, they are making a decision to provide housing for the community, which interests complement each other.
- (b) However, if the corporation was looking to use the councillor's contracting company to build the complex, they are then in a conflict of interest. They would essentially be using their influence on the board of the corporation, along with their power to provide funding for the project as a councillor, to provide the construction company with work.

- (c) Another example is where a councillor is a director of a non-profit corporation requesting funding from the municipality for a project. This, in itself, does not necessarily place the councillor in a conflict of interest. However, if their spouse will be hired to do some work on the project, they are potentially in a conflict of interest in both their role as a director of the corporation and in their role as councillor.

Other than the exceptions for controlled corporations and non-profit corporations discussed above, where a councillor is a director of a corporation dealing with the municipality, for the most part, they will likely be in a conflict of interest. This is because their duty to act in the best interests of the corporation as its director conflict with their duty to act in the best interests of the ratepayers as a councillor. A simple example would be if the corporation wishes to purchase land from the municipality. In the role as director of the corporation, a councillor will want to act in its best interest by obtaining the land as cheaply as possible. Meanwhile, in their role as councillor, they will want to ensure the municipality receives a fair sum for its land. There is a clear conflict of interest here between their duty to the corporation and their duty to the municipality, which would make it difficult for them to act impartially as a councillor.

Where possible, this situation should be avoided. If unavoidable, the councillor should then discuss the conflict with the rest of council and refrain from discussing or voting in the matter as a councillor, although they may have to present to council in their role as director of the corporation.

## **E. EMPLOYMENT MATTERS**

### **1. Introduction – Employment Matters**

The discussion to this point has pointed out situations where employment matters may give rise to conflict. All of the general considerations above apply in the case of employment-related matters.

However, there are some specific issues in the employment context that should be considered.

### **2. Can a councillor be employed by the municipality or a controlled corporation?**

Section 112 of the Act provides that a councillor cannot be employed by the municipality or by a controlled corporation, nor of a committee or a business improvement district.

As an aside, section 188 provides that a councillor cannot be appointed as auditor for the municipality.

The prohibition on a councillor acting as an employee of the municipality or a controlled corporation is in place to help avoid conflicts of interest. Given that council oversees the operation of the municipality, including its employees, setting wages, managing human resource issues, etc. in conjunction with the administrator, it makes sense that a councillor cannot also be an employee, or the required oversight would disappear or be rendered ineffective as other councillors may be leery to make a decision impacting their fellow councillor's employment.

This prohibition means that a councillor should not be entering into paid employment with the municipality for any type of work. This does not preclude a councillor from volunteering at municipal sponsored events. Nor does it preclude a councillor from accepting an honorarium for their work as a councillor or reimbursement for expenses incurred as a result of duties as a councillor, such as attending a convention.

### **3. Can family members be employed by the municipality or a controlled corporation?**

Family members can be employed by the municipality or a controlled corporation. However, this does raise potential conflicts of interest.

There will always be concern that a family member of a councillor employed by the municipality, or a controlled corporation will be given special treatment, and so there will be more public scrutiny of how this particular employee is treated. This makes it especially important that a councillor ensure they remove themselves from any portion of a meeting discussing the family member's employment status, duties, remuneration, etc. They will also have to refrain from partaking in any decision which could impact on the family member's employment, such as general employment policies. This will ensure that any decisions made by council are impartial, can be shown to be impartial through meeting minutes, and that they will not disqualify themselves from acting as a councillor.

In particular, the following steps should be taken when a matter involving the employment of a family member arises:

- (a) Before the matter is considered or discussed by council, a councillor must let council know that they have a conflict of interest;

- (b) The councillor should explain to council that their family member is the employee to be discussed, or the decision to be discussed could affect your family member's employment;
- (c) The councillor cannot vote in any decision related to the matter;
- (d) The councillor cannot participate in any discussion of the matter;
- (e) The councillor should leave the room until the discussion and voting on the matter have completed;
- (f) The councillor cannot in any way attempt to influence the discussion or voting of the matter either before, during, or after the council meeting; and
- (g) The councillor must immediately update their public disclosure statement.

The declaration of the conflict of interest must be recorded in the meeting minutes, including the general nature of the conflict of interest. It is also a good idea to include the steps taken to address the conflict, such as whether the councillor left the room, refrained from discussing the matter, etc., so that it can be shown an impartial decision was made.

It is also important to note that the person presiding over the meeting must ensure the above requirements are met whenever a matter involving the family member is being discussed.

*This guide has been prepared by Robertson Stromberg LLP as a guide and discussion paper to assist municipalities in dealing with conflict issue. It is not intended as legal advice and readers are encouraged to seek legal advice from their solicitor where questions or concerns arise.*

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### Checklist for Public Disclosure Statements and Annual Declarations

#### Disclosure Due:

*With nomination papers.*

*30 days after election;*

*November 30 each subsequent year;*

*Immediately upon a change in circumstance*

#### Employers:

- Have I previously disclosed the name of my employer(s) or any board(s) or association(s) from which I am paid compensation?
  - If yes: no need to disclose again.
  - If no: disclose the name of each employer/board/association now.
- Have I previously disclosed the name of each employer or each board or association from which any member of my family (spouse or dependant children) is paid compensation?
  - If yes: no need to disclose again.
  - If no: disclose the name of each employer/board/association now.
- Do I have a new employer, or have I joined any new boards or associations which pay me since the last time I submitted a public disclosure statement or annual declaration?
  - If yes: disclose the name of each new employer/board/association.
  - If no: no action required.
- Does any family member (spouse or dependant child) have a new employer, or have they joined any new boards or associations since the last time I submitted a public disclosure statement or annual declaration?
  - If yes: disclose the name of each new employer/board/association.
  - If no: no action required.

#### Corporate interests:

- Have I previously disclosed the name of each corporation in which I own at least 25% of the voting shares or am a director or officer of?
  - If yes: no disclosure required.
  - If no: disclose the name of each corporation now.
- Have I previously disclosed the name of each corporation which a family member (spouse or dependant child) owns at least 25% of the voting shares of or is a director or officer of?
  - If yes: no need to disclose again.
  - If no: disclose the name of each corporation now.

- Have I acquired at least 25% of the voting shares in any corporation or become a director or officer since the last time I submitted a public disclosure statement or annual declaration?
  - If yes: disclose the name of each corporation.
  - If no: no action required.
- Has a family member (spouse or dependant child) acquired at least 25% of the voting shares in any corporation or become a director or officer since the last time I submitted a public disclosure statement or annual declaration?
  - If yes: disclose the name of each corporation.
  - If no: no action required.

**Partnerships, Joint Ventures, and Firms (see accompanying paper for further details):**

- Have I previously disclosed the name of each partnership, joint venture, or firm of which I am a part?
  - If yes: no disclosure required.
  - If no: disclose the name of each now.
- Have I previously disclosed the name of each partnership, joint venture, or firm of which a family member (spouse or dependant child) is a part?
  - If yes: no need to disclose again.
  - If no: disclose the name of each now.
- Have I acquired an interest in any partnership, joint venture, or firm since the last time I submitted a public disclosure statement or annual declaration?
  - If yes: disclose the name of each now.
  - If no: no action required.
- Has a family member (spouse or dependant child) acquired an interest in a partnership, joint venture, or firm since the last time I submitted a public disclosure statement or annual declaration?
  - If yes: disclose the name of each partnership.
  - If no: no action required.

**Others:**

- Have I disclosed the name of every corporation, partnership, organization, association, institution, or other body that does business with the municipality of which I am a member or with which I am involved?
  - If yes: no disclosure required.
  - If no: disclose the name of each entity now.
- Have I previously disclosed the name of every corporation, partnership, organization, association, institution, or other body that does business with the municipality of which a family member (spouse or dependant child) is a member or with which they are involved?
  - If yes: no need to disclose again.
  - If no: disclose the name of each entity now.

**Property:**

- Have I previously disclosed the municipal address or legal address of any property I or a family member (spouse or dependant child) owns which is located in the municipality or an adjoining municipality?
  - If yes: no disclosure required.
  - If no: disclose the address of each property now.
- Have I previously disclosed the municipal address or legal address of any property which is located in the municipality or an adjoining municipality which is owned:
  - By a corporation which I either:
    - Own at least 25% of the voting shares in? or
    - Of which I am a director or officer?
  - If you previously disclosed: no disclosure required.
  - If you have not previously disclosed: disclose the address of each property now.
- Have I previously disclosed the municipal address or legal address of any property which is located in the municipality or an adjoining municipality which is owned:
  - By a corporation of which a family member (spouse or dependant child) either:
    - Owns at least 25% of the voting shares? or
    - Is a director or officer?
  - If you have previously disclosed: no disclosure required.
  - If you have not previously disclosed: disclose the address of each property now.
- Have I or a family member (spouse or dependant child) acquired property in the municipality or an adjoining municipality since the last time I submitted a public disclosure statement or annual declaration?
  - If yes: disclose the address of each property.
  - If no: no action required.
- Do I hold at least 25% of the voting shares of any corporation OR am I a director or officer of any corporation?
  - If yes:
    - Has the corporation acquired any property in the municipality or an adjoining municipality since the last time I submitted a public disclosure statement or annual declaration?
      - If yes: disclose the address of each property.
      - If no: no action required.
  - If no: no action required.
- Does a family member (spouse or dependant child) hold at least 25% of the voting shares of any corporation OR is a director or officer of any corporation?
  - If yes:

- Has the corporation acquired any property in the municipality or an adjoining municipality since the last time I submitted a public disclosure statement or annual declaration?
  - If yes: disclose the address of each property.
  - If no: no action required.
- If no: no action required.

**Contracts:**

- Have I previously disclosed any contracts/agreements which I or a family member (spouse or dependant child) am party to which could impact my impartiality in making decisions for the municipality?
  - If yes: no disclosure required.
  - If no: disclose the nature of the contract/agreement and how it could be relevant to your impartiality in making decisions.
- Since the last time I submitted a public disclosure statement or annual declaration, have I or a family member (spouse or dependant child) acquired any contracts/agreements which could impact my impartiality in making decisions for the municipality?
  - If yes: disclose the nature of the contract/agreement and how it could be relevant to your impartiality in making decisions.
  - If no: no action required.

**Amendments or Deletions from Disclosure:**

- Is there anything disclosed in my prior disclosure, which is still required to be disclosed, but details have changed (i.e. change in name of corporation or partnership)? If yes, disclose your change in circumstance and amend your disclosure to ensure it is accurate.
- Is there anything disclosed in my prior disclosure that no longer exists (i.e. I am no longer on a board, or a member of a partnership, or have sold my shares in a corporation). If yes, disclose the change and amend your disclosure to delete the reference.

**If nothing has changed since you submitted your initial public disclosure statement or last annual declaration:** then submit a declaration stating that no material changes have occurred since the last public disclosure statement or annual declaration was submitted, as the case may be.