Relevant Legal Issues/ Considerations for Municipalities



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Overview

- Municipalities face a host of legal issues

- Will briefly discuss the following:
  1. MNL Retainer with Stewart McKelvey
  2. Municipal acquisition of real property
  3. Expropriation
  4. Conflict of Interest
  5. Social Media

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MNL Retainer

- Stewart McKelvey on retainer with MNL
- Municipalities can call Stewart McKelvey, FREE OF CHARGE, with legal questions
- Unable to provide advice in fact specific cases, given Code of Professional Conduct, but can advise municipalities of relevant legal principles and statutory powers

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Municipal Acquisition of Real Property

- Unless it is necessary for the "*operations of the Council",* Towns have a limited ability to acquire real property
- Certain specific purposes are set out in the *Municipalities Act*

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With Ministerial Approval

- Town needs prior written approval from Minister before acquiring and holding real or personal property that is not necessary "*for the operations of the Council*" under the *Municipalities Act*.

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Without Ministerial Approval

- *Municipalities Act* provides a number of purposes for which a Town can acquire land (i.e. Minister Approval NOT required):
  - Lands adjacent to public water supply system, public sewage system or storm drainage system to prevent pollution (s. 156)
  - Real property within highway reservations, highway improvement lines and highway lines (s. 167)

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Without Ministerial Approval

- Real Property necessary for parking lots (s. 169)
- Parks, stadiums and other recreational facilities (s. 174)
- For purpose of Fire Hall and fire fighting (s. 183)
- Cemetery or crematorium (s. 192)

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Procedure

- Survey
- Title Search - to identify owner
- Appraisal
- Offer of Fair Market Value

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Lands Act

- *Lands Act*, section 9
- Minister may grant up to 10 hectares of Crown lands free of charge for the site of a:
  - Church;
  - School;
  - Cemetery;
  - Municipal Building; or,
  - Municipal Recreation Park

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Expropriation

- Urban and Rural Planning Act, 2000
- Approval of Minister: Show no agreement could be made
- Expropriation Strategy
- Notice of Expropriation with Offer
- Appraisal of fair market value
- Best Use
- Appraisal to include amounts for depreciation and injurious affection

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Expropriation

- Make a reasonable offer in writing (considered when Board awards costs)
- If offer is rejected, Counsel fees and Board Fees are paid for by Municipality
- Mortgagees & lien holders have rights

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Conflict of Interest

- S.207 Conflict of Interest = “monetary interest”
- Older version of the Act: “the councillor has an interest in the matter distinct from an interest arising from his or her functions as a councillor”
- Direct or indirect monetary interest
- Relative has a monetary interest
- Employee of organization with a monetary interest
- Distinct from an interest held in common with the other citizens

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Conflict of Interest

- Harsh consequence = seat is vacated
- S.208: Disclose the interest to Council
- Council may decide by majority vote – decision final
- Leave during the discussion of the interest
- S.201: Annual Disclosure Statement

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Conflict of Interest

- *Neary v. Portugal Cove-St. Phillip's,* 2013 NLCA : Mayor's seat vacated due to undeclared conflict. HELD: Mayor was entitled to procedural fairness.

- *Fewer v. Harbour Main*, 2007 NLTD 91: Councillor's son lived in house on road considered for water and sewer (= "monetary interest"). Councillor voted. Council found a conflict and his seat was vacated. Councillor appealed. Appeal dismissed.

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Conflict of Interest

- *Snow v. Norris Arm,* 2007 NLTD: Councillor wanted to interview job applicants. Mayor advised he could not because his sister had applied. Council decided to vacate Councillor's seat. Decision quashed. Council must determine conflict by majority vote before Councillor is required to leave the meeting.
- *Payne v. Cow Head*, 2001 NLTD: Councillor's wife owned business where councillor was employed. Wife came to council meeting to discuss tax arrears. Councillor was asked to leave the meeting and refused. Seat was vacated. Councillor did not exhibit good faith.

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Social Media

- Facebook, Twitter, Instagram
- Town Trademark on Community FB page
- Councilors posting comments on FB pages
- Lack of control: non-ownership of FB page
- Report infringements directly to FB
- Contests

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