Conflict of Interest

Sandy Hounsell
Director, Municipal Support
Department of Municipal Affairs and Environment
729-7390

Relevant Legislation

Municipalities Act, 1999

- S. 206(2) - Result when conflict of interest occurs
- S. 207 - Conflict of Interest
- S. 208 - Disclosure
- S. 209 - Decision of Council
- S. 210 - Disclosure Statement
- S. 410(1) - Appeal Process

Conflict of Interest

A councillor is in a conflict of interest when:

- He/she has a monetary interest distinct from an interest arising from his or her function as a councillor
- A relative has a monetary interest …
  - Relative is defined in section 207
- A company or association of persons, with which a councillor is associated as an officer, employee or agent, has a monetary interest

Relative?

- ✓ Parent (includes in-law)
- ✓ Sibling (includes in-laws)
- ✓ Child (includes step-child)
- ✓ Ward
- ✓ Spouse (includes cohabitating partner)

“A Distinct Interest”

- In order for a conflict of interest to exist, it must be an interest distinct from an interest held in common with other citizens of the municipality

No Councillor is in conflict with setting & voting on property tax rates.

Conflict of Interest: Councillor's Responsibility

Councillors must:

- know what monetary interest he or she has that would or may constitute a conflict of interest
- *disclose* his or her interest and the nature of that interest in a manner before the Council or committee *before formal discussion of that matter commences*

Conflict of Interest: Councillor's Responsibility

- Once he or she has declared a conflict of interest, the councillor *must leave the meeting* while the matter in question is being discussed and voted on

- If the councillor is unsure that a conflict of interest exists, he or she should request that council decide and *abide by its decision*

Conflict of Interest: Council's Responsibility

To thoroughly investigate
any allegation of conflict of interest

Conflict of Interest: Council's Responsibility

- To declare a councillor's seat vacant when it is established that the councillor:
  - failed to disclose a conflict of interest or
  - discussed or voted on a matter in which he or she had a conflict of interest

Rules of Natural Justice

- Provide details of the allegation
- Hearing (outside formal meeting structure)
- Adequate notification
- Opportunity to be represented
- Only then make the determination
- After Natural Justice process complete, vote must take place at public meeting

Appeal Process

- If a councillors seat is vacated due to Conflict of Interest, the councillor has the right to appeal
- Section 410

Conflict of Interest: *Disclosure Statement*

Councillors must . . .

- File an annual conflict of interest Disclosure Statement
  - must be filed within 60 days of the Councillor's election and
  - by March 1st in each subsequent year of the councillor's term

Coombs v. Placentia - 2018 NLSC 53

- Can council declare a seat vacated after a councillor has resigned?
- Was procedural fairness denied?
- Did the Councillor's comments constitute discussion as per section 206(2)?

Vacancy v. Resignation

“In my view, the legislature did not intend that a councillor….who resigns his office, could subsequently have his office declared vacant and thereby be subjected to the punitive consequences of subsection 15(3) of the *Municipal Elections Act*.”

Procedural Fairness

- Provide written notice explicitly setting out the details of the allegations of conflict;
- Provide a reasonable period of notice; and
- Permit the Councillor
  - to speak or be heard through legal council
  - to examine and cross-examine witnesses, submit exhibits and make submissions

Discussion?

“Once [the councillor] declared a conflict of interest, he should not have spoken to the issue in the presence of the other councillors before the decision was made, whether he believed he was discussing it within the meeting or not. It would be an illogical interpretation of subsection 208(3) to say that he could speak to the issue in the presence of the decision-makers outside the formal meeting but not within.”

Legislative Review

1. Who should conflict provisions apply to?
2. How should a conflict be defined?
3. How should conflict be determined?
4. What should an appeals process look like?
5. What penalties are appropriate for breaches?

Contact Information

Region	Phone	Regional Manager
Eastern	729-5020	Lori Evoy
Central	256-1061	Ed Goodyear
Western	637-8010	Holly Scott-Walsh (A)
Labrador	896-2942	