

Valkyrie Law Group LLP

Local Government Elected Officials: Conflict of Interest

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Overview

- Pecuniary Interests
- Bias
- Penalties
- Implications for Elected Officials

Types of Conflicts

- Pecuniary
 - direct or indirect financial interest
- Bias
 - personal interest
 - “closed mind” or pre-judgment

Pecuniary Interests



- Direct interest
 - elected official owns land which is the subject of a rezoning application
 - elected official is a principal in a company bidding for a municipal project
- Indirect interest
 - member of a society receiving a grant from the municipality
 - member of a business or other club doing business with a municipality

Exemptions



- No conflict of interest where
 - pecuniary interest in common with electors of the municipality generally (community of interest)
 - remuneration of elected officials
 - interest so “remote or insignificant” that it “cannot reasonably be regarded as likely to influence the member”

Conflict Exceptions

- Conflict exceptions (s. 104)
 - ability for exceptions for pecuniary interest to be established by regulation
 - if council member has a right to be heard but is excluded by conflict, may appoint representative to exercise that right



Campaign Contributions

- Campaign contribution does not, by itself, create a conflict of interest
 - context of contribution
 - conduct of recipient

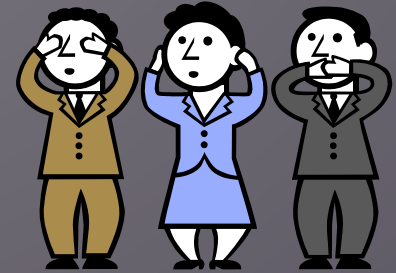


Bias



- Non-pecuniary personal interest
 - types of personal interest include applications/contracts dealing with
 - family members
 - business associates or friends
 - charitable organizations of which elected official is a director, etc.
 - other affiliations, e.g. religious, fraternal

Pre-judgment Bias



- Where elected official has
 - made his/her decision in advance
 - is not capable of being persuaded
- “closed mind” indicates pre-judgment
 - can have honest opinions strongly held
 - an “open” mind is not an empty mind
 - amenable to persuasion

Penalties

- Pecuniary conflict
 - disqualification unless
 - contravention inadvertent
 - error of judgment made in good faith
- Bias
 - does not result in disqualification



Penalties

- Local government or 10 or more electors may commence an application for Supreme Court order for disqualification
- if electors bring successful action, local government must pay electors' costs

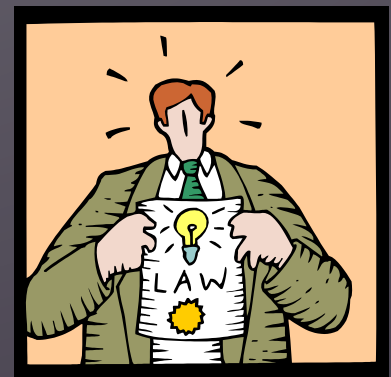


Where Conflict Exists

- Where elected official considers that he or she is in a conflict of interest
 - conflict must be declared
 - general nature of conflict must be described
 - must not take part in discussion nor vote, must immediately leave the meeting and must not attempt to influence the vote

Where Conflict Exists

- Post-declaration
 - following declaration of conflict of interest, council member may return to the meeting if he or she, following legal advice, determines not in conflict

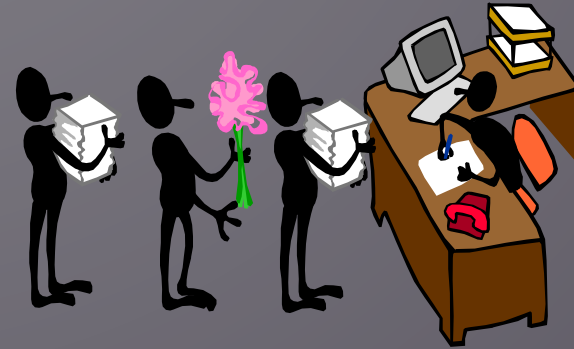


Influence



- Influence (s. 102, 103)
 - where direct or indirect pecuniary interest, council member must not attempt to influence, directly or indirectly a decision, recommendation or other action to be made or taken
 - at a council meeting
 - by an officer or employee
 - by a delegate
 - by any other person or body
 - contravention is basis for disqualification

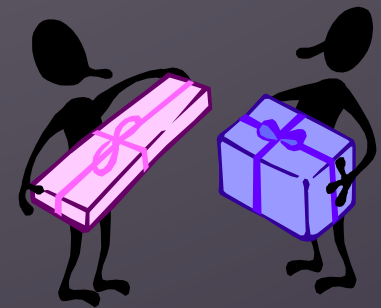
Gifts



- Accepting Gifts (s. 105)
 - council member must not, directly or indirectly, accept a fee, gift or personal benefit connected with performance of his or her duties
 - exceptions
 - where incident of the protocol or social obligations that accompany office
 - compensation authorized by law
 - election contribution
 - basis for disqualification

Gifts

- Disclosing Gifts (s. 106)
 - if council member receives gift of personal benefit that
 - exceeds \$250 in value
 - total value of gifts and benefits in 12 month period from a single source exceeds \$250



Gifts

- council member must file disclosure statement stating
 - nature of gift or benefit
 - source
 - when received
 - circumstances under which it was given and accepted
- failure to disclose is basis for disqualification



Insider Information



- Insider information (s. 108)
 - member or former member must not use information
 - obtained in performance of office
 - not available to the general public
 - for purpose of gaining or furthering a direct or indirect pecuniary interest
 - basis for disqualification unless inadvertent or error in judgment made in good faith

Contracts



- Contract Disclosure (s. 107)
 - any contract between the local government and a councillor/director, or person who was a councillor or director in the preceding six months must be disclosed
 - failure to disclose grounds for disqualification



Penalties

- Financial gain (s. 109)
 - If council member or former council member has received gain from contravening
 - conflict of interest requirements
 - internal or external influence when in conflict
 - gift and disclosure requirements
 - use of insider information
 - contracts provision



Penalties

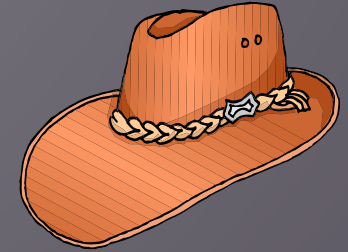
- municipality or elector may commence an application for Supreme Court order requiring member to pay to the municipality an amount equal to the gain
- if elector brings successful action, municipality must pay elector's costs

Effect on Bylaws/Decisions

- Quasi judicial decision may be void if conflict found
 - decision maker not impartial
- Administrative decision
 - bylaw or resolution may still be valid if quorum would have existed, and sufficient votes cast, to carry vote without member



Example



Councillor Grafton sells his property to the Prestons for \$200K and takes a mortgage back in the amount of \$50K. The Prestons then apply to Council to rezone their property. They want to build a leather goods boutique.

Councillor Grafton, who often wears leather, votes in favour of the rezoning.

- Was the Councillor in a conflict of interest?

Example

- The owner of “Back in the Saddle” applied to the City for a permit to paint a 40 foot mural of a horse on the side of his building. Councillor Green, who worked as a trail guide at “Back in the Saddle” every summer, voted in favour of the application.
- Should Councillor Green be voting?
- What if the mural contained advertising?



Example



Councillor Merchant is newly elected. Her best friend of 20 years, Angela Mueller, is the local real estate agent. The two women vacation together every year.

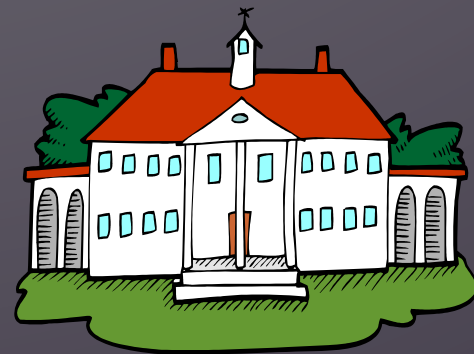
This year, Angela insists on paying for their trip to Club Med. Angela has had a great year selling Rwandan rangeland to disaffected Europeans.

Just back from their trip, Angela appears before Council seeking to rezone one of her properties.

- Should Councillor Merchant be voting?

Example

- The Village of Smallville recently amended its OCP to change the designation of its one of its most highbrow neighbourhoods from single family to multi-family residential. Councillor Harry Braggs, a long-time resident of the neighborhood, voted against the amendment.
- Should he have been voting?



Example



The Jingle Bells Music School leases its building from the City. Councillor Phyllis Steen has no musical talent, but her son John has been taking glockenspiel lessons at the school for years (he is a slow learner).

The Music School asks the City Council for a rent deduction.

- Should Councillor Steen vote?
- Does it matter if John is on a music scholarship?



Example

- Councillor Smith loved the expansive views from the balcony of her high-rise apartment. When an application to rezone the property directly in front of her building came before council, she declared a conflict and removed herself from the discussion. This did not, however, prevent her from venting to the local media about her opposition to increased densification in the community.
- Any issues?

