

COUNTY OF HASTINGS COUNTY DAY 2019

MUNICIPAL CONFLICT OF INTEREST ACT A PRIMER

EWART O'DWYER

M. John Ewart

Jessica Chapman

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PURPOSE OF THE MCIA

- **Moll v. Fisher 1979 Ontario Divisional Court**
 - “The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest...”
 - Based on the moral principle that no man can serve two masters
 - Applies to all situations in which member has, or is deemed to have, any direct or indirect pecuniary interest.
 - No need to find corruption, so long as member fails to honour the standard of conduct prescribed by the statute, then regardless of good faith they will be in contravention.

AMENDMENTS UNDER BILL 68

- Member's must now file written statements of member's interest after disclosed at meeting.
- Member's obligations have been broadened with addition of section 5.2 which precludes a member from using their office to influence decisions or recommendations by administrative staff.
- Member can speak but not vote where Council or Board is meeting to consider an imposition of the code of conduct penalty to suspend member's pay for up to 90 days.
- Registry of written statements or declarations of interests of members available for public inspection.
- Broader penalties now available to a judge:
 - Reprimand
 - Suspension of pay for up to 90 days
 - Declare seat vacant
 - Disqualify for a period of not more than 7 years
 - Require the member/former member to make restitution

MCIA IS PERSONAL

- The obligation to comply with the requirements of the MCIA is the personal responsibility of the member.
- Declaration of office under section 232 of Municipal Act, 2001
 - “I will disclose any pecuniary interest, direct or indirect, in accordance with the *Municipal Conflict of Interest Act*.”
- Affirmed in *Magder v. Ford* at both the Superior Court and Divisional Court levels.
- No other person – including CAO, clerk, treasurer, municipal solicitor or other members of council has the responsibility to advise a member regarding their statutory obligations under MCIA

PECUNIARY IS FINANCIAL

- Pecuniary not defined within the MClA.
- It has been held by the courts to be “a financial, monetary or economic interest.” – *Tuchenhagen v. Mondoux*, (2011)
- Not just a direct financial interest, but to things that can be measured in terms of financial value, such as assets, rights or competitive position.

INDIRECT INTERESTS

- Where your spouse, parent or child has an interest or where you are a member of a board, a shareholder, director or officer of a corporation you are deemed to have an interest

ADAMIAK V CALLAGAHAN (2014)

- Spouse of Town of Erin council member was fire chief
- Council member contravened Act by voting on across-the-board pay increases for municipal employees (including fire chief)
- Did not contravene Act by voting on operational review of town services

INTEREST IN COMMON WITH ELECTORS GENERALLY

- Exemption under clause 4(j)
- Defined in section 1 of the MCIA
- The question is not whether the interest of the member is exactly the same as everyone else in the municipality, but whether, within the area under consideration, the member's interest is similar in nature or kind (not simply degree) with those interests of the other member electors in the applicable area
- Many of the cases dealing with this exemption are very fact specific

ENNISMORE (TOWNSHIP), RE (1996)

- Municipality had undertaken two water and sewer needs studies in a certain area
- Application brought to determine whether or not a member of council with a commercial establishment within the study area could participate and vote on the decision to build a communal water supply system within that area of the municipality
- All residents within the area would be affected
- The fact that the council member had a commercial establishment in the study area did not make his pecuniary interest different in kind from the other affected elections. His interest was greater in degree only.

SO REMOTE OR INSIGNIFICANT

- Exemption under section 4(k)
- Applicable test in determining whether an interest is so remote or insignificant in its nature is
 - “Would a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councillor as likely to influence that councillor’s action and decision on the question?”

Whiteley v. Schnurr (1999) Ont. S.C.J.

- A 4(k) analysis must focus on the proximity and significance of the councillor’s pecuniary interest in the context of all the circumstances.

Ferri v. Ontario (Attorney General) (2015) Ont. C.A.

COOPER V. WIANCKO (2018)

- Three Township of Georgian Bay Councillors were members of chamber of commerce that received municipal grant
- In two cases interest so remote or insignificant it could not reasonably be regarded as likely to influence the members
- In third case, interest was reasonably regarded as likely to influence

BEING A MEMBER OF A BOARD, COMMITTEE OR OTHER BODY...

- The appointment of a council member to fulfil a public duty was contemplated by section 4(h) even though an indirect conflict might arise when there was otherwise no actual or personal interest at issue
- Any indirect conflict created for the appointee should be accepted to allow the council members to fulfil their public duty
- *Aurora (Town) v. Ontario, 2013*
 - Two council members appointed by Council to sit on board of a cultural centre
 - This fell under the exemption of section 4(h)

SO YOU CONTRAVENED THE ACT...

- Penalties will not be imposed where it is found that the contravention was through inadvertence or by reason of an error in judgment
- Inadvertence refers to a failure to direct one's mind to one's duty
 - i.e. where it never occurs to the member that he or she may need legal advice, the result may be a pleading of inadvertence
- Reason of an error in judgment refers to a judgment call, which proves to be in error
 - Where the member acts upon legal advice that they do not have an interest, but in reality they do, the finding may be "error in judgment" on behalf of the lawyer

BEST PRACTICES

- Review your Agenda beforehand and know what is coming
- Ask yourself the fundamental question:
 - “Do I, or any party whose interest I am deemed to have, stand to gain or lose arising out of the vote in question, or does the vote have the potential to affect my financial position, whichever way it goes?”
- When in doubt contact your Integrity Commissioner for advice
- Once a declaration is made remove yourself from the room
- If you are not present at a meeting in which you have a conflict you must still declare at the beginning of the next meeting