

Module 11: Part B – The Municipal Conflict of Interest Act

[The Municipal Conflict of Interest Act]

The Municipal Conflict of Interest Act identified the circumstances when a member of the board has a conflict of interest. According to the Act, a conflict of interest is a pecuniary interest. A pecuniary interest is any interest involving money. The pecuniary interest can be direct or indirect. A member can have a conflict of interest that is not pecuniary with respect to quasi-judicial decision-making.

The purpose of the *Municipal Conflict of Interest Act* is to prevent holders of public office from participating in matters in which their economic self-interest could be in conflict with their public duty.

[Indirect Interest]

An indirect interest includes where the member of his/her nominee

- is a shareholder, director or senior officer of a private corporation with a direct pecuniary interest;
- has a controlling interest in a public corporation with a direct pecuniary interest;
- is a member of a body that has a direct pecuniary interest
- is a partner or employed by a person with a pecuniary interest

[Deemed to have a pecuniary interest]

The Municipal Conflict of Interest Act identifies individuals whose direct or indirect pecuniary interests are deemed to be the member's direct or indirect pecuniary interest. The individuals are the member's parent, spouse or child. For example, if a trustee's son or daughter is a new teacher with the board, the trustee should declare a conflict of interest and not participate in board proceedings where cutbacks to teaching staff to address budget concerns are being discussed or decisions are being made. Another example is where a trustee's spouse is employed at a senior level with a major computer manufacturer and supplier. The trustee should declare a conflict of interest for any board proceedings where computer purchases are being discussed or decisions are being made.

[Deemed not to have a pecuniary interest]

The Municipal Conflict of Interest Act identifies when a member is deemed not to have a pecuniary interest, including:

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- the member's child's right to attend school and receive educational related services on the same terms as the other community members
- a pecuniary interest which is common with electors generally
- an interest so remote or insignificant it is not reasonably likely to have an influence

A trustee could participate in discussions and decisions with respect to transportation for all students, even if a trustee's child was one of the students being transported. However, despite transportation being provided to students generally on the same terms, if a change to the transportation policy would impact the member's child in a manner different than other students, the member might be considered to have a financial interest in the decision and should declare a conflict of interest.

[If a member has a Conflict of Interest]

If a member has a conflict of interest, before the matter is considered they must:

- disclose the conflict of interest
- not take part in discussion or vote
- not attempt to influence voting before, during or after the meeting(s) where the matter is considered

[When Conflict of Interest is being considered in-camera]

Where the matter giving rise to the conflict of interest is being considered in-camera, in addition to disclosing, not taking part and not attempting to influence before, during or after – the member must also leave the meeting or the part of the meeting when the matter is being considered.

If a member is absent from the meeting in which the matter giving rise to the conflict of interest is being considered and therefore, has not declared his/her conflict, the member must declare the conflict and otherwise comply at the next meeting attended.

[Declarations must be recorded in the minutes]

Every declaration must be recorded in the minutes. If declared in public, the general nature of the conflict must be recorded. In declared in camera, the fact of the declaration – but not the general nature of the conflict – needs to be recorded in the minutes at the next public meeting of the board.

[Contravention]

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An elector may apply to a judge to determine whether a member has contravened his/her duties under the Act. Where the judge determines that there has been a contravention, the judge:

- shall declare the member's seat vacant;
- may disqualify the member for up to 7 years; and
- may require restitution.

[Determining failure to declare conflict of interest]

According to section 10(2) of the *Municipal Conflict of Interest Act* a judge may determine that the failure to declare the conflict was due to inadvertence or error in judgement. If so found, the member's seat need not be vacated and the member is not subject to being disqualified. In the Carol case, the judge did consider whether trustee Carol had inadvertently or as a result of an error in judgment, failed to declare a conflict and found that the facts did not support such a conclusion - that he was aware of the duty and had on other occasions, properly declared a conflict.

[End of Module 11 Part B]