



11 Legal Aspects of School Board Governance

PART B: THE MUNICIPAL CONFLICT OF INTEREST ACT

This section will help you understand how to apply the *Municipal Conflict of Interest Act* while discussing and voting on matters brought before the board.

The purpose of the *Municipal Conflict of Interest Act* is to prevent holders of public office from participating in matters where economic self-interest could be in conflict with public duty. As a trustee, you must be well aware of situations where you, or others, may have a conflict of interest.

When it comes to the quasi-judicial decision making process as discussed in Part A, a potential Conflict of Interest is any interest that might bias a trustee towards a particular decision. The *Municipal Conflict of Interest Act* is more specific. According to the Act, a conflict of interest is a pecuniary interest – an interest involving money.

Indirect Pecuniary Interest

A pecuniary interest can be direct or indirect. Here are some examples of an indirect interest:

- The member or his/her nominee is a shareholder, director or officer of a private corporation with a direct financial interest;
- Has a controlling interest in a public corporation with a direct financial interest;
- Is a member of a body that has a direct financial interest;
- Is a partner or employed by a person with a financial interest

The *Municipal Conflict of Interest Act* also identifies the member's parent, spouse or child as individuals whose direct or indirect financial interests are deemed to be the same as the member's interests.

Example: A trustee's son is a new teacher with the board. In board proceedings, cutbacks to teaching staff to address budget cuts are being discussed and decisions are being made. In this case, the trustee should declare a conflict of interest and not participate in Board proceedings.

No Pecuniary Interest

The *Municipal Conflict of Interest Act* also identifies when a member is deemed not to have a pecuniary interest. These situations include:

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

Example: It is acceptable for a Trustee to participate in discussions and decisions related to transportation for all students even if the Trustee's child uses the transportation.

Declaring a Conflict of Interest

If a member has a Conflict of Interest, they must:

- Disclose the conflict of interest before the matter is considered
- Take no part in the discussion or vote
- Make no attempt to influence voting before, during or after the meeting(s) where the matter is considered
- Leave the meeting when the matter is being discussed if the matter is being considered in-camera.

If the member is absent from the meeting and as such has not declared their conflict, they must do so at the next meeting they attend. Every declaration must be recorded in the minutes of the meeting. In the case of public meetings, the general nature of the conflict must be recorded.

Contravention - Being in breach of the Conflict of Interest Act

An elector has the right to apply to a judge to determine whether a member has contravened his or her duties under the *Municipal Conflict of Interest Act*.

If 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 seven years
- May require restitution

The judge may instead determine that the failure to declare the conflict was due to inadvertence or error in judgement. If so, the member will not have to vacate their seat and will not be subject to disqualification.