Principles Integrity

Section 12.0 Conflict of Interest

12.1 Members shall take appropriate steps to avoid conflicts of interest, both apparent and real. Proactive steps to mitigate conflict of interest is important to maintaining public confidence in elected officials. Members are encouraged to seek guidance from the Integrity Commissioner on becoming aware that they may have a conflict between their responsibilities to the public as a Member of Council and any other interest, pecuniary or non-pecuniary.

Commentary:

1. Members are subject to legislative and common law responsibilities to avoid conflicts of interest.

2. The legislation, the Municipal Conflict of Interest Act, deals specifically with pecuniary conflicts of interest, and attributes the pecuniary interests of the member’s business partners, family members, and defined individuals connected to the member, as indirect pecuniary interests of the member.

3. This broader common law responsibility is captured in the Code of Conduct, and requires members to avoid 'real and apparent' conflicts of interest.

4. The courts over time have rendered decisions that assist in assessing whether a councillor is in breach of their responsibility to avoid a conflict of interest. For example:

   All conflict of interest rules are based on the moral principle…that no man can serve two masters. …even the most well-meaning men and women may be impaired where their personal financial interests are affected. (Moll v. Fisher)

   and

   “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. In answering the question set out in such test, such elector might consider whether there was any present or prospective financial benefit or detriment, financial or otherwise that could result depending on the manner in which the member disposed of the subject-matter before him or her.”
   (Re Mel Lastman and The Queen in Right of Ontario)

   and

   an apparent conflict of interest…” exists when there is a reasonable apprehension, which reasonably well-informed persons could properly
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> *have, that a conflict of interest exists.*" (Stevens v. Canada (Attorney General))

5. In considering whether members may have an interest that conflicts with their responsibilities as an elected representative, members of Council should also be aware of the concept of bias. The test for bias is whether as a member of Council, the member is completely incapable of being persuaded of a different point of view. The courts recognize that members of bodies popularly elected, such as municipal councils are not expected to approach all matters with disinterest and strict impartiality. Members of public office often bring with them a predisposition towards the various issues upon which council must decide. In fact, these might well be the positions for which electors supported them.

The test for bias for members of municipal council requires establishing that there has been prejudgment to the extent that any representations to the contrary, or in support of an alternative view, are futile. The onus on establishing bias rests with the person alleging it. However, publicly articulating a definitive position on a matter before it has been fully debated may raise questions as to whether the member is capable of being persuaded.

6. To assess whether any matter may give rise to a real or apparent conflict of interest for a Member of Council, the following series of questions may assist:

a. *Have I been or am I in any way involved with the matter?*

b. *Is there a substantial likelihood that I may be involved in the matter?*

c. *Are any of my business partners or my family members connected with the matter, or are likely to be or become connected with the matter?*

d. *Is the matter so proximate to a property in which I am or may be connected that my property will be impacted?*

e. *Would the decision on the matter impact a non-property matter in which I am or may be connected?*

f. *Am I capable of addressing this matter without bias; is my mind open to following a course of action that may be different from my original position on the matter?*

g. *Have I considered the public interest as a priority?*

h. *What would a reasonable person, apprised of all the relevant facts, believe about whether I am influenced by my personal and/or business interests, if I participate in Council’s deliberations.*