

ASSOCIATION OF MANITOBA MUNICIPALITIES

# CONFLICT OF INTEREST AND BIAS

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## CONFLICT OF INTEREST AND BIAS

### Municipal Council Conflict of Interest Act

- Background
- Features
- Cases and Issues

### Bias

- Principles
- Cases
  - Personal bias
  - Political bias

# CONFLICT OF INTEREST BACKGROUND

Pre-1987

Barber v Calvert (1971 MB Court of Appeal)

Calvert Mayor of Carberry for 18 years

Owner of farm equipment dealership: sale of parts and  
service

Municipal Act: member of Council cannot contract with  
Municipality

Court said he acted with best of intentions – nothing to  
suggest he was seeking private gain at public expense.

# **BARBER V MAYOR CALVERT**

**DECISION OF THE COURT OF APPEAL  
DISQUALIFIED!**

**LEGISLATIVE RESPONSE  
AMENDED MUNICIPAL ACT  
MUNICIPAL COUNCIL CONFLICT OF INTEREST  
ACT**

## **MCCIA PRINCIPLE**

Members of council can have significant conflict of interest and can contract with the municipality despite the conflict - as long as they follow the rules.

## MCCIA RULES

1. File statement of assets and liabilities annually and keep it up to date with changes (Section 9).
2. At meeting where matter arises in which the member or dependant has pecuniary issue: disclose and withdraw (Section 5). And refrain from attempting to influence the matter.
3. Don't use inside municipal information for personal gain of the member or any person (Section 14).
4. Where conflict, don't communicate directly or indirectly with another member or staff to obtain contract or benefit (Section 16).

# MCCIA DEFINITIONS

## DEPENDANT

Spouse, partner or child residing with member.

## PECUNIARY INTEREST

\$500 or more

Not if interest doesn't exceed that of an ordinary resident

## INDIRECT PECUNIARY INTEREST

Employee of corporation with an interest

5% or more of capital

## SIGNIFICANCE OF DEFINITIONS

They are technical

Exceptions, refinements

But if you are outside them then you  
don't have a conflict.

If you are inside them you are presumed  
to have a bias in the matter.



## CONSEQUENCES OF BREACH

Court of King's Bench order:

Disqualification

Return any money made

Council can void contract

Resolution/by-law not automatically invalid

Member can run in next general election

**CHAN V MAYOR KATZ  
MB COURT OF APPEAL 2013**

Xmas party for City councillors and staff  
at Mayor's restaurant.

Paid for by the City.

Mayor's office manager recommended  
choice of restaurant.

Mayor's office sent out the invitations.

**CHAN V MAYOR KATZ  
MB COURT OF APPEAL 2013**

Application for disqualification  
under MCCIA.

Dismissed

**CHAN V MAYOR KATZ  
MB COURT OF APPEAL 2013**

Matter not discussed at any  
meeting.

No evidence the Mayor took any  
steps to use his influence.

Can't infer he spoke to the office  
manager about it.

## CHAN V MAYOR KATZ MB COURT OF APPEAL 2013

Trial judge said even if she had found a violation she would have refused to disqualify the Mayor because it “would be utterly disproportionate to the impugned conduct to trigger an expensive civic election and interfere with the will of the electorate democratically exercised.”

Court of Appeal agreed.

**CHAN V MAYOR KATZ  
MB COURT OF APPEAL 2013**

Effect of the decision

Importance of evidence.

Inadvertent or minor breach likely  
to be excused by the Court.

**MATZ V REEVE LAVOIE  
QUEEN'S BENCH 1992**

Matz had a proposed cottage development.

Reeve owned competing cottage  
development.

Matz alleged Reeve used his influence to  
place more onerous restrictions on his  
subdivision.

**MATZ V REEVE LAVOIE  
QUEEN'S BENCH 1992**

Reeve took part in meetings where  
Matz subdivision was discussed.  
Judge agreed Reeve had something  
to gain by frustrating Matz's  
subdivision.



**MATZ V REEVE LAVOIE  
QUEEN'S BENCH 1992**

Application dismissed!

Matz wasn't an elector.

In any case, not proven that the  
Reeve influenced the decisions of  
Council.

**MATZ V REEVE LAVOIE  
QUEEN'S BENCH 1992**

But because the Reeve “acted inappropriately” costs were awarded against him.

# MANITOBA LAW REFORM COMMISSION 2016

## Recommendations

A range of penalties for breach:  
disqualification, suspension up to 90 days, fine  
up to \$5000, order to make restitution.

If violation unknowing or inadvertent,  
restitution only.

# BIAS

MCCIA covers conflict of interest. If your interest isn't caught by it, you can't be challenged under MCCIA.

Eg, your child doesn't live in your house.

But you can still be biased.

Council decision can be challenged in Court of King's Bench.

## REASONABLE APPREHENSION OF BIAS

Where it would be reasonable in the circumstances for an observer to think that bias was involved in the decision.

## REASONABLE APPREHENSION OF BIAS

Consequences of finding bias involved:

Resolution or by-law invalid.

No legal consequence for the member.

**MCLAREN V CASTLEGAR**  
**BC COURT OF APPEAL 2011**

Derelict former restaurant, motel and residence.

Complaints: property unsightly and unsafe.

Owner denied access for inspection. City got court  
warrant.

Mayor interviewed by local paper: We'd like to see the  
building removed".

**MCLAREN V CASTLEGAR**  
**BC COURT OF APPEAL 2011**

Administration report to Council recommending a resolution requiring owner to demolish the buildings. Owner given an opportunity to appear before Council. City Council passed a resolution requiring McLaren to demolish.



**MCLAREN V CASTLEGAR**  
**BC COURT OF APPEAL 2011**

Court application to declare the resolution  
void because

statements by the Mayor gave rise to a  
reasonable apprehension of bias.

**MCLAREN V CASTLEGAR**  
**BC COURT OF APPEAL 2011**

Court said members of Council had a  
duty to be impartial.

Does not mean they couldn't have  
preconceptions or inclinations.

**MCLAREN V CASTLEGAR**  
**BC COURT OF APPEAL 2011**

Application dismissed.

Mayor's remarks did not indicate he was unwilling to reassess the matter or wouldn't weigh subsequent evidence and submissions.

**MCLAREN V CASTLEGAR**  
**BC COURT OF APPEAL 2011**

“He did not display an undue predisposition such as to create a reasonable apprehension of bias”

**OLD ST BONIFACE RESIDENTS  
ASSOC V WINNIPEG  
SUPREME COURT 1990**

Proposed condo development on Red River.

Included City land developer was buying.

Developer met with City, including Coun Savoie.

Savoie appeared before Finance Cmte arguing in favour  
of the sale.

**OLD ST BONIFACE RESIDENTS  
ASSOC V WINNIPEG  
SUPREME COURT 1990**

Sale approved.

Rezoning required, with public hearing by Community  
Committee, chaired by Savoie.

Objectors wrote to him saying he shouldn't participate  
as he was committed to the project.

**OLD ST BONIFACE RESIDENTS  
ASSOC V WINNIPEG  
SUPREME COURT 1990**

Savoie participated.

Committee recommended rezoning.

City Council passed the by-law.

**OLD ST BONIFACE RESIDENTS  
ASSOC V WINNIPEG  
SUPREME COURT 1990**

Application to Court to quash the by-law.

Ground: Councillor was disqualified by  
reason of bias from participating in the  
proceedings of the Committee.



**OLD ST BONIFACE RESIDENTS  
ASSOC V WINNIPEG  
SUPREME COURT 1990**

Court considered that taking a stand for or against the matter would run afoul of the ordinary rule which disqualifies a decision maker on the basis of a reasonable apprehension of bias.

**OLD ST BONIFACE RESIDENTS  
ASSOC V WINNIPEG  
SUPREME COURT 1990**

**Application dismissed!**

**Councillors can take stands for or against  
development: in election campaign.**

**Can assist parties in supporting or  
opposing developments.**

**OLD ST BONIFACE RESIDENTS  
ASSOC V WINNIPEG  
SUPREME COURT 1990**

Public hearing context: to hear  
representations.

Members of council must not have  
prejudged the matter, so that they are not  
amenable to persuasion.

**OLD ST BONIFACE RESIDENTS  
ASSOC V WINNIPEG  
SUPREME COURT 1990**

To succeed objectors have to show their appearance at the Committee was futile.

That statements of a member are expression of a final opinion.

Members can have “political bias”.

# BIAS

Generally: reasonable apprehension test.

Public hearing: amenable to persuasion  
test.

Key: evidence.



QUESTIONS?

**MICHAEL McCANDLESS**