



Manitoba Law  
Reform Commission

# **Municipal Conflict of Interest: A Better Approach to Enforcement?**

**2016 Municipal Officials Seminar  
Association of Manitoba Municipalities  
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# Today's Presentation

Manitoba Law Reform Commission

MCCIA: The Current Law

Need for Reform

Remedies

Enforcement

Models for Enforcement

# Manitoba Law Reform Commission

- Independent law reform agency created in 1970 by *The Law Reform Commission Act*
- Role: Improve, Modernize, Reform
- Projects are initiated by requests from:
  - Public
  - Legal Profession
  - Minister of Justice/Attorney General
- Reports available online:

**[www.manitobalawreform.ca](http://www.manitobalawreform.ca)**



# Municipal Conflict of Interest Legislation

- Based on the principle that an elected public official cannot use his or her position to advance his or her own interests.
- *The Municipal Council Conflict of Interest Act* (MCCIA) enacted in 1983.
- Applies to all municipalities in Manitoba, including the City of Winnipeg.
- Sets out the rules that govern the conduct of members of council regarding conflicts of interest.

## Current Law: The MCCIA

- Defines direct and indirect pecuniary interests or liabilities;
- Requires disclosure of statement of assets and interests;
- Requires disclosure at meetings and refrain from voting; and
- Provides for sanctions if Act is violated.

## Current Law: The MCCIA cont'd.

### **Disqualification for Violation**

18(1) A councillor who violates any provision of this Act is disqualified from office, and the councillor's seat on council becomes vacant, as of the time of the declarations referred to in clauses 21(1)(a) and 21(2)(a).

## Current Law: the MCCIA cont'd.

### **Enforcement:**

If an elector or council thinks a councillor has violated the Act  
→ Court of Queen's Bench.



## Current Law: the MCCIA Cont'd.

After the judge hears the matter:

21(1) After hearing the application, the judge may:

- (a) Declare that the councillor has violated the Act; or
  - (b) Refuse to make the declaration;
- and in either case, with or without costs.



## Current Law: The MCCIA cont'd.

Remedy for violating the Act =

**Disqualification from office** (and possible restitution)

21(2) Where the judge declares that the councillor has violated a provision of this Act, the judge

(a) **shall** declare the seat of the councillor vacant; and

(b) may, where the councillor has realized pecuniary gain in any transaction to which the violation relates, order the councillor to make restitution to any person, including the municipality, affected by the pecuniary gain.

## Current Law: The MCCIA cont'd.

### Unknowing or Inadvertent Breach

22 Notwithstanding anything in this Act, where a judge finds that a councillor violated a provision of this Act **unknowingly or through inadvertence**, the councillor is **not** disqualified from office, and the judge shall not declare the seat of the councillor vacant, in consequence of the violation.

# Need for Reform?

- Other jurisdictions
- Case Law in Manitoba and elsewhere
- Judicial inquiry recommendations
- Informal consultations



## Need for Reform: Concerns Identified

- On par with provincial conflict of interest legislation.
- Desire for an out-of-court enforcement process.
- Need an authoritative source of advice.
- With many different offices dealing with ethical matters, reforms should provide clarity, rather than just creating another layer of bureaucracy.

# Provincial Conflict of Interest

- Every Canadian province or territory has conflict of interest legislation
- All but Quebec have established independent conflict of interest commissioners
  - Advice
  - Enforcement
- In Manitoba, *The Legislative Assembly and Executive Council Conflict of Interest Act*

# Provincial Conflict of Interest Cont'd.

- Two important distinctions between the provincial Act and the MCCIA:
  - Remedial provisions
  - Conflict of Interest Commissioner



## Provincial Conflict of Interest Cont'd.

Where a judge determines that a member has violated the Act, judge shall impose one or more of the following penalties:

- Disqualification from office
- Suspension of a period not exceeding 90 sitting days
- Fine not exceeding \$5,000
- Restitution

## Provincial Conflict of Interest Cont'd.

### Provincial Conflict of Interest Commissioner

- Act amended in 2002 to establish Commissioner
- Meets with each member to review statement of assets
- Members may seek formal or informal opinions about their obligations under the Act
- No investigatory or enforcement powers



# Need for Reform?

- The Commission:
  - Listened to identified concerns;
  - Looked at other jurisdictions, case law, judicial inquiries;
  - Decided on recommendations for law reform.
  - Did not release a Consultation Report due to indications that the MB Legislature was planning to make changes in its Spring session (which it did not).
  - Published its report in January, 2016. Report was submitted to Minister of Justice and Attorney General and made public.

# Reform to Remedial Provisions: Recall the Current Law

21(1) Upon hearing any application for a declaration that a councillor has violated a provision of this Act and such evidence as may be adduced, the judge may

(a) declare that the councillor has violated a provision of this Act; or

(b) refuse to make the declaration;

and in either case, with or without costs.

21(2) Where the judge declares that the councillor has violated a provision of this Act, the judge

(a) shall declare the seat of the councillor vacant; and

(b) may, where the councillor has realized pecuniary gain in any transaction to which the violation relates, order the councillor to make restitution to any person, including the municipality, affected by the pecuniary gain.

# Recommendation 1: Range of Sanctions

***Sections 21(1) and (2) of The Municipal Council Conflict of Interest Act should be replaced with one provision which states that [...] the judge may impose one or more of the following penalties on the councillor:***

- a) Disqualification of the councillor from office.***
- b) Suspension of the councillor for a period not exceeding 90 days.***
- c) A fine not exceeding \$5,000.***
- d) An order requiring the councillor to make restitution to any person, including the municipality, affected by the pecuniary gain.***
- e) Any other order that the judge considers appropriate in the circumstances.***

## Recommendation 3

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***Section 18(1) of The Municipal Council Conflict of Interest Act should be repealed.***

(Section 18(1) says that a councillor who violates any provision of the Act is disqualified from office and the councillor's seat on council is vacant.)

## Recommendations 5 & 6: Suspension

**Recommendation 5:** *The Municipal Council Conflict of Interest Act should be amended to include a provision which specifies that a councillor suspended under the Act is, for the duration of the suspension, prohibited from participating in any council meeting or any committee on which the councillor serves.*

**Recommendation 6:** *Section 94(1)(a) of The Municipal Act and section 47(1) of The City of Winnipeg Charter Act should be amended to allow a councillor to remain a member of council if he or she is absent from three consecutive regular council meetings as a result of a suspension under The Municipal Council Conflict of Interest Act.*

# Municipal Conflict of Interest Commissioner

Two issues/concerns identified:

- No access to an authoritative source of advice; and
- No out-of-court process for dealing with conflict of interest complaints or enforcement.



## Recommendation 7

**The Municipal Council Conflict of Interest Act *should be amended to provide for the establishment of a municipal Conflict of Interest Commissioner, with responsibility for administering, interpreting and enforcing the Act for all municipalities in Manitoba, including the City of Winnipeg.***

## Recommendation 9

***The municipal Conflict of Interest Commissioner should have four primary roles:***

- a) providing advice and guidance to councillors;***
- b) educating councillors and the public regarding ethical obligations;***
- c) investigating alleged breaches of the Act; and***
- d) enforcement of the Act.***



## Recommendations 11 & 12: Advice

**Recommendation 11: The municipal Conflict of Interest Commissioner should be required to respond to requests from councillors for advice and guidance as to their responsibilities under the Act.**

**Recommendation 12: The municipal Conflict of Interest Commissioner may make inquiries that he or she considers appropriate, and shall give councillors opinions and recommendations, where requested. If a councillor has requested a formal opinion, the opinion must be in writing.**

## Recommendations 13 & 14: Advice Cont'd.

**Recommendation 13: Any written opinion of the municipal Conflict of Interest Commissioner shall be filed with the municipality and made available to the public in the same manner that the statement disclosing assets and interests is available.**

**Recommendation 14: The Municipal Council Conflict of Interest Act should be amended to provide that a councillor who acts on the written opinion and recommendations given by the municipal Conflict of Interest Commissioner is not in contravention of the Act with respect to the matters dealt with in the opinion and recommendation.**

# Recommendation: Investigations

Several mechanisms that already relate to ethics and municipal governments:

- Office of the Ombudsman
- Office of the Auditor General
- Code of Conduct
- Court of Queen's Bench

Different bodies with different mandates, applying different standards.

## Recommendations 15: Investigation

**Recommendation 15: The Municipal Council Conflict of Interest Act *should authorize the municipal Conflict of Interest Commissioner to conduct an inquiry arising from a request made by council, a councillor, or a member of the public, as to whether a councillor has contravened the Act.***

## Recommendation 16 & 17: Investigation

**Recommendation 16: The municipal Conflict of Interest Commissioner should have the discretion to refuse a request to investigate where he or she is satisfied that the request is frivolous, vexatious, or not made in good faith; or where he or she is satisfied that there are insufficient grounds for an investigation.**

**Recommendation 17: Commissioner should be given powers of investigation. [abbreviated]**

# Models for Reform: Enforcement

- Three possible models:

Commissioner  
makes  
recommendations  
to council

Commissioner has  
power to impose  
sanctions directly

If there is merit to  
complaint,  
Commissioner  
brings complaint to  
court

# Models for Reform: Commissioner Makes Recommendations

## PROS

- Model has worked well at provincial level in other jurisdictions.
- If Commissioner's recommendations public, council would go against commissioner's ruling at its peril.

## CONS

- Court still most appropriate place for more serious sanctions (procedural fairness)
- Would create a dual process (court vs. commissioner), so may not add clarity for electors and councillors. Would have to be clearly defined.

# Models for Reform: Commissioner Imposes Sanctions

## PROS

- Depoliticizes sanction process (as compared to ombudsman model).

## CONS

- Court still most appropriate place for more serious sanctions (procedural fairness)
- Would create a dual process (court vs. commissioner), so may not add clarity for electors and councillors. Would have to be clearly defined.



# Models for Reform: Commissioner Carries Complaint to Court

## PROS

- Elector/council does not bear the cost of the court application.
- Depoliticizes the sanction process (as compared to ombudsman model).
- One clear process for enforcement.
- Presumably one those cases with merit would end up in court.

## CONS

- Model has yet to be tested in the context of conflict of interest.

# Questions and Comments

Please share your comments:

[mail@manitobalawreform.ca](mailto:mail@manitobalawreform.ca)



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