

EXECUTIVE SUMMARY

The promotion of ethical conduct has become a priority for all levels of government in Canada. Municipalities, provinces, territories and the federal government are looking for new ways to strengthen their ethical regimes, whether it is through the establishment of codes of conduct; integrity or conflict of interest commissioners; lobbyist registries and registrars, or expanding the mandate of the office of the ombudsman.

Members of municipal councils are elected public officials, and, as such, they have a duty to consider the well-being and interests of the municipality as a whole.¹ When a member of council uses his or her position to advance his or her own interests, he or she may be found to be in a conflict of interest. In Manitoba, legislation has been in place for several decades to address municipal conflict of interest. *The Municipal Council Conflict of Interest Act*² (“MCCIA”) was passed on August 18, 1983 and came into force on October 26, 1983. It applies to all municipalities in the province of Manitoba, including the City of Winnipeg. The MCCIA sets out a legislative framework that governs the conduct of members of council regarding conflicts of interest.

The MCCIA is primarily concerned with preventing a councillor’s direct or indirect pecuniary interests or liabilities from affecting decisions made by council. The MCCIA defines the types of interests or liabilities that result in a conflict of interest; obligates councillors to disclose their interests in a statement of assets and liabilities; requires councillors to disclose their interests and liabilities at meetings and refrain from voting; and provides for sanctions if a provision of the Act is violated. There is no provision in the Act for dealing with a conflict of interest outside of the court process. If it is alleged that a councillor has violated a provision of the MCCIA, recourse is to the Court of Queen’s Bench for a declaration.³ A councillor who violates any provision of the MCCIA is disqualified from office, and the councillor’s seat on council becomes vacant.⁴

A canvass of judicial inquiry reports and case law suggests that reform is now required to bring the MCCIA in line with modern day values of accountability, honesty, and openness in local government. While Manitoba was ahead of many other Canadian jurisdictions in its decision to enact municipal conflict of interest legislation in 1983, much has changed in the ethical climate since that time. Three recent judicial inquiry reports, two from Ontario and one from Saskatchewan, highlight the need for rules governing the conduct of members of council that promote ethical conduct as a matter of best practice, rather than simply punishing unethical

¹ Andrew Sancton, *Canadian Local Government: An Urban Perspective*, 2nd ed (Oxford University Press: 2015) at 23.

² Originally SM 1982-83-84, c 44; now CCSM c M255.

³ *Ibid*, s 19; 20(1).

⁴ *Ibid*, s 18(1).

conduct after it has already occurred.⁵ All three reports recommend, among other things, the establishment of an independent body to administer ethical conduct rules for members of council.

The Manitoba Law Reform Commission (the “Commission”) has limited the scope of its review of the MCCIA to the remedial provisions and enforcement of the Act.

This report will provide an overview of the municipal conflict of interest legislative regime in Manitoba and other jurisdictions and will canvass case law and judicial inquiry reports as they relate to sanctions and enforcement of municipal conflict of interest, before making recommendations for the improvement of remedial provisions and enforcement of the MCCIA. Other issues, such as the enforcement of municipal codes of conduct and the provincial Conflict of Interest Commissioner will also be discussed.

The Commission recommends that the remedial provisions of the Act be amended so that judges are provided with a range of available sanctions to impose when they are satisfied that there has been a breach of the conflict of interest provisions of the MCCIA, rather than only having recourse to the current all or nothing approach, in which the only penalty available is disqualification from office and a declaration that a councillor’s seat is vacant.

In addition to recommending changes to the remedial provisions of the MCCIA, the Commission also recommends the establishment of a municipal Conflict of Interest Commissioner, who would carry out an advisory, investigatory, and enforcement function. The Commissioner would provide binding advice to members of council, so that a councillor, if he or she provided all material facts to the Commissioner and followed the Commissioner’s recommendations, would be rendered immune from subsequent proceedings under the Act. The Commissioner would also be empowered to receive complaints from members of the public and be authorized to conduct investigations. In terms of enforcement powers, if any, granted to the municipal Conflict of Interest Commissioner, the Commission does not provide a recommendation as to a specific model to adopt, but instead presents three possible models for consideration, and discusses the factors that should be weighed in determining an appropriate model. The Commission’s recommendations on establishing a municipal Conflict of Interest Commissioner, if implemented, would improve and modernize the MCCIA. Members of council would receive authoritative advice on conflict of interest issues on which they could rely, and members of the public would be able to pursue allegations of violations of the Act without having to apply to court.

⁵ The Honourable Madam Justice Denise E Bellamy, *Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report* (The City of Toronto, 2005), online: <https://www1.toronto.ca/inquiry/inquiry_site/report/index.html>; The Honourable Justice Douglas Cunningham, *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure* (City of Mississauga, 2001), online: <<http://www.mississaugainquiry.ca/>>; The Honourable R L Barclay, *Final Report of the Inspection and Inquiry into the RM of Sherwood No 159*, (Saskatchewan, 30 December 2014) [Barclay Report], online: <<https://www.saskatchewan.ca/government/municipal-administration/municipal-inquiries>>.