Manitoba Law Reform Commission

MODERNIZING *THE MUNICIPAL COUNCIL CONFLICT OF INTEREST ACT*: ACCOUNTABILITY, ENFORCEMENT & OVERSIGHT

Final Report

January 2016

Manitoba Law Reform Commission

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The views expressed in this report are those of the Manitoba Law Reform Commission and do not necessarily represent the views of those individuals who have so generously assisted the Commission in this project.

Explanatory Note

The Manitoba Law Reform Commission's usual practice in preparing reports is to first release a Consultation Report, solicit and receive feedback from interested organizations and members of the public, and then incorporate this feedback into a Final Report. In the case of Final Report #132, the Commission has chosen not to release a Consultation Report, due to indications that the Manitoba Legislature is planning to make changes to municipal conflict of interest legislation in the near future. The Commission felt it was important for its report to receive consideration by the Legislature and the public before any amendments to *The Municipal Council Conflict of Interest Act* or related acts of the Legislature are introduced.

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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 (made effective pursuant to s 30); 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.

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[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.>.

RÉSUMÉ

Promouvoir une conduite éthique est devenu une priorité pour tous les ordres de gouvernement au Canada. Les municipalités, les provinces, les territoires et le gouvernement fédéral cherchent de nouveaux moyens de renforcer leurs politiques d'éthique, que ce soit en instaurant des codes de conduite, en nommant des commissaires à l'intégrité ou aux conflits d'intérêts, en créant des registres des lobbyistes, en nommant des registraires des lobbyistes ou en élargissant le mandat du bureau de l'ombudsman.

Les membres des conseils municipaux sont des responsables publics élus. À ce titre, ils ont le devoir de veiller au bien-être et aux intérêts de la municipalité dans son ensemble.[6] Lorsqu'un membre du conseil se sert du poste qu'il occupe pour servir ses intérêts personnels, il pourrait se trouver en conflit d'intérêts. Au Manitoba, la législation afférente aux conflits d'intérêts à l'échelle municipale a été adoptée il y a plusieurs décennies. La *Loi sur les conflits d'intérêts au sein des conseils municipaux* [7] (la « *Loi* ») a été adoptée le 18 août 1983 et est entrée en vigueur le 26 octobre 1983. Elle s'applique à l'ensemble des municipalités de la province du Manitoba, dont la Ville de Winnipeg. La *Loi* établit le cadre législatif régissant la conduite des membres des conseils municipaux en ce qui a trait aux conflits d'intérêts.

La *Loi* vise principalement à empêcher que des intérêts financiers directs ou indirects ou des responsabilités financières directes ou indirectes d'un conseiller influencent les décisions prises par le conseil. La *Loi* définit les types d'intérêts ou de responsabilités qui donnent lieu à un conflit d'intérêts; oblige les conseillers à divulguer leurs intérêts en déposant un état de leurs biens et de leurs droits; exige des conseillers qu'ils divulguent leurs intérêts et leurs responsabilités aux réunions et s'abstiennent de voter; et prévoit l'imposition de sanctions si une disposition de la *Loi* n'est pas respectée. Aucune disposition de la *Loi* ne prévoit le règlement d'un conflit d'intérêts à l'extérieur du processus judiciaire. Lorsqu'un conseiller est soupçonné d'avoir enfreint une disposition de la *Loi,* le recours est intenté devant la Cour du Banc de la Reine pour qu'elle rende une ordonnance.[8] Le conseiller qui enfreint une disposition de la *Loi* devient inhabile à occuper son poste et son siège au conseil devient vacant.[9]

Un examen des rapports d'enquête judiciaire et de la jurisprudence donne à penser qu'une réforme s'impose pour rendre la *Loi* compatible avec les valeurs de notre monde contemporain que sont la responsabilisation, l'honnêteté et l'ouverture au sein des administrations locales. Le Manitoba était largement en avance sur beaucoup d'autres provinces et territoires canadiens dans sa décision de promulguer une législation sur les conflits d'intérêts au sein des conseils

[6] Andrew Sancton (2015). *Canadian Local Government: An Urban Perspective*, 2e éd., Oxford University Press, p. 23.
[7] À l'origine : L.M. 1982-83-84, c. 44; aujourd'hui : C.P.L.M., c. M255
[8] *Ibid*, art. 19; par. 20(1).
[9] *Ibid*, par. 18(1).

municipaux en 1983, mais le climat éthique a bien changé depuis. Trois rapports d'enquête judiciaire récents, soit deux de l'Ontario et un de la Saskatchewan, mettent en lumière la nécessité de se doter de règles régissant la conduite des membres du conseil qui cherchent davantage à promouvoir une conduite éthique à titre de pratique exemplaire qu'à se contenter de punir une conduite immorale après coup.[10] Les trois rapports recommandent, entre autres choses, la création d'un organisme indépendant chargé d'administrer des règles de conduite éthique pour les membres du conseil.

La Commission de réforme du droit du Manitoba (la « Commission ») a limité la portée de son examen aux recours prévus dans la *Loi* et à la mise en application de la *Loi*.

Le présent rapport donne un aperçu du régime législatif en matière de conflits d'intérêts au sein des conseils municipaux au Manitoba et dans d'autres provinces et territoires, fait un survol de la jurisprudence et des enquêtes judiciaires concernant l'exécution des sanctions liées aux conflits d'intérêts au sein des conseils municipaux, puis formule des recommandations pour améliorer les recours prévus dans la *Loi* et la mise en application de la *Loi*. D'autres sujets sont abordés, comme l'application des codes de conduite municipaux et le rôle du commissaire aux conflits d'intérêts.

La Commission recommande de modifier les recours prévus dans la *Loi* de façon à ce que les juges disposent d'une série de sanctions à imposer lorsqu'ils sont convaincus qu'il y a eu violation des dispositions portant sur les conflits d'intérêts dans la *Loi*, en lieu et place de l'approche du tout ou rien actuelle, selon laquelle la seule peine possible est de rendre la personne reconnue coupable inhabile à occuper son poste et de déclarer son siège au conseil vacant.

Outre les recommandations de changements aux recours prévus dans la *Loi*, la Commission recommande aussi la nomination d'un commissaire aux conflits d'intérêts au sein des conseils municipaux, qui assumerait des fonctions de conseil, d'enquête et d'application de la loi. Le commissaire rendrait des avis contraignants aux membres du conseil, de façon à ce qu'un conseiller qui divulguerait tous les faits pertinents au commissaire et qui donnerait suite à ses recommandations ne serait plus passible de poursuites ultérieures en vertu de la *Loi*. Le commissaire serait aussi habilité à entendre les plaintes des membres du public et autorisé à mener des enquêtes. Au chapitre des pouvoirs d'application qui pourraient être accordés au commissaire aux conflits d'intérêts au sein des conseils municipaux, la Commission n'a pas formulé de recommandation sur un modèle précis à adopter. Elle présente plutôt trois modèles possibles à examiner, puis discute des facteurs qui devraient être pris en compte pour déterminer

[10] Madame la juge Denise E Bellamy (2005). *Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report*, Ville de Toronto, lien : <https://www1.toronto.ca/inquiry/inquiry_site/report/index.html>; Monsieur le juge Douglas Cunningham (2001). *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure*, Ville de Mississauga, lien : < http://www.mississaugainquiry.ca/>; Monsieur R L Barclay (décembre 2014). *Final Report of the Inspection and Inquiry into the RM of Sherwood No 159*, Saskatchewan, [rapport Barclay], lien : <https://www.saskatchewan.ca/government/municipal-administration/municipal-inquiries.>.

le modèle à adopter. Si on donne suite à la recommandation de la Commission de nommer un commissaire aux conflits d'intérêts au sein des conseils municipaux, cela permettrait d'améliorer et de moderniser la *Loi.* Les membres du conseil recevraient alors des conseils qui font autorité au sujet de la question des conflits d'intérêts sur lesquels ils pourraient s'appuyer, et les membres du public pourraient faire enquête sur les allégations faisant état d'infractions à la *Loi* sans avoir à s'adresser au tribunal.

CHAPTER 1: INTRODUCTION

In recent years, the ethical conduct of elected public officials has increasingly come under scrutiny, not only in Manitoba, but in other Canadian jurisdictions as well. There appears to be a growing demand for better accountability measures for public officials at all levels of government, including the municipal level.[11] For the proper functioning of local government, communities must have confidence that elected public officials are free from conflicts of interest when making decisions that affect members of the public.

At common law, elected public officials, such as members of municipal council, stand in a fiduciary relationship with the electorate. Members of municipal council are under a duty to act in the best interests of the electorate, and to put the interests of the electorate ahead of their own personal interests.[12]

The Supreme Court of Canada recognized the concept of conflict of interest at common law:

> It is not part of the job description that municipal councillors be personally interested in matters that come before them beyond the interest that they have in common with the other citizens in the municipality. Where such an interest is found, both at common law and by statute, a member of Council is disqualified if the interest is so related to the exercise of public duty that a reasonably well-informed person would conclude that the interest might influence the exercise of that duty. This is commonly referred to as a conflict of interest.[13]

If a fiduciary breaches his or her duty, he or she will be subject to equitable remedies, such as restitution. The equitable remedy of restitution with respect to municipal conflict of interest has been codified in most jurisdictions, including Manitoba.[14]

The Municipal Council Conflict of Interest Act[15] ("MCCIA") was passed on August 18, 1983 and came into force on October 26, 1983. The MCCIA sets out a legislative framework that governs the conduct of members of council regarding conflicts of interest. It addresses situations where municipalities must make decisions on matters in which municipal councillors may have a pecuniary interest. It applies to all municipalities in the province of Manitoba, including the City of Winnipeg.

This is not the Commission's first report on municipal conflict of interest; the Commission published a *Report on Conflict of Interest of Municipal Councillors* in 1981, following a

[11] See for example the Honourable Madam Justice Denise E Bellamy, *Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report, Volume 2: Good Government* (City of Toronto, 2005) [Bellamy Report] at 8-13.
[12] See *Hawrelak v City of Edmonton*, [1975] 4 WWR 561 at 572.
[13] *Old St Boniface Residents' Association v Winnipeg (City)*, [1990] 3 SCR 1170, 1990 CanLII 31 (SCC) at 1196.
[14] *Infra*, ss 21(2)(b); 24.
[15] Originally RSM 1987, c M255; now CCSM c M255.

ministerial request.[16] At the time, the rules related to conflict of interest were seen as inflexible as they forbade anyone with a conflicting interest from seeking public office.[17] The enactment of the MCCIA stemmed from a desire to improve the rules regarding conflict of interest by allowing individuals with conflicting interests to sit on councils, provided they comply with strict requirements about the disclosure of interests. The MCCIA was seen as a positive step toward improving municipal conflict of interest legislation, and was ahead of its time in many respects.[18]

The Commission has decided to revisit the issue of municipal conflict of interest following recent case law and reports from judicial inquiries, which suggest that reforms to the MCCIA are needed to bring the legislation in line with modern day values of accountability, honesty, and openness in local government. The current MCCIA reflects the climate surrounding ethical conduct for public officials when it was enacted in 1983. It provides strict penalties for a breach. However, there appears to be a growing shift away from enforcement mechanisms predicated on an all-or-nothing approach to punishment to mechanisms that encourage public officials to adopt good ethical principles as a matter of best practice.[19]

The underlying ethical concern that conflict of interest legislation seeks to address has been explained as follows:

> This enactment, like all conflict of interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well meaning men and women may be impaired where the personal financial interests are affected. Public office is a trust conferred by public authority for public purpose. And [Ontario's *Municipal Conflict of Interest Act*], by its broad proscription, enjoins holders of public offices within its ambit from any participation in matters in which their economic self-interests may be in conflict with their public duty. The public's confidence in its elected representatives demands no less.[20]

The Commission has limited the scope of this project to enforcement of the MCCIA and its remedial provisions: Chapter 2 will provide an overview of the municipal conflict of interest legislative regime in Manitoba and other jurisdictions; Chapter 3 will canvass case law and judicial inquiries as they relate to sanctions and enforcement of municipal conflict of interest; Chapter 4 will suggest reform is required to improve the remedial provisions of the Act; Chapter

[16] Manitoba Law Reform Commission, *Report on Conflict of Interest of Municipal Councillors* (Report #46, 1981) [1981 Commission Report], available online: <http://www.manitobalawreform.ca/pubs/pdf/archives/46-full_report.pdf>.
[17] *Ibid* at 3.
[18] See Manitoba, Legislative Assembly, *Official Report of Debates (Hansard)*, 32nd Leg, 2nd Sess, Vol 82A (6 June 1983) at 3456 (Hon Aime Adam).
[19] Basile Chiasson, "Ethics in Local Government: Atlantic Canada Conflict of Interest Enforcement Mechanisms – Pathways or Roadblocks to a Culture of Ethics", (2009) 59 UNNLJ 232 (in local governance, "…a positive ethical environment values accountability not as a negative tool of assigning blame and punishing wrongdoing, but rather as a powerful positive incentive" at 235).
[20] *Re Moll and Fisher et al.* (1979), 23 OR (2d) 609, 1979 CanLII 2020 (ONSC) at para 6.

5 will suggest the establishment of a municipal Conflict of Interest Commissioner for the enforcement of municipal conflict of interest laws; and Chapter 6 will discuss other issues related to the Act as well as other conflict of interest legislation in Manitoba.

CHAPTER 2: BACKGROUND

A. Overview of the Municipal Conflict of Interest Legislative Regime in Manitoba

Provincial governments have the exclusive jurisdiction to pass laws respecting municipal institutions.[21] The provinces have delegated to municipal institutions some powers to control local matters. Therefore, the powers of municipalities are limited to those which have been delegated to them under statute.

Municipal councils in Manitoba are established pursuant to Manitoba's *Municipal Act*[22] for all municipalities outside the City of Winnipeg, and *The City of Winnipeg Charter Act* ("*Winnipeg Charter*")[23] for the City of Winnipeg. Outside the City of Winnipeg, every municipality is governed by a council, which is composed of a head of council (reeve or mayor) and four to ten councillors.[24] In the City of Winnipeg, council includes a mayor and fifteen councillors.[25] *The Municipal Act* and the *Winnipeg Charter* delegate authority to the municipalities, and set out the powers and duties of council.

A municipal council may only act by resolution or by-law.[26] Every proposed by-law must be given three separate readings, and each reading must be put to a vote.[27] Resolutions cover one-time authorizations and approvals, such as contracts. Subject to certain restrictions, decisions can be delegated to committees of council, and, under *The Municipal Act*, to the mayor or reeve.[28] Decisions of municipal councils can affect many aspects of the lives of citizens of the municipality. Municipal governments provide a wide range of services, programs, and facilities within their geographic region: municipal councils have some legal authority to act in matters related to fire protection; animal control; roads; land-use planning and regulation; parks and recreation; licensing of businesses; economic development; and traffic control, to name but a few.[29]

Members of council are elected public officials, and, as such, they have a duty to consider the well-being and interests of the municipality as a whole.[30] Therefore, when a member of council

[21] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5, s 92(8).
[22] CCSM c M225.
[23] SM 2002, c 39 [*Winnipeg Charter*].
[24] *Municipal Act*, *supra* note 22, ss 77(1); 78.
[25] *Winnipeg Charter*, *supra* note 23, s 10; 17(1).
[26] *Municipal Act*, *supra* note 22, s 140(1); *Winnipeg Charter*, *ibid*, s 54(1).
[27] *Municipal Act*, *supra* note 22, s 142(1); *Winnipeg Charter*, *ibid*, s 55(1).
[28] *Municipal Act*, *supra* note 22, s 85(1)-(2); *Winnipeg Charter*, *ibid*, s 53(1); 65.
[29] Andrew Sancton, *Canadian Local Government: An Urban Perspective*, 2nd ed (Oxford University Press: 2015) at 23.
[30] *Ibid*.

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.

a) *The Municipal Council Conflict of Interest Act*

As previously mentioned, the MCCIA was passed on August 18, 1983, and came into force on October 26, 1983.[31] The MCCIA establishes the legislative framework for conflict of interest issues for municipal councillors in Manitoba, including the City of Winnipeg.[32]

Prior to the Act, municipal conflict of interest matters were dealt with by *The Municipal Act*[33] for rural municipalities and *The City of Winnipeg Act*[34] for city councillors in Winnipeg. The legislation essentially disqualified anyone with a conflicting interest from seeking or holding public office. The legislation was seen as inflexible as it did not recognize the reality of life in rural municipalities, where many people serving on municipal councils would have some sort of business interest in the region. Both acts prohibited a councillor from voting on or taking part in a discussion on any question in which he or she had a personal pecuniary interest beyond his or her interest as an ordinary ratepayer.[35]

Under both acts, there were no specific penalties tailored for conflict of interest. A councillor in breach of the conflict of interest provisions under *The Municipal Act* was guilty of an offence by virtue of *The Summary Convictions Act*.[36] A City of Winnipeg councillor in breach of the conflict of interest provisions under *The City of Winnipeg Act* was guilty of an offence by virtue of the general penalty clause found in the act, which provided that, if found liable, the councillor would be liable to a fine of $1,000, a term of six months imprisonment or both.[37]

In 1981, the Commission published its *Report on Conflict of Interest of Municipal Councillors* following a request from former Attorney General, Gerald Mercier, who noted that "...the existing provisions appear deficient in coping with a variety of practical situations which are arising with greater frequency."[38] The Commission recommended that a councillor should no longer be disqualified from office simply because he or she had a pecuniary interest in a matter coming before the municipality. Rather, the Commission recommended that the principle of disqualification should be replaced by the principle of disclosure, whereby a councillor should be

[31] MCCIA, *supra* note 15.
[32] Pursuant to Conflict of Interest Regulation 254/2006, some provisions of the MCCIA also apply to community councils designated under section 7(1) *The Northern Affairs Act*, CCSM c N100.
[33] SM 1970, c 100 [*Municipal Act*, 1970], s 47.
[34] Originally SM 1971, c 105; then SM 1989-90, c 10, as repealed by *The City of Winnipeg Charter Act*, SM 2002, c 39.
[35] *Municipal Act* 1970, *supra* note 33, s 123(1); *The City of Winnipeg Act*, *ibid*, s 10(13).
[36] CCSM, c S230, s 4.
[37] *The City of Winnipeg Act*, *ibid*, s 149.
[38] As cited in 1981 Commission Report, *supra* note 16 at 1.

required to disclose his or her pecuniary interests and abstain from voting on any matter before council on which he or she had an interest.[39]

When Bill 47, *The Municipal Council Conflict of Interest Act*,[40] was introduced, its purpose was said to be to establish the allowable limits of the financial relationship between municipal councillors and their municipalities by requiring councillors to disclose their financial interests and liabilities in matters arising during the course of official business.[41] The legislation was seen as a way to alleviate some of the practical difficulties that the old provisions were causing for municipal councils. No longer would a councillor be disqualified from office if he or she had a pecuniary interest in a matter before council.

The MCCIA is primarily concerned with preventing a councillor's direct or indirect pecuniary interests or liabilities from affecting decisions made by council. "Councillor" is the term used to describe a member of council, and includes a mayor or reeve.[42] A conflict of interest arises where a member is in a position to deal with a matter in which he or she has a direct or indirect pecuniary interest or liability, does not disclose his or her interest and votes or exerts his or her influence on the matter. The MCCIA: (i) defines the types of interests or liabilities that result in a conflict of interest; (ii) obligates councillors to disclose their interests in a statement of assets and liabilities; (iii) requires councillors to disclose their interests and liabilities at meetings and refrain from voting; and (iv) provides for sanctions if a provision of the Act is violated.

(i) Types of Interests that Result in a Conflict of Interest

The MCCIA only addresses pecuniary (financial) interests and liabilities. Direct pecuniary interest includes a fee, commission or other compensation paid or payable to any person for representing the interests of another person or a corporation, partnership, or organization in a matter.[43] An indirect pecuniary interest is presumed where a person holds a beneficial interest in 5% or more of the value of capital stock, or is a director of a corporation which has a direct pecuniary interest; or the person is a partner, employed by, a guarantor or surety for, or a creditor of a person or organization that has a direct pecuniary interest in a matter.[44]

The MCCIA provides certain presumptions regarding when a person is considered not to have a direct or indirect pecuniary interest, such as contracts for utilities on terms common to contracts

[39] 1981 Commission Report, *supra* note 16 at 51-52.
[40] Manitoba, Bill 47, *The Municipal Council Conflict of Interest Act*, 2nd Sess, 32nd Leg, Manitoba, 1983 (assented to 18 August 1983), RSM 1987, c M255.
[41] Manitoba, Legislative Assembly, *Official Report of Debates (Hansard)*, 32nd Leg, 2nd Sess, Vol 82A (6 June 1983) at 3456 (Hon Aime Adam).
[42] MCCIA, *supra* note 15, s 1(1).
[43] *Ibid.*
[44] *Ibid*, s 4(1).

between other persons and the municipality.[45] The interest or liability must be significant, meaning it must be more than the interest of an ordinary resident in the matter.[46]

The MCCIA proscribes other types of conflict: insider information; compensation for services; and use of influence. Councillors may not use insider information for personal gain or the gain of any other person where the information is acquired in the performance of the councillor's official powers, duties and functions.[47] Councillors may not receive compensation for services rendered in relation to matters before council or committees (such as contracts or resolutions) in order to influence or attempt to influence any other councillor.[48] The Act also expressly provides that no councillor shall communicate with another councillor or employee of the municipality for the purpose of influencing the municipality to enter into any contract or transaction or to confer any benefit in situations where the councillor or his or her dependents has a direct or indirect pecuniary interest.[49]

(ii) Statement of Assets and Interests

Councillors must file a statement disclosing their assets and interests in accordance with the MCCIA. The Act provides a list of the types of assets and interests which must be disclosed, such as all land in Manitoba in which, or in respect of which, the councillor or any of his dependants has any estate or interest, or any contract entered into between the municipality and the councillor or any of his dependents.[50] The MCCIA only requires that the nature of the financial interest be disclosed, not the financial details such as salary amounts, value of holdings, etc.[51] Statements of assets and interests are kept in a central record and available to the public.[52]

(iii) Disclosure at Meetings

The MCCIA sets out the procedure that must be followed where a councillor has an interest in a matter before council or a committee. If a councillor believes that he or she has a direct or indirect pecuniary interest in a matter that arises in a meeting, he or she must disclose the interest and its general nature before the matter is discussed.[53] The Act defines "meeting" for the purposes of disclosure, and includes a council meeting; a meeting of any committee or subcommittee of a council; a meeting of any commission, board or agency on which the councillor serves in his or her official capacity; and a meeting of any Court of Revision or Board

[45] *Ibid*, s 4(3).
[46] *Ibid*, s 4(5).
[47] *Ibid*, s 14.
[48] *Ibid*, s 15.
[49] *Ibid*, s 16.
[50] *Ibid*, s 10.
[51] Association of Manitoba Municipalities/Province of Manitoba, *Council Members Guide: Once Elected… What is Expected?* (Manitoba: 2014-2018) at p 44 ["*Council Members Guide*"].
[52] MCCIA, *supra* note 15, s 13(1).
[53] *Ibid*, s 5(1).

of Revision on which the councillor sits.[54] Disclosure can either be oral or in writing, and is recorded by the Chief Administrative Officer (CAO) of the municipality, or the City Clerk, in the case of the City of Winnipeg.[55] Upon providing disclosure of his or her pecuniary interest, the councillor must immediately withdraw from the meeting without voting on or participating in the discussion on the matter. The councillor's withdrawal from the meeting must be recorded in the meeting minutes, and the record of disclosure must be available to the public.[56]

It is important to note that disclosure, in these circumstances, must be made not only in relation to the direct or indirect pecuniary interests of the councillor, but to those of his or her dependants as well.[57] The MCCIA defines "dependant" as the spouse or common-law partner of a councillor, as well as any child, natural or adopted, who resides with the councillor.[58]

(iv) Enforcement Provisions

A councillor who violates any provision of the MCCIA is disqualified from office, and the councillor's seat on council becomes vacant.[59] There is no provision 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.

If a municipal council alleges that one of its councillors has breached one of the provisions of the MCCIA, the clerk of the municipality may apply by originating notice to a judge of the Court of Queen's Bench for a declaration to this effect.[60]

An elector may also apply *ex parte* to a judge of the Court of Queen's Bench for authorization to apply for a declaration that a councillor has violated a provision of the MCCIA.[61] The elector is required to pay $300 as security for the application.[62] Upon hearing the *ex parte* application, the judge may dismiss the application or authorize the applicant to apply to another judge of the Court of Queen's Bench for a declaration that the councillor has violated a provision of the MCCIA.[63] In this sense, it is a two-step process for an elector who thinks a councillor is in a conflict of interest; first, a Court of Queen's Bench judge must decide whether the matter should be heard; and second, if the answer is yes, another Court of Queen's Bench judge will hear and decide the matter.

After hearing the application, the judge may declare that the councillor has violated a provision of the MCCIA or refuse to make the declaration. The judge also has discretion as to whether or

[54] *Ibid*, s 5(2).
[55] *Ibid*, s 6(1)-(4).
[56] *Ibid*, s 6(5).
[57] *Ibid*, s 5(1).
[58] *Ibid*, s 1(1).
[59] *Ibid*, s 18(1).
[60] *Ibid*, s 19.
[61] *Ibid*, s 20(1).
[62] *Ibid*, s 20(2).
[63] *Ibid*, s 20(3).

not to award costs. If the judge declares that the councillor has violated a provision of the MCCIA, the judge must declare the seat of the councillor vacant and may order the councillor to make restitution:

> Disposition after hearing
>
> 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.
>
> Penalty for violation
>
> 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.

There are no other penalties available. A judge must declare the seat vacant unless he or she finds that the violation was made unknowingly or through inadvertence.[64]

The Municipal Act provides that if a councillor is disqualified pursuant to the MCCIA, he or she is eligible to be elected at the next general election, provided he or she is otherwise eligible for nomination.[65] Likewise, the implication in the *Winnipeg Charter* is that a councillor would be eligible to run in the next general election.[66]

Pursuant to *The Municipal Act*, a municipality may indemnify a current or former member of council for costs incurred in defending an application by or on behalf of the municipality under the MCCIA if the councillor satisfies the court that he or she acted in good faith.[67]

There have not been any significant amendments to the enforcement provisions of MCCIA since its enactment.[68]

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[64] *Ibid*, s 22.
[65] *The Municipal Act, supra* note 22, s 94(3).
[66] *Winnipeg Charter supra* note 23. Section 48(1) provides that, where a member of council forfeits a seat on council for any reason, the member is not eligible to be nominated for, or elected as, a member of council before the next general election.
[67] *The Municipal Act, supra* note 22, s 404(3).
[68] The MCCIA came into force on 26 October 1983 pursuant to SM 1982-83-84, c 44, s 30. Amended by SM 1996, c 58, s 462; SM 2002, c 24, s 44; SM 2002, c 39, s 528; SM 2002, c 48, s 28; SM 2009, c 35, Part 1; SM 2010, c 33, s 40; SM 2012, c 25, s 13; SM 2013, c 47, Sch A, s 134 (not yet proclaimed).

b) Related Acts

(i) The Municipal Act

The MCCIA is not the only mechanism to govern the ethical conduct of councillors in Manitoba. *The Municipal Act* and the *Winnipeg Charter* also contain provisions addressing the conduct of municipal councils.

In 2013, *The Municipal Act* was amended to require every municipality to establish a Code of Conduct to apply to members of council.[69] The purpose of the Code of Conduct is to set out guidelines that "define the standards and values that the council expects members to meet in their dealings with each other, employees of the municipality and the public."[70] Codes of Conduct typically include rules about the expectations for the conduct of councillors, such as respectful conduct, respect for the decision-making process, preferential treatment, treatment of staff, respect for the role of administration, and election campaign work.[71] Codes of Conduct do not address conflict of interest issues as they are not intended to touch on those areas already covered by the MCCIA, although some issues may unavoidably engage both the MCCIA and a Code of Conduct.

The Municipal Act does not set out the procedure for dealing with complaints under Codes of Conduct. Rather, each municipality may, by its own policies and procedures, set out the process for enforcement of its Code of Conduct. Many municipalities have adopted the sample Code of Conduct provided by the Manitoba Municipal Government Department, which sets out a procedure for addressing complaints.[72] First, a complaint is lodged with council and acted upon by a member of council who is not the subject of the complaint. The member chosen to act upon the complaint is responsible for investigating the complaint. It is important to note, however, that councillors are not vested with powers of investigation such as summoning witnesses, compelling the production of documents, etc. If the investigating councillor determines that the allegation against the other member of council is founded, he or she can bring a resolution of censure forward.[73] A majority of council members plus one may pass a resolution to censure the member.[74]

If the complainant is not satisfied with the result of the investigation, there is no prescribed process to have the matter reviewed. It appears that the Municipal Support Services Division of

[69] *Municipal Act*, *supra* note 22, s 84.1(1). *The Municipal Act* was amended by SM 2012, c 25, Part 1 on 14 June 2012, and came into force on 1 January 2013.
[70] *Ibid*, s 84.1(2).
[71] *Council Members Guide*, *supra* note 46 at p 13. See for example City of Brandon, *City Council Code of Conduct* (2 April 2013), online: <http://brandon.ca/images/pdf/governancePolicies/codeofConduct.pdf>; RM of Reynolds, *Policy No. 21 – Code of Conduct*, online: <http://www.rmofreynolds.com/main.asp?fxoid=FXMenu,9&ID=2&sub_ID=213&sub2_ID=163>.
[72] Manitoba Municipal Government, *Municipal Act Procedures Manual* at Appendix 1 – Sample Council Members' Code of Conduct.
[73] *Ibid*, s 5.
[74] *Municipal Act*, *supra* note 22, ss 84.1(3)-(4).

the Manitoba Municipal Government Department will provide advice in some cases.[75] As will be discussed in a section below, on occasion, the Office of the Ombudsman has been called on to make a determination as to whether a councillor has breached a municipality's Code of Conduct.

(ii) The City of Winnipeg Charter Act

Under the *Winnipeg Charter*, City Council has powers to establish rules governing the conduct of council, including a Code of Conduct.[76] In 1994, The Code of Conduct of the Council of The City of Winnipeg ("City Code") was passed.[77] One of the purposes of the City Code, as set out in the preamble, was that "… it is advisable that a Code of Conduct be developed to supplement existing provincial legislation."[78]

As far as prohibiting unethical conduct, there is significant overlap between the MCCIA and the City Code. The City Code expressly addresses conflict of interest issues, and goes beyond the definitions in the MCCIA by prohibiting even the appearance of such conflict.[79]

There is no legislated procedure for complaints or investigations into allegations of breaches of the City Code. Allegations of breaches of the City Code are presumably brought to council for its consideration. Council may then refer a matter to the City Auditor, but this is not prescribed by statute or by-law.[80] In the motion to pass the City Code, City Council requested that the provincial government amend the *Winnipeg Charter* in order to give the City Ombudsman (a position that is no longer in existence) the power to investigate allegations of breaches of the City Code.[81] In 2009, City Council passed a motion calling on the provincial government to amend existing legislation to create stronger conflict of interest rules and guidelines through such measures as the establishment of a separate office for an independent commissioner or by expanding the role of the provincial Conflict of Interest Commissioner.[82]

In December 2015, Winnipeg City Council approved the creation of an Office of an Integrity Commissioner, as recommended in a report of its Executive Policy Committee.[83] The report recommended, among other items:

- That City Council create the Office of Integrity Commissioner on a two-year renewable term;

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[75] Based on e-mail discussions with Municipal Support Services Division, Manitoba Municipal Government, 2 April 2015.
[76] *Ibid*, s 74.
[77] City of Winnipeg, *Code of Conduct* File GC-2 (21 September 1994).
[78] *Ibid.*
[79] City Code, *supra* note 77.
[80] Note that to date, the City Auditor has never investigated a matter respecting the City Code.
[81] *Winnipeg Charter*, *supra* note 23 at preamble.
[82] City of Winnipeg, *Conflict of Interest Commissioner* eFile GL-5.4 (19 January 2009).
[83] Council of the City of Winnipeg, Council Regular Meeting Hansard, un-audited, (9 Dec 2015) at 22, available online at: http://clkapps.winnipeg.ca/dmis/ViewDoc.asp?DocId=14905&SectionId=&InitUrl=.

- That the Integrity Commissioner provide written and oral advice to members of council on questions related to the Code of Conduct, the MCCIA, and other by-laws, policies, or Acts governing the behaviour of council;
- That the Integrity Commissioner be empowered to investigate complaints from members of the public, City staff or other members of council and conduct inquiries into alleged contraventions of any applicable by-law, policy, or Act and report his or her findings to council;
- That the Integrity Commissioner's mandate include oversight of a City Lobbyist Registry, should one be established; and
- That the Integrity Commissioner publish an annual report.[84]

In order for the Integrity Commissioner to have the powers of inquiry and enforcement as contemplated in the report, amendments to the MCCIA and the *Winnipeg Charter* would be required. Therefore, City Council has again requested that the Legislature amend the *Winnipeg Charter* to provide the mandate and powers of the Integrity Commissioner, such as investigative powers and identifying appropriate penalties.[85]

While the *Winnipeg Charter* does not yet contain provisions in relation to the position of Integrity Commissioner, it does contain provisions establishing the post of City Auditor, whose role is to conduct audits and report to council on whether operations of the city are carried out with due regard for the economy and efficiency.[86] On the direction of council, the City Auditor may conduct audits on anything done by the city or an affiliated body or any person to whom the city has made a financial contribution or transfer of property for no or substantially inadequate consideration.[87] The *Winnipeg Charter* gives the City Auditor broad powers to carry out its duties, including the powers and protections of a commissioner under Part V of *The Manitoba Evidence Act*,[88] such as summoning witnesses and requiring the production of documents.[89]

(iii) Ombudsman Act

Under Manitoba's *Ombudsman Act*,[90] the Ombudsman has the authority to investigate actions or decisions relating to matters of administration of a municipality. The Ombudsman's investigations are initiated by the Ombudsman or by written complaint.[91] The investigation

[84] City of Winnipeg, Report – Executive Policy Committee, Office of Integrity (Ethics) Commissioner, December 9, 2015, at 4, available online at http://clkapps.winnipeg.ca/dmis/ViewDoc.asp?DocId=14890&SectionId=&InitUrl=.
[85] *Ibid* at 9.
[86] *Winnipeg Charter*, *supra* note 23, s 105(2).
[87] *Ibid*, s 105(4). Pursuant to s 107(1), The City of Winnipeg may, by motion, engage an external auditor. See for example, the report issued for the City Auditor under RFP No 84-2014: Audit of Winnipeg Police Station Headquarters Construction Project (14 July 2014), online: The City of Winnipeg <http://winnipeg.ca/audit/pdfs/reports/2014/WinnipegPoliceServiceHeadquartersConstructionProjectAudit.pdf>.
[88] CCSM c E150.
[89] *Ibid*, s 105(5).
[90] CCSM c O45.
[91] *Ibid*, s 15(b).

process is non-adversarial, and information provided by the complainant, decision maker and any witnesses is considered.

In carrying out his or her investigations, the Ombudsman has the powers and protections of a commissioner appointed under Part V of the *Manitoba Evidence Act*, meaning he or she can summon witnesses and require the production of information. The Ombudsman is not required to hold a hearing, but, if it appears to him or her that there are sufficient grounds for making a formal report or recommendation in respect of any matter that may adversely affect a municipality or person, he or she must give that municipality or person an opportunity to make representations in respect of the matter.[92]

At the conclusion of an investigation, the Ombudsman may make a finding of maladministration and can make recommendations for improvement.[93] The Ombudsman can make recommendations to a municipal council that any decision be cancelled or varied, or that any steps be taken to remedy the situation.[94] Reports looking into municipal administration under the *Ombudsman Act* will typically maintain the confidentiality of the names of councillors, the complainant, and other witnesses, if any, although the nature of the report may identify certain individuals involved.[95]

It is important to note that the Ombudsman does not have the authority to administer the MCCIA. Therefore, any findings made by the Ombudsman with respect to conflict of interest are not necessarily based on the same standards as a judge in applying the MCCIA, and, are, in fact, made on a broader basis than what is permitted under the MCCIA. According to the Ombudsman's *Handbook on Fairness for Manitoba Municipal Leaders*, "[c]onflict, or the perception of conflict, can also occur even when there is no financial interest..."[96] This suggests that, unlike the MCCIA, the Ombudsman will consider the appearance of conflict as well as non-pecuniary interests. According to the Manitoba Ombudsman, its investigations "consider and take guidance from the various provisions of the [MCCIA] that reflect the intent of the legislature."[97]

The distinction between the Ombudsman's process and the process under the MCCIA was explained in a recent Manitoba Ombudsman report:

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[92] *Ombudsman Act*, *supra* note 85, s 28.
[93] *Ibid*, s 36.
[94] Manitoba Ombudsman, *Municipal Issues Series: Fact Sheet 1: Conflict of Interest*, November 2014 at 1, online: https://www.ombudsman.mb.ca/uploads/document/files/conflict-of-interest-web-en.pdf.
[95] *Ibid*.
[96] Manitoba Ombudsman, *Understanding Fairness, A Handbook on Fairness for Manitoba Municipal Leaders* (Revised 2013) at 7, online: <https://www.ombudsman.mb.ca/uploads/document/files/understanding-fairness-web-en.pdf>.
[97] Manitoba Ombudsman, Town of Neepawa (2012-0080) at 3, online: <https://www.ombudsman.mb.ca/uploads/document/files/case-2012-0080-web-version-en.pdf>

> A significant difference between the ombudsman investigation process and the court process is the remedy available to a complainant/applicant in these processes. If a court determines that a council member has violated the MCCIA, the council member may be disqualified from council and may be required to make restitution to any person or the municipality affected by the financial gain. The goal of a complaint investigation under *The Ombudsman Act* is to determine whether there are administrative issues and, if so, to make recommendations for administrative improvement that could benefit both government and the public.[98]

Although the Ombudsman does not have the authority to administer the MCCIA, it has made recommendations on at least two occasions to improve compliance with the MCCIA.[99] In its recent report on the Rural Municipality of West St. Paul, for example, the Ombudsman considered whether a councillor abided by the MCCIA, the Rural Municipality's policy on conflict of interest, and procedural fairness obligations, and whether council had an obligation to ensure that council members followed the MCCIA and the Rural Municipality's policies. In finding that that the councillor had not abided by the MCCIA, rather than recommend sanctions, the Ombudsman made recommendations to improve administrative accountability.[100]

The Office of the Ombudsman has also, on occasion, reviewed the conduct of councillors with respect to Codes of Conduct of municipalities.[101] To date, the Office of the Ombudsman has not recommended the censure of a councillor for breaching a Code of Conduct.

(iv) The Auditor General Act

Under *The Auditor General Act*,[102] the Auditor General may conduct audits of municipal governments. When requested to do so by the Lieutenant Governor in Council or the Minister of Finance, or by resolution of the Standing Committee on Public Accounts, the Auditor General may examine and audit the accounts of a government organization, recipient of public money or other person or entity that in any way receives, pays or accounts for public money.[103] The Auditor General has broad powers to access the records of municipalities and any other persons or organizations with relevant information necessary for the purpose of carrying out its audit.[104]

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[98] Manitoba Ombudsman, Rural Municipality of West St Paul (2013-0391) [Rural Municipality of West St Paul] at 16, online: <https://www.ombudsman.mb.ca/uploads/document/files/case-2013-0391-en.pdf>.
[99] See Rural Municipality of West St Paul, *ibid*. See also Town of Neepawa, *supra* note 97. The Acting Ombudsman investigated an allegation that a Town of Neepawa councillor had placed himself in a conflict of interest. The Acting Ombudsman found that, although there was no actual conflict, the manner in which the matter was dealt with gave rise to the perception of a conflict. The Ombudsman suggested administrative improvements to avoid the perception of conflict in the future, and recommended that appropriate procedures for declaring a conflict are to be followed.
[100] Rural Municipality of West St Paul, *ibid* at 24-29.
[101] See Manitoba Ombudsman, Rural Municipality of De Salaberry (2013-0250), online: <https://www.ombudsman.mb.ca/uploads/document/files/case-2013-0250-en.pdf>.
[102] SM 2001 c 39.
[103] *Ibid*, s 16(1).
[104] *Ibid*, ss 18(1) & (2).

If the Auditor General makes recommendations regarding the operations of a municipality under *The Auditor General Act*, council must table the Auditor General's report and adopt a response to any recommendations.[105]

As with the Office of the Ombudsman, the Office of the Auditor General is not empowered to administer the MCCIA.

(v) Criminal Code

Canada's *Criminal Code*[106] addresses the most serious conflict of interest offences for public officials, such as bribery, breach of trust, fraud and corruption.[107] In particular, section 123(1) makes it a criminal offence for a municipal official to accept a benefit in exchange for voting or abstaining from voting.[108] Offences against the administration of law and justice are considered indictable offences, punishable by a maximum term of imprisonment of five years.[109]

B. Other Jurisdictions

a) Municipal Conflict of Interest Legislation

Every Canadian province and territory has enacted legislation governing municipal conflict of interest, either by amending existing municipal legislation or as a stand-alone municipal conflict of interest statute. Manitoba, Ontario,[110] Nova Scotia,[111] the Northwest Territories[112] and Nunavut[113] have stand-alone conflict of interest legislation, while the other provinces and territories address conflict of interest as part of existing legislation. Underlying all these enactments is the idea that an elected public official should not allow his or her personal interests to influence decision-making on matters coming before the municipality. Similar to Manitoba, most other provinces and territories establish strict rules to govern situations where there are financial relationships between elected public officials and their municipalities, requiring

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[105] *The Municipal Act*, *supra* note 22, ss 198.1(1)-(3).
[106] RSC, 1985, c C-46.
[107] *Ibid*, at Part IV: Offences against the administration of law and justice.
[108] *Ibid*. 123. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who directly or indirectly gives, offers or agrees to give or offer to a municipal official or to anyone for the benefit of a municipal official — or, being a municipal official, directly or indirectly demands, accepts or offers or agrees to accept from any person for themselves or another person — a loan, reward, advantage or benefit of any kind as consideration for the official

(*a*) to abstain from voting at a meeting of the municipal council or a committee of the council;
(*b*) to vote in favour of or against a measure, motion or resolution;
(*c*) to aid in procuring or preventing the adoption of a measure, motion or resolution; or
(*d*) to perform or fail to perform an official act.

[109] *Ibid.*
[110] *Municipal Conflict of Interest Act*, RSO 1990, c M50.
[111] *Municipal Conflict of Interest Act*, RSNS 1989 c299.
[112] *Conflict of Interest Act*, RSNWT 1988, c C-16.
[113] *Conflict of Interest Act*, RSNWT (Nu) 1988, c C-16.

officials to disclose pecuniary interests and liabilities arising during the course of official business and subjecting them to penalties for failing to disclose such relationships.

Most Canadian jurisdictions statutes contain remedial provisions similar to Manitoba's, where the only consequence that may be imposed in the event of a breach is a declaration that the seat of the council member is vacant, coupled with requirement to make restitution, in some circumstances, unless the violation was made unknowingly or through inadvertence.[114] In all cases, there is no independent body to review or advise on conflict of interest issues.

The following table describes the remedial provisions in each province or territory's municipal conflict of interest legislation:

Province or Territory	**Legislation**	**Remedial Provision**
Manitoba	*Municipal Council Conflict of Interest Act*, CCSM, c M255, s 21(1); 21(2).	Judge may: declare that the councillor has violated a provision of the Act; or refuse to make the declaration. Where the judge declares the councillor has violated a provision of the Act, the judge: • shall declare the councillor's seat vacant; and • may order restitution.
Ontario	*Municipal Conflict of Interest Act*, RSO 1990, c M50, s 10(1).	Judge shall declare the seat of the member vacant; and may: • disqualify the member or former member from being a member during a period thereafter of not more than seven years; and • order restitution.
British Columbia	*Community Charter*, SBC 2003, c26, s 111(6).	The court may declare: • that the person is qualified to hold office, • that the person is disqualified from holding office, or • that the person is disqualified from holding office and that the office is vacant.
Alberta	*Municipal Government Act*, RSA 2000, c M-26, ss 176(1)-(2).	Judge may: • declare the person to be disqualified and the position on council to be vacant; • declare the person able to remain a councillor; or

		• dismiss the application. If a judge declares a person disqualified, he or she may order the person to pay the municipality a sum of damages.
Saskatchewan	*Municipalities Act*, SS 2005, c M-36.1, s 148(6)-(7).	Judge may: • declare the person to be disqualified and a position on council to be vacant; • declare the person able to remain a member of council; or • dismiss the application. If a judge declares a person disqualified, he or she may order restitution.
Quebec	*An act respecting elections and referendums in municipalities*, CQLP c E-2.2, ss 303-304.	Disqualification from office. The disqualification shall continue for five years.
Nova Scotia	*Municipal Conflict of Interest Act*, RSNS 1989 c299, ss 10(3)-(4).	Judge may: • disqualify the member for a period of not more than ten years; and • order restitution. Where the contravention has been made for the purpose of personal financial gain, the judge shall impose a penalty of not more than $25,000 or, in default of payment thereof, imprisonment for a term of not more than twelve months.
New Brunswick	*Municipalities Act*, RSNB 1973, c M-22, s 90.9.	A person who fails to comply with conflict of interest provisions commits an offence under *The Provincial Offences Procedure Act*. In addition, the Court may: • order the person to resign his office or position on such terms and conditions as the Court prescribes; • prohibit the person from holding that office or position or any other specified office or position during such period of time as the Court prescribes; • where the contravention has resulted in financial gain to the person or a family associate, to return any gain realized thereby in accordance with terms and conditions imposed by the Court; or • make any other order that the Court considers appropriate in the circumstances. A failure to comply with any such order shall be deemed to be a contempt in the face of the Court and is punishable as such.

Prince Edward Island	*Municipalities Act*, RSPEI 1988, cM-13 *Charlottetown Area Municipalities Act*, RSPEI 1988 c C-14.	Not specified.[115]
Newfoundland & Labrador	*Municipalities Act*, SNL 1999 c M-24, s 206; 410(1); 410(6).	*No provision for an elector to bring application to court.* Council shall, by resolution, declare vacant the office of a councillor where the councillor fails to disclose a conflict of interest or discusses or votes on a matter in which he or she has a conflict of interest. A councillor whose seat has been vacated may appeal to a judge. The judge may: • uphold the vacancy or reinstate the councillor; • uphold, amend or rewrite the resolution; or • make any other decision that he or she considers appropriate.
Northwest Territories	*Conflict of Interest Act*, RSNWT 1988, c C-16, s 6(1).	Supreme Court shall declare the seat of the member vacant and may: • disqualify him or her during a period not exceeding five years; and • impose a fine not exceeding $5,000.
Nunavut	*Conflict of Interest Act*, RSNWT (Nu) 1988, c C-16, s 6(1).	Nunavut Court of Justice shall declare the seat of the member vacant and may: • disqualify him or her during a period not exceeding five years; and • impose a fine not exceeding $5,000.
Yukon	*Municipal Act*, RSY 2002, c 154, s 198.	The Supreme Court may make a declaration: • confirming the member of council in their office; or • disqualifying them from continuing in office as a member of council and declaring the office vacant.

[115] PEI's *Municipalities Act*, RSPEI 1988, cM-13 contains only one provision respecting conflict of interest:

> 23. No member of council shall, subject to section 17, derive any profit or financial advantage from his position as member of council and, where a member of council has any pecuniary interest in or is affected by any matter before the council, he shall declare his interest therein and abstain from the voting and discussion thereon.

The provision has not received judicial treatment, although the common law rules regarding conflict of interest would apply: see Prince Edward Island Municipal Affairs and Provincial Planning, *PEI Local Government Resource Handbook*, 3d ed, January 2013, online: <http://www.gov.pe.ca/photos/original/MunHandbook.pdf>, ("the final decision maker on matters of municipal conflict of interest cases, should any arise, would be the courts" at 32).

While there are other variations in the legislation across Canada, this section, consistent with this report, will limit its discussion to the relevant variations amongst the enforcement and remedial provisions.

(i) Ontario

Ontario's *Municipal Conflict of Interest Act*[116] is similar to Manitoba's in many respects: it provides that where a member has any pecuniary interest in any matter that is subject to consideration by council or the local board, he or she is required to disclose his or her interest and refrain from taking part in discussion or voting on the matter.[117] The penalty for a breach is disqualification.[118] However, there are some significant differences between the two statutes, which will be discussed in this section.

One significant difference between the two Acts is with respect to the requirement to file a statement of assets and interests. While the MCCIA requires councillors to file an annual statement disclosing assets and interests with the CAO of the municipality (or, in the case of the City of Winnipeg, with the City Clerk), there is no corresponding requirement in Ontario's Act. Another important difference is that Ontario's Act applies not only to municipal council members, but also to local board members such as school board members.[119]

Similar to the MCCIA, if an elector alleges that the Ontario Act has been breached, the only recourse is to the court. An elector may apply to a judge for a determination of the question of whether a member has contravened the Act.[120] Ontario's Act provides that where a judge determines that a member or a former member has contravened the Act, the judge shall declare the seat of the member vacant.[121] The judge has discretion to disqualify the member or former member for a period up to seven years, and may also order restitution.[122] The purpose behind providing such an extended period of disqualification is to give judges discretion as to the length of disqualification and to allow for situations where a former member could be penalized by preventing him or her from running in the next election.[123]

There have been several reported Ontario decisions that have addressed the remedial provisions of Ontario's *Municipal Conflict of Interest Act*.

In the 1995 decision of *Halton Hills (Town) v Equity Waste Management of Canada*,[124] Justice Belleghem of the Ontario Court of Justice (General Division) held that:

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[116] *Municipal Conflict of Interest Act*, *supra* note 110.
[117] *Ibid*, s 5(1).
[118] *Ibid*, s 10(1).
[119] *Ibid*, s 1.
[120] *Ibid*, ss. 8-9.
[121] *Ibid*, s 10(1)(a).
[122] *Ibid*, s 10(1)(b)-(c).
[123] *Tuchenhagen v Mondoux*, 2010 ONSC 6536 (CanLII) at para 80.
[124] [1995] OJ No 3787.

> The Municipal Conflict of Interest Act provides for the automatic unseating of any council member who votes on any public matter in which he or she has any financial interest.
>
> The Act is crystal clear. It is harsh. It must be. It controls the actions of council members. They are the repositories of the citizens' highest trust. They must at once be strong in their debate to put forward their electorates' concerns; they must always have an ear to the dissent in their voters. They must not only be unshirkingly honest -- they must be seen to be so -- by those who voted for them, and those who voted against them. Their role, though noble in its calling, is demanding in its execution. It is onerous in the extreme.[125]

In *Tuchenhagen v. Mondoux,*[126] the Ontario Superior Court of Justice considered whether the respondent council member had violated section 5 of Ontario's *Municipal Conflict of Interest Act*. Having determined that the respondent had violated the Act, the next step was for the Court to determine the appropriate penalty. At the time of the hearing, the respondent was no longer a member of council. In determining the penalty, the Court considered several factors:

> The issue is, how serious was the contravention. There is no evidence that Mr. Tuchenhagen acted in bad faith. The City suffered no loss. There was no policy prohibiting Mr. Tuchenhagen from bidding on real estate declared surplus to the City's needs. There was no interference with the public tender process. Mr. Tuchenhagen has given the City 12 years of public service. However, because the municipal election has just been held, any disqualification of less than the four-year term of the present Council would result in no sanction. It was Mr. Tuchenhagen's choice not to run in the most recent election. The only meaningful sanction that I can impose, because I cannot declare his seat vacant, is to disqualify Mr. Tuchenhagen from running in the next election. […] [T]here must be some consequence flowing from the contravention. I hold that a disqualification of four years would be fair and just in this case.[127]

On appeal, the Divisional Court agreed with the Superior Court insofar as "[t]he determination of any penalty stands apart from the decision as to whether Ontario's *Municipal Conflict of Interest Act* has been breached."[128] The Divisional Court also affirmed the application judge's reasons, indicating that a judge should look to the seriousness of the contravention; whether the councillor acted in bad faith; whether the municipality suffered any loss; and whether the penalty imposed would have consequences for the councillor.[129]

In the recent case of *Magder v Ford,*[130] it was alleged that the Mayor of the City of Toronto had violated section 5(1) of Ontario's *Municipal Conflict of Interest Act* by speaking to and voting on

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[125] *Ibid* at paras 8-9.
[126] *Tuchenhagen v Mondoux, supra* note 123.
[127] *Ibid* at para 80.
[128] 2011 ONSC 5398 (CanLII) at 69.
[129] *Ibid* at paras 70-71.
[130] 2012 ONSC 5615.

a matter in which he allegedly had a pecuniary interest.[131] The allegations related to a report of the City of Toronto's Integrity Commissioner, which had concluded that the mayor (then a member of council) had breached certain provisions of the City's Code of Conduct by using the City of Toronto logo and his status as a City Councillor to solicit funds for a private foundation created in his name. The Integrity Commissioner recommended that Council take steps to require the respondent to reimburse $3,150 in donations made to his private foundation.[132] It was also alleged that, at a City Council meeting, the respondent had voted on a motion for reconsideration of the Integrity Commissioner's recommendations.[133] Further, when the respondent failed to reimburse the funds and the matter came before City Council a second time, the respondent had allegedly spoken to the matter and voted on a motion to rescind Council's adoption of the Integrity Commissioner's findings as to the respondent's violations of the Code of Conduct.[134]

The application judge held that the respondent did violate Ontario's *Municipal Conflict of Interest Act*, noting that his conduct was far from the most serious breach.[135] In looking to section 10 of the Act, the strict remedial provisions meant that his seat would have to be declared vacant.

The application judge was critical of the remedy available for a violation of the Act, calling the mandatory removal from office a "very blunt instrument".[136] In his view, the problem with Ontario's *Municipal Conflict of Interest Act* is that it does not allow for "appropriately broad consideration of the seriousness of the contravention or of the circumstances surrounding the contravention, unless the member's actions in speaking or voting on a matter occurred through inadvertence or by reason of an error in judgment."[137] In reaching this conclusion, the application judge referred to observations from Professor David Mullan, Toronto's former Integrity Commissioner, describing section 10 as a "sledgehammer" in the course of his observations in a report to City Council:

> Even more importantly, the City should make every endeavour to persuade the provincial government to either modernize the Municipal Conflict of Interest Act or confer on the City of Toronto authority to create its own conflict of interest regime in place of or supplementary to that Act. Aside from the fact that the existing Act places legal impediments in the way of the City extending the concept of conflict of interest beyond the formulation in that Act, <u>it is simply Byzantine to have a regime under which the only way of dealing legally with conflict of interest in a municipal setting is by way of an elector making an application to a judge and</u>

[131] *Ibid* at para 1.
[132] *Ibid* at para 4.
[133] *Ibid* at para 6.
[134] *Ibid* at para 10.
[135] *Ibid* at para 50.
[136] *Ibid* at para 46.
[137] *Ibid* at para 47.

> where the principal and mandatory penalty (save in the case of inadvertence) is the sledgehammer of an order that the member's office is vacated.[138] [emphasis added]

This decision was overturned by the Divisional Court,[139] which found that City Council lacked the power to require the respondent to repay the money, so the respondent had therefore not violated the Act because the financial sanction had been a nullity.[140]

It is important to point out that Ontario's *Municipal Conflict of Interest Act* contains no equivalent to the MCCIA's section 21(1)(b), where a judge may refuse to make the declaration.

In the 1990s, Ontario had contemplated a new legislative regime respecting municipal conflict of interest. Following the recommendations of the Commission on Planning and Development Reform,[141] the Ontario government introduced sweeping reforms to its municipal planning laws. New municipal conflict of interest legislation was included in an omnibus bill that would have revised several other statutes in addition to replacing Ontario's *Municipal Conflict of Interest Act*. [142]

The *Local Government Disclosure of Interest Act*[143] ("LGDIA") was initially adopted in 1995. It was never proclaimed and was repealed in 2003.[144] The LGDIA would have created a province-wide commissioner with responsibility to administer the Act, including authority to conduct investigations.[145] Under this model, the public would make complaints to the commissioner rather than the court.[146] After conducting an investigation, if the commissioner was satisfied that the LGDIA had been violated, he or she could bring his or her own application to court.[147] If the commissioner were to find no grounds for the complaint, only then could a private citizen bring a court application alleging a conflict of interest.[148] The purpose of including a new enforcement

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[138] *Ibid* at para 46.
[139] 2013 ONSC 263 (CanLII).
[140] The Divisional Court's decision has received criticism. See for example Canadian Lawyer Magazine: *Toronto Mayor Rob Ford's highly charged fight to save his seat has thrust municipal conflict of interest issues into the spotlight across Canada*, Charlotte Santry, June 1, 2013. This article is available online at: http://www.canadianlawyermag.com/4654/Conflicting-opinions.html.
[141] Commission on Planning and Development Reform in Ontario, Commissioners John Sewell, George Penfold, Toby Vigod, *New Planning for Ontario: Final Report of the Commission on Planning and Development Reform in Ontario*, (Toronto, 1993). This report is available online at: https://archive.org/details/newplanningforon00comm.
[142] Bill 163, *An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes relating to planning and municipal matters*, 3rd Sess, 35th Leg, Ontario, 1994.
[143] *Local Government Disclosure of Interest Act 1994*, SO 1994, c23, Sch B [LGDIA]. A copy of the LGDIA can be found at Appendix B.
[144] On March 9, 1995, a proclamation was issued naming April 15, 1995 as the day on which the LGDIA would come into force. On April 13, 1995, a proclamation was issued revoking the March 9, 1995 proclamation, and the statute was repealed on January 1, 2003. See ss 484(2) and 485(1) of the *Municipal Act*, SO 2001, c 25.
[145] LGDIA, *supra* note 143, s 8(5).
[146] *Ibid*, s 8(1).
[147] *Ibid*, s 8(8).
[148] *Ibid*, s 8(12).

process through a local government disclosure commissioner was said to be the removal of financial burden of enforcement from an individual, so that an elector no longer had to bear the cost of going to court if he or she brought forward an allegation.[149]

The Commission is not aware of the reason for the legislation's repeal, although it appears that the bill received opposition for the statement of assets requirement in the LGDIA.[150]

A copy of the LGDIA can be found at Appendix B.

More recently, Ontario has chosen to supplement its legislative regime for conflict of interest through the use of municipal codes of conducts and through legislative changes that allow for, and, in some cases, mandate the establishment of integrity commissioners. These mechanisms for managing conflict of interest will be discussed in more detail in a later section of this report.

(ii) Alberta

Alberta's municipal conflict of interest legislation is encompassed in Alberta's *Municipal Government Act*.[151] Alberta's Act gives local governments the option of requiring a statement of disclosure of interests and assets, but, unlike the situation under the MCCIA, councils are not obligated to comply with this provision.[152]

Alberta's Act is similar to Manitoba's in several respects. Alberta's Act sets out the circumstances under which a councillor is disqualified from council, including if the councillor fails to disclose his or her interest or votes on a matter before council or a committee of council relating to a matter in which he or she has a pecuniary interest or liability; or where the councillor uses information obtained through his or her seat on council to gain a pecuniary benefit.[153] The Act provides that a councillor who is disqualified must resign immediately. If the councillor does not resign immediately, council or an elector may apply to a judge of the Court of Queen's Bench for an order declaring the person to be disqualified from council.[154]

After hearing an application for an order declaring a councillor to be disqualified from office, Alberta's Act gives the judge three options: the judge may: declare the person to be disqualified and his or her position on council to be vacant; declare the person able to remain a councillor; or

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Note that pursuant to s. 9(1), the Act would have allowed for a range of penalties, including suspension without pay for a period of not more than 90 days; a declaration that the seat of the member be vacant; disqualification for a period of not more than seven years; and restitution.

[149] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Leg, 3rd Sess, A (16 June 1994) at 1850 (Hon Ed Philip).

[150] See for example Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Leg, 3rd Sess, A (16 June 1994) (Hon Eddy) ("The disclosure of financial interest part of the bill is, as has been said, a great concern for municipal politicians from smaller areas" at 2010).

[151] RSA 2000, c M-26.

[152] *Ibid*, s 171.

[153] *Ibid*, ss 172; 174(1).

[154] *Ibid*, s 175.

dismiss the application.[155] In addition, if a judge declares a person disqualified, he or she may order the person to pay the municipality a sum of damages.[156] The option of empowering the judge to declare the person able to remain a councillor has been interpreted to mean that, if, upon finding that a councillor did in fact contravene the Act, a judge can nonetheless allow the councillor to remain on council in spite of the contravention.[157]

The remedial provisions in Alberta's *Municipal Government Act* were considered in the case of *Lac La Biche (County) v Bochkarev*,[158] where it was alleged that the respondent councillor had violated the Act by failing to disclose his pecuniary interest and voting on two matters that came before council.[159] In exercising his discretion to allow the councillor to remain on council despite his contravention of Alberta's *Municipal Government Act*, the judge considered the effect of section 32(3)(b), which allows a judge to make an order declaring the person to be qualified to remain a member of the council:

> [Section 32(3)(b)] can be seen as providing the judge with the ability to enable the person to remain a member of council notwithstanding the fact that they have technically breached one of the conflict of interest rules enumerated in s. 174. This allows relief from hardship where the breach is slight, or where it would be just to do so in the circumstances.[160]

In the decision, the judge noted that imposing a declaration of disqualification and declaring a councillor's seat vacant "carries with it a genuine condemnation, a stigma, not just a slap on the wrist or a minor embarrassment and therefore such a declaration should not be made lightly."[161] In his reasons, Justice Marceau determined that the councillor's conduct amounted to a lack of reflection and could not be considered outrageous or "acting in the face of a patent or obvious conflict" and therefore, disqualification was too harsh a remedy.[162]

Previously, the remedial provisions in Alberta's *Municipal Government Act* were worded similarly to the MCCIA, where the judge could either declare the member to be disqualified or refuse the application.[163] In *Re Buzunis*,[164] the Alberta Supreme Court, Appellate Division considered the language used under what was then section 32(2) of Alberta's Act, which provided:

> On hearing the application and any evidence, either oral or by affidavit, that he requires, the judge
>
> (a) may, by order, declare the member to be disqualified, or

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[155] *Ibid*, s 176(1).
[156] *Ibid*, s 176(2).
[157] See *Crowsnest Pass (Municipality of) v Prince*, 2001 ABQB 212 at 28-29.
[158] 2009 ABQB 400 (CanLII) [*Lac La Biche*].
[159] *Ibid* at para 1.
[160] *Ibid* at para 28.
[161] *Ibid* at para 49.
[162] *Ibid*.
[163] *Municipal Government Act*, RSA 1980, cM-26; amended by 1994 cM-26; now RSA 2000, cM-26.
[164] *Reference re Municipal Government Act, 1974* Alta SCAD 76 [*Re Buzunis*].

(b) may refuse the application.[165]

The Court determined that the intent and purpose of the statute requires the word "may" in section 32(2)(a) to be construed as imperative, so that in the case of proceedings under this provision there is no discretion and that "…it would be contrary to the intent and purpose of the legislation to import its existence when the conditions of disqualification are plainly established…"[166]

The remedial provisions of Alberta's Act were amended in 1986 to reflect the three options seen today.[167] However, the Alberta Supreme Court's interpretation of the old section 32(2) is relevant to this report because is worded similarly to the MCCIA's current section 21(1).

While the remedial provisions found in British Columbia and Saskatchewan's municipal conflict of interest legislation are similar to Alberta's in terms of giving judges the option of declaring the person able to remain as a councillor, the courts have not yet been called on to interpret the effect of including this option.

(iii) Municipal Codes of Conduct in Other Canadian Jurisdictions

Codes of conduct for public officials are designed to promote integrity in public affairs and serve as a guide to acceptable behaviour.[168] They provide a reference point not only for public servants, but also for the public to gauge the actions of elected officials. Codes of conduct are meant to deal with conduct that is not otherwise covered in legislation.

Some jurisdictions, such as Ontario and Quebec, have seen a shift toward the establishment of municipal ethics regimes, which include codes of ethics governing the behavior of councillors, coupled with oversight by an independent commissioner.

Ontario's *Municipal Statute Amendment Act*[169] amended Ontario's *Municipal Act*[170] and the *City of Toronto Act*[171] to add a new part called "accountability and transparency". Provisions of this part authorize municipal councils to establish a code of conduct for members of council and local boards. Each municipal council is empowered, and, in the case of Toronto, is required, to appoint an integrity commissioner who reports to council and is responsible for the applying the code of conduct and procedures, rules, and policies governing ethical behaviour.[172] One of the main roles of the integrity commissioner is to educate and assist council in ensuring that the code of conduct

[165] Alberta's *Municipal Government Act*, *supra* note 151, s 32(2).
[166] *Re Buzunis*, *supra* note 164 at para 38.
[167] Alberta's Hansard does not provide any indication of the reason for including the third option, except that the conflict of interest changes were made as a result of the recommendations of an independent conflict of interest committee which had reported to the government in 1985-1986. See *Lac La Biche*, *supra* note 153 at para 19.
[168] Gregory J. Levine, *Municipal Ethics Regimes* (Ontario: Municipal World Inc, 2009) at 7.
[169] Most sections came into force on January 1, 2007.
[170] SO 2001, c25.
[171] SO 2006, c11, Sch A.
[172] SO 2001, c25, s. 223.2; SO 2006, c11, Sch A, s. 157.

is being followed. In this model, councillors, other employees of the municipality or the public can make complaints to the integrity commissioner, who can then carry out inquiries.

In *Magder v Ford*, Justice Hackland determined that both Ontario's *Municipal Conflict of Interest Act* and the City of Toronto's Code of Conduct are primarily aimed at ensuring integrity in the decision-making of municipal councillors, and the two regimes are intended to operate together.[173]

In most municipalities that have established an integrity commissioner, the integrity commissioner does not impose sanctions directly. Under this model, referred to as the "ombudsman model", the integrity commissioner recommends to council an appropriate sanction if he or she finds that a councillor has breached the code of conduct. Recommended sanctions can include a reprimand, a suspension of remuneration for up to 90 days, or a request for an apology, but the commissioner cannot recommend a suspension or the removal of a councillor.[174] The ombudsman model is the most common model seen in Ontario's municipalities.[175]

Having said this, Ontario's *Municipal Act* creates the potential for a municipality to establish a commissioner who can impose sanctions directly for breaches of codes of conduct. To date, the City of Hamilton and the Town of Caledon are the only municipalities in Ontario that have chosen this model.[176] Pursuant to its by-law, passed in 2008, the Integrity Commissioner of the City of Hamilton may impose either a reprimand or a suspension of remuneration.[177] Likewise, the Integrity Commissioner for the Town of Caledon may impose a range of penalties, including censure, a reprimand, an apology or a suspension of remuneration.[178]

Ontario's legislation requires municipalities to establish their own integrity commissioners, rather than setting up one commissioner to oversee all municipalities, which is the case in Quebec.

In Quebec, the *Municipal Ethics and Good Conduct Act*[179] requires all municipalities to have codes of ethics that contain rules guiding the conduct of council members, including conflict of

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[173] *Magder v Ford*, *supra* note 130 at paras 27-28.
[174] SO 2001, c 25, ss. 223.3-223.8; SO 2006, c11, Sch A, ss. 158-164.
[175] As of January 1, 2016, the Ontario Ombudsman will have the jurisdiction to investigate complaints respecting municipal councils: *Bill 8, Public Sector and MPP Accountability and Transparency Act, 2014*, SO 2014, c 13, Sch 9 comes into force January 1, 2016. Available online: http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=3000.
[176] City of Hamilton, By-law 08-154, adopted June, 2008; Town of Caledon, Council Code of Conduct, online: http://www.caledon.ca/en/townhall/resources/Council_Code_of_Conduct_-_Corporate_Policy.pdf.
[177] City of Hamilton By-law, *ibid*, s 19.
[178] Pursuant to the Town of Caledon Code of Conduct, *supra* note 171, s 14.1, the Integrity Commissioner may impose censure, reprimand, recommend that council remove the member from an advisory committee or local board, recommend that the appropriate committee or local board remove the member as Chair, have the member repay or reimburse monies received, return property, request an apology or suspend remuneration for up to 90 days. Online: < http://www.caledon.ca/en/townhall/Integrity_Commissioner.asp>.
[179] CQLR c E-15.1.0.1.

interest. Under Quebec's model, complaints are made to the Minister in the form of a written request and made under oath.[180] The Minister may dismiss the request or refer it to a Commission for inquiry.[181] The Commission will then hold an *in camera* inquiry, where the council member whose conduct is being examined will have the opportunity to present a full and complete defence.[182] If the Commission concludes that a council member's conduct constitutes a violation, the Commission decides whether or not to impose a sanction, looking to the seriousness of the violation.[183] Sanctions may include a reprimand, restitution, or suspension for a period up to 90 days.[184]

It is important to note that in both Ontario and Quebec, commissioners are empowered to apply codes of conduct, but are not empowered to apply Ontario's *Municipal Conflict of Interest Act* or Quebec's *An act respecting municipal elections and referendums*,[185] respectively. Therefore, the only recourse available to an elector who alleges that a councillor has violated a provision of those acts is to apply to court. Futhermore,no independent body has been empowered to review or advise with respect to those acts.[186]

Some other provinces and territories are moving toward the independent commissioner model for municipalities, but again, only in relation to codes of conduct.[187]

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[180] *Ibid*, s 20.
[181] *Ibid*, ss 21-22.
[182] *Ibid*, s 24.
[183] *Ibid.*

> 26. If the Commission concludes that the council member's conduct constitutes a violation of a rule of the code of ethics and conduct, the Commission imposes one or more of the sanctions set out in section 31 or decides not to impose a sanction. In making its decision, the Commission takes into consideration the seriousness of the violation and the circumstances in which it occurred, including whether or not the council member obtained a written advisory opinion, containing reasons, from an ethics and conduct adviser or took any other reasonable measure to comply with the code.
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> 31. A violation by a member of a council of a municipality of a rule of a code of ethics and conduct adopted under section 3 may entail the imposition of the following sanctions:
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> (1) a reprimand;
>
> (2) the delivery to the municipality, within 30 days after the decision of the Commission municipale du Québec,
>
> *(a)* of any, or of the value of any, gift or hospitality or benefit received; or
>
> *(b)* of any profit made in violation of a rule set out in the code;
>
> (3) the reimbursement of the remuneration, allowances or other sums received as member of a council, committee or commission of the municipality or member of a body while the violation of a rule of the code continued; or
>
> (4) the suspension of the council member for a period of up to 90 days and not exceeding the expiry of his or her term.
>
> When suspended, a council member may not sit on any council, committee or commission of the municipality or on any other body in his or her capacity as council member, nor may the council member receive any remuneration, allowance or other sum from the municipality or such a body.

[184] *Ibid.*
[185] CQLR c E-2.2.
[186] Having said this, however, in *Magder v Ford*, *supra* note 130, Hackland RSJ found that both Ontario's *Municipal Conflict of Interest Act* and The City of Toronto's Code of Conduct are primarily aimed at ensuring integrity in the decision-making of municipal councillors, and the two regimes are intended to operate together (paras 27-28).
[187] For instance, on February 9, 2015, Calgary City Council approved in principle the establishment of an independent Integrity Commissioner position. Online: <http://publicaccess.calgary.ca/searchCCProc/index.htm>.

b) Provincial and Territorial Conflict of Interest Legislation

Every Canadian province and territory has conflict of interest legislation, which governs the conduct of elected members of provincial or territorial governments. Provincial and territorial conflict of interest legislation is largely intended to ensure that elected representatives do not put their personal interests ahead of the interests of the province or territory. The legislation requires elected representatives to disclose their pecuniary interests and liabilities and refrain from speaking to or voting on those matters in which they have an interest.

In all cases, save for Quebec,[188] conflict of interest legislation includes the establishment of an independent commissioner.[189] All provincial conflict of interest legislation empowers conflict of interest commissioners to give advice to members of Legislative Assemblies with respect to their obligations under their respective acts. In the case of British Columbia, Alberta, Nova Scotia, New Brunswick, the Northwest Territories and Nunavut, if a commissioner provides an opinion to a member, the member can safely rely on the advice as final and binding for all purposes and proceedings under the legislation, as long as the member provided the commissioner with all the material facts.[190]

In terms of enforcement of provincial and territorial conflict of interest legislation, with the exception of Manitoba, conflict of interest commissioners in all provinces and territories are empowered to conduct inquiries.[191] In almost all cases, if the commissioner determines that the relevant statute has been contravened, he or she can make recommendations as to penalty to the Legislative Assembly. Penalties range from fines or reprimands to declaring the seat of a member vacant.[192]

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[188] In Quebec, an Ethics Commissioner is established to administer the *Code of Ethics and Conduct of the Members of the National Assembly*, CQLR c C-23.1.

[189] *Members' Integrity Act*, RSO 1994, c 38, s 23(2); *Legislative Assembly and Executive Council Conflict of Interest Act*, CCSM c L112, s 19.5(1); *Conflict of Interest Act*, SNS 2010, c 35, s 4(1); *Members Conflict of Interest Act*, RSBC 1996, c 287, s 14; *Conflicts of Interest Act*, RSA 2000, c C-23, s 33; *The Members' Conflict of Interest Act*, RSS c M 11.11, s 18; *Members Conflict of Interest Act*, RSNB 1999, c M-7.01, s 43(1); *Conflict of Interest Act*, RSPEI 1988, c C-17.1, s 2; *Conflict of Interest Act*, SNL 1990 c H-10, s 34(1); *Legislative Assembly and Executive Council Act*, SNWT 1999, c 22, s 91; *Integrity Act*, SNu 2001, c 7, s 24(1). Yukon's *Conflict of Interest (Members and Ministers) Act*, RSY 2002, c 37, s 17 appoints a Conflicts Commission.

[190] See *Conflict of Interest Act*, SNS 2010, c 35, s 28(5); *Members Conflict of Interest Act*, RSBC 1996, c 287, s 18(5); *Conflicts of Interest Act*, RSA 2000, c C-23, s 43(5); *Members Conflict of Interest Act*, RSNB 1999, c M-7.01, s 30(4); *Legislative Assembly and Executive Council Act*, SNWT 1999, c 22, s 98(5); *Integrity Act*, SNu 2001, c 7, s 35(4).

[191] Under the Northwest Territories' *Legislative Assembly and Executive Council Act*, SNWT 1999, c 22, s 102(1), the Conflict of Interest Commissioner does not conduct inquiries directly. The Commissioner can direct that an inquiry be held before a sole adjudicator and the adjudicator makes recommendations to the Legislative Assembly.

[192] See *Members' Integrity Act*, RSO 1994, c 38, s 34; *Members Conflict of Interest Act*, RSBC 1996, c 287, s 22; *Conflicts of Interest Act*, RSA 2000, c C-23, s 27(2); *Conflict of Interest Act*, RSPEI 1988, c C-17.1, s 32(1); *Integrity Act*, SNu 2001, c 7, s 46(1). Pursuant to Nova Scotia's *Conflict of Interest Act*, SNS 2010, c 35, s 32, rather than recommend a penalty to the Legislature, the Commissioner may issue an order (small penalty) if he or she finds that the Act has been violated. Alternatively, the Commissioner may refer the matter to the Supreme Court of Nova

(i) Manitoba's Provincial Conflict of Interest Legislation

The Legislative Assembly and Executive Council Conflict of Interest Act ("*Legislative Conflict of Interest Act*")[193] is the provincial equivalent to the MCCIA. Both acts were passed on the same day,[194] and the MCCIA mirrors the *Legislative Conflict of Interest Act* in many respects. The *Legislative Conflict of Interest Act* is intended to prevent individuals' "direct or indirect pecuniary interests or liabilities" from affecting decisions of the Assembly or Cabinet, and sets out the procedures to be followed where members find themselves in conflict of interest situations.[195] The *Legislative Conflict of Interest Act* is the primary legislation in Manitoba that provides standards to assist members of the Legislative Assembly in ensuring that they are acting appropriately in performance of their duties.[196] As stated by Justice Schulman in *Dunn v Manitoba (Minister of Finance)*,[197] the purpose of the *Legislative Conflict of Interest Act* is "to protect the public and provide transparency for financial transactions."[198]

A copy of the *Legislative Conflict of Interest Act* can be found at Appendix C.

There are two important distinctions between the MCCIA and the *Legislative Conflict of Interest Act* which help to inform this report. The statutes differ firstly with respect to remedial provisions and secondly, with respect to the establishment of a legislative conflict of interest commissioner.

1. Remedial Provisions:

Unlike the MCCIA, the *Legislative Conflict of Interest Act* allows for a range of sanctions in the event of a violation. It contains no equivalent to the MCCIA's general provision which provides that a councillor who violates any provision of the MCCIA is disqualified from office.[199]

The *Legislative Conflict of Interest Act*, like the MCCIA, requires a voter to apply *ex parte* to a judge of the Court of Queen's Bench for authorization to have a hearing before another judge to determine whether a member or minister has violated the Act, so in this sense, the two Acts are similar.[200] However, the Acts diverge with respect to the way a judge is to determine the matter; recall that, under the MCCIA, upon hearing an application, a judge may either declare that a councillor has violated a provision of the Act or refuse to make the declaration;[201] however, under the *Legislative Conflict of Interest Act*, there is no equivalent provision. Rather, when a

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Scotia for a determination. The Commissioner may also refer the matter to the court if the member has failed to comply with an order issued by the Commissioner.

[193] CCSM c L112 [*Legislative Conflict of Interest Act*].

[194] Bots Acts were enacted on 18 August 1983.

[195] *Legislative Conflict of Interest Act, supra* note 193, ss 4-10.

[196] Manitoba Legislative Assembly, *Annual Report of the Conflict of Interest Commissioner* (2014) at 1.

[197] [2013] MJ No 402, MBQB 281.

[198] *Ibid* at para 21.

[199] MCCIA, *supra* note 15, s 18(1).

[200] *Legislative Conflict of Interest Act, supra* note 193, s 20.

[201] MCCIA, *supra* note 15, s 21(1).

hearing is granted pursuant to the *Legislative Conflict of Interest Act* and a judge determines that the member or minister has violated the Act, he or she must impose one or more of the penalties listed under section 21(1), which include disqualification; suspension of the member for a period not exceeding 90 sitting days of the Legislative Assembly; a fine not exceeding $5,000; and/or an order requiring the member or minister to make restitution for any pecuniary gain which the member or minister has realized in any transaction to which the violation relates.[202]

The range of sanctions listed under section 21(1) of the *Legislative Conflict of Interest Act* can be contrasted with the "all or nothing" approach in the MCCIA, where disqualification, coupled with restitution, is the only option. [203]

The remedial provisions under section 21 of the *Legislative Conflict of Interest Act* have not been judicially considered.

The *Legislative Conflict of Interest Act* provides more serious penalties for persons who contravene certain sections of the Act dealing with insider information[204]or use of influence.[205] Serious penalties are also provided with respect to certain provisions that address the conduct of ministers and senior public servants after leaving office.[206] In the event of a breach of any of those sections, the minister or senior public servant is guilty of an offence and liable to a fine in the range of $1,000 to $10,000.[207] No equivalent penalty is found in the MCCIA.

2. Conflict of Interest Commissioner:

Another important feature of the *Legislative Conflict of Interest Act* is that it establishes the office of an independent Conflict of Interest Commissioner.

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[202] *Legislative Conflict of Interest Act, supra* note 193, s 21(1). A copy of *The Legislative Conflict of Interest Act* can be found at Appendix C.

[203] When Bill 18, *The Conflict of Interest Act*, was discussed in committee, a change to what was section 24 of the bill was moved and carried, so that the remedial provisions mirrored the MCCIA:

> 24(1) Upon hearing any application for a declaration that a member or Minister has violated a provision of the Act and such evidence as may be adduced, the judge may
> (a) declare that the member or Minister has violated a provision of this act; or
> (b) refuse to make the declaration;
> and in either case, with or without costs.
> 24(2) Where the judge declares that the member or Minister has violated a provision of this Act, the judge
> (a) shall, where the violation has been committed by a member, declare the seat of the member vacant; and
> (b) may, where the member or Minister has realized pecuniary gain in any transaction to which the violation relates, order the member or Minister to make restitution to any person, including the government of Manitoba or a Crown agency, affected by the pecuniary gain. (Manitoba, Legislative Assembly, *Official Report of Debates (Hansard)*, 32nd Leg, 2nd Sess, Vol (16 Aug 1983) at 276 (Hon J Plohman).

Bill 18 was passed with the remedial provisions that appear in the Act today. Hansard does not provide any indication as to the reason for the clause's subsequent amendment.

[204] *Legislative Conflict of Interest Act, supra* note 193, s 18(1).

[205] *Ibid*, s 19(1).

[206] *Ibid*, s 19.1-19.3.

[207] *Ibid*, as amended by SM 1988-89, c 26, s 30.1(1). Amendments assented to 20 December 1988.

In its 2000 report on the *Legislative Assembly and Conflict of Interest Act*,[208] the Manitoba Law Reform Commission recommended the *Legislative Conflict of Interest Act* be amended to include the establishment of an independent Conflict of Interest Commissioner.[209] The Commission made its recommendations following a comprehensive review of legislative changes made to conflict of interest legislation in most other Canadian jurisdictions. It identified that the legislation in most Canadian provinces and territories provided for a designated individual with responsibility for administering the disclosure and enforcement provisions of the legislation.[210]

The Commission's report recommended that the Conflict of Interest Commissioner should have four primary roles: (1) supervising the disclosure requirements under the Act; (2) providing advice and guidance to members and Ministers; (3) educating members, Ministers, and the public regarding conflict of interest rules; and (4) investigating alleged breaches of the Act and recommending appropriate dispositions to the Legislative Assembly.[211]

The Legislature adopted some, but not all of the report's recommendations, and the Act was amended in 2002.[212] The amended *Legislative Conflict of Interest Act* establishes a Conflict of Interest Commissioner and sets out the Commissioner's powers and responsibilities. Every member of the Legislature is required to file a statement disclosing assets and interests with the Clerk of the Legislative Assembly.[213] Every member is also required to meet with the Conflict of Interest Commissioner either before filing or within 60 days of doing so, to review their statement of assets and interests.[214] Any member of the Legislative Assembly may seek an informal or formal opinion from the Commissioner about any matter concerning the member's obligations under the *Legislative Conflict of Interest Act*.[215] According to the Annual Reports of the Conflict of Interest Commissioner, several informal requests take place every year. No formal opinions have been made to date.[216]

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[208] Manitoba Law Reform Commission, *The Legislative Assembly and Conflict of Interest* (Report #106, 2000) [2000 Commission Report]. This report is available online at: http://www.manitobalawreform.ca/pubs/pdf/archives/106-full_report.pdf.

[209] *Ibid*. Recommendation 2 provides that "[t]he position of Conflict of Interest Commissioner should be created, with responsibility for administering, interpreting, and enforcing the Act."

[210] *Ibid*, at 24.

[211] *Ibid*, at p 31.

[212] SM 2002, c 49. Amendments assented to on 9 August 2002; in force 2 December 2002 (all but s. 3); 23 June 2003 (s. 3).

[213] *The Legislative Conflict of Interest Act, supra* note 193, ss 11(1); 12.

[214] *Ibid*, s 11.1(1).

[215] *Ibid*, s 19.6(1).

[216] Based on a review of all annual reports (2003-2004 to 2014). These reports are available online at: http://www.mbcoic.ca/reports.html.

2009 Annual Report (William Norrie), p 1-2:

> "During the year I also received questions from a number of individual members regarding their obligations under the act. These involved questions regarding the advisability of putting certain business interests in trust and the acceptance of gifts or privileges from members of the public."

The amendments to the *Legislative Conflict of Interest Act* did not give the Conflict of Interest Commissioner investigatory or enforcement powers. If a voter is concerned that a member of the Legislative Assembly has violated a provision of the *Legislative Conflict of Interest Act*, recourse is still to apply to the Court of Queen's Bench. However, when deciding whether to authorize a hearing or when making a determination on the merits, a judge must take into account any written opinion and recommendations the Commissioner has given about the subject matter of the alleged violation.[217]

c) Federal Conflict of Interest Legislation

Until recently, the federal government did not have legislation specifically directed at conflicts of interest, although guidelines and codes have been in place from time to time. For instance, a Conflict of Interest Code was adopted in 1994, and was implemented by an Ethics Counsellor, who was required to report to the Prime Minister.[218] Many rules governing conflict of interest for federal public officials are found in the *Criminal Code*,[219] the *Parliament of Canada Act*,[220] and the *Canada Elections Act*,[221] as well as in Standing Orders of the House of Commons and Rules of the Senate of Canada.[222]

Conflict of interest rules for federal public office holders have recently been established by statute in the federal *Conflict of Interest Act*.[223] The Act has been in force since July 2007. It creates the position of Conflict of Interest and Ethics Commissioner, appointed by the Governor in Council pursuant to the *Parliament of Canada Act*.[224] The mandate of the Commissioner is to carry out the functions of the commission in relation to public officers and members of Parliament, and to provide confidential advice.[225]

Under the federal *Conflict of Interest Act*, if a member of the Senate or House of Commons has reasonable grounds to believe that a public office holder or former public office holder has

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2003-2004 Annual Report (William Norrie), p. 6:

> "Over the period of this report I have met individually with thirteen individuals. Some such meetings are short, some require protracted consultation, all have been productive, I believe, and seem to have been appreciated by the members and ministers involved."

[217] *The Legislative Conflict of Interest Act*, *supra* note 193, s 21.1.
[218] Canada, Office of the Ethics Counsellor, *Conflict of Interest and Post-employment Code for Public Office Holders* (June 1994).
[219] *Criminal Code*, *supra* note 106.
[220] RSC, 1985, c P-1.
[221] SC 2000, c 9.
[222] The Standing Orders of the House of Commons are the permanent written rules under which Canada's House of Commons regulates its proceedings, while the Rules of the Senate of Canada perform the same function for the Senate. The Standing Orders of the House of Commons are available online at: http://www.parl.gc.ca/About/House/StandingOrders/toc-e.htm. The Rules of the Senate of Canada are available online at: http://www.parl.gc.ca/About/Senate/Rules/senrules_00-e.htm.
[223] SC 2006, c 9, s 2.
[224] *Parliament of Canada Act*, *supra* note 220, s 81.
[225] *Conflict of Interest Act*, *supra* note 223, Part 4.

contravened the Act, he or she may ask the Commissioner to examine the matter.[226] The Commissioner can only initiate an inquiry at the request of a member of the Senate or House of Commons, and cannot initiate at the request of members of the public.[227] The Commissioner will conduct an examination of the alleged contravention and make a determination as to whether the public office holder did in fact contravene the Act.[228] In conducting an examination, the Commissioner has the power to summon witnesses and require the production of evidence.[229]

In preparing his or her report, the Commissioner must provide the public office holder with a reasonable opportunity to present his or her views.[230] If the Commissioner believes on reasonable grounds that the public office holder has committed a violation, he or she must serve a notice of violation setting out the proposed penalty. The maximum penalty which the Commissioner may impose is an administrative monetary penalty not exceeding $500.[231] The public office holder has the option of paying the penalty or making representations to the Commissioner. If the public office holder pays the penalty, he or she is considered to have committed the violation.[232]

The Act provides the Commissioner with guidelines that must be taken into account when determining the amount of the proposed penalty, such as the fact that penalties have as their purpose to encourage compliance with the Act rather than to punish; the public office holder's history of prior violations from the past five years; and any other relevant matter.[233]

[226] *Ibid*, s 44.
[227] See *Democracy Watch v Canada (Conflict of Interest and Ethics Commissioner)*, 2009 FCA (CanLII), leave to appeal to Supreme Court of Canada dismissed: [2009] SCCA No 139 (SCC).
[228] *Conflict of Interest Act*, *supra* note 223, s 44.
[229] *Ibid*, s 48.
[230] *Ibid*, s 46.
[231] *Ibid*, ss 52-53.
[232] *Ibid*, s 55.
[233] *Ibid*, s 53.

CHAPTER 3: NEED FOR REFORM

Having described the municipal conflict of interest regime in Manitoba, as well as conflict of interest legislation in other Canadian jurisdictions, the following section will discuss the need for reform of the remedial and enforcement provisions of the MCCIA, in light of the way the Act has been applied by the courts, as well as the recommendations made following judicial inquiries in other Canadian jurisdictions.

A. Manitoba Case Law

This section will review some of the relevant cases from Manitoba, which highlight the problematic aspects of the remedial provisions found in the MCCIA.

In Manitoba, there has been limited judicial consideration of the remedial provisions of the MCCIA. It appears that sections 21(1) and (2), the sections that empower judges to provide a remedy in cases where a conflict of interest is alleged, are applied unevenly by the courts. There is no consensus as to how these subsections are to fit together, or how they are to be read in conjunction with sections 18(1) and 22 of the Act.

Several earlier cases dealt with the application of section 22, the section which deals with unknowing and inadvertent breaches of the Act.[234] The case of *Synchyshyn v Tiller*[235] involved an appeal from an order declaring that the Reeve of Clanwilliam had violated a provision of the MCCIA and likewise declaring his seat on council vacant.[236] The Manitoba Court of Appeal determined that, while the Reeve of the municipality had in fact violated the MCCIA by failing to disclose his interest at a meeting, the violation was made unknowingly or through inadvertence and hence, section 22 of the MCCIA was engaged. The Court allowed the appeal and set aside the order declaring the Reeve's seat vacant. Paradoxically, however, the Court held that the finding of a violation of the Act should remain in place.[237]

This interpretation seems to suggest that the MCCIA allows a judge to declare a violation of the Act while using his or her discretion whether to declare the councillor's seat vacant. The Manitoba Court of Appeal did not reconcile its finding with the wording of section 21(2), which holds that where a judge declares that a councillor has violated a provision of the Act, the judge *shall* declare the seat of the councillor vacant.[238]

[234] See *Cornwallis (Rural Municipality) v Selent*, 1998 CanLII 17672 (MBCA).
[235] 2000 MBCA 40 (CanLII).
[236] *Ibid* at para 1.
[237] *Ibid* at para 24.
[238] MCCIA, *supra* note 15, s 21(2).

In *Lovatt v Glenwood (Rural Municipality)*[239], the motions judge found the councillor had violated the MCCIA, but the violation was made inadvertently, so she refused to make a declaration under section 21(1)(b). She held that:

> I am satisfied that under s. 21(1) I am able to consider an unknowing or inadvertent breach before a declaration is made that a councillor has violated a provision of the Act. I have that discretion, which I choose to exercise. Accordingly, I refuse to make a declaration under s. 21(1) that Betker and Hume have violated a provision of the *Act*.[240]

The judge's finding suggests that the discretion to refuse to make a declaration under section 21(1) is triggered if and when the violation was a result of one of the circumstances contemplated in section 22, namely, unknowingly or through inadvertence. This issue was not addressed by the Manitoba Court of Appeal as the appeal was dismissed for other reasons (namely, a finding that no violation of section 5 had occurred).[241]

In the recent case of *Chan v Katz*,[242] the Manitoba Court of Appeal addressed the application of section 21 of the MCCIA. However, rather than settle the matter, the decision appears to raise more questions as to how the application of the remedial provisions of the MCCIA should be applied.

At first instance, the applicant applied to the Court of Queen's Bench for a declaration that the respondent mayor of the City of Winnipeg violated section 16 of the Act by influencing the City to use his own restaurant for a City Christmas party.[243] The restaurant was paid approximately $3,000 for the event. The application judge dismissed the application; she held that section 16, which contemplates the prohibition against communication for the purposes of influencing council, is limited to communications at meetings.[244] She held that, while section 16 did not apply in the circumstances, if it did, she had discretion under section 21(1), which she would have exercised, not to declare a violation. In her view, if discretion was not intended to be given to the judge, subsection (b) should have read that the judge should "declare that the councillor has not violated a provision of this Act."[245] She indicated that she would have refused to make the declaration in any event on the grounds that 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."[246] It is unclear from the decision whether the "disproportion" relates to the nature of the alleged conflict, or the monetary value of $3,000.

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[239] 2003 MBQB 100 (CanLII).
[240] *Ibid* at para 24.
[241] 2004 MBCA 18 (CanLII).
[242] 2013 MBCA 90. Leave to appeal to Supreme Court of Canada dismissed: 2014 CanLII 5981 (SCC).
[243] *Chan v Katz* (5 April 2013), Winnipeg CI12-01-79458 (Manitoba Court of Queen's Bench).
[244] *Ibid* at 3-4.
[245] *Ibid* at 4.
[246] *Ibid* at 4.

On appeal, the Manitoba Court of Appeal disagreed with the application judge's interpretation of section 16, finding that the provision's application is not limited to meetings of council or committees.[247] In so doing, the Court indicated that the MCCIA is public interest legislation which "must be given a broad and liberal interpretation in accordance with the modern rule of statutory interpretation."[248] However, it held that there was no evidence to suggest that the mayor took steps to communicate or use his influence to direct that the event be held at his restaurant.[249]

With respect to the second ground of appeal, the Court agreed with the reasoning of the application judge, who held that she had discretion to refuse to make the declaration under section 21(1) on the grounds that it would be "utterly disproportionate".[250] The Court held that there is discretion afforded to a judge under section 21(1) to refuse to grant a declaration if the judge is of the view that the conduct does not warrant it.[251] In the Court's view:

> The application judge referred to what was, in her view, the disproportion between the impugned conduct and the expense of a civic election to justify her decision to refuse to make a declaration. It was not inappropriate for her to bear that factor in mind when reaching her decision.[252]

The appellant had offered a different interpretation of section 21(1), which was not accepted by the Court. The appellant pointed to the wording of section 18(1) of the Act, which states that a councillor who violates any provision of the Act is disqualified from office, and his or her seat on the council becomes vacant as of the time of the declarations referred to in sections 21(1) and sections 21(2).[253] The appellant argued that, accordingly, the sole effect of a declaration under sections 21(1)(a) and (b) is to determine the timing of the vacancy of the councillor's seat on council, but the disqualification itself is automatic.[254]

The Manitoba Court of Appeal did not consider how its interpretation of section 21(1) could be reconciled with section 18(1). From a plain reading of the statute, it appears that the finding that a judge has discretion under section 21(1) is inconsistent with the intent of section 18(1). The Manitoba Court of Appeal's interpretation is also at odds with the Supreme Court of Alberta Appellate Division's interpretation of a similar provision in Alberta's *Municipal Government Act* (since amended), where that Court held that a judge must declare a councillor disqualified in the event of a contravention.[255]

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[247] *Chan v Katz*, *supra* note 242 at para 11.
[248] *Ibid* at para 11.
[249] *Ibid* at para 12.
[250] *Chan v Katz*, *supra* note 242 at para 15.
[251] *Ibid* at para 13.
[252] *Ibid* at para 15.
[253] *Chan v Katz*, 2013 MBCA 90 (CanLII) (Factum of the Appellant at para 40).
[254] *Ibid* at para 41.
[255] *Re Buzunis*, *supra* note 164 at para 28.

B. Judicial Inquiry Reports

Three recent judicial inquiries, two from Ontario and one from Saskatchewan, have examined ethics and conflict of interest at the municipal level. The recommendations contained in the reports from these inquiries help to inform this report.

a) The Bellamy Report (Ontario)

The Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry was conducted between 2002 and 2005. The purpose of the inquiry was to examine all aspects of transactions related to the acquisition of computer equipment and to ascertain the circumstances surrounding the retaining of consultants to assist in the creation and implementation of the tax system of the former City of North York.[256] The report of the Honourable Madam Justice Denise Bellamy ("Bellamy Report"),[257] made more than 200 recommendations in relation to City of Toronto decision-making and administration.

In her report, Justice Bellamy stressed the importance of promoting an ethical culture within municipal government. She noted that "servant" in "public servant" is "meant in the most admirable sense of contributing to something greater than one's own self-interest."[258] She accordingly made recommendations to improve the ethical culture of the City of Toronto, such as expanding its code of conduct, promoting awareness of the code of conduct and instituting mandatory training on code of conduct provisions, to name a few.[259]

Justice Bellamy also recommended the establishment of a full-time integrity or ethics commissioner for the City of Toronto.[260] She noted that, while elected officials can informally consult with peers or mentors on ethical questions, it is necessary to ensure there is a more formal source of ethical guidance, advice, surveillance, and enforcement.[261] Some of the reasons to support her recommendation are set out as follows:

- An integrity commissioner can help ensure consistency in applying the City's code of conduct;
- An integrity commissioner sends an important message to constituents about the City's commitment to ethical governance;
- There will be occasions where there is no clear ethical answer and an elected official will need authoritative advice and guidance; and

[256] The Honourable Madam Justice Denise E Bellamy, *Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report* (The City of Toronto, 2005) [Bellamy Report] at Appendix A(i) (Terms of Reference), online: < https://www1.toronto.ca/inquiry/inquiry_site/report/index.html>.
[257] *Ibid.*
[258] *Ibid* at 26.
[259] *Ibid* at 33-37.
[260] *Ibid* at 43. The City of Toronto established an Integrity Commissioner in 2004.
[261] *Ibid* at 44.

- Without enforcement, the rules are only guidelines. Where the public interest is involved, there should be a deterrent in the form of consequences for "bad behaviour."[262]

Justice Bellamy noted that an effective integrity commissioner system provides both an advisory component and an investigative or enforcement component to examine allegations of a breach.[263] To this end, she made several recommendations as to the role of the integrity commissioner. She recommended that the integrity commissioner should be empowered to offer his or her opinion, in confidence, to all members of council who request it.[264] She noted that "[u]pfront advice that avoids a problem is therefore far better than enforcement action taken after the damage has already been done."[265]

In the report, Justice Bellamy also contemplated the potential for conflict where one person is providing both an advisory and investigative service. She suggested that, if such conflict should occur, another person, such as an integrity commissioner from another jurisdiction, should be retained to conduct the investigation.[266]

In terms of investigation and enforcement, Justice Bellamy recommended that members of the public should be able to make anonymous complaints to the integrity commissioner, and that the complaints should not be pre-filtered by any elected official.[267] She further recommended that the commissioner be given summons powers,[268] and that sanctions for withholding cooperation should be equal to the sanctions for ethical breaches.[269] The commissioner should have the ability to dismiss frivolous complaints at the outset, should be able to identify individuals who have launched bad faith complaints, and should be allowed to recommend to council that bad faith complainants reimburse the City for expenses of the investigation.[270]

In her report, Justice Bellamy considered the integrity commissioner's role in enforcement. Rather than the ability to impose sanctions directly, she recommended that the City give the integrity commissioner broad powers to recommend an appropriate range of sanctions to council, including: public reprimands; public apologies; expulsion from one or more committee meetings; removal from committee posts or committee chair positions; expulsion from one or more council meetings; or a fine or declaration of a vacancy in the councillor's seat.[271] She further

[262] *Ibid* at 44.
[263] *Ibid* at 46.
[264] *Ibid* at 47.
[265] *Ibid* at 47-48.
[266] *Ibid* at 46.
[267] *Ibid* at 48.
[268] *Ibid* at 49.
[269] *Ibid* at 48.
[270] *Ibid* at 48.
[271] *Ibid* at 49.

recommended that council be required to rule within a fixed time on the integrity commissioner's recommendations.[272]

Justice Bellamy pointed to the strict sanctions under Ontario's *Municipal Conflict of Interest Act*, noting that there is no allowance for a "mere suspension". In her view, a more "finely tuned gradation" of penalties should be available to council, so that the integrity commissioner can make recommendations that are fair and proportionate to the ethical misconduct.[273]

The Bellamy Report also made recommendations respecting education and outreach. Justice Bellamy recommended, for example, that the integrity commissioner be given the mandate and resources to provide education and outreach for City staff and councillors. She noted that outreach is an important part of ensuring a strong ethical culture.[274]

Many of Justice Bellamy's recommendations were adopted by the City of Toronto. In 2006, the Ontario Legislature amended *The City of Toronto Act* to provide for the office of the integrity commissioner.[275] The integrity commissioner has both an advisory and investigatory role. However, the Act does not contain a broad range of penalties as was contemplated by Justice Bellamy in her report; city council may impose a reprimand or a suspension of remuneration for a period of up to 90 days on a member if the integrity commissioner reports to council that the member has contravened the code of conduct.[276]

There are several similarities between Justice Bellamy's recommendations with respect to an integrity commissioner and this Commission's recommendations in its Report on *The Legislative Assembly and Conflict of Interest*.[277] Both the Bellamy Report and the Commission's Report identify that the role of a commissioner would include providing advice, conducting investigations, and education.

b) The Cunningham Report (Ontario)

In 2009, the Mississauga Judicial Inquiry was launched to inquire into issues connected to the City of Mississauga's acquisition of land in the city centre, as well as issues in connection with the December 2000 Enersource Shareholders Agreement to which the City was a party. The inquiry involved examining whether any conflict of interest or misconduct might have influenced the actions of any existing or former elected or administrative representatives of the City of Mississauga, including the Mayor, Hazel McCallion.[278]

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[272] *Ibid* at 49.
[273] *Ibid* at 50.
[274] *Ibid* at 50.
[275] *City of Toronto Act*, *supra* note 171, s 158, as amended by 2006, c. 11, Sched. A, s. 160 (5).
[276] *Ibid*, s 160(5).
[277] 2000 Commission Report, *supra* note 208.
[278] City of Mississauga, resolution 0271-2009, (11 Nov 2009).

In his *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure*[279] ("Cunningham Report"), the Honourable J. Douglas Cunningham, found that the mayor was in a conflict of interest when she used her influence as mayor to further the interests of World Class Developments, a company in which her son had a financial interest. Justice Cunningham assesses the mayor's conduct with regard to the common law concept of conflict of interest as well as Ontario's *Municipal Conflict of Interest Act*.[280]

The Cunningham report made 27 recommendations to improve conflict of interest rules in Ontario. Some of the recommendations addressed the enforcement and remedial provisions of Ontario's *Municipal Conflict of Interest Act*.[281]

With respect to enforcement, Justice Cunningham was critical of the unavailability of any process outside of court for an elector alleging a conflict of interest. He pointed out that for most electors, an application to the Ontario Superior Court of Justice would be cost prohibitive.[282] With respect to the remedial provisions, he found that the "quasi-penal" nature of the Act was "outdated and out of step with the modern municipal accountability regime."[283]

Justice Cunningham called the sanctions available under the *Municipal Conflict of Interest Act* "draconian."[284] He recommended that lesser sanctions be made available where a judge finds a contravention, including:

- Suspension of the member for a period of up to 120 days;
- A form of probation of the member, with oversight by the integrity commissioner or auditor;
- Removal from membership of a committee of council;
- Removal as chair of a committee of council;
- A reprimand publicly administered by a judge; and
- A formal apology by the member.[285]

Justice Cunningham asserted that court is still the appropriate place to have conflict of interest allegations heard. He pointed out that court procedures allow for greater procedural safeguards for members of council. In his opinion, judges of the Superior Court of Justice should continue to

[279] The Honourable Justice Douglas Cunningham, *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure* (City of Mississauga, 2001) [Cunningham Report], online: < http://www.mississaugainquiry.ca/>.
[280] *Ibid* at 151.
[281] The Cunningham Report also made recommendations with respect to other areas of Ontario's *Municipal Conflict of Interest Act*, such as who is captured by the Act, expanding the types of interests captured by the Act beyond pecuniary interests. (See Cunningham Report, *ibid*, at 166-171.)
[282] *Ibid* at 158.
[283] *Ibid* at 159.
[284] *Ibid* at 171.
[285] *Ibid* at 171-172. Justice Cunningham also recommended that section 13 of Ontario's Act be amended so that restitution is no longer an available remedy. He notes that Ontario's Act should not be "construed as precluding civil actions for restitutionary recovery" (at 171-172).

have responsibility for removing municipal politicians from office under Ontario's *Municipal Conflict of Interest Act*.[286]

With regard to municipal codes of conduct, Justice Cunningham noted that Ontario's *Municipal Conflict of Interest Act* does not occupy the entire legislative field of conflict of interest. Therefore, in his view, there would be no legal impediment to including conflict of interest provisions in a municipal code of conduct.[287] The benefit to including conflict of interest provisions in a municipal code of conduct would be that enforcement of conflict of interest can also take place outside the court process and without the associated costs, albeit with less severe sanctions.[288] However, Justice Cunningham concluded that an application to court should not proceed concurrently with an investigation by the integrity commissioner.[289]

c) The Barclay Report (Saskatchewan)

In 2014, an inquiry was launched to inspect and report on the matters connected with the management, administration or operation of the Rural Municipality of Sherwood and to inquire into the conduct of members of council and agents of the municipality.[290] Allegations had been made that the reeve, Kevin Eberle, had engaged in inappropriate conduct in relation to the proposed Wascana Village Development. While it was apparent that the reeve had made a declaration of a pecuniary interest to Council regarding the development and had recused himself from voting on any Council decisions relating thereto, there were allegations that the reeve may have had other undeclared pecuniary interests in relation to the development.[291]

In his report, the Honourable R. L. Barclay, former Justice of the Saskatchewan Court of Queen's Bench and current Conflict of Interest Commissioner for the Province of Saskatchewan, recommended, among other things, the establishment of a municipal conflict of interest ombudsman.[292] He pointed out that, based on the nature of municipalities, council members are often important members of the community and have significant land holdings or other business interests in the municipality. Therefore, council members frequently find themselves assessing their pecuniary interests and making decisions about their obligations under the conflict of interest provisions of Saskatchewan's *Municipalities Act*. In his view:

> Municipal council members and staff should not be expected to reach determinations on what are often nuanced legal issues. Outside of scenarios where there is a clear conflict of interest,

[286] *Ibid* at 159.
[287] *Ibid* at 159-160.
[288] *Ibid* at 160.
[289] *Ibid* at 160.
[290] 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.
[291] *Ibid* at 4.
[292] *Ibid* at 147.

> the municipality should have access to expertise on the matter which does not come at a significant expense to the municipality and its ratepayers.
>
> […]
>
> Regardless of the nomenclature applied to the position, a conflict of interest ombudsman would fill a meaningful gap in the resources currently available to municipalities and their council members. The legal advice that would become available by virtue of this position would be an effective and efficient medium for municipalities to resolve the often complex issues they are faced with in regards to conflicts of interest among their council members.[293]

The Honourable Mr. Barclay recommended that the conflict of interest ombudsman be empowered to conduct an investigation in respect of a breach of Saskatchewan's *Municipalities Act* or the Code of Ethics, and should further be able to convert his or her investigation into an inquiry, should the situation warrant it, exercising the powers available under Saskatchewan's *Public Inquiries Act.*[294]

In terms of enforcement, the Honourable Mr. Barclay recommended that the ombudsman be authorized to issue either a reprimand or suspend the salary of a council member for up to 90 days, if he or she determines that the member has violated the Code of Ethics or Saskatchewan's *Municipalities Act.*[295]

The Honourable Mr. Barclay also suggested that the mandate of Saskatchewan's Ombudsman could be expanded to include the provision of advice and the conduct investigations under the conflict of interest provisions of the *Municipalities Act* as well as codes of ethics.[296]

The Honourable Mr. Barclay did not discuss in his report, what effect, if any, the establishment of a conflict of interest ombudsman would have on the provisions of Saskatchewan's *Municipalities Act* which allow an elector to bring an application to court alleging a member of council to be in a conflict.

[293] *Ibid* at 148.
[294] *The Public Inquiries Act, 2013*, c P-38.01.
[295] Barclay Report, *supra* note 290 at 148.
[296] *Ibid* at 148-149.

CHAPTER 4: REMEDIAL PROVISIONS

The MCCIA reflects the state of the law on municipal conflict of interest at the time of its enactment in 1983. It was a positive step toward a more flexible model of conflict of interest legislation, allowing individuals with pecuniary interests and liabilities in a municipality to serve on its council, provided they comply with disclosure and withdrawal requirements. However, recent case law and judicial inquiry reports suggest that the remedial provisions of the Act should be amended to enhance the enforcement of conflict of interest rules for members of council.

A. Range of Sanctions

The sanction under the MCCIA is strict; the only sanction available for a breach of the Act is disqualification from office, along with the possible requirement to pay restitution. Following a declaration that the councillor has breached the Act, the councillor's seat is declared vacant, which, in turn, creates the need to call an election.[297] The Manitoba Court of Appeal has interpreted section 21(1) as giving judges the option of refusing to make a declaration of a violation even when the evidence shows that a violation has in fact occurred,[298] notwithstanding section 18(1) of the Act, which provides that a councillor who violates any provision of the Act is disqualified from office.[299] This interpretation of the law stems from a concern that, in some cases, it would be unfair to declare the seat of a councillor vacant if the conduct of the councillor is not serious enough to warrant disqualification.[300]

The harshness of the remedial provisions in municipal conflict of interest legislation in Manitoba and elsewhere has been the subject of criticism.[301] The Cunningham Report found that the penalties available under Ontario's *Municipal Conflict of Interest Act* were outdated and that lesser sanctions should be made available where a judge finds a breach of Ontario's Act.[302] In the Commission's view, Justice Cunningham's criticisms with respect to the sanctions available under Ontario's Act are equally applicable to the MCCIA.

It is the Commission's position that including a range of sanctions in the event of a violation of the MCCIA would bring the legislation in line with modern day values of promoting ethical conduct for elected public officials. Should a range of sanctions be available, judges would have more options at their disposal, and would not need to resort to refusing to make a declaration of a

[297] MCCIA, *supra* note 15, s 18(1); 21(1)-(2).
[298] *Chan v Katz*, supra note 242 at para 15.
[299] MCCIA, *supra* note 15, s 18(1).
[300] *Chan v Katz*, *supra* note 242 at para 15.
[301] *Magder v Ford*, *supra* note 130 at paras 46-47; Cunningham Report, *supra* note 279 at 171-172.
[302] Cunningham Report, *ibid* at 171-172. Justice Cunningham recommended a range of sanctions for a breach, namely disqualification, suspension, probation, removal from a committee, removal as chair of a committee of council, a reprimand publicly administered by a judge, or a formal apology.[302]

conflict of interest simply because, by doing so, the consequences (causing a municipality to hold a costly by-election) would be too severe in the circumstances of the case.

Recognizing the importance of accountability for public officials, any amendments to the remedial provisions of the MCCIA should not detract from the court's power to order the ultimate sanction, which is disqualification from office. It is the Commission's position that the MCCIA can still have the same clout while also providing for other less serious sanctions should a breach of the Act be not so egregious as to warrant a councillor being stripped of his or her seat.

The Commission does not recommend the inclusion of an extended disqualification, as is seen in Ontario's Act, where a judge may suspend a member for a period of up to seven years.[303] Rather, the councillor should be entitled to run in the next general election. If a councillor is stripped of his or her seat, it should be for the electorate to weigh and determine whether the councillor should return to office, provided the councillor chooses to run.

In the Commission's view, the range of sanctions provided under the *Legislative Conflict of Interest Act* for members of the Legislative Assembly sufficiently allow for proportional remedies in the event of a breach and, as such, the MCCIA should be amended so as to mirror the sanctions listed under section 21(1) of the *Legislative Conflict of Interest Act*.[304] While the Commission would be inclined to recommend increasing the monetary penalty to an amount greater than $5,000, in the interest of providing consistency between the MCCIA and the *Legislative Conflict of Interest Act* with respect to monetary penalty, the Commission is not recommending this at the present time. However, the Legislature may wish to consider whether an increase to the monetary penalty under both acts would be advisable.

Consistent with a more flexible approach, the Commission suggests that section 21 of the MCCIA depart from the language of the *Legislative Conflict of Interest Act* in two ways. Firstly, the Commission recommends that, where a judge determines that a councillor has violated the Act, the judge may impose one or more of the penalties listed under section 21, rather than retaining the imperative "shall". Secondly, the Commission recommends that judges be explicitly empowered to use their discretion under section 21 to make any other order that they consider appropriate in the circumstances. In making this recommendation, the Commission's

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[303] *Municipal Conflict of Interest Act, supra* note 110, s 10(1)(b).

[304] *Legislative Conflict of Interest Act*, *supra* note 193, s 21(1) provides:

> 21(1) Subject to sections 21.1 and 22, where a judge determines, after a hearing authorized under section 20, that the member or minister has violated this Act, the judge shall impose one or more of the following penalties on the member or minister:
>
> (a) In the case of a violation committed by a member, disqualification of the member from office.
>
> (b) In the case of a violation committed by a member, suspension of the member for a period not exceeding 90 sitting days of the Legislative Assembly.
>
> (c) A fine not exceeding $5,000.
>
> (d) An order requiring the member or minister to make restitution to the Government of Manitoba or a Crown agency for any pecuniary gain which the member or minister has realized in any transaction to which the violation relates.

intent is not to water-down the consequences that may flow from a breach of the MCCIA; conflict of interest is a serious matter, and, where appropriate, councillors who violate the Act should be penalized accordingly. However, it is not possible to contemplate every instance of a violation of the MCCIA that could arise, and it is important for judges to have sufficient flexibility to determine the appropriate sanctions in the circumstances. For instance, there may be situations where a councillor has technically violated the Act and has done so with the requisite intent, but where the violation is so minor in nature that it would not be appropriate for a judge to impose one of the sanctions enumerated in the statute. In such cases, the Commission believes that judges should have the power to craft a remedial order uniquely tailored to the circumstances.

To put the MCCIA on par with the *Legislative Conflict of Interest Act*, the Commission recommends replacing section 21(1) and (2) with one provision that affords judges a range of sanctions. To ensure consistency within the Act, the Commission recommends that section 18(1) be repealed, so there can be no doubt that, where a judge determines that a councillor has violated the Act, he or she shall choose from the range of sanctions listed under section 21.

The Commission notes that this recommendation, if implemented, will require an amendment to section 22 as well. Section 22 of the MCCIA provides that, in the case of an unknowing or inadvertent violation, a councillor is not disqualified from office and the judge shall not declare the seat of the councillor vacant, but it does not speak to other types of sanctions that could be imposed if a range of sanctions were provided under section 21. Therefore, the Commission recommends that section 22 be amended to mirror the language of section 22 of the *Legislative Conflict of Interest Act*. Section 22 of the *Legislative Conflict of Interest Act* provides:

> Where, after a hearing authorized under section 20, the judge determines that the member or minister has violated this Act unknowingly or through inadvertence, the judge may make an order of restitution in accordance with clause 21(1)(d) but shall impose no other penalty against the member or minister.

This amendment, if implemented, will ensure that councillors are not penalized for violations that have been committed inadvertently or unknowingly.

The Commission notes that, in repealing section 18(1) of the MCCIA, section 18(2) will require a slight amendment. Section 18(2) provides that a councillor who fails to file an annual statement of assets and interests under section 9(1) is only in violation of the Act if he or she fails to file the required statement within the time period referred to in subsection 9(2).[305] The first part of section 18(2), which states that "[f]or the purposes of subsection (1)..." should be repealed in order for subsection 18(2) to retain its meaning.

[305] MCCIA, supra note 15, s 18(2) provides:

> For purposes of subsection (1), a councillor violates subsection 9(1) only where, after receiving the notification referred to in subsection 9(2), the councillor fails to file the required statement within the time period referred to in subsection 9(2).

These amendments, if implemented, would bring Manitoba's legislation in line with the recommendations made by recent judicial inquiries and with provincial conflict of interest legislation. They would also provide more clarity as to how the remedial provisions of the Act are to be applied.

***Recommendation 1*: Sections 21(1) and (2) of The Municipal Council Conflict of Interest Act should be replaced with one provision which states that, subject to section 22, where a judge determines, after a hearing authorized under the Act, that a councillor has violated the Act, 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 2*: Section 22 of The Municipal Council Conflict of Interest Act should be amended to provide that if, after a hearing authorized under section 20, the judge determines that the councillor has violated the Act unknowingly or through inadvertence, the judge may make an order of restitution but shall impose no other penalty against the councillor.**

***Recommendation 3*: Section 18(1) of The Municipal Council Conflict of Interest Act should be repealed.**

***Recommendation 4*: The words "[f]or purposes of subsection (1)" under section 18(2) of The Municipal Council Conflict of Interest Act should be repealed.**

B. Meaning of Suspension

Section 21(2) of the provincial *Legislative Conflict of Interest Act* clarifies the meaning of a suspension under section 21(1). The Commission recommends that the MCCIA be amended to include a provision which specifies the meaning of a suspension of a councillor, so that it is clear that a suspended councillor may not participate in any council meeting or any committee on which the councillor serves.

In making this recommendation, the Commission notes that a consequential amendment to both the *Municipal Act* and the *Winnipeg Charter* will be required, to ensure that a councillor's suspension will not lead to disqualification under those acts. Under the *Municipal Act*, a councillor is disqualified from council if he or she is absent from three consecutive regular council meetings unless the absences are with the leave of the council, granted by a resolution.[306] Similarly, under the *Winnipeg Charter*, a member of council forfeits his or her seat on council if

[306] *The Municipal Act*, *supra* note 22, s 94(1)(a).

he or she fails to attend three consecutive regular meetings of council, unless the absences are authorized by a resolution of council passed before or at one of those meetings.[307]

Section 23 of the MCCIA indicates that an application for a declaration that a councillor has violated a provision of the Act may be brought notwithstanding that the councillor resigned, did not seek re-election, was not re-nominated, or was re-elected or defeated subsequent to the alleged violation.[308] The Commission notes that this provision should apply to situations where a judge orders a suspension of a councillor shortly before an election is called. If the councillor in question did not have the opportunity to complete the full period of his or her suspension before the election, and he or she is re-elected, the suspension should apply in his or her next mandate.

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.***

[307] *Winnipeg Charter*, *supra* note 23, s 47(1).

[308] MCCIA, *supra* note 15, s 23 provides:

> An application for a declaration that a councillor has violated a provision of this Act may be brought notwithstanding that the councillor against whom the declaration is sought resigned or did not seek re-election, or was not re-nominated, or was re-elected or defeated subsequent to the alleged violation of this Act.

CHAPTER 5: CONFLICT OF INTEREST COMMISSIONER

A. Establishing a Municipal Conflict of Interest Commissioner

Aside from the remedial provisions of the Act, two other issues related to the enforcement of the MCCIA have been identified in this report: first, members of council, when unsure about their obligations under the Act, do not have legislated access to a source for authoritative advice; and second, an application to the Court of Queen's Bench is the only recourse for an elector who has reason to believe that a member of council has violated a provision of the Act. In the Commission's view, both of these issues can be addressed by the establishment of a municipal Conflict of Interest Commissioner.

The purpose of ethics rules is to prevent unethical conduct before it occurs, rather than to punish after the fact. According to Gregory J. Levine, a leading authority on ethics in local government, the functions of an ethics system are education, advice-giving, monitoring, investigating and sanctioning, as he notes that "[i]t is clearly better to avoid problems than to pick up the pieces once they have occurred."[309]

In the Cunningham Report, Justice Cunningham emphasized the importance of a culture of ethics in municipal government:

> An effective municipal accountability regime requires a culture of accountability that pervades municipal government. That culture of accountability cannot simply be imposed top-down through legislation; it requires strong leadership from various municipal stakeholders. A balance must be struck that provides consistency, predictability, coherence, fairness, and transparency, as well as sufficient flexibility.[310]

Much has changed in the ethical climate since the MCCIA was enacted, and reform is now appropriate to bring the Act in line with modern day values of accountability, honesty, and openness in local government.

Recent judicial inquiries have recommended the establishment of independent commissioners with powers of oversight with respect to municipal conflict of interest and other ethical matters: in the Cunningham Report, Justice Cunningham was critical of the fact that Ontario's *Municipal Conflict of Interest Act* provides no process outside of court for an elector alleging a conflict of interest;[311] in the Bellamy Report, Justice Bellamy recommended an ethics commissioner for the City of Toronto;[312] and in the Barclay Report, the Honourable Barclay recommended the establishment of a conflict of interest ombudsman to provide an advisory and investigatory role with respect to the application of Saskatchewan's conflict of interest provisions under the

[309] Gregory J Levine, *Municipal Ethics Regimes*, *supra* note 168 at 17-18.
[310] Cunningham Report, *supra* note 279 at 157.
[311] *Ibid* at 158.
[312] Bellamy Report, *supra* note 256 at 43.

Municipalities Act.[313] In all three reports, the emphasis is on education, training, and the provision of advice so as to avoid ethical breaches from occurring in the first place rather than punishing after the fact. Recognizing that even the best efforts at promoting ethical conduct will not catch every instance, these models also provide for enforcement mechanisms. It is the Commission's position that the rationale for making these recommendations in other jurisdictions is equally applicable to Manitoba.

It is not the Commission's intent to recommend an office that would create another layer of bureaucracy. Rather, the Commission views the establishment of an office of a municipal Conflict of Interest Commissioner as a necessary addition designed to provide more clarity to the legislative scheme; a place where councillors and the public alike could turn in order to obtain authoritative advice and have the MCCIA enforced outside of the court process.

At the provincial level, the Legislative Conflict of Interest Commissioner is responsible for supervising the disclosure requirements under the *Legislative Conflict of Interest Act*; before filing a disclosure statement or within 60 days after doing so, every member and minister is required to meet with the Conflict of Interest Commissioner to ensure that adequate disclosure is made.[314] In the Commission's view, it is not necessary or feasible for the municipal Conflict of Interest Commissioner to oversee the annual statement of assets and interests for every member of municipal council in Manitoba. Rather, the Commission believes that the current procedure for filing with the clerk of the municipality should remain in place. The municipal Conflict of Interest Commissioner can request the information from the clerk should he or she be called upon to provide advice to a member of council or investigate an alleged breach of the MCCIA.

Given that the municipal Conflict of Interest Commissioner's independence and authority are essential to the proper functioning of the office, the Commission recommends that the Commissioner should be an officer of the Legislative Assembly, appointed for a fixed term. The municipal Conflict of Interest Commissioner should be accountable to the Legislative Assembly and the public, and should be required to submit an annual report about the office's activities.

The Commission is aware that Winnipeg City Council recently passed a motion to establish the Office of an Integrity Commissioner.[315] City Council has asked the Legislature to make amendments to the *Winnipeg Charter* to give the Integrity Commissioner investigative and enforcement powers.[316] While the Commission believes that this would be a positive step forward for the City of Winnipeg, the Commission's view is that the MCCIA should be amended to establish a municipal Conflict of Interest Commissioner that is empowered to administer and enforce the MCCIA for all municipalities in Manitoba.

[313] Barclay Report, *supra* note 290 at 147-148.
[314] *Legislative Conflict of Interest Act*, *supra* note 193, s 11.1(1).
[315] City of Winnipeg, *supra* note 84.
[316] *Ibid.*

The following recommendations, if implemented, would put Manitoba's MCCIA ahead of the rest of Canada in terms of establishing an independent commissioner to administer and enforce municipal conflict of interest legislation.[317] The amendments to the MCCIA would bring the Act in line with modern values of accountability in municipal government, and would be consistent with the recommendations from recent judicial inquiries.

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 8: The municipal Conflict of Interest Commissioner should be appointed by the Lieutenant Governor for a fixed term and be required to report annually to the Legislature on the activities of his or her office.

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.***

Recommendation 10: The municipal Conflict of Interest Commissioner should be required to promote awareness and understanding by councils, councillors, and members of the public of ethics in municipal government in general, and rules surrounding conflicts of interest in particular, in such a manner as the Commissioner deems appropriate.

B. Advice

At the provincial level, Manitoba has established a Legislative Conflict of Interest Commissioner to provide advice on conflict of interest issues for members of the Legislative Assembly.[318] The *Legislative Conflict of Interest Act* allows any member to ask the commissioner for a formal or informal opinion and recommendations about a matter concerning the member's obligations

[317] See Ontario Ministry of Municipal Affairs and Housing, Municipal Legislation Review, online: < http://www.mah.gov.on.ca/Page11144.aspx >. The Ontario Ministry of Municipal Affairs and Housing is currently reviewing Ontario's *Municipal Conflict of Interest Act* along with Ontario's *Municipal Act* and the *City of Toronto Act*. According to its website, it will be developing recommendations on how to improve the Act. See also Ontario, *Municipal Legislation Review: Public Consultation Discussion Guide*, (June, 2015), online: < http://www.mah.gov.on.ca/AssetFactory.aspx?did=10979>. Under the heading "Conflict of Interest," the Discussion Guide asks for feedback on whether municipal councillors need more support to comply with conflict of interest rules; how to improve the public's access to the decision-making process about conflict of interest; what are the appropriate penalties for violating conflict of interest rules; and who should enforce municipal conflict of interest rules (at 11).

[318] *Legislative Conflict of Interest Act*, *supra* note 193, s 19.6(1).

under the Act.[319] The Commissioner is empowered to make any inquiries that he or she considers appropriate in order to provide the member with an opinion and recommendations.[320] The Act states that a member is entitled to rely on the formal, written opinion of the commissioner, so long as the member has disclosed all relevant facts and acts in accordance with the commissioner's recommendations.[321] The Legislative Conflict of Interest Commissioner's advice is not binding in the sense that it prevents subsequent proceedings under the statute with respect to the particular facts at issue. However, in deciding whether to hear an application or when making a determination under the Act, a judge must give due regard to the commissioner's written opinion and recommendations regarding the subject matter of the alleged violation.[322]

Unfortunately, at present, there is no equivalent source of advice for members of municipal councils. Members of council must seek legal advice at their own expense or ask for guidance from other organizations should they be faced with a question about their compliance with the MCCIA. Although these sources may provide councillors with valuable information, they are not specifically mandated to apply and enforce the MCCIA. In addition, their advice is not authoritative in the sense that it will potentially operate to protect the member of council from a later finding of conflict of interest.

Many of the provincial conflict of interest statutes in other provinces and territories provide that, if a member of the Legislative Assembly seeks a formal opinion from its commissioner, as long as the member provides all material facts to the commissioner and complies with any recommendations made by the commissioner, the member is rendered immune from any subsequent proceedings under the statute with respect to the particular facts of the matter.[323] In the Commission's view, in order for the municipal Conflict of Interest Commissioner's advice to be confidently relied on by members of council, it should be binding so that members are protected from subsequent proceedings under the Act, provided that they have complied with the requirement to disclose all material facts and have acted in accordance with the recommendations. This amendment, if implemented, would provide members of council with certainty, so that the municipal Conflict of Interest Commissioner would be a reliable place for councillors to turn.

As is the case for members of the Legislative Assembly, members of council should be able to seek out confidential, informal advice as well as formal, written advice. In the interests of transparency, the Commission believes that the written, formal opinions and recommendations should not only be binding, but should also be publicly available. This would not only further

[319] *Ibid*, s 19.6(1).
[320] *Ibid*, s 19.6(2).
[321] *Ibid*, s 19.6(3).
[322] *Ibid*, s 21.1.
[323] See *Conflict of Interest Act*, SNS 2010, c 35, s 28(5); *Members Conflict of Interest Act*, RSBC 1996, c 287, s 18(5); *Conflicts of Interest Act*, RSA 2000, c C-23, s 43(5); *Members Conflict of Interest Act*, RSNB 1999, c M-7.01, s 30(4); *Legislative Assembly and Executive Council Act*, SNWT 1999, c 22, s 98(5); *Integrity Act*, SNu 2001, c 7, s 35(4).

advance the public education role of the municipal Conflict of Interest Commissioner, but would align with the openness and accountability objectives that underpin the MCCIA.

It should be noted that the Commission made a similar recommendation with respect to advice in the context of the Legislative Conflict of Interest Commissioner, in its 2000 Report on *The Legislative Assembly and Conflict of Interest*.[324] When the *Legislative Conflict of Interest Act* was amended in 2002, the Legislature did not go as far as to make the Commissioner's advice binding.[325] With respect, it is the Commission's position that it is important for the municipal Conflict of Interest Commissioner's advice to be binding for the purposes of the Act.

***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.**

***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.**

C. Investigation

Aside from an application to the Court of Queen's Bench under the MCCIA, there are several other review mechanisms in place that relate to ethics issues and conflict of interest at the municipal level: members of the public may complain to the Office of the Ombudsman; the Office of the Auditor General can review a municipality's finances; and electors can also complain directly to the municipality if they think a councillor has breached the municipality's Code of Conduct. With several different bodies applying different standards and using different enforcement mechanisms, a concerned citizen is unlikely to know where to turn if he or she has concerns about the ethical conduct of a member of council.

If an elector believes that a councillor has violated a provision of the MCCIA, the elector's only recourse is to the Court of Queen's Bench for a declaration that the councillor has violated a

[324] 2000 Commission Report, *supra* note 208 at 35.
[325] *Legislative Conflict of Interest Act*, *supra* note 193, s 21.1, as amended by SM 2002, c 49, s 7.

provision of the Act.[326] This process requires the elector to pay into court $300 as security for the application, and the elector is responsible for his or her own legal expenses to pursue the application unless the judge orders otherwise.[327]

In the Commission's view, members of the public should have access to an out-of-court process when they may have reason to believe that the conduct of a member of council has fallen below the applicable standard. The Commission therefore recommends that the municipal Conflict of Interest Commissioner have the authority to conduct inquiries arising from requests made by members of the public or by councils, in order to ascertain whether a councillor has contravened a provision of the MCCIA.

In order for the municipal Conflict of Interest Commissioner to effectively carry out his or her duties, it is important that he or she be afforded the powers and privileges of a commissioner under Part V of *The Manitoba Evidence Act*.[328] This would allow the Commissioner to compel the attendance of witnesses and the production of documents, to examine witnesses under oath, and impose a term of imprisonment for contempt.[329] It should be noted that provincial conflict of interest commissioners in most Canadian jurisdictions are able to compel witnesses and the production of documents.[330] If the municipal Conflict of Interest Commissioner were granted similar powers under the MCCIA, he or she could carry out his or her responsibilities to investigate more effectively.

In the Commission's view, it is important for the municipal Conflict of Interest Commissioner to have the discretion to refuse to investigate a complaint if he or she has reason to believe that the complaint is frivolous or vexatious or when there is insufficient evidence on which to proceed with a complaint, as is the case for the Manitoba Ombudsman.[331]

In order to carry out the intent of section 23 of the MCCIA,[332] the Commission is of the view that an investigation into an alleged violation can be carried out whether or not the councillor whose conduct is in question has resigned, did not seek re-election, was not re-nominated, or was re-elected or defeated subsequent to the alleged violation.

In the Bellamy Report, Justice Bellamy contemplated the potential for conflict where a commissioner is providing both an advisory and investigative service. She suggested that, if a conflict should occur, where a commissioner is asked to investigate an alleged conflict with

[326] MCCIA, *supra* note 15, s 20(1).
[327] *Ibid*, ss 20(2); 21(1).
[328] *Manitoba Evidence Act*, *supra* note 88.
[329] *Ibid*, ss 83-95.
[330] *Supra* note 191.
[331] *Ombudsman Act*, *supra* note 90, s 23(1).
[332] MCCIA, *supra* note 15, s 23 provides:

> An application for a declaration that a councillor has violated a provision of this Act may be brought notwithstanding that the councillor against whom the declaration is sought resigned or did not seek re-election, or was not re-nominated, or was re-elected or defeated subsequent to the alleged violation of this Act.

respect to a matter in which he or she has already provided advice, another person, such as an integrity commissioner from another jurisdiction, should be retained to conduct the investigation.[333] In crafting a model for the municipal Conflict of Interest Commissioner, the Commission notes that provision will need to be made to address the potential for conflict.

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*: 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: **The Municipal Council Conflict of Interest** ***Act should empower the municipal Conflict of Interest Commissioner with the powers and privileges of a commissioner under Part V of*** **The Manitoba Evidence Act.**

D. Enforcement

In making provisional recommendations for the establishment of a municipal Conflict of Interest Commissioner, the Commission has considered various models for enforcement which are used at the provincial level as well as models used to enforce municipal codes of conduct in other jurisdictions. Different models of enforcement are being applied in other jurisdictions; some use an ombudsman model, where the commissioner makes recommendations to council or the Legislature, as the case may be, and council or the Legislature ultimately decides whether to impose a penalty in the event of a breach; in other jurisdictions, the commissioner is empowered to impose penalties directly. A third option has also been presented, where the Commissioner can bring an application to court if he or she determines the allegation of a violation of conflict of interest legislation may be founded. According to leading authorities on municipal ethics, such as Levine, there are pros and cons to each model.[334]

The Commission does not make specific recommendations with respect to the most appropriate model of enforcement, as it has not conducted broad consultation on this issue. The Commission's usual practice in preparing its reports is to first release a Consultation Report, solicit and receive feedback from interested organizations and members of the public, and then incorporate this feedback into a Final Report. In this case, the Commission has chosen not to release a Consultation Report, due to indications that the Manitoba Legislature is planning to

[333] Bellamy Report, *supra* note 256 at 46. See also Cunningham Report, *supra* note 290 at 179-180. Justice Cunningham identified the potential for conflict, though he cautioned that concerns about this potential should not be overstated.
[334] See, for example, Gregory J Levine, *Municipal Ethics Regimes*, *supra* note 168 at 20.

make changes to municipal conflict of interest legislation in the near future. The following section will highlight some of the important factors that the Legislature should consider in determining the appropriate model of enforcement of the MCCIA.

a) Ombudsman Model

Provincial conflict of interest commissioners are not empowered to impose sanctions directly. In most provincial and territorial jurisdictions, if the commissioner determines that a member or minister has violated his or her respective conflict of interest statute, he or she can make recommendations to the Legislature, which has the authority to accept or reject the recommendations.[335]

As noted by the Supreme Court of Canada, the ombudsman fills a special role:

> The limitations of the courts are also well-known. Litigation can be costly and slow. Only the most serious cases of administrative abuse are therefore likely to find their way into the courts. More importantly, there is simply no remedy at law available in a great many cases.[336]

In recommending the establishment of an integrity commissioner for the City of Toronto, the Bellamy Report recommended that the integrity commissioner be empowered to recommend to Council an appropriate range of sanctions for "ethical misdeeds" by councillors.[337] However, in Justice Bellamy's view, the integrity commissioner should not have the power to impose sanctions directly. Instead, the report stated that "[c]ouncil should rule within a fixed time on the integrity commissioner's recommendations for sanctions."[338] The report emphasized that Council should consider the integrity commissioner's recommendations very seriously and depart from them only where recommendations are "manifestly unfit."[339]

In the Barclay Report, the Honourable Barclay recommended the establishment of a municipal conflict of interest ombudsman. He recommended that the ombudsman be authorized to conduct an investigation or inquiry of an alleged breach of Saskatchewan's *Municipalities Act* or the Code of Ethics.[340] If the ombudsman finds that a member of council has breached the Act or Code of Ethics, then council may issue a reprimand or suspend the salary of the member for up to 90 days.[341]

The Commission notes that the provincial Ombudsman in Manitoba has already conducted investigations into alleged breaches of municipal codes of conduct, and has provided

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[335] *Supra* note 192.
[336] *British Columbia Development Corporation v Friedmann (Ombudsman)*, [1984] 2 SCR 447 at 460.
[337] Bellamy Report, *supra* note 256 at 49.
[338] *Ibid* at 50.
[339] *Ibid*.
[340] Barclay Report, *supra* note 290 at 148.
[341] *Ibid.*

recommendations to municipal council on how to improve administration so as to avoid future breaches.[342] The provincial Ombudsman has also recently investigated an allegation of a violation of the MCCIA, and has made recommendations to council.[343] To date, the Ombudsman has not recommended that a council impose sanctions toward an offending councillor.

If the Legislature considers adopting this model, several factors would need to be addressed, such as: whether the Commissioner's report should be made public; the effect that the Commissioner's investigation would have on any court applications; and the range of sanctions that the Commissioner could recommend.

In the Commission's view, if this model were to be implemented in Manitoba, the municipal Conflict of Interest Commissioner's recommendations should be made public, and council's vote on whether to adopt the recommendations should also be public. Therefore council would go against the commissioner's ruling at its own peril. As Levine notes, the ombudsman model has worked quite well at the provincial level, so it "... behooves municipalities to reflect very carefully before adopting a system [for enforcement of codes of conduct] that runs counter to the apparent intent of the legislation, and that flies in the face of a successful history at other levels of government."[344]

Another consideration in implementing the ombudsman model is the effect that it would have on any application to the Court of Queen's Bench with respect to the same allegation. The relationship between the two processes would need to be clearly defined, so that members of the public and councils alike would have a clear understanding of both enforcement mechanisms and the circumstances in which they would apply. In the Cunningham Report, Justice Cunningham cautioned that an application to court should not proceed concurrently with an investigation by the Integrity Commissioner.[345] The Legislature would also have to consider the range of sanctions that should be made available for the Commissioner to recommend and for council to impose.

The ombudsman model used in Ontario should not be looked to as a direct comparison in establishing an enforcement mechanism under the MCCIA. This is because the Integrity Commissioners established under Ontario's *Municipal Act* only investigate allegations of contraventions of municipal Codes of Conduct. They are not empowered to investigate or enforce Ontario's *Municipal Conflict of Interest Act*. At present, the only recourse under Ontario's Act is to the Superior Court of Justice. In the Cunningham Report, Justice Cunningham concludes that court is still the most appropriate place for serious sanctions such as disqualifying a member of council from office.[346] Therefore, if the Legislature considers adopting an

[342] *Supra* note 91; 91.
[343] RM of West St Paul, *supra* note 98.
[344] *Levine, supra* note 168 at 20.
[345] Cunningham Report, *supra* note 279 at 160.
[346] *Ibid,* at 159.

ombudsman model as the enforcement mechanism under the MCCIA, it would need to clarify, through statute, the circumstances under which enforcement by the municipal Conflict of Interest Commissioner may be pursued, and whether or not pursuing enforcement by the municipal Conflict of Interest Commissioner closes the door to enforcement by the Court of Queen's Bench.

b) Commissioner Imposes Penalty Model

A second model to consider is one where the municipal Conflict of Interest Commissioner is empowered to impose sanctions directly. This model is used at the federal level and by two municipalities in Ontario.[347]

According to Levine, this model has the advantage of potentially depoliticizing the sanction process.[348]

Under this model, protections would need to be in place in order to ensure that the councillor whose conduct is at issue is afforded procedural fairness, including a right to be heard. In most cases where a commissioner has the power to impose sanctions directly, the sanctions available to the commissioner are on the less serious end of the spectrum, including a fine or reprimand.[349] This is based on the principle that before a democratically elected public office holder can be stripped of his or her seat he or she would need to be afforded a high degree of procedural fairness, which might only be available through a court process. Again, as noted by Justice Cunningham, court is the most appropriate place for serious sanctions such as disqualifying a member of council from office.[350] Therefore, if the Legislature were to adopt this model, as with the ombudsman model, the dual processes of enforcement by the municipal Conflict of Interest Commissioner and enforcement by the Court of Queen's Bench would need to be clearly articulated. If an elector had the option to either complain to the municipal Conflict of Interest Commissioner or apply to the Court of Queen's Bench, with different processes for each and with different sanctions available under each process, the creation of two different complaint mechanisms would need to be sorted out. If an elector made a complaint to the commissioner, would they still have the option of going to court?

c) *Local Government Disclosure of Interest Act* Model

Finally, the third model to consider is that of Ontario's LGDIA, which, as previously mentioned, was never in force and was later repealed.[351] Under this model, the Commissioner, after conducting an investigation, determines whether to bring an application to court. It is the

[347] *Conflict of Interest Act*, *supra* note 223; City of Hamilton, *supra* note 176; Town of Caledon, *supra* note 176.
[348] Levine, *supra* note 168 at 20.
[349] See *Conflict of Interest Act*, *supra* note 223; City of Hamilton, *supra* note 176; Town of Caledon, *supra* note 176.
[350] Cunningham Report, *supra* note 279 at 159.
[351] LGDIA, *supra* note 143.

Commissioner who carries the application to court and bears the cost, rather than the elector.[352] If the Commissioner concludes that an application to court is not necessary, only then can an elector apply to bring the matter to court.[353] Presumably, under this model, the judge would take into account the findings of the commissioner in determining whether to hear the elector's case.

A copy of the LGDIA can be found at Appendix B.

The Commission has identified significant advantages with this model:

- the elector does not bear the costs of the court application;
- it depoliticizes the sanction process;
- it brings the matter out of the court system initially, and presumably, only those cases with merit would be heard by the courts; and
- it provides clarity to the Act, so that there is only one process for enforcement.

Although there are no other examples of this model in relation to municipal conflict of interest, a similarity can be seen between this model and the federal Privacy Commissioner of Canada. Under the *Personal Information Protection and Electronic Documents Act* (PIPEDA)[354], if a complainant makes a complaint under PIPEDA, the Privacy Commissioner, after conducting an investigation, may apply to court with the consent of the complainant.[355] A complainant may apply to court for a hearing in respect of which a complaint was made, but only if he or she has first complained to the Privacy Commissioner and followed the proper channel as set out in PIPEDA.[356]

[352] *Ibid*, s 8(8).
[353] *Ibid*, s 8(12).
[354] SC 2000, c 5.
[355] *Ibid*, s 15.
[356] *Ibid*, s 14. It should also be noted that this type of model is well-recognized in human rights legislation in Canada, For instance, under Manitoba's *Human Rights Code*, CCSM c H175, ss 29(3); 34, after investigating a complaint, the Human Rights Commission can determine that additional proceedings in respect of a complaint are required. If it requests that the adjudication panel adjudicate the complaint, the Commission becomes a party to the adjudication. Also note that the Ontario Ministry of Municipal Affairs and Housing is currently reviewing Ontario's *Municipal Conflict of Interest Act* along with Ontario's *Municipal Act* and the *City of Toronto Act*. According to its website, it will be developing recommendations on how to improve the Act. See also Ontario, *Municipal Legislation Review: Public Consultation Discussion Guide*, (June, 2015), online: < http://www.mah.gov.on.ca/AssetFactory.aspx?did=10979>. Under the heading "Conflict of Interest," the Discussion Guide asks for feedback on whether municipal councillors need more support to comply with conflict of interest rules; how to improve the public's access to the decision-making process about conflict of interest; what are the appropriate penalties for violating conflict of interest rules; and who should enforce municipal conflict of interest rules (at 11).

CHAPTER 6: OTHER ISSUES

A. Gender-Neutral Language

The Commission has identified that, throughout the MCCIA, councillors are referred to in the masculine.[357] Although it is recognized that gender specific terms include both genders as a matter of interpretation,[358] in order to modernize the legislation, the Commission recommends that the MCCIA should be amended to allow for gender neutral language, either by replacing "he/his" with "he or she/his or her" or with other gender neutral language.

Recommendation 18*: In referring to councillors, The Municipal Council Conflict of Interest Act *should be amended to allow for gender neutral language.

B. Codes of Conduct

As previously mentioned, *The Municipal Act* requires every municipality to have a Code of Conduct.[359] However, *The Municipal Act* does not establish a mandatory process for investigating alleged breaches and enforcing Codes of Conduct. Rather, each municipality may, by its own policies and procedures, set out the process for enforcement of its Code of Conduct. The Manitoba Municipal Government Department has developed a sample procedure for councils, which involves one councillor investigating the alleged violation made by another councillor.[360] If the investigating councillor determines that the allegation against the other member of council is founded, he or she can bring a resolution of censure forward.[361]

Under *The Municipal Act*, if a complainant is not satisfied with the result of an investigation into an alleged breach of a Code of Conduct, there is no prescribed review process. Likewise, the *Winnipeg Charter* currently provides no legislated procedure for complaints or investigations into allegations of breaches of the City Code and no statutory process for review, although this may soon change with the recent decision to establish an Integrity Commissioner.

While it is outside the scope of this report to make recommendations with respect to Codes of Conduct under *The Municipal Act* and the *Winnipeg Charter*, the Commission suggests the Legislature consider whether the legislation should be amended so that an independent office is empowered to interpret and enforce Codes of Conduct; whether the municipal Conflict of Interest Commissioner's role should be extended to give the Commissioner responsibility for administering, interpreting and enforcing Codes of Conduct, or whether the role of the Office of

[357] See MCCIA, *supra* note 15, ss 2(1)(b); 10(a)-(i); 11(a); 12; 14; 15(a); 16; 17(1); 19.
[358] *The Interpretation Act*, CCSM c I80, s 28.
[359] *Municipal Act*, *supra* note 22, ss 84.1(1).
[360] Manitoba Municipal Government, Sample Council Members' Code of Conduct, *supra* note 72.
[361] *Ibid*, s 5.

the Ombudsman should be formalized, so that it is clear to members of the public that they may request an investigation by the Ombudsman into alleged breaches of Codes of Conduct.

C. *The Legislative Assembly and Executive Council Conflict of Interest Act*

As previously mentioned, in all Canadian provinces in territories, save for Quebec, conflict of interest legislation includes the establishment of an independent commissioner.[362] In terms of enforcement, with the exception of Manitoba, conflict of interest commissioners in all provinces and territories are empowered to conduct inquiries.[363] The Conflict of Interest Commissioner for Manitoba provides advice to members of the Legislative Assembly, but is not empowered to investigate alleged of breaches of the Act, nor does the Commissioner have the powers of a Commissioner under Part V of *The Manitoba Evidence Act* to compel witnesses or require the production of documents.[364]

In its 2000 Report on *The Legislative Assembly and Conflict of Interest*, the Commission recommended, among other things:

- The *Legislative Conflict of Interest Act* should permit any member of the public, any member of the Legislative Assembly, or the Legislative Assembly (by resolution) to request that the Commissioner investigate an allegation that the Act has been breached by a member.[365]
- The Commissioner should have the powers and privileges of a commissioner under Part V of *The Manitoba Evidence Act*.[366]
- The Commissioner should be able to recommend to the Legislative Assembly any or all of the following sanctions when he or she finds a breach of the Act by a member: a reprimand; a fine; an order of restitution; suspension of the member; and/or a declaration that the member's seat is vacant.[367]
- The Legislative Assembly should have the option of accepting the recommendations of the Commissioner in whole or in part, imposing a different penalty or penalties, or imposing no penalty at all.[368]

While it is beyond the scope of this report to make specific recommendations with respect to the *Legislative Conflict of Interest Act*, the Commission believes that the Legislature should revisit the recommendations from its 2000 Report on *The Legislative Assembly and Conflict of Interest*. If implemented, these recommendations would bring the legislation in line with provincial

[362] *Supra* note 189.
[363] *Supra* note 191.
[364] *Legislative Conflict of Interest Act*, *supra* note 193, s 19.6(1).
[365] 2000 Commission Report, *supra* note 208 at 39.
[366] *Ibid* at 41.
[367] *Ibid* at 44.
[368] *Ibid.*

conflict of interest legislation in other Canadian jurisdictions and enhance the role of the provincial Conflict of Interest Commissioner.

D. *The Public Schools Act*

The remedial provisions respecting conflict of interest for school trustees found in *The Public Schools Act*[369] mirror the remedial provisions respecting councillors in the MCCIA.[370] Although it is outside the scope of this report to conduct a review *The Public Schools Act*, the Commission notes that the Legislature should consider whether amendments to the remedial provisions of the *Public Schools Act* are necessary, in order to allow for proportionate remedies.

[369] CCSM c P250.

[370] *Ibid*, ss 39.7(5)-(6).

> 39.7(5) Upon hearing an application made under this section for a declaration that a trustee has violated a provision of this Act and such evidence as may be adduced, the judge may
>
> (a) declare that the trustee has violated a provision of this Act; or
>
> (b) refuse to make the declaration;
>
> and may make the declaration or refuse to make the declaration, with or without costs.
>
> 39.7(6) Where a judge declares under subsection (5) that a trustee has violated a provision of this Act, the judge
>
> (a) shall declare the seat of the trustee vacant; and
>
> (b) may, where the trustee has realized pecuniary gain in any transaction to which the violation relates, order the trustee to make restitution to any person, including the school division or school district, affected by the pecuniary gain.

CHAPTER 7: SUMMARY OF RECOMMENDATIONS

***Recommendation 1**: Sections 21(1) and (2) of The* **Municipal Council Conflict of Interest Act** *should be replaced with one provision which states that, subject to section 22, where a judge determines, after a hearing authorized under the Act, that a councillor has violated the Act, 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.* **(p 51)**

***Recommendation 2**: Section 22 of* **The Municipal Council Conflict of Interest Act** *should be amended to provide that if, after a hearing authorized under section 20, the judge determines that the councillor has violated the Act unknowingly or through inadvertence, the judge may make an order of restitution but shall impose no other penalty against the councillor.* **(p 51)**

***Recommendation 3**: Section 18(1) of* **The Municipal Council Conflict of Interest Act** *should be repealed.* **(p 51)**

***Recommendation 4**: The words "[f]or purposes of subsection (1)" under section 18(2) of* **The Municipal Council Conflict of Interest Act** *should be repealed.* **(p 51)**

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.(p 52)**

***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. (p 52)**

***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.* **(p 55)**

***Recommendation 8**: The municipal Conflict of Interest Commissioner should be appointed by the Lieutenant Governor for a fixed term and be required to report annually to the Legislature on the activities of his or her office.* **(p 55)**

***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. **(p 55)**

***Recommendation 10**: The municipal Conflict of Interest Commissioner should be required to promote awareness and understanding by councils, councillors, and members of the public of ethics in municipal government in general, and rules surrounding conflicts of interest in particular, in such a manner as the Commissioner deems appropriate.* **(p 55)**

***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.* **(p 57)**

***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.* **(p 57)**

***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.* **(p 57)**

***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.* **(p 57)**

***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.* **(p 59)**

***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.* **(p 59)**

***Recommendation 17**:* **The Municipal Council Conflict of Interest Act** *should empower the municipal Conflict of Interest Commissioner with the powers and privileges of a commissioner under Part V of* **The Manitoba Evidence Act. (p 59)**

***Recommendation 18*: *In referring to councillors*, The Municipal Council Conflict of Interest Act *should be amended to allow for gender neutral language.* (p 64)**

This is a report pursuant to section 15 of the *Law Reform Commission Act*, C.C.S.M. c. L95, signed this 6th day of January, 2016.

"Original Signed by"
Cameron Harvey, President

"Original Signed by"
Jacqueline Collins, Commissioner

"Original Signed by"
Michelle Gallant, Commissioner

"Original Signed by"
Myrna Phillips, Commissioner

"Original Signed by:
Hon. Lori Spivak, Commissioner

"Original Signed by"
Sacha Paul, Commissioner

APPENDIX A

C.C.S.M. c. M255
The Municipal Council Conflict of Interest Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions
1(1) In this Act,

"common-law partner" of a person means a person who, not being married to the other person, is cohabiting with him or her in a conjugal relationship of some permanence; (« conjoint de fait »)

"council" means

(a) a municipal council, or

(b) an elected council under *The Local Government Districts Act*; (« conseil »)

"councillor" means a member of a council, and includes a mayor or reeve; (« conseiller »)

"Crown agency" means Crown agency as defined in *The Legislative Assembly Act*; (« organisme de la Couronne »)

"dependant" means

(a) the spouse of a councillor,

(a.1) the common-law partner of a councillor, and

(b) any child, natural or adopted, of the councillor,

who resides with the councillor; (« personne à charge »)

"direct pecuniary interest" includes a fee, commission or other compensation paid or payable to any person for representing the interests of another person or a corporation, partnership, or organization in a matter; (« intérêt financier direct »)

"elector" means a person entitled to vote at an election of members to a council; (« électeur »)

"family" includes a common-law partner; (« famille »)

"municipality" includes a local government district; (« municipalité »)

"ordinary resident" means

(a) in the case of a matter which relates to an entire municipality, an ordinary resident of the municipality, and

(b) in the case of a matter which relates to a part of a municipality, an ordinary resident of that part of the municipality; (« simple résident »)

"subsidiary" means a corporation that is a subsidiary as described in section 2. (« filiale »)

Registered common-law relationship
1(2) For the purposes of this Act, while they are cohabiting, persons who have registered their common-law relationship under section 13.1 of *The Vital Statistics Act* are deemed to be cohabiting in a conjugal relationship of some permanence.

S.M. 2002, c. 24, s. 44; S.M. 2002, c. 48, s. 28.

Subsidiary corporation

2(1) A corporation is a subsidiary of another corporation where it is controlled by that other corporation.

Control

2(2) A corporation is controlled by another corporation where

(a) securities of the controlled corporation to which are attached more than 50% of the votes that may be cast to elect directors of the controlled corporation are held, other than by way of security only, by or for the benefit of the controlling corporation; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the controlled corporation.

Subsidiary includes subsidiaries

2(3) **"Subsidiary"** includes all subsidiaries of a subsidiary.

City of Winnipeg

3(1) This Act applies to The City of Winnipeg.

3(2) [Repealed] S.M. 2012, c. 25, s. 13.

S.M. 2012, c. 25, s. 13.

Indirect pecuniary interest

4(1) For purposes of this Act, but subject to this section, a person shall be presumed to have an indirect pecuniary interest in a matter where

(a) the person, or a nominee of the person,

(i) holds a beneficial interest in, or a share warrant or purchase option in respect of, 5% or more of the value of the issued capital stock, or

(ii) is a director or officer, of a corporation which, or a subsidiary of which, has a direct pecuniary interest in the matter; or

(b) the person is

(i) a partner of or employed by, or

(ii) a guarantor or surety for, or

(iii) a creditor of,

a person, corporation, partnership, or organization who or which, or (in the case of a corporation) a subsidiary of which, has a direct pecuniary interest in the matter.

Exception for indemnity or expenses

4(2) For purposes of this Act, councillors shall be presumed not to have a direct or indirect pecuniary interest in any matter involving the indemnity, expenses or remuneration payable to councillors.

No pecuniary interest in certain transactions

4(3) For purposes of this Act, a person, corporation, partnership, or organization shall be presumed not to have a direct or indirect pecuniary interest in respect of

(a) any contract into which the person, corporation, partnership or organization enters with a municipality on terms common to contracts between other persons, corporations, partnerships, or organizations and the municipality

(i) for the supply, provision, or sale to the person, corporation, partnership, or organization of a utility, service, or article of merchandise administered, provided, or sold by the municipality,

(ii) for payment of sewer or water rates or rents, or the installation by the municipality of sewer or water connections or appliances, or

(iii) for the construction for the person, corporation, partnership, or organization and other persons, corporations, partnerships, or organizations of any local improvement by the municipality;

(b) official notices or advertisements inserted by a municipality, or subscriptions held by a municipality, at normal commercial rates in or to a newspaper or other periodical publication of which the person, corporation, partnership or organization is the proprietor or in which he or it is otherwise interested;

(c) holding bonds or debentures of the municipality;

(d) reasonable compensation or expense money received for services as a volunteer firefighter or a driver or attendant of an emergency vehicle; or

(e) reasonable compensation received for providing work, goods or services to the municipality in an emergency.

Presumption of indirect pecuniary liability

4(4) For purposes of this Act, but subject to this section, a person shall be presumed to have an indirect pecuniary liability to another person or to a corporation, partnership, or organization where

(a) the person, or a nominee of the person,

(i) holds a beneficial interest in, or a share warrant or purchase option in respect of, 5% or more of the value of the issued capital stock, or

(ii) is a director or officer,

of a corporation which, or a subsidiary of which, has a direct pecuniary liability to the other person or to the corporation, partnership, or organization; or

(b) the person is

(i) a partner of or employed by, or

(ii) a guarantor or surety for, or

(iii) a creditor of,

a person, corporation, partnership, or organization who or which, or (in the case of a corporation) a subsidiary of which, has a direct pecuniary liability to the other person or to the corporation, partnership, or organization.

Interest or liability must be significant

4(5) For purposes of this Act, and notwithstanding any other provision of this Act,

(a) where the direct or indirect pecuniary interest of any person, corporation, partnership, or organization in a matter does not exceed the pecuniary interest of an ordinary resident in the matter, the person, corporation, partnership, or organization shall be presumed not to have a direct or indirect pecuniary interest in the matter;

(b) where the direct or indirect pecuniary liability of any person to another person or to a corporation, partnership, or organization does not exceed the pecuniary liability of an ordinary resident to the same person or to the same corporation, partnership, or organization, the person shall be presumed not to have a direct or indirect pecuniary liability to the other person or to the corporation, partnership, or organization; and

(c) no person shall be presumed to have a direct or indirect pecuniary interest in any matter, or a direct or indirect pecuniary liability to another person or to a corporation, partnership, or organization, unless the value of the pecuniary interest or liability is $500. or more.

Appointments

4(6) For purposes of this Act, where a councillor is appointed to serve in his official capacity as a councillor on any commission, board or agency, the councillor shall be presumed not to have a direct pecuniary interest in the appointment and the councillor shall not be presumed, solely by virtue of that appointment, to have

(a) an indirect pecuniary interest in a matter in which the commission, board or agency has a direct pecuniary interest; or

(b) an indirect pecuniary liability to another person or to a corporation, partnership, or organization to whom or which the commission, board or agency has a direct pecuniary liability.

Employees of public bodies

4(7) For purposes of this Act, where a person is employed by

(a) the Government of Canada or a federal Crown agency;

(b) the Government of Manitoba or a Crown agency; or

(c) a school board;

the person shall not be presumed to have

(d) an indirect pecuniary interest in a matter in which his employer has a direct pecuniary interest; or

(e) an indirect pecuniary liability to another person or to a corporation, partnership, or organization to whom or which his employer has a direct pecuniary liability.

Contribution to municipal budget

4(8) For purposes of this Act, a corporation or organization shall not be presumed to have a direct pecuniary interest in a matter solely by virtue of the fact that the corporation or organization is liable to pay a portion of a municipal budget under an agreement entered into with the municipality.

Disclosure during meetings

5(1) Where during any meeting there arises

(a) a matter in which a councillor or any of his dependants has a direct or indirect pecuniary interest; or

(b) a matter involving the direct or indirect pecuniary interest of any person, corporation, subsidiary of a corporation, partnership, or organization to whom or which a councillor or any of his dependants has a direct or indirect pecuniary liability;

the councillor shall

(c) disclose the general nature of the direct or indirect pecuniary interest or liability;

(d) withdraw from the meeting without voting or participating in the discussion; and

(e) refrain at all times from attempting to influence the matter.

All official meetings included

5(2) For purposes of subsection (1), **"meeting"** includes

(a) a council meeting;

(b) a meeting of any committee or subcommittee of a council, or any subcommittee of a committee, on which the councillor sits;

(c) [repealed] S.M. 2002, c. 39, s. 528;

(d) a meeting of any commission, board or agency on which the councillor serves in his official capacity as a councillor; and

(e) a meeting of any Court of Revision or Board of Revision on which the councillor sits.

Absence from meeting

5(3) Where a councillor fails to comply with subsection (1) by reason of the absence of the councillor from a meeting referred to therein, the councillor shall

(a) disclose the general nature of his direct or indirect pecuniary interest or liability at the next meeting of the same body before which the matter arose; and

(b) refrain at all times from attempting to influence the matter.

S.M. 2002, c. 39, s. 528.

Record of compliance

6(1) Where a councillor has complied with subsection 5(1), the clerk of the meeting shall record

(a) the disclosure;

(b) the general nature of the direct or indirect pecuniary interest or liability disclosed; and

(c) the withdrawal of the councillor from the meeting;

and the clerk of the meeting shall subsequently file with the clerk of the municipality

(d) the information recorded under clauses (a), (b) and (c); and

(e) a notation indicating whether the meeting in question was open to the public, or was a closed meeting or a meeting the minutes of which are not open to the public.

Central record of disclosures

6(2) The clerk of every municipality shall keep a central record for purposes of recording information in accordance with subsections (3) and (4).

Information disclosed at open meeting

6(3) Where the meeting referred to in subsection 5(1) was open to the public, the clerk of the municipality shall record

(a) the disclosure;

(b) the general nature of the direct or indirect pecuniary interest or liability disclosed; and

(c) the withdrawal of the councillor from the meeting;

in the central record.

Information disclosed at closed meeting

6(4) Where the meeting referred to in subsection 5(1) was a closed meeting, or a meeting the minutes of which are not open to the public, the clerk of the municipality shall record

(a) the disclosure; and

(b) the withdrawal of the councillor from the meeting;

in the central record.

Central record open to public

6(5) The clerk of every municipality shall make the central record referred to in this section

available for inspection by any person without charge during normal business hours.

Reduced quorum

7(1) Where by reason of withdrawals from a meeting under subsection 5(1) the number of councillors remaining at the meeting is not sufficient to constitute a quorum, then, notwithstanding the provisions of any Act of the Legislature or any procedure or by-law of the council, the number of councillors remaining, if not fewer than two, shall be deemed to constitute a quorum for purposes of discussing and voting on any matter referred to in subsection 5(1).

Application to Municipal Board

7(2) Where in the circumstances referred to in subsection (1) there would be fewer than two councillors remaining at a meeting, the council shall apply to The Municipal Board for an order authorizing the council to discuss and vote on any matter referred to in subsection 5(1).

Order of Municipal Board

7(3) Upon hearing an application brought under subsection (2), The Municipal Board may order that

(a) subsection 5(1) does not apply to the council in respect of the matter; and

(b) the council may discuss and vote on the matter in the same manner as though none of the councillors or their dependants had any direct or indirect pecuniary interest or liability in or in relation to the matter;

subject only to such conditions and directions as The Municipal Board may prescribe.

Referral to city council

7(4) Notwithstanding subsections (2) and (3), where in the circumstances referred to in subsection (1) there would be fewer than two councillors remaining at a meeting of a committee or subcommittee of The City of Winnipeg, the committee or subcommittee shall refer the matter to the council of the city, and council shall discuss and vote on the matter in place of the committee or subcommittee.

S.M. 2002, c. 39, s. 528.

Voidability of transaction or procedure

8 The failure of any councillor to comply with subsection 5(1) does not of itself invalidate

(a) any contract or other pecuniary transaction; or

(b) any procedure undertaken by the municipality with respect to a contract or other pecuniary transaction;

to which the failure to comply with subsection 5(1) relates, but the transaction or procedure is voidable at the instance of the municipality before the expiration of two years from the date of the decision authorizing the transaction, except as against any person, corporation, partnership, or organization who or which acted in good faith and without actual notice of the failure to comply with subsection 5(1).

Annual statement of assets and interests

9(1) Not later than the last day in November of each year, and in the case of The City of Winnipeg, not later than the fourth Wednesday in November of each year, every councillor shall file with the clerk of the municipality a statement disclosing assets and interests in accordance with section 10.

Notification of failure to comply

9(2) Where a councillor fails to comply forthwith with subsection (1), the clerk of the municipality shall forthwith notify the councillor in writing of the failure to comply, and the councillor shall, within 30 days of receiving the notification, file the statement referred to in subsection (1).

Further statement after acquisition or disposal

9(3) Where after the filing of a statement under subsection (1) or (2) a councillor or any dependant of a councillor acquires or disposes of any asset or interest of the kind mentioned in section 10, the councillor shall within 30 days of the acquisition or disposal file with the clerk of the municipality a further statement disclosing the acquisition or disposal.

S.M. 1996, c. 58, s. 462.

Assets and interests which must be disclosed

10 Subject to section 11, the councillor shall disclose in the statement filed under subsection 9(1)

(a) all land in Manitoba in or in respect of which the councillor or any of his dependants has any estate or interest, including any leasehold estate and any mortgage, licence, or interest under a sale or option agreement, but excluding principal residence property;

(b) where the councillor or any of his dependants holds a beneficial interest in, or a share warrant or purchase option in respect of, 5% or more of the value of the issued capital stock of a corporation, all estates and interests in or in respect of land in Manitoba held by that corporation or by a subsidiary of that corporation;

(c) the name of every corporation, and every subsidiary of every corporation, in which the councillor or any of his dependants holds a beneficial interest in 5% or more of the value of the issued capital stock, or holds a share warrant or purchase option in respect of 5% or more of the value of the issued capital stock;

(d) the name of every person, corporation, subsidiary of a corporation, partnership, or organization which remunerates the councillor or any of his dependants for services performed as an officer, director, manager, proprietor, partner or employee;

(e) bonds and debentures held by the councillor or any of his dependants, excluding bonds issued by the Government of Canada, by the government of any province of Canada, or by any municipality in Canada, and also excluding Treasury Bills;

(f) holdings of the councillor or any of his dependants in investment funds, mutual funds, investment trusts, or similar securities, excluding Retirement Savings Plans, Home Ownership Savings Plans, accounts and term deposits held in banks, credit unions, or other financial institutions, pension plans, and insurance policies;

(g) any interest in property in Manitoba to which the councillor or any of his dependants is entitled in expectancy under any trust, and any interest in property in Manitoba over which the councillor or any of his dependants has a general power of appointment as executor of a will, administrator of an estate, or trustee under a deed of trust;

(h) the nature, and the identity of the donor, of every gift given to the councillor or any of his dependants at any time after the coming into force of this Act, excluding

(i) gifts from a family member,

(ii) gifts disclosed in any previous statement filed under section 9, and

(iii) gifts received before the councillor was first elected to the council; and

(i) the general nature of any contract or other pecuniary transaction entered into at any time after the coming into force of this Act between the municipality and

(i) the councillor or any of his dependants, or

(ii) any corporation referred to in clause (c), or

(iii) any partnership in which the councillor or any of his dependants is a partner,

but excluding

(iv) any such contract or other pecuniary transaction entered into before the councillor was first elected to the council, and

(v) any such contract or other pecuniary transaction disclosed in any previous statement filed under section 9, and

(vi) any transaction in which the councillor or any of his dependants is presumed under section 4 not to have a direct or indirect pecuniary interest.

S.M. 2012, c. 25, s. 13.

General exemptions

11 For purposes of sections 9 and 10, no councillor is required

(a) to disclose any gift worth less than $250., unless the total value of all the gifts from the donor to the councillor and his dependants during the past year exceeded $250.; or

(b) to disclose any other asset or interest worth less than $500.; or

(c) to estimate the value of any asset or interest disclosed; or

(d) to disclose any asset or interest acquired by a dependant of the councillor elected to the council more than two years before the person was elected to the council for the first time.

Continuing disclosure

12 Where a councillor or any of his dependants receives as a gift any of the assets or interests referred to in clauses 10(a) to (g), the councillor shall, notwithstanding that the gift has already been disclosed in a statement filed under section 9, continue to disclose the asset or interest in every statement filed under subsection 9(1) until the councillor or his dependant disposes of the asset or interest.

Statements available to public

13(1) The clerk of the municipality shall make every statement filed under section 9 available for inspection by any person without charge during normal business hours.

November 2009 statements and beyond

13(2) Subsection (1) applies in respect of any statement required to be filed by a date in November 2009 and thereafter.

S.M. 2009, c. 35, s. 1.

Insider information

14 No councillor shall use, for personal gain or the gain of any other person, information which is not available to the public and which the councillor acquires in the performance of his official powers, duties and functions.

Compensation for services

15 No councillor shall receive or agree to receive any compensation, directly or indirectly, for services rendered or to be rendered by the councillor

(a) to any person, corporation, partnership or organization in relation to any by-law, resolution, contract, proceeding, or other matter before the council or any committee, subcommittee or community committee thereof, before any subcommittee of a committee, or before any commission, board or agency on which a councillor serves in his official capacity as a councillor; or

(b) in order to influence or attempt to influence any other councillor.

Use of influence

16 No councillor shall, himself or through any other person, communicate with another councillor or with an officer or employee of the municipality for the purpose of influencing the municipality to enter into any contract or other transaction, or to confer any benefit, in which the councillor or any of his dependants has a direct or indirect pecuniary interest.

Right to appear

17(1) Notwithstanding anything in this Act, but subject to subsection (3), a councillor has the same right as any other resident of the municipality to appear before a meeting for the purpose of representing his personal interests in

(a) an application for a variance in a zoning by-law; or

(b) an application for a conditional use under a zoning by-law; or

(c) a complaint in respect of a business, realty or local improvement assessment.

"Meeting" defined

17(2) For purposes of subsection (1), **"meeting"** includes

(a) a council meeting;

(b) a meeting of any committee or subcommittee of a council, or any subcommittee of a committee;

(c) [repealed] S.M. 2002, c. 39, s. 528;

(d) a meeting of any commission, board or agency which has jurisdiction in the matter; and

(e) a meeting of any Court of Revision or Board of Revision.

No right to vote

17(3) Where the councillor sits on any body which considers a matter referred to in subsection (1), the councillor shall not vote on the matter.

S.M. 2002, c. 39, s. 528.

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).

Disqualification for failure to file statement

18(2) For purposes of subsection (1), a councillor violates subsection 9(1) only where, after receiving the notification referred to in subsection 9(2), the councillor fails to file the required statement within the time period referred to in subsection 9(2).

Effect on other business

18(3) Subject to section 8, no decision or transaction, and no procedure undertaken by a municipality with respect to a decision or transaction, is void or voidable by reason of a violation of this Act.

Application by clerk to Q.B.

19 Where it is alleged that a councillor has violated a provision of this Act, the council of which he is a member may direct the clerk of the municipality to apply by originating notice to a judge of the Court of Queen's Bench for a declaration that the councillor has violated a provision of this Act.

Application by elector to Q.B.

20(1) Where it is alleged that a councillor has violated a provision of this Act, and if there is no previous application outstanding or determined on the same facts, an elector may apply ex parte to a judge of the Court of Queen's Bench for authorization to apply for a declaration that the councillor has

violated a provision of this Act.

Affidavit and security for application

20(2) An elector who files an ex parte application under subsection (1) shall

(a) file an affidavit showing details of the alleged violation; and

(b) pay into court the sum of $300. as security for the application.

Summary dismissal or authorizing of application

20(3) Upon hearing the ex parte application, the judge may

(a) dismiss the application and order forfeiture of all or part of the security referred to in clause (2)(b); or

(b) authorize the applicant to apply to another judge of the Court of Queen's Bench for a declaration that the councillor has violated a provision of this Act.

Disposition after hearing

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.

Penalty for violation

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.

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.

Election not to preclude application

23 An application for a declaration that a councillor has violated a provision of this Act may be brought notwithstanding that the councillor against whom the declaration is sought resigned or did not seek re-election, or was not re-nominated, or was re-elected or defeated subsequent to the alleged violation of this Act.

Application for restitution

24 Notwithstanding anything in this Act, where any person, whether the person is or was a councillor or not, has realized pecuniary gain in any transaction to which a violation of this Act relates, any person affected by the pecuniary gain, including any municipality, may apply to a court of competent jurisdiction for an order of restitution against the person who has realized the pecuniary gain.

Limitation period for declaration

25(1) No application for a declaration that a councillor has violated a provision of this Act shall be brought more than six years after the date of the alleged violation.

Limitation period for order of restitution

25(2) No application for an order of restitution under section 24 shall be brought more than six years

after the date of the transaction which results in the alleged pecuniary gain.

No other proceedings

26 Proceedings to declare the seat of a councillor vacant, or for an order of restitution, in consequence of a violation of this Act shall be had and taken only under the provisions of this Act, and not by way of application for a writ of quo warranto or by a proceeding under any other Act of the Legislature or otherwise.

Summary Convictions Act not to apply

27 No violation of any provision of this Act is an offence for purposes of *The Summary Convictions Act*.

APPENDIX B

Local Government Disclosure of Interest Act, 1994

S.O. 1994, CHAPTER 23
SCHEDULE B

Note: This Act was repealed on January 1, 2003. See: 2001, c. 25, ss. 484 (2), 485 (1).

Purpose
1. The purpose of this Act is to preserve the integrity and accountability of local government decision-making. 1994, c. 23, Sched. B, s. 1.

Definitions
2. (1) In this Act,
"board" means,
(a) a local board as defined in the *Municipal Affairs Act*,
(b) boards, agencies, corporations or other entities or classes of them established in relation to local, municipal or school purposes as may be prescribed in the regulations; ("commission")
"child" means a child under 18 years of age born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family; ("enfant")
"commissioner" means the commissioner appointed under this Act; ("commissaire")
"committee" means any advisory or other committee or subcommittee composed of members of one or more boards or councils; ("comité")
"council" means the council of a municipality other than an improvement district and the board of trustees of an improvement district; ("conseil")
"meeting" includes any regular, special, committee or other meeting of a council or board; ("réunion")
"member" means a member of a council or of a board; ("membre")
"Minister" means the Minister of Municipal Affairs; ("ministre")
"municipality" means a local municipality, county, improvement district, metropolitan, regional or district municipality and the County of Oxford; ("municipalité")
"pecuniary interest" includes a direct or indirect pecuniary interest of a member and a pecuniary interest deemed to be that of a member; ("intérêt pécuniaire")
"prescribed" means prescribed by regulations made under this Act; ("prescrit")
"same-sex partner" means a same-sex partner as defined in Part III of the *Family Law Act;* ("partenaire de même sexe")
"senior officer" means the chair or any vice-chair of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other person who performs functions for the corporation similar to those normally performed by a person occupying any such office; ("dirigeant")
"spouse" means a spouse as defined in Part III of the *Family Law Act*. ("conjoint") 1994, c. 23, Sched. B, s. 2 (1); 1999, c. 6, s. 35 (1).

Non-application
(2) This Act does not apply to a committee of management of a recreation centre appointed by a school board, to a local roads board or to a local services board. 1994, c. 23, Sched. B, s. 2 (2).

Pecuniary interest
(3) For the purposes of this Act, a member shall be deemed to have a pecuniary interest in a matter in

which a council or board is concerned, if,

(a) the member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in, or is a director or senior officer of, a corporation that offers its securities to the public,

(iii) is a partner or agent of a person,

(iv) is a member of a body,

that has a pecuniary interest in the matter;

(b) the member or the member's spouse, same-sex partner or child is an employee of a person or body and the member knows that the person or body has a pecuniary interest in the matter;

(c) the member knows that the member's spouse, same-sex partner or child has a direct or indirect pecuniary interest in the matter; or

(d) the member knows that the member's spouse, same-sex partner or child,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in, or is a director or senior officer of, a corporation that offers its securities to the public,

(iii) is a partner or agent of a person,

(iv) is a member of a body,

that has a pecuniary interest in the matter. 1994, c. 23, Sched. B, s. 2 (3); 1999, c. 6, s. 35 (2).

Definition

(4) In subsection (3),

"controlling interest" means the interest that a person has in a corporation when the person beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding. 1994, c. 23, Sched. B, s. 2 (4).

Exceptions

3. Section 4 does not apply to a pecuniary interest in any matter that a member may have,

(a) as a user of any public utility service supplied to the member by the municipality or board under similar conditions as other users;

(b) as a recipient of any service or commodity or any subsidy, loan or other benefit offered by the municipality or board on terms common to other persons;

(c) as a purchaser or owner of a debenture of the municipality or board;

(d) as a depositor with the municipality or board, if the whole or part of the deposit is or may be returnable to the member in like manner as a deposit is or may be returnable to other persons under similar conditions;

(e) in any property affected by a work under the *Drainage Act* or under the *Local Improvement Act*;

(f) in farm land that is exempt from taxation for certain expenditures under the *Assessment Act*;

(g) as a director or senior officer of a corporation incorporated by the municipality or to carry on business on behalf of the municipality or board or as a person nominated by the council as a director or officer of a corporation;

(h) as a member or office holder of a council, board or other body when it is required by law or by virtue of office or results from an appointment by a council or board;

(i) as a recipient of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled as a member;

(j) in common with persons generally within the area of jurisdiction or, if the matter under consideration affects only part of the area, in common with persons within that part;

(k) as a member or volunteer for a charitable organization or a not-for-profit organization with

objects substantially similar to those provided by section 118 of the *Corporations Act* if the member receives no remuneration or other financial benefit from the organization and the pecuniary interest is in common with other persons in the organization;
(l) as a recipient of remuneration, consideration or an honorarium under section 256 of the *Municipal Act* or as a volunteer firefighter;
(m) that is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member. 1994, c. 23, Sched. B, s. 3.

Duty of member
4. (1) If a member has a pecuniary interest in any matter and is or will be present at a meeting at any time at which the matter is the subject of consideration, the member,
(a) shall, before any consideration of the matter at the meeting, orally disclose the interest and its general nature;
(b) shall not, at any time, take part in the discussion of, or vote on, any question in respect of the matter;
(c) shall not, at any time, attempt, either on his or her own behalf or while acting for, by or through another person, to influence the voting on any such matter or influence employees of or persons interested in a contract with the council or board in respect of the matter;
(d) shall immediately leave the meeting and remain absent from it at any time during consideration of the matter; and
(e) shall, as soon as possible, complete and file with the clerk of the municipality or secretary of the board a written disclosure, in the prescribed form, setting out the interest and its general nature.

When absent from meeting
(2) If a member is absent from all or part of a meeting in which he or she has a pecuniary interest in a matter being considered, other than an absence due to compliance with clause (1) (d), clause (1) (c) applies to that member and he or she shall,
(a) disclose the interest in the manner described in clause (1) (a) at the next meeting of the council or board that the member attends;
(b) in the case of a committee meeting, disclose the interest in the manner described in clause (1) (a) at the next meeting of the committee that the member attends; and
(c) file a written disclosure in the manner described in clause (1) (e) as soon as possible after the next meeting that the member attends. 1994, c. 23, Sched. B, s. 4 (1, 2).

Limitation
(3) A disclosure under this section is not required to disclose that the member has a spouse, same-sex partner or child or the name of the member's spouse, same-sex partner or child. 1994, c. 23, Sched. B, s. 4 (3); 1999, c. 6, s. 35 (3).

Interest of member
(4) Where a disclosure omits reference to a member's spouse, same-sex partner or child, the interest shall be stated as being that of the member. 1994, c. 23, Sched. B, s. 4 (4); 1999, c. 6, s. 35 (4).

Filing
(5) If a member of a committee is required to file a written disclosure under this section, the member shall file it in the manner described in clause (1) (e) with the clerk of the council or secretary of the board that appointed the member. 1994, c. 23, Sched. B, s. 4 (5).

Gifts
5. (1) A member shall not, either directly or through another person, accept a fee, gift or personal benefit except compensation authorized by law that is connected with the performance of his or her duties of

office. 1994, c. 23, Sched. B, s. 5 (1).

Exception
(2) Subsection (1) does not apply to,

(a) a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office; or

(b) a contribution that is permitted under the *Municipal Elections Act, 1996*. 1994, c. 23, Sched. B, s. 5 (2); 1996, c. 32, s. 74 (1).

Disclosure
(3) A member shall complete and file a disclosure statement with the clerk of the municipality or secretary of the board as soon as possible after receiving a gift or personal benefit described under clause (2) (a) if,

(a) the value of the gift or benefit exceeds the lower of the amount prescribed or provided by by-law or resolution; or

(b) the total value received directly or indirectly from one source in one calendar year exceeds the lower of the amount prescribed or provided by by-law or resolution.

Contents
(4) A disclosure statement filed under subsection (3) shall state the nature of the gift or benefit, its source and the circumstances under which it was given or accepted. 1994, c. 23, Sched. B, s. 5 (3, 4).

Financial disclosure requirement
6. (1) This section applies only to members of,

(a) a council;

(b) a board as defined in subsection 1 (1) of the *Education Act*;

(c) a public utility commission; and

(d) a police village. 1994, c. 23, Sched. B, s. 6 (1); 1997, c. 31, s. 152.

Filing form
(2) Every member shall, within 60 days of being elected or appointed, file with the clerk of the municipality or the secretary of the board a financial disclosure statement in the prescribed form. 1994, c. 23, Sched. B, s. 6 (2).

Omissions
(3) The member may with the consent of the commissioner omit or delete from the financial disclosure statement information if,

(a) disclosure would reveal a source of income for the member or the member's spouse, same-sex partner or child from services that are customarily provided on a confidential basis; or

(b) the possibility of serious harm to a person or business justifies a departure from the general principle of public disclosure. 1994, c. 23, Sched. B, s. 6 (3); 1999, c. 6, s. 35 (5).

Changes
(4) The member shall file a supplementary financial disclosure statement during the month of December of every calendar year except an election year. 1994, c. 23, Sched. B, s. 6 (4).

Limitation
(5) A financial disclosure statement under this section is not required to disclose that the member has a spouse, same-sex partner or child or the name of the member's spouse, same-sex partner or child. 1994, c. 23, Sched. B, s. 6 (5); 1999, c. 6, s. 35 (6).

Interest of member
(6) Where a financial disclosure statement omits reference to a member's spouse, same-sex partner or child, the financial information shall be stated as being that of the member. 1994, c. 23, Sched. B, s. 6 (6); 1999, c. 6, s. 35 (7).

Commissioner
7. (1) The Minister may appoint a commissioner to exercise the powers and perform the duties set out in this Act.

Assistant commissioner
(2) The commissioner may appoint one or more assistant commissioners who may exercise such powers and duties of the commissioner as the commissioner delegates to them.

Restriction
(3) The commissioner and any assistant commissioner shall not be a member of the Legislative Assembly, a council or a board.

Guidelines
(4) The commissioner may provide such guidelines for the proper administration of this Act as he or she considers necessary for the guidance of members, boards and municipalities. 1994, c. 23, Sched. B, s. 7.

Applications
8. (1) Any person may apply in writing to the commissioner for an investigation to be carried out of an alleged contravention by a member of section 4, 5 or 6.

Timing
(2) An application may only be made within 90 days after the person became aware of the alleged contravention.

Fees
(3) The commissioner may establish fees in respect of applications under subsection (1) and may waive any fee in cases of hardship.

Contents
(4) An application shall set out the reasons for believing that the member has contravened section 4, 5 or 6 and include a statutory declaration attesting to the fact that the person became aware of the contravention not more than 90 days before the date of the application.

Investigation
(5) The commissioner, upon receiving an application, may conduct such investigation as he or she considers necessary.

Same
(6) For the purpose of conducting an investigation, the commissioner,

(a) has the right of access, at all reasonable hours, to all relevant books, papers or documents of the member or applicant and of a municipality or board; and

(b) has the powers of a commission under Part II of the *Public Inquiries Act* which Part applies to the investigation as if it were an inquiry under that Act.

Timing
(7) The commissioner shall complete the investigation within 180 days of receiving the completed

application.

Completion
(8) Upon completion of the investigation, the commissioner,

(a) shall, if he or she considers it appropriate, apply to the Ontario Court (General Division) for a determination as to whether the member has contravened section 4, 5 or 6; or

(b) shall advise the applicant that the commissioner will not be making an application to the court.

Court determination
(9) The question of whether or not a member has contravened section 4, 5 or 6 may be tried and determined by the Ontario Court (General Division).

Application
(10) Any person may apply to the court for a determination under subsection (9).

Requirement
(11) No application may be made to the court unless the application includes a statutory declaration attesting to the fact that the person became aware of the contravention not more than 90 days before the date of the application to the commissioner under subsection (4).

Restriction
(12) Despite subsection (10), no person other than the commissioner shall make an application to the court unless the person has submitted an application to the commissioner under subsection (1) and,

(a) the commissioner has notified the applicant that he or she will not be carrying out an investigation;

(b) the commissioner has failed to complete the investigation within 180 days of receiving the application; or

(c) the commissioner has notified the applicant that the commissioner will not be making an application to the court under clause (8) (b).

Limitation
(13) No application shall be brought to the court under this section after the expiration of two years from the date on which the contravention is alleged to have occurred. 1994, c. 23, Sched. B, s. 8.

Power of court
9. (1) If the court determines that a member or a former member while he or she was a member has contravened section 4, 5 or 6, the court,

(a) shall suspend the member without pay and benefits for a period of not more than 90 days;

(b) may, in the case of a member, declare the seat of the member vacant;

(c) may disqualify the member or former member from being a member for a period of not more than seven years; and

(d) may, where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or board of which he or she is a member or former member.

Restrictions
(2) A member suspended from a council or board under subsection (1) shall not during the period of the suspension,

(a) participate in any meeting of the council or board as a member or otherwise;

(b) participate in any meeting of any body,

(i) to which the member has been appointed by the council or board, or
(ii) on which the member is required by law to sit by virtue of the member's office on the council or board;

(c) participate in any meeting of any other council or board that appointed or approved the appointment of the member to the council or board; or

(d) in the case of suspension from a council, participate in any meeting of any other council of which the member is also a member.

No vacancy

(3) Clause 38 (c) of the *Municipal Act* and section 229 of the *Education Act* do not apply to the seat of a member if the member is absent due to a suspension under clause 9 (1) (a). 1994, c. 23, Sched. B, s. 9.

Appeal to Divisional Court

10. (1) An appeal lies to the Divisional Court from a determination made under section 9 as to whether a contravention has occurred or not.

Judgment or new trial

(2) The Divisional Court may give any judgment that ought to have been pronounced, in which case its decision is final, or the Divisional Court may grant a new trial for the purpose of taking evidence or additional evidence and may remit the case to the Ontario Court (General Division) and, subject to any directions of the Divisional Court, the case shall be proceeded with as if there had been no appeal.

Further appeal

(3) If the case is remitted to the Ontario Court (General Division) under subsection (2), the appeal lies from the order of the court to the Divisional Court in accordance with this section. 1994, c. 23, Sched. B, s. 10.

Proceedings not invalidated

11. The failure of any member to comply with section 4 does not of itself invalidate any proceedings in respect of any matter but the proceedings are voidable at the instance of the municipality or of the board, as the case may be, before the expiration of two years from the date of the passing of the by-law or resolution authorizing the matter unless to make void the proceedings would adversely affect the rights of any person acquired under or by virtue of the proceedings who acted in good faith and without actual notice of the failure to comply with section 4. 1994, c. 23, Sched. B, s. 11.

Other procedures prohibited

12. The following proceedings in respect of disclosure of interest shall be taken only under this Act:

1. To suspend a member without pay or benefits.
2. To declare a seat vacant.
3. To disqualify a member or former member.
4. To require a member or former member to make restitution where a contravention has resulted in personal gain. 1994, c. 23, Sched. B, s. 12.

Quorum

13. (1) If the number of members who, by reason of this Act, are disabled from participating in a meeting is such that there is no quorum, despite any other Act, any number that is not less than one-third of the total number of members of the council or board shall be deemed to constitute a quorum, but the number shall not be less than two unless an order is made under subsection (3) authorizing it.

Same

(2) When the remaining number of members under subsection (1) is two, the concurrent votes of both are

necessary to carry any resolution, by-law or other measure.

Order
(3) If the remaining number of members who are not disabled from participating in the meeting is less than one-third of the total number of members or less than two, as the case may be, the council or board may apply to the commissioner without notice for an order authorizing the council or board to give consideration to, discuss and vote on the matter out of which the pecuniary interests arise.

Declaration
(4) The commissioner may declare that section 4 does not apply to a matter that is the subject of consideration by a council or board if,

(a) the council or board applies to the commissioner under subsection (3); and

(b) the council or board submits a copy of the written disclosure statements of the members who are disabled from participating.

Conditions
(5) As part of a declaration given under subsection (4), the commissioner may require the council or board to comply with any conditions the commissioner considers appropriate.

Effect
(6) If a declaration is made, section 4 does not apply and the council or board may give consideration to the matter in the same manner as though none of the members had a pecuniary interest in it, subject to any conditions the commissioner sets out in the declaration. 1994, c. 23, Sched. B, s. 13.

Minutes
14. Every oral declaration made under section 4 shall be recorded in the minutes of the meeting by the clerk of the municipality or secretary of the committee or board, as the case may be. 1994, c. 23, Sched. B, s. 14.

Register
15. (1) The clerk of a municipality and the secretary of a board shall maintain a register of disclosures for the members of the council or board, respectively.

Contents
(2) The register shall contain,

(a) the written disclosures of pecuniary interests under section 4;

(b) disclosure statements and supplementary disclosure statements of financial information under section 6; and

(c) disclosure statements of gifts or personal benefits under section 5.

Inspection
(3) All documents in the register are public documents and may be inspected by any person upon request at the office of the clerk or the secretary during normal office hours.

Copies
(4) Any person may make extracts from the documents and is entitled to copies of them upon payment of such fees as may be charged by the municipality or board for the preparation of copies of other documents.

Retention of records
(5) Despite section 116 of the *Municipal Act*, a municipality or local board shall not destroy the

documents in the register until after the prescribed period. 1994, c. 23, Sched. B, s. 15.

Prohibition re information
16. A member or former member shall not use or disclose information that is gained in the execution of his or her office and is not available to the general public to further or seek to further his or her pecuniary interests or the pecuniary interests of any other person. 1994, c. 23, Sched. B, s. 16.

Offence
17. Every person who contravenes section 16 is guilty of an offence. 1994, c. 23, Sched. B, s. 17.

Insurance
18. (1) Despite section 252 of the *Municipal Act*, the council of every municipality may pass by-laws,

(a) for contracting for insurance;

(b) despite the *Insurance Act*, to enable the municipality to act as an insurer; and

(c) for exchanging with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the *Insurance Act*,

to protect a member who has been found not to have contravened section 4, 5 or 6, against any costs or expenses incurred by the member as a result of a proceeding brought under this Act, and for paying on behalf of or reimbursing the member for the costs or expenses.

***Insurance Act* does not apply**
(2) The *Insurance Act* does not apply to a municipality acting as an insurer for the purposes of subsection (1). 1994, c. 23, Sched. B, s. 18 (1, 2).

Surplus funds
(3) Despite subsections 387 (1) and (2) of the *Insurance Act*, any surplus funds and the reserve fund of a municipal reciprocal exchange may be invested only in such securities as a municipality may invest in under section 167 of the *Municipal Act*. 1994, c. 23, Sched. B, s. 18 (3); 1996, c. 32, s. 74 (2).

Note: During a one-year transitional period, beginning on March 6, 1997 and ending on March 6, 1998, the following rules apply:
Subsection 18 (3), as it read on March 5, 1997, continues to apply to investments made before that date. However, an investment made before that date shall not be continued beyond the transitional period unless it is a permitted investment under section 167 of the *Municipal Act*.
Surplus funds and the reserve fund of a municipal reciprocal exchange may also be invested in securities in which the municipality is permitted to invest under section 167 of the *Municipal Act*.
See: 1996, c. 32, ss. 74 (3-5), 102 (4).

Reserve funds
(4) The money raised for a reserve fund of a municipal reciprocal exchange may be spent or pledged for, or applied to, a purpose other than that for which the fund was established if two-thirds of the municipalities that are members of the exchange together with two-thirds of the municipalities that previously were members of the exchange and that may be subject to claims arising while they were members of the exchange agree in writing and if section 386 of the *Insurance Act* is complied with.

Boards
(5) A board has the same powers to provide insurance for or to make payments to or on behalf of its members as are conferred on a municipality under this section in respect of its members.

Former members
(6) A by-law or resolution passed under this section may provide that it applies to a person who was a

member at the time the circumstances giving rise to the proceeding occurred but who, before the judgment in the proceeding, had ceased to be a member. 1994, c. 23, Sched. B, s. 18 (4-6).

By-laws
19. A municipality or board may pass by-laws or resolutions providing for the maximum amount of a single gift or benefit and of the combined value of gifts and benefits under section 5. 1994, c. 23, Sched. B, s. 19.

Community economic development corporations
20. If a director of a community economic development corporation is required to file a written disclosure or a disclosure statement under this Act, the director shall file it with the clerk of the municipality that nominated or appointed the person. 1994, c. 23, Sched. B, s. 20.

Regulations
21. The Lieutenant Governor in Council may make regulations prescribing,

(a) financial information or classes of financial information that must be disclosed or that is exempt from being disclosed in a financial disclosure statement under section 6;

(b) the maximum amount of a single gift or benefit and of the combined value of gifts and benefits under section 5. 1994, c. 23, Sched. B, s. 21.

Regulations
22. The Minister may make regulations,

(a) prescribing the duties of the commissioner;

(b) prescribing procedures for applications to the commissioner under section 13;

(c) prescribing forms or requiring that information required be on a form provided by the Ministry;

(d) prescribing boards, agencies, corporations or other entities or classes of them to which this Act applies;

(e) prescribing the period for the purposes of subsection 15 (5). 1994, c. 23, Sched. B, s. 22.

Conflict
23. In the event of conflict between a provision of this Act and a provision of any other Act, the provision of this Act prevails. 1994, c. 23, Sched. B, s. 23.

24. Omitted (enacts short title of this Act). 1994, c. 23, Sched. B, s. 24.

APPENDIX C

C.C.S.M. c. L112

The Legislative Assembly and Executive Council Conflict of Interest Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1(1) In this Act

"commissioner" means the person appointed as the Conflict of Interest Commissioner under section 19.5; (« commissaire »)

"common-law partner" of a member or minister means a person who, not being married to the member or minister, is cohabiting with him or her in a conjugal relationship of some permanence; (« conjoint de fait »)

"Crown agency" means any board, commission, association, or other body, whether incorporated or unincorporated, all the members of which, or of the board of management or board of directors of which,

(a) are appointed by an Act of the Legislature or by order of the Lieutenant Governor in Council, or

(b) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are directly or indirectly, responsible to the Crown,

or any corporation the election of the board of directors of which is controlled by the Crown, directly or indirectly, through ownership of the shares of the capital stock thereof by the Crown or by a board, commission, association, or other body which is a Crown agency within the meaning of this definition; (« organisme de la Couronne »)

"dependant" means

(a) the spouse of a member or minister,

(a.1) the common-law partner of a member or minister, and

(b) any child, natural or adopted, of a member or minister,

who resides with the member or minister; (« personne à charge »)

"direct pecuniary interest" includes a fee, commission or other compensation paid or payable to any person for representing the interests of another person or a corporation, partnership or organization in a matter; (« intérêt financier direct »)

"family" includes a common-law partner; (« famille »)

"member" means a member of the Legislative Assembly of Manitoba, and includes any minister who is a member; (« député »)

"minister" means a member of the Executive Council appointed under *The Executive Government Organization Act*; (« ministre »)

"senior public servant" means

(a) the clerk of the executive council;

(b) a deputy minister or equivalent or an assistant deputy minister;

(c) a chairperson, president, vice-president, chief executive officer or deputy chief executive officer of a Crown agency;

(d) a person who is designated or who occupies a position that is designated under section 31.1;

and includes a person who, on a temporary basis, occupies a position described in clauses (a) to (d). (« fonctionnaire supérieur »)

"subsidiary" means a corporation that is a subsidiary as described in section 2; (« filiale »)

"voter" has the same meaning as eligible voter in section 1 of *The Elections Act*. (« électeur »)

Registered common-law relationship

1(2) For the purposes of this Act, while they are cohabiting, persons who have registered their common-law relationship under section 13.1 of *The Vital Statistics Act* are deemed to be cohabiting in a conjugal relationship of some permanence.

S.M. 1988-89, c. 26, s. 2; S.M. 2002, c. 24, s. 38; S.M. 2002, c. 48, s. 28; S.M. 2002, c. 49, s. 2; S.M. 2006, c. 15, Sched. A, s. 207.

Subsidiary corporation

2(1) A corporation is a subsidiary of another corporation where it is controlled by that other corporation.

Control

2(2) A corporation is controlled by another corporation where

(a) securities of the controlled corporation to which are attached more than 50% of the votes that may be cast to elect directors of the controlled corporation are held, other than by way of security only, by or for the benefit of the controlling corporation; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the controlled corporation.

Subsidiary includes subsidiaries

2(3) "**Subsidiary**" includes all subsidiaries of a subsidiary.

Indirect pecuniary interest

3(1) For purposes of this Act, but subject to this section, a person shall be presumed to have an indirect pecuniary interest in a matter where

(a) the person, or a nominee of the person,

(i) holds a beneficial interest in, or a share warrant or purchase option in respect of, 5% or more of the value of the issued capital stock, or

(ii) is a director or officer,

of a corporation which, or a subsidiary of which, has a direct pecuniary interest in the matter; or

(b) the person is

(i) a partner of or employed by, or

(ii) a guarantor or surety for, or

(iii) a creditor of,

a person, corporation, partnership, or organization who or which, or (in the case of a corporation) a subsidiary of which, has a direct pecuniary interest in the matter.

Exception for indemnity or expenses

3(2) For purposes of this Act, members and ministers shall be presumed not to have a direct or indirect pecuniary interest in any matter involving the indemnity, expenses or remuneration payable to members or ministers from the Consolidated Fund.

Exception for common interests

3(3) For purposes of this Act, where

(a) a person, corporation, partnership, or organization who or which benefits from a program, service or contract represents less than 1% of all persons, corporations, partnerships, or organizations in Manitoba who or which benefit from a similar program, service or contract; and

(b) the value of the program, service or contract to the person, corporation, partnership, or organization represents less than 1% of the total value of similar programs, services or contracts provided to other persons, corporations, partnerships or organizations in Manitoba;

the person, corporation, partnership, or organization shall be presumed not to have a direct or indirect pecuniary interest in any matter involving the program, service or contract.

Indirect pecuniary liability

3(4) For purposes of this Act, but subject to this section, a person shall be presumed to have an indirect pecuniary liability to another person or to a corporation, partnership, or organization where

(a) the person, or a nominee of the person,

(i) holds a beneficial interest in, or a share warrant or purchase option in respect of, 5% or more of the value of the issued capital stock, or

(ii) is a director or officer,

of a corporation which, or a subsidiary of which, has a direct pecuniary liability to the other person or to the corporation, partnership, or organization; or

(b) the person is

(i) a partner of or employed by, or

(ii) a guarantor or surety for, or

(iii) a creditor of,

a person, corporation, partnership, or organization who or which, or (in the case of a corporation) a subsidiary of which, has a direct pecuniary liability to the other person or to the corporation, partnership, or organization.

Exception for common liabilities

3(5) For purposes of this Act, where

(a) a person with a direct or indirect pecuniary liability to another person or to a corporation, partnership, or organization represents less than 1% of all persons in Manitoba who have a similar direct or indirect pecuniary liability to the other person or to the corporation, partnership or organization; and

(b) the value of the person's direct or indirect pecuniary liability to the other person or to the corporation, partnership, or organization represents less than 1% of the total value of similar direct or indirect pecuniary liabilities owing by other persons in Manitoba to the other person or to the corporation, partnership, or organization;

the person shall be presumed not to have a direct or indirect pecuniary liability to the other person or to the corporation, partnership, or organization.

General exception

3(6) For purposes of this Act, and notwithstanding any other provision of this Act, no person shall be presumed to have a direct or indirect pecuniary interest in any matter, or a direct or indirect pecuniary liability to another person or to a corporation, partnership, or organization, unless the value of the pecuniary interest or liability is $500. or more.

Statutory appointments to Crown agencies

3(7) For purposes of this Act, where under the authority of any other Act of the Legislature, a member or minister is appointed to a Crown agency, the member or minister shall be presumed not to have a direct pecuniary interest in the appointment and shall not be presumed, solely by virtue of that appointment, to have

(a) an indirect pecuniary interest in a matter in which the Crown agency has a direct pecuniary interest; or

(b) an indirect pecuniary liability to another person or to a corporation, partnership, or organization to whom or which the Crown agency has a direct pecuniary liability.

Employees of public bodies

3(8) For purposes of this Act, where a person is employed by the Government of Canada or a federal Crown agency, by a school board, or by a municipal government, the person shall not be presumed to have

(a) an indirect pecuniary interest in a matter in which his employer has a direct pecuniary interest; or

(b) an indirect pecuniary liability to another person or to a corporation, partnership, or organization to whom or which his employer has a direct pecuniary liability.

Meetings involving members

4(1) Where during any meeting there arises

(a) a matter in which a member or any of his dependants has a direct or indirect pecuniary interest; or

(b) a matter involving the direct or indirect pecuniary interest of any person, corporation, subsidiary of a corporation, partnership, or organization to whom or which a member or any of his dependants has a direct or indirect pecuniary liability;

the member shall

(c) disclose the general nature of the direct or indirect pecuniary interest or liability;

(d) withdraw from the meeting without voting or participating in the discussion; and

(e) refrain at all times from attempting to influence the matter.

All official meetings included

4(2) For purposes of subsection (1), "**meeting**" includes

(a) a sitting of the Legislative Assembly;

(b) a meeting of the Legislative Assembly Management Commission;

(c) a meeting of any committee of the Legislative Assembly on which the member sits; and

(d) a meeting of any Crown agency on which the member serves.

Record of compliance

5 Where a member has complied with subsection 4(1), the clerk of the meeting shall record

(a) the disclosure;

(b) the general nature of the direct or indirect pecuniary interest or liability disclosed; and

(c) the withdrawal of the member from the meeting;

and the clerk of the meeting shall subsequently file the recorded information with the Clerk of the Legislative Assembly.

Public record of disclosures

6 The Clerk of the Legislative Assembly shall record all information filed with him under section 5 in a central record kept for that purpose, and shall make the central record available for inspection by any person without charge during normal business hours.

Cabinet meetings

7 Where during any meeting of the Executive Council or a committee thereof there arises

(a) a matter in which a minister or any of his dependants has a direct or indirect pecuniary interest; or

(b) a matter involving the direct or indirect pecuniary interest of any person, corporation, subsidiary of a corporation, partnership, or organization to whom or which a minister or any of his dependants has a direct or indirect pecuniary liability;

the minister shall

(c) disclose the general nature of the direct or indirect pecuniary interest or liability;

(d) withdraw from the meeting without voting or participating in the discussion; and

(e) refrain at all times from attempting to influence the matter.

Performance of responsibilities by minister

8 Where, during the exercise of any official power or the performance of any official duty or function by a minister, there arises

(a) a matter in which the minister or any of his dependants has a direct or indirect pecuniary interest; or

(b) a matter involving the direct or indirect pecuniary interest of any person, corporation, subsidiary of a corporation, partnership, or organization to whom or which the minister or any of his dependants has a direct or indirect pecuniary liability;

the minister shall

(c) delegate the power, duty, or function to the Executive Council or a committee thereof;

(d) refrain at all times from attempting to influence the matter; and

(e) at any subsequent meeting of the Executive Council or a committee thereof which considers the matter, disclose the general nature of the direct or indirect pecuniary interest or liability and withdraw from the meeting without voting or participating in the discussion.

Absence from meeting

9 Where a member or minister fails to comply with subsection 4(1), section 7 or section 8, as the case may be, by reason of the absence of the member or minister from a meeting referred to therein, the member or minister shall

(a) disclose the general nature of his direct or indirect pecuniary interest or liability at the next meeting of the same body before which the matter arose; and

(b) refrain at all times from attempting to influence the matter.

9.1 Repealed.

S.M. 1989-90, c. 90, s. 23.

Voidability of transaction or procedure

10 The failure of any member or minister to comply with subsection 4(1), section 7 or section 8, as the case may be, does not of itself invalidate

(a) any contract or other pecuniary transaction; or

(b) any procedure undertaken by the Government of Manitoba or a Crown agency with respect to a contract or other pecuniary transaction;

to which the failure to comply with subsection 4(1), section 7 or section 8 relates, but the transaction or procedure is voidable at the instance of the Government of Manitoba or the Crown agency before the expiration of two years from the date of the decision authorizing the transaction, except as against any person, corporation, partnership, or organization who or which acted in good faith and without actual notice of the failure to comply with subsection 4(1), section 7 or section 8.

Statement of assets and interests

11(1) Within 15 days after the beginning of each session of the Legislature, every member and minister shall file with the Clerk of the Legislative Assembly a statement disclosing assets and interests in accordance with section 12.

Notification of failure to comply

11(2) Where a member or minister fails to comply with subsection (1), the Clerk of the Legislative Assembly shall forthwith notify the member or minister in writing of the failure to comply, and the member or minister shall, within 30 days of receiving the notification, file the statement referred to in subsection (1).

Further statement after acquisition or disposal

11(3) Where during the course of a session of the Legislature a member or minister or any dependant of a member or minister acquires or disposes of any assets or interests of the kind mentioned in section 12, the member or minister shall within 30 days of the acquisition or disposal file with the Clerk of the Legislative Assembly a further statement disclosing the acquisition or disposal.

Meeting with the commissioner

11.1(1) Before filing a disclosure statement under section 11, or within 60 days after doing so, every member and minister shall meet with the commissioner to ensure that adequate disclosure is made and to obtain any advice about the member's or minister's obligations under this Act. The spouse or common-law partner of the member or minister may also attend the meeting with the commissioner and may otherwise seek the commissioner's advice.

Extension

11.1(2) The commissioner may extend the 60-day period if he or she considers it appropriate to do so.

S.M. 2002, c. 49, s. 3.

Assets and interests which must be disclosed

12 Subject to section 13, the member or minister shall disclose in the statement filed under subsection 11(1)

(a) all land in the province in or in respect of which the member or minister or any of his dependants has any estate or interest, including any leasehold estate and any mortgage, licence, or interest under a sale or option agreement, but excluding principal residence property;

(b) where the member or minister or any of his dependants holds a beneficial interest in, or a share warrant or purchase option in respect of, 5% or more of the value of the issued capital stock of a corporation, all estates and interests in or in respect of land in the province held by that corporation or by a subsidiary of that corporation;

(c) the name of every corporation, and every subsidiary of every corporation, in which the member or minister or any of his dependants holds a beneficial interest in 5% or more of the value of the

issued capital stock, or holds a share warrant or purchase option in respect of 5% or more of the value of the issued capital stock;

(d) the name of every person, corporation, subsidiary of a corporation, partnership, or organization which remunerates the member or minister or any of his dependants for services performed as an officer, director, manager, proprietor, partner or employee;

(e) bonds and debentures held by a member or minister or any of his dependants, excluding bonds issued by the Government of Canada, by the government of any province of Canada, or by any municipality in Canada, and also excluding Treasury Bills;

(f) holdings of the member or minister or any of his dependants in investment funds, mutual funds, investment trusts, or similar securities, excluding Retirement Savings Plans, Home Ownership Savings Plans, accounts and term deposits held in banks, credit unions, or other financial institutions, pension plans, and insurance policies;

(g) any estate or interest in land in the province

(i) to which the member or minister, or any dependant of the member or minister, is entitled in expectancy under any trust, or

(ii) over which the member or minister, or any dependant of the member or minister, has a general power of appointment as executor of a will, administrator of an estate, or trustee under a deed of trust;

(g.1) the amount of salary and other compensation received from a political party, other than money received as reimbursement for expenses actually incurred by the member or minister;

(h) the nature, and the identity of the donor, of every gift given to the member or minister or any of his dependants at any time after the coming into force of this Act, excluding

(i) gifts from a family member,

(ii) gifts disclosed in any previous statement filed under section 11, and

(iii) gifts received before the member was first elected to the Legislative Assembly or the minister was first appointed to the Executive Council; and

(i) the general nature of any contract or other pecuniary transaction entered into at any time after the coming into force of this Act between the Government of Manitoba or any Crown agency and

(i) the member or minister or any of his dependants, or

(ii) any corporation referred to in clause (c), or

(iii) any partnership in which the member or minister or any of his dependants is a partner,

but excluding

(iv) any such contract or other pecuniary transaction entered into before the member was first elected to the Legislative Assembly or the minister was first appointed to the Executive Council,

(v) any such contract or other pecuniary transaction disclosed in any previous statement filed under section 11, and

(vi) any transaction in which the member or minister or any of his dependants is presumed under section 3 not to have a direct or indirect pecuniary interest.

S.M. 2002, c. 49, s. 3; S.M. 2006, c. 15, Sched. F, s. 2.

General exemptions

13 For purposes of sections 11 and 12, no member or minister is required

(a) to disclose any gift worth less than $250. unless the total value of all the gifts from the donor to the member or minister and the dependants of the member or minister during the previous year exceeded $250.; or

(b) to disclose any other asset or interest worth less than $500.; or

(c) to estimate the value of any asset or interest disclosed; or

(d) to disclose any asset or interest acquired by a dependant of the member or minister.

Continuing disclosure

14 Where a member or minister or any of his dependants receives as a gift any of the assets or interests referred to in clauses 12(a) to (g), the member or minister shall, notwithstanding that the gift has already been disclosed in a statement filed under section 11, continue to disclose the asset or interest in every statement filed under subsection 11(1) until the member or minister or his dependant disposes of the asset or interest.

Forms

15(1) The Clerk of the Legislative Assembly may prepare and make available to members and ministers forms to assist them in complying with sections 11 and 12.

Compliance through form

15(2) Subject to subsection (3), a member or minister may comply with sections 11 and 12 by completing and filing with the Clerk the forms referred to in subsection (1).

Form not conclusive

15(3) No member or minister is relieved from any disclosure requirement of section 11 or 12 by virtue of the inadequacy or unavailability of any form referred to in subsection (1).

Statements not available to public

16(1) Subject to subsections (2) and (3), the Clerk of the Legislative Assembly shall not

(a) make any statement filed under section 11 available for inspection by any person; or

(b) reveal the contents of any statement filed under section 11 to any person.

Exception for members and ministers

16(2) Subsection (1) does not apply to a member or minister who wishes to inspect, or to be informed of the contents of, any statement which he has filed under section 11.

Limited disclosure

16(3) Where any person

(a) provides details of a possible violation of this Act by a member or minister; and

(b) identifies a specific asset or interest in respect of which the possible violation may have occurred;

the Clerk of the Legislative Assembly shall examine the statements filed by the member or minister under section 11 and shall in writing inform the person whether or not the statements disclose the specific asset or interest.

Application of section

16(4) This section applies to statements filed in respect of the 32nd Legislature.

S.M. 1988-89, c. 13, s. 23.

Statements available to public

17 The Clerk of the Legislative Assembly shall make every statement filed under section 11 in respect of the First Session of the 33rd Legislature, or any subsequent session, available for inspection by any person without charge during normal business hours.

Insider information

18(1) No member, minister or senior public servant shall use for personal gain or for the gain of another person information that is not available to the public and which the member, minister or senior public servant acquires in the performance of his or her official powers, duties and functions.

Former ministers and public servants

18(2) For purposes of subsection (1),

(a) "**member**" includes a former member;

(b) "**minister**" includes a former minister; and

(c) "**senior public servant**" includes a former senior public servant.

S.M. 1988-89, c. 26, s. 3.

Use of influence

19(1) No member, minister or senior public servant shall communicate, either directly or indirectly, with another member, minister or senior public servant or with an officer or employee of the government or of a Crown agency for the purpose of influencing the government or a Crown agency to enter into a contract, or to confer a benefit, in which the member, minister or senior public servant, or in which a dependant of the member, minister or senior public servant, has a pecuniary interest.

Former ministers and public servants

19(2) For purposes of subsection (1), "**minister**" includes a former minister and "**senior public servant**" includes a former senior public servant, for a period of one year following the date on which the minister or senior public servant leaves office.

S.M. 1988-89, c. 26, s. 4.

No contracts or benefits

19.1(1) Except with the approval of the Lieutenant Governor in Council, no minister or senior public servant shall, for a period of one year following the date on which the minister or senior public servant leaves office, enter into a contract with, or accept a benefit from, the government or a Crown agency.

Routine services exempted

19.1(2) Subsection (1) does not apply to contracts or benefits that are entered into or conferred by the government or a Crown agency in the course of providing routine services to members of the public, including a minister or a senior public servant.

S.M. 1988-89, c. 26, s. 5.

No acting or advising

19.2 Where a minister or senior public servant acts for or advises the government or a Crown agency with respect to a matter in which the government or Crown agency has an interest, the minister or senior public servant shall not, for a period of one year following the date on which the minister or senior public servant leaves office, act for or on behalf of a person, partnership or unincorporated association or organization in relation to the matter.

S.M. 1988-89, c. 26, s. 5.

No participation in employer's dealings

19.3(1) Where a minister or senior public servant, after leaving office, accepts employment with a person, partnership or unincorporated association or organization with which the minister or senior public servant has official dealings during the year preceding the date on which the minister or senior public servant leaves office, the minister or senior public servant, for a period of one year following the date on which the minister or senior public servant leaves office, shall not, directly or indirectly, attempt to influence or assist or in any way participate in

(a) deliberations of the employer with respect to a matter in which the employer has a pecuniary interest and in which the government or a Crown agency is involved;

(b) negotiations or consultations between the employer and the government or a Crown agency;

(c) the performance of obligations of the employer under a contract between the employer and the government or a Crown agency.

"Employment" in subsection (1)

19.3(2) For purposes of subsection (1), "**employment**" includes

(a) appointment to the governing board of a corporation or unincorporated association or organization; and

(b) membership in a partnership.

S.M. 1988-89, c. 26, s. 5.

General exemption

19.4 Notwithstanding the provisions of this Act, a minister or senior public servant may, upon leaving office,

(a) accept employment with;

(b) enter into a contract with;

(c) accept a benefit from; or

(d) accept appointment to a governing board of an agency or corporation that is established by and is accountable to;

a government of another province or a territory or the government of Canada.

S.M. 1988-89, c. 26, s. 5.

Appointment of commissioner

19.5(1) On the recommendation of the Standing Committee of the Assembly on Legislative Affairs, the Lieutenant Governor in Council shall appoint a Conflict of Interest Commissioner for the purpose of this Act. The commissioner is to be appointed on a part-time basis.

Appointment process

19.5(1.1) If the position of commissioner is vacant or if it will become vacant within six months because the term of office is scheduled to expire or the commissioner has resigned,

(a) the President of the Executive Council must, within one month of the vacancy or expected vacancy, convene a meeting of the Standing Committee on Legislative Affairs; and

(b) the Standing Committee must, within six months of the vacancy or expected vacancy, consider candidates for the position and make recommendations to the President of the Executive Council.

Annual report

19.5(2) The commissioner shall make an annual report to the Speaker of the Assembly about the exercise of the commissioner's responsibilities under this Act. The Speaker must lay the report before the Assembly.

S.M. 2002, c. 49, s. 4; S.M. 2004, c. 42, s. 106; S.M. 2015, c. 14, art. 5.

Request for commissioner's advice

19.6(1) Any member may request the commissioner to give a formal or an informal opinion and recommendations about a matter concerning the member's obligations under this Act.

Commissioner may make inquiries

19.6(2) On receiving a request, the commissioner may make any inquiries that he or she considers appropriate, and shall give the member an opinion and recommendations. If the member has requested a formal opinion, the opinion must be given in writing.

Reliance on commissioner's written opinion

19.6(3) A member may rely on a written opinion given by the commissioner in response to a request for a formal opinion, if

(a) the member acts in accordance with the commissioner's recommendations; and

(b) before receiving the commissioner's opinion and recommendations, the member disclosed all the relevant facts that were known to the member.

Opinion available to public

19.6(4) A member who receives a written opinion under this section shall file a copy of it with the Clerk of the Legislative Assembly within 30 days after receiving it. The Clerk shall make the opinion available to the public in the same manner as the statement disclosing assets and interests under section 11 is made available.

S.M. 2002, c. 49, s. 4.

General opinion to members

19.7(1) The commissioner may give a written opinion and recommendations of general application to members or to a class of members on any matter concerning their obligations under this Act. The opinion must state the facts and any other considerations on which it is based.

Reliance on general opinion

19.7(2) A member may rely on a written opinion given under subsection (1) in respect of facts and considerations stated in the opinion if the member acts in accordance with the commissioner's recommendations.

S.M. 2002, c. 49, s. 4.

Application for authorization

20 Any voter may, by filing an affidavit showing details of an alleged violation of this Act by a member or minister and by paying into court $300. as security for costs, apply ex parte to a judge of the Court of Queen's Bench for authorization to have a hearing before another judge of the court to determine whether the member or minister has violated this Act and upon hearing the application, the judge may grant the authorization, subject to section 21.1, or dismiss the application and order forfeiture of all or a part of the security.

S.M. 2002, c. 49, s. 5.

"Minister" and "member"

20.1 For purposes of sections 21 and 22, "**minister**" includes a former minister and "**member**" includes a former member.

S.M. 1988-89, c. 26, s. 6.

Disposition after hearing on merits

21(1) Subject to sections 21.1 and 22, where a judge determines, after a hearing authorized under section 20, that the member or minister has violated this Act, the judge shall impose one or more of the following penalties on the member or minister:

(a) In the case of a violation committed by a member, disqualification of the member from office.

(b) In the case of a violation committed by a member, suspension of the member for a period not exceeding 90 sitting days of the Legislative Assembly.

(c) A fine not exceeding $5,000.

(d) An order requiring the member or minister to make restitution to the Government of Manitoba or a Crown agency for any pecuniary gain which the member or minister has realized in any transaction to which the violation relates.

Meaning of suspension

21(2) A member who is suspended under clause (1)(b) or subsection 23(1) is, for the duration of the suspension, prohibited from

(a) sitting in the Legislative Assembly; and

(b) participating as a member in any meeting of a committee of the Legislative Assembly, the Legislative Assembly Management Commission or any Crown agency on which the member serves.

Suspension served during sitting days

21(3) A suspension imposed under clause (1)(b) shall be served entirely during sitting days of the Legislative Assembly, and any time remaining to be served at the end of a session shall be carried forward to the next session.

S.M. 2002, c. 49, s. 6.

Judge must consider commissioner's written opinion

21.1 When deciding whether to authorize a hearing under section 20 or when making a determination under subsection 21(1), the judge shall give due regard to any written opinion and recommendations the commissioner has given under section 19.6 or 19.7 about the subject matter of the alleged violation.

S.M. 2002, c. 49, s. 7.

Unknowing or inadvertent breach

22 Where, after a hearing authorized under section 20, the judge determines that the member or minister has violated this Act unknowingly or through inadvertence, the judge may make an order of restitution in accordance with clause 21(1)(d) but shall impose no other penalty against the member or minister.

Mandatory suspension

23(1) A member who fails to file the statement required under subsection 11(1) within the time prescribed under subsection 11(2) is, subject to subsection (2), suspended for the duration of the session then in progress or, if no session is then in progress, for the duration of the next session.

Termination of suspension

23(2) A member who is suspended pursuant to subsection (1) may at any time file the statement required under subsection 11(1), and thereupon the suspension terminates.

Disqualification at end of session

23(3) Where the session during which a member is suspended pursuant to subsection (1) ends and the member has not filed the required statement, the member is disqualified from office.

No court disposition required

23(4) No court proceeding under section 20 or 21 is required before a member is suspended or disqualified from office under this section.

Enforcement by Assembly

23(5) The Legislative Assembly possesses all the powers and jurisdiction necessary or expedient for investigating and determining a violation referred to in this section and for suspending or disqualifying a member under this section, and any decision by the assembly under this section is final and conclusive and is not subject to review or appeal in any court.

Suspension without pay

24 A member who is suspended pursuant to clause 21(1)(b) or subsection 23(1) is, in respect of the period covered by the suspension, not entitled to receive any indemnity, allowance or expense otherwise payable to the member under *The Legislative Assembly Act*, *The Legislative Assembly Management Commission Act* or under the terms of appointment to any Crown agency on which the member serves.

Application for stay

25(1) A member who appeals a disqualification from office imposed under clause 21(1)(a) or a suspension imposed under clause 21(1)(b) may apply to a judge of The Court of Appeal for a stay of the penalty pending the determination of the appeal, and the judge may order a stay on such terms and conditions as are just under the circumstances.

Restoration of pay

25(2) Where a member who appeals a disqualification from office imposed under clause 21(1)(a) or a suspension imposed under clause 21(1)(b) has lost any indemnity, allowance, expense or benefit as a result of the disqualification or suspension and a court which hears the appeal sets aside or reduces the penalty, the court may, as part of the judgment, order that the member be reimbursed in whole or in part for the indemnity, allowance or expense, or that the benefit be restored in whole or in part, and the member shall be reimbursed or the benefit restored accordingly.

Report to Speaker

26 Forthwith after the delivery of any court judgment

(a) determining whether or not a member or minister has violated this Act; or

(b) disposing of an application for a stay of a judgment referred to in clause (a) or an appeal from a judgment referred to in clause (a);

the registrar of the court which delivers the judgment shall, in writing, certify to the Speaker of the Assembly the decision of the court, including any penalty imposed on the member or minister by the court.

Effect of violation

27 Subject to section 10, no decision or transaction and no procedure undertaken by the Government of Manitoba or a Crown agency with respect to a decision or transaction is void or voidable by reason of a violation of this Act.

Election not to preclude application

28 An application to the Court of Queen's Bench for a determination that a member or minister has violated this Act may be brought notwithstanding that

(a) the member against whom the order is sought resigned or did not seek re-election, or was not re-nominated, or was re-elected or defeated; or

(b) the minister against whom the order is sought resigned from or was not re-appointed to the Executive Council, or was re-appointed to the Executive Council;

subsequent to the alleged violation of this Act.

Restitution

29(1) Subject to subsection (2), where a member, minister or senior public servant, or a dependant of the member, minister or senior public servant, realizes a pecuniary gain in a transaction or matter to which a violation of this Act by the member, minister or senior public servant relates, a person adversely affected by the transaction or matter, including the government or a Crown agency, may apply to a judge of the Court of Queen's Bench for an order of restitution against the member, minister or senior public servant.

Government or Crown agency applications

29(2) Where the government or a Crown agency is adversely affected by a transaction or matter to which a violation of the Act by a member, minister or senior public servant relates and a restitution order with respect to the transaction or matter is made under subsection 21(1), section 22 or subsection 30.1(2) in favour of the government or the Crown agency against the member, minister or senior public servant, the government or the Crown agency may not apply under subsection (1) for a restitution order against the member, minister or senior public servant in relation to the same transaction or matter.

Restitution by third parties

29(3) Where a third party has reasonable grounds to believe that a violation of this Act by a member, minister or senior public servant relates to a transaction or matter and the third party realizes a pecuniary gain in the transaction or matter, a person adversely affected by the transaction or matter, including the government or a Crown agency, may apply to a judge of the Court of Queen's Bench for an order of restitution against the third party.

Limit on third party restitution orders

29(4) Where a restitution order is made against a third party under subsection (3), the amount awarded as restitution may not exceed the amount of pecuniary gain realized by the third party.

S.M. 1988-89, c. 26, s. 7.

General limitation period

30(1) No application under section 20 shall be brought more than six years after the date of the alleged violation in respect of which the application is made.

Limitation period for order of restitution

30(2) No application for an order of restitution under section 29 shall be brought more than six years after the date of the transaction which results in the alleged pecuniary gain.

Offence and penalty

30.1(1) A person, other than a person who is liable to a penalty under subsection 21(1) or section 22, who contravenes sections 18, 19, 19.1, 19.2 or 19.3 is guilty of an offence and liable to a fine of not less than $1,000. and not more than $10,000.

Reimbursement

30.1(2) A judge, in addition to imposing a fine under subsection (1), may order restitution to the government or a Crown agency as the judge considers appropriate in the circumstances.

S.M. 1988-89, c. 26, s. 8.

No other proceedings

31 Proceedings alleging a violation of this Act or for an order of restitution under section 29 shall be had and taken only under the provisions of this Act.

Designation of position or person

31.1 The Lieutenant Governor in Council may, by regulation, designate

(a) a position or class of positions in government or with a Crown agency as a position or class of positions to which this Act applies; or

(b) a person or class of persons in the employment of the government or a Crown agency as senior public servants for purposes of this Act.

S.M. 1988-89, c. 26, s. 9.

Summary Convictions Act not to apply

32 A violation of a provision of this Act, other than a violation of sections 18, 19, 19.1, 19.2 or 19.3 by a senior public servant, is not an offence for purposes of *The Summary Convictions Act*.