

LAW REFORM COMMISSION



MANITOBA

COMMISSION DE RÉFORME DU DROIT

REPORT

ON

CONFLICT OF INTEREST OF MUNICIPAL COUNCILLORS

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The Manitoba Law Reform Commission was established by "*The Law Reform Commission Act*" in 1970 and began functioning in 1971.

The Commissioners are:

C.H.C. Edwards, Q.C., *Chairman*
Patricia G. Ritchie
David G. Newman
Prof. A. Burton Bass
Knox B. Foster, Q.C.
Beverly-Ann Scott
Victor Rosenman

Legal Research Officers of the Commission are: Ms. Leigh Halprin; Ms. Donna J. Miller; and Ms. Valerie C. Perry.
The Secretary of the Commission is Miss Suzanne Pelletier.

The Commission offices are located at 521 Woodsworth Building, 405 Broadway, Winnipeg, Manitoba R3C 3L6, Tel. (204) 944-2896.

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I. INTRODUCTION

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In May of 1980, the Honourable the Attorney-General asked the Manitoba Law Reform Commission to review the issue of conflict of interest of municipal councillors. In making this referral, the Attorney-General noted that "the existing provisions appear deficient in coping with a variety of practical situations which are arising with greater frequency". There have also been repeated expressions of public dissatisfaction with the functioning of the present law. The Commission has therefore reviewed conflict of interest legislation in Manitoba and other jurisdictions and submits the following report.

To understand the ramifications of the present Manitoba law, and to appreciate how it can be improved, it is first necessary to understand what is meant by the term "conflict of interest". One commentator has said that it is much like sin: everyone is against it, but few can define it.¹ For the purposes of our discussion, we have used the following as a working definition:

A conflict of interest arises when a person in public life puts himself in a position where his personal interests may, or may appear to, conflict with his public duty.

It is imperative for the functioning of democratic local government that the public have confidence in the impartiality of local councillors. To maintain such confidence councillors must conduct themselves in such a way that their private interests do not prevent them from exercising unbiased and disinterested judgment in matters of public concern. The question becomes to what extent the law can encourage and demand the proper performance of public duties.

Those who do not favour a larger role for the law in this area argue that morality cannot be legislated; that those in public office who are bent on corruption will not be deterred by legal prohibitions. According to this view, conflict of interest legislation is at best ineffectual.

A different attitude is implicit in the current Manitoba statutes where extensive conflict of interest rules are to be found. These rules (and any this Commission could suggest in their place) cannot completely settle the many problems inherent in this area of the law, especially definitional problems. However, the legislation does serve two very important purposes: it establishes ethical standards for councillors and provides them with guidance to help them avoid improper conduct; and, secondly, the legislation can help to deter wrongdoing by penalizing the councillor who has (or may appear to have) allowed his judgment to be influenced by the opportunity for personal gain.

Many of the present statutory provisions in Manitoba have grown out of common law principles essential to the operation of honest government. One such principle is that a municipal councillor occupies a fiduciary position; when he is exercising his public duties he does so as a trustee for the public.² He cannot use his position to gain an advantage for himself, but must act solely in the interests of the public he serves. An analogous principle relevant in the municipal field is that no man can be a judge in his own cause.³ Consequently, a councillor must not participate in proceedings in which he has a special interest distinct from that of other residents of the municipality. These common law rules are the foundation upon which

the statutory provisions are based. The statutes have done little more than refine and perfect the operation of the common law, and develop more sophisticated means of enforcing it.

There are two statutes with which we are concerned in this report: "*The City of Winnipeg Act*"⁴ which contains provisions respecting the conduct of Winnipeg councillors, and "*The Municipal Act*"⁵ which governs councillors in all other Manitoba municipalities. The rules set out in these two Acts are substantially the same, although in recent years "*The Municipal Act*" has been updated in some respects in which "*The City of Winnipeg Act*" has not.

Conflict of interest statutes generally fall into two categories. The first (and older) type forbids anyone who has a major conflicting interest, such as a contract with the municipality, from seeking public office in the first place. The rationale for this approach is that the councillor who has divested himself of possible conflicting interests will never be put in a position where his loyalties are divided. With some variations, this is the thrust of the legislation currently found in Manitoba.

The second legislative approach is to allow individuals with conflicting interests to sit on council, on the condition that they comply with strict requirements about the disclosure of their interests. This can be done in two ways:

- (1) by requiring the oral disclosure of any interest which is at issue in council proceedings, and prohibiting the councillor from voting or otherwise participating;

and

- (2) by requiring the councillor to declare the nature of his continuing financial interests in a register that is open to public inspection.

This second legislative approach has been in effect in Britain since the 1930s,⁶ in Ontario since 1972,⁷ and in numerous American jurisdictions.⁸ In both Britain and Ontario strict rules regarding oral disclosure have replaced old divestiture provisions. Neither Ontario nor Britain, however, now require registration of interests, although a 1974 Committee on Local Government, chaired by Lord Recliffe-Maud,⁹ strongly recommended a register for British councillors. In Canada, only British Columbia has enacted comprehensive legislation requiring the registration of councillors' interests.¹⁰

In our research we have examined both legislative approaches to the conflict of interest problem. We have analyzed carefully the deficiencies in the present Manitoba legislation, and have considered how it can be updated and improved. Our report is in two parts: in the first we look at the operation of the existing law, and in the second we propose reform in the areas of oral disclosure of interests, contracts with the municipality, registration of interests and the enforcement of requirements. In making our recommendations, we have suggested that substantially the same rules be applied to both urban and rural councillors; we have concluded that their similar positions and responsibilities require similar conflict of interest guidelines. However, with respect to the registration of interests, the needs of rural municipalities are different than those of the larger urban centres, and our recommendations reflect this difference.

In preparing our report, we have had the benefit of reading the *Report of the Winnipeg Commission on Conflict of Interest*.¹¹ That Commission, chaired by the Honourable

C. Rhodes Smith, was asked in 1977 by the Council of the City of Winnipeg to study the viability of proposing guidelines and regulations for Winnipeg councillors. The Commission held a number of public hearings and conducted extensive research. A transcript of the hearings and most of the Commission's research material has been available to us. We have found the report to be of great assistance and wish to acknowledge our indebtedness to the Commission.

It has also been of some assistance to us that the Executive Policy Committee and Council of the City of Winnipeg have addressed the issue of conflict of interest as recently as October 1980.¹² Their deliberations have given us valuable insight into the nature of the concerns of Winnipeg councillors.

We also wish to thank the Union of Manitoba Municipalities for their useful brief to the Commission.¹³

II. THE LAW OF CONFLICT OF INTEREST IN MANITOBA

In this part of our report we shall summarize the present statutory and common law rules regarding conflict of interest. The most important statutory provisions are to be found in "*The City of Winnipeg Act*" and "*The Municipal Act*". The former Act governs Winnipeg councillors; the latter governs councillors of the other municipalities in the province. These two statutes attempt to provide a code of conduct for councillors, setting out what activities are prohibited and the penalties for contravention. Other statutory rules, relating to the more serious forms of misconduct, such as bribery and corruption, are found in the *Criminal Code*.¹⁴ The law of trusts is also relevant where a councillor has used his position to gain a financial benefit for himself.

A. Provincial Legislation: "*The City of Winnipeg Act*" and "*The Municipal Act*"

The relevant provisions are sections 10(13), 77 and 85 to 94 of "*The City of Winnipeg Act*", and sections 46 to 50, 66 to 68, 123 and 124 of "*The Municipal Act*". These sections are reproduced in full as Appendix A.

(1) General prohibition against voting and taking part in discussion

The most important conflict of interest provision, found in section 10(13) of "*The City of Winnipeg Act*" and section 123(1) of "*The Municipal Act*", prohibits a councillor from voting on or taking part in a discussion on any question in which he has a personal pecuniary interest beyond his

interest as an ordinary ratepayer. There is no specific penalty for breach of this provision in either Act, but a Winnipeg councillor who contravenes the section is guilty of an offence by virtue of the general penalty clause found in section 138 of "*The City of Winnipeg Act*". A councillor in breach of section 123(1) of "*The Municipal Act*" is guilty of an offence by virtue of "*The Summary Convictions Act*".¹⁵

(2) Disqualification

Both "*The Municipal Act*" and "*The City of Winnipeg Act*" contain sections dealing at some length with the disqualification of councillors (and candidates for office) which will be discussed under three headings: (a) incompatible offices, (b) contracting with the municipality, and (c) miscellaneous provisions.

(a) Incompatible offices

Considerations of public policy make it improper for a public official to hold two incompatible offices at the same time. Incompatibility exists where there is a conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other. Thus both "*The Municipal Act*" and "*The City of Winnipeg Act*" list a number of persons "who are not qualified to be nominated for election to, or to be, or remain a member of council".¹⁶ Included are federally and provincially appointed judges, employees of the municipality,¹⁷ councillors of other municipalities, members of the Senate and House of Commons, and certain other persons.

(b) Contracting with the municipality

To ensure that the independence of a municipal council is not jeopardized by the municipality's allocation of business, the Acts contain provisions disqualifying from office a person who holds a contract with the municipality. Thus with certain exceptions "*The City of Winnipeg Act*" disqualifies:

any person who, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, holds and enjoys, undertakes or executes, or has an interest in any contract or agreement, expressed or implied, with or for the city or any officer of the city on its behalf, for which money of the city is, or is to be, paid to or for him, or on his behalf, or for his benefit.¹⁸

The same provision is also found in "*The Municipal Act*".¹⁹

Both Acts specify numerous contractual arrangements which are not of such a serious nature that councillors who hold them should be disqualified. The most important of these exceptions allows councillors to retain certain interests in corporations which have dealings or contracts with the municipality. A councillor is not disqualified from membership in council by reason only of his being a shareholder in such a corporation. To be disqualified he must own more than 25% of the corporation's issued capital stock, or be a manager, director or officer of the corporation, and the contracts must involve considerations of more than \$1,000 in any one year.²⁰

There are numerous other exceptions found in section 49(1) of "The Municipal Act" and section 87(1) of "The City of Winnipeg Act", which are set out in Appendix "A" to this report. These exceptions range from exempting the councillor who has purchased or leased land prior to his nomination to council, to the councillor who owns a newspaper which publishes municipal notices, to the councillor who pays municipal sewer and water rates.

The legislation isolates some of these permitted contractual interests which are serious or important enough that the councillor is prohibited from voting on a matter involving them. They are as follows:

- (i) The Winnipeg councillor who owns any shares in a corporation having dealings or contracts with the City is forbidden from voting on a matter affecting that corporation.²¹ In other municipalities, the councillor is forbidden from voting if he owns more than 5% of the issued capital stock of the corporation;²²
- (ii) A councillor who has entered into a mortgage, agreement for sale, lease, purchase or contract cannot vote when the subject matter of any of those transactions is in issue;²³
- (iii) A councillor who is a newspaper proprietor cannot vote on any question involving his dealings with the municipality;²⁴
- (iv) A councillor whose property is tax exempt cannot vote on any question affecting that property.²⁵

There is no prohibition against voting with respect to the other contractual interests which are specifically permitted by the legislation.

The penalty for violating the prohibition against voting is forfeiture of the councillor's seat.²⁶ Proceedings to unseat him may be taken by way of an election petition under "*The Local Authorities Election Act*".²⁷ Upon summary conviction he is also liable to a fine of \$300 and in default of payment to imprisonment for not more than six months.²⁸

Because special considerations apply in rural Manitoba respecting the supply of goods and services, "*The Municipal Act*" contains another important exception to the rule against contracting with a municipality, an exception not found in "*The City of Winnipeg Act*". Section 49(2.1) permits a councillor (or a corporation of which he is a shareholder) to enter into a contract with the municipality if certain requirements are met. The council resolution approving the contract must be published and posted in the municipality seven days prior to being passed, and a copy of the resolution must be sent to the Minister of Municipal Affairs within seven days after it is passed. When the contract involves the sale or purchase of goods or services by the municipality and the consideration is more than \$100, the contract must also be let on tender. The councillor is then prohibited from voting.

The rationale for this section is that in smaller municipalities there may be only one local supplier of a certain service or commodity, and that supplier may also be a member of council. Section 49(2.1) allows the municipality to enter into a contract with a councillor as long as there is full disclosure and the contract is awarded through an open

and public process. The municipality is thus not put to the added expense of purchasing supplies from a distant source when a local supplier, albeit a councillor, is available.

(c) Miscellaneous provisions

The most important disqualifying circumstances are those we have already referred to, the holding of an incompatible office, voting on a contractual matter in contravention of the Act, and contracting with the municipality. However, both "*The Municipal Act*" and "*The City of Winnipeg Act*" categorize other situations which will disqualify a councillor. Although not all of them are directly related to conflicts of interest, we will mention them here for the sake of completeness.

The Acts disqualify from office a councillor who:

- is an undischarged bankrupt or insolvent in the meaning of the *Bankruptcy Act*;²⁹
- having been convicted of an offence under any Act has not paid any fine which was imposed on him;³⁰
- is convicted of making or approving unauthorized expenditures in contravention of the legislation or against whom judgment is obtained in a civil action regarding such expenditures;³¹
- is convicted of an indictable offence upon conviction of which he is liable to imprisonment for five or more years;³²
- is convicted of municipal corruption under the *Criminal Code*.³³

In the City of Winnipeg a councillor who is counsel or solicitor in the prosecution of any proceeding against the City or in opposing such proceeding is also disqualified.³⁴ In addition, both Acts contain provisions respecting residency and attendance at meetings which affect the councillor's right to remain a member.³⁵

(3) Declarations of office and qualification

Both "*The City of Winnipeg Act*" and "*The Municipal Act*" require that newly elected councillors make a "Declaration of Qualification" and a "Declaration of Office".³⁶ In the first Declaration the councillor states that he is not subject to disqualification under any provincial legislation. In the second he declares that he does not and will not receive any payment "for the exercise of any partiality . . . or other undue execution" of his office. He declares further that he does not have an interest in any contract with or on behalf of the municipality in contravention of the statute.

B. The Criminal Code

The *Criminal Code*³⁷ prohibits certain types of conduct on the part of municipal officials and those persons who would try to influence their behaviour. The provision dealing with what the Code refers to as "municipal corruption" is as follows:

112.(1) Every one who

(a) gives, offers or agrees to give or offer to a municipal official, or

(b) being a municipal official, demands, accepts or offers or agrees to accept from any person,

a loan, reward, advantage or benefit of any kind as consideration for the official

(c) to abstain from voting at a meeting of the municipal council or a committee thereof,

(d) to vote in favour of or against a measure, motion or resolution,

(e) to aid in procuring or preventing the adoption of a measure, motion or resolution, or

(f) to perform or fail to perform an official act, is guilty of an indictable offence and is liable to imprisonment for two years.

(2) Every one who

(a) by suppression of the truth, in the case of a person who is under a duty to disclose the truth,

(b) by threats or deceit, or

(c) by any unlawful means,

influences or attempts to influence a municipal official to do anything mentioned in paragraph (1) (c) to (f) is guilty of an indictable offence and is liable to imprisonment for two years.

(3) In this section "municipal official" means a member of a municipal council or a person who holds an office under a municipal government.

The nature of the offence is bribery or the acceptance of bribes, and its seriousness is reflected in the fact that the offence is an indictable one. The Code also prohibits the selling and purchasing of offices and the influencing or negotiating of appointments. These offences are punishable by imprisonment for five years.³⁸

The Code also deals with breach of trust by public officials. Section 111 is as follows:

111. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

If has been held by the Supreme Court in 1967 in *Campbell v. The Queen*³⁹ that it is not necessary to prove that a breach of trust occurred with respect to trust property to bring an accused within this section. All that is required is that the accused breached the public trust and confidence placed in him by his position as a public servant.

We agree with the Smith Commission when it called the *Criminal Code* provisions a minimal "foul line" of acceptable behaviour.⁴⁰ The important task of providing councillors with detailed legislative guidelines for their conduct in office falls within provincial jurisdiction.

C. Common Law - Trusts

The common law also has a part to play in the conflict of interest area. It is a well-established rule in Canada,⁴¹ as well as in Great Britain⁴² and the United States,⁴³ that a municipal councillor occupies the position of trustee with respect to the municipality. As such, he is subject to the strict rules regarding trustees, and is not permitted to make a profit by reason of his public office. Parker & Mellows in *The Modern Law of Trusts* summarize the law in Great Britain in the following way:

If a person manages property and is in a fiduciary capacity he is prohibited from obtaining any personal benefit by availing himself of his position in the absence of authorisation from the beneficiary. And if he does obtain an advantage he is a constructive trustee of any benefits for the persons beneficially entitled to the property in question.

The basis of the rule is that a trustee or person holding a fiduciary position should not place himself in a position where his interest and duty conflict.⁴⁴

If a municipal councillor has made a profit by reason of his fiduciary position, acting in the course of the execution of his office, the municipality has a right to seek an accounting of that profit.⁴⁵

The Supreme Court of Canada has recently had occasion to consider these principles in the 1978 case of *City of Edmonton v. Hawrelak*.⁴⁶ It was decided in that case that a constructive trust could not be imposed upon the profit made by an erring councillor unless it was made "by reason and only by reason of the fact"⁴⁷ that the councillor occupied a public office. For a municipality to be successful in an action seeking an accounting, it is not enough to show that the councillor entered into a transaction in which his private interests conflicted with his public duty. It must also be shown that the gain or advantage arising out of the transaction was obtained solely by reason of the use of the fiduciary position.

III. PROPOSALS FOR REFORM

The Commission is of the view that many of the sections of "*The City of Winnipeg Act*" and "*The Municipal Act*" which deal with conflict of interest should be revised. The present provisions are cumbersome and often difficult to interpret by either lawyer or layman. Their major failing is that they do not provide sufficient guidance to municipal councillors in a language that is easily understood. Clear and more precise rules can and should be enacted.

In this part of our report we discuss why and how we think the Acts can be modified. We propose four major areas of reform: oral disclosure; contracts with a municipality; registration of interests; and enforcement.

A. Oral Disclosure

(1) Types of interests to be disclosed

There is an established common law principle that a municipal councillor must refrain from voting in council on a question in which he has an interest distinct from that of the electors generally.⁴⁸ The purpose of this requirement is to ensure that each councillor's vote is free from personal bias and that council decisions are made in the public interest.

The common law draws a distinction between two types of interests: those which are pecuniary and those which are merely personal. If it can be shown that a councillor

has voted on a matter in which he has a pecuniary interest (no matter how small that interest is) bias is presumed. The councillor's vote is disallowed and the by-law or resolution in question can be quashed. However, a different rule applies where the interest is merely personal. In that case, the court looks at the circumstances to determine whether the interest is "substantial", and whether a reasonable probability exists that the councillor is likely to be biased.⁴⁹

Part of this common law principle is embodied in both "*The City of Winnipeg Act*" and "*The Municipal Act*". "*The City of Winnipeg Act*" provides that a councillor shall not vote if he has a "personal pecuniary interest beyond his interest as an ordinary ratepayer".⁵⁰ "*The Municipal Act*" prohibits voting by a councillor who has a "personal and pecuniary interest".⁵¹ The Manitoba legislation thus appears to prohibit a councillor from voting only in a situation where he has a financial interest. Both Acts refer to "personal" interests, but the word "personal" is in both instances linked to "pecuniary". Consequently, a councillor who votes on a question involving a purely personal interest is not in contravention of the legislation. However, his vote, and the council proceedings themselves, may nevertheless be subject to attack by reason of the common law rule prohibiting a councillor who may be biased (as a result of a personal interest) from participating in the proceedings.

Most councillors will have no difficulty in determining when they have at least a direct pecuniary interest in a matter. We therefore do not think that the operation of the legislation would be made any easier if an attempt were made to catalogue various types of direct pecuniary interests. Given the wide range of possible conflict of

interest situations, any list could not be exhaustive and would raise more questions about what interests were omitted than it would answer about those which were specified.

There is one respect, however, in which the current legislation could be improved by further definition. The phrase "pecuniary interest" is not broad enough to include interests which a councillor holds indirectly. Indirect interests would include those held by a councillor as a shareholder in a corporation, interests held as a partner or employee of a business, and interests held by certain members of his family.

At the present time, the only indirect pecuniary interest which is referred to in "*The City of Winnipeg Act*" or "*The Municipal Act*" is the holding of shares in a corporation. Both Acts prohibit a councillor from voting in council on a question affecting a corporation of which he is a shareholder.⁵²

We therefore think that section 10(13) of "*The City of Winnipeg Act*" and section 123(1) of "*The Municipal Act*" need to be revised in two ways. First of all, these sections should prohibit voting where a councillor has either a "direct or indirect pecuniary interest" in a matter. In our view it is essential that a councillor refrain from voting if he has a pecuniary interest of any kind; the legislation should clearly state that the prohibition also applies to interests held indirectly.

Secondly, "indirect pecuniary interest" must be defined. We propose that a councillor be defined as having an indirect pecuniary interest when:

1. He, or his nominee, is a shareholder in, or a director or officer of, a corporation that does not offer its securities to the public, when the corporation has a direct pecuniary interest in a matter under consideration.
2. He, or his nominee, holds a beneficial interest in 5% or more of the issued capital stock, or is a director or officer of a corporation that offers its shares to the public, when the corporation has a direct pecuniary interest in a matter under consideration.
3. He is a partner or in the employment of a person, corporation or body when that person, corporation or body has a direct pecuniary interest in a matter under consideration.

We also propose that the direct or indirect interests held by any person normally residing in the councillor's household be deemed to be the interests of the councillor, if known to him.⁵³

Our definition of indirect pecuniary interest is modelled closely on the English definition found in *The Local Government Act 1972*.⁵⁴ With respect to employees, that Act provides that the direct pecuniary interest of an employer be deemed to be an interest held by the employee. An exception, however, is made for employees of "public bodies".⁵⁵ "Public body" is defined as including local authorities, nationalized industries, the governing bodies of schools and universities and the National Trust.⁵⁶ We consider that a similar exception for public employees should be included in Manitoba legislation. Employees of the federal and provincial governments, Crown corporations and school boards should be exempted.

One further point with respect to pecuniary interests should be made. We have proposed that a councillor be prohibited from voting on a matter in which he has "a direct or indirect pecuniary interest beyond his interest as an ordinary ratepayer". An exception must be made to this rule to permit a councillor to vote in respect of his own salary, remuneration or other benefits to which he is entitled by reason of his membership on council.

We turn now to the question to what extent the Manitoba legislation should concern itself with purely personal, as opposed to pecuniary, interests. Private or personal interests occur in a number of ways. One of the most common is through family ties. For example, the councillor whose brother proposes to enter into a contract with the municipality has an "interest" in a matter to be decided by council. So too does the councillor who is a member of a church congregation when that church is applying for a re-zoning of its property. In these situations, the councillor does not stand to gain a financial benefit by voting on a matter, but he may nevertheless have a conflict of interest. Should the legislation specify that the councillor is prohibited from voting?

At the present time, the answer to this question in Manitoba is "no"; the legislation does not prohibit a councillor from voting unless his interest in a matter is financial. We are of the view that it is not practicable to require the disclosure of interests which are not pecuniary. We do not think that such interests can be adequately defined; and to amend the legislation by simply requiring councillors to declare "personal" interests, without defining what is

interests meant by "personal", would not be advisable. That approach would leave councillors open to charges of conflict of interest in situations that were never intended to be covered by the statute.

There is another reason for not including personal interests within the legislative provisions. Contravention of the Act as it now stands can result in the councillor being fined or disqualified from holding office. We propose elsewhere in this report to strengthen these penalties. In light of the quasi-criminal nature of the statutory rules, we think that the inclusion of interests, where there is no question of financial gain to the councillor, is unwarranted.

Although we do not recommend that the Manitoba legislation refer to non-pecuniary interests, we recognize that in certain cases such interests may influence a councillor (or appear to do so), and should be disclosed. The decision to disclose, however, is one that the individual councillor must make for himself. He ought to ask himself whether his connection with a particular person or organization would be held to be capable of influencing someone in his position. If he can answer that question in the affirmative, he ought to disclose his interest and refrain from voting. We are mindful of the fact that this solution is less than ideal. However, for the reasons we have already discussed, we think that the question of non-pecuniary interests is one area which must of necessity be left to the discretion of the individual councillor.

This is not to say that councillors should receive

no direction respecting their private interests. The Redcliff-Maud Committee in Britain recommended a code of conduct to supplement the legislation, to provide guidance for councillors, and to "provide an explicit public standard which those outside local government can expect from it".⁵⁷ The following quotation is taken from the Committee's report:

Our conception of a code of conduct for councillors is that it should be a short, simple, and lucid statement of principles and of their practical application. It should be of such length and format as to enable the user to carry it about with him easily. It should serve as a supplement or extension to the law and standing orders and a reminder of their importance, but should not duplicate or replace them. It should constitute a frame of reference valuable to everyone serving in local government and especially to those doing so for the first time. It should be issued to all councillors on taking office and drawn to their attention periodically thereafter; it should also be generally available to the public⁵⁸

Following the Redcliff-Maud Committee's recommendation, the British Government promulgated the "National Code of Local Government Conduct". A copy of the Code is attached to this report as Appendix B.

We are of the view that a code of conduct similar to the British Code would be of benefit to Manitoba councillors. We recommend that the City of Winnipeg Council consider approving such a code, and that the Department of Municipal Affairs consult with the various municipalities with a view to drafting a code which would be applicable to all Manitoba municipalities outside of the City of Winnipeg.

(2) Method of oral disclosure

One of the major deficiencies in the present

legislation is that it does not adequately set out what action a councillor should take when he finds himself in a conflict of interest situation. Section 10(13) of *"The City of Winnipeg Act"* and section 123(1) of *"The Municipal Act"* provide merely that a councillor shall not take part in the discussion or vote on a question in which he has a personal pecuniary interest.

In our opinion this prohibition does not go far enough. It does not require a councillor to declare orally the nature of his interest at the meeting. It does not require that he absent himself from the meeting. It does not require that the minutes of the meeting show that he declared his interest and absented himself prior to the discussion and voting. It is therefore possible for a councillor to be present during the discussion of a matter in which he has an interest and for the other councillors to be totally unaware of that interest. He is not breaking the law as long as he neither votes nor takes part in the discussion.

Provisions which set out in some detail what procedure should be followed would protect the councillor as well as the public. For example, under the present legislation, a councillor who chooses to leave a meeting prior to discussion of a matter in which he has an interest may be doing so because he does not know how to register that interest. If there is a dispute later, there will be no record of his having absented himself. He is thus open to criticism because the present law gives him no guidance as to what procedure he should follow, and the lack of any reference in the minutes as to what steps were actually taken makes it difficult for him to clear himself of a charge of misconduct.

We therefore recommend that the law be amended to require a councillor to disclose orally the existence and the general nature of any pecuniary interest. Such a disclosure should be made in proceedings of council, committees and sub-committees of council, and in the case of the City of Winnipeg, community committees. The councillor should be required to disclose only the general nature of the interest and not specific details or the extent of that interest. The disclosure should be made as soon as possible after the commencement of any meeting where a matter in which the councillor has an interest is being considered. The clerk of the municipality should be charged with the responsibility of recording the disclosure in the minutes of the meeting.

The requirement of oral disclosure would be in addition to the prohibitions found in the present Manitoba legislation against taking part in the discussion or in voting on any question in which the councillor has an interest. Also included in any amendment should be a prohibition against attempting in any way to influence the voting on any question in which the councillor has an interest. Such a provision is currently found in the Ontario *Municipal Conflict of Interest Act, 1972.*⁵⁹

We also recommend that the councillor be required to withdraw from a meeting when a matter in which he has disclosed an interest is under consideration. The Redcliffe-Maud Committee suggested that there are two reasons for requiring withdrawal: the first is that the councillor should not hear his colleagues discuss a matter in which he has an interest; the second is that his presence should not inhibit them from speaking freely.⁶⁰

It is important both for the councillor and the public that a record be kept of oral disclosures. When a councillor discloses an interest and withdraws from a meeting the clerk of the municipality should be required to record those facts in the minutes. The fact of the disclosure, the general nature of the interest disclosed and the withdrawal should all be recorded. In this regard, we agree with the view expressed by the Association of Municipalities of Toronto that public inspection allows the electors "to examine the extent, nature and frequency of the transactions between the member and the municipality . . . and thereby make a rational decision before voting at the next municipal election as to whether or not they wish that person to continue in office".⁶¹

We also believe that the public should be given some means of assessing an individual councillor's declarations of interest without having to read all the minutes of the many meetings attended by that councillor. We recommend that all oral disclosures be brought together in a record separate and apart from the minutes of the meetings. Such a central record would set out in a concise and easily inspected form all of the declarations made.

It should be noted that current legislation does not provide for the public inspection of minutes of all meetings. Sections 78(1) of "*The City of Winnipeg Act*" provides that the minutes of all council meetings and open committee meetings are open to public inspection. However, the minutes of *in camera* committee meetings are not open to inspection by Winnipeg residents.

Section 145(1) of "*The Municipal Act*" provides that for other municipalities only the minutes of council meetings are available to the public. Consequently, the minutes of any committee meetings, public or not, are unavailable.

We think that the public should be informed of declarations made in *in camera* meetings as well as those made in open proceedings. We do recognize, however, that there is a need to protect the confidentiality of proceedings of closed meetings. We therefore recommend that when a disclosure is made in a closed meeting, or in any meeting the minutes of which are not open to the public, that the central record of declarations kept by the clerk of the municipality should state only that a declaration was made and not the nature of the interest disclosed. On the other hand, where the minutes are by statute open to the public, the clerk should record both the fact of the disclosure and the general nature of the interest disclosed.

RECOMMENDATIONS

1. A councillor should be prohibited from voting or taking part in discussion in council or in any committee, on any question in which he has either a direct or indirect pecuniary interest beyond his interest as an ordinary ratepayer.
2. A councillor should be defined as having an indirect pecuniary interest when:
 - (a) He, or his nominee, is a shareholder in, or a director or officer of, a corporation that does not offer its securities to the public, when the corporation has a direct pecuniary interest in a matter under consideration.
 - (b) He, or his nominee, holds a beneficial interest in 5% or more of the issued capital stock, or is a director or officer of a corporation that offers its shares to the public, when the corporation has a direct pecuniary interest in a matter under consideration.
 - (c) He is a partner or in the employment of a person, corporation or body when that person, corporation or body has a direct pecuniary interest in a matter under consideration.

(employees of public bodies such as the federal and provincial governments, Crown corporations and school boards should be exempted.)

Pecuniary interests held by any person normally resident in the councillor's household should be deemed to be the councillor's interest, if known to him.

3. Despite the fact of a pecuniary interest, a councillor should be permitted to vote and take part in discussion respecting his own salary, remuneration or other benefit to which he is entitled by reason of his membership on council.
4. A councillor should be required to disclose orally the existence and general nature of a pecuniary interest whenever it arises in council, committees of council, and in the case of the City of Winnipeg, community committees. The disclosure should be made as soon as possible after the commencement of the meeting.
5. A councillor who has disclosed a pecuniary interest should be required to withdraw completely from the meeting when a matter in which he has disclosed an interest is under discussion.
6. The fact of a disclosure, the general nature of the interest disclosed, and the withdrawal should be recorded by the municipal clerk
 - (a) in the minutes of the meeting, and
 - (b) in a central record to be kept for the purpose and open to public inspection.

Where, however, the disclosure is made in a closed meeting, or in any meeting the minutes of which are not open to the public, the central record should state only that a disclosure was made and that the councillor withdrew, and not the general nature of the interest disclosed.

7. A councillor should be prohibited from attempting to influence the voting on any question in which he has a pecuniary interest.
8. The City of Winnipeg and the Department of Municipal Affairs should consider implementing a code of conduct to provide guidance for councillors and to supplement and extend the legislation.

B. Contracts with the Municipality - Disqualification or Disclosure?

One of the most serious issues which conflict of interest legislation must address is that of the councillor who has commercial dealings with the municipality. The issue is important because the councillor who has a financial interest in a contract with the municipality of which he is an official may be put in the position of having to choose between his private interest and his public duty. Another danger is that he may attempt (or be perceived to have attempted) to use his position as councillor to pressure or influence a municipal employee or another councillor having responsibility concerning such a contract.

There are two views as to how the problem of commercial dealings with municipalities should be handled. To prevent misconduct, one view holds that public officials should be required to divest themselves of interests they may have in contracts with the municipality. This is the legislative tool most often found in Canadian jurisdictions,⁶² including Manitoba.⁶³

In Manitoba, where both "*The Municipal Act*" and "*The City of Winnipeg Act*" disqualify any person "who, directly or indirectly, . . . has an interest in any contract or agreement. . ." ⁶⁴ with the municipality, the basic rule is subject to a bewildering array of exceptions. We have referred to these exceptions in an earlier chapter and do not propose to restate them here. Suffice it to say that they are complex and confusing; for both the councillor and his lawyer they are difficult to understand and to apply in a specific case.

The "disqualification" approach to the problem of contracts has been the subject of much criticism. In discussing the Ontario law prior to 1972 (very similar to present Manitoba legislation) Ian MacF. Rogers, Q.C., said the following:

In specifying certain exemptions from disqualification, on the basis that the nature of the conflict was not serious enough to warrant the imposition of the penalty, the Act precluded a defence of *bona fides* by the well-intentioned offender. It took no account of minor infractions that arose through inadvertence, and assumed in every case a council member dealing contractually with a council was acting for his own selfish ends.⁶⁵

The present Manitoba legislation also contains no provision which will allow a councillor to escape its consequences by proving that he acted in the utmost good faith, or for the benefit of the municipality.⁶⁶ It is not a defence that the councillor disclosed his interest and did not participate in the proceedings. The fact that he personally may have gained nothing from the contract is also irrelevant. Because of the strict construction of the rule and its exceptions, the "disqualification" type of legislation can work hardship for both the councillor and the municipality.

The second and more practical solution is that which requires the councillor to make a full disclosure of any contractual interest he may have, to refrain from voting and from attempting to influence other councillors. The advantage of this approach is that many qualified people, especially those with commercial or professional experience, will not be deterred from entering public service. This is especially important in the municipal field where salaries are not large enough to attract many individuals willing to work full-time for the municipality; the retention of some private interests is essential for most councillors, particularly those in smaller communities.

We are of the view that the principle of disqualification found in "*The Municipal Act*" and "*The City of Winnipeg Act*" should be replaced by the principle of

disclosure. A similar view was taken by the Ontario Committee on Conflicts of Interests in 1968.⁶⁷ That Committee's recommendations were enacted in 1972, and Ontario now allows councillors to contract with the municipality if full disclosure is made. The Smith Commission made the same recommendation for the City of Winnipeg in 1977. Great Britain has had this type of legislation since the 1930s,⁶⁸ and it is now common throughout the United States.

We therefore recommend the repeal of sections 86(1)(m), 87(1) and (2) of *"The City of Winnipeg Act"* and sections 47(m), 49(1), (2) and (2.1) of *"The Municipal Act"*. We believe that the prohibitions found in these sections are unnecessary if a councillor is subject to stringent rules regarding the disclosure of his private interests. Our recommendations regarding disclosure are found elsewhere in this report; we believe they will adequately protect the public interest.

If contracts with the municipality are allowed, there is also no need for section 88(5) of *"The City of Winnipeg Act"* or section 49(7) of *"The Municipal Act"*. These sections declare that where a councillor has entered into a contract which is prohibited by the Act, that contract is void in any action thereon against the municipality. Although we advocate repeal of these sections, we think that the legislation should address itself to the validity of a contract, or of proceedings themselves, where a councillor has not complied with the requirement to disclose his interest orally and refrain from voting. The following section is contained in the Ontario *Municipal Conflict of Interest Act* and we recommend that a similar section be included in the Manitoba legislation:

The failure of any person to comply with subsection 1 or 2 [the requirement of disclosure] does not of itself invalidate any contract, or the proceedings in respect of any proposed contract or other matter mentioned in subsection 1 or 2, but the contract or the proceedings in respect of any proposed contract or other matter are voidable at the instance of the municipality . . . , before the expiration of two years from the date of the passing of the by-law or resolution authorizing the contract or proposed contract or other matter.⁶⁹

We recognize that our recommendations respecting disclosure may have the effect of increasing the number of situations in which small councils are reduced to less than a quorum. In such cases, we recommend that "The Municipal Act" provide that the matter be referred to the Municipal Board for decision.

RECOMMENDATIONS

9. A councillor should no longer be disqualified from office because he has an interest in a contract with the municipality. The principle of disqualification should be replaced by the principle of disclosure. Sections 86(1)(m), 87(1) and (2) of "The City of Winnipeg Act", and sections 47(m), 49(1), (2) and (2.1) of "The Municipal Act" should be repealed.
10. Provisions in the current legislation (s. 88(5) of "The City of Winnipeg Act; s. 49(7) of "The Municipal Act") which state that a contract entered into with a councillor is void in any action against the municipality should be repealed. Instead, the failure of a councillor to comply with the oral disclosure requirements should make any contract in which a councillor has a direct or indirect pecuniary interest, or the proceedings themselves, voidable at the instance of the municipality within two years.
11. In view of the fact that in certain cases the requirement that councillors disclose their interests and refrain from voting may have the effect of reducing small councils to less than a quorum, "The Municipal Act" should provide for a referral to the Municipal Board for decision.

C. Registration of Interests

There is a widely held view that in addition to oral disclosure of interests at meetings, public officials should also be required to disclose their continuing financial interests in a register that is open to public review. Such a register is common throughout the United States⁷⁰ and has been recommended for municipal officials in Great Britain.⁷¹

In Canada, only British Columbia now requires municipal councillors to register a comprehensive statement of financial interests.⁷² The requirement is more common for members of provincial legislatures than for municipal officials: British Columbia,⁷³ Newfoundland,⁷⁴ New Brunswick⁷⁵ and Saskatchewan⁷⁶ have recently enacted legislation which requires the registration of interests by provincial legislators. The federal government has considered, but not passed, comprehensive registration requirements for members of the House of Commons and senators.⁷⁷

In 1975 a Bill was presented to the Manitoba Legislature respecting registration of interests by members of the Legislative Assembly.⁷⁸ If passed, it would have required members to reveal the precise nature of all of their financial interests and liabilities including those held by spouses and minor children. The Bill also provided that municipalities wishing the requirements to apply to them could pass a by-law to make the legislation applicable. The Bill received some criticism in the Legislature⁷⁹ and was sent to the Committee on Statutory Orders and Regulations for further review. It was not returned to the Legislature.

At present, there is no provincial legislation in Manitoba requiring councillors to register any of their

financial interests. However, the City of Winnipeg has since 1973 required councillors to file a statement of their real estate interests (and those of their spouses and corporations in which they hold shares) located in the City of Winnipeg or "the additional zone". In October of 1980, Council passed a further resolution requiring councillors also to declare interests held in corporations, partnerships, or sole proprietorships doing business with the City, and election contributions in excess of \$100.⁸⁰ Because these disclosure requirements are contained in a Council resolution and not in a by-law, there is no penalty for failing to file. It is the view of the City Solicitor that "*The City of Winnipeg Act*" does not permit the City to pass a conflict of interest by-law containing financial disclosure requirements.⁸¹

Some of the many reasons which can be advanced in favour of a statutory register can be summarized as follows:

1. Financial disclosure would increase public confidence in government.
2. Financial disclosure would relieve many councillors of anxiety about conflict of interest situations. A councillor who makes a public statement about all of his financial affairs would make his colleagues and the public aware in advance of any possible conflicting interests. Groundless suspicions and irresponsible charges of wrong-doing would be lessened.
3. Financial disclosure would help to deter conflict of interest situations from arising in the first place. A councillor who knows that his actions are subject to informed public scrutiny would be more careful to act in such a way that his private interests do not conflict with his public duty.
4. Financial disclosure requirements would allow

interested private citizens to better evaluate the performance of their councillors

5. Financial disclosure requirements would mean that councillors must review their private financial interests at regular intervals, and consider how those interests might affect the exercise of public duties.

It must be kept in mind that the most important safeguard against conflicts of interest is oral disclosure at a meeting where a councillor's interest is under consideration. Financial disclosure is merely a supplement to oral disclosure. Registration of interests cannot prevent dishonesty or corruption, and that is not its purpose. In one sense, registration is a public relations exercise. That public relations aspect can be seen as a justification of registration rather than a criticism: it is the public interest and the public confidence in government that should be addressed.⁸²

The following arguments can be advanced against the introduction of a register of interests for municipal councillors:

1. A register would infringe on the councillor's right to privacy by allowing his colleagues and the public access to his confidential financial matters. This is especially true where he is required to register interests held by his family as well as his own.
2. A register might deter potential candidates who could make a valuable contribution to municipal government. In smaller communities, the few individuals who do seek office should not be unnecessarily discouraged from doing so.

3. A register would require the setting up of an administrative structure.
4. A councillor bent on deliberate misconduct would not be deterred by the requirement of registration of assets. Legal requirements which can be easily evaded should not be enacted in the first place.

Of these arguments, the first and second require the most serious consideration. The fundamental question regarding the right to privacy argument is whether a public official's personal finances are of legitimate concern to the electorate. We think the public concern is a legitimate one because a councillor's private financial interests can influence the public decisions that he must make. We agree with the New Jersey Supreme Court when it recently gave the following justification for discounting the privacy argument:

By accepting public employment an individual steps from the category of purely private citizen to that of a public citizen. And in that transition he must of necessity subordinate his private rights to the extent that they may compete or conflict with the superior right of the public to achieve honest and efficient government.⁸³

The second argument against registration is that it might deter qualified people from seeking municipal office. We do not think that this contention is questionable in the larger, urban municipalities; however, we find it compelling with respect to some of the smaller municipalities in the province which now have a difficult time recruiting candidates. This situation might well be worsened by the introduction of a compulsory register for all Manitoba councillors.

Given the variations in size of the municipalities in the province, and their divergent needs, we consider that

they should themselves decide whether their councillors ought to register financial interests. In some municipalities potential candidates might be deterred by financial disclosure requirements, while in others the public interest in such disclosure might outweigh the deterrence factor. We are of the view that those municipalities which desire it should be permitted to pass by-laws requiring registration. We shall discuss the form of such registration and the types of interests which should be disclosed later in this chapter.

Although we do not recommend comprehensive financial disclosure requirements, there is one type of interest which we think the councillor in every municipality should be required to disclose, and that is land holdings. All local governments exercise considerable influence and control over land, and most conflict of interest problems arise as a result of this one type of interest. We therefore think that the public has a right to be informed of the nature of the real estate holdings of both the councillor, and of the corporations in which he holds shares.

We are also of the view that a councillor should be required to register the real estate interests of any person who normally resides in the same household as he does. There are compelling reasons for requiring such disclosure. Interests held by members of the same household are often intermingled, and it is not realistic to treat them as separate from those held by the councillor himself. Without the requirement of disclosure of such assets, a councillor could avoid the disclosure requirements by conveying his interests to persons normally residing in his household. For these reasons we recommend that

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the councillor be required to disclose real estate interests of which he is actually aware which are held by any person normally residing in the same household.

We therefore recommend that all Manitoba councillors be required to register the following:

1. A brief description of all land in the municipality in which the councillor or any person normally residing in his household has any interest, including a leasehold interest, mortgage, or interest under a sale or option agreement.
2. Where a councillor or any person normally residing in his household holds a beneficial interest in 5% or more of the issued capital stock of a corporation, the councillor must also register the description of all land in the municipality in which the corporation holds an interest.

The registration of real estate interests would be done by way of statutory declarations filed with the municipal clerk prior to the councillor taking office. The councillor should be required to notify the clerk within 30 days of any acquisition or disposal of an interest in land in the municipality. The register should be open to public inspection, which we believe is necessary to ensure its effectiveness. Elsewhere in this report we recommend that a councillor who fails to disclose orally his interest in a matter under consideration by council be disqualified from office. We recommend that this same penalty should apply to a councillor who fails to register these real estate interests in accordance with the legislation.

We believe that many municipalities in the province will favour a more comprehensive registration requirement

than the simple one respecting land. We therefore recommend that all municipalities be empowered to pass by-laws which would require councillors to disclose certain additional interests in a public register. It is our view that such additional interests must be relevant to the councillor's public duties, ie. he should be required to disclose only those financial details which may lead to conflicts of interest. Any additional requirements should also be drawn with sufficient care and discrimination to ensure the councillor's privacy is not unnecessarily violated. In order to achieve these goals, we are of the view that only the councillor's important interests should be registered, and that he be required to reveal only the general (as opposed to the detailed) nature of those interests. He should not be required to state the value of any interest.

We therefore recommend that municipalities be empowered to require registration of the following:

1. The name of every corporation in which the councillor or any person normally residing in his household holds a beneficial interest in 5% or more of the issued capital stock of the corporation.
2. The name of every business, corporation, enterprise, professional practice or organization which financially remunerates the councillor or any person normally residing in his household for services performed as officer, director, manager, proprietor, partner or employee.

Where municipalities require such additional registration they should determine at what intervals councillors are required to revise declarations of additional interests. Some municipalities may wish revision at annual intervals, while others may opt for a requirement similar to the one we

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have already proposed for land holdings, ie. that all changes be declared within 30 days.

We consider that in principle a municipal register should reflect only financial interests. We have therefore not recommended registration of membership in non-profit organizations, such as professional associations, trade unions and religious groups. On occasion, the councillor's association with such an organization may give rise to a conflict of interest. In such a case, the councillor should disclose his interest orally and refrain from voting.

We have also considered whether municipalities should be permitted to require disclosure of a councillor's liabilities, on the basis that liabilities as well as assets may be the cause of conflict between private and public duties. We agree with the suggestion of an Australian Parliamentary Committee considering the question of financial disclosure that to require the registration of debts is to create "a register of wealth or lack of wealth".⁸⁴ We therefore do not include liabilities in our list of additional interests.

It was suggested by the Smith Commission that contributions made to a councillor's election campaign should also be registered.⁸⁵ While we recognize that such contributions may well have an influence on decisions made by the councillor once he is in office, we think that the question of contributions should be dealt with by specific legislation relating to election financing. Accordingly we do not recommend that municipalities be permitted to require the disclosure of campaign contributions.

We have also considered whether candidates for municipal office should be required to register the same interests which councillors in the municipality must disclose. Bearing in mind the issues of the invasion of privacy of and deterrence to possibly good candidates, we do not recommend that registration requirements be extended to persons not yet in office. We are also reluctant to recommend that municipalities be empowered, by by-law, to add to election requirements currently set out entirely in provincial legislation.

Although we have not been asked to consider conflict of interest as it relates to municipal employees, we would draw attention to a recommendation made by the Smith Commission. That Commission recommended that high-ranking civic employees, and employees in certain sensitive departments of the City of Winnipeg administration, be required to file disclosure statements with the Chief Commissioner.⁸⁶ The rationale for the recommendation is that some civic employees exercise delegated powers or carry out responsibilities which are particularly sensitive. The Planning and Real Estate Departments are examples of the latter. We agree with the concerns expressed by the Smith Commission and recommend that municipal councils be given the power to pass by-laws obliging such employees as the municipality requires to file disclosure statements with the municipal clerk. Interests to be registered should be land holdings and, if desired, any additional interests which the municipality requires its councillors to register. Employees' statements should be open for inspection by the chief administrative officer of the municipality, department or division heads and the councillors of the municipality. There should be no public access to such statements.

RECOMMENDATIONS

12. A councillor should be required to register, by way of statutory declaration filed with the municipal clerk, prior to his taking office, the following information respecting his real estate interests:

(a) A brief description of all land in the municipality in which the councillor or any person normally residing in his household has any interest, including a leasehold interest, mortgage, or interest under a sale or option agreement.

(b) Where a councillor or any person normally residing in his household holds a beneficial interest in 5% or more of the issued capital stock of a corporation, the councillor must also register the description of all land in the municipality in which the corporation holds an interest.

The councillor should be required to notify the clerk within 30 days of any acquisition or disposal of an interest in land in the municipality.

13. The register of real estate interests should be open to public inspection.

14. The councillor should be required to register the real estate interests of any person normally residing in his household where such interests are known to him.

15. The councillor who fails to register his real estate interests in accordance with the legislation should be disqualified from office.

16. All municipalities in the province should be empowered to pass by-laws which would require their councillors to disclose the following additional interests in a public register:

(a) The name of every corporation in which the councillor or any person normally residing in his household holds a beneficial interest in 5% or more of the issued capital stock of the corporation.

(b) The name of every business, corporation, enterprise, professional practice or organization which financially remunerates the councillor or any person normally residing in his household for services performed as

officer, director, manager, proprietor, partner or employee.

The councillor should be required to state only the general nature of these interests, and should not be required to state their value. These additional statements should be revised at intervals determined by the municipality.

17. *Municipalities should also be empowered to pass by-laws obliging such employees as the municipality requires to file disclosure statements. Interests to be registered should be land holdings and, if desired, any additional interests which the municipality requires its councillors to register. There should be no public access to such statements.*

D. Enforcement

Both "The Municipal Act" and "The City of Winnipeg Act" contain a number of provisions relating to the enforcement of conflict of interest rules. These provisions do not form a coherent scheme of penalties because they are the result of many years of separate amendments incorporating new ideas into existing sections. In many instances, insufficient care was taken to ensure that all the sections were compatible. The resulting legislation is unwieldy and difficult to understand.

We do not propose to go into a lengthy description of the existing provisions. Those provisions are found in the Appendix to which we have already referred. However, we do wish to state their general effect, discuss the most important inadequacies, and recommend how they can be streamlined and updated.

The existing provisions dealing with enforcement can be summarized as follows:

VOTING OR TAKING PART IN DISCUSSION - CONTRACTS

A councillor who has an interest in a contract (or is a shareholder in a corporation which does) and who votes on a question affecting that contract forfeits his seat on council and is liable to a fine of \$300. These penalties also apply to the councillor who votes when he has an interest in a newspaper in which municipal notices are inserted, and to the councillor who votes on any question involving tax-exempt property which he owns.⁸⁷

VOTING OR TAKING PART IN DISCUSSION - GENERAL

A councillor who votes or takes part in any discussion of a matter in which he has a personal pecuniary interest (other than an interest in a contract) is guilty of an offence both in the City of Winnipeg and in other municipalities. The Winnipeg councillor is liable to a fine of \$1,000 and six months imprisonment; the councillor outside Winnipeg is liable to a fine of \$100 and one month imprisonment.⁸⁸

CORRUPTION AND BRIBERY

A councillor who is convicted of corruption or bribery under the *Criminal Code* forfeits his seat on council. In the City of Winnipeg he is also subject to a further penalty of being disqualified from holding any municipal office or voting at any municipal election for three years.⁸⁹

PROCEEDINGS TO UNSEAT

When a Winnipeg councillor is disqualified, or has forfeited his seat, he is required to vacate the seat by disclaimer.⁹⁰ If he fails to do so, proceedings to unseat him may be taken in the County Court by way of an election petition under "*The Local Authorities Election Act*".⁹¹ This procedure allows four or more electors to question a councillor's right to sit on council on the ground that he was either not qualified at the time of the election, or became disqualified subsequently. At the conclusion of the trial the judge determines "whether any member of a council has forfeited his seat on the council or his right thereto, or has become disqualified to hold his seat".⁹² The judge must then "forthwith

certify to the clerk of the local municipality the matters so determined by him; and, subject to appeal, the determination so certified is final . . .".⁹³ There is a right of appeal from the County Court to the Court of Appeal.⁹⁴ It should be noted that there is no provision in either "*The Local Authorities Election Act*" or in "*The City of Winnipeg Act*" stating that once a councillor is disqualified, his seat becomes vacant. The election petition remedy therefore appears to be somewhat unclear.

Slightly different rules apply under "*The Municipal Act*". A member who is disqualified or has forfeited his seat has the option of disclaiming; the Act does not require that he do so.⁹⁵ If he does not disclaim, an election petition can be presented.⁹⁶ This is the same remedy as is available in The City of Winnipeg, but there is one important difference. If a judge declares a councillor disqualified in election proceedings, section 67(1) of "*The Municipal Act*" provides that the seat is thereby vacated. This provision cures the uncertainty found in "*The Local Authorities Election Act*".

More importantly, section 67(1) is applicable to "any proceeding" in which a court determines a councillor is disqualified. It is not restricted to an election petition, and consequently applies equally to a statement of claim where declaratory relief is sought. The result is that if a judge grants a declaration that a councillor is disqualified, the seat becomes thereby vacant. That is not the case in Winnipeg because "*The City of Winnipeg Act*" does not contain a provision similar to section 67(1).

Section 67(1) also provides expressly for the timing of the vacancy depending on whether an appeal is allowed and commenced within a specific period.

"*The Municipal Act*" provides that in some circumstances an election petition is not necessary. Thus where a councillor has been convicted of certain offences under the Act, section 67(2) provides that the seat is *ipso facto* vacant. There is no corresponding provision in "*The City of Winnipeg Act*".

We perceive several deficiencies in these provisions. The first is that the councillor who votes on a matter involving a contract he has with the municipality is subject to a different penalty than the councillor who votes on a non-contractual matter. In the former case he forfeits his seat, and in the latter he is only subject to a fine. Non-contractual interests can give rise to conflicts of pecuniary interest in the same way and to the same extent that contractual interests do. We think the same penalty should apply to both situations. Accordingly we recommend that the councillor who votes on any matter in which he has a pecuniary interest be subject to disqualification. This penalty should also apply where a councillor fails to disclose orally a pecuniary interest as required by law, who fails to withdraw, or who takes part in the discussion or attempts to influence the voting on any question in which he has an interest.

Another fault with the current legislation has to do with the appropriate remedy for unseating a councillor who is disqualified and yet continues to sit. As we have seen, "*The City of Winnipeg Act*" does not contain a provision which has the effect of vacating the seat once a judge has determined that the councillor is disqualified. We perceive this to be an omission in "*The City of Winnipeg Act*" which must be remedied.

There are other deficiencies in the election petition remedy. Four or more electors are now required to present a petition; in our view a single elector should have the right to question a councillor's qualification. We can also envision a case where the municipality itself might want to take proceedings to unseat a councillor who has conducted himself improperly. This is not possible under the current provision. Our more general criticism

is that the election petition is primarily designed to question "the election of a person to a council".⁹⁷ It is not specifically tailored for the special issues which can be found in conflict of interest cases.

Accordingly, we recommend that the election petition remedy be no longer applicable to conflict of interest situations. In its place we recommend that the following provisions be contained in "The City of Winnipeg Act" and "The Municipal Act":

1. A councillor who is disqualified shall forthwith resign.
2. If he does not resign, the council of the municipality may apply by originating notice to a judge of the County Court district in which the municipality is situated for an order declaring him to be disqualified.
3. (a) Upon the *ex parte* application of an elector who
 - (i) files an affidavit showing that a councillor is disqualified, and
 - (ii) pays into court the sum of \$200 as security for costs,a judge of the County Court may, if no previous application is outstanding or has been determined on the same facts, direct that there be served upon the councillor notice of an application for an order declaring him to be disqualified, or may dismiss the application.
 - (b) Upon hearing the application for an order and such evidence as he requires, the judge may declare the councillor disqualified or may refuse the order, and in either case with or without costs.

4. Where a judge declares a councillor to be disqualified he
 - (a) shall declare the seat of that councillor vacant;
 - (b) may disqualify him from being or being eligible to be a councillor during a period thereafter of not more than five years;
 - (c) may, where the contravention of the Act has resulted in personal financial gain, order the councillor to pay the total amount of that gain to the municipality; and
 - (d) may, where the contravention of the Act has been made for the purpose of personal financial gain, impose a fine of up to \$5,000 upon the councillor.
5. Where the judge finds that a councillor is disqualified, he may nevertheless dismiss the application where he is of the opinion that the disqualification arose inadvertently or by reason of a *bona fide* error in judgment.
6. Any party may appeal to the Court of Appeal from a decision of a judge of the County Court in accordance with the rules of court.
7. Where a councillor appeals from a declaration for disqualification he remains disqualified until the final determination of the appeal. If, on appeal, the disqualification is set aside, the Court shall reinstate the councillor for any unexpired portion of his term of office. If the term of office for which the councillor was elected has expired, he shall not be reinstated.

In paragraph 3, we recommend a two-stage procedure where an elector wishes to challenge a councillor's qualification. A similar provision is found in the *Alberta Municipal Government Act*.⁹⁸ The purpose of the initial *ex parte* application, prior to an enquiry being directed, is to provide a

form of preliminary hearing "so as to preclude dissatisfied electors from bringing frivolous actions".⁹⁹ Electors thus have relatively easy access to the courts, and the two-stage procedure also helps to protect a councillor from having to defend himself except in a proper case.

In paragraph 4 we recommend a broad discretionary jurisdiction which will allow a judge to tailor the penalty to the seriousness of the offence. Once a councillor is found to be disqualified, the judge must declare the seat vacant. However, depending on the degree of the councillor's misconduct, the judge can impose a subsequent period of disqualification, order restitution or impose a fine.¹⁰⁰

With respect to paragraph 5, there may be cases where a councillor is in technical breach of the legislation, but the breach may have arisen inadvertently or because of an error in judgment. In these cases, the court should be given a discretion as to whether or not the councillor should be disqualified. A similar provision is found in the *Alberta Municipal Government Act*¹⁰¹ and the *Ontario Municipal Conflict of Interest Act, 1972*.¹⁰²

There is a further issue which must be addressed. Under current legislation, proceedings to unseat can be taken "at any time during the term for which (the councillor) is elected after the date of the alleged forfeiture or disqualification".¹⁰³ By implication, they cannot be brought if an election intervenes and a new term has begun; the councillor's re-election (or defeat or decision not to seek re-election) cures any previous default.

We are of the view that in certain cases an

application must be capable of being brought despite the fact that an election has intervened. This would allow the court to impose a future period of disqualification, require restitution or impose a fine. The current Alberta legislation contains a provision to this effect¹⁰⁴ and we think that it would be appropriate in Manitoba as well. Such a provision respecting an intervening election would be required only where a councillor's disqualification is alleged to have occurred because he failed to comply with the oral disclosure requirements, or failed to register his financial interests, in accordance with the Act.

RECOMMENDATIONS

18. *The councillor who votes on any matter in which he has a pecuniary interest, whether contractual or otherwise, should be disqualified. This penalty should also apply where a councillor fails to disclose orally a pecuniary interest as required by law, who fails to withdraw, or who takes part in the discussion or attempts to influence the voting on any question in which he has a pecuniary interest.*
19. *The election petition is an inappropriate remedy for unseating a councillor who is disqualified. In its place the following provisions should be contained in "The City of Winnipeg Act" and "The Municipal Act":*
 - (a) *A councillor who is disqualified shall forthwith resign.*
 - (b) *If he does not resign, the council of the municipality may apply by originating notice to a judge of the County Court district in which the municipality is situated for an order declaring him to be disqualified.*
 - (c) (i) *Upon the ex parte application of an elector who*
 - (aa) *files an affidavit showing that a councillor is disqualified, and*
 - (ab) *pays into court the sum of \$200 as security for costs,*

a judge of the County Court may, if no previous application is outstanding or has been determined on the same facts, direct that there be served upon the councillor notice of an application for an order declaring him to be disqualified, or may dismiss the application.

(ii) Upon hearing the application for an order and such evidence as he requires, the judge may declare the councillor disqualified or may refuse the order, and in either case, with or without costs.

(d) Where a judge declares a member to be disqualified he

(i) shall declare the seat of that member vacant;

(ii) may disqualify him from being a member during a period thereafter of not more than five years;

(iii) may, where the contravention of the Act has resulted in personal financial gain, order the councillor to pay the total amount of that gain to the municipality; and

(iv) may, where the contravention of the Act has been made for the purpose of financial personal gain, impose a fine of up to \$5,000 upon the member.

(e) Where the judge finds that a member is disqualified, he may nevertheless dismiss the application where he is of the opinion that the disqualification arose inadvertently or by reason of a bona fide error in judgment.

(f) Any party may appeal to the Court of Appeal from a decision of a judge of the County Court in accordance with the rules of court.

(g) Where a councillor appeals from a declaration for disqualification he remains disqualified until the final determination of the appeal. If, on appeal, the disqualification is set aside, the court shall reinstate the councillor for any unexpired portion of his term of office. If the term of office for which the councillor was elected has expired, he shall not be reinstated.

20. *In certain cases an application to unseat a councillor should be capable of being brought despite the fact that the councillor's term of office is over because of an intervening election. This would allow the court to impose a future period of disqualification, require restitution or impose a fine.*

IV. SUMMARY OF RECOMMENDATIONS

1. A councillor should be prohibited from voting or taking part in discussion in council or in any committee, on any question in which he has either a direct or indirect pecuniary interest beyond his interest as an ordinary ratepayer.
2. A councillor should be defined as having an indirect pecuniary interest when:
 - (a) He, or his nominee, is a shareholder in, or a director or officer of, a corporation that does not offer its securities to the public, when the corporation has a direct pecuniary interest in a matter under consideration.
 - (b) He, or his nominee, holds a beneficial interest in 5% or more of the issued capital stock, or is a director or officer of a corporation that offers its shares to the public, when the corporation has a direct pecuniary interest in a matter under consideration.
 - (c) He is a partner or in the employment of a person, corporation or body when that person, corporation or body has a direct pecuniary interest in a matter under consideration.
(Employees of public bodies such as the federal and provincial governments, Crown corporations and school boards should be exempted.)

Pecuniary interests held by any person normally resident in the councillor's household should be deemed to be the councillor's interest, if known to him.
3. Despite the fact of a pecuniary interest, a councillor should be permitted to vote and take part in discussion respecting his own salary, remuneration or other benefit to which he is entitled by reason of his membership on council.

4. A councillor should be required to disclose orally the existence and general nature of a pecuniary interest whenever it arises in council, committees of council, and in the case of the City of Winnipeg, community committees. The disclosure should be made as soon as possible after the commencement of the meeting.
5. A councillor who has disclosed a pecuniary interest should be required to withdraw completely from the meeting when a matter in which he has disclosed an interest is under discussion.
6. The fact of a disclosure, the general nature of the interest disclosed, and the withdrawal should be recorded by the municipal clerk
 - (a) in the minutes of the meeting, and
 - (b) in a central record to be kept for the purpose and open to public inspection.

Where, however, the disclosure is made in a closed meeting, or in any meeting the minutes of which are not open to the public, the central record should state only that a disclosure was made and that the councillor withdrew, and not the general nature of the interest disclosed.

7. A councillor should be prohibited from attempting to influence the voting on any question in which he has a pecuniary interest.
8. The City of Winnipeg and the Department of Municipal Affairs should consider implementing a code of conduct to provide guidance for councillors and to supplement and extend the legislation.
9. A councillor should no longer be disqualified from office because he has an interest in a contract with the municipality. The principle of disqualification should be replaced by the principle of disclosure. Sections 86(1)(m), 87(1) and (2) of "*The City of Winnipeg Act*", and sections 47(m), 49(1), (2) and (2.1) of "*The Municipal Act*" should be repealed.
10. Provisions in the current legislation (s. 88(5) of "*The City of Winnipeg Act*"; s. 49(7) of "*The Municipal Act*") which state that a contract entered into with

a councillor is void in any action against the municipality should be repealed. Instead, the failure of a councillor to comply with the oral disclosure requirements should make any contract in which a councillor has a direct or indirect pecuniary interest, or the proceedings themselves, voidable at the instance of the municipality within two years.

11. In view of the fact that in certain cases the requirement that councillors disclose their interests and refrain from voting may have the effect of reducing small councils to less than a quorum, "The Municipal Act" should provide for a referral to the Municipal Board for decision.
12. A councillor should be required to register, by way of statutory declaration filed with the municipal clerk, prior to his taking office, the following information respecting his real estate interests:
 - (a) A brief description of all land in the municipality in which the councillor or any person normally residing in his household has any interest, including a leasehold interest, mortgage, or interest under a sale or option agreement.
 - (b) Where a councillor or any person normally residing in his household holds a beneficial interest in 5% or more of the issued capital stock of a corporation, the councillor must also register the description of all land in the municipality in which the corporation holds an interest.

The councillor should be required to notify the clerk within 30 days of any acquisition or disposal of an interest in land in the municipality.

13. The register of real estate interests should be open to public inspection.
14. The councillor should be required to register the real estate interests of any person normally residing in his household where such interests are known to him.
15. The councillor who fails to register such real estate interests in accordance with the legislation should be disqualified from office.
16. All municipalities in the province should be empowered to pass by-laws which would require their councillors to disclose the following additional interests in a public register:

- (a) The name of every corporation in which the councillor or any person normally residing in his household holds a beneficial interest in 5% or more of the issued capital stock of the corporation.
- (b) The name of every business, corporation, enterprise, professional practice or organization which financially remunerates the councillor or any person normally residing in his household for services performed as officer, director, manager, proprietor, partner or employee.

The councillor should be required to state only the general nature of these interests, and should not be required to state their value. These additional statements should be revised at intervals determined by the municipality.

- 17. Municipalities should also be empowered to pass by-laws obliging such employees as the municipality requires to file disclosure statements. Interests to be registered should be land holdings and, if desired, any additional interests which the municipality requires its councillors to register. There should be no public access to such statements.
- 18. The councillor who votes on any matter in which he has a pecuniary interest, whether contractual or otherwise, should be disqualified. This penalty should also apply where a councillor fails to orally disclose a pecuniary interest as required by law, who fails to withdraw, or who takes part in the discussion or attempts to influence the voting on any question in which he has a pecuniary interest.
- 19. The election petition is an inappropriate remedy for unseating a councillor who is disqualified. In its place the following provisions should be contained in "*The City of Winnipeg Act*" and "*The Municipal Act*":
 - (a) A councillor who is disqualified shall forthwith resign.
 - (b) If he does not resign, the council of the municipality may apply by originating notice to a judge of the County Court district in which the municipality is situated for an order declaring him to be disqualified.

- (c) (i) Upon the *ex parte* application of an elector who
- (aa) files an affidavit showing that a councillor is disqualified, and
 - (ab) pays into court the sum of \$200 as security for costs,
- a judge of the County Court may, if no previous application is outstanding or has been determined on the same facts, direct that there be served upon the councillor notice of an application for an order declaring him to be disqualified, or may dismiss the application.
- (ii) Upon hearing the application for an order and such evidence as he requires, the judge may declare the councillor disqualified or may refuse the order, and in either case, with or without costs.
- (d) Where a judge declares a member to be disqualified he
- (i) shall declare the seat of that member vacant;
 - (ii) may disqualify him from being a member during a period thereafter of not more than five years;
 - (iii) may, where the contravention of the Act has resulted in personal financial gain, order the councillor to pay the total amount of that gain to the municipality; and
 - (iv) may, where the contravention of the Act has been made for the purpose of personal financial gain, impose a fine of up to \$5,000 upon the member.
- (e) Where the judge finds that a member is disqualified, he may nevertheless dismiss the application where he is of the opinion that the disqualification arose inadvertently or by reason of a *bona fide* error in judgment.

- (f) Any party may appeal to the Court of Appeal from a decision of a judge of the County Court in accordance with the rules of court.
 - (g) Where a councillor appeals from a declaration for disqualification he remains disqualified until the final determination of the appeal. If, on appeal, the disqualification is set aside, the court shall reinstate the councillor for any unexpired portion of his term of office. If the term of office for which the councillor was elected has expired, he shall not be reinstated.
20. In certain cases an application to unseat a councillor should be capable of being brought despite the fact that the councillor's term of office is over because of an intervening election. This would allow the court to impose a future period of disqualification, require restitution or impose a fine.


This is a Report pursuant to section 5(3) of
"The Law Reform Commission Act" signed this 14th day of
April, 1981.


Clifford H.C. Edwards, Chairman


Patricia G. Ritchie, Commissioner


David G. Newman, Commissioner


Knox B. Foster, Commissioner


Beverly-Ann Scott, Commissioner


Victor Rosenman, Commissioner


A. Burton Bass, Commissioner

FOOTNOTES

1. E.P. Johnson, "Legislative Comments: Conflict of Interest" (1968) 70 *West Virginia L.R.* 400.
2. *Bowes v. City of Toronto* (1858) 11 Moo P.C. 463, 14 L.R. 770; *Hawrelak v. City of Edmonton*, [1972] 2 W.W.R. 561. Affirmed [1973] 1 W.W.R. 179. Reversed [1975] 4 W.W.R. 561.
3. *Ibid.*, and see *Re L'Abbe and Blind River* (1904), 7 O.L.R. 230 (Div.Ct.).
4. S.M. 1971, c. 105, as am.
5. C.C.S.M., c. M225.
6. *Local Government Act 1972* (1972, c. 70) and *Local Government (Scotland) Act 1973*. The provisions with respect to conflict of interest have been in substantially their present form since the *Local Government Act 1933*, and the *Local Government Amendment (Scotland) Act 1939*.
7. *The Municipal Conflict of Interest Act, 1972*, S.O. 1972, c. 142, as am. S.O. 1976, c. 54.
8. See "Privacy Limits on Financial Disclosure Laws: Pruning Plante v. Gonzalez, 54 *New York University Law Review* (1979) 601; National Municipal League, *Ethics in Government: Selected Statutes and Reports* (1972); National Association of Attorneys General, *Legislative Approaches to Campaign Finance, Open Meetings and Conflict of Interest* (1974).
9. Prime Minister's Committee on Local Government Rules of Conduct, "Conduct in Local Government", Cmnd. 5636, May 1974 (hereinafter referred to as the Redcliffe-Maud Committee).
10. *Public Officials and Employees Disclosure Act*, S.B.C. 1974, c. 73.
11. "Report of the Winnipeg Commission on Conflict of Interest", July 1977 (hereinafter referred to as the Smith Commission).
12. City of Winnipeg Council Minutes, October 14, 1980.
13. Letter from Warren Rusk, Union of Manitoba Municipalities, to the Manitoba Law Reform Commission, November 27, 1980.
14. *Criminal Code*, R.S.C., 1970, c. C-34, as am., ss. 111-114.
15. C.C.S.M., c. S230, s. 4.
16. "The Municipal Act", s. 47; "The City of Winnipeg Act", s. 86(1).

17. This provision is also designed to prohibit the councillor from obtaining a job for himself with the municipality.
18. "The City of Winnipeg Act", s. 86(1)(m).
19. "The Municipal Act", s. 47(m).
20. "The Municipal Act", s. 49(2); "The City of Winnipeg Act", s. 87(2).
21. "The City of Winnipeg Act", s. 88(1).
22. "The Municipal Act", s. 49(3).
23. "The Municipal Act", s. 49(3); "The City of Winnipeg Act", s. 88(1).
24. "The Municipal Act", s. 49(4); "The City of Winnipeg Act", s. 88(2).
25. "The Municipal Act", s. 49(5); "The City of Winnipeg Act", s. 88(3).
26. "The Municipal Act", s. 49(6); "The City of Winnipeg Act", s. 88(4).
27. "The Municipal Act", s. 67(4); "The City of Winnipeg Act", s. 94(2).
28. "The Municipal Act", s. 49(6.1); "The City of Winnipeg Act", s. 88(4).
29. "The Municipal Act", s. 47(i); "The City of Winnipeg Act", s. 86(1)(i).
30. "The Municipal Act", s. 47(n); "The City of Winnipeg Act", s. 86(1)(n).
31. "The Municipal Act", s. 50(1)(a); "The City of Winnipeg Act", s. 90(1).
32. "The Municipal Act", s. 50(1)(b); "The City of Winnipeg Act", s. 93(a).
33. "The Municipal Act", s. 50(1)(a); "The City of Winnipeg Act", s. 90(1).
34. "The City of Winnipeg Act", s. 87(3).

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35. "The Municipal Act", s. 47(o) and s. 66; "The City of Winnipeg Act", s. 86(1)(o) and s. 93.
36. "The Municipal Act", s. 65; "The City of Winnipeg Act", s. 92(1). Section 77 of "The City of Winnipeg Act" also requires newly-elected councillors to make a statutory declaration in substantially the same form as the Declaration of Office required by s. 92(1).
37. *Supra* n. 14.
38. *Supra* n. 14, ss. 113 and 114.
39. (1967), 50 C.R. 270. Affirmed (1968), 2 C.R.N.S. 403.
40. *Supra* n. 11, at 29.
41. *Supra* n. 2.
42. *Bowes v. City of Toronto*, *supra* n. 2.
43. 63 Am. Jur. 2D, *Public Officers and Employees*, §§ 275-283.
44. Parker, D.B. and Mellows, A.R., *The Modern Law of Trusts* (4th ed. 1979), 151.
45. *Bowes v. City of Toronto*, *supra* n. 2.
46. *Supra* n. 2.
47. *Supra* n. 2 at 572, quoting Lord Russell of Killowen in *Regal (Hastings) Ltd. v. Gulliver*, [1942] 1 All E.R. 378 (H.L.), at 389.
48. *King v. Justices of Sunderland*, [1901] 2 K.B. 357; *Re L'Abbe and Corporation of Blind River* (1904), 7 O.L.R. 230; *Beer v. Rural Municipality of Fort Garry* (1958), 16 D.L.R. (2d) 316 (Man. C.A.); *Starr et al v. City of Calgary* (1965), 52 D.L.R. (2d) 726 (Alta. S.C.).
49. *Re L'Abbe and Corporation of Blind River*, *ibid.*; *The King v. Justices of Sunderland*, *ibid.*
50. "The City of Winnipeg Act", s. 10(13).
51. "The Municipal Act", s. 123(1).
52. "The Municipal Act", s. 49(3); "The City of Winnipeg Act", s. 88(1).

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53. The Ontario *Municipal Conflict of Interest Act, 1972, supra* n.7, s. 2(3) contains the following provision: "The interest of any spouse, son, daughter, or any other relative of a member of council . . . who has the same home as such member, shall if known to the member, be deemed . . . to be also an interest of the member". In England, *supra* n. 6, s. 95(3), only the interest of a spouse living with the councillor is deemed to be the councillor's interest; there is no provision respecting children or other persons residing in the councillor's household.
 54. *Supra* n. 6, s. 95.
 55. *Supra* n. 6, s. 95(2).
 56. *Supra* n. 6, ss. 98(2) and 270(1).
 57. *Supra* n. 9, at 44.
 58. *Ibid.*
 59. *Supra* n. 7, s. 2(1).
 60. *Supra* n. 9, at 13.
 61. The Association of Municipalities of Ontario, "Report on Municipal Conflict of Interest", 1979, 5.
 62. All of the following statutes contain a basic rule prohibiting contracting, which in each case is subject to many exceptions. In British Columbia, "*The Municipal Act*", R.S.B.C. 1979, c. 290, ss. 82(1)(c) and 93, and *The Vancouver Charter*, S.B.C. 1953, c. 44, as am., ss. 38 and 39; in Alberta, *Municipal Government Act*, R.S.A. 1970, c. 204, as am., s. 29; in Saskatchewan, *The Urban Municipality Act*, R.S.S. 1978, c. U-10, ss. 40(1)(h) and 40(2), and *The Rural Municipality Act*, R.S.S. 1978, c. R-26, ss. 25(1) and 27; in Quebec, *The Municipal Bribery and Corruption Act*, R.S.Q. 1964, c. 173, as am., ss. 3 and 4; in Nova Scotia, *The Municipal Elections Act*, C.S.N.S., c. M28, ss. 16(1)(e) and 17; in Prince Edward Island, *The Town Act*, S.P.E.I., c. T-4, s. 20(4).
 63. "*The Municipal Act*", s. 47(m); "*The City of Winnipeg Act*", s. 86(1)(m).
 64. "*The Municipal Act*", s. 47(m); "*The City of Winnipeg Act*", s. 86(1)(m).

65. Rogers, Ian MacF., Q.C., "Conflicts of Interest: A Trap for Unwary Politicians", 11 *Osgoode Hall L.J.* (1973) 537.
66. *Barber v. Calvert et al.*, [1969] 71 W.W.R. 124. Affirmed [1971] 2 W.W.R. 401 (Man. C.A.).
67. "Report of the Ontario Committee on Conflicts of Interests", 1968.
68. *Supra* n. 6.
69. *Supra* n.7, s. 2(6).
70. *Supra* n. 8.
71. *Supra* n. 9, at 14-16.
72. *Supra* n.10. However, Saskatchewan requires both the urban and rural councillor to register all land in the municipality, and the adjoining area, owned by him, his spouse or any corporation in which they are interested: *Urban Municipality Act* and *Rural Municipality Act*, *supra* n. 65. Newfoundland, in *The Municipalities Act*, S. Nfld., 1979, c. 33, s. 419, allows municipal councils to require councillors to complete a designated disclosure statement.
73. *Supra* n. 10.
74. *The Conflict of Interest Act*, S. Nfld. 1973, c. 113, as am.
75. *The Conflict of Interest Act*, S.N.B. 1978, c. C-16.1, as am.
76. *The Members of the Legislative Assembly Conflict of Interest Act*, S.S., 1980.
77. An Act respecting the independence of Parliament and conflicts of interest of Senators and Members of the House of Commons and to amend certain other Acts in relation thereto or in consequence thereof, Bill C-6, Fourth Session, 30th Parliament, 27 Elizabeth II, 1978. This Bill was introduced in October of 1978. It received second reading but died on the order paper when Parliament was dissolved in March 1979.
78. An Act respecting Disclosure of Interests in Matters of Public Concern and Conflicts of Interests of Persons Holding Public Office, Bill 37, Second Session, 30th Legislature, 24 Eliz. II, 1975.

79. Legislative Assembly of Manitoba, Debates and Proceedings, June 6, 1975 at 3562-3564; June 10, 1975 at 3695-3715; June 11, 1975 at 3729-3733 and 3755-3766.
80. *Supra* n. 12.
81. *Ibid.*
82. *Supra* n. 9, at 15.
83. *Kenny v. Byrne*, 144 N.J. Super. 243, at 252 (App. Div. 1976) aff'd, 75 N.J. 458 (1976) quoting *Lehrhaupt v. Flynn*, 140 N.J. Super. 240 at 262 (App. Div. 1976).
84. Joint Committee on Pecuniary Interests of Members of Parliament, "Report on Declaration of Interests", No. 182, Sept. 30, 1975, 25.
85. *Supra* n. 11, at 70.
86. *Supra* n. 11, at 72-74.
87. "The Municipal Act", s. 49(6) and s. 69(6.1); "The City of Winnipeg Act", s. 88(4).
88. "The Summary Convictions Act", C.C.S.M. c. S230, s. 4; "The City of Winnipeg Act", s. 138(1).
89. "The Municipal Act", s. 50(1); "The City of Winnipeg Act", s. 90(1).
90. "The City of Winnipeg Act", s. 94(1).
91. "The City of Winnipeg Act", s. 94(2).
92. "The Local Authorities Election Act", C.C.S.M. c. L180, s. 173(1)(c).
93. "The Local Authorities Election Act", s. 173(6).
94. "The Local Authorities Election Act", s. 203.
95. "The Municipal Act", s. 67(3).
96. "The Municipal Act", s. 67(4).
97. "The Local Authorities Election Act" s.151(1).
98. *Municipal Government Act*, R.S.A. 1970, c. 246, as am. s. 32(1).

99. *Ellsworth v. Boisvert, Ellsworth v. Miller and Jantzi*, [1974] 2 W.W.R. 251 (Alta. S.C., App. Div.) at 252-3.
100. The Ontario *Municipal Conflict of Interest 1972*, supra n. 7, s. 5(1), provides that a judge may impose a seven year disqualification upon a councillor who has contravened the oral disclosure provisions. The Association of Municipalities of Ontario, supra n. 61, at 44, has recommended that the Act be amended to also allow the judge to order restitution if the contravention of the law has resulted in personal financial gain, and to impose a fine of \$10,000 if a contravention was made for the purpose of financial gain.
101. *Supra* n. 98, s. 32.1.
102. *Supra* n. 7, s. 5(2). The Ontario legislation also provides that a councillor is not disqualified if a judge finds that "the interest of the member is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member . . .".
103. "*The Municipal Act*", s. 67(4); "*The City of Winnipeg Act*", s. 94(2).
104. *Supra* n. 98, s. 32.2.

APPENDIX A

"THE CITY OF WINNIPEG ACT"

Interested members excluded from debate.

10 (13) A member of council who has a personal pecuniary interest beyond his interest as an ordinary ratepayer in any question shall not

- (a) take part in the discussion of the question in council or any committee thereof; or
- (b) vote on the question in council or any committee thereof.

Declaration by certain officers.

77 Every councillor and every officer appointed by the council and every constable duly appointed under this Act, shall before entering the duties of his office, make and subscribe a statutory declaration to the following effect:

I, A.B., do solemnly promise and declare that I will truly, faithfully, and impartially, to the best of my knowledge and ability, execute the office of (insert the name of the office) to which I have been elected (or appointed) in the city, and that I have not received and will not receive any payment or reward, or promise thereof for the execution of any partiality or corruption or other undue execution of the office, and that I have not by myself or partner, either directly or indirectly, any interest in any contract with or on behalf of the city.

S.M. 1971, c. 105, s. 77.

Qualification of candidates.

85 The following persons and no others are eligible to be nominated for election or to be elected as members of the council; namely any person who is

- (a) a Canadian citizen;
- (b) of the full age of 18 years;
- (c) an elector;
- (d) a resident who has resided in the city, or in the case of the election of the first council, in an area municipality for a period of six months immediately prior to his being nominated;

and is not subject to any disqualification under this Act.

S.M. 1971, c. 105, s. 85.

Persons disqualified.

86 (1) None of the following persons is qualified to be nominated for election to, or to be, or remain a member of, the council; that is to say:

- (a) A judge of any County Court, the Court of Queen's Bench, or The Court of Appeal.
- (b) A magistrate or justice of the peace.
- (c) A gaoler, superintendent of any correctional institution, sheriff, deputy sheriff, sheriff's bailiff, or bailiff of any court.
- (d) A police constable of the city or an area municipality.
- (e) An assessor, collector, treasurer, clerk, or other paid official or employee of the city, or of an area municipality.
- (f) A clerk of a County Court.
- (g) A master, registrar, referee in chambers.

- (h) A surety for an officer or an employee of the city or of an area municipality.
- (i) A person who is an undischarged bankrupt or insolvent within the meaning of the Bankruptcy Act (Canada).
- (j) A member of the council of another municipality.
- (k) A member of the Senate or House of Commons of the Parliament of Canada.
- (l) Repealed, S.M. 1972, c. 93, s. 20.
- (m) Subject to section 87 any person who, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, holds or enjoys, undertakes or executes, or has an interest in any contract or agreement, expressed or implied, with or for the city or any officer of the city on its behalf, for which money of the city is, or is to be, paid to or for him, or on his behalf, or for his benefit.
- (n) Any person who, having been convicted of an offence under any provision of this Act, or any other Act, has not paid any fine imposed upon him for commission of the offence.
- (o) A person who, subsequent to his election ceases to be, or to be deemed to be, a resident of the city.
Am. S.M. 1972, c. 93, s. 20.

Election of 2 offices invalid.

86 (2) If a person has been nominated in an election for election as the mayor, he may not be nominated in that election for election as a councillor and, if a person is nominated in an election for election as councillor in a ward, he may not be nominated in that election as mayor or as councillor in another ward.

Election of M.L.A. to council.

86 (3) If a member of the Legislative Assembly is elected as a member of the council, he ipso facto forfeits his seat in the assembly and is disqualified from sitting and voting in the assembly.

Election of councillor as M.L.A.

86 (4) If a member of the council is elected to the Legislative Assembly, he ipso facto forfeits his seat on the council and is disqualified from sitting on and voting in the council.

Election of M.L.A. as mayor.

86 (5) If a member of the Legislative Assembly is elected as mayor, he ipso facto forfeits his seat in the assembly and is disqualified from sitting and voting in the assembly.

Election of mayor as M.L.A.

86 (6) If the mayor is elected to the Legislative Assembly, he ipso facto forfeits his position as mayor.
S.M. 1971, c. 105, s. 86; Am. S.M. 1972, c. 93, s. 20; S.M. 1977, c. 64, s. 40.

Contracts which do not invalidate membership of councillors.

87 (1) Nothing herein renders any person ineligible to be nominated for, or elected as a member of the council, or disqualifies him being or remaining a member of, or from sitting or voting in, the council by reason only of his being a person

- (a) who, previous to the time of his nomination to the council,
 - (i) has given a mortgage on land to the city; or
 - (ii) has purchased land under an agreement for sale from the city; or
 - (iii) has leased land from the city;
- if there are no arrears upon the mortgage, agreement, or lease; or

- (b) who previous to the time of his nomination, became a lessee from, or a tenant of, the city under a lease or tenancy agreement that continues after his election, whether by formal renewal or not;
- (c) who enters into a contract with the city for the supply, provision, or sale to him of a utility, service, or article of merchandise administered, provided, or sold by the city; or
- (d) who enters into a contract with the city for payment of sewer or water rates or rents, or for the installation by the city of sewer or water connections or appliances; or
- (e) who enters into a contract with the city for the construction for himself, together with other persons, of any local improvement by the city; or
- (f) who makes with the city a contract or agreement for the provision of a temporary place of reception for persons infected with any contagious disease or disease dangerous to the public health, under The Public Health Act, or for supplies for such a place; or
- (g) who is the proprietor of, or otherwise interested in, a newspaper or other periodical publication in which official notices or advertisements by the city are inserted, or which is subscribed for by the city, unless the notices or advertisements or subscriptions are paid for at rates greater than usual rates; or
- (h) whose property or any part thereof is wholly or partially exempt from taxation, whether the exemption is statutory or founded on an agreement with the city or on a by-law; or
- (i) who is the holder of bonds or debentures of the city; or
- (j) who is a contractor for the loan of money, or of securities for the payment of money, to the city, after public competition, or who purchases or becomes the holder of securities of the city, on terms common to all persons; or
- (k) not being an employee, servant, or agent of the city, who receives from his employer remuneration for services or out-of-pocket expenses the cost of which is defrayed, in whole or in part, directly or indirectly, from grants made to his employer by the city; or
- (l) who receives, or has received, or agreed to receive, compensation with respect to any property taken or purchased by the city under its powers of expropriation.

Shareholders in corporation excepted.

87 (2) No person, while a member of the council, is disqualified from holding office by reason of his being a shareholder in a corporation having dealings or contracts with the city, unless,

- (a) directly or indirectly, he owns, or is entitled to a beneficial interest in, twenty-five per cent or more of the issued capital stock of the corporation; or
- (b) he is manager, managing director, general manager, or secretary, thereof or other similar senior or executive official thereof, or devotes his whole time, or the major portion of his time, to the direction of the affairs of the corporation; and
- (c) the dealings or contracts mentioned herein involve considerations or amounts exceeding in the aggregate more than one thousand dollars in any one year.

Am. S.M. 1972, c. 93, s. 21.

Member of council solicitor in action.

87 (3) A member of the council who, either himself or by or with or through another, is counsel or solicitor in the prosecution of any claim, action or proceeding against the city or in opposing or defending any claim, action or proceeding by the city, shall thereby forfeit his seat.

En. S.M. 1972, c. 93, s. 22
S.M. 1971, c. 105, s. 87; Am. S.M. 1972, c. 93, ss. 21 & 22.

Voting by certain members prohibited.

88 (1) No member of the council who is a shareholder in a corporation having dealings or contracts with the city shall vote in the council or any committee thereof on any question affecting that corporation; and no member of the council who has entered into any mortgage, agreement for sale, lease, purchase or contract is entitled to vote in the council or any committee thereof on any question affecting the mortgage, agreement for sale, lease, purchase or contract.

Proprietor of newspaper prohibited from voting.

88 (2) No person who is a proprietor of, or otherwise interested in, a newspaper or other periodical publication to which clause (g) of subsection (1) of section 87 applies shall vote in the council or in any committee thereof upon any question affecting his dealings with the city.

Voting by persons whose property is exempt prohibited.

88 (3) No person whose property is exempt from taxation as provided in clause (h) of subsection (1) of section 87 shall vote in the council or in any committee thereof on any question affecting that property.

Members violating to forfeit seat and incur penalty.

88 (4) Any person violating any provision of subsection (1), (2), or (3), ipso facto, forfeits his seat in the council and, upon summary conviction for any such violation, is liable to a fine of not more than three hundred dollars and in default of payment, to imprisonment for a period of not more than six months.

Contracts by members with the city void.

88 (5) Where a member of the council, either in his own name or in the name of another, and either alone or jointly with another, enters into a contract or transaction of any kind, or makes a purchase or sale, by reason of which he is disqualified from holding that office, the contract, transaction, purchase, or sale, unless it is one permitted by this Act, is void in any action thereon against the city; and in addition thereto, the member is guilty of an offence.

S.M. 1971, c. 105, s. 88.

Councillors acting on boards, commissions, etc.

88.1 Any person who, while a member of the council, is appointed by the council to be a member of a board, commission or other body, is not by reason of that appointment precluded from taking part in council, or a committee thereof, in the consideration or discussion of any question relating to the affairs of that board, commission or other body and may vote in council or a committee thereof on any such question.

En. S.M. 1978, c. 53, s. 12.

Councillors voting on boards, commissions, etc.

88.1 (2) No member of council who, while a member of council, is appointed by the council to be a member of a board, commission or other body, shall vote on that board, commission or body on any question affecting any mortgage, agreement for sale, lease, purchase, contract or dealing

- (a) to which the member is a party; or
- (b) to which a corporation of which the member is a shareholder is a party.

Making or approval of unauthorized expenditures an offence.

89 (1) Any member of the council who

- (a) expends or authorizes the expenditure of any moneys of the city without having first been empowered so to do by by-law or resolution of the council passed under the authority of an Act of the Legislature; or
- (b) accepts, or votes in favour of paying to any person, including a member of the council, any amount not authorized by this Act or any other Act, or any amount for any purpose greater than is permitted by this Act or any other Act;

is guilty of an offence, and for each such offence is liable, on summary conviction, to a fine of not more than five hundred dollars and, in default of payment, to imprisonment for not more than six months.

Civil liability.

89 (2) A member of council who commits an offence under subsection (1) is, in addition to any penalty he may incur under that subsection, liable to the city for the full amount of the expenditure or payment in a civil action instituted against him by the city or by any elector thereof on behalf of, and for the benefit of, the city.

Note: Bribery of Member of Municipal Council or Officer of Municipality — See sec. 104 of the Criminal Code (Canada).

Certain exceptions.

89 (3) Clause (a) of subsection (1) does not apply

- (a) to any case where the expenditure of an amount not exceeding one thousand dollars is necessary and urgent
 - (i) to repair any public work of the city; or
 - (ii) for aiding any person in need within the city; or
- (b) to an expenditure made in respect of a civil disaster where, under The Emergency Measures Act, a proclamation has issued proclaiming that a state of civil disaster exists in an area that comprises or includes the city or that part thereof in respect of which the expenditure is made.

Authorization.

89 (4) An expenditure shall not be made in a case to which subsection (3) applies, unless, before the expenditure is made, the head of the council authorizes the expenditure.

S.M. 1971, c. 105, s. 89.

Disqualification for certain criminal offences, etc.

90 (1) Any person convicted under section 89 of this Act or under section 104 of the Criminal Code (Canada) or against whom a judgment is obtained in a civil action instituted under section 89 from the date of the conviction, or of the judgment against him in a civil action, forfeits his seat on the council, and is disqualified from holding any municipal office or voting at a municipal election for a period of three years from the date of the conviction or judgment.

Am. S.M. 1972, c. 93, s. 23; S.M. 1974, c. 73, s. 5.

Disqualification for election offences.

90 (2) Any candidate elected, who, upon the trial of an election petition, is found guilty by the judge of any election offence is ineligible as a candidate at any election for three years thereafter.

S.M. 1971, c. 105, s. 90.
Am. S.M. 1972, c. 93, s. 23; S.M. 1974, c. 73, s. 5.

Division of wards into polls.

91 The returning officer may divide any ward into 2 or more polling subdivisions, and a list of electors for each such polling subdivision shall be prepared in accordance with The Local Authorities Elections Act.

En. S.M. 1974, c. 74, s. 18.

Declaration of qualification and office.

92 (1) Every person elected as a member of the council shall

- (a) before he takes the declaration of office make and subscribe a declaration of qualification in Form 2 of The Municipal Act; and
- (b) before he enters on the duties of his office make and subscribe a declaration in Form 3 of The Municipal Act.

Deposit of declaration with clerk.

92 (2) A person who makes a declaration required under subsection (1) shall deposit it duly completed with the clerk of the council.

Failure to complete declaration an offence.

92 (3) Any person who is elected as a member of the council and has not resigned or disclaimed office, and who does not, at or before the first meeting of the council after he is elected, and which he attends, make the declaration required under subsection (1), is guilty of an offence.

S.M. 1971, c. 105, s. 92.

Vacating of seats by crime, insolvency, absence, etc.

93 Where, after the election of a person as member of council he

- (a) is convicted of any indictable offence, upon conviction of which a person is liable to imprisonment for five years; or
- (b) fails to attend three consecutive regular meetings of the council without being authorized so to do by a resolution of the council entered in its minutes; or
- (c) becomes, under this Act, disqualified for election as, or to be or remain, a member of the council;

he thereby forfeits his seat on the council.

S.M. 1971, c. 105, s. 93.

Disclaimer upon forfeiture of seat.

94 (1) Where a member of the council forfeits his seat on the council or his right thereto, or becomes disqualified to hold his seat, he shall forthwith vacate his seat by disclaimer.

Proceedings to unseat member.

94 (2) Where a person to whom subsection (1) applies refuses, neglects, omits, or fails to comply with that subsection at any time after his election, proceedings to unseat him may be taken by an election petition presented to a judge at any time during the term for which he is elected after the date of the alleged disqualification or forfeiture.

Note: Disclaimer of Seat after Election — See sec. 186 of The Local Authorities Election Act. Proceedings to Unseat Disqualified Member — See sec. 151 et seq. of The Local Authorities Election Act.
S.M. 1971, c. 105, s. 94.

"THE MUNICIPAL ACT"

Qualification of candidates.

46 Subject as herein provided, no person is eligible for election as mayor or reeve, or as alderman or councillor, of a municipality unless at the time of his being nominated

- (a) he is a Canadian citizen;
- (b) he is of the full age of eighteen years;
- (c) he is an elector of the municipality;
- (d) he is a resident
 - (i) of the municipality; or
 - (ii) in the case of an election of a councillor of a municipality divided into wards, of the ward as a representative of which he seeks to be elected;
- (e) except in the case of a municipality to which subsection 45(2) applies, he has been a resident of the municipality for a period of not less than six months; and
- (f) he is not subject to any disqualification under this Act.

En. S.M. 1974, c. 7, s. 1.

Subdivision II

DISQUALIFICATION AND FORFEITURE OF SEAT

Persons disqualified.

47 Subject to sections 48 and 49, none of the following persons is qualified to sit or act as, or remain a member of, the council of a municipality; that is to say:

- (a) A judge of any County Court, the Court of Queen's Bench, or The Court of Appeal.
- (b) A magistrate or justice of the peace.
- (c) Repealed, S.M. 1977, c. 22, s. 7.
- (d) A constable of any municipality.
- (e) An assessor, collector, treasurer, clerk, or other paid official or employee of the municipality.
- (f) Repealed, S.M. 1977, c. 22, s. 7.
- (g) Repealed, S.M. 1977, c. 22, s. 7.
- (h) A surety for an officer or an employee of the municipality.
- (i) A person who is an undischarged bankrupt or insolvent in the meaning of the Bankruptcy Act (Canada).
- (j) A member of the council of another municipality.
- (k) A member of the Senate or House of Commons of the Parliament of Canada.
- (l) A person who has been nominated as a member of the council of another municipality.
- (m) Subject to section 49, any person who, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, holds or enjoys, undertakes or executes, or has an interest in any contract or agreement, expressed or implied, with or for the municipality or any officer of the municipality on its behalf, for which money of the municipality is, or is to be, paid to or for him, or on his behalf, or for his benefit.

(n) Any person who, having been convicted of an offence under any provision of this Act, or any other Act, has not paid any fine imposed upon him for commission of the offence.

(o) A person who, subsequent to his election as mayor or reeve, or alderman or councillor, as the case may be, ceases to be, or to be deemed to be, under this Division

(i) a resident of the municipality; or

(ii) in the case of an alderman or councillor in a municipality divided into wards, a resident of the ward that he was elected to represent.

S.M. 1970, c. 100, s. 47.

Am. S.M. 1972, c. 22, s. 9; Am. S.M. 1976, c. 39, s. 4; Am. S.M. 1977, c. 22, s. 7.

See R.S.M. 1954, c. 173, s. 303(1); am. S.M. 1964, (1st Sess.), c. 31, s. 4; am.

Election to two offices invalid.

48 (1) No person is eligible for nomination for, election as, or to be, both mayor and alderman, or both reeve and councillor, and no person is eligible for election as alderman or councillor in more than one ward.

See R.S.M. 1954, c. 173, s. 303(2), (3), (4); am. W.C. 10(2); am.

48 (2) Repealed by S.M. 1976, c. 39, s. 5.

Restriction of eligibility of councillors.

48 (3) No member of council is eligible to be nominated for, or to be elected as, mayor or reeve, at a by-election, being an election other than a regular election, unless he has, at least 2 weeks before nomination day, resigned his seat on the council, to take effect on the day previous to election day, by delivery to the clerk of his resignation in writing signed by him.

S.M. 1970, c. 100, s. 48; Am. S.M. 1976, c. 39, s. 6.

See R.S.M. 1954, c. 173, s. 117; am.

Am. S.M. 1972, c. 22, s. 10; Am. S.M. 1976, c. 39, ss. 5 - 6.

Note: Tenure of Office of Substituted Member — See sec. 103 et seq.

Contracts which do not invalidate membership of councils.

49 (1) Nothing herein renders any person ineligible to be nominated for, or elected as a member of the council, or disqualifies him being or remaining a member of, or from sitting or voting in, the council by reason only of his being a person

(a) who, previous to the time of his nomination, or of his appointment to the council,

(i) has given a mortgage on land to the municipality; or

(ii) has purchased land under an agreement for sale from the municipality; or

(iii) has leased land from the municipality; or

(b) who, previous to the time of his nomination, became a lessee from, or a tenant of, the municipality under a lease or tenancy agreement that continues after his election, whether by formal renewal or not;

(c) who purchases from the municipality seed grain, fodder, or motive fuel under this Act, or any other Act; or

- (d) who enters into a contract with the municipality for the supply, provision, or sale to him of a utility, service, or article of merchandise administered, provided, or sold by the municipality; or
- (e) who enters into a contract with the municipality for payment of sewer or water rates or rents, or for the installation by the municipality of sewer or water connections or appliances; or
- (f) who enters into a contract with the municipality for the construction for himself, together with other persons, of any local improvement by the municipality; or
- (g) who makes with the municipality a contract or agreement for the provision of a temporary place of reception for persons infected with any contagious disease or disease dangerous to the public health, under The Public Health Act, or for supplies for such a place; or
- (h) who is the proprietor of, or otherwise interested in, a newspaper or other periodical publication in which official notices or advertisements by the municipality are inserted, or which is subscribed for by the municipality, unless the notices or advertisements or subscriptions are paid for at rates greater than usual rates; or
- (i) whose property or any part thereof is wholly or partially exempt from taxation, whether the exemption is statutory or founded on an agreement with the municipality or on a by-law; or
- (j) who is the holder of bonds or debentures of the municipality; or
- (k) who is a contractor for the loan of money, or of securities for the payment of money, to the municipality, after public competition, or who purchases or becomes the holder of securities of the municipality, on terms common to all persons; or
- (l) not being an employee, servant, or agent of the municipality, who receives from his employer remuneration for services or out-of-pocket expenses the cost of which is defrayed, in whole or in part, directly or indirectly, from grants made to his employer by the municipality; or
- (m) who receives, or has received, or agreed to receive, compensation with respect to any property expropriated from him by the municipality; or
- (n) who is a party to or a shareholder or agent in a corporation that is a party to a contract approved by resolution under subsection (2.1).

Am. S.M. 1971, c. 27, s. 4; S.M. 1971, c. 81, s. 1; Am. S.M. 1976, c. 39, s. 7 & c. 60, s. 2.

Shareholders in corporations excepted.

49 (2) No person, while a member of the council of a municipality, is disqualified from holding office by reason of his being a shareholder in a corporation having dealings or contracts with the municipality, unless,

- (a) directly or indirectly, he owns, or is entitled to a beneficial interest in, twenty-five per cent or more of the issued capital stock of the corporation; or
- (b) he is manager, managing director or other director, general manager, or secretary, thereof, or other similar senior or executive official thereof, or devotes his whole time, or the major portion of his time, to the direction of the affairs of the corporation; and
- (c) the dealings or contracts mentioned herein involve considerations or amounts exceeding in the aggregate more than one thousand dollars in any one year.

See W.C. s. 12(1) (a); am.

Approval of certain contracts.

49 (2.1) The council of a municipality may, by resolution, approve a contract between a municipality and a member of the council or a corporation in which a member of the council is a shareholder or a corporation for whom a member of the council is an agent, if

- (a) a copy of the resolution was published and posted up in the municipality at least 7 days before it is passed;
- (b) where the contract involves the purchase of goods and services or either by the municipality, the value of the consideration passing to the member of the council or the corporation under the contract does not exceed \$100.00 or the contract was let on tender and the tender of the member of the council or the corporation is the lowest;
- (c) where the contract involves the sale of goods and services or either by the municipality, the value of the consideration passing to the municipality under the contract does not exceed \$100.00 or the contract was let on tender and the tender of the member of the council or the corporation is the highest; and
- (d) the member of council does not vote on the resolution;

and the municipality shall send a copy of the resolution to the minister within 7 days after it is passed.

En. S.M. 1976, c. 60, s. 3.

Voting by certain members prohibited.

49 (3) No member of the council of a municipality who owns or has a beneficial interest in more than five per cent of the capital stock of a corporation having dealings or contracts with the municipality shall vote in the council or any committee thereof on any question affecting that corporation; and no member of the council of a municipality who has entered into any mortgage, agreement for sale, lease, purchase, or contract to which subsection (1) applies is entitled to vote in the council or any committee thereof on any question affecting the mortgage, agreement for sale, lease, purchase, or contract.

Proprietor of newspaper prohibited from voting.

49 (4) No person who is a proprietor of, or otherwise interested in, a newspaper or other periodical publication to which clause (h) of subsection (1) applies shall vote in the council or any committee thereof upon any question affecting his dealings with the municipality.

Voting by persons whose property is exempt prohibited.

49 (5) No person whose property is exempt from taxation as provided in clause (i) of subsection (1) shall vote in the council or any committee thereof on any question affecting that property

Violator to forfeit seat.

49 (6) Any member of council who violates any provision of subsection (3), (4), or (5) forfeits his seat in the council.

Offence.

49 (6.1) Every member of council who violates or contravenes any provision of subsection (3), (4), or (5), is guilty of an offence and liable, upon summary conviction, to a fine of not more than three hundred dollars and in default of payment to imprisonment for a period of not more than six months.

En. S.M. 1972, c. 41, s. 1.

Note: Election Petition to Unseat — See sec. 151 — The Local Authorities Election Act.

Contracts by members with the municipality void.

49 (7) Where a member of the council of a municipality, either in his own name or in the name of another, and either alone or jointly with another, enters into a contract or transaction of any kind, or makes a purchase or sale, by reason of which he is disqualified from holding that office, the contract, transaction, purchase, or sale, unless it is one permitted by this Act, is void in any action thereon against the municipality; and in addition thereto, the member is guilty of an offence.

S.M. 1970, c. 100, s. 49; Am. S.M. 1971, c. 27, s. 4; S.M. 1971, c. 81, ss. 1 & 2;

Am. S.M. 1972, c. 41, s. 1; S.M. 1974, c. 33, s. 5.

See W.C. s. 13; am. R.S.M. 1954, c. 173, s. 304; am; Am. S.M. 1976, c. 39, s. 7 & c. 60, ss. 2 & 3.

Forfeiture on conviction or judgment.

50 (1) Any member of council

- (a) who is convicted of an offence under subsection (6.1) of section 49, or under section 124, or under section 112 of the Criminal Code (Canada); or
- (b) who is convicted of an indictable offence, upon conviction of which a person is liable to imprisonment for five or more years; or
- (c) against whom a judgment is obtained in a civil action under section 124; or
- (d) against whom any conviction mentioned in clause (a) or (b) or judgment mentioned in clause (c) is upheld or confirmed by a judgment on an appeal;

shall not attend in the capacity of a member of the council, or sit or vote at, any meeting of the council or meeting of a committee of the council or perform any duty or function or exercise any right or privilege of a member of the council until the conviction or judgment is quashed, reversed or set aside on appeal or by prerogative writ; and

- (e) where there is no appeal permitted from the conviction or judgment he forfeits his seat on the council as of the day of the conviction or on which the judgment is delivered; and
- (f) where no appeal against the conviction or judgment is commenced within thirty days after the day of the conviction or on which the judgment was delivered, he forfeits his seat on the council as of the thirty-first day after the day of the conviction or on which the judgment was delivered.

En. S.M. 1972, c. 41, s. 2.

No stay of forfeiture.

50 (2) No court shall give any order that would have the effect of staying or delaying the application or effect of subsection (1).

En. S.M. 1972, c. 41, s. 2.

Vacating of seats by crime, insolvency, absence, etc.

66 Where, after the election of a person as member of a council of a municipality, he

(a) Repealed, S.M. 1972, c. 41, s. 4.

(b) Repealed, S.M. 1971, c. 27, s. 10.

(c) fails, except where prohibited from attending under section 50, to attend three consecutive regular meetings of the council without being authorized so to do by a resolution of the council entered in its minutes; or

(d) becomes, under section 46 or 47, disqualified for election as, or to be or remain, a member of the council;

he thereby forfeits his seat on the council.

S.M. 1970, c. 100, s. 66; Am. S.M. 1971, c. 27, s. 10; Am. S.M. 1972, c. 41, s. 4.

See R.S.M. 1954, c. 173, s. 281; am. S.M. 1955, c. 46, s. 10; am.

Note: Disqualification of Person to be Member — See secs. 46 and 47.

Meaning of "liable to" — See Rex. vs. Robinson (1951) S.C.R. 522.

Resolution on forfeiture for non-attendance.

66.1 (1) Where a member forfeits his seat under clause 66 (c), the council of the municipality may, by resolution, request the minister to declare that the member has forfeited his seat and that the seat is vacant.

En. S.M. 1977, c. 22, s. 10.

Declaration by minister.

66.1 (2) Upon receiving a request from the council of a municipality to declare that a member has forfeited his seat under clause 66 (c) and that the seat is vacant, the minister may, without any notice to the member and without holding any hearing, make the declaration and thereupon he shall notify the municipality of his declaration and shall send a copy of the notice by registered mail to the member addressed to his address as shown in the records of the municipality.

En. S.M. 1977, c. 22, s. 10.

Finality of declaration.

66.1 (3) Any member of the council of the municipality, or the member who has been declared to have forfeited his seat, may appeal a declaration made under subsection (2) to the County Court of the County Court District in which the municipality or any part thereof is situated within 30 days of the date the declaration was made, and, if the declaration is not appealed within that time, it is final and binding on all persons.

En. S.M. 1977, c. 22, s. 10.

Right to take election petition.

66.1 (4) Nothing in this section prevents a person from proceeding to unseat a member who has forfeited his seat under clause 66 (c) by an election petition.

En. S.M. 1977, c. 22, s. 10.

Where court to declare seat vacant.

67 (1) Where in any proceeding a court finds that a member of a council has forfeited his seat or is disqualified from holding his seat,

(a) where there is no appeal permitted from the finding, the seat is thereupon vacant; and

(b) where no appeal against the finding is commenced within thirty days after the finding was handed down, the seat is vacant as of the thirty-first day after the day on which the finding was handed down.

En. S.M. 1972, c. 41, s. 5.

Declaration of vacancy on conviction.

67 (2) Where a member of council forfeits his seat under section 50, the seat is ipso facto vacant.

En. S.M. 1972, c. 41, s. 5.

Disclaimer by member.

67 (3) Where a member of council does any act or thing for which he forfeits his seat, or for which he becomes disqualified from holding his seat, he may disclaim his seat by filing with the clerk of the municipality a disclaimer in writing; and thereupon the seat is vacant.

En. S.M. 1972, c. 41, s. 5.

Election petition to unseat member.

67 (4) Where a member of council does any act or thing for which he forfeits his seat or is disqualified from holding his seat, and subsections (1) and (2) do not apply and he does not disclaim his seat under subsection (3), proceedings to unseat him may be taken by an election petition presented to a judge at any time during the term for which he is elected after the date of the alleged forfeiture or disqualification.

En. S.M. 1972, c. 41, s. 5.

Note: Disclaimer of Seat after Election — See sec. 186 of The Local Authorities Election Act. Proceedings to Unseat Disqualified Member — See sec. 151 et seq. of The Local Authorities Election Act.

Where council does not have quorum.

67.1 (1) Where the membership of a council is reduced by reason of a member not attending meetings because of the requirements of subsection 50 (1) or by vacancies, caused by any reason, to less than the quorum required under any other provision of this or any other Act of the Legislature to conduct the business of the council, the minister

(a) if he is satisfied that elections will be held to fill the vacancies within four months of the time the membership was first reduced below the quorum, may by written order reduce the quorum of the council below the quorum otherwise required, but not below three members, until the vacancies are filled; or

(b) may by his order appoint a temporary administrator for the municipality to act and suspend the powers, duties, rights and authorities of the council and the remaining members of council until the vacancies are filled.

En. S.M. 1972, c. 41, s. 6; Am. S.M. 1974, c. 7, s. 3.

Act on reduced quorum.

67.1 (2) Where the minister reduces the quorum under clause (a) of subsection (1), the council may conduct business at any meeting at which there are present the number of members required to meet the reduced quorum ordered by the minister as though there were present a quorum as required by any other provision of this Act or any other Act of the Legislature.

En. S.M. 1972, c. 41, s. 6.

Powers and duties of temporary administrator.

67.1 (3) A temporary administrator appointed for a municipality under clause (b) of subsection (1) has all the powers, duties, rights and authority of an administrator appointed under section 532 and Subdivision II of Division VI of Part VIII, except sections 532 and 546, applies mutatis mutandis to the municipality and the temporary administrator.

En. S.M. 1972, c. 41, s. 6.

Council not qualified to act.

67.1 (4) While an order made under clause (b) of subsection (1) is in force respecting a municipality, the council is not qualified to act for, or on behalf of, the municipality, or to exercise any of the functions, powers or authority vested in councils under this or any other Act of the Legislature, and all officers and employees of the municipality are subject to the control of the temporary administrator.

En. S.M. 1972, c. 41, s. 6.

Revocation of order.

67.1 (5) Where the minister revokes an order made under subsection (1), the council of the municipality in respect of which the order was made shall resume the performance of its duties and the exercise of its powers, rights and authority in accordance with the other provisions of this Act.

En. S.M. 1972, c. 41, s. 6; Am. S.M. 1974, c. 7, s. 3.

Any member may resign.

68 (1) Any member of a council may resign his seat as such a member.

68 (2) Repealed by S.M. 1976, c. 39, s. 10.

Form of resignation.

68 (3) A resignation by a member of a council under subsection (1) shall be in writing, dated, and signed by the member; and shall be delivered to the clerk.

Am. S.M. 1976, c. 39, s. 11.

When resignation effective.

68 (4) Except as provided in subsection 48 (3), a resignation under subsection (1) takes effect from the time of its receipt by the clerk of the municipality.

S.M. 1970, c. 100, s. 68; Am. S.M. 1972, c. 22, s. 13; Am. S.M. 1976, c. 39, s. 12.
See R.S.M. 1954, c. 173, s. 283; am; Am. S.M. 1976, c. 39, ss. 10 - 12.

Interested members excluded from debate.

123 (1) No member of a council shall take part in the discussion of, or vote on, any question in which he has a personal and pecuniary interest beyond his interest as an ordinary ratepayer.

Exception.

123 (2) Subsection (1) does not apply to the appointment of a chairman or acting head of the council or to the naming of the members of committees.

S.M. 1970, c. 100, s. 123.

See R.S.M. 1954, c. 173, s. 326; am.

Note: Voting on Contracts when Interested — See secs. 47(m), 49, 123.

Making or approval of expenditures an offence.

124 (1) Any member of the council of a municipality who

(a) expends or authorizes the expenditure of any moneys of the municipality without having first been empowered so to do by by-law or resolution of the council passed under the authority of an Act of the Legislature;
or

(b) accepts, or votes in favour of paying to any person, including a member of the council, any amount not authorized by this Act or any other Act, or any amount for any purpose greater than is permitted by this Act or any other Act;

is guilty of an offence, and for each such offence is liable, on summary conviction, to a fine of not more than five hundred dollars and, in default of payment, to imprisonment for not more than six months.

See S.M. 1960, c. 44, s. 2; S.M. 1963, c. 49, s. 8; am.

Civil liability.

124 (2) A member of council who commits an offence under subsection (1) is, in addition to any penalty he may incur under that subsection, liable to the municipality for the full amount of the expenditure or payment in a civil action instituted against him by the municipality or by any ratepayer thereof on behalf of, and for the benefit of, the municipality.

See S.M. 1963, c. 49, s. 8; am.

Note: Bribery of Member of Municipal Council or Officer of Municipality
— See sec. 104 of the Criminal Code (Canada).

Certain exceptions.

124 (3) Clause (a) of subsection (1) does not apply

- (a) to any case where the expenditure of an amount not exceeding seven hundred and fifty dollars is necessary and urgent
 - (i) to repair any public work of the municipality; or
 - (ii) for aiding any person in need within the municipality; or
- (b) to an expenditure made in respect of a civil disaster where, under The Civil Defence Act, a proclamation has issued proclaiming that a state of civil disaster exists in an area that comprises or includes the municipality, or that part thereof in respect of which the expenditure is made; or
- (c) to any expenditure required to meet regular recurring periodic obligations for the payment of which council has given prior general authority.

Am. S.M. 1971, c. 27, s. 16.

See S.M. 1959, (2nd Sess.), c. 40, s. 1; am.

Authorization.

124 (4) An expenditure shall not be made in a case to which subsection (3) applies, unless, before the expenditure is made, the head of the council authorizes the expenditure.

S.M. 1970, c. 100, s. 124; Am. S.M. 1971, c. 27, s. 16.

See R.S.M. 1954, c. 173, ss. 305(1), (3), (4); am.

APPENDIX B

GREAT BRITAIN

NATIONAL CODE OF LOCAL GOVERNMENT CONDUCT

This Code is a guide for all councillors elected or co-opted to local authorities in England, Wales and Scotland. It supplements both the law enacted by Parliament and the Standing Orders made by individual councils. It has been agreed by the Associations representing local authorities in all three countries and by the Government.

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7. Gifts and hospitality
8. Expenses and allowances
9. Use of council facilities

1. LAW, STANDING ORDERS AND NATIONAL CODE

Make sure that you fully understand the rules of conduct which the law, Standing Orders and the national code require you to follow. It is your personal responsibility to apply their requirements on every relevant occasion. Seek any advice about them that you need from your council's appropriate senior officer or from your own legal adviser.

2. PUBLIC DUTY AND PRIVATE INTEREST

- (i) Your over-riding duty as a councillor is to the whole local community.
- (ii) You have a special duty to your own constituents, including those who did not vote for you.
- (iii) Whenever you have a private or personal interest in any question which councillors have to decide, you must not do anything to let that interest influence the decision.
- (iv) Do nothing as a councillor which you could not justify to the public.
- (v) The reputation of your council, and of your party if you belong to one, depends on your conduct and what the public believes about your conduct.
- (vi) It is not enough to avoid actual impropriety; you should at all times avoid any occasion for suspicion or the appearance of improper conduct.

3. DISCLOSURE OF PECUNIARY AND OTHER INTERESTS

- (i) The law makes specific provision requiring you to disclose pecuniary interests, direct and indirect. But interests which are not pecuniary can be just as important. Kinship, friendship, membership of an association, society, or trade union, trusteeship and many other kinds of relationship can sometimes influence your judgement and give the impression that you might be acting for personal motives. A good test is to ask yourself whether others would think that the interest is of a kind to make this possible. If you think they would, or if you are in doubt, disclose the interest and withdraw from the meeting unless under Standing Orders you are specifically invited to stay.
- (ii) The principles about disclosure of interest should be borne in mind in your unofficial relations with other councillors—at party group meetings, or other informal occasions no less scrupulously than at formal meetings of the council, its committees and sub-committees.

4. MEMBERSHIP AND CHAIRMANSHIP OF COUNCIL COMMITTEES AND SUB-COMMITTEES

(i) You, or some firm or body with which you are personally connected, may have professional business or personal interests within the area for which the council is responsible; such interests may be substantial and closely related to the work of one or more of the council's committees or sub-committees, concerned with (say) planning or developing land, council housing, personnel matters or the letting of contracts for supplies, services or works. Before seeking or accepting membership of any such committee or sub-committee, you should seriously consider whether your membership would involve you (a) in disclosing an interest so often that you could be of little value to the committee or sub-committee, or (b) in weakening public confidence in the impartiality of the committee or sub-committee.

(ii) You should not seek or accept the chairmanship of a committee or sub-committee whose business is closely related to a substantial interest or range of interests of yourself or of any body with which you are associated.

5. COUNCILLORS AND OFFICERS

(i) Both councillors and officers are servants of the public, and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the council and are permanently appointed. An officer's job is to give advice to councillors and the council, and to carry out the council's work under the direction and control of the council and its committees.

(ii) Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual councillor and officer can damage this relationship and prove embarrassing to other councillors and officers.

(iii) If you are called upon to take part in appointing an officer, the only question you should consider is which candidate would best serve the whole council. You should not let your personal or political preferences influence your judgment. You should not canvass the support of colleagues for any candidate and you should resist any attempt by others to canvass yours.

6. USE OF CONFIDENTIAL AND PRIVATE INFORMATION

As a councillor you necessarily acquire much information that has not yet been made public and is still confidential. It is a grave betrayal of trust to use confidential information for the personal advantage of yourself or of anyone known to you.

7. GIFTS AND HOSPITALITY

Treat with extreme caution any offer or gift, favour or hospitality that is made to you personally. The person or organisation making the offer may be doing or seeking to do business with the council, or may be applying to the council for planning permission or some other kind of decision. Working lunches and other social occasions arranged or authorised by the council or by one of its committees or sub-committees may be a proper way of doing business, provided that no extravagance is involved. Nor can there be any hard and fast rule about acceptance or refusal of tokens of goodwill on special occasions. But you are personally responsible for all such decisions and for avoiding the risk of damage to public confidence in local government. The receipt or offer of gifts should be reported to the chief executive.

8. EXPENSES AND ALLOWANCES

There are rules entitling you to claim expenses and allowances in connection with your duties as a councillor. These rules should be scrupulously observed.

9. USE OF COUNCIL FACILITIES

Make sure that any facilities—such as transport, stationery, or secretarial services—provided by the council for your use in your duties as a councillor are used strictly for those duties and for no other purpose.