

Municipal Conflict of Interest Act

CHAPTER 299 OF THE REVISED STATUTES, 1989

as amended by

1991, c. 6, s. 40; 1993, c. 47, s. 6; 1995-96, c. 1, ss. 148, 149;
2018, c. 1, Sch. A, s. 124



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Published by Authority of the Speaker of the House of Assembly
Halifax

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An Act to Prevent Conflict of Interest in the Conduct of Municipal Government

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Short title

1 This Act may be cited as the *Municipal Conflict of Interest Act*. R.S.,
c. 299, s. 1.

Interpretation

2 In this Act,

- (a) “council” means the council of a municipality;
- (b) “elector” means a person entitled to vote at a municipal election in the municipality;
- (c) “interest in common with electors generally” means a pecuniary interest in common with the electors within the area of jurisdiction of the municipality or local board or, where the matter under consideration affects only part of that area, an interest in common with the electors within that part;
- (d) “local board” means any board, commission, committee, body or local authority of any kind established to exercise or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes of a municipality or parts thereof or of two or more municipalities or parts thereof, or to which a municipality or municipalities are required to provide funds, and includes the Conseil scolaire acadien provincial;

APRIL 1, 2018

(e) “meeting” means a regular, special or emergency meeting of a municipality or local board and any committee thereof, and includes informal as well as formal meetings;

(f) “member” means a member, in whatever capacity, of a council or a local board and, for the purposes of Sections 9 and 10, includes a former member;

(g) “municipality” means a city, incorporated town or municipality of a county or district;

(h) “senior officer” means the chairman and vice-chairman of the board of directors of a corporation, the president, vice-president, secretary, treasurer, managing director and general manager of a corporation and any other person who performs functions for the corporation similar to those normally performed by a person occupying any such office;

(i) “spouse” means either of a man and woman who

(i) are married to each other,

(ii) are married to each other by a marriage that is voidable but which has not been voided by order of a court,

(iii) have gone through a form of marriage that is void and have cohabited within the preceding twelve months, or

(iv) are living together as husband and wife;

(j) “substantial interest” means the direct or indirect beneficial ownership of, or the power to exercise control or direction over, equity shares of any corporation that carry more than ten per cent of the voting rights attached to all outstanding equity shares of the corporation. R.S., c. 299, s. 2; 1991, c. 6, s. 40; 1995-96, c. 1, s. 148; 2018, c. 1, Sch. A, s. 124.

Indirect pecuniary interest

3 A member has an indirect pecuniary interest in any matter

(a) if the member or the members nominee

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

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

(iii) is a member of a body, whether incorporated or not, that has an interest in any matter in which the council or local board is concerned; or

(b) if the member is a partner of or associated in a joint venture with a person, or is in the employ of a person or body, whether incorporated or not, that has an interest in any matter in which the council or local board is concerned. R.S., c. 299, s. 3.

Deemed pecuniary interest

- 4** The pecuniary interest of
- (a) the spouse of a member;
 - (b) any son, daughter, father, mother, brother or sister of a member or the members spouse;
 - (c) the spouse of the persons referred to in clause (b); and
 - (d) any other person who normally resides in the same home as the member,

shall, if known to the member or of which the member reasonably should have known, be deemed to be also a pecuniary interest of the member. R.S., c. 299, s. 4.

Act does not apply

- 5 (1)** This Act does not apply to any interest in any matter that a member may have
- (a) as an elector;
 - (b) by reason of being entitled to receive any service, commodity or other benefit offered by the municipality or local board in like matter and subject to the like conditions as are applicable to persons who are not members;
 - (c) by reason of purchasing or owning a debenture or other security issued by the municipality or local board;
 - (d) by reason of having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to the member in like manner as such a deposit is or may be returnable to other electors;
 - (e) by reason of being eligible for election or appointment to fill a vacancy, office or position in the council or local board where the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;
 - (f) by reason of being eligible for appointment, or having been appointed, by the council to a local board;
 - (g) by reason only of being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board;
 - (h) by reason of having been appointed by the council or local board to a board, committee or other body;
 - (i) with respect to any allowance, honorarium, remuneration, salary or benefit to which the member is or may be entitled by reason of being a member or by reason of having been appointed, by the council or local board, to a local board or other board, committee or other body;

(j) by reason of having a pecuniary interest that is an interest in common with electors generally;

(k) by reason only of an interest that is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

(2) This Act does not apply to a council of a city, or a local board of that city, while it has in effect a by-law made pursuant to Section 19 of the *Municipal Elections Act*. R.S., c. 299, s. 5; 1995-96, c. 1, s. 149.

Interested member present at meeting

6 (1) Where a member, either on the members own behalf or while acting for, by, with or through another, has any direct or indirect pecuniary interest in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member shall

(a) as soon as practicable after the commencement of the meeting disclose the interest and the general nature thereof;

(b) withdraw from his place as member and

(i) in the case of a closed meeting, leave the room in which the meeting is held for the duration of the consideration of the matter, and

(ii) in the case of a meeting that is open to the public, either leave the room in which the meeting is held or remain in that part of the room set aside for the general public for the duration of the consideration of the matter;

(c) refrain from taking any part in the consideration or discussion of the matter and from voting on any question relating to the matter; and

(d) refrain from attempting in any way, whether before, during or after the meeting, to influence the decision of the council or local board with respect to the matter.

(2) Where the member was not present at a meeting at which a matter in which the member, either on the members own behalf or while acting for, by, with or through another, has any direct or indirect pecuniary interest was the subject of consideration, the member shall disclose the interest at the next meeting the member attends, and the provisions of subsection (1) shall apply to the member in respect of the matter.

(3) A member shall comply with this Section in respect of any matter in which the member intends to obtain a pecuniary interest, either on the members own behalf or while acting for, by, with or through another. R.S., c. 299, s. 6.

Recording of declaration or disclosure of interest

7 (1) Every declaration of interest and the general nature thereof disclosed pursuant to Section 6 shall be recorded in the minutes of the meeting by the clerk of the municipality or by the secretary of the local board, as the case may be.

(2) The person acting as secretary of any meeting, or the chairman of the meeting if there is no secretary, shall record every disclosure of interest and the general nature thereof in a central record of disclosure.

(3) Every municipality and local board shall keep a central record of disclosure, which shall be open to inspection by any elector without fee at all reasonable times. R.S., c. 299, s. 7.

Reduced quorum

8 (1) Where, by reason of this Act, a council or local board lacks a quorum to consider any particular matter, then, notwithstanding the provisions of any Act or other provision establishing the number of members to constitute a quorum, for the purposes of considering and acting on the matter, a quorum is one third of the council or local board or two members thereof, whichever is greater.

(2) Where, by reason of this Act, a council or local board lacks a quorum pursuant to subsection (1) to consider any particular matter, the council or local board may apply to a judge of the Trial Division of the Supreme Court or a county court for an order authorizing the council or local board to consider and act on the matter.

(3) The judge may, by order, prescribe the terms and conditions pursuant to which the council or local board may consider and act on the matter, and may direct that certain of the members may participate in the consideration of the matter and that certain members may not, as to the judge seems just.

(4) Participation in the consideration of any matter in which a member has a direct or indirect pecuniary interest pursuant to an order of a judge is not a contravention of this Act. R.S., c. 299, s. 8; 1993, c. 47, s. 6.

Application to determine if member in contravention

9 (1) The Attorney General or an elector may apply to a judge of the Trial Division of the Supreme Court or a county court for a determination of whether a member has contravened the provisions of this Act.

(2) An application shall be made by originating notice (application *inter partes*) pursuant to the rules of the court.

(3) The application shall state the grounds on which it is believed that a contravention of this Act may have occurred.

(4) An application shall be made within sixty days after the fact comes to the attention of the applicant that the member may have contravened this Act.

(5) No application may be made pursuant to this Section more than ten years after the date of the alleged contravention of this Act. R.S., c. 299, s. 9.

Forfeiture of office and disqualification

10 (1) Where the judge determines that a member has contravened this Act, the judge shall declare the seat of the member vacant and direct that the vacancy be filled in the manner prescribed by law, but if the judge determines that the contravention was committed as a result of inadvertence or a *bona fide* error in judgment the judge may relieve against such forfeiture of office.

(2) The member found to have contravened this Act shall not be qualified to fill the vacancy so created.

(3) Where the judge determines that a member has contravened this Act, the judge may

(a) disqualify the member from being a member of the council or local board, or any council or local board, for a period of not more than ten years; and

(b) where the contravention has resulted in personal financial gain, require the member to make restitution.

(4) Where the contravention has been made for the purpose of personal financial gain, the judge shall impose a penalty of not more than twenty-five thousand dollars or, in default of payment thereof, imprisonment for a term of not more than twelve months. R.S., c. 299, s. 10.

Appeal

11 (1) An appeal lies from the decision of the judge to the Appeal Division of the Supreme Court in accordance with the rules of court.

(2) No steps shall be taken to fill the seat of a member who has been found to contravene this Act until after the expiration of the time limited for appeal or, if an appeal is brought, until after the appeal has been finally determined. R.S., c. 299, s. 11.

Inquiry

12 (1) If the council or local board by resolution requests that inquiry be made into or concerning

(a) any matter mentioned in the resolution and relating to an alleged malfeasance, breach of trust or other misconduct on the part of a member, an officer or other official, an employee or agent of the municipality or local board, or any person having a contract there-

with, in relation to the duties or obligations of such person to the municipality or local board;

(b) any allegation that a member has contravened the provisions of this Act; or

(c) any matter connected with the good government of the municipality or local board or the conduct of any part of the public business thereof,

the Attorney General shall appoint a judge or some other suitable person to make the inquiry.

(2) The person so appointed shall, with all convenient promptitude, enter upon the inquiry and upon the conclusion thereof, shall report to the Attorney General and to the council or local board the result of the inquiry and the evidence taken thereon.

(3) The person appointed shall have, for the purpose of inquiry, all the powers of a commissioner under the *Public Inquiries Act*.

(4) Such person is entitled to receive and shall be paid such fees as may be fixed and paid by the Attorney General.

(5) The council or board may engage and pay counsel to represent the municipality or local board and may pay all proper witness fees to persons summoned to give evidence at the instance of the municipality or local board.

(6) Any person charged with malfeasance, breach of trust or other misconduct, or whose conduct is called in question, may be represented by counsel. R.S., c. 299, s. 12.

Voidable proceedings where Section 6 contravened

13 (1) The contravention of Section 6 of this Act does not of itself invalidate any proceedings in respect of any matter, but the proceedings in respect of the matter are voidable on application to a judge of the Trial Division of the Supreme Court or of a county court at the instance of the municipality or of the local board within two years after the matter was authorized by the council or local board.

(2) In determining whether any proceedings should be declared void under subsection (1), the judge shall give due consideration to the effect of such declaration on innocent third parties. R.S., c. 299, s. 13.

Certain proceedings only under this Act

14 Proceedings to declare a seat vacant or to disqualify a member by reason of conflict of interest, or to require a member to make restitution where a contravention of this Act has resulted in personal financial gain, shall be had and taken only under the provisions of this Act. R.S., c. 299, s. 14.