



# The Legal Obligation of Councillors

Speaker:

Sheila C. McNaughtan, Q.C.  
Reynolds Mirth Richards & Farmer LLP



## *Municipal Government Act*

Section 3 of the MGA

The purposes of a municipality are:

- a) To provide good government.
- b) To provide services, facilities or other things that, in the opinion of council are necessary or desirable for the municipality.
- c) To develop and maintain safe and viable communities.



## *Municipal Government Act*

### Section 201 of the MGA

The principal role of council is:

- a) Developing and evaluating the policies and programs of the municipality.
- b) Making sure the powers, duties and functions of the municipality are carried out properly.
- c) Carrying out the power, duties and functions given to it under the MGA or any other act.



## *Municipal Government Act*

### Section 153 of the MGA

Councillors have the following duties:

- a) To consider and promote the welfare and interests of the municipality as a whole.
- b) To participate in developing and evaluation the policies and programs of the municipality.
- c) To participate in council meetings and council committee meetings.



## *Municipal Government Act*

- d) To obtain information about the operation or administration of the municipality from the CAO.
- e) To keep in confidence matters discussed in private at council or council committee meetings.
- f) To perform any other duties or functions imposed on councillors.



## *Municipal Government Act*

### Section 154 of the MGA

The Chief Elected Officer must:

- a) Preside when in attendance at council meetings.
- b) Perform any other duty imposed on chief elected official.





## *Municipal Government Act*

- Chief Elected Official is a member of all council committees, unless council decides otherwise.



## **Municipalities**

- Council fills many roles in a municipality.
  - Council is the governing body.
  - Council is the law making body.
  - Council is the policy making body



## Municipalities

- Council establishes rules that govern the “business” of the municipality.
- Administration implements those rules.



## Duties of Councillors

- To attend meetings.
- To vote on issues.
- To disclose pecuniary interests and conflicts of interest.



## Duty of Councillor When Appointed to Another Body

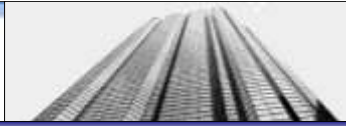
- Duty to vote in best interests of the body to which appointed as a Board Member;
- Duty to bring forward position of the municipality of which is a Councillor;
- Consider all information;
- Vote for position believe is in best interest of the body upon whose Board the Councillor is a member.



## Pecuniary Interest/Conflict of Interest

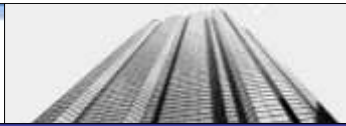
- A councillor will have a pecuniary interest in a matter if the matter could monetarily affect the councillor, the councillor's family or the councillor's employer.





## Pecuniary Interest of Councillors: What is a Pecuniary Interest

- A Councillor has a pecuniary interest in a matter if:
  - a) The matter could monetarily affect the councillor or an employer of the councillor; or
  - b) The councillor knows or should know that the matter could affect the councillor's family.



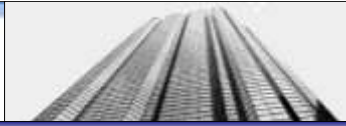
## Pecuniary Interest of Councillors: What is a Pecuniary Interest

A person is monetarily affected by a matter if the matter monetarily affects:

- a) The person directly,
- b) A corporation, other than a distributing corporation, in which the person is a shareholder, director or officer,
- c) A distributing corporation in which the person beneficially owns voting shares carrying at least 10% of the voting rights attached to the voting shares of the corporation or of which the person is a director or officer, or
- d) A partnership or firm of which the person is a member.

*Municipal Government Act, R.S.A. 2000, c. M-26, s. 170(1) and (2)*

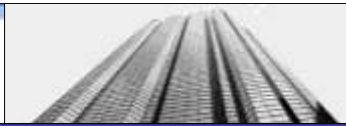




## Pecuniary Interest of Councillors: Case Study I

- School Trustee, *School Act*
- Trustee in adult interdependent relationship with teacher employed by the Board of Trustees
- Trustee participated in motion before the Board to approve incentive payment for early retirement of teachers
- Trustee spoke to her partner about the issue and was assured that her partner did not intend to apply for early retirement

*Howell v. Grande Yellowhead Regional Division #35, 2006 ABQB 387*



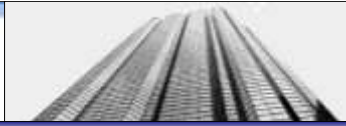
## Pecuniary Interest of Councillors: What is *not* a Pecuniary Interest?

**A councillor does not have a pecuniary interest by reason only of any interest**

- That the councillor, an employer of the councillor or a member of the councillor's family may have as an elector, taxpayer or utility customer of the municipality,
- That the councillor or a member of the councillor's family may have by reason of being appointed by the council as a director of a company incorporated for the purpose of carrying on business for and on behalf of the municipality or by reason of being appointed as the representative of the council on another body,
- That the councillor or member of the councillor's family may have with respect to any allowance, honorarium, remuneration or benefit to which the councillor or member of the councillor's family may be entitled by being appointed by the council to a position described in clause (b),

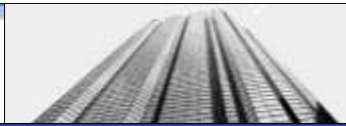
*Municipal Government Act, R.S.A. 2000, c. M-26, s. 170(3)*





## Pecuniary Interest of Councillors: What is *not* a Pecuniary Interest?

- d) That the councillor may have with respect to any allowance, honorarium, remuneration or benefit to which the councillor may be entitled by being a councillor,
- e) That the councillor or a member of the councillor's family may have by being employed by the Government of Canada, the Government of Alberta or a federal or provincial Crown corporation or agency, except with respect to a matter directly affecting the department, corporation or agency of which the councillor or family member is an employee,
- f) That a member of the councillor's family may have by having an employer, other than the municipality, that is monetarily affected by a decision of the municipality,



## Pecuniary Interest of Councillors: What is *not* a Pecuniary Interest?

- g) that the councillor or a member of the councillor's family may have by being a member or director of a non-profit organization as defined in section 241(f) or a service club,
- h) That the councillor or member of the councillor's family may have
  - i. By being appointed as the volunteer chief or other volunteer officer of a fire or ambulance service or emergency measures organization or other volunteer organization or service, or
  - ii. By reason of remuneration received as a volunteer member of any of those voluntary organizations or services.



## Pecuniary Interest of Councillors: What is *not* a Pecuniary Interest?

- i) If the councillor, an employer of the councillor or a member of the councillor's family that is held in common with the majority of electors of the municipality or, if the matter affects only part of the municipality, with the majority of electors in that part,
- j) That is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor, or
- k) That a councillor may have by discussing or voting on a bylaw that applies to businesses or business activities when the councillor, an employer of the councillor or a member of the councillor's family has an interest in a business, unless the only business affected by the bylaw is the business of the councillor, employer of the councillor or the councillor's family.

*Municipal Government Act, R.S.A. 2000, c. M-26, s. 170(3) continued*

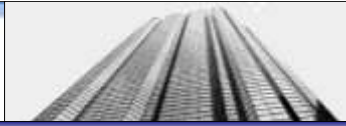


## Pecuniary Interest of Councillors: Case Study II

- Councillor owns sporting good store that sells and supplies golf carts
- Councillor votes on capital budget containing proposed golf cart expenditure
- Councillor participates in discussion at Council meeting respecting store's tender to supply golf carts to municipal golf course
- Councillor votes on resolution to obtain legal opinion respecting his participation in prior meetings

*Wainwright (Municipal District No. 61) v. Willerton, 2000 ABQB 539*

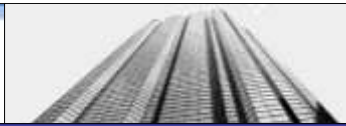




## Pecuniary Interest of Councillors: Case Study III

- Councillor's spouse leases community hall from municipality
- Councillor's spouse refuses to pay rental fee
- Councillor's spouse attends before Council at delegation portion of meeting, Councillor also attends
- Subject matter of delegation put on regular agenda of Council meeting. Councillor attends meeting and continues to question spouse

*Crowsnest Pass (Municipality of) v. Prince, 2001 ABQB 212*



## Pecuniary Interest of Councillors: Case Study IV

- Municipality maintained list of contractors to do construction work on day labour basis
- Councillor was sole shareholder of corporation on the list
- Councillor voted on two motions which resulted in the decision to proceed with certain work through the use of the day labour list

*Lac La Biche (County) v. Bochkarev, 2009 ABQB 400*



## Pecuniary Interest/Conflict of Interest

What to do?

- Disclose general nature of interest.
- Abstain from voting.
- Abstain from discussion.
- Leave room.



## Pecuniary Interest/Conflict of Interest

- If Councillor fails to follow the rules regarding disclosure and abstaining from the vote, could lead to disqualification.
- Refusing to vote when do not have a pecuniary interest could lead to disqualification.



## Risk of Liability to Councillors

- Pecuniary interest.
- Civil liability:
  - Makes expenditures not included in budget nor otherwise approved by Council;
  - Votes to use borrowed money or grant money for something not within purpose for which borrowing or grant made;
  - Votes to borrow money which causes municipality to exceed debt limit;
- Other grounds for disqualification (s. 174).



## Risk of Liability to Councillors

Councillor can be financially liable for:

- unauthorized expenditures.
- if votes to spend money outside purposes of a borrowing or grant.
- if votes in favor of loan, borrowing or guarantee which exceeds debt limit.



## Protection for Councillors

- 535(2) Councillors, council committee members, municipal officers and volunteer workers are not liable for loss or damage caused by anything said or done or omitted to be done in good faith in the performance or intended performance of their functions, duties or powers under this Act or any other enactment.



## Liabilities of Councillors

- (3) Subsection (2) is not a defence if the cause of action is defamation.
- (4) This section does not affect the legal liability of a municipality.



## Council Decisions

- Council decisions can be made only by bylaw or resolution (motion).
- If the MGA does not specify that a bylaw is required, the decision can be made by either bylaw or resolution.



## Meetings

- Generally speaking, council and committees must meet in public.
- May go “in camera” and exclude the public from all or part of their meeting if Council/committee is considering a matter which falls within Division 2 of Part 1 of FOIPP.



## Meetings

- However, no resolutions or bylaws can be passed “in camera”.
- Resolutions and bylaws must be passed in public portion of a council or committee meeting.
- The only motion that can be passed is to return to the public portion of the meeting.



## Additional Responsibilities

- Planning and Development.
  - Bylaws dealing with land use require a public hearing prior to second reading
- Assessment Review Board (“ARB”).
  - Quasi judicial tribunal that deals with assessment appeals
- Subdivision and Development Appeal Board (“SDAB”)
  - Quasi judicial tribunal that deals with appeals from development permit and subdivision decisions



## Additional Responsibilities

- Different standards may apply to different functions.
- When acting as a member of quasi-judicial tribunal – common law duty of fairness (natural justice) applies.



## Additional Responsibilities

- Could have conflict, even though do not have a pecuniary interest.
- “open mind” test (legislative function), or;
- “reasonable apprehension of bias” test (quasi-judicial function).





## Thank You For Your Attention, Questions Are Welcome

Sheila C. McNaughtan, Q.C.  
(780) 497-3362  
[smcnaughtan@rmrf.com](mailto:smcnaughtan@rmrf.com)

Toll Free: 1-800-661-7673

