

FEDERATION OF URBAN NEIGHBOURHOODS OF ONTARIO

QUEEN'S PARK REPORT



FEDERATION OF
URBAN
NEIGHBOURHOODS
OF ONTARIO
www.urbanneighbourhoods.org

An Umbrella Group of
Community Associations throughout
Ontario

Communities count.
Civic matters.

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Archie Campbell
President
33 Rochester Street, Suite 6
Ottawa, Ontario K1R 7L4
613-231-7470
funontario@rogers.com

FUN has asked the Ontario Government to Amend the Municipal Conflict of Interest Act and the Municipal Elections Act (April 2013)

The *Municipal Conflict of Interest Act* is not difficult to follow. Its main purpose is to prevent municipal councillors or school trustees and their immediate families from benefiting financially from a decision in which they are decision-makers. The Act states as follows:

Indirect pecuniary interest

2. For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

- (a) the member or his or her nominee,
 - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
 - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or
 - (iii) is a member of a body,
that has a pecuniary interest in the matter; or
- (b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter. R.S.O. 1990, c. M.50, s. 2.

Interest of certain persons deemed that of member

3. For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member. R.S.O. 1990, c. M.50, s. 3; 1999, c. 6, s. 41 (2); 2005, c. 5, s. 45 (3).

Interests generally shared by all councillors or school trustees or by the public are not considered conflicts, as are matters so remote or insignificant that they could not reasonably be seen to have influenced the member. If a councillor or member of a board such as a school trustee has a possible conflict of interest, they must declare it, refrain from debating, voting on or in any way influencing the decision and, if the meeting is closed to the public, they must leave the meeting until the matter is no longer under consideration. This seems very straightforward and easy to follow. Why then the problem?

A Basic Problem of Enforcement

The ***Municipal Conflict of Interest Act*** requires enforcement to be initiated by an elector who brings an application before a judge within six years of the time of alleged contravention. If electors feel the need to do this, they should realize that it might cost them tens of thousands of dollars. Thus the Act is seldom enforced and when it is, the judge often excuses the member on the basis that the contravention was committed through inadvertence or by reason of an error in judgment, an escape clause conveniently included in the Act. The Act must be amended to establish a body to deal quickly with conflict of interest complaints without cost to the elector or the member. Such a body could also be used by councillors or members of a board to determine if they have a conflict of interest before they take part in the decision-making process. This could easily clear the air and keep everyone honest and would make the inadvertence or error of judgment defence unnecessary.

Both the ***Municipal Conflict of Interest Act*** and the ***Municipal Elections Act*** suffer from the same flaw when it comes to the enforcement of the Act – an elector must make an application to a judge and spend large sums of money in the process. The result is that these Acts are seldom enforced and this encourages contraventions even when the contraventions are clear. For example, a school trustee participating in teacher salary negotiations when his daughter or son is an employee of his school board is clearly in contravention of the *Municipal Conflict of Interest Act*. And a councillor who accepts excess funding from a developer above the legislated limits is clearly in contravention of the *Municipal Elections Act*.

Why do these contraventions keep occurring? It is a problem of enforcement of these acts. It is as if, when your house is robbed, you must hire a lawyer to make an application to a judge to have the robbery investigated. This, of course, would be ridiculous. But this is exactly the status of a taxpayer with respect to enforcing these two Acts. Obviously these Acts need to be amended. The problems with these Acts in some municipalities must surely be an embarrassment to all Ontarians and should be to the Ontario Government.

It is time for the Ontario Government to amend both the *Municipal Elections Act* and the *Municipal Conflict of Interest Act*. The Federation of Urban Neighbourhoods of Ontario has written to the Premier of Ontario and the Minister of Municipal Affairs and Housing to ask for immediate action on amending these two Acts.

Please e-mail a copy of this Report to anyone that you think might be interested.