



An Investigation into a Complaint About the Sale of Land by the Village of Manor and Allegations of Conflict of Interest Against the Former Mayor

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THE COMPLAINT

The complainant contacted the Ombudsman on behalf of a group of citizens from the Village of Manor and the surrounding area, about the village's decision to sell its campground to the then-mayor's son. The complainant alleged that the Mayor did not declare a conflict of interest during the April 15, 2015 council meeting at which the council decided to sell the land, and further that the village acted contrary to the law by not publicly offering the land for sale.

The sale of the campground received media attention. Therefore, we decided it would be in the public interest to make this report public. It is important for local governments and elected officials to carry out their public duties in a transparent and accountable manner, in the best interests of the community. This report provides some guidance to all municipalities and their council members for managing conflicts of interest.

OMBUDSMAN'S MANDATE

The Ombudsman is an independent officer of the Legislative Assembly of Saskatchewan. Under *The Ombudsman Act, 2012*, the Ombudsman receives, informally resolves and investigates complaints from the public about their treatment by government entities. The Office of the Ombudsman was created in 1973 with the mandate to review the actions, omissions and decisions of provincial ministries, Crown corporations and most provincial government agencies, boards, commissions and authorities.

In November 2015, the Ombudsman's mandate was expanded to give the Office jurisdiction to receive complaints about municipal government entities and their council members, including the authority to investigate any matter respecting a council member's conflict of interest or alleged contravention of a code of ethics.

Ombudsman Saskatchewan does not advocate for the people who complain to us or for the government entities, board members, council members, officers, or employees we investigate. We are impartial and independent from the government entities we oversee. If, after an investigation, we determine that an administrative decision, action, recommendation or omission was unreasonable, unjust, improperly discriminatory, unlawful, based on a mistake of law or fact, or wrong, or if we find that a council member was in a conflict of interest in carrying out his or her duties, or breached a code of conduct, we may make recommendations aimed at resolving the issues we uncover. We cannot order any council member or government entity to do anything or take any specific action. We may also issue public reports about our work, including about any case we have investigated.

SASKATCHEWAN'S MUNICIPAL SYSTEM

The Legislative Assembly of Saskatchewan enacted *The Cities Act*, *The Municipalities Act*, and *The Northern Municipalities Act, 2010* to provide for the establishment of cities, towns, villages, resort villages, rural municipalities, northern municipalities and other local government entities across the province. Municipalities are empowered to govern themselves, to make decisions and provide the services and facilities they consider appropriate and in the best interest of their residents and ratepayers, to whom they are accountable. They exercise their powers through their councils by passing bylaws or resolutions.

There are 780 cities, towns, villages, resort villages, rural municipalities and northern municipalities in Saskatchewan. There are approximately 3,700 council members sitting on the councils of these municipalities.

While the Legislative Assembly has given municipalities wide discretion to decide how they will exercise their delegated powers, the Legislative Assembly has an interest in being sure municipalities exercise their powers fairly, reasonably and in the public interest. This is, in our opinion, one of the reasons why *The Municipal Conflict of Interest Amendment Act, 2015* expanded the Ombudsman's oversight mandate to investigate complaints about municipalities and their council members.

The Village of Manor is governed by *The Municipalities Act*. It is situated about 230 kilometres southeast of Regina. According to the Government of Saskatchewan's Municipal Directory System, it has a population of 322. It is governed by a mayor and four councillors. The mayor who was the subject of this investigation served as mayor from 2008 to 2016. She was not re-elected during the October 2016 municipal elections.

REFERENCES

STATUTES

The Municipalities Act

The Planning and Development Act, 2007

The Heritage Property Act

BYLAWS

Village of Manor Bylaw No. 02-06 – *A Bylaw to Establish a Public Notice Policy*

Village of Manor Bylaw No. 03-05 – *Administration Bylaw*

OTHER DOCUMENTS

Barclay, R.L., Q.C, *Final Report of the Inspection and Inquiry into the R.M. of Sherwood No. 159 (Volume 1 of 2)*, December 30, 2014

Manor & District Historical Society, *Memories....are forever* (Manor, Saskatchewan, Manor History Book Committee, 1982, online Our Roots, www.ourroots.ca, 09 September 2016)

EVENTS LEADING TO THE COMPLAINT

In 1963, land adjacent to Highway 13 in the Village of Manor was gifted to the Village by the Estate of one of the early pioneer families in the area. During the Village's 75th anniversary celebration, the community raised money to have a memorial cairn built on the land. The cairn was unveiled in 1980, with the following inscription:

This Cairn Was Erected
in Commemoration of the
75th Anniversary of the
Village of Manor
1902-1977
It is Dedicated to the
Memory of the Pioneers
Of Manor and District

THE USE OF THE LAND AS A CAMPGROUND

Historically, the land had been used as a rest stop and picnic area. People could camp there for up to two days for free, but had to pay the village if they stayed longer. However, by 2012, the site's facilities had begun to fall into disrepair. On June 21, 2012, a public health officer issued a general sanitation report indicating several deficiencies to be corrected to comply with regulations and standards. At the end, the report stated "NOTE UPGRADES WOULD BE MORE IN KEEPING. THIS CAMPGROUND POPULAR."

The council considered taking steps to improve the site. For example, according to minutes of the July 26, 2012 council meeting, a quote for a campground septic

tank was read, discussed and filed. However, we did not find any other evidence that any other steps were taken.

An administrator's report for the July 25, 2013 council meeting, signed by both the administrator and the Mayor, indicates:

Public Health Inspector was at the Campground on June 21. She made the following comments:

- ✓ no water closet etc. shall be used in a manner as to permit discharge of liquid onto the ground surface
- ✓ grass is long cut ASAP as it attract misquitos [sic] etc. which carry diseases
- ✓ keep contact info of those who stayed at the campground at the site in case they ever need to trace back

On May 29, 2014, a public health officer issued another general sanitation report, again indicating deficiencies at the site, and that "Public health will follow-up with a letter asking for your plans regarding Sanitary facilities & upgrades."

On June 19, 2014, the council passed a resolution to have a "Closed" sign made for the site, and to shut the water/sewer and power off. Minutes of this meeting indicated that the council also discussed turning the site back into a rest area.

DECISION TO SELL THE LAND

We received inconsistent information about how the council made the decision to sell the land to the Mayor's son. When we asked the Mayor specifically how it came to the attention of her son that the village was thinking of selling the land, she told us "I never told him. I know that. I think he heard it from another councillor that it might come available, or it could be coming available." She refused to tell us which councillor it was, even though she told us she knew which one it was.

Two of the village's councillors told us they could not remember telling the Mayor's son about the land being for sale. One of them told us he could not remember how the idea to sell the land to the Mayor's son came up. Another councillor told us he was not sure whether the Mayor's son approached the village or they approached him. He said that the Mayor had maybe brought it to his attention.

One councillor told us that the Mayor announced, at the March 18, 2015 council meeting, that she had someone who was interested in purchasing the land, but no names were given. The councillor said that the council discussed that if some-

one was interested, he or she should contact the administrator. This discussion was not captured in the meeting minutes.

Regardless of how he came to know of the land's availability, the administrator told us that the Mayor's son approached her about purchasing the land and she placed him on the agenda for the April 15, 2015 meeting.

APRIL 15, 2015 COUNCIL MEETING – DECISION TO SELL THE LAND

The minutes of the April 15, 2015 regular council meeting indicate that the Mayor and three councillors were present, and one councillor was absent. The minutes state: "At 7:15 P.M. Mayor... excused herself from the meeting, while guest [Mayor's son] presented his proposal to council on the purchasing of the Campground Lot." Everyone we interviewed confirmed the Mayor was not in the room when her son made his proposal.

According to the minutes, the proposal was to build and run a carpentry shop on the site. The Mayor's son agreed, among other things, that the cairn could stay there. However, the plaque from the monument would be removed and placed at Centennial Park. He agreed that the village could repossess the site if his proposed project was not completed within one year. The minutes show that he excused himself from the meeting at 7:30 p.m.

While the minutes do not indicate this, we were told that the council asked him what he was willing to pay for the land. The Mayor's son told us that he asked the council what they wanted for it, and then he left the room while the council deliberated. One person we interviewed told us that he proposed to pay \$10,000, but no one else recalled him saying this.

The administrator and one councillor told us that when the Mayor's son left the meeting, the Mayor returned to the meeting. Another councillor told us he did not know when the Mayor returned to the meeting because he was not there. Another told us that the Mayor excused herself "when [they] sold it." The Mayor told us that she stayed out of the meeting "for as long as [her son] was there." The minutes do not indicate when the Mayor returned to the room. Therefore, it is not clear whether or not the Mayor was present when the council discussed the price.

Councillors told us they considered the following facts when determining the price of \$10,000:

- Historically, the village sold residential lots for \$1.00 as long as the purchaser began construction within one year.

- Normally the council would charge \$4000-\$5000 for such a lot, but because the oil industry was booming in the area at the time, it decided to ask for \$10,000.
- After paving the village streets, the council charged all existing property owners a one-time frontage charge of \$33 per linear foot of land bordering a paved street. Based on this, the council had offered fully serviced lots for \$33 per linear foot of paved street frontage.
- Because of its low elevation, the lot cannot be connected to the village sewer system without installing a lift station, which the council was not prepared to install for a single property. This meant it could not be sold as a residential property and only had limited commercial value since it was not fully serviced.
- Selling the land to a young person who was opening a business would be good for the village and provide some tax revenue.
- Other businesses may have been interested in the lot because it is on the highway, so the council might have been able to sell it for more than \$10,000.

The Mayor's son told us \$10,000 was at the upper end of what he was willing to pay because he knew there were fully serviced three-acre lots for sale in the neighbouring town for \$20,000. He said that if the price for the lot had been too high, he would have bought a lot there.

The minutes indicate that the council carried a motion to sell the lot to the Mayor's son for \$10,000. They also indicate that the motion was seconded by the councillor whom the minutes noted was absent. Two people at the meeting told us that this absent councillor participated by telephone, but when we asked him, he could not recall whether he was on the phone. He told us he seconded the motion either over the phone or because someone sent him a text message. The councillor who made the motion told us that there was no need for a motion to have a seconder, so whether the minutes were accurate was irrelevant.

The minutes also do not indicate whether the Mayor was present for or participated in the vote to sell the land to her son. When we asked her whether she abstained from the vote, she said she normally does not vote except to break a tie. When we asked whether she was in the room for the vote, she said she did not remember a vote being called. One councillor told us that the council does not call for a vote on a motion unless one of them objects to it. Another told us that he could not remember if the decision to sell was made at this meeting, but that he was sure the Mayor was not in the room. The administrator told us the Mayor was not in the room.

Since most of the people we interviewed, including the Mayor herself, said that she re-entered the room right after her son left, and no one told us she left again

after re-entering, we find that the Mayor was in the room while the council discussed what price it would charge her son for the land, and when the motion to sell the land to her son was carried. We acknowledge that she did not specifically vote on the motion, but this is because the council's practice is to vote by general consent, that is, unless a council member states he or she is voting against the motion, his or her silence is taken as a vote in favour of it.

The administrator and the Mayor signed the April 28, 2015 agreement for the sale of the property. It confirmed that, as discussed at the April 15, 2015 council meeting, the Mayor's son would pay \$10,000, begin his project by April 29, 2015, and complete it within one year, otherwise the village would retake ownership of the lot and keep the \$10,000.

CONCERNS ABOUT THE LAND SALE

On July 10, 2015, the complainant wrote a letter to the council "on behalf of the pioneers and settlers of Manor and the present day people of this community and district." She wrote that the sale of the campground was not legal because "parcels of dedicated Heritage Sites [cannot] be sold."

On July 17, 2015, the administrator responded to the complainant stating that the land was not a dedicated heritage site and that the money collected during the village's 75th anniversary was only for the cairn. The administrator further stated, "With no disrespect towards the pioneers and settlers of Manor the cairn will remain erected and be moved into the centennial park beside the Over 60's club." She offered the complainant an opportunity to speak to the matter at the August 19, 2015 council meeting.

On August 17, 2015, three other individuals emailed a "letter of protest" to the administrator claiming that the sale of the lot would "reduce the curb appeal of the village and less people would stop on their way by," and that "the movement of the cairn dedicated to the pioneers would place it at great risk of damage, this in itself would be very disrespectful as it was them that built the town."

About 30 residents of Manor and the surrounding area attended the August 19, 2015 council meeting. The complainant asked the council to rescind the sale of the lot. The minutes of the meeting note: "Roughly half of the citizens in attendance were not aware that the campground had not been a campground for about a year and a half. ...public health shut it down as it needs major upgrades." A motion was passed that the administrator was to contact the village's lawyer to "further discuss actions and what can be done to fix any wrong doings."

The complainant also submitted two petitions to the village with 167 signatures from residents of the village and the surrounding area opposing the sale of the

site. Section 132 of *The Municipalities Act* allows voters in a municipality to petition for a referendum on any matter within the jurisdiction of the council. A petition must be signed by the greater of 15% of the population or 25 voters to be sufficient to require the council to submit the request for a referendum to a vote. The administrator is responsible for determining whether a petition is sufficient. In this case, the administrator deemed the petitions to be insufficient to require a referendum, because they included non-residents and were not properly dated or witnessed. As a result, the petitions were rejected.

On August 25, 2015, the village's lawyer advised the council that to comply with its own Bylaw 02-06 – *A Bylaw to Establish a Public Notice Policy*, the village needed to give seven clear days' notice prior to the sale. He advised the village to comply with its bylaw and explained how the notice process should be carried out.

At its August 31, 2015 council meeting, the council moved "THAT Administrator approach [the Mayor's son] in regards of the campground lot to sell the lot back to the Village to rectify their actions." The administrator wrote to him in an undated letter stating:

Council does understand the sale has been made and is final, however after further consideration on behalf of council they would like to request to buy back this property. The proper steps we [sic] not taken to sell this property and council would like to rectify that. If you agree to sell it back to The Village of Manor. The steps would include eventually posting that it is going to be sold and tenders will be taken. At this point, you could put in a tender to buy it back. Thank you for taking the time to consider this matter and I am immensely sorry for all of this grief. If you could please let me know at your earliest convenience if you would like to sell this lot that would be greatly appreciated.

We were told that the Mayor's son verbally declined to sell the land back. On November 25, 2015, he was registered as the owner of the land in the Saskatchewan Land Titles Registry.

In a February 2, 2016 letter, a lawyer representing the Manor and District Citizens Committee (MDCC), comprised of six individuals who opposed the sale, wrote to the council stating that there may have been a conflict of interest in the decision to sell the land and that the motion to sell the land was invalid because it was seconded by a councillor whom the meeting minutes indicated was not at the meeting. On February 8, 2016, the administrator responded, stating that the minutes noted that the Mayor excused herself while her son made his proposal. The administrator also said that the seconder was on conference call but even if this was not valid, the village's bylaw states that motions do not need a seconder. Finally, she noted that she attempted to buy the land back on the council's behalf, but the Mayor's son declined.

The February 18, 2016 council meeting minutes indicate that this motion was made and carried:

THAT the council make the following statements in response to the sale of the campground lot:

- it is not a heritage site
- Minutes state that the Village of Manor will take care of the cairn.
- [the Mayor] excused herself from the meeting while [her son] brought forward his proposal to council (as recorded in previous minutes)
- We have a Council Procedures Bylaw in place that states we do not require a seconder, therefore the fact that [the administrator] noted [the absent councillor] as a seconder is beside the point.
- Ethically made a mistake by not advertising and tendering the land.

The minutes also indicate the Mayor excused herself from the meeting at 8:30 p.m., after the above motion was carried. The council then discussed the sale of the lot to her son and passed a motion giving him until February 18, 2017, to build on the property. Thereafter, the Mayor re-entered the room at 8:35 p.m.

The MDCC's lawyer wrote to the council again on April 15, 2016, copying the Mayor's son. He suggested that "a wise course of action" would be to apply to the Court of Queen's Bench to adjudicate the legality of the sale and urged the village to advise the Mayor's son not to do any work on the property until this matter was resolved.

The minutes for the April 21, 2016 council meeting indicate the Mayor's son was in attendance, that his options for building on the lot were discussed, and that the Mayor "excused herself from the meeting at 8:05 p.m. while council discussed with [her son] because he is [the Mayor's] son there is a conflict of interest present." The minutes further state, "Council will not direct [the Mayor's son] on further actions because the title is in his name." The minutes indicate that the Mayor returned to the meeting at 8:30 p.m.

In May 2016, the Mayor's son began to build his shop on the site. On May 13, 2016, the administrator advised MDCC's lawyer that the council would not be taking the matter to court.

In May 2016, we gave notice of our intention to investigate this complaint.

ISSUES RAISED BY THE COMPLAINT

1. Did the Village of Manor sell the campground site in accordance with *The Municipalities Act*, other relevant laws and the Village's bylaws?
2. Did the Mayor have a conflict of interest in the council's decision to sell the land? If so, did the Mayor comply with *The Municipalities Act*? Or with the common law respecting conflicts of interest?

ANALYSIS AND FINDINGS

DID THE VILLAGE OF MANOR SELL THE CAMPGROUND SITE IN ACCORDANCE WITH *THE MUNICIPALITIES ACT*, OTHER RELEVANT LAWS AND THE VILLAGE'S BYLAWS?

We looked at the council's obligations under provincial legislation and its own bylaws.

The Municipalities Act: Was public notice required?

The Municipalities Act gives municipalities and their councils wide discretion when it comes to selling municipal land. Generally, subsection 48(1) provides that a council's decision to sell land, who to sell it to, and whether the price is fair market value, is not open to question, review or control by any court, as long as the purchaser can lawfully purchase it and the council acts in good faith.

However, there are certain circumstances when councils have to give public notice of the intention to sell the land. Subsection 48(2) of *The Municipalities Act* states:

(2) if a council wishes to dispose of municipal lands used for park purposes, the council must give public notice of its intention to do so before authorizing the disposal.

The purpose of giving public notice, in our opinion, is to give the public an opportunity to make representations to the council before a decision is made to sell land used for park purposes.

We considered whether this campground was "used for park purposes" and, therefore, required public notice before it was sold. "Park purposes" is not defined in *The Municipalities Act*. However, the Act does use the term "regional park" when it means a park under *The Regional Parks Act, 2013* and uses the term "park land" when it means land falling under *The Parks Act*.

Therefore, the meaning of “used for park purposes” must be broader and, in our opinion, would include land used for park purposes even if the land is not officially designated as a regional park or park land.

Given this, we conclude that the Village of Manor had been using this municipal land for park purposes, and had been doing so for over 30 years. It has been used as a rest stop, picnic area, and campground. In our view, the public should have been given notice that the council was considering selling the site. We acknowledge that the council passed a motion in June 2014, to put a “Closed” sign on the property and shut the water and power off. However, this was done in response to Public Health’s reports on the facilities. We acknowledge that putting the sign up was a clear message that the facilities were not to be used, but the council did not make a specific decision to close the site to the public. This is supported by the minutes at that same meeting which indicate that the council discussed turning it into a rest area.

We find that the site had been “used for park purposes”, so when the council did not give public notice before it authorized selling the site, the council contravened subsection 48(2) of *The Municipalities Act*.

Village of Manor Bylaw No. 02-06: A Bylaw to Establish a Public Notice Policy

Even if the land was not being “used for park purposes” and subsection 48(2) of the Act did not apply, the Village of Manor has a bylaw requiring it to give public notice before disposing of municipal lands or buildings. Sections 3 and 4 state in part:

3. MATTERS FOR WHICH NOTICE MUST BE GIVEN

3.1 Public notice in accordance with this policy shall be given before Council initially considers the... (b) disposition of municipal lands or buildings;

...

4. NOTICE TO THE GENERAL PUBLIC AND AFFECTED PARTIES

4.1 Notice shall be given to the general public for all matters set out in subsection 3.1 (a to o) in accordance with this section:

(a) notice of the matter shall be posted at the Municipal Office at least seven (7) clear days prior to the meeting at which Council will initially consider the matter; and

(b) notice of the matter shall be posted in a conspicuous place in the municipality at least seven (7) clear days prior to the meeting at which Council will initially consider the matter.

Before the council initially considered disposing of the land, it was required to give at least seven days' public notice. Therefore, we find that the council contravened its own bylaw by failing to give public notice of its intention to consider selling the land.

Was the campground a heritage site?

The complainant submitted to the council that the land could not be sold because it was a heritage property.

Under *The Heritage Property Act*, a municipality or the Province can designate "heritage property" (any site where objects of archaeological or paleontological value are found or where property of architectural, historical, cultural, environmental, archaeological, paleontological, aesthetic or scientific value is situated). Once designated, heritage property is to be preserved and protected from, among other things, being destroyed. Even though this site was the location of the cairn which paid tribute to the pioneers of the area, it had not been legally designated a heritage site under *The Heritage Property Act*. It is not registered in the Saskatchewan Register of Heritage Property maintained online by the Ministry of Parks, Culture and Sport. Therefore, it is not subject to the rules in *The Heritage Property Act*.

DID THE MAYOR HAVE A CONFLICT OF INTEREST IN THE COUNCIL'S DECISION TO SELL THE LAND?

Under *The Municipalities Act* Before November 19, 2015

On November 19, 2015, *The Municipalities Act* was amended. The *pecuniary interest* rules for council members were changed to *conflict of interest* rules. Therefore, we first considered whether, before November 19, 2015, the Mayor had a *pecuniary* interest based on the following former provisions of *The Municipalities Act*:

- Subsection 144(1) required council members to disclose any *pecuniary* interest they had in a matter before the council, to abstain from voting on any question relating to the matter, to abstain from any discussion of the matter, and to leave the room in which the meeting was being held until discussion and voting on the matter had concluded.
- Subsection 144(2) stated that no council member shall attempt in any way, whether before, during or after the meeting, to influence the voting on any question involving a matter in which he or she had a *pecuniary* interest.

- Subsection 144(5) required the administrator to “record any abstention or disclosure made in accordance with subsection (1) in the minutes of the meeting.”
- Under the former Act, a council member had a *pecuniary* interest if the council member or a closely connected person (including the family of a council member) could make a financial profit from or be adversely affected financially by a decision of the council.
- The word “family” was defined as including the children of a council member – whether dependent or not.

April 15, 2015 Council Meeting: The Decision to Sell the Campground Site

According to the former provisions of *The Municipalities Act*, the Mayor had a pecuniary interest in the council’s decision to sell the land to her son. Therefore, she was required to disclose the interest, abstain from voting on and discussing it, and leave the room until any discussion and voting on the matter had concluded. The administrator was also required to record the disclosure and abstention in the minutes.

The April 15, 2015 meeting minutes indicate, and several people we interviewed confirmed, that the Mayor left the room while her son made his presentation. However, the minutes do not indicate and no one we interviewed could recall with certainty that the Mayor disclosed her pecuniary interest, abstained from discussing it, or remained out of the room until the rest of the council discussed and voted on the matter. The minutes were adopted at the next council meeting with no amendments. The Mayor had an opportunity to correct the minutes to ensure they reflected that she fully complied with the Act, but she did not.

Given this, we find that the Mayor did not fully comply with the requirements of *The Municipalities Act* in force at the time.

August 19, 2015 Council Meeting: The Decision to Seek Legal Advice About the Sale of the Campground

At this meeting, the complainant asked the council to rescind the sale of the land. The council passed a resolution that the village’s lawyer be contacted to “further discuss actions and what can be done to fix any wrong doings.” The meeting minutes indicate that the Mayor was present. It appears from the minutes that she was present for the entire discussion and did not abstain from discussing or voting on the motion. Again, the minutes were presented and approved with no changes at the council’s next meeting.

We find that the Mayor had a pecuniary interest in this matter – because it affected her son’s pecuniary interests. She did not comply with the requirements of *The Municipalities Act* in force at the time. She should have disclosed that she had a pecuniary interest, abstained from discussing and voting on the matter and left the room.

August 31, 2015 Council Meeting: The Council's Decision to Ask the Mayor's Son to Sell the Land Back

At this meeting, a resolution was passed to have the administrator approach the Mayor’s son about selling the lot back to the village “to rectify their actions.” The minutes indicate the Mayor was present. Again, it appears from the minutes that she was present for the entire discussion and did not abstain from discussing or voting on the motion. And again, these minutes were approved with no changes at the next council meeting.

Therefore, we find that the Mayor had a pecuniary interest in this matter and that she failed to comply with *The Municipalities Act*.

Under *The Municipalities Act* After November 19, 2015

The Municipal Conflict of Interest Amendment Act, 2015 added new conflict of interest provisions for council members under *The Municipalities Act*:

- Subsection 141.1(1) provides that that a member of council has a conflict of interest if he or she “makes a decision or participates in making a decision in the execution of his or her office and at the same time knows or ought reasonably to know that in the making of the decision there is an opportunity to further his or her private interests or the interests of a closely connected person.”
- Similar to the previous version of the Act, subsection 144(2) states that, “No member of a council shall attempt in any way, whether before, during or after the meeting, to influence the voting on any question involving a matter in which the member of council has a *conflict of interest*.”
- Also similar to the previous version, clause 143(1)(b) states in part that a council member has a financial interest if “the member of council or a closely connected person could make a financial profit from or be adversely affected financially by a decision of council[.]”
- Subsection 141.1(2) states that a financial interest such as this always constitutes a conflict of interest.

- If a council member has a conflict of interest in a matter before the council at a meeting the council member is present for, subsection 144(1) states he or she must:
 - (a) before any consideration or discussion of the matter, declare that he or she has a conflict of interest;
 - (b) disclose the general nature of the conflict of interest and any material details that could reasonably be seen to affect the member's impartiality in the exercise of his or her office;
 - (c) abstain from voting on any question, decision, recommendation or other action to be taken relating to the matter;
 - (d) subject to subsection (4), refrain from participating in any discussion relating to the matter; and
 - (e) subject to subsections (3) and (4), leave the room in which the meeting is being held until discussion and voting on the matter are concluded.

While a "closely connected person" still includes "the...family...of a member of council" the definition of "family" is now more narrowly defined. It only includes "the... dependent children of a member of council."

Arguably, these amendments mean that the Mayor would no longer be in a conflict of interest under the Act, because her son is not a "dependent child"; therefore, he no longer falls under the definition of a "closely connected person." As a result, the Mayor's son's financial interest in the campground sale would no longer be deemed to be a financial interest of the Mayor. She does not have a conflict of interest under subsections 141.1(1) and (2) of the current Act. That is, even though she knew she would have an opportunity to further her son's interest in the campground if she participated in decisions about the sale and other related matters after November 19, 2015, she no longer had a statutory conflict of interest as the phrase is now used in *The Municipalities Act*.

February 18, 2016 Council Meeting: The Decision to Make an Official Statement About the Sale and the Decision to Extend the Time for the Mayor's Son to Construct his Shop

At the February 18, 2016 council meeting, the following motion was passed:

THAT the council make the following statements in response to the sale of the campground lot:

- it is not a heritage site
- Minutes state that the Village of Manor will take care of the cairn.

- [the Mayor] excused herself from the meeting while [her son] brought forward his proposal to council (as recorded in previous minutes)
- We have a Council Procedures Bylaw in place that states we do not require a seconder therefore the fact that [the administrator] noted [the absent councillor] as a seconder is beside the point.
- Ethically made a mistake by not advertising and tendering the land.

According to the minutes, the Mayor did not declare a conflict of interest with respect to this motion, nor did she abstain from discussing or voting on it, or excuse herself while the discussion around it was occurring. In our view, she had a personal interest in the council making a statement about her actions and whether or not she was in the room when her son presented his proposal to the council. While we acknowledge that the statement is merely a reiteration of the minutes of the April 15, 2015 meeting, it was made in part as a public show that the council believed she did nothing wrong. Given this, in our view, she should have complied with subsection 144(1) of the Act and declared a conflict of interest, disclosed her personal interest in council making this statement, abstained from voting on it, refrained from discussing it, and left the room while the rest of the council dealt with it.

After this motion was passed, the minutes reflect that the Mayor excused herself from the meeting while other members discussed the sale to her son. The council then passed a motion to extend the time for the Mayor's son to build on the lot. The minutes indicate she returned to the meeting after the motion was carried. Although the Mayor did not have a statutory conflict of interest under the new provisions of *The Municipalities Act* with respect to this motion, she nevertheless still had an common law conflict of interest. We acknowledge her for doing the right thing and excusing herself from the meeting while the rest of the council deliberated on what to do with the Mayor's son's request for more time.

April 21, 2016 Council Meeting: Discussion About Options for the Mayor's Son Building on the Lot

The minutes of the April 21, 2016 council meeting indicate, "Council discussed [the Mayor's son's] options for building," and decided that it "will not direct [the Mayor's son] on further actions as the title is in his name." The minutes show that the Mayor "excused herself from the meeting at 8:05 p.m. while council discussed with [the Mayor's son] because he is [her] son there is a conflict of interest present." Again, although the statutory conflict of interest provisions in *The Municipalities Act* no longer applied to the Mayor in relation to her son's financial interest in the lot, we find that she nevertheless met the spirit of the requirements of *The Municipalities Act* and the common law.

Council Members Must Still Comply with Broader Conflict of Interest Rules Under the Common Law

The pecuniary interest and conflict of interest rules in the former and current versions of *The Municipalities Act* are narrower than the common law conflict of interest rules, but council members still have to follow the common law. This was confirmed by the addition of subsection 141.1(4) of *The Municipalities Act*, which states, “*Nothing in this Part is to be interpreted as affecting any other rights given by, or the application of other requirements, duties or responsibilities imposed by, any other Act or law in relation to the matters covered by this Part.*”

Council members must follow the requirements in *The Municipalities Act* and the common law rules about conflicts of interest. But, what does this actually mean for council members?

In his *Final Report of the Inspection and Inquiry into the R.M. of Sherwood No. 159 (Volume 1 of 2, pages 74-78)* the Honourable Mr. Ronald Barclay, Q.C. extensively reviewed the common law prohibition against acting in a conflict of interest. He made it clear that it extended beyond simply not voting on a matter in which a council member has an interest, and that it was wider than the requirements in *The Municipalities Act*. He concluded that the common law is “*concerned not only with the steps taken by a council member with respect to their legislative role on council, but also prohibits a member of council from participating in any activity that could reasonably be seen as preferring their own private interests ahead of the interests of their voters or the municipality as a whole.*”

Even in situations not caught by the statutory definitions of conflict of interest in *The Municipalities Act*, council members still have to follow the common law principles and rules about avoiding conflicts of interest:

- As trustees for the local community, council members cannot vote or otherwise seek to gain or appear to gain private advantage out of matters over which they have supervision for the benefit of the public.
- Council members must conduct themselves in such a way as to avoid any reasonable apprehension that their personal interest could in any way influence their elected responsibility.
- They are not to use their office to promote private interests, whether their own or those of relatives or friends.
- They must be unbiased in the exercise of their municipal duties.

A common law conflict of interest has the following characteristics:

- The interest or bias must exist separately and distinctly within the individual council member – it is not a general interest the council member shares in common with all or a substantial number of the members of the community.
- The interest may be pecuniary – economic, financial or monetary. The pecuniary interest may be direct – such as owning a company contracted to provide the municipality services or indirect – such as being an employee of a company under contract with the municipality.
- The interest may also be non-pecuniary. For example, family connections, membership in a club or society, or being on the board of a company or society that is specially affected by a municipal decision.

The test is this: Could a reasonably informed person, considering all the circumstances, reasonably conclude that there is a real likelihood of bias? Did the council member know or should he or she have reasonably known that he or she could further his or her private interest by participating in the decision?

Council members with a common law conflict of interest in a matter, whether they are dealing with the matter at a specific meeting or otherwise while talking with councillors and municipal staff, should follow the procedures in section 144 *The Municipalities Act* applicable to statutory conflicts of interest. They should declare the conflict, disclose all pertinent details about it, abstain from involving themselves in any vote, action or decision relating to the matter, refrain from discussing it before, during or after any meeting in which it is being dealt with, and, if they are at a council meeting, leave the room while it is being discussed and decided upon. They should avoid attempting to influence any other council member's vote and, more broadly, attempting to influence or direct any municipal official's decision or action in relation to the matter.

Applying these principles and rules to the sale of the campground to her son, it is clear the Mayor should not have had any involvement in any part of discussions, deliberations, decisions about the sale of village land to her son – from the beginning to the end of the process.

SUMMARY OF FINDINGS

THE COUNCIL AUTHORIZED THE SALE OF THE LAND WITHOUT GIVING PUBLIC NOTICE OR OFFERING IT FOR SALE PUBLICLY

- Although the campground site was not a heritage property under *The Heritage Property Act*, it had been used as a rest stop, picnic area, and campground for over 30 years.
- If municipal land is “used for park purposes,” subsection 48(2) of *The Municipalities Act* requires a council to give public notice of its intention to dispose of the land before authorizing it to be sold.
- “Used for park purposes” is not defined in the Act, and it is arguable that the use of this land as a rest stop, picnic area, and campground fell under the definition of “used for park purposes”, and that public notice was required for the land was sold.
- Even if the use of this land did not fall under the definition of “used for park purposes” under the Act, the Village of Manor contravened its Public Notice Bylaw, which required it to give at least seven days’ public notice of its intention to dispose of any municipal lands.

THE MAYOR WAS IN A CONFLICT OF INTEREST AND DID NOT FULLY COMPLY WITH *THE MUNICIPALITIES ACT*

- The Mayor had a conflict of interest in the council’s decision to sell the campground site to her son.
- She did not fully comply with the pecuniary interest provisions of *The Municipalities Act* at the April 15, 2015 meeting. Although she left the meeting while he made his presentation to the council, she did not disclose her pecuniary interest or remain out of the room while the rest of the council deliberated and made its decision.
- At the August 19, 2015 and the August 31, 2015 meetings, the Mayor again did not comply with pecuniary interest provisions of *The Municipalities Act* in relation to the decision to seek legal advice about the sale and the decision to ask the Mayor’s son to sell the lot back to the Village.
- On February 18, 2016, the Mayor failed to comply with *The Municipalities Act* with respect to the council’s motion to make a statement in response to the sale of the campground site. She had a personal interest in this statement. Therefore, she ought to have declared and disclosed her

personal interest in the council making this statement and left the room while the council discussed and voted on it.

- The Mayor did comply with the spirit of the new provisions of *The Municipalities Act* and the common law by declaring her conflict of interest and leaving the room while the council decided, at the February 18, 2016 meeting, to extend the time for the Mayor's son to construct his shop and its statement at the April 16, 2016 meeting that it would not direct him to do anything with the lot since the title was in his name.

RECOMMENDATION

The purpose of an Ombudsman investigation is to determine the facts, make findings, and make recommendations to address the issues. In this case, even though we found that the council did not follow statutory requirements or its own bylaw, the village transferred the land to the Mayor's son before our investigation started. We are not a court. We cannot order the land to be returned or sold back to the village. We cannot make any recommendation that would return things to the way they were in 2015. Despite this, we hope that by making this report public, other municipalities will consider how they deal with the sale of municipal land and make sure that they follow all relevant statutes, regulations and bylaws with the best interests of their community in mind.

As well, even though we found that the Mayor was in a conflict of interest with respect to this matter, she was not re-elected during the last village election. Therefore, we are not making any recommendation related to her, because it is no longer necessary. Again, we hope by making this report public, we will provide the Village of Manor's council members, and the council members of other municipalities with a better understanding of what a conflict of interest is and the importance of making sure they follow the requirements of the law when making decisions for their communities.

Under *The Municipalities Act*, all municipalities are required to adopt a code of ethics, which must include the model code of ethics prescribed in *The Municipalities Regulations* and a process for dealing with contraventions of the code. In our view, adopting a clear process for council members, the administrator and members of the public to raise issues of real or perceived conflicts of interest will improve the village's ability to address these issues appropriately at the local level.

We recommend that the council of the Village of Manor pass a bylaw adopting procedures:

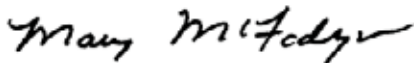
(a) Requiring the procedures in section 144 of *The Municipalities Act* to be followed whenever a council member has any conflict of interest – whether under *The Municipalities Act* or otherwise under the common law.

(b) Allowing any person – including another council member, village staff, and members of the public – who honestly believes a council member may have a conflict of interest or may have contravened the code of ethics to: (i) address the matter directly with the council member and encourage him or her to stop or otherwise avoid the conflict of interest or contravention of the code of ethics; or (ii) make a written request to the council to address the matter.

(c) Making it a contravention of its code of ethics for a council member to threaten to take or take any reprisal against a person because the person initiated the procedures in clause (b).

(d) Ensuring any request made to the council to address the matter is brought to the attention of and addressed by the council at its next regular council meeting.

Dated this 27th day of January, 2017



Mary McFadyen, Q.C.

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