

Legal Issues Candidates Should be Aware of when Running for Municipal Office

Introduction:

From the day a person declares him or herself to be a municipal candidate and throughout the time he or she is elected as a council member, the person's activities are regulated and made open to public scrutiny.

Open government is something the people in Nova Scotia look for. The assumption is that a government that is open to scrutiny is more likely to be a government that people can trust.

In Nova Scotia, and the rest of Canada, the public acts as a "watch dog" to see that their politicians are acting in accordance with the law. The laws are written to allow the public access to the information that they need to check on the actions of their politicians and to report them to the police or take them to court, if necessary.

Following is legislation that applies to municipal government, starting with the day a person becomes a candidate for municipal office.

Municipal Elections Act:

As of the date that a person either is nominated or declares that he or she is a candidate, the *Municipal Elections Act* requires that

- the candidate designate an official agent to receive contributions
- the candidate has a separate bank account for receiving any campaign contributions
- that a record be made of all contributions
- that no contributions can be received anonymously (any anonymous contributions must be turned over to the municipality if they cannot be returned)
- that the names and addresses of anyone who contributes \$50 or more must be put in a record that is filed at the municipal office and open to the public.

Disclosure of contributions also is required in provincial and federal campaigns in most parts of Canada. Disclosure is seen as an important tool in building public confidence in the election process. Allowing the public to know who contributes to a candidate's campaign means that it is less likely that a candidate will be acting secretly to further the interests of a particular person or group of people.

As well as regulating disclosure of contributions, the *Municipal Elections Act* also contains requirements that any election advertisements contain information about who published them; if not, they can be removed. This allows people to confirm the content of the materials with those who prepared them.

The Act also describes a number of activities that are offences under the Act. These include:

- bribery
- forgery
- voting when not entitled to do so
- making false statements to an election officer
- compelling someone to vote or not to vote
- obstructing an election officer
- being a candidate and agreeing to act on council in any way that will prevent freedom of action, and
- being a candidate and betting on the outcome of the election.

Many of these are defined to be “corrupt practices” under the Act and a conviction for a corrupt practice means the person loses his or her seat if elected and cannot run for election again for five years.

Once a candidate is elected, there are more rules that apply to his or her conduct. The new council members usually are introduced to at least some of these rules at the orientation sessions held for new councillors. Municipal councillors as public officials are expected to place the public interest before their own private advantage. The law prescribing the required standard of conduct comes in several forms.

Criminal Code of Canada:

Some of the most serious offences for breach of the public trust are found in Canada’s *Criminal Code*. The *Criminal Code* is passed by the federal government and applies all across Canada. All the offences could be punished with five years imprisonment. For example, Section 122 of the *Criminal Code* makes it a crime for an official to commit fraud or breach of trust, such as using confidential information to try to buy land that might be going to increase in value. Section 123 of the *Criminal Code* prohibits a person from buying or selling (or offering to buy or sell) a vote or abstention or the performance or non-performance of an official act. It also prohibits someone from seeking to influence a politician by use of threats or other unlawful means. As well, Sections 124 and 125 of the *Criminal Code* prohibit buying or selling or influencing appointments. Conviction for any of these offences will mean a serious fine or term of imprisonment and that the person loses his or her seat on council, if elected, and cannot run for office again for five years.

Municipal Conflict of Interest Act:

In Nova Scotia, the *Municipal Conflict of Interest Act* has been in effect since June 26, 1982. Its purpose is to prevent council members (and members of local boards, municipal committees, etc.) from using their office to further their own interests, or their family's or their company's interests.

Basically the Act requires any member of council who has a financial interest in any matter coming before the council to:

- declare that interest and to withdraw from any discussion of it
- If the meeting is closed, the member must leave the room where the meeting is being held.
- If the meeting is open, the member must withdraw and leave the room or sit in the public gallery.

The member is thus disqualified from dealing with the particular matter in which he or she has an interest but not from sitting on council when other matters are discussed.

The interest of a member is broadly defined to include the pecuniary interest of relatives, a spouse and a spouse's relatives and also a company in which the council member has an interest. However, having an interest that is common to most electors is deemed not to constitute conflict of interest.

Breach of the provisions of the *Municipal Conflict of Interest Act* can have a number of consequences. A judge may:

- order the member's seat vacated
- disqualify the person from office for up to ten years
- require the member to pay back any gain
- impose a penalty of up to \$25,000.

The Act is most useful in highlighting the issue of potential conflicts and in providing rules of behaviour. The Act is emphasized in training offered to new councillors and each should be given a copy of the Act to refer to as necessary.

Municipal Government Act:

Municipalities in Canada are all "statutory corporations" which means they get their authority from statutes passed by the provincial governments. Legislation in Nova Scotia makes most council activities open to public scrutiny. For example, almost all binding decisions of council must be made at a council meeting and almost all council meetings must be public meetings.

No binding decisions can be made by one council member; not even the mayor.

Since 1999, when the *Municipal Government Act* came into effect, the legislation provides that all council and committee meetings are public except in certain limited cases. Council meetings are open to the public unless closed to discuss a limited range of subjects set out in the statute:

- acquisition, sale, lease or security of municipal property
- minimum price to accept at a tax sale
- personnel matters
- labour relations
- contract negotiations
- litigation
- legal advice
- public security.

Committee meetings may be closed for the same limited number of subjects.

No decision may be made at a private meeting except concerning procedure (such as adjournment) and direction to staff or solicitors. So even if a council holds a closed meeting to discuss one of these topics, final decisions, particularly those involving the spending of municipal money, must be made in public.

Some members of the press and public would like to see every meeting of council open but they do recognize that the new legislation is an improvement over previous legislation that allowed meetings to be closed on any topic. As well, there are complaints that records of meetings are not detailed enough or that informal meetings occur and that no records are kept.

Decisions respecting expenditures must fall within the authorized expenditure areas provided by legislation. Unauthorized expenditures can be and have been challenged by the public in the courts. Municipal borrowings must be approved by the Minister of Municipal Affairs and are only approved if they are authorized by legislation. If necessary, the Minister can order forensic audits, in addition to the annual audits that are required under the Act, and failure to assist with these audits is an offence.

By-laws are the means councils use to regulate people's behaviour within the municipality. They must be authorized in a statute, usually the *Municipal Government Act*, and they must be adopted at open meetings, following the procedure set out in legislation. They also must be available for the public to see. The procedure to adopt a by-law requires two readings and two advertisements.

During the course of conducting their business, municipalities accumulate a great deal of information. Sometimes the public may wish to obtain some of this information. And sometimes an individual may need assurance that personal and private information stays private.

Part XX of the *Municipal Government Act* provides the public with access to most records under the control of the municipality. The *Municipal Government Act* also protects the privacy of individuals who do not want their information made public. The law tries to strike a balance between the public's right to know, and an individual's right to privacy.

Other provisions that have been included in legislation to protect against conflicts include a provision that protects municipal staff from being given conflicting direction by members of council as the Act prohibits council members from giving directions to staff; staff must be dealt with by the Chief Administrative Officer or council as a whole if there is no CAO. Also in respect to tax sales, municipal council members, municipal staff and their family members or their companies cannot buy property that is being sold at tax sale.

The *Municipal Government Act* also prevents a member of council from becoming an employee of the municipality while in office or for six months after leaving office. The provision protects councillors and staff against allegations of influence in the hiring processes.

Conclusion:

The following words are from the "Oath or Affirmation of Allegiance and of Office" taken by each councillor at the first meeting of the council after the election:

I will truly, faithfully and impartially execute the duties of the office to which I have been elected to the best of my knowledge and ability.

I have not received and will not receive any payment or reward or promise thereof for the exercise of any partiality or other undue execution of the duties of my office...

The words place a heavy burden on the elected official to accept and discharge, in a conscientious and forthright manner, the duties, obligations, and responsibilities of office. The legislation in place is intended to assist the public to see that this is how municipally elected officials act and to assist municipal officials in knowing the standards expected of them.