

The Peterborough Examiner

Scenario a conflict, lawyer says ; City had first conflict case under act

Sat Jan 29 2011

Page: A1

Section: News

Byline: BRENDAN WEDLEY, EXAMINER MUNICIPAL WRITER

Illustrations: photo of Bennett ; ; photo of Rexe

A council member who owns a taxi company and votes on public transit cuts is the type of scenario that could lead to a conflict of interest application, one of Canada's leading municipal law lawyers says.

George Rust-D'Eye wasn't commenting on the allegations at recent public budget committee meetings that Mayor Daryl Bennett has a conflict of interest over the proposed transit service cuts.

The partner at WeirFoulds LLP was commenting on the scenario of a council member who owns a taxi company and votes on public transit cuts.

Ultimately, there's competition between taxis and public transit, Rust-D'Eye told The Examiner on Friday.

"It could well have an impact," he said. "That is precisely the kind of thing that could well lead to an (alleged conflict of interest) application being brought."

A judge would have to consider how immediate and specific the impact would be for the council member and how large the impact would be for the council member, Rust-D'Eye said.

"It's cases like that that cause the quandary," he said.

Bennett didn't respond to a request for an interview Friday, but he has refused to comment on the allegations that some residents made during the budget committee meetings on Tuesday and Thursday.

On Jan. 17, the mayor told The Examiner he rejected the suggestion that he has a conflict of interest.

He didn't declare a pecuniary interest during the budget committee meeting of Jan. 10, 12 and 13, when council endorsed the draft budget. He voted on the endorsement of the draft 2011 budget, which includes the proposed transit service cuts.

Bennett is a part owner of Liftlock Group, which includes Capitol Taxi. He owns the company with his two sons and his brother-in-law.

Council endorsed cutting \$422,000 from the city's \$9.8-million budget for public transit during the budget committee meeting two weeks ago. Service hours on several bus routes would be reduced.

Peterborough has a place in the history of the Municipal Conflict of Interest Act as the municipality with the first elected official to be removed from council for breaching the 1983 legislation.

Former councillor Paul Rexe was removed from council by the courts in 1987 for conflict of interest on a case involving two development applications for plazas on Lansdowne St. W.

Lou Kazowski, a local developer, sued Mr. Rexe in civil court for not fully declaring a conflict of interest on a zoning application and failing to declare a conflict of interest on another zoning application to allow a liquor store on a property.

Rexe owned Public Consulting Group, which performed consulting work for Alfa-Laval Ltd. in connection with a rezoning application for a property owned by Alfa-Laval, Kazowski claimed.

Rexe didn't declare the business relationship when the application went to council. Instead, Mr. Rexe declared a conflict on the basis that the Alfa-Laval president was an uncle who was raised with him like he was a brother.

Del-Ray Development was competing with Alfa-Laval for zoning for a liquor store. The city was prepared to add only one more liquor store.

The zoning applications from the two companies went to council on Aug. 19, 1985.

Rexe didn't declare a conflict with the Del-Ray application. He voted on the rezoning.

Rexe had actively lobbied the provincial government against locating the liquor store on the Del-Ray property, Kazowski alleged in an affidavit.

District court Mr. Justice D.M. Lawson found largely in Kazowski's favour. Rexe was removed from council and barred from running for or holding municipal office for two years.

He appealed the decision and lost. Rexe served 10 years on council over a 35-year period. He served as the city's finance chairman and unsuccessfully ran for the mayor's office in 2006.

He was just 28 years old when he was first elected in 1972.

Bennett has told other local media outlets that he will declare a pecuniary interest over the proposed public transit service cuts when the draft 2011 budget goes to council for approval Monday night.

The Municipal Conflict of Interest Act makes it mandatory for a council member to disclose a

pecuniary interest, Rust-D'Eye said.

"You've got to disclose. People have to know that you've got an interest in the matter. And you can't do anything in any way to affect the vote," he said. "The case law ... is pretty clear that it does apply to a member in attendance of a meeting of a committee of council. So it would include standing committees."

The budget committee is a standing committee of city council.

More recently, the court has interpreted the intent of the act to be to prevent members from participating in the decision-making process if they have a conflict, Rust-D'Eye said.

"Very often, the real decision making takes place at the committee level.... By the time it gets to council, most of the items are not debated and just passed," he said. "It's fair to say that the more modern and purposeful interpretation of the act is that if you participate at all in the decision-making process, then the act applies to you."

Rust-D'Eye, who tours around to municipalities after elections to speak to councils about the Municipal Conflict of Interest Act, explained the purpose of the provincial legislation.

"The act is to prevent people from using public office for their own personal financial benefit," he said. "You're not supposed to use your public office to make money or to increase your assets or the value of your assets."

More often than not, council members don't realize they're breaching the act -- it's inadvertent, Rust-D'Eye said.

"I really feel sorry for a lot of councillors because ... there's no training in this stuff," he said. "Councillors don't necessarily know all the ins and outs of these requirements, but yet if they cross the line they can stand to lose their seat."

He urged council members to declare a pecuniary interest if they have any doubt about a situation.

"There's no penalty for declaring an interest when you don't have one," he said. "Err on the side of complying with the act."

To challenge a council member on a conflict of interest, a voter must file an application with the Superior Court within six years of the alleged breach of the act.

The Municipal Conflict of Interest Act is enforced entirely by individuals, Rust-D'Eye explained.

"They commence legal proceedings at their own expense. It's a form of civil proceeding.... The individual basically has to retain their own lawyer and pay for their own lawyer," he said. "The elector has got to be someone who is prepared to put up their own money and these proceedings can easily cost \$50,000 to \$75,000 and they can go on for months

and months.

"In a lot of cases, people who bring conflict cases are political enemies who want to nail the councillor."

A council member who is found to have breached the act could lose the seat on council, face a potential 10-year disqualification from public offices unless inadvertence or bona fide error in judgment is shown. The legislation also allows for a cash penalty of as much as \$25,000.

bwedley@peterboroughexaminer.com