

**Not Why I Ran For Office – The Perils  
of a Councillor Facing Allegations  
of Improper Conduct**

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**WeirFoulds**<sup>LLP</sup>

## NOT WHY I RAN FOR OFFICE - THE PERILS OF A COUNCILLOR FACING ALLEGATIONS OF IMPROPER CONDUCT

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The two principal matters of concern to councillors in terms of potential for allegations of misconduct are the *Municipal Conflict of Interest Act* and their council's own code of conduct, if it has established one.

In terms of planning what to do, as with most things, it is not so much what you do after the incident has occurred, but what you do to avoid having it happen in the first place.

Every member of a municipal council must be aware of the rules governing his or her conduct as a member.

First of all, get a copy of each document and READ IT!

A copy of the *Municipal Conflict of Interest Act* is attached.

Always pay special attention in any situation in which your own interests, or those of people, corporations or bodies close to you, may be affected by debate or voting at council.

Pay special attention to issues of sensitivity and/or confidentiality, particularly reports, records or other documents marked "confidential", or of a nature generally considered sensitive or not appropriate to be dealt with at a public meeting or made a matter of public record, such as:

- legal advice;
- labour/employee relations and personnel matters;
- security of municipal property; and
- proposed or pending acquisition or sale of municipal land.

The issue of confidentiality is referred to first, due to the fact that the disclosure, use or misuse of confidential information is one of the most frequent issues arising in allegations of misconduct against councillors.

### **Municipal Conflict of Interest Act**

The purpose of the Act is to prevent members of municipal councils, committees and local boards from having any involvement in consideration of a matter in which the member has any direct, indirect or deemed pecuniary interest.

Although the provisions of the Act are couched in vague terms, the results, from the point of view of a member, can be disastrous.

The Act may be brought to bear on any perceived or potential situation of conflict and, where a direct or indirect pecuniary interest exists, proscribes any participation at all in debate or voting, as well as any attempt before, during or after the meeting to influence the vote.

The *Municipal Conflict of Interest Act* can be severe and arbitrary in its impact. It can destroy, and has destroyed, political careers. What should be of particular concern to members of councils, committees and local boards is the potential for a financial interest to be attributed to the member, even though the member him or herself does not have a direct interest. Such attributed interests are:

- indirect interests;
- the interest of a corporation, including a public corporation in which the member holds a controlling interest, or a private corporation, of which the member is a shareholder, director or senior officer;
- the interest of a body of which the member is a member (“body” is not defined);
- the interest of a partnership of which the member is a partner;
- the interest of the employer of the member;
- the interest, direct or indirect, of a parent, spouse or child of the member, if known to the member.

All of the above interests are considered, for the purposes of the Act, to be the interest of the member which impose upon the member the responsibilities of disclosure, non-participation and prohibited conduct.

Section 4 of the Act lists a number of situations to which the requirements of section 5 do not apply, including:

- by reason of the member having a pecuniary interest which is an interest in common with electors generally; and
- by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

If you think that you may have an interest or conflict of interest affected by the Act:

- seek legal or other assistance right away;
- although the municipality’s lawyer doesn’t act for you, he or she may assist in providing direction and other assistance;

- if your municipality has an integrity commissioner whose responsibilities include providing advice to councillors, ask for his or her assistance;
- the municipal clerk, a key official who has witnessed the results of councillor conflict of interest and legal advice provided at meetings, may be in a position to provide direction and advice based on experience.

IF YOU ARE IN DOUBT as to whether or not you have an interest in a matter PROCEED AS IF YOU DO HAVE SUCH AN INTEREST AND COMPLY WITH THE REQUIREMENTS OF SECTION 5 OF THE ACT.

There is no penalty for declaring that you may have an interest but are not sure, but that you intend to proceed as if you do have an interest. It is probably best to leave the meeting while the matter is dealt with by the council.

Section 5 of the Act provides:

**5. (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,**

**(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;**

**(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and**

**(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.**

**Where the meeting is not open to the public, the member must also leave the meeting while the matter is under consideration.**

**Where the member is absent from the meeting, he or she must disclose the interest and otherwise comply with subsection 5(1) at the first meeting of the council or local board attended by the member.**

The duty not to take part in the discussion precludes a member from saying or doing ANYTHING to affect the debate. In one case, a member who had made the declaration and disclosure and went to sit in the public gallery, was held to have breached the Act by volunteering factual information concerning an issue that had come up in the debate.

## The Municipal Code of Conduct

Authority for a municipal council to establish a code of conduct for its members, and those of local boards, is contained in section 223.2 of the *Municipal Act* of Ontario.

Some municipalities had enacted such codes, often as part of a procedure by-law, prior to specific authority being created for that purpose.

The code of conduct represents the collective will of the council members as to the conduct expected of their members acting in their capacity as members, whether or not at a meeting of the council.

The objective of a code of conduct is that the elected representatives of the public serve, and are seen to serve, the public interest and their constituents in a responsible, lawful and diligent manner.

The most frequent types of provisions in municipal codes of conduct in Ontario are:

- restrictions on the use, disclosure and dealing with of confidential information;
- restrictions on gifts and benefits that members may receive, possibly including reporting requirements;
- controls on the expenses of members of council;
- provisions with respect to the use of municipal staff and resources;
- prevention of the improper use of influence and conduct involving a conflict of interest;
- requirements to adhere to council's policies and procedures, comply with the procedure by-law and generally work on behalf of the electors in a conscientious and diligent manner.

Municipal councils also have the power, under section 223.3 of the *Municipal Act, 2001*, to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the application of the code of conduct and generally procedures, rules and policies governing the ethical behaviour of members of council and local boards.

Probably the most important responsibilities of an Integrity Commissioner are to educate and advise the council and its members as to the requirements of the code of conduct and other legislation and policies which may impact on their role as councillors, where the council has authorized and directed the Commissioner to do so.

An Integrity Commissioner has such powers and responsibilities as may be assigned to him or her by the municipal council, which may include the conduct of an inquiry to ascertain facts and

provide an opinion as to whether or not a member of council has contravened the code of conduct.

In the conduct of an inquiry, the Integrity Commissioner may exercise such powers and duties as assigned by the council. The municipality or local board is required to give the commissioner such information as he or she believes to be necessary for the inquiry, and the commissioner is entitled to have free access to all books, accounts, reports, records and other papers belonging to the municipality believed to be necessary for the inquiry.

The Commissioner may decide to exercise the powers of a commission under the *Public Inquiries Act*.

A code of conduct cannot include an offence provision.

If an Integrity Commissioner reports to the municipal council that, in his or her opinion, a member has contravened the code of conduct, the council may impose:

- a reprimand;
- suspension of remuneration as a councillor for a period of up to 90 days.

Aside from those two specified sanctions, it is unclear what other penalties or requirements a council may impose upon one of its members following breach of the code of conduct. For instance, the council might require that the member apologize, or take such specific actions to rectify the consequences of the breach as are within the powers of the council to require.

It would not appear that a council would have the power to suspend a member from office, or from voting, or prevent a member from attending meetings of a body of which he or she is a member, at least in the absence of improper conduct at a meeting sufficient to authorize the head of council or other presiding officer to expel the member from the meeting.

### **Financial Costs to Members of Misconduct Proceedings**

The costs of responding to conflict of interest proceedings or a code of conduct breach may be substantial, particularly the expenses for obtaining required legal advice and representation, but there are statutory provisions to mitigate such costs.

At the outset, it is necessary to make reference to section 448 of the *Municipal Act, 2001* which provides that no proceedings for damages or otherwise shall be commenced against a member of council for any act done in good faith in the performance or intended performance of a duty or authority under that Act or a by-law passed under it, or for any alleged neglect or default in the performance in good faith of the duty or authority.

Similarly, section 450 of the Act provides that no proceedings in negligence may be brought with respect to the exercise of discretionary power or the performance or non-performance of a

discretionary function, if such involves a policy decision made in good faith in the exercise of discretion by the member of council.

Under section 283(1) of the *Municipal Act, 2001*, a municipality may pay the expenses of members of its council where such are incurred in their capacity as members or officers.

Typically, municipal councils adopt policies providing some financial support to members of council in respect of legal expenses incurred in defending themselves against charges arising out of the performance of their duties as councillors, where the member has been successful in his or her defence of the proceeding.

Section 14(1) of the *Municipal Conflict of Interest Act* authorizes municipal councils to pass by-laws for contracting for insurance or acting as an insurer to protect a member of council found not to have contravened section 5, against costs or expenses incurred by the member as a result of proceedings brought under that Act and for paying on behalf of or reimbursing the member for any such costs or expenses.

Although it appears that a member cannot be reimbursed for acting as an applicant in municipal conflict of interest proceedings, nevertheless, a court recently supported the power of a municipality to pay the legal costs of a councillor as plaintiff in a personal defamation action, where the attack on the councillor's reputation was considered by the council as likely to affect her ability to carry out her duties and to undermine public confidence in municipal government.

The Court also suggested that it expected that the municipality in question would arrange with the councillor to repay the municipal corporation out of costs or damages recovered by her in the action, if any. (See *Holyday v. City of Toronto et al* (2010), 256 OAC 109 (Div. Ct.), 74 MPLR (4th) 194.)

### **What To Do When an Allegation is Made**

In general terms, the following will often be the best approach:

- obtain immediate legal and/or other advice as may be required;
- be vigilant;
- say as little as possible about the matter, except to the extent necessary;
- obtain and review whatever is being said about you and search all media for coverage;
- ascertain who else was in attendance at the meeting or other event where the misconduct is alleged to have occurred, and make a list of their names as possible witnesses;
- obtain copies of reports, minutes, agendas, by-laws, certified copies of public documents and whatever other information or records you may need to support your case;

- co-operate with the municipal solicitor and/or integrity commissioner in ascertaining facts involving the case;
- bear in mind that it is political enemies who most frequently bring conflict of interest and other proceedings against members of municipal councils. It is for this reason, among others, why it is recommended that if you are in doubt, you should proceed on the basis as if you had a conflict or pecuniary interest in the matter.

In addition to the provisions referred to above, there are also other relevant legislative requirements, such as the provisions of the *Criminal Code of Canada* prohibiting an official from committing fraud or breach of trust; giving, offering, demanding or accepting a benefit in exchange for voting or other official act; attempting to affect municipal official action by suppression of the truth; and unlawfully and corruptly accepting a reward to show favour.

There are also common law principles against conflict of interest, the undue exertion of influence, and accepting gifts or benefits in exchange for a vote.

## **Conclusion**

Fortunately, most members of municipal councils serve out their term without being subject to serious allegations of improper conduct or conflict of interest. In some cases, resignation, a compromise or settlement of claims may lead to resolution of such a matter. At the same time, it is always necessary to be vigilant, and to be aware of the responsibilities of municipal office.

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## **Municipal Conflict of Interest Act**

R.S.O. 1990, CHAPTER M.50

**Consolidation Period:** From July 1, 2010 to the [e-Laws currency date](#).

Last amendment: 2009, c. 33, Sched. 21, s. 7.

### **Definitions**

**1.** In this Act,

“child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family; (“enfant”)

“controlling interest” means the interest that a person has in a corporation when the person beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding; (“intérêts majoritaires”)

“council” means the council of a municipality; (“conseil”)

“elector” means,

(a) in respect of a municipality, or a local board thereof, other than a school board, a person entitled to vote at a municipal election in the municipality, and

(b) in respect of a school board, a person entitled to vote at the election of members of the school board; (“électeur”)

“interest in common with electors generally” means a pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part; (“intérêt commun à tous les électeurs”)

“judge” means a judge of the Superior Court of Justice; (“juge”)

“local board” means a school board, board of directors of a children’s aid society, committee of adjustment, conservation authority, court of revision, land division committee, municipal service board, public library board, board of management of an improvement area, board of health, police services board, planning board, district social services administration board, trustees of a police village, board of trustees of a police village, board or committee of management of a long-term care home, or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act in respect of any of the affairs or purposes, including school purposes, of one or

more municipalities or parts thereof, but does not include a committee of management of a community recreation centre appointed by a school board or a local roads board; (“conseil local”)

“meeting” includes any regular, special, committee or other meeting of a council or local board, as the case may be; (“réunion”)

“member” means a member of a council or of a local board; (“membre”)

“municipality” includes a board, commission or other local authority exercising any power in respect of municipal affairs or purposes, including school purposes, in territory without municipal organization, but does not include a committee of management of a community recreation centre appointed by a school board, a local roads board or a local services board; (“municipalité”)

“parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child; (“père ou mère”)

“school board” means a board as defined in subsection 1 (1) of the *Education Act*, and, where the context requires, includes an old board within the meaning of subsection 1 (1) of the *Education Act*; (“conseil scolaire”)

“senior officer” means the chair or any vice-chair of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other person who performs functions for the corporation similar to those normally performed by a person occupying any such office; (“dirigeant”)

“spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage. (“conjoint”) R.S.O. 1990, c. M.50, s. 1; 1997, c. 25, Sched. E, s. 7; 1997, c. 31, s. 156 (1); 1999, c. 6, s. 41 (1); 2002, c. 17, Sched. F, Table; 2005, c. 5, s. 45 (1, 2); 2006, c. 19, Sched. C, s. 1 (1); 2006, c. 32, Sched. D, s. 10; 2007, c. 8, s. 219.

### **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).

EXCEPTIONS

**Where s. 5 does not apply**

**4.** Section 5 does not apply to a pecuniary interest in any matter that a member may have,

- (a) as a user of any public utility service supplied to the member by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members;
- (b) by reason of the member being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;
- (c) by reason of the member purchasing or owning a debenture of the municipality or local board;
- (d) by reason of the member having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to the member in like manner as such a deposit is or may be returnable to all other electors;
- (e) by reason of having an interest in any property affected by a work under the *Drainage Act* or by a work under a regulation made under Part XII of the *Municipal Act, 2001* or Part IX of the *City of Toronto Act, 2006*, as the case may be, relating to local improvements;
- (f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the *Assessment Act*;
- (g) by reason of the member being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;
- (h) by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board;

- (i) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member or as a member of a volunteer fire brigade, as the case may be;
- (j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or
- (k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member. R.S.O. 1990, c. M.50, s. 4; 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (1).

#### DUTY OF MEMBER

##### **When present at meeting at which matter considered**

**5. (1)** Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

##### **Where member to leave closed meeting**

**(2)** Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration. R.S.O. 1990, c. M.50, s. 5 (2).

##### **When absent from meeting at which matter considered**

**(3)** Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1). R.S.O. 1990, c. M.50, s. 5 (3).

#### RECORD OF DISCLOSURE

##### **Disclosure to be recorded in minutes**

**6. (1)** Every declaration of interest and the general nature thereof made under section 5 shall, where the meeting is open to the public, be recorded in the minutes of the

meeting by the clerk of the municipality or secretary of the committee or local board, as the case may be. R.S.O. 1990, c. M.50, s. 6 (1).

### **Idem**

(2) Every declaration of interest made under section 5, but not the general nature of that interest, shall, where the meeting is not open to the public, be recorded in the minutes of the next meeting that is open to the public. R.S.O. 1990, c. M.50, s. 6 (2).

## REMEDY FOR LACK OF QUORUM

### **Quorum deemed constituted**

7. (1) Where the number of members who, by reason of the provisions of this Act, are disabled from participating in a meeting is such that at that meeting the remaining members are not of sufficient number to constitute a quorum, then, despite any other general or special Act, the remaining number of members shall be deemed to constitute a quorum, provided such number is not less than two. R.S.O. 1990, c. M.50, s. 7 (1).

### **Application to judge**

(2) Where in the circumstances mentioned in subsection (1), the remaining number of members who are not disabled from participating in the meeting is less than two, the council or local board may apply to a judge without notice for an order authorizing the council or local board, as the case may be, to give consideration to, discuss and vote on the matter out of which the interest arises. R.S.O. 1990, c. M.50, s. 7 (2).

### **Power of judge to declare s. 5 not to apply**

(3) The judge may, on an application brought under subsection (2), by order, declare that section 5 does not apply to the council or local board, as the case may be, in respect of the matter in relation to which the application is brought, and the council or local board thereupon may give consideration to, discuss and vote on the matter in the same manner as though none of the members had any interest therein, subject only to such conditions and directions as the judge may consider appropriate and so order. R.S.O. 1990, c. M.50, s. 7 (3).

## ACTION WHERE CONTRAVENTION ALLEGED

### **Who may try alleged contravention of s. 5 (1-3)**

8. The question of whether or not a member has contravened subsection 5 (1), (2) or (3) may be tried and determined by a judge. R.S.O. 1990, c. M.50, s. 8.

### **Who may apply to judge**

9. (1) Subject to subsection (3), an elector may, within six weeks after the fact comes to his or her knowledge that a member may have contravened subsection 5 (1), (2) or (3), apply to the judge for a determination of the question of whether the member has contravened subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 9 (1).

### **Contents of notice of application**

(2) The elector in his or her notice of application shall state the grounds for finding a contravention by the member of subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 9 (2).

### **Time for bringing application limited**

(3) No application shall be brought under subsection (1) after the expiration of six years from the time at which the contravention is alleged to have occurred. R.S.O. 1990, c. M.50, s. 9 (3).

### **Power of judge to declare seat vacant, disqualify member and require restitution**

**10. (1)** Subject to subsection (2), where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), the judge,

- (a) shall, in the case of a member, declare the seat of the member vacant; and
- (b) may disqualify the member or former member from being a member during a period thereafter of not more than seven years; and
- (c) may, where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or local board of which he or she is a member or former member. R.S.O. 1990, c. M.50, s. 10 (1).

### **Saving by reason of inadvertence or error**

(2) Where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), if the judge finds that the contravention was committed through inadvertence or by reason of an error in judgment, the member is not subject to having his or her seat declared vacant and the member or former member is not subject to being disqualified as a member, as provided by subsection (1). R.S.O. 1990, c. M.50, s. 10 (2).

### **Member not to be suspended**

(3) The authority to disqualify a member in subsection (1) does not include the right to suspend a member. R.S.O. 1990, c. M.50, s. 10 (3).

### **Transition: disqualification**

(4) A disqualification of a member of a school board under this section that would have continued after December 31, 1997 but for the dissolution of the school board continues for its duration with respect to membership on any board whose members are elected by members of the electoral group who elected the member. 1997, c. 31, s. 156 (2).

### **Definition**

(5) In subsection (4),

“electoral group” has the same meaning as in Part VIII of the *Education Act* as the Part read on January 1, 1997. 1997, c. 31, s. 156 (2).

### **Appeal to Divisional Court**

**11. (1)** An appeal lies from any order made under section 10 to the Divisional Court in accordance with the rules of court. R.S.O. 1990, c. M.50, s. 11 (1).

### **Judgment or new trial**

**(2)** The Divisional Court may give any judgment that ought to have been pronounced, in which case its decision is final, or the Divisional Court may grant a new trial for the purpose of taking evidence or additional evidence and may remit the case to the trial judge or another judge and, subject to any directions of the Divisional Court, the case shall be proceeded with as if there had been no appeal. R.S.O. 1990, c. M.50, s. 11 (2).

### **Appeal from order or new trial**

**(3)** Where the case is remitted to a judge under subsection (2), an appeal lies from the order of the judge to the Divisional Court in accordance with the provisions of this section. R.S.O. 1990, c. M.50, s. 11 (3).

### **Proceedings not invalidated but voidable**

**12.** The failure of any person to comply with subsection 5 (1), (2) or (3) does not of itself invalidate any proceedings in respect of any such matter but the proceedings in respect of such matter are voidable at the instance of the municipality or of the local board, as the case may be, before the expiration of two years from the date of the passing of the by-law or resolution authorizing such matter unless to make void the proceedings would adversely affect the rights of any person acquired under or by virtue of the proceedings who acted in good faith and without actual notice of the failure to comply with subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 12.

### **Other procedures prohibited**

**13.** Proceedings to declare a seat vacant or to disqualify a member or former member for conflict of interest, or to require a member or former member to make restitution where a contravention has resulted in personal financial gain, shall be had and taken only under this Act. R.S.O. 1990, c. M.50, s. 13.

## GENERAL

### **Insurance**

**14. (1)** Despite section 279 of the *Municipal Act, 2001* or section 218 of the *City of Toronto Act, 2006*, as the case may be, the council of every municipality may at any time pass by-laws,

- (a) for contracting for insurance;
- (b) despite the *Insurance Act*, to enable the municipality to act as an insurer; and
- (c) for exchanging with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the *Insurance Act*,



to protect a member of the council or of any local board thereof who has been found not to have contravened section 5, against any costs or expenses incurred by the member as a result of a proceeding brought under this Act, and for paying on behalf of or reimbursing the member for any such costs or expenses. R.S.O. 1990, c. M.50, s. 14 (1); 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (2).

### **Insurance Act does not apply**

[\(2\)](#) The *Insurance Act* does not apply to a municipality acting as an insurer for the purposes of subsection (1). R.S.O. 1990, c. M.50, s. 14 (2).

### **Surplus funds**

[\(3\)](#) Despite section 387 of the *Insurance Act*, any surplus funds and the reserve fund of a municipal reciprocal exchange may be invested only in such securities as a municipality may invest in under the *Municipal Act, 2001* or the *City of Toronto Act, 2006*, as the case may be. R.S.O. 1990, c. M.50, s. 14 (3); 1996, c. 32, s. 76 (1); 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (3); 2007, c. 7, Sched. 27, s. 1.

### **Reserve funds**

[\(4\)](#) The money raised for a reserve fund of a municipal reciprocal exchange may be expended or pledged for, or applied to, a purpose other than that for which the fund was established if two-thirds of the municipalities that are members of the exchange together with two-thirds of the municipalities that previously were members of the exchange and that may be subject to claims arising while they were members of the exchange agree in writing and if section 386 of the *Insurance Act* is complied with. R.S.O. 1990, c. M.50, s. 14 (4); 2009, c. 33, Sched. 21, s. 7.

### **Local boards**

[\(5\)](#) A local board has the same powers to provide insurance for or to make payments to or on behalf of its members as are conferred upon the council of a municipality under this section in respect of its members. R.S.O. 1990, c. M.50, s. 14 (5).

### **Former members**

[\(6\)](#) A by-law passed under this section may provide that it applies to a person who was a member at the time the circumstances giving rise to the proceeding occurred but who, prior to the judgment in the proceeding, has ceased to be a member. R.S.O. 1990, c. M.50, s. 14 (6).

### **Conflict with other Acts**

[15.](#) In the event of conflict between any provision of this Act and any provision of any general or special Act, the provision of this Act prevails. R.S.O. 1990, c. M.50, s. 15.