



Integrity and Ethics Office

Interpretation Bulletin Regarding Conflicts of Interest

Interpretation bulletins are not binding legal interpretations. They are intended as guidance for compliance with the Code of Conduct for Elected Official Bylaw (26M2018). Interpretation Bulletins are an effort to summarize general principles that have emerged from court decisions, Integrity Commissioner investigations, and key concepts, to serve as helpful guidance to Members of Council, their staff, City staff and the public. These interpretations may be amended periodically to reflect evolving principles.

I. PURPOSE OF THE BULLETIN

1. This bulletin is intended to assist *Members of Council, City staff, Members' staff* and the public to broadly understand the obligations of *Members* regarding conflicts of interest under the following:
 - *Code of Conduct for Elected Official Bylaw (26M2018) ("Code of Conduct")*, primarily parts G-H;
 - *Municipal Government Act, RSA 2000, c M-26 ("MGA")*, ss. 169 – 174;
 - *Procedure Bylaw (35M2017)*; and
 - *Disclosure Policy for Members of Council (CC044, 2014 November 04) ("Disclosure Policy")*.

II. CONFLICT OF INTEREST

2. Elected officials are expected to maintain the highest standard of ethical conduct and conflicts of interest must be proactively and promptly addressed. The purpose of

conflicts of interest rules are to manage conflicts between private interests and public duties that might create real or perceived bias. The rules are based on three principles: (a) no person can serve two masters; (b) public office is a relationship of trust with the community; and (c) constant rigor is necessary to avoid conflicts of interest and uphold public confidence.¹

3. *Members* must only use the influence of their office for official duties. This means that in carrying out their work, *Members* must focus on what is in the best interests of the *City* without regard to their personal interests, and they must be alert to their influence on others (*Code of Conduct*, ss. 10, 40).
4. There are three types of conflict of interest discussed in this bulletin: pecuniary, personal and prejudgment. They apply in different circumstances with different legal tests. Since each situation is unique, *Members* should seek fact-specific advice from the *Ethics Advisor*.

Pecuniary Interest

5. A pecuniary interest is one that can monetarily affect a *Member*, their employer or their family. The potential monetary impact can be positive or negative (MGA, ss. 169-170).
6. What is considered family is limited to a spouse or adult interdependent partner, their parents, and a *Member's* children (MGA, s. 169(b)-(c); *Code of Conduct*, s. 3(k)).
7. The purpose of the pecuniary interest provision is to “to stop elected officials from using their democratically-given authority to benefit themselves monetarily.”²
8. A monetary impact can be direct or indirect. A direct monetary impact might be voting at *Council* about a monetary benefit to a family member or that *Member*. An indirect monetary impact is an interest by virtue of a *Member's*, or their family's, role within a corporation, partnership or firm (MGA, s. 170(1)-(2)).
9. Not every monetary impact is a pecuniary interest. Courts narrowly interpret the meaning of pecuniary interest.³ It rises to the level of a pecuniary interest only when

¹ For more detailed principles, see *Calgary Roman Catholic Separate School District No 1 v O'Malley*, 2007 ABQB 574 at para 74.

² *Rocky View (County) v Wright*, 2021 ABQB 422, para 55.

³ *Ibid*, para 60.

there is a “clear and *material financial impact*” on the *Member* or their family.⁴ In short, the monetary impact must be sufficiently serious that it is likely to influence their decision-making.⁵

10. In addition, there are several exceptions to finding that there is a pecuniary interest. Two of the most common are an interest that is held in common with the majority of the electors in all or part of a municipality, or a conflict that is so remote or insignificant that it could not reasonably be seen to influence the *Member’s* decision-making (MGA, s. 170(2)).

Personal Interest

11. A personal conflict of interest refers to a *Member’s* private, non-financial interest in the outcome of a decision that could reasonably be viewed as influencing their decision making, such as a matter impacting a *Member’s* close friend or non-immediate family.
12. The question for a personal conflict of interest is whether an informed person would conclude that it is likely that there is a serious and substantial reasonable apprehension of bias.⁶

Prejudgment

13. Prejudgment refers to bias on the basis of having pre-judged an issue. As the Supreme Court of Canada explains, “some degree of prejudgment is inherent in the role of a municipal councillor.”⁷ *Members* are often elected on the basis of their strong views on local matters. Prejudgment is a conflict of interest when a *Member* has prejudged a matter such that their minds are utterly closed and they are no longer capable of persuasion.⁸

⁴ *Ibid*, para 65.

⁵ *Ibid*, paras 55-63.

⁶ *Fitzpatrick v College of Physical Therapists of Alberta*, 2019 ABCA 254 at para 38 quoted in *Kissel v Rocky View (County)*, 2020 ABQB 406 at para 109.

⁷ *Old St Boniface v Winnipeg*, [1989] SCCA No 196.

⁸ *Waste Management of Canada Corporation v Thorhild (County)*, 2008 ABQB 762.

14. Many issues before Council fall under the category of prejudgment not personal conflict of interest. In general, the dividing line is when the decision is more legislative than judicial, in particular when debating larger questions of public policy.⁹

III. ETHICS ADVISOR CONSULTATION

15. If a Member suspects that they have a pecuniary interest, or they have a personal interest, in a matter before *Council* or a *Council* committee, they must consult with the *Ethics Advisor* unless not practically possible (*Code of Conduct*, ss. 37-38).
16. A *Member* should consult the *Ethics Advisor* if they are concerned that they may be perceived as prejudging a matter.

IV. VOTING

17. A *Member* must vote on all matters at *Council* or *Council* Committee meeting at which they are present unless permitted to abstain under the MGA, another enactment or at law. In the face of a conflict of interest, a *Member* can only abstain from voting if the interest is financial (MGA, s. 172, *Procedure Bylaw*, s. 119).¹⁰
18. For clarity, if a *Member* has a personal interest in a matter at a *Council* or *Council* Committee meeting, or concerns about prejudgment, the *Member* nevertheless has a duty to vote if they are present. In such a situation, *Members* are reminded of their obligation to uphold public confidence, and act in the best interests of the *City* as a whole regardless of their personal interests. A *Member* should be vigilant, in substance and appearance, to maintain their open-mindedness and act in the public's interest in their decision-making (*Code of Conduct*, Part A).

⁹ *Atkins v Calgary (City)*, 1994 ABCA 385 at para 20.

¹⁰ The focus of this bulletin is on conflicts of interest. There are other circumstances where a *Member* may abstain from voting, but they are not discussed here. For example, A *Member* may abstain from voting on a bylaw or resolution at a public hearing if they are absent from part of the hearing, and they must abstain if they are absent from all of the hearing (MGA, s. 184; *Procedure Bylaw*, s. 89).

V. DISCLOSING A PECUNIARY CONFLICT OF INTEREST

19. A *Member* has a duty to disclose their pecuniary interest in a matter before *Council*, a Council committee meeting or other bodies to which a *Member* has been appointed as a representative of *Council*.
20. The disclosure should take place before discussion of the matter or as soon as they become aware of it.
21. The disclosure must explain the general nature of the interest.
22. With limited exceptions, a *Member* must immediately leave the room where the meeting is behind held, and must not communicate with anyone remaining in the meeting until voting is complete (MGA s. 172).

VI. DISCLOSURE OBLIGATIONS FOR OTHER INTERESTS

23. A *Member* must disclose their real estate and financial holdings as required by the *Disclosure Policy*.
24. A *Member* must disclose certain gifts and personal benefits valued over \$50 (*Code of Conduct*, s. 30).
25. A *Member* must disclose budgets and expenses as required by the *Expense Bylaw*.
26. A *Member* must disclose quarterly a list of persons with whom they, or their staff, have meetings. There are exceptions depending on privacy concerns, and the size and nature of the meeting (*Code of Conduct*, Part G).

VII. CONSEQUENCES

27. Failure to disclose a pecuniary conflict of interest, and failure to vote at a *Council* meeting when they should, disqualifies a *Member* from *Council*. (MGA, s. 174)
28. Depending on how a *Member* manages a personal conflict of interest, or risk of prejudgment of a matter, it may be a breach of the *Code of Conduct*, in particular Parts A, G or H.

29. Failure to disclose other interests may be a breach of the *Code of Conduct*.

Issue Date	September 2023
Version	1