

CONSOLIDATION OF CONFLICT OF INTEREST ACT
R.S.N.W.T. 1988,c.C-16

(Current to: May 23, 2014)

AS AMENDED BY:

S.Nu. 2006,c.2

In force March 14, 2006

S.Nu. 2011,c.6,s.7

s.7 in force February 25, 2011

S.Nu. 2011,c.11,s.1

s.1 in force March 10, 2011

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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CONFLICT OF INTEREST ACT

INTERPRETATION

Definitions

1. (1) In this Act,

"board" means

- (a) a public agency as defined in subsection 1(1) of the *Financial Administration Act*, and
- (b) a planning board or other public board, commission, committee or body or local authority established or exercising any power or authority for public purposes; (*commission*)

"council" means the council of a municipality; (*conseil*)

"member" means a member of a council or board; (*membre*)

"municipality" means a corporation established or continued as

- (a) a city, town or village within the meaning of the *Cities, Towns and Villages Act*, or
- (b) a hamlet within the meaning of the *Hamlets Act*; (*municipalité*)

"person" includes a corporation and a co-operative association; (*personne*)

"senior officer" means

- (a) the chairperson or vice-chairperson of the board of directors of a corporation, or
- (b) the president, vice-president, secretary, treasurer or general manager of a corporation, and includes a person who performs functions for the corporation similar to those normally performed by a person occupying such office; (*cadre supérieur*)

"voter" means,

- (a) in respect of a municipality, a person entitled to vote under the *Local Authorities Elections Act*, and
- (b) in respect of a board, a person entitled to vote at the election of members of the board, and if the board is appointed, includes the person who may appoint members of the board. (*électeur*)

Expanded meaning of "municipality"

(1.1) For the purpose of this Act, "municipality" includes a settlement corporation within the meaning of the *Settlements Act*. (*municipalité*)

Controlling interest

(2) For the purposes of paragraph (3)(a), a member shall be deemed to have a controlling interest in a corporation if the member beneficially owns directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10% of the voting rights attached to all equity shares of the corporation for the time being outstanding.

Indirect pecuniary interest

(3) For the purposes of this Act, a member has an indirect pecuniary interest in a contract or proposed contract with the municipality or board or in any contract or proposed contract that is reasonably likely to be affected by a decision of the council or board of which he or she is a member or in any other matter in which the council or board is concerned,

- (a) if the member or his or her nominee is a shareholder in, or a director or senior officer of, a private corporation that does not offer its securities to the public or has a controlling interest in, or is a director or senior officer of, a public corporation that offers its securities to the public or is a member of a body,
 - (i) with which the contract is made or is proposed to be made,
 - (ii) that has a pecuniary interest in a contract or proposed contract that is reasonably likely to be affected by a decision of the council or board, or
 - (iii) that has a pecuniary interest in any other matter in which the council or board is concerned; or
- (b) if the member is a partner or employee of a person
 - (i) with whom the contract is made or is proposed to be made,
 - (ii) who has a pecuniary interest in a contract likely to be affected by a decision of the council or board, or
 - (iii) who has a pecuniary interest in any other matter in which the council or board is concerned.

Exception

(4) A member does not have an indirect pecuniary interest by reason only that the member is

- (a) a director or senior officer of a corporation incorporated for the purposes of carrying on business for and on behalf of the municipality or board;
 - (b) a member of a board, commission or other body as an appointee of the council or board; or
 - (c) a nominal director of, or the owner of one share in, a private corporation that does not offer its securities to the public.
- S.Nu. 2006,c.2,s.2; S.Nu. 2011,c.6,s.7(2),(3),(4).

DISCLOSURE

Duty to disclose interest and other conduct

- 2.** (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any direct or indirect pecuniary interest
- (a) in a contract or proposed contract with the municipality or board,
 - (b) in a contract or proposed contract that is reasonably likely to be affected by a decision of the council or board, or
 - (c) in any other matter in which the council or board is concerned,
- and is present at a meeting of the council, board or committee of the council or board at which the contract, proposed contract or other matter is the subject of consideration, the member
- (d) shall, as soon as practicable after the commencement of the meeting, disclose his or her interest and the extent and nature of the interest; and
 - (e) shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract, proposed contract or other matter, or attempt in any way whether before, during or after the meeting to influence the voting on any such question.

Where member absent, etc.

(2) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the absence of the member from the meeting referred to in subsection (1) or the interest having been acquired after the meeting, and after the contract or matter has come to the knowledge of the member, the member shall disclose his or her interest and otherwise comply with subsection (1) at the first meeting of the council or board that is attended by the member after the meeting referred to in subsection (1) or after acquiring the interest.

Interest of dependants and relatives

(3) The interest of a dependant, spouse, son, daughter or other relative of a member who has the same home as the member shall, for the purposes of this section, be deemed to be also an interest of the member if that interest is known to the member.

Exemption

- (4) Subsections (1) and (2) do not apply to an interest in a contract, proposed contract or other matter that a member may have
- (a) as a voter or a user of any public utility service supplied to the member by the municipality or board in the same manner and subject to the same conditions as are applicable in the case of a person who is not a member;
 - (b) because the member is 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 board;

- (c) by reason of the member purchasing or owning a debenture of the municipality or board;
- (d) by reason of the member having made a deposit with the municipality or board, the whole or part of which is or may be returnable to the member in the same manner as such a deposit is or may be returnable to all other ratepayers; or
- (e) by reason of the member being a member of a co-operative association.

Recording of disclosures

(5) Every disclosure of interest under subsection (1) or (2) shall be recorded in the minutes of the meeting by the senior administrative officer of the municipality or the secretary of the board, as the case may be.

Voidable contracts

(6) The failure of a person to comply with subsection (1) or (2) does not of itself invalidate a contract, proceedings in respect of a proposed contract or other matter mentioned in subsection (1), but the contract, the proceedings in respect of a proposed contract or other matter is voidable at the instance of the municipality or board, before the expiration of two years from the date of the passing of the by-law or resolution authorizing the contract or proposed contract or other matter. S.Nu. 2011,c.6,s.7(6).

Quorum

3. Despite any other Act, where the number of members who have a direct or indirect pecuniary interest is such that at any meeting the remaining members are not sufficient to constitute a quorum, the remaining members, if they number at least two, shall be deemed to constitute a quorum. S.Nu. 2011,c.6,s.7(7).

DETERMINING CONTRAVENTION BY MEMBER

Nunavut Court of Justice

4. The question of whether or not a member has contravened subsection 2(1) or (2) may be tried and determined by the Nunavut Court of Justice. S.Nu. 2006,c.2,s.3(a).

Procedure

5. (1) Subject to subsection (3), the Commissioner or a voter may, within three months after the fact comes to his or her knowledge that a member may have contravened subsection 2(1) or (2), apply to the Nunavut Court of Justice by way of originating notice in the manner established by the Rules of the Nunavut Court of Justice for a determination of the question of whether or not a member has contravened subsection 2(1) or (2).

Grounds

(2) The Commissioner or a voter referred to in subsection (1) must state in the originating notice the grounds for finding a contravention by the member of subsection 2(1) or (2).

Restriction on bringing application

(3) An application under subsection (1) may not be brought against a member who does not hold office at the time the application is brought. S.Nu. 2006,c.2,s.3(b).

Punishment

6. (1) Subject to subsection (2), where the Nunavut Court of Justice determines that a member has contravened subsection 2(1) or (2), the Nunavut Court of Justice shall declare the seat of the member vacant and may

- (a) disqualify him or her from being a member of any council and of any board during a period not exceeding five years after the declaration; and
- (b) impose a fine not exceeding \$5,000.

Exception

(2) Where the Nunavut Court of Justice determines that a member has contravened subsection 2(1) or (2), but finds that the contravention was committed through inadvertence or by reason of a *bona fide* error in judgment, the member is not subject to having his or her seat declared vacant or to being disqualified as a member or to be fined as provided by subsection (1). S.Nu. 2006,c.2,s.3(b); S.Nu. 2011,c.6,s.7(8),(9).

Appeal

7. An appeal lies from any order made under section 6 to the Court of Appeal in accordance with the Rules of the Nunavut Court of Justice. S.Nu. 2006,c.2,s.3(c).

GENERAL

Where discussion permitted

8. Nothing in this Act prevents a member from taking part in the consideration or discussion of or from voting on any question in respect of an allowance for attendance at meetings or any other allowance or honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member.

Contracts with senior administrative officers

9. (1) No municipality or board shall enter into a contract, other than his or her own contract of employment, with

- (a) the senior administrative officer of the municipality or board; or
- (b) a corporation or other body in which the senior administrative officer is a senior officer or has a controlling interest as defined in subsection 1(2).

Where contract void

(2) A contract that is entered into contrary to subsection (1) is void *ab initio*.

Conflict with other Acts

10. This Act prevails in the event of conflict between this Act and any other Act.

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