

Avoiding conflict best policy

Even when declaring conflict, politicians still target of accusation

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A municipal councillor's parents live a few houses away from a controversial parcel of land she is fighting to preserve as green space. Is this a conflict of interest?

Another councillor's mother is a retired teacher, collecting a pension from the Ontario Teachers Pension Fund, which owns Markham's Markville Shopping Centre. Is it a conflict of interest for him to participate in council matters dealing with the mall?

Developers contribute to councillor campaigns all the time. When their plans of subdivision come to council for approval, are councillors who accepted money in conflict if they vote?

The answers are no, no and no, according to municipal law experts. They say legislation governing municipal conflict of interest is difficult, unfair and unworkable — but it's all politicians have to rely on at the moment.

"One of the big problems is the legislation is very much self-reporting," explained municipal lawyer Graham Tighe of the Toronto firm Gardiner, Roberts.

"As a consequence, when you have a politician who is less than honest it's easy to circumvent the system. Then you have those who are more than honest and the whole system bogs down unnecessarily as they declare each and every little thing."

Councillors must declare an interest in any matter in which they have a direct or indirect pecuniary interest, according to the Municipal Conflict of Interest Act. That means a councillor must excuse himself from any matter that could affect his financial situation or assets — or those of his family — in any way.

However, a list of 11 exceptions can be applied, including an interest in common with electors generally or if the interest is so remote or insignificant it can't reasonably be regarded as an influence.

Sounds simple enough. But determining whether the interest is direct or indirect, whether the issue could potentially affect



STAFF PHOTO/MIKE BARRETT

Markham Councillor Erin Shapiro decided to be safe rather than sorry by declaring a conflict of interest, but still has to contend with accusations.

a politician's family, or his business, or any body or organization to which he belongs, is more difficult. It's also often beyond the councillor's experience.

"Whether it's measured or not, big or small, whichever way a councillor votes, or whether his vote even influences the decision, he can't participate," said municipal lawyer George Rust D'Eye.

Many councillors, especially those in smaller communities, can't afford constant legal advice, Mr. Tighe pointed out. "Asking councillors to make these kinds of decisions with no resources to do it is unfair," he said.

Markham Councillor Jack Heath agreed.

"The onus is on the councillor. Even the town lawyers get anxious when we ask a question. They tell us to consult our own lawyer, but there are very few of us who wander around with our own lawyers. It would be easier if there was some source we could go to. There's nowhere near the information needed."

Councillor Heath declares an interest on any matter involving Markville Shopping Centre because his mother, a former teacher, collects a pension from the fund that owns the mall.

"Under the act, you are supposed to examine potential conflict in your immediate family," he said. "I know it is questionable, but I want to make sure no

questions can be raised. I'm better off if I declare an interest."

Markham Ward 2 Councillor Erin Shapiro also decided to be safe rather than sorry.

Recent letters to the editor have alleged Ms Shapiro has a conflict of interest on the issue of the Town of Markham buying a portion of Settlers Park in Thornhill. Because her parents live on Donnamora Crescent, a few properties away from a 1.8-acre parcel threatened with development, conflict accusations began to be heard in the community and around the town offices.

HARD TO FIGHT RUMOURS

"This stinks to me," said Thornhill resident David Jordan. "I don't know Erin Shapiro or anything about her, but there is clearly a problem here. She has an obligation to make the taxpayers comfortable with her integrity in doing her job."

Despite comments like these, no one has challenged Councillor Shapiro publicly. And as any politician can tell you, it's hard to fight rumours.

"I openly campaigned on this issue, which existed before I came to council, so it should come to no surprise to anyone I have continued this fight," she said in a recent interview.

"I received a legal opinion in June, 2001 and it was found I did not have a conflict for two reasons. The issue is something I have in common with electors

generally, and secondly, it won't raise significant financial gain either way. My parents' home is located within a subdivision, and so are the homes of 1,500 other people, many of whom want that property saved. I made sure I was on solid ground."

Meanwhile, a battle between residents and restaurant retailers looking to open on Unionville Main Street has created a reverse conflict situation. Councillor Joe Virgilio, a lawyer, represents the owner of the property where a new Firkin Pub is scheduled to open, despite resident concerns about a lack of parking and too many bars on the historical street.

Councillor Virgilio's client is a long-time friend, and he was forced to declare an interest, removing himself from debate on the issue. But that left his constituents unrepresented.

"The problem is if you are in any sort of business in the community, you have a greater chance of bumping into clients around the town. So do you not bother running? This client is one of my best friends — I'm Godfather to his son. So I got another councillor on-side to represent the area in the meantime," he said.

York Region's most recent conflict case was that of former East Gwillimbury Mayor Jim Mortson, who was eventually found guilty of conflict of interest for twice voting in favour of

extending Hwy. 404, despite the fact he stood to benefit financially because the preferred route would cross his farm.

Mr. Rust D'Eye was his lawyer. He argued since Mr. Mortson was the only member on regional council from East Gwillimbury, he felt he had to represent the town's policy in supporting the extension.

Mr. Mortson kept his job because the judge felt it was an honest mistake, but Mr. Rust D'Eye said he paid a high price — both in his day-to-day operations and politically.

"The extension was the biggest planning issue in East Gwillimbury but any future votes would have to exclude the mayor," he said. "In any case, in the next election he was thrown out on his ear."

The long-time practice of politicians accepting campaign contributions from developers is often questioned by residents who believe it's a clear conflict, especially in high-growth areas where new subdivisions are approved on a regular basis.

But in reality, it is rarely challenged.

They can do it because the donation is made so long before the specific vote, it's difficult to connect the two in a court of law. It's just as hard to prove a council vote today is connected to the possibility of a donation in the future, Mr. Rust D'Eye said.

And, perhaps the most glaring flaw in the legislation, is the fact electors are the ones charged with filing a conflict application. That application goes directly to the courts, without the benefit of any organization or government body reviewing the accusations first. Even a charge that eventually gets thrown out can ruin a politician's reputation and career.

More importantly, there aren't many taxpayers who have the financial resources or the time to pursue a conflict case through the courts.

"It places the onus on the taxpayer to prosecute and who is going to do that? It's certainly a lot to ask the average citizen to pony up thousands of dollars. You'd have to be crazy," said Mr. Tighe.

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