

## Sherbrooke Lake Access Advisory Committee

### AGENDA

Location: 1379 Newburne Rd., St. Matthews Lutheran Church

June 23, 2015 at 7 p.m.

Page

1. CALL TO ORDER
2. APPROVAL OF AGENDA
3. APPROVAL OF MINUTES OF MAY 12, 2015 MEETING AS CIRCULATED
4. BUSINESS ARISING FROM THE MINUTES
5. PRESENTATION BY THE SHERBROOKE LAKE FAMILY PARK SOCIETY
6. HISTORY – Public Access to Sherbrooke Lake 1-4
7. CONFLICT OF INTEREST INFORMATION 5-24
8. SHERBROOKE LAKE FAMILY PARK SOCIETY – PETITION 25-30
9. REPORTING TO COUNCIL AND TIMELINES
10. SELECTION OF CHAIR
11. PUBLIC INPUT (15 minutes)
12. INCAMERA ITEM as per the MGA 22 (2) (c) - Personnel Matters
13. ADJOURNMENT AND NEXT MEETING DATE

Please note: Work Plan and Best Practices deferred to next meeting.

## History – Sherbrooke Lake Public Access

Please note the following timeline has been compiled based on information obtained through the Municipality of the District of Lunenburg; it in no way represents the chronology of events or stories that many have in the community concerning public access to Sherbrooke Lake.

- A letter dated December 11, 1995 from the Recreation Coordinator, referenced an Open Space Needs Assessment that was conducted in 1986 and revised in 1994. “In this study, it was recommended that access to major bodies of water should be a priority to the Municipality. One in particular, is Sherbrooke Lake.” This dates the issue of public access to Sherbrooke Lake back to 31 years from today.
- In 1997 MODL started inquiring about acquiring the unlisted portion of the Veinot Road from the Province of Nova Scotia.
- On February 12, 2001 MODL acquired the unlisted portion of the Veinot Road from the Province of NS through a Quit Claim Deed.
- The Municipality’s 2002/2003 Open Space Strategic Plan was released and public access to Sherbrooke Lake was identified as priority number seven. At that time the action was to purchase property from a private land owner and the envisioned use was a picnic area, access to the lake, parking and toilets. Potential partners identified were Bass Masters and the Lunenburg County Wildlife Association. Also identified as partners in the implementation which would involve community participation were adjacent subdivision homeowners associations, Walden community and Veinot Road residents.
- In 2003 MODL is in negotiations with a private land owner to acquire additional land abutting Sherbrooke Lake. MODL was not successful in acquiring the land.
- July 16, 2003 an article is published in The Bulletin and The Progress Enterprise titled “Municipality has no immediate plans for Sherbrooke Lake, says Warden”. In this article residents want to know what the Municipality is planning concerning access to Sherbrooke Lake as “rumours are running rampant about land purchases and road building in the area.” “Municipal Warden Jack Wentzell said the Municipality owns a right-of-way to the lake off the Veinotte Road, near Newburne. He said South Shore Bass Masters has asked to be involved and the group has gone ahead and contacted people and received estimates for putting in a road. He pointed out the Municipality hasn’t gone ahead and contacted anyone.”

- July 30, 2003 an article is published in The Bulletin titled "Sherbrooke Lake water access heats up". The article was about accessing the lake via the Old Veinot Road. Some residents voiced concerns about the type of access and that the public was not consulted. Other residents voiced concerns about not being able to access Sherbrooke Lake and that a public access needs to be established for future generations. In the article it was stated "at public open space meetings in the spring, access to Indian Falls and Sherbrooke Lake were identified as priorities. Warden Wentzell pointed out that Sherbrooke Lake access won't immediately follow the Indian Falls Project. (Indian Falls Park was a project that was completed to help celebrate the 125<sup>th</sup> anniversary of municipal council)
- In 2009 Council for the Municipality holds an Open Space Strategic Workshop with Councillors. An update of the Open Space Strategic Plan was approved in 2010. In the updated Plan public access to Sherbrooke Lake was identified as priority number five. With the acquisition of the Old Veinot Road the concept of purchasing land from a private land owner and utilizing the public land was identified to provide access. The envisioned use remained as picnic area, access to lake, parking and toilets. Possible partners included the Bass Masters, Lunenburg County Wildlife Association, South Shore Wildlife Association, local fire departments, Department of Fisheries and Oceans, the Municipality of Chester and the Department of Natural Resources. Community participation remained part of the process to involve adjacent subdivision homeowners associations, the Walden community, Veinot Road residents and now included the general public.
- In 2009 MODL was in negotiations to acquire additional land abutting Sherbrooke Lake but the negotiations did not lead to the Municipality acquiring the property.
- In 2010 the Municipality makes the decision to have the portion of the Veinot Road they acquired through a Quit Claim Deed surveyed.
- The surveying of the property in 2010 prompted rumours that the Municipality was developing a cement boat launch. Communication was sent by the Municipality stating the rumours were just that and no decisions had been made concerning the development of Sherbrooke Lake.
- The survey was registered on December 12, 2011. On the survey plan it notes "by deed dated February 12, 2001, Her Majesty the Queen (book 784, page 847) by quit claim deed conveyed to the Municipality of the District of Lunenburg a 66' right of way extending from the end of the listed public highway no. 474 (Veinot Road) to Crown grant no. 6416 & thereafter the prolongation of the Veinot Road as described in various statutory declarations. This survey represents the visible road on the ground extending to waters of Sherbrooke Lake."
- MODL received correspondence challenging the survey before and after it was registered. No legal action has been taken to date against the Municipality.

- In April 2013 Councillor Dorey submitted a letter to the Committee of the Whole requesting he be able to pursue the possibility of using crown land on the Municipality of Chester side to provide public access to Sherbrooke Lake.
- On October 7, 2013 an Open Space Workshop was held with Council. The purpose of this workshop was to review open space priorities currently being worked on, those on the horizon and all that is listed in the Open Space Strategic Plan. Council went through a prioritization process establishing “now priorities” in which staff are to spend time and resources on. A “next” priority list was also generated and access to Sherbrooke Lake is the number one priority on the “next” list. Once some of the projects are completed on the now list access to Sherbrooke Lake will then become on the now list.
- October 22, 2013 Committee of the Whole session the Committee deferred a motion that Council undertake an investigation on the possibilities of simultaneously developing three properties being PID Numbers 60277464, 60206885 and 60280252 presently owned by the Municipality of the District of Lunenburg with the intent of providing public access to Sherbrooke Lake until the Public Open Space Workshop was presented to the Committee.
- In November 2013, Council directed staff to continue with the now priorities identified at the workshop in October in which access to Sherbrooke Lake was a next priority.
- At the February 24, 2014 Council meeting the following motion was made: “that the old Veinot Road (PID 60569670) be pursued as the preferred access point to Sherbrooke Lake when the project is moved to the Now Priority on Council’s Strategic Priorities List.”
- March 25, 2014 Council meeting the following motion was approved: “Council accepts the recommendation of the Committee of the Whole and approves the establishment of a reserve for access to Sherbrooke Lake via the Old Veinot Road (PID 60569670) with the 2014/15 fiscal year to be established at \$40,000 and with contributions each subsequent year, up to four years, to be established during budget deliberations each year.”
- May 2014 a Town Hall meeting was held in the Parkdale/Maplewood Hall and the topic of access to Sherbrooke Lake was the main item discussed.
- May 2014 Council received a letter from a number of residents and property owners near Sherbrooke Lake concerning the direction Council was taking pertaining to access to Sherbrooke Lake.
- August 2014 the Sherbrooke Lake Family Park Society became an incorporated non-profit group.

- September 16, 2014 – staff was directed to prepare a terms of reference to establish a Sherbrooke Lake Access Advisory Committee, comprised of community members, supported by staff.
- December 9, 2014 the terms of reference for the Sherbrooke Lake Access Advisory Committee were approved. The mandate being “to provide broad based community advice to the Municipality of the District of Lunenburg and provide options available for establishing public access to Sherbrooke Lake and to engage the public using various methods (i.e. questionnaires, public meetings) to ensure community input throughout the process of determining public access to Sherbrooke Lake.”
- February 24, 2015 Council appoints ten individuals (residents and or property owners in MODL or MODC) to the Sherbrooke Lake Access Advisory Committee.
- May 12, 2015 was the first meeting of the Sherbrooke Lake Access Advisory Committee.
- At the June 9, 2015 Council meeting Council received a petition from the Sherbrooke Lake Family Park Society which was referred to the Sherbrooke Lake Access Advisory Committee.
- June 23, 2015 – second meeting of the Sherbrooke Lake Access Advisory Committee.

**MUNICIPALITY OF THE DISTRICT OF LUNENBURG**

**POLICY MDL-37**

**A POLICY RESPECTING A CODE OF CONDUCT**

1. This policy is entitled "A Policy Respecting a Code of Conduct" and applies to Members of Municipal Council, citizens appointed by Council to serve on a Committee of Council and Municipal staff.

**PURPOSE**

2. The purpose of this Policy is to establish Council's standards of professional conduct for Council Members, Municipal Staff and citizens appointed by Council to serve on a Committee of Council. The standards of professional conduct established in this Policy are built on the following Core Values of Municipal Council:
  - a) Customer Service
  - b) Community Participation and Consultation
  - c) Equality and Respect
  - d) Openness and Accountability
  - e) Integrity and Impartiality.

**PROFESSIONAL CONDUCT STANDARDS - GENERAL**

3. All Municipal Council members, citizen appointees to Committees of Council and Municipal staff shall adhere to the following Professional Conduct Standards in carrying out their respective duties:
  - a) Council members, citizen appointees and Municipal staff will act in good faith at all times, putting public interest above personal interest
  - b) Council members, citizen appointees and Municipal staff will be cognizant of issues involving Conflict of Interest (either direct or indirect) and will declare such Conflict of Interest when they occur.
  - c) No member of Municipal Council, citizen appointees or Municipal staff shall, without proper legal authorization, disclose confidential information of the Municipality, property of the Municipality or employees of the Municipality where such information was discussed in an In-Camera Session.
  - d) Council members, citizen appointees and Municipal staff shall not exceed their authority, breach the law or ask others to do so.

e) Council members, citizen appointees and municipal staff will recognize that the expenditure of municipal funds is a public trust and will endeavor to ensure that such funds are expended efficiently, economically and in the best interest of the Municipality of the District of Lunenburg.

#### **PROFESSIONAL CONDUCT STANDARDS – MUNICIPAL COUNCIL MEMBERS**

4. In addition to the Professional Conduct Standards in section 3, all Members of Municipal Council shall follow the Professional Conduct Standards in carrying out their duties as a Municipal Councillor of the Municipality of the District of Lunenburg, as follows:

a) Council members shall be able to seek information from Municipal Staff without receiving authorization from the Chief Administrative Officer. However, if the information being sought will impact on Municipal staff's workload or not enable Municipal staff to complete scheduled work, the request for information shall be made through the Chief Administrative Officer.

b) As per the Municipal Government Act, no member of Municipal Council or Committee member shall give direction to Municipal staff. All instructions shall be made by Council or the Committee of the Whole or other Committees of Council, through the Chief Administrative Officer.

c) Council members will avoid hostility and bitterness during meetings; will observe proper decorum and behavior; will encourage full and open discussions in all matters; and, will not withhold or conceal from Council members any information or matter in which they should be concerned.

d) Council members will make no disparaging remarks (in or out of Council) about other members of Council or their opinions, but will reserve the right to make respectful and honest criticism.

e) Council members will respect that the role of Municipal staff is to provide Council with the information deemed necessary for Council members to make decisions and carry out the duties of Council. Council members shall treat staff with respect and shall not display hostility or bitterness to Municipal staff while receiving Municipal staff's advice.

f) Council members will not pursue any procedure calculated to embarrass a fellow member of Council or a member of Municipal Staff.

g) Council members will abide by the majority decisions of Municipal Council.

**PROFESSIONAL CONDUCT STANDARDS - CITIZEN APPOINTMENTS**

5. Individuals appointed by Municipal Council as Members at Large (Citizen Appointments) on Committees of Municipal Council shall adhere to the professional conduct standards as established for Municipal Council Members

**PROFESIONAL CONDUCT STANDARDS - MUNICIPAL EMPLOYEES**

6. Municipal staff shall adhere to the following Professional Conduct Standards in carrying out their duties as employees of the Municipality of the District of Lunenburg:
  - a) Municipal staff will carry out their duties in accordance with their job descriptions and will do so with the utmost respect for each other, Council and for public which they serve.
  - b) No Municipal employee shall grant any special consideration, treatment or advantage to any citizen or group of citizens beyond that which is accorded to all citizens.
  - c) Municipal staff will make no disparaging remarks about other employees, Council members or members of the public in the carrying out of their duties.
  - d) Upon the request of a Council Member for information, a Municipal staff member shall provide the requested information within a reasonable time frame. If a Municipal staff member feels that in order to provide the requested information their respective workload and ability to meet specific deadlines will be impacted, the employee shall forward the request, on behalf of the Councillor, to the Chief Administrative Officer. The Chief Administrative Officer shall then make a determination as to whether the requested information can be provided and when.
  - e) Municipal staff shall not receive direction from a Municipal Council member, but rather shall receive direction from a Committee or Council, through the Chief Administrative Officer.
  - f) All recommendations/reports communicated to Council or a Committee of Council shall be in writing and shall be brought to Council through the Chief Administrative Officer, or to the applicable Committee through the Chief Administrative Officer, or the Committee Chair, as applicable. Verbal reports shall be used as a method of communicating advice to Council or a Committee only on the rare occasion, when time constraints provide no other option. Recommendations/Reports shall be based upon the best information available to Municipal Staff at the time of forwarding the same to Council.
  - g) Municipal staff shall respect that the role of Municipal staff is to advise Council on policy matters. Municipal staff shall further respect that the role of Municipal Council is to receive the advice and then make decisions respecting policy matters. Municipal staff shall

respect the decision of Council, and shall not make disparaging remarks (in or out of Council) about Councillors or individual Council Members opinions.

## 7. REPORTING BREACHES OF THIS CODE

Members of Municipal Council, citizen appointees on Committees of Council and Municipal staff shall act in accordance with this Code of Conduct. The following procedure shall be followed in reporting a breach of this Code:

### Municipal Employees

- a) An employee who wishes to report a breach of this Code or seek clarification as to whether the Code of Conduct was breached shall consult with his/her supervisor.
- b) If a supervisor determines that a breach to this Code has occurred, the supervisor shall report the same to his/her Department Head. The Department Head, in consultation with the Chief Administrative Officer, shall determine what steps shall be taken to rectify the matter, including whether disciplinary action shall be taken.
- c) A Municipal Councillor who wishes to report a breach of this Code by a Municipal Employee, or seek clarification as to whether the Code of Conduct was breached shall do so by consulting with the Chief Administrative Officer.

### Municipal Council Members / Citizen Appointees

- d) A Municipal Council Member or Citizen Appointee, who wishes to report a breach of this Code by a Council Member or a Citizen Appointee, or seek clarification as to whether the Code of Conduct was breached, shall consult with the Head of Council.
- e) If the Head of Council determines that a breach of this Code has occurred, the Head of Council shall discuss the breach with the Councillor or Citizen Appointee whom made the breach to determine what steps will be taken to rectify the matter.
- f) A Municipal Employee who wishes to report a breach of this Code by a Municipal Councillor or Citizen Appointee, or seek clarification as to whether the Code of Conduct was breached shall do so by consulting with his/her supervisor. Upon receipt of the notice by the employee, the supervisor shall report the same to the Chief Administrative Officer, who, in turn shall refer the matter to the Head of Council.
- g) A Municipal Councillor who wishes to report a breach of this Code of Conduct by the Head of Council shall do so by bringing the matter to Council. The Head of Council shall grant the request to place the item on the Agenda. Council members shall discuss the concern with the Head of Council.

**Clerks Annotation for Official Policy Book**

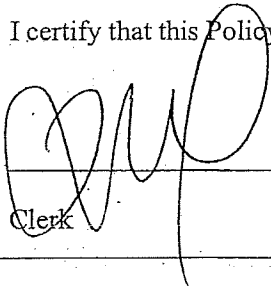
Date of Notice of Council Members: September 11, 2007

Date of Passage of Current Policy: October 9, 2007

I certify that this Policy was adopted by Council as indicated above:

Clerk

Date



October 17, 2007

**Section 4.3**

**Conflict of Interest Guidelines for  
Members of Councils and Local Boards**

**Introduction**

At some point, a question may arise as to whether a member of a council or local board is in a conflict of interest. This is a matter which cannot be taken lightly and it has warranted the provincial legislature to adopt the *Municipal Conflict of Interest Act* (see Appendix 4.3a) Furthermore, failure to act upon a conflict of interest can have serious consequences upon an individual and the credibility of the municipality.

This section provides a brief overview of the Act, as well as a copy of the Act. The reader is cautioned, however, the preparation of this material involves interpretation of legislation as it applies in general situations. Specific situations may require careful legal analysis and therefore reference should be made to the *Municipal Conflict of Interest Act*, other relevant legislation and legal advisors.

It is also important to note that the municipal solicitor does not advise individuals on issues regarding conflict of interest. The municipal solicitor's role is to advise the council and not individual councillors or members of boards, commissions or committees. It is the personal responsibility for the councillor to obtain his or her own legal advice on such matters.

**Conflict of Interest**

The *Municipal Conflict of Interest Act* was enacted in 1982. The Act deals with various types of interests and what conduct is required when those interests arise, as well as the penalties that result from the failure to observe the standards set out in the Act. Within the Act, the term "conflict of interest" is not used. Rather, the Act talks about declaring an interest. If the interest is declared, there is not a conflict.

Public office is a trust conferred by the public for public purposes. The present legislation in Nova Scotia permits members of councils or local boards to do business with the municipality or board, provided that they remove themselves from the decision making process in respect to

**When in doubt ask your personal legal advisor whether a conflict of interest exists.**

**Purpose and Overview of the Act**

**Who is covered under the Act?**

that business. It recognizes that the judgment of even the most well meaning persons may be impaired when their own financial interests, or the financial interests of someone close to them are affected.

The Act covers members of both council and local boards which means elected officials of municipalities and school boards and appointed members of municipal and inter-municipal commissions, boards, bodies and authorities and committees (Section 2).

**Interests**

The Act speaks of “interests.” These can be discussed under the headings:

- direct pecuniary interest
- indirect pecuniary interest
- deemed pecuniary interest

**Pecuniary Interest**

In each case the term “pecuniary” is used, but not defined. A pecuniary interest is money interest. It does not, however, have to be a cash interest as long as it may be converted into or measured in cash. The focus is not only on money income but on the wealth of the member. The wealth of the member includes all of the member’s assets. The possible effect must be looked at in addition to the certain effect. The magnitude or extent of the pecuniary interest is irrelevant to the determination as to whether the interest exists. Thus, a pecuniary interest can mean monetary benefits that will be received or could be received, either in cash or as an increase in asset value and it can also mean the avoidance of cash payments or a decrease in asset value.

**Direct Pecuniary Interest**

This is not discussed under a separate heading in the Act, however, a direct pecuniary interest is that of a member. “Member” is defined in the Act, as are council and local board, and includes a former member, so that enforcement for actions taken while a person was a member can continue after membership ceases.

A useful question for a member to ask is: “What could I possibly stand to gain or lose from the outcome of this matter?” Unless the answer is “Absolutely nothing” the member has an interest which, unless it is exempted elsewhere in the legislation, requires the member to adhere to the course of conduct set out in the Act. Generally, if you have to ask yourself whether the Act applies, it probably does, and you should

**Indirect Pecuniary Interest**

declare an interest, or, at a minimum, obtain independent legal advice and follow it.

Indirect pecuniary interests are dealt with under Section 3 of the Act and arise from the member's relationship with another entity, such as a corporation, of which the member is a shareholder or director and which has an interest in any matter in which the council is concerned.

The indirect pecuniary interests (Section 3) includes interests of a/an:

- partner
- associate
- employer
- company in which the member is an officer
- private company in which the member is a shareholder
- company in which the member has or controls over 10% of the voting shares (directly or indirectly)

who or which has an interest in any matter in which the council, board, commission or committee is concerned.

The combination of the member's relationship with the entity, and an interest of the entity, whether pecuniary or not, is sufficient to give the member an indirect pecuniary interest. An example of this may be where a councillor is a member of a volunteer organization that seeks a grant from council.

**Deemed Pecuniary Interest**

A deemed pecuniary interest (Section 4) results from the relationship of the member with other individuals. This section is very wide ranging in terms of the relationships covered both by blood and by marriage and by virtue of the definition of "spouse," includes those who are living together as husband and wife. As well, the section includes anyone who normally resides in the same house as the member. The section also applies not only to pecuniary interests of which the member has knowledge, but also pecuniary interests of which the member reasonably should have known. This section means that the pecuniary interest of these people, whether it is direct pecuniary interest or an indirect pecuniary interest, is deemed to be that of the member.

**There are exemptions to the Act.**

### **Exemptions**

Section 5 (1) of the Act provides the exemptions, and the circumstances. They are self explanatory (see Appendix 4.3a), however, if there is any question, the councillor should seek independent legal advice. This is not legal advice from the municipal solicitor, whose role is to advise the council and not individual councillors.

**What you should do when an interest has been declared.**

### **Discharging Obligations Under the Act**

Section 6 of the Act states that any and all interests must be declared at the start of a meeting where the matter is to be considered, and the member must withdraw from his or her place as a member. In closed door meetings, he or she must physically leave the room, and at meetings open to the public, he or she must withdraw to that part of the room set aside for the general public and abstain from taking part in any discussion or voting on the matter. It is to be understood that interested members must refrain from attempting in any way whether before, during or after the meeting to influence the decision of the council or local board with respect to the matter.

A “meeting” is defined as a regular, special or emergency meeting of the municipality or local board and any committee thereof and includes informal as well as formal meetings (Section 2 (e)).

If the member was not present at the meeting where the matter in which the member has an interest was first raised, the member must disclose the interest at the next meeting he or she attends (Section 6(2)).

Similarly, a member must comply with these requirements even if he or she only intends to obtain a pecuniary interest, either on his or her behalf or while acting for, by with or through another (Section 6(3)).

**Ensure records are kept.**

### **Record Keeping**

Section 7 states that every declaration of interest must be recorded in the minutes of the meeting and kept in a “central record of disclosure” by the clerk, meeting secretary or chairman. It is recommended that any person who declares an interest check the central record of

disclosure to ensure that this has in fact been recorded. This record is open to public inspection.

**Consequences Upon Failure to Disclose an Interest**

Section 9 of the Act provides that the Attorney General or an elector (this includes a Council member) may apply to the Nova Scotia Supreme Court for the determination of whether a member has breached the Act. The Attorney General’s Department has stated that responsibility to pursue complaints that do not involve Provincial interests lies in the hands of the electors or the council or local board concerned and that it will not pursue claims which are local in nature. An application under Section 9 must be done within sixty days of the alleged contravention coming to the applicant’s attention, and within ten years after the date of the alleged breach.

**The consequences of failing to declare a conflict of interest can be severe.**

Section 10(1) provides that where a judge finds that the Act has been violated, he or she shall declare the member’s seat vacant. And direct that it be filled (see exceptions below). The disqualified member will not qualify to fill any such vacancy. The judge may also disqualify the member from being a council or local board member for up to ten years. Additionally, where the violation resulted in personal financial gain, the judge may order the member to make restitution and where it was made for personal financial gain, shall impose a penalty of not more than \$25,000 or in default, imprisonment for up to 12 months. Court costs may also be awarded against the member.

If a member fails to declare an interest, the Court may also order that the Council’s, board’s or committee’s action in respect to the subject matter be void (Section 13). The judge, however, is required to consider the effect this may have on innocent third parties.

As an alternative to a court application by an elector, the Council or local board may by resolution request an inquiry into any alleged breach of the Act. The Attorney General may then appoint a judge or other suitable person to head the inquiry. The appointee is required to report to the Attorney General and the Council or local board on the results of evidence taken at the inquiry.

## **Defences to Legal Action**

A defendant may argue that one of the exemptions in Section 5 applies. If the judge finds, however, that the Act has been contravened, the only defences available to argue that the member's seat should not be forfeited are that the contravention was committed as a result of inadvertence or *bona fide* error in judgement (Section 10(1)).

Inadvertence has been interpreted by the Courts to excuse ignorance of the law, carelessness, negligence and mere inattention. Willful blindness or reckless disregard for the legal consequences of ones action, however, does not constitute inadvertence. An error in judgement may be an error arising out of a mistake of fact or law. Whether an error has occurred in good faith or honestly, which is what *bona fide* means, is itself a question of fact.

If either of these defences can be borne out, the Court has the discretion to relieve against forfeiture of office if a member was found to contravene the Act.

## **Conclusion**

The issue of "conflict of interest" is a serious matter of concern for all elected officials of municipalities and school boards and appointed members of municipal and inter-municipal commissions, boards, bodies, authorities and committees. Each of the above should have their own copy of the *Municipal Conflict of Interest Act* as soon as they assume their position and they should review it on a regular basis.

**Appendix 4.3a**

**Municipal Conflict of Interest  
Act**

**CHAPTER 299  
OF THE**

**REVISED STATUTES, 1989**

amended 1991, c. 6, s. 40; 1993, c. 47, s. 6

NOTE - This version of this statute is provided for your convenience and personal use only. Where accuracy is critical, please consult official sources.

An Act to Prevent Conflict of Interest in the  
Conduct of Municipal Government

- 1 This Act may be cited as the *Municipal Conflict of Interest Act*. R.S., c. 299, s. 1.
- 2 In this Act,
  - (a) "council" means the council of a municipality;
  - (b) "elector" means a person entitled to vote at a municipal election in the municipality;
  - (c) "interest in common with electors generally" means a pecuniary interest in common with the electors within the area of jurisdiction of the municipality or local board or, where the matter under consideration affects only part of that area, an interest in common with the electors within that part;
  - (d) "local board" means any board, commission, committee, body or local authority of any kind established to exercise or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes of a municipality or parts thereof or of two or more municipalities or parts thereof, or to which a municipality or municipalities are required to provide funds, and includes a school board pursuant to the School Boards Act;

**Definitions**

- (e) "meeting" means a regular, special or emergency meeting of a municipality or local board and any committee thereof, and includes informal as well as formal meetings;
- (f) "member" means a member, in whatever capacity, of a council or a local board and, for the purposes of Sections 9 and 10, includes a former member;
- (g) "municipality" means a city, incorporated town or municipality of a county or district;
- (h) "senior officer" means the chairman and vice-chairman of the board of directors of a corporation, the president, vice-president, secretary, treasurer, managing director and general manager of a corporation and any other person who performs functions for the corporation similar to those normally performed by a person occupying any such office;
- (i) "spouse" means either of a man and woman who
  - (i) are married to each other,
  - (ii) are married to each other by a marriage that is voidable but which has not been voided by order of a court,
  - (iii) have gone through a form of marriage that is void and have cohabited within the preceding twelve months, or
  - (iv) are living together as husband and wife;
- (j) "substantial interest" means the direct or indirect beneficial ownership of, or the power to exercise control or direction over, equity shares of any corporation that carry more than ten per cent of the voting rights attached to all outstanding equity shares of the corporation. R.S., c. 299, s. 2; 1991, c.6, s. 40.

**Indirect pecuniary interest**

- 3** A member has an indirect pecuniary interest in any matter
  - (a) if the member or the members nominee
    - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its shares to the public,

**Deemed pecuniary interest**

- (ii) has a substantial interest in, or is a director or senior officer of, a corporation that offers its shares to the public, or
  - (iii) is a member of a body, whether incorporated or not, that has an interest in any matter in which the council or local board is concerned;
- or

- (b) if the member is a partner of or associated in a joint venture with a person, or is in the employ of a person or body, whether incorporated or not, that has an interest in any matter in which the council or local board is concerned. R.S., c. 299, s. 3.

**4** The pecuniary interest of

- (a) the spouse of a member;
- (b) any son, daughter, father, mother, brother or sister of a member or the members spouse;
- (c) the spouse of the persons referred to in clause (b); and
- (d) any other person who normally resides in the same home as the member, shall, if known to the member or of which the member reasonably should have known, be deemed to be also a pecuniary interest of the member. R.S., c. 299, s. 4.

**Where the Act does not apply.**

**5 (1)** This Act does not apply to any interest in any matter that a member may have

- (a) as an elector;
- (b) by reason of being entitled to receive any service, commodity or other benefit offered by the municipality or local board in like matter and subject to the like conditions as are applicable to persons who are not members;
- (c) by reason of purchasing or owning a debenture or other security issued by the municipality or local board;
- (d) by reason of 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 other electors;

- (e) by reason of being eligible for election or appointment to fill a vacancy, office or position in the council or local board where the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;
- (f) by reason of being eligible for appointment, or having been appointed, by the council to a local board;
- (g) by reason only of 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;
- (h) by reason of having been appointed by the council or local board to a board, committee or other body;
- (i) with respect to any allowance, honorarium, remuneration, salary or benefit to which the member is or may be entitled by reason of being a member or by reason of having been appointed, by the council or local board, to a local board or other board, committee or other body;
- (j) by reason of having a pecuniary interest that is an interest in common with electors generally;
- (k) by reason only of an interest that is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

(2) This Act does not apply to a council of a city, or a local board of that city, while it has in effect a by-law made pursuant to Section 19 of the Municipal Elections Act. R.S., c. 299, s. 5.

**What to do if there is a direct conflict of interest.**

6 (1) Where a member, either on the members own behalf or while acting for, by, with or through another, has any direct or indirect pecuniary interest 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 shall

- (a) as soon as practicable after the commencement of the

meeting disclose the interest and the general nature thereof;

- (b) withdraw from his place as member and
  - (i) in the case of a closed meeting, leave the room in which the meeting is held for the duration of the consideration of the matter, and
  - (ii) in the case of a meeting that is open to the public, either leave the room in which the meeting is held or remain in that part of the room set aside for the general public for the duration of the consideration of the matter;
- (c) refrain from taking any part in the consideration or discussion of the matter and from voting on any question relating to the matter; and
- (d) refrain from attempting in any way, whether before, during or after the meeting, to influence the decision of the council or local board with respect to the matter.

**What to do if there is an indirect conflict of interest.**

- (2) Where the member was not present at a meeting at which a matter in which the member, either on the members own behalf or while acting for, by, with or through another, has any direct or indirect pecuniary interest was the subject of consideration, the member shall disclose the interest at the next meeting the member attends, and the provisions of subsection (1) shall apply to the member in respect of the matter.
- (3) A member shall comply with this Section in respect of any matter in which the member intends to obtain a pecuniary interest, either on the members own behalf or while acting for, by, with or through another. R.S., c. 299, s. 6.

**Recording the Conflict of Interest in the minutes.**

- 7 (1) Every declaration of interest and the general nature thereof disclosed pursuant to Section 6 shall be recorded in the minutes of the meeting by the clerk of the municipality or by the secretary of the local board, as the case may be.
- (2) The person acting as secretary of any meeting, or the chairman of the meeting if there is no secretary, shall record every

**What is required if a declared conflict of interest results in a lack of quorum.**

disclosure of interest and the general nature thereof in a central record of disclosure.

- (3) Every municipality and local board shall keep a central record of disclosure, which shall be open to inspection by any elector without fee at all reasonable times. R.S., c. 299, s. 7.

- 8 (1) Where, by reason of this Act, a council or local board lacks a quorum to consider any particular matter, then, notwithstanding the provisions of any Act or other provision establishing the number of members to constitute a quorum, for the purposes of considering and acting on the matter, a quorum is one third of the council or local board or two members thereof, whichever is greater.

- (2) Where, by reason of this Act, a council or local board lacks a quorum pursuant to subsection (1) to consider any particular matter, the council or local board may apply to a judge of the Trial Division of the Supreme Court or a county court for an order authorizing the council or local board to consider and act on the matter.

- (3) The judge may, by order, prescribe the terms and conditions pursuant to which the council or local board may consider and act on the matter, and may direct that certain of the members may participate in the consideration of the matter and that certain members may not, as to the judge seems just.

- (4) Participation in the consideration of any matter in which a member has a direct or indirect pecuniary interest pursuant to an order of a judge is not a contravention of this Act. R.S., c. 299, s. 8; 1993, c. 47, s. 6.

**An application to determine whether a conflict of interest has arisen.**

- 9 (1) The Attorney General or an elector may apply to a judge of the Trial Division of the Supreme Court or a county court for a determination of whether a member has contravened the provisions of this Act.

- (2) An application shall be made by originating notice (application inter partes) pursuant to the rules of the court.

- (3) The application shall state the grounds on which it is believed

**Consequences of an undeclared conflict of interest as determined by a judge.**

that a contravention of this Act may have occurred.

- (4) An application shall be made within sixty days after the fact comes to the attention of the applicant that the member may have contravened this Act.
- (5) No application may be made pursuant to this Section more than ten years after the date of the alleged contravention of this Act. R.S., c. 299, s.9.

**10** (1) Where the judge determines that a member has contravened this Act, the judge shall declare the seat of the member vacant and direct that the vacancy be filled in the manner prescribed by law, but if the judge determines that the contravention was committed as a result of inadvertence or a bona fide error in judgment the judge may relieve against such forfeiture of office.

- (2) The member found to have contravened this Act shall not be qualified to fill the vacancy so created.
- (3) Where the judge determines that a member has contravened this Act, the judge may
  - (a) disqualify the member from being a member of the council or local board, or any council or local board, for a period of not more than ten years; and
  - (b) where the contravention has resulted in personal financial gain, require the member to make restitution.
- (4) Where the contravention has been made for the purpose of personal financial gain, the judge shall impose a penalty of not more than twenty-five thousand dollars or, in default of payment thereof, imprisonment for a term of not more than twelve months. R.S., c. 299, s. 10.

**Appeal process when a judge has rendered a decision on a conflict of interest.**

- 11** (1) An appeal lies from the decision of the judge to the Appeal Division of the Supreme Court in accordance with the rules of court.
- (2) No steps shall be taken to fill the seat of a member who has been found to contravene this Act until after the expiration of the time limited for appeal or, if an appeal is brought, until after

the appeal has been finally determined. R.S., c. 299, s. 11.

**Inquiry Process for  
conflict of interest.**

- 12** (1) If the council or local board by resolution requests that inquiry be made into or concerning
- (a) any matter mentioned in the resolution and relating to an alleged malfeasance, breach of trust or other misconduct on the part of a member, an officer or other official, an employee or agent of the municipality or local board, or any person having a contract therewith, in relation to the duties or obligations of such person to the municipality or local board;
  - (b) any allegation that a member has contravened the provisions of this Act; or
  - (c) any matter connected with the good government of the municipality or local board or the conduct of any part of the public business thereof, the Attorney General shall appoint a judge or some other suitable person to make the inquiry.
- (2) The person so appointed shall, with all convenient promptitude, enter upon the inquiry and upon the conclusion thereof, shall report to the Attorney General and to the council or local board the result of the inquiry and the evidence taken thereon.
- (3) The person appointed shall have, for the purpose of inquiry, all the powers of a commissioner under the Public Inquiries Act.
- (4) Such person is entitled to receive and shall be paid such fees as may be fixed and paid by the Attorney General.
- (5) The council or board may engage and pay counsel to represent the municipality or local board and may pay all proper witness fees to persons summoned to give evidence at the instance of the municipality or local board.
- (6) Any person charged with malfeasance, breach of trust or other misconduct, or whose conduct is called in question, may be represented by counsel. R.S., c. 299, s. 12.

**Voidable proceedings  
where Section 6  
contravened**

- 13** (1) The contravention of Section 6 of this Act does not of itself invalidate any proceedings in respect of any matter, but the proceedings in respect of the matter are voidable on application to a judge of the Trial Division of the Supreme Court or of a county court at the instance of the municipality or of the local board within two years after the matter was authorized by the council or local board.
- (2) In determining whether any proceedings should be declared void under subsection (1), the judge shall give due consideration to the effect of such declaration on innocent third parties. R.S., c. 299, s. 13.
- 14** Proceedings to declare a seat vacant or to disqualify a member by reason of conflict of interest, or to require a member to make restitution where a contravention of this Act has resulted in personal financial gain, shall be had and taken only under the provisions of this Act. R.S., c. 299, s. 14.



# Municipality of the District of Lunenburg

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Phone 902-543-8181 • Fax 902-543-7123 • Web Site www.modl.ca

## MEMORANDUM

**DATE:** June 9, 2015  
**TO:** Chairman & Members,  
Sherbrooke Lake Access Advisory Committee  
**FROM:** Kevin Malloy, CA, Chief Administrative Officer  
**SUBJECT:** **Sherbrooke Lake Family Park Society - Petition re Access**

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Municipal Council, in session June 9, 2015, received the attached petition from the Sherbrooke Lake Family Park Society and passed the following motion:

**that Municipal Council accepts the Petition by the Sherbrooke Lake Family Park Society as correspondence and refers their request to the Sherbrooke Lake Access Advisory Committee as they have been mandated by Council to provide options to Council for establishing public access to Sherbrooke Lake, and that the Sherbrooke Lake Access Advisory Committee report back to Council before Council goes on its summer break which starts July 20, 2015.**

Also attached are three pictures of the Veinotte Road Prolongation that were provided by the Society at the Council meeting.

As requested by Council, please provide to Council the Committee's report and/or recommendation with regards to the Petition and request of the Sherbrooke Lake Family Park Society.

The last meeting of Council before the summer break will be Tuesday, July 14, 2015.

/hw  
Attachment

- 25 -

c: Trudy Payne, Director of Recreation Services

**PETITION BY THE SHERBROOKE LAKE FAMILY PARK SOCIETY**

WHEREAS the Veinotte Road Prolongation, so-called, is dedicated as a public highway, though not maintained;

AND WHEREAS Veinotte Road Prolongation runs about 3 km from the publicly maintained portion of Veinotte Road to Sherbrooke Lake

AND WHEREAS the Sherbrooke Lake Family Park Society has secured an agreement with landowners fronting on Sherbrooke Lake to acquire the land on Sherbrooke Lake as a family park for use by the public, including swimming, boating, picnicking, and recreation

AND WHEREAS the Veinotte Road Prolongation, if made accessible to the public, will open up public access to Sherbrooke Lake, and also permit development of other lands along the road

NOW we the undersigned, directors of the Sherbrooke Lake Family Park Society, do hereby petition the Mayor and Council of the Municipality of the District of Lunenburg to permit and approve access and use by the public, including the Society and its members, of the dedicated public highway lands known as Veinotte Road Prolongation from the end of the currently maintained Veinotte Road to the north eastern boundary of lands owned by Glendon and Alexander Wentzell PID 60205069. Refer to map attached.

AND we hereby petition the Mayor and Council to construct the Veinotte Road Prolongation for the public good, including public access to the lake and subdivision and development of the lands; and to vote funds for the construction of the road.

DATED this first day of June, 2015

Iris Veinotte

Warren Veinotte

Byron Veinotte

Glen Dyne

Rebecca Slawerub

Rob Slawerub

Measuring Tool  
Start Clear 127 ft

Measuring Tool  
Start Clear 127 ft

DRAW A SEARCH AREA

|               |                                     |               |                                     |
|---------------|-------------------------------------|---------------|-------------------------------------|
| Minimum Price | <input type="checkbox"/>            | Maximum Price | <input type="checkbox"/>            |
| Any Bedrooms  | <input checked="" type="checkbox"/> | Any Bathrooms | <input checked="" type="checkbox"/> |
| Status        | <input type="checkbox"/>            | Any Date      | <input type="checkbox"/>            |
| Min. Lot Size | <input type="checkbox"/>            | Max Lot Size  | <input type="checkbox"/>            |
| Any Type      | <input type="checkbox"/>            |               |                                     |

- Garage
- Pool
- Fireplace
- Waterfront
- Income
- Open House
- Use Is/Where Is
- New Construction

Description keywords:

RESET SEARCH



Map data © 2015 Google



Veinotte Road Prolongation  
May, 2015



Veinotte Road Prolongation



Steep Hill, Veinotte Road Prolongation