

Town of O’Leary, PEI
A Bylaw to Provide Rules Governing Conflict of Interest for Members of Council
Bylaw # 2019-04

BE IT ENACTED by the Council of the Town of O’Leary as follows:

1. Title

1.1. This bylaw shall be known and cited as the “Conflict of Interest Bylaw.”

2. Authority

2.1. Section 97 of the *Municipal Government Act* R.S.P.E.I. 1988, Cap. M-12.1., requires a Council to establish a bylaw outlining a procedure to be followed by a member of Council if the member believes or suspects that they may have a conflict of interest or if a complaint is received by Council that a member has a conflict of interest.

3. Application

3.1. This bylaw applies to all members of Council.

4. Definitions

4.1. “Act” means the *Municipal Government Act*.

4.2. “Bias” means a preconceived opinion, predisposition, or prejudice that prevents a person from impartially evaluating information on an issue that has been presented for determination.

4.3. “Chief Administrative Officer” or “CAO” means the administrative head of a municipality as appointed by Council under clause 86(2)(c) of the *Municipal Government Act*.

4.4. “Councillor” means a member of Council other than the Mayor.

4.5. “Conflict of Interest” means a situation in which a member of Council is in a conflict of interest if, in relation to a matter under consideration by the Council, the member or a person closely connected to the member:

- (a) has any pecuniary interest;
 - (b) is a shareholder, officer, agent or director of a corporation or any other organization that has dealings or contracts with the municipality; or
 - (c) is a party to dealings or a contract with the municipality, or is a member of a partnership that has dealings or a contract with the municipality.
 - (d) a Council member is in a conflict of interest if the member makes a decision or participates in making a decision in the execution of their office while at the same time the member knows or ought reasonably to know that the member’s private interests or the private interests of a person closely connected to the member affected the member’s impartiality in the making of the decision.
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- 4.6. "Council" means the Mayor and other members of the Council of a municipality.
- 4.7. "Family member" means, in relation to a person, a spouse, parent, child, brother, sister, aunt, uncle, grandchild, grandparent, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of the person;
- 4.8. "Improper Conduct" means behaviour that a reasonable and sensible person would not do. It is behaviour that is unfitting and not suited to the character, time, and place.
- 4.9. "Pecuniary" means money or monetary matters or that which can be valued in money.
- 4.10. "Person Closely Connected", in relation to a member, means a family member, an agent, a business partner or an employer of the person.
- 4.11. "Private Interest" means a relationship, obligation, duty, responsibility or benefit unique to the member of Council or a person closely connected to the member of Council.
- 4.12. "Undue Influence" means one person taking advantage of a position of power over another person. This inequity in power between the parties can impair one party's consent as that person is unable to freely exercise independent will.

5. General

- 5.1. Pursuant to subsections 97.(1) and 97.(2) of the Act, the purpose of this bylaw is to:
 - (a) set out the procedure to be followed by a member of Council if the member believes or suspects that they may have a conflict of interest; and
 - (b) set out the procedure to be followed by the Council if a complaint is received by Council that a member of Council has a conflict of interest.
- 5.2. Pursuant to Part 5, Division 2 of the *Municipal Government Act*, where there is an inconsistency between this bylaw and the *Municipal Government Act* or another enactment, this bylaw is of no force or effect to the extent of the inconsistency.

6. Procedure for Reporting Conflicts of Interest

- 6.1. Every member of Council is individually responsible for preventing potential and actual conflicts of interest as defined in the Act.
 - 6.2. A member of Council must ensure that the conflict of interest is brought to the attention of Council as soon as it arises and declare their interest before any discussion of the matter during any type of meeting of Council including:
 - (a) council meetings;
 - (b) council committee meetings, including Planning Board meetings
 - (c) meetings with the public for the purpose of information sharing or gathering such as town hall meetings;
 - (d) public hearings required under legislation;
 - (e) controlled corporation meetings; and
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- (f) meetings where the member serves as the representative of the Council on another body;
- 6.3. There is no conflict in the decision made by Council if an interest is properly declared and the declaration:
- (a) occurs before any consideration or discussion;
 - (b) discloses the general nature of the conflict;
 - (c) includes any material details that may reasonably be seen to affect the member's impartiality; and
 - (d) involves the person making the declaration leaving the room at any time while the topic is being discussed and decisions relating to the topic are being made.
- 6.4. If a member of Council or a person closely connected to the member develops a private interest in a matter *after* it has been addressed by Council, the member of Council must disclose the conflict of interest as soon as possible thereafter.
- 6.5. A member of Council shall disclose an interest each and every time the matter in which an interest is held is brought before Council.
- 6.6. Pursuant to subsection 96.(3) *Municipal Government Act*, when a member of Council declares a conflict of interest, the Council member:
- (a) shall refrain from discussion and voting;
 - (b) must leave the room where the meeting is being held until discussion and voting has occurred;
 - (c) shall not influence discussion, voting, recommendations or other actions to be taken involving the matter, including using their office or position to influence others or the decisions of others, before, during, and after the meeting; and
 - (d) must submit a written amendment to the disclosure statement if they have declared a conflict of interest that is not present, but is required to be included, on their most recently filed public disclosure statement.
- 6.7. A declaration of a conflict of interest must be recorded in the meeting minutes. If a conflict of interest is declared by a member of Council, the CAO shall ensure that the following is recorded in the meeting minutes:
- (a) the declaration of a conflict of interest;
 - (b) the general nature of the conflict declared;
 - (c) the material details; and
 - (d) the abstention and withdrawal of the member.
- 6.8. The person presiding over any meeting of Council, a Council committee, a controlled corporation or other bodies of Council shall ensure that the provisions in this section are followed when a conflict of interest is declared. Discussion on the matter must be suspended until the Council, Council committee, controlled corporation, or other bodies of Council, as the case may be, can determine whether or not a conflict is present.
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- 6.9. If a Council member is in doubt as to whether they are in a conflict of interest or may be in a conflict, it is the responsibility of that Council member to ensure a conflict is not present.
- 6.10. Where a member of Council has a conflict of interest, the member, as a taxpayer or voter, has a right to be heard at a meeting of Council pursuant to subsection 96(8) of the Act and as such, the member:
- (a) shall leave their place at the Council table, but is not required to leave the room;
 - (b) may exercise the right to be heard at the meeting in the same manner as a person who is not a member of Council; and
 - (c) shall leave the meeting room after having been heard until the matter has been dealt with by the Council, or the meeting has progressed to the next item on the agenda.
- 6.11. During any public consultation, hearing, or other format used by the municipality for seeking feedback from the public or receiving information from an applicant, a member of Council may exercise the right to be heard as a taxpayer or voter. However, the member must declare the conflict of interest to those present before speaking.
- 6.12. Considerations of potential conflict shall take into account the information included in the disclosure statement required under the Code of Conduct bylaw, as well as all other facts relating to the matter.

7. Procedure for Handling Conflict of Interest Complaints Against a Member of Council

- 7.1. A complaint that a member of Council is in a conflict of interest may be made to Council pursuant to section 97 of the Act:
- (a) by a member of Council; or
 - (b) in writing, by an elector.
- 7.2. After a complaint has made against a member of Council, the Mayor shall ensure that the complaint comes before Council to be addressed as follows:
- (a) Where a member of Council has made a complaint against another member of Council, the complainant will address Council with respect to the nature of the complaint.
 - (b) Where an elector has made a complaint against a member of Council, the complaint will be tabled in writing and the elector will be given the opportunity to speak.
- 7.3. At the conclusion of either event (a) or (b) in section 7.2, the Council member against whom the complaint is made must be given an opportunity to respond to the complaint.
- 7.4. The complaint must be recorded in the minutes of the meeting.
- 7.5. In the event that the Mayor is the subject of the complaint, the Deputy Mayor will bring the matter before Council.
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- 7.6. After the member of Council against whom the complaint has been made has addressed Council, the member of Council must excuse themselves from the room for the duration of the discussion regarding the complaint.
- 7.7. Council may seek an opinion from legal counsel for the municipality when determining whether or not a conflict exists.
- 7.8. The member of Council may seek an opinion from independent legal counsel.
- 7.9. The member of Council against whom a complaint has been made must be absent from any discussion in advance of a vote and shall not vote in any way or attempt to influence the discussion of or voting on the matter at issue until the complaint has been resolved and it has been determined by Council that the member is not in a conflict.
- 7.10. Council will consider all relevant information and will determine, by vote, if a conflict of interest exists. The Council must declare that:
 - (a) the member is in a conflict of interest; or
 - (b) the member is not in a conflict of interest.
- 7.11. The disclosure and decision as to whether a conflict of interest exists must be recorded in the minutes of the Council meeting.
- 7.12. If Council determines a conflict of interest exists, Council will require the member of council to:
 - (a) remove himself or herself from the Council meeting and any other meeting when the matter is discussed;
 - (b) abstain from the discussion and voting on the matter; and
 - (c) not attempt in any way, before, during or after a meeting, to influence the discussion or voting on any question, decision, recommendation or other action to be taken involving a matter in which the member has a conflict of interest.

8. Disqualification for Failing to Disclose a Conflict of Interest

- 8.1. Pursuant to subsection 96(4) of the *Municipal Government Act*, a member of Council is disqualified from serving on Council if they:
 - (a) fails to declare their interest in the matter before the Council;
 - (b) fails to remove themselves from the Council meeting and any other meeting when the matter is discussed;
 - (c) fails to abstain from the discussion and voting on the matter; and
 - (d) attempts in any way, before, during or after a meeting, to influence the discussion or voting on any question, decision, recommendation or other action to be taken involving a matter in which the member has a conflict of interest.
 - 8.2. Pursuant to subsection 96(6) of the Act, a member of Council who fails to comply or contravenes section 8(1) of this bylaw may be pardoned by a resolution of Council, if
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Council is satisfied that the member's action was inadvertent or due to a genuine error in judgment.

8.3. Council shall not pardon a member of Council who fails to comply or contravenes section 8.1 where that member should reasonably have known that they were acting in a conflict.

8.4. Where a member is disqualified, Division 5 of Part 4 of the Act applies.

9. Repeal of Existing Bylaw

9.1. On adoption, this bylaw replaces Bylaw # 2019-04 - not applicable.

10. Effective Date

10.1. This Conflict of Interest Bylaw, Bylaw# 2019-04, shall be effective on the date of approval and adoption below.

First Reading:

This Conflict of Interest Bylaw, Bylaw# 2019-04, was read a first time at the Council meeting held on the 13th day of November, 2019.

This Conflict of Interest Bylaw, Bylaw# 2019-04, was approved by a majority of Council members present at the Council meeting held on the 13th day of November, 2019.

Second Reading:

This Conflict of Interest Bylaw, Bylaw# 2019-04, was read a second time at the Council meeting held on the 11th day of December, 2019.

This Conflict of Interest Bylaw, Bylaw# 2019-04, was approved by a majority of Council members present at the Council meeting held on the 11th day of December, 2019.

Approval and Adoption by Council:

This Conflict of Interest Bylaw, Bylaw# 2019-04, was adopted by a majority of Council members present at the Council meeting held on the 11th day of December, 2019.

Signatures

ERIC GAVIN

Mayor

BEVERLEY SHAW

Chief Administrative Officer



This Conflict of Interest for Members of Council Bylaw # 2019-04 adopted by the Council of the Town of O'Leary on December 11, 2019 is certified to be a true copy.

BEVERLEY SHAW

DECEMBER 18, 2019

Chief Administrative Officer Signature

Date



