

# How to Stay Out of Trouble

## Privacy, Right to Information & Conflict of Interest

UMNB Annual Conference 2018  
AMANB Pre-Conference Workshop

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# Outline

1. Conflict of Interest
  - a. Consequences of getting it wrong
  - b. What is a “conflict of interest”
  - c. Disclosing a conflict
  
2. Agreeing to Disagree
  - a. Sources of conflict
  - b. Conflict resolution strategy
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3. The Public Purse
  - a. Headlines and Lawsuits
  - b. Municipal Purposes
  - c. Reasonable Expenditures

# Conflict of Interest

## The Consequence of Getting this Wrong

The Headline: N.B. mayor pleads not guilty to charges, will stand trial

(Times and Transcript, May 2018)

The Law: New Brunswick *Local Governance Act*, Part 8 Conflict of Interest

- An order to resign
- An order prohibiting holding an office or position
- Restitution/Return any gain
- Any other order that is appropriate
- Fine between \$500 and \$20,500

# What is a Conflict of Interest?

“Real-life” Example:

- Your brother owns a company
- Your brother’s company submits a tender
- You take part in the vote
- You don’t declare a conflict

# What is a Conflict of Interest?

New Brunswick *Local Governance Act*, ss. 89(1): the council member has a conflict of interest if:

- The member has or proposes to have an interest in a contract in which the council has an interest
- The member has an interest in a matter in which the council is concerned that would financially benefit the council member or their:
  - spouse
  - partner
  - child
  - parent
  - sibling

# What is a Conflict of Interest?

Definition:

Council members are in a conflict if:

- A. they or a family member
- B. stand to gain financially or prevent a financial loss
- C. from a decision of council

*Local Government Resource Manual, section 7.3 What Constitutes “conflict of interest”*

# What is a Conflict of Interest?

## Beyond the Definition – the Best Practice:

Allan Gillmor, former Mayor of St. Stephen -18 years at the Council Table

- Remove yourself from discussions and decisions where there is a **PERCEIVED** conflict of interest

# Disclosing a Conflict

Disclosure is the Best and Most Safe Policy (and it's the law)

- When do you disclose a conflict of interest?
- How do you disclose a conflict of interest?
- What do you do after you have disclosed a conflict of interest?
- What you should not do after you have disclosed a conflict of interest?



# Disclosing a Conflict

When do you disclose a conflict of interest?

New Brunswick *Local Governance Act, s. 91*

- On assuming office disclose any actual or potential conflicts of interest
- Any time a conflict arises while in office

# Disclosing a Conflict

## How do you disclose a conflict of interest?

New Brunswick *Local Governance Act, s. 91*

New Brunswick Regulation 2018-52, *Local Governance Act*

- Prepare a Form 3 - Statement Disclosing A Conflict of Interest

<http://laws.gnb.ca/en/ShowPdf/cr/2018-52.pdf>

- File the Form 3 with your Clerk
- Keep a filed copy for your own records

Note: unless a Form 3 is filed the municipality assumes there is no conflict

FORM 3  
STATEMENT DISCLOSING  
A CONFLICT OF INTEREST  
(Local Governance Act, S.N.B., 2017, c.18, s.91(4), 92(4))

Under the *Local Governance Act*, I, \_\_\_\_\_,  
being \_\_\_\_\_ of \_\_\_\_\_,  
(office) (name of local government,  
local board or committee)

hereby disclose a conflict of interest in that I have or propose to have an interest in a contract or in any other matter, or my family associate has or proposes to have an interest in a contract or in any other matter, concerning the following person, firm, union or association:

(Name of person, firm, union or association contracting with or likely to be financially benefitted by a decision of council, local board or commission)

This disclosure relates to the following matter,

(describe the contract or other matter in which the council, local board or commission is concerned and that constitutes an actual or potential conflict of interest)

DATED at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
Signature of member or senior officer

Received and filed this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_.

\_\_\_\_\_  
Clerk

**Note:**  
If a conflict of interest arises with respect to the member or senior officer that is not referred to in this statement, the member or senior officer shall immediately file another statement disclosing the conflict of interest with the clerk.

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FORMULE 3  
DÉCLARATION DIVULGUANT  
UN CONFLIT D'INTÉRÊTS  
(Loi sur la gouvernance locale,  
L.N.-B. 2017, ch. 18, par. 91(4), 92(4))

En vertu de la *Loi sur la gouvernance locale*, je,  
\_\_\_\_\_ du \_\_\_\_\_ de \_\_\_\_\_,  
(bureau) (nom du  
gouvernement local,  
de la commission  
locale ou du comité)

divulgue par la présente l'existence d'un conflit d'intérêts du fait que je suis ou que je me propose d'être titulaire d'un intérêt dans un contrat ou dans une autre affaire concernant la personne, la société ou le syndicat ci-dessous, ou qu'un membre de ma proche famille est titulaire d'un pareil intérêt ou se propose de l'être.

(Nom de la personne, de la société, de l'association ou du syndicat traitant des affaires avec le conseil, la commission locale ou le comité ou qui est susceptible de tirer des bénéfices de ses décisions)

La présente divulgation concerne l'affaire suivante :

(préciser tout contrat ou autre affaire qui intéresse le conseil, la commission locale ou le comité et qui constitue un conflit réel ou potentiel)

Fait à \_\_\_\_\_, le \_\_\_\_\_ jour de \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
Signature du membre ou du  
cadre supérieur

Reçu et déposé le \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Greffier

**Note :**  
Le membre ou le cadre supérieur qui se trouve placé en situation de conflit d'intérêts qui n'est pas visée par cette déclaration est tenu de déposer sans délai auprès du greffier une nouvelle déclaration divulguant ce conflit.

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# Disclosing a Conflict

What do you do after you have disclosed?

*New Brunswick Local Governance Act, ss. 91(5) & s. 93*

- When the matter is introduced, disclose that you have a conflict
- Immediately leave the room while the matter is considered or put to a vote
- Ensure your Statement Disclosing A Conflict of Interest is filed by the Clerk
- Ensure your disclosure of a conflict is recorded in the minutes

# Disclosing a Conflict

After you have disclosed a conflict:

- Leave the room
- Do not take part in the discussion of the matter
- Do not vote on the matter
- Do not attempt to influence the vote
- Do not shout from the gallery

# Agreeing to Disagree

“Real-life” Example:

- You disagree with a decision of council
- You chose to talk about your frustration and disagreement to:
  - friends and/or
  - co-workers and/or
  - family members and/or
  - the CBC and/or
  - the newspaper reporter
- They also share it



# Agreeing to Disagree

You win some, you lose some

- The perfect world: all council members see eye to eye
- The real world: council members do not always agree
- Impact/Risk: difficulties and conflict in relationships
- Sources of conflict (just a few example):
  - Poor communications
  - Different election platforms
  - Misunderstanding of each other's role
  - Anti-staff bias
  - Lack of sensitivity
  - Style differences
  - Lack of trust
  - Inadequate policies, procedures and goals
  - Unclear understanding of operating structure

Local Government Resource Manual, section 3.27 Conflict Resolution  
Municipal Orientation 2004 "Roles, Responsibilities and Relationships of Elected and Appointed Municipal Officials", Jack Novack, Professor, Henson College, Dalhousie University

# Agreeing to Disagree

## Resolving Conflict

- A good discussion with a third party non-partisan facilitator
  - Mutual understanding
  - Communication lines open
- AMANB/UMNB Conflict Resolution Committee
  - Volunteer-based
  - Peer mediation group (elected and appointed officials)

<http://www.amanb-aamnb.ca/Conflict-Resolution>

# Agreeing to Disagree

## Preventing Conflict Before it Starts

- Individual meetings between the mayor and each councillor
  - Gain understanding of goals, vision, priorities for the community
- Respecting a decision once it is made
- Maintain focus on mandate: make decisions that serve the public's best interest
- Compromise to get things accomplished
- Courteous: don't interrupt, maintain good order and conduct



# Agreeing to Disagree

## Advice from an Expert

Allan Gillmor, former Mayor of St. Stephen -18 years at the Council Table

- Politics is about compromise – be willing to discuss alternatives
- Focus on the issues and facts not the personalities, feelings or biases
- Cooperation leads to a positive, achievement-oriented council
- Use an annual retreat:
  - Away from distractions
  - Set priorities
  - Build consensus
  - Refine the actions

# The Public Purse

## A True Story:

New York Times March 6, 2018

- Megan Barry - 2½ years as Mayor of Nashville
- 72% approval rating
- Extra-marital affair with head of mayoral security, Sgt. Robert Forrest of the Nashville Police
- 10 “trips” with Sgt. Forrest at taxpayer expense
- Felony charge of theft
- Reimburse \$11,000 in unlawful expenditures
- Resigned

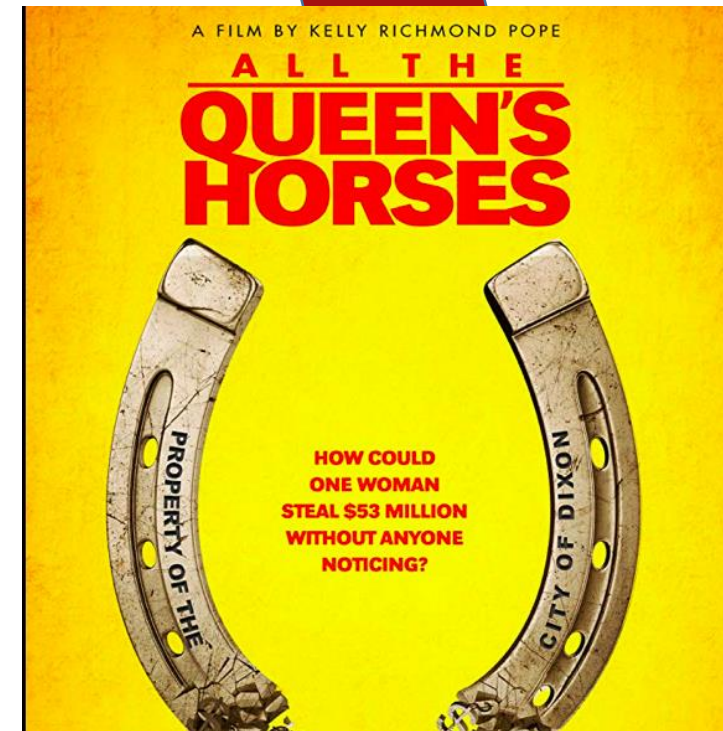


# The Public Purse

## Another True Story:

Forbes Magazine, February 14, 2013

- Rita Crundwell of Dixon Illinois, population: 15,733
- Comptroller/Treasurer
- An employee for 42 years
- Over 22 years she stole a total of: \$53,000,000.00
- Bought 400 horses
- 20 years in prison



# The Public Purse is only for Municipal Purposes

## Municipal Purposes (*Local Governance Act, s. 5*)

1. Purposes of local government:
  - a. provide good government
  - b. provide services, facilities or things the council considers necessary or desirable for all or part of the local government
  - c. to develop and maintain safe and viable communities
  - d. foster the economic, social and environmental well-being of its community
2. Power of municipalities: capacity, rights, powers & privileges of a natural person in respect of municipal purposes (*Local Governance Act, ss. 6(2)*)
3. Powers of local government are vested in and exercised by its council

# The Public Purse is only for Municipal Purposes

## Expenditures beyond Legal Authority

- Statutory power, express or implied, must exist for every item of expenditure
- If there is no statutory authority for doing what the municipality proposes to do or has done the expenditure is illegal
- More specific, i.e. ...to develop and maintain safe ...communities
- Less specific, i.e. ...to provide good government...

# The Public Purse

## Unreasonable Expenditures

- Reasonableness is a question for the council not the courts

*(Robertson v. Toronto (City), 66 O.L.R. 38 (Ont. C.A.)*

- But the public is watching, i.e. Canadian Taxpayers Federation Teddy Waste Awards

- Municipal “Winners”:

1. Montreal - \$34 million to attract an electric car race that sold only 25,000 of 45,000 tickets
2. Calgary - “Poop Palace” art installation costing \$246,000 which features LED lights that depict the rate the lift station is pumping water



# The Public Purse

## Advice from an Expert

Allan Gillmor, former Mayor of St. Stephen -18 years at the Council Table

- The Municipality is assigned “property services” (province “people services”)
- Focus spending on:
  - Drainage
  - Fire
  - Police
  - Garbage
  - Sewerage
  - Roads & sidewalks
  - Traffic
  - Community planning
  - Street lighting
  - Water
  - Recreation
  - Tourism
  - Industrial development
  - Urban redevelopment

# THANK YOU

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