

Ombudsman Act Investigation Report



**MANITOBA
OMBUDSMAN**

December 2024

Available in alternate formats upon request.

Mailing address: Manitoba Ombudsman
300-5 Donald Street
Winnipeg, MB R3L 2T4
Phone: 204-982-9130
Toll-free phone: 1-800-665-0531
Email: ombudsman@ombudsman.mb.ca
Website: www.ombudsman.mb.ca



**MANITOBA
OMBUDSMAN**

**REPORT UNDER
THE OMBUDSMAN ACT
[CASE MO-03697]
[RM OF EAST ST. PAUL]**

THE COMPLAINT

The Manitoba Ombudsman received a complaint about the usage of the rural municipality (RM) of East St. Paul logo by a councillor, and subsequent mayoral candidate, (herein after referred to as the councillor) during the municipal council campaign in fall 2022. The complaint stated the councillor used municipal resources contrary to the provisions of By-Law 2022-04. The complainants also informed our office that when they initially approached the RM regarding the alleged use of the municipal logo, the Senior Election Official (SEO) dismissed the concern, asserting the usage of the logo was permissible.

In addition, the complainants alleged a conflict of interest within the RM when the same councillor participated in a vote to refund approximately \$210,125 to a developer. At the time, the councillor's business was a contractor for the development in question.

JURISDICTION AND ROLE

Under the Ombudsman Act, Manitoba Ombudsman investigates complaints about administrative actions and decisions made by any government departments and agencies, municipalities, and their officers and employees.

Investigations

15 The Ombudsman may, on a written complaint or on her own initiative, investigate:

- (b) any decision or recommendation made, including any recommendation made to a council, or any act done or omitted, relating to a matter of administration in or by any municipality or by any officer or employee of a municipality, whereby any person is or may be aggrieved

Manitoba Ombudsman investigations obtain, review, and analyze relevant information to identify areas requiring administrative improvement. We carefully and independently consider the information provided by the complainants, the decision maker, and any witnesses we determine to be relevant to the case. Administrative investigations can involve an analysis of statute or by-law provisions, document reviews, interviews and site visits.

We will either support a complaint and identify the appropriate corrective or restorative action or provide a reasonable explanation for the conclusion that a complaint cannot be supported. If a complaint is supported, the ombudsman may make recommendations to the public body pursuant to section 36 of the Ombudsman Act.

OUR INVESTIGATION

Our office initiated an investigation on November 9, 2023.

Our investigation included a review of the following:

- Information and documentation provided by the complainants
- Information and documentation provided by the RM of East St. Paul
- Information provided by the councillor
- Statutes including The Ombudsman Act, The Municipal Act, The Municipal Conflict of Interest Act
- Policies adopted by the RM of East St. Paul, including By-Law 2022-04

KEY ISSUES

Our investigation examined the following issues:

1. Were municipal resources used for the council election contrary to the provisions of By-Law 2022-04?
2. Was there a conflict of interest, as identified by the complainants?

Issue 1

Were municipal resources used for the council election contrary to the provisions of By-Law 2022-024?

The Municipal Act stipulates the council is required to enact a by-law outlining regulations and protocols governing the utilization of municipal resources.

Municipal Election and By-Law 2022-024

The RM adopted By-Law 2022-024 to establish rules and procedures for the use of municipal resources during municipal elections. This by-law outlines the rules and procedures regarding usage of municipal resources during the 42-day period preceding a general election or a by-election, as mandated by The Municipal Act. As per this by-law, municipal resources include the municipal logo, seal, and other identifying marks associated with the municipality, among other resources.

Any contravention of this by-law is enforced by the By-Law Enforcement Officer, pursuant to General Enforcement By-Law 2021-02. The Officer may then provide notice to the individual who contravened the by-law.

In this case, it is not disputed that the councillor used the municipal logo for their election campaign.

The SEO is the person appointed by the municipality to exercise general direction and supervision over the conduct of municipal elections. The SEO is appointed by council

resolution and reports directly to the Chief Administrative Officer (CAO),. The SEO is accountable for overseeing the entire election process, including ensuring that candidates are informed about relevant municipal by-laws, such as those governing the use of municipal resources during elections.

RM's Response

According to the CAO, the councillor's marketing team utilized the municipal logo without adequately confirming permissions with the councillor. By the time it came to the attention of the CAO, the materials were already distributed. The CAO explained it was an unintentional error on the part of the councillor, and when the issue was brought to the councillor's attention, they showed a willingness to comply with and destroy any remaining election materials. While they did not personally witness the disposal of the remaining materials, the RM expressed confidence that the candidate understood the seriousness of the issue and assured that the materials would be destroyed.

We asked the municipality why the Enforcement Officer had not issued a contravention notice for the improper use of the municipal logo, as required in By-Law 2021-02. The municipality explained that Section 7 of the by-law states the By-Law Enforcement Officer has the discretion to issue a notice of contravention, with no explicit requirement to do so. They further explained that given the councillor's unintentional mistake, the sincerity of their explanation and the actions they took to address the error, it was determined no additional measures were required.

Analysis

While the councillor's use of the municipal logo was in contravention of By-Law 2022-04, we accept it was an unintentional error, which is supported by the councillor taking steps to remedy the situation once it was brought to their attention. The municipality has discretion to decide whether the councillor's action warranted a Notice of Contravention, as stipulated in the General Enforcement By-Law 2021-02. Given the councillor's willingness to address the situation, we find it reasonable the municipality chose not to issue a Notice of Contravention.

However, we found the RM could make improvements to its process to ensure staff are aware of regulations and protocols governing the utilization of municipal resources within the 42-day period preceding a general election or a by-election. The SEO's initially inaccurate response and dismissal of the complainants' concerns caused them to lose trust in the municipality and the election process.

The election process is the foundation of democracy, playing a pivotal role in ensuring representation, accountability, and government legitimacy. Any allegation against the election process has the potential to jeopardize public confidence.

The CAO informed us they will be more vigilant in monitoring campaign materials to prevent similar oversights. To date, no actions have been taken for training or other professional education activities. However, the CAO assured our office that a thorough discussion with the SEO will be conducted to ensure they clearly communicate the requirements regarding campaign materials to all the candidates for the 2026 election.

We encourage the RM to develop a comprehensive communication plan prior to the 2026 municipal election that ensures a timely and effective distribution of all relevant information about the election process and the requirements of By-Law 2022-24.

Issue 2

Was there a conflict of interest, as identified by the complainants?

In this case, the developer, 1915 Hoddinott Developments Ltd., and the RM of East St. Paul had a development agreement for a 48-unit, multi-family development within the planned area at 1915 Hoddinott Road. The development agreement required the developer to pay \$210,125 to the municipality as a contribution towards future road upgrades at Raleigh Street and improvements at the intersection of Raleigh Street and Hoddinott Road.

As per sub-section 2(a) of the Amending Development Agreement dated December 9, 2021, the municipality eliminated the developer's access to the planned area from Raleigh Street. Consequently, the improvements to Raleigh Street were no longer necessary.

The developer sent a request to the municipality in December 2021 to refund the \$210,125 paid for Raleigh Street future road upgrades. This request came before the council for voting. The complainants alleged the councillor's private business was the contractor for this development and they should not have participated in the council vote to refund money to the developer. Upon inquiry, the CAO confirmed the councillor's business was the contractor for the developer. Both the CAO and the councillor informed us that the councillor advised the mayor of this relationship prior to the alleged council meeting. However, the mayor advised the councillor to vote as they had no pecuniary advantage from the developer.

The RM shared it was an administrative oversight that brought the approval of the refund to council. The RM stated that ordinarily, such approvals are handled at the administrative level. Our office spoke to the Department of Municipal and Northern Relations, who confirmed there is nothing legislatively that requires refunds to go to council for a vote. The RM said if they handled the refund administratively, as per their regular practice, any alleged conflict of interest would have been avoided. However, because the refund came before the council for voting, this office looked at the impacts of that process.

Conflict of Interest

The Municipal Council Conflict of Interest Act (MCCIA), The Municipal Act Procedures Manual prepared by the Department of Municipal Relations, the Council Members Guide prepared by the Association of Manitoba Municipalities, and our office's handbook, "Understanding Fairness: A Handbook on Fairness for Manitoba Municipal Leaders", all offer guidance on the criteria and standards concerning conflicts of interest.

The MCCIA outlines standards regarding conflicts of interest among municipal officeholders. Along with defining direct and indirect conflicts, the Act mandates the declaration of any conflicts and requires officeholders to abstain from participating in debates, discussions, or votes. The MCCIA specifically addresses conflicts related to financial interests, including pecuniary benefits for the officeholder, their spouse, and any dependent children.

According to clause 4(1)(b) of the MCCIA, an officeholder has an indirect pecuniary interest if they are employed by a person, corporation, partnership, or organization, or a subsidiary of a corporation, with a direct pecuniary interest in the matter. This provision clarifies that officeholders employed by a company are considered to have an indirect conflict of interest in any matter where that company has a financial interest. It is important to declare the conflict of interest and withdraw from the discussion. Further, it is also important to record the declaration and recusal in the minutes each time a conflicted item is raised.

It is important to note that the role of Manitoba Ombudsman with respect to conflict of interest matters is broader than the MCCIA and is not confined to the question of pecuniary interest. Conflict, or the perception of conflict, can also occur when there is no pecuniary interest, such as when a council member is seen to be too close to the parties on one side of a dispute or proposal.

Achieving procedural fairness in decision-making necessitates impartiality, lack of personal interest in the outcome, and an openness to persuasion on the merits of an issue on the part of the decision maker. In any scenario where a councillor possesses a personal interest in a matter that goes beyond the shared interest of other municipal citizens, it could be inferred this interest might impact their duty as a public official to act in the best interests of the entire municipality.

The appearance or perception of a conflict of interest can be as damaging to public confidence as actual conflict as it can undermine the overall credibility of a municipal council. If a council member participates in discussions and votes where there is a

conflict or perception of conflict, it could compromise the validity of the decision or the process through which it was made.

Analysis

In this case, both the CAO and the councillor mentioned that prior to the meeting of council, the councillor flagged a potential conflict to the mayor and the councillor said they offered to recuse themselves from the vote. According to the councillor, the mayor and other council members advised them to participate in the vote, asserting the councillor had no pecuniary interest in the matter. The councillor followed the mayor's advice and participated in the vote to refund money to the developer.

Although the councillor had an ongoing business relationship with the developer and their business was the contractor for the development that was the subject of the vote, we were not presented with any evidence the councillor had a direct pecuniary interest in the decision to refund money to the developer.

Our review determined the councillor did have an indirect pecuniary interest, as well as a personal relationship with the developer, and in these circumstances, we find the councillor had a personal interest in the vote. In our view, the councillor believed there was a reasonable likelihood members of the public may see their personal interest in conflict with public duties and it was possible the public may perceive their participation in discussions or decisions as influencing the council's actions in favor of those with direct financial interests.

We find the councillor was correct in their actions to flag the potential conflict to the mayor before the matter was discussed at the meeting. However, the actions of the councillor and the mayor were inconsistent with the conflict of interest procedures under subsection 5(1) of The Municipal Conflict of Interest Act which would require the

councillor to withdraw from the meeting without voting and the disclosure and withdrawal be recorded in the minutes.

It is ultimately the responsibility of each council member to identify and declare conflicts on matters before council. While disclosure can be made orally, it is best practice to provide disclosures in writing. A written disclosure, signed by the RM's CAO, would serve as official documentation and provides an opportunity for the CAO to discuss the issue of conflict with council members, ensuring proper procedures as required by The Municipal Conflict of Interest Act are followed. In many cases, the appearance or perception of conflict can be as harmful to public trust and confidence as an actual conflict. Once a connection between the personal and the public interest has been made, it can be very difficult to demonstrate a decision was not unduly influenced and remained procedurally fair. Procedural fairness requires decision makers to be seen as unbiased, without a personal interest in the outcome of a decision, and open to persuasion.

By disclosing interests in writing, and by documenting these disclosures (including oral disclosures) and withdrawals in meeting minutes, the conflict of interest process becomes clearer to all council members, ratepayers and members of the general public. This will not only provide a verifiable record of how conflict was managed, but it will also reinforce the integrity of the decision making process and promote openness and transparency that helps to build public trust in the governance process.

CONCLUSION

Because of the Ombudsman's involvement and suggestions to strengthen compliance with The Municipal Council Conflict of Interest Act and improve administration, council members and the CAO reviewed the requirements and procedures outlined in the act. This was accomplished at the December 17, 2024 council meeting. The RM also reported to our office that they have a central record of all disclosures, which will be

maintained moving forward and is available to the public upon request, in keeping with Section 6 of the act. The Ombudsman is satisfied with the action taken by the RM.

This report concludes our investigation into this matter.

MANITOBA OMBUDSMAN