



# **SUMMARY OF INVESTIGATION**

## **NORTHERN HAMLET OF COLE BAY**

### **COMPLAINT**

We received complaints that the mayor and one alderman were in a conflict of interest when they participated in the council's decision to appoint a relative to the board of the Primrose Lake Economic Development Corporation (PLEDCO), and that the mayor and two aldermen were in a conflict of interest when they participated in the council's decision to appoint their relatives to the Fire Suppression Crew and to the position of crew leader. We also investigated whether the council used a fair and reasonable process when it received complaints about council member conduct.

### **FACTS**

#### **APPOINTMENT OF PLEDCO BOARD MEMBER**

PLEDCO is a non-profit corporation formed as a result of negotiations between the federal government, provincial government, and the northern municipalities of Cole Bay, Jans Bay, Beauval, and Île-à-la-Crosse regarding the loss of land for the Primrose Air Weapons Range. Each community appoints two board members to PLEDCO.

When the term of a Cole Bay board member expired, the council advertised the position. There were two applicants. One was the board member whose term had expired, and the other was the sister of the mayor and the cousin of alderman A. The clerk at the village office accepted the former board member's application, who happened to be her sister, but did not initially accept the other application.

At its January 31, 2017 meeting, the council discussed the PLEDCO board member appointment. Alderman A made a motion that the position be filled by her cousin. According to the minutes of the meeting, no one on the council declared a conflict of interest in the matter or left the meeting. The minutes did not show who voted on the motion, but the motion was approved.

On February 14, 2017, the former board member filed an appeal to council that included allegations of a conflict of interest on the part of the mayor and alderman A with respect to the appointment of the PLEDCO board member.

## **FIRE SUPPRESSION CREW**

Every year the council hires a fire suppression crew for the duration of 20 weeks. All crew members are paid. On April 13, 2017, alderman B made a motion that they hire certain individuals for the crew, and that one individual would be the crew leader for the first 10 weeks and then it would change over to another individual. The first individual appointed crew leader was the son of a former alderman (who resigned before our investigation started), and the second individual appointed crew leader was the mayor's sibling, alderman B's child, and alderman A's cousin. Others appointed to the crew included the mayor's siblings and uncle, alderman B's children and brother in law, and alderman A's cousins. According to the minutes, no one on the council declared a conflict of interest in the matter or left the meeting. The meeting minutes do not say who voted on the motion, but the motion was approved.

## **WHAT IS A CONFLICT OF INTEREST?**

Subsection 159.1(1) of *The Northern Municipalities Act, 2010* states that a council member has a conflict of interest if he or she makes a decision or participates in making a decision in the execution of his or her office and at the same time knows or ought reasonably to know that in the making of the decision there is the opportunity to further his or her private interests or the private interests of a closely connected person. A closely connected person includes the agent, business partner, spouse, dependent child or employer of a council member.

Subsection 159.1(4) says the Act's conflict of interest rules should not be "interpreted as affecting any other rights given by, or the application of other requirements, duties or responsibilities imposed by, any other Act or law." This means council members must also follow the common law rules governing conflicts of interest. For example, a council member must always act in the best interests of the community when participating in making decisions as a council member. There may be some situations where a council member may still have an obligation to declare that he or she has a conflict of interest in a matter before council, even if it does not fall strictly under the definition of conflict of interest in *The Northern Municipalities Act, 2010*.

For example, if an adult child of a council member has a financial interest in a matter before the council, the strict wording of the Act does not require the council member to declare a conflict because it states that council members only have conflicts of interest if a matter involves a *dependent* child. But the common law is wider than the Act. In a situation like this, the council member may still have a conflict of interest and is required to take steps to deal with it.

Even in situations not caught by the definition of conflict of interest in *The Northern Municipalities Act, 2010*, council members still must follow the common law principles and rules about avoiding conflicts of interest. This is because:

- As trustees for the local community, council members cannot vote or otherwise seek to gain or appear to gain private advantage out of matters over which they have supervision for the benefit of the public.
- Council members must conduct themselves in such a way as to avoid any reasonable apprehension that their personal interest could in any way influence their elected responsibility.

- They are not to use their office to promote private interests, whether their own or those of relatives or friends.
- They must be unbiased in the exercise of their municipal duties.

When faced with a potential conflict of interest, the main question to ask is: in all the circumstances, is there a real likelihood that the council member would not be able to take part in the council's decision in an unbiased manner?

We suggest that council members ask themselves the following questions. If they answer 'yes' to any of them, there may be a conflict of interest that needs to be addressed:

- Am I, or is someone close to me (i.e. a family member, a friend or business partner) likely to be directly affected (negatively or positively) by the decision, issue or situation that is being discussed or decided?
- Do I, or does someone close to me, have an interest in, or hold a position in, a company or organization that is likely to be affected?
- Am I, or is someone close to me, likely to have a financial gain or loss as a result of the decision, issue, or situation that is being discussed or decided?
- Have I, or has someone close to me, received a gift (money or otherwise) from a person, company, or organization that is likely to be directly affected?
- Am I uncertain of my ability to act impartially and in the public interest?
- Could a person with knowledge of the situation reasonably perceive that my ability to carry out my public duties impartially could be influenced as a result of me or someone close to me, having a private interest in the decision, issue, or situation that is being discussed or decided?

If council members are uncertain whether they have a conflict of interest or what to do about it, they should get advice from a trusted colleague or advisor.

### **What should a council member do if he or she has a conflict of interest?**

Under subsection 162(1) of *The Northern Municipalities Act, 2010*, at every meeting when a matter in which a council member has a conflict of interest, no matter how many times it has come up before and even if everyone on the council already knows about it, the council member, if at the meeting, must:

**Declare** the conflict of interest before any discussion occurs,

**Disclose** the general nature of the conflict of interest,

**Abstain** from voting on it,

**Refrain** from participating in any discussion about it, and

**Leave** the room until all discussion and voting is over.

If the council member is not at a meeting when a matter comes up in which he or she has a conflict of interest, he or she must declare and disclose the conflict of interest at the very next meeting he or she attends.

Importantly, council members and administrative staff responsible for preparing meeting minutes must ensure that all meeting minutes accurately and fully record every time a council member declares, discloses and abstains due to a conflict of interest. Council members are to review and approve council meeting minutes at the next regular council meeting.

## **ISSUES AND FINDINGS**

### **DID THE MAYOR HAVE A CONFLICT OF INTEREST IN THE MATTERS BEFORE COUNCIL ON JANUARY 31, 2017 AND APRIL 13, 2017? IF SO, DID SHE TAKE THE STEPS REQUIRED OF HER TO DEAL WITH THE CONFLICTS OF INTEREST?**

While the mayor did not contravene the statutory conflict of interest rules in *The Northern Municipalities Act, 2010*, because the statutory definition of “closely connected person” does not include siblings, adult children or other extended family members, she was still subject to the common law conflict of interest rules.

She should have recognized she was in a conflict of interest when she participated in the decision to appoint her sister to the board of PLEDCO and her other siblings and uncle to the fire suppression crew. These decisions promoted her relatives’ private interests. A reasonable person would believe that she could not make these decisions in an unbiased manner. In this regard, we note that at a November 2016 council meeting, when the council was discussing hiring a janitor, the mayor declared a pecuniary interest and left the room because one of the applicants was her sister. Given this, we find that the mayor understood that it was a conflict of interest to make decisions that would benefit her siblings’ and her uncle’s private interests.

Therefore, we find that the mayor knew (or ought to have known) she was in a conflict of interest during the January 31, 2017 and April 13, 2017 meetings when the matters involved her siblings and her uncle. We find the mayor had a conflict of interest in the matters before council. She should have declared the conflicts of interest, disclosed the nature of the conflicts, abstained from voting, refrained from participating in the discussions, and left the council meetings on January 31, 2017 and April 13, 2017.

### **WAS ALDERMAN A IN A CONFLICT OF INTEREST IN THE MATTERS BEFORE COUNCIL ON JANUARY 31, 2017 AND APRIL 13, 2017? IF SO, DID SHE TAKE THE STEPS REQUIRED OF HER TO DEAL WITH THE CONFLICTS OF INTEREST?**

Alderman A told us that she that she did not think that she was in a conflict of interest during the January 31, 2017 and April 13, 2017 meetings when she participated in the decisions of council to appoint her cousin to the board of PLEDCO, and her cousins to the fire suppression crew.

While she did not explicitly contravene the conflict of interest rules in *The Northern Municipalities Act, 2010*, she should have recognized she was in a conflict of interest by participating in the decision to appoint her cousin to the board of PLEDCO and her cousins to the fire suppression crew. These decisions promoted the private interests of her cousins. A

reasonable person would believe that she could not make these decisions in an unbiased manner.

We find alderman A had a conflict of interest in the matters before council. She should have declared the conflicts of interest, disclosed the nature of the conflicts, abstained from voting, refrained from participating in the discussions, and left the council meetings on both January 31, 2017 and April 13, 2017.

### **WAS ALDERMAN B IN A CONFLICT OF INTEREST IN THE MATTER BEFORE COUNCIL ON APRIL 13, 2017? IF SO, DID SHE TAKES THE STEPS REQUIRED TO DEAL WITH THE CONFLICT OF INTEREST?**

Alderman B was elected on February 22, 2017 in a bi-election. She told us that there have always been conflicts of interest in Cole Bay, because everyone is related to each other. She said that when it comes to a job she picks the person “who needs it the most, or who is most qualified...but we are all related.”

Alderman B participated in the council’s decision to appoint her children and her brother-in-law to the positions on the fire suppression crew. While she did not explicitly contravene the conflict of interest rules in *The Northern Municipalities Act, 2010*, she should have recognized she was in a conflict of interest by participating in the decision to appoint her children and her brother-in-law to the fire suppression crew. This decision promoted the private interests of her relatives. A reasonable person would believe that she could not make this decision in an unbiased manner. Based on what she told us, we find she understood she was in a conflict of interest, but believed it was acceptable because having conflicts of interest is commonplace in Cole Bay.

We find that alderman B had a conflict of interest. She should have declared the conflict of interest, disclosed the nature of the conflict, abstained from voting on the matter, refrained from participating in any discussions, and left the council meeting.

### **DID THE COUNCIL DEAL WITH COMPLAINTS IN A FAIR AND REASONABLE MANNER?**

The former board member brought two complaints to council.

First, at the February 14, 2017 council meeting, she made a submission to the council appealing the PLEDCO appointment decision and alleging that the mayor should have declared a conflict of interest. (We note that our brochure about what council members are supposed to do when they have a conflict of interest was presented to the council at this meeting.) Her appeal was tabled until the next meeting. The minutes of the February 14, 2017 meeting do not indicate that the mayor declared her conflict of interest in the decision to table the complaint against her. Her appeal was tabled again at the February 28, 2017 meeting, and again the minutes do not indicate that the mayor declared her conflict of interest in the decision. It was tabled again at the March 14, 2017 meeting and again the minutes do not show that the mayor declared a conflict of interest.

Then, at the March 28, 2017 meeting, according to the minutes, the council decided: “NO EXPLANATION NEEDED – [the mayor] TO [the former director] ON CONFLICT OF INTEREST.” The minutes also note that “MARCH 22, 2017 9:00 AM HAMLET OFFICE. [the former director] ARRANGED TO MEET WITH MAYOR,....TO DISCUSS HER APPEAL BEFORE THE MEETING. [the

mayor]. DID NOT SHOW UP.” The minutes do not indicate that the mayor declared a conflict of interest in this decision.

The minutes of the April 19, 2017 council meeting indicate that an item described as “CONFLICT OF INTEREST...ON PLEDCO BOARD MEMBER DECISION – WHAT IS HAPPENING?” was discussed. The minutes state: “[the mayor] – WILL LOOK INTO TO, HAVEN’T DONE ANYTHING YET....” Again, the minutes do not indicate that the mayor declared a conflict of interest.

At the May 17, 2017 council meeting, the former director filed a complaint to council about alderman B, which included the allegation that alderman B had a conflict of interest when she participated in the council’s decision to appoint her children to be on the fire suppression crew. According to the meeting minutes, the council decided that the mayor would “TALK TO [A NORTHERN MUNICIPAL ADVISOR TO] CHECK INTO CONFLICT OF INTEREST, WHAT NEXT STEP WILL BE. FIND OUT MORE INFORMATION.” The minutes do not indicate that alderman B declared a conflict of interest in the council’s decision on how to deal with the complaint made against her.

As of February 23, 2017, all municipal councils were required to have a code of ethics bylaw in place setting out the standards and values that council members are expected to comply with in their dealings with each other, employees of the municipality and the public. The code of ethics bylaw must also include a process for dealing with contraventions.

When we started this investigation, Cole Bay did not have a code of ethics bylaw. Section 107.2 of *The Northern Municipalities Act, 2010* states if a council fails to adopt a code of ethics, it is deemed to have adopted the model code of ethics prescribed in *The Northern Municipalities Regulations*. So, when these two complaints were submitted to the council, the model code of ethics was applicable. However, the model code does not include a process for councils to deal with complaints about alleged contraventions of the code of ethics, including conflict of interest complaints. Therefore, the council had no rules or processes in place for dealing with the complaints.

Generally, complaints about council member conduct need to be addressed fairly. To us, this means that the person making the complaint needs an opportunity to be heard by the council, so the council understands the complaint. The council member whose conduct is being reviewed also needs a fair opportunity to respond to the allegations.

Importantly, the council members dealing with the complaint must not have conflicts of interest in deciding how to deal with it. This means the council member being complained about should not participate in the council’s discussions or decision about whether the complaint against them is valid, or about what sanctions, if any, the council should levy against them. It also means council members that are family members and related to the council member being complained about, should not participate in the decision about how to deal with the complaint.

The council’s process for dealing with complaints should also be timely and respect everyone’s confidentiality. The council should also provide the complainant with reasons why or why not it has determined a complaint is founded or unfounded, and if founded, what action the council intends to take.

In both cases, the council members against whom the complaints were made participated in the council’s discussions and decisions on how to deal with them.

Therefore, we find that the council did not deal with these complaints fairly or reasonably.

We note that the council adopted a *Code of Ethics Bylaw* on March 6, 2018, which includes a general complaint procedure and provides some guidance to the council about how to deal with complaints.

## **CONCLUSION AND RECOMMENDATIONS**

### **AVOIDING CONFLICTS OF INTEREST IN SMALL COMMUNITIES**

The mayor and aldermen told us several times that because they are all related in their community, they would never be able to vote on and pass anything because if they all followed the conflict of interest rules and removed themselves from participating in decisions in which they had a conflict of interest, they would never have a quorum.

Section 164 of *The Northern Municipalities Act, 2010* deals with the effects on quorum due to conflict of interest and provides guidance to council to deal with matters in those cases.

Being elected to govern a small, closely-knit community does not mean council members are exempt from or have an excuse for not dealing with their conflicts of interest appropriately. Members of the community still have the right to expect that their council will make decisions on their behalf in the best interests of the community and be seen to be doing so. At a bare minimum, they have a right to expect their council members to not use their public authority to make decisions to promote the private interests of their friends and family members. In this case, the mayor and the two other aldermen failed to meet this minimum standard of public office.

### **THE CONSEQUENCES OF NOT DECLARING A CONFLICT OF INTEREST**

It is important for council members to follow the conflict of interest rules and deal with them as set out in *The Northern Municipalities Act, 2010*, because if they don't, the consequences are serious.

Based on our investigation, we found that the mayor and each of the aldermen were in a conflict of interest and did not take the steps to deal with it as required by section 162 of the Act. Therefore, according to the Act, the mayor and alderman A and alderman B are all disqualified from the council. According to the Act, they must resign immediately, and are not eligible to be nominated or elected in any municipality for 12 years.

Given these consequences, it is important and necessary that council members learn the conflict of interest rules and then ensure they follow them.

If they do not resign immediately, under section 166 of *The Northern Municipalities Act, 2010*, the council may:

- Declare their positions vacant by a resolution.
- Apply to a provincial court judge or the Court of Queen's Bench for an order declaring the council member to be disqualified.

If the council decides to go to court to enforce the disqualification, the judge must dismiss the application if he or she is of the opinion that the council member's disqualification arose through inadvertence or because of an honest mistake.

## **RECOMMENDATIONS**

The Ombudsman investigates complaints about how decisions are made by government agencies, including municipal governments, under the authority granted to them and the duties imposed on them under legislation. In this case, we found that the mayor and the aldermen did not follow the conflict of interest rules. The mayor and alderman A participated in making a decision to appoint a board member to a 2-year term to the PLEDCO Board. The mayor and both aldermen participated in making a decision to appoint members to the fire suppression crew for a 20-week period in 2017. They should not have participated in these decisions. However, we are not recommending that the council revoke and revisit these decisions. We are making recommendations aimed at assisting council in better addressing conflicts of interest and dealing with matters before council in the future.

The council of Cole Bay was elected to represent the best interests of the community. In our opinion, therefore, the council should decide how to deal with these council members and be accountable to its voters for its decisions. Therefore, we recommend:

- 1. The council of the Northern Hamlet of Cole Bay, at its next regular council meeting, should, in accordance with section 166 of *The Northern Municipalities Act, 2010*, determine whether to enforce [the mayor's], [alderman A's], and [alderman B's] disqualification from council.**

When these motions are before the council, the mayor and the alderman A and alderman B must follow the conflict of interest rules and fully comply with section 162 of *The Northern Municipalities Act* – this means they must not attempt in any way, whether before, during or after the meeting, to influence the discussion and, if they are present at the meeting, they must declare their conflict of interest, disclose the general nature of their conflict, abstain from voting, refrain from participating in the discussion, and leave the room until after the discussion and voting is over.

This investigation demonstrates how important it is for council members to understand how to recognize when they have a conflict of interest in a matter before council and what they need to do about it. Therefore, we recommend:

- 2. The council of the Northern Hamlet of Cole Bay should arrange for each council member and all its staff to take education and training so they each understand what conflicts of interest are and how to deal with conflicts of interest when they arise while carrying out their duties.**

## **RESPONSE TO DRAFT INVESTIGATION REPORT**

Under *The Ombudsman Act, 2012*, if there are sufficient grounds for making a report that may adversely affect any entity or person, we must give the entity or the person an opportunity to respond before we finalize the report. On June 6, 2018, we provided a copy of the draft investigation report to the council, as our findings involved the activities and decisions of Cole

Bay's council and administration. We were advised that the council discussed the report at its June 18, 2018 council meeting, and that council accepted our recommendations. It appears from the minutes of the meeting, that the council members in question were not involved in the discussions or decisions concerning the report.

The file is now closed.