Lobbyists, conflict of interest, and how to deal with them

Mtre Sébastien Dorion, Attorney
Lobbying and conflict of interest: questions frequently asked

Elected officials ask themselves many questions in the course of their duties:

1. Elected officials are requested to meet many individuals in the course of their duties: citizens, counterparties, bidders and professionals;
2. They are often enough actively implicated in their community in various committees;
3. They are called to award contracts, which may represent significant amounts;
4. Lobbying and conflict of interest are an inseparable reality of the function of an elected official.
Quebec's Cities and Towns Act and Québec Municipal Code
(Art. 573.3.1.2 C.T.A. and 938.1.2 M.C.).

Obligation to adopt a contract management policy

The policy should include some measures:

1. to ensure that any bidder or any of its representatives did not contact or attempt to contact, in order to influence him, one member of the selection committee regarding the solicitation for which he presented a bid;

2. to ensure compliance with the *Lobbying Transparency and Ethics in Lobbying Act* (chapter T-11.011) and the *Code of Conduct for Lobbyists* (chapter T-11.011, r 2.) made under this Act;

3. to aim at preventing conflict of interest situations.
Breach of contractual obligation policy

Sanctions

The council member who knowingly, by vote or otherwise authorizes or conducts the awarding or making of a contract by not complying with the policy (Art. 573.3.4 C.T.A. and 938.4 M.C.) is subject to the following penalties:

1. held personally liable to the municipality for any loss or damage suffered by the municipality;

2. declared disqualified to hold a position, for a period of two years, as member of the council of any municipality or municipal agency.

Furthermore, the breach of the rules contained in the policy could void the contract.
Lobbying Transparency and Ethics Act
The regulations of lobbying

The government cares about the pressure that various lobbyists could have on municipal decision makers:

1. The *Lobbying Transparency and Ethics Act* was adopted to regulate lobbying activities and make them more transparent;

2. This law applies to lobbyists, not elected officials;

3. Nevertheless, the government requires from elected officials to help enforce the *Quebec's Cities and Towns Act* as well as the *Québec Municipal Code*. 
Lobbying Transparency and Ethics Act

What is lobbying? (art. 2)

All oral and written communications to influence the decision of a holder of public office, if made by a lobbyist, are lobbying activities when they relate to the following items:

a) the development, introduction, modification or rejection of a legislative or regulatory proposal, resolution, orientation, program or action plan;
b) the issue of a permit, license, certificate or other authorization;
c) the awarding of any contract, otherwise then by way of a call for public tender, or of any grant or other financial benefit or the granting of any form of benefit determined by government regulation;
d) appoint a public administrator or deputy minister;
e) arranging for a third party of a meeting or an interview with a public office holder.
What is the definition of a lobbyist? (art. 3)

“consultant lobbyist” means any person, whether or not a salaried employee, whose occupation or mandate consists, in whole or in part, in lobbying on behalf of another person in return for compensation;

“enterprise lobbyist” means any person a significant part of whose job or function within a profit-seeking enterprise consists in lobbying on behalf of the enterprise; and

“organization lobbyist” means any person a significant part of whose job or function consists in lobbying on behalf of an association or other non-profit group.
Lobbying Transparency and Ethics Act

What should a lobbyist needs to do to lobby? (art. 8)

1. Register with the Registry of lobbyists, on the Internet at "www.lobby.gouv.qc.ca";

2. Register his name, the company he intends to lobby for, the object of lobbying activities, the expected duration of its activities, and the people he intends to lobby.
Lobbying Transparency and Ethics Act

It is the duty of the Lobbyist to ensure that it complies with the law.

If there is no legal obligation or consequence for the elected officials, he has an ethical responsibility to ask himself some questions:

1. Identify the files and services that may be subject to lobbying;
2. Identify people and professionals likely to exercise communication of influence: urban planner, engineer, architect, lawyer, notary, business owner, building contractor, Chamber of Commerce representative, etc.
3. Consult the Register of lobbyists at “www.lobby.gouv.qc.ca” to ensure that the information listed delivers an adequate picture of the reality of lobbying in the institution.
Activities not covered by law (art. 5 and 6), notably:

1. any submission made prior to or in legal or judicial proceedings;

2. any submission made for the sole purpose of informing a public office holder of the existence and characteristics of a product or service;

3. any submission made in response to a written request from a public office holder, including any submission made in response to a call for public tenders issued under the authority of such holder;

4. any submission with the sole purpose to inquire into the nature or scope of the rights or obligations of a client, a company or law enforcement authorities.

Lobbying Transparency and Ethics Act
Measures to be implemented

Suggestions
The law, however, applies not only to contracts, but in many other areas of influence (regulation, resolution, license, appointment, etc.)

**Elected officials could:**

1. Ask anyone who wishes to meet with him, prior to schedule an appointment, the reason for this meeting;
2. Assess whether that person, and the subject of the meeting, fall under the scope of what the law provides;
3. If in doubt, inform the person requesting the meeting to obtain additional information and thus clarify its role;
4. If necessary, ask him to join the registry.
Conclusion

The elected official must reconcile two important aspects of its relationship with the public:

1. Meet people who may want to interact with the Municipality, but;

2. Aim to secure the public nature of any lobbying activity.

In order to do this, the elected officials do not have to track down any contravention of the law.

He does not have to avoid people who want to request something from him.

He only needs to get the proper information in order to assist in the implementation of the law.
Conflict of interest
Conflict of interest situations

« Est celle dans laquelle une personne se trouve dans l’obligation ou dans la possibilité d’avoir à choisir entre deux intérêts.

Ces deux intérêts peuvent être soit le sien et celui de son employeur, ou soit l’intérêt d’un de ses amis ou d’une personne qu’il veut servir et l’intérêt de la personne qu’il doit servir.

Avec une telle définition, il n’est pas nécessaire qu’il ait à choisir entre deux intérêts, il suffit qu’il soit dans la situation d’avoir à choisir. »

Ville de Montréal c. Le Syndicat des fonctionnaires municipaux de Montréal, 2001 CanLII 21884 (QC SAT), p. 55.
General rules

Relevant legislation:

- Act respecting elections and referendums in municipalities, R.S.Q., c. E-2.2.
General rules

The conflict of interest situations can be divided into five categories:

1. Criminal act (s. 123 Cr.) (not covered herein);

2. Act that makes someone totally ineligible (Art. 303, 304, 357 AERM) (not covered herein);

3. Act that prevents a decision;

4. Act that violates ethics;

5. Act which is not forbidden.
3. Act that prevents a decision

A. Decision making:

Under Article 164 of the *Québec Municipal Code*, an elected official present at a meeting of the council is required to vote unless there is a conflict of interest on the matter in question in accordance with the AERM.

An elected official may therefore temporarily lose the ability to decide on a matter where his personal interest may conflict with the public interest.
3. **Act that prevents a decision**

When a decision has to be made and such a conflict of interest occurs, the elected official has three obligations under Article 361 AERM:

1) **When present, he must disclose the general nature of the interest before the start of deliberations.** If absent, he must disclose it in the first subsequent session in which he participates;

2) **He must refrain from participating in deliberations;**

3) **He must abstain from voting or influence the vote.**
3. Act that prevents a decision

The pecuniary interest that a member of the council may have pertaining to a certain subject prevents him to attend and vote at meetings relating to this particular interest.

In case of failure to comply with Article 361 of the AERM, the elected official can be disqualified under the second paragraph of Article 303 of the same Act for a period of five years.
3. Act that prevents a decision

B. Exceptions (Art. 362 AERM):

a) Working conditions attached to the duties of elected officials within the municipality;

b) Minor interest.
4. Act that violates ethics

*Municipal Ethics and Good Conduct Act* creates an obligation for municipalities to adopt a code of ethics and professional conduct applicable to elected officials in their territory.

This code can contain rules that prevent elected officials to vote on certain issues that are not otherwise a conflict of interest under the Law.

Anyone can file a complaint to the Minister of Municipal Affairs, who, if he does not judge the complaint frivolous, forwards it to the *Quebec Municipal Commission* for investigation.
4. Act that violates ethics

The consequences of a conviction by the Q.M.C.:

1. A reprimand;

2. The payment or reimbursement of any benefit received against the rules;

3. The suspension of a board member for a duration that cannot exceed 90 days.
5. **Act which is not forbidden**

In addition to the exceptions already mentioned, it is possible that an elected official finds himself in a conflict of interest that is not prohibited by law or defined by the ethics code.

In these circumstances, the elected official is authorized to assist, to participate in discussions and vote, if necessary.
FOUR OFFICES TO SERVE YOU

MONTREAL
Stock Exchange Tower, 43rd Floor
800, Victoria Square P.O. Box 303
Montreal (Quebec) H4Z 1H1
Phone ....................... 514 866-6743
Fax ........................... 514 866-8854

LAVAL
3333, boul. du Souvenir
Suite 200
Laval (Quebec) H7V 1X1
Phone .............. 450 686-8683
Fax ................. 450 686-8693

LONGUEUIL
4501, rue Bishop
Bureau 201
Longueuil (Quebec) J3Y 9E1
Phone ................. 450 670-8225
Fax ....................... 450 670-6369

JOLIETTE
1075, boul. Firestone
Suite 3100
Joliette (Quebec) J6E 6X6
Phone .............. 450 759-8800
Fax ................. 450 759-8878