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Reimbursement of Fees for Legal Advice Requested by an Elected Official: The Court of Appeal Calls for Flexibility

Since 2021, section 35 of the *Municipal Ethics and Good Conduct Act* (the "MEGCA") has allowed municipal council members to claim reimbursement from their municipalities when they seek legal advice from an ethics and conduct advisor as a preventive measure. This section is generally interpreted restrictively, considering the use of the expression "as a preventive measure." In most cases, municipalities will not reimburse elected officials if the advice was requested after the fact. However, on March 11, the Québec Court of Appeal, in the *Galati*[1] and *Tassoni*[2] cases, confirmed that these terms should be interpreted more liberally.

In *Galati*, a municipal councillor who also sat on the board of a school service centre sought legal advice from an ethics advisor regarding his right to occupy both positions. His municipality refused to reimburse the fees and the decision was upheld by the Superior Court on the grounds that the legal advice was not sought preventively, as he was already sitting on the council and the school service centre's board. Meanwhile, in *Tassoni*, two municipal councillors were under investigation by the Commission municipale du Québec for having participated in the adoption of council resolutions despite an alleged conflict of interest. They consulted lawyers, then sought reimbursement of the lawyers' fees. They were also denied, on the grounds that the advice had been requested after the situation had occurred. The Court of Appeal overturned the trial judgments and allowed the appeals, ordering the City to reimburse the officials.

In these decisions, which were handed down on the same day, the Court of Appeal opened the door to a broader interpretation of MEGCA section 35 and the preventive nature that legal advice must have in order for reimbursement to be authorized. In *Galati*, the Court stated the following:

> "[29] […] MEGCA section 35 must be interpreted in such a way as to encourage an elected municipal official who has allegedly broken the law to receive the clarification they need to rectify a potentially illegal situation or adopt a better practice in the future. The appellant explained in his mandamus proceedings that his dual positions could lead to 'ethical concerns' and that the legal advice was preventive in that it addressed a potential conflict of interest.[20]" [Translated from French]

The Court also expressed this point of view in *Tassoni*:

> "[55] In any case, even if the questions at least partly related to the existing conflict and therefore past actions, this conflict persists. Since the appellants had nearly two years left in their terms, the consultation remained preventive because of the appellants' ethical obligations in light of their direct and indirect pecuniary interests, as well as the conduct they needed to follow for the remaining 20 months of their terms." [Translated from French]

Given these rulings, we feel that the mere fact that legal advice has been sought after a breach of ethics has occurred should no longer be sufficient to deny reimbursement of fees. Instead, it appears that reimbursement should be granted if a situation is likely to have future consequences.

With this liberal interpretation, the province's highest court seems to be encouraging elected municipal officials to make use of this tool the MEGCA provides. As municipal managers, we suggest you pass this message on to your elected officials!

[1] *Galati* v. *Ville de Laval*, 2024 QCCA 263.
[2] *Tassoni* v. *Ville de Laval*, 2024 QCCA 264.