

Municipal Conflict of Interest Act and Council Code of Conduct

Presentation to Township of Melancthon Council

April 7, 2022

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Overview

1. *Municipal Conflict of Interest Act*
2. **Code of Conduct**
3. **Council-Staff Relations**
4. **Roles of Staff and Council**
5. **Advice from Integrity Commissioner**

1. *Municipal Conflict of Interest Act*

Municipal Conflict of Interest Act:

Pecuniary interest

- Concerned only with “pecuniary interest” (financial or economic interest)
- Pecuniary interest may be direct or indirect
- Direct: Member, spouse, parent or child has pecuniary interest in matter in which Council or local board is concerned
- Indirect: Any of the following has a pecuniary interest in matter in which Council or local board is concerned:
 - Employer of Member, spouse, parent or child
 - Partner of Member, spouse, parent or child
 - Body to which Member, spouse, parent or child belongs
 - Private corporation of which Member, spouse, parent or child is shareholder, director or senior officer
 - Publicly-traded company that Member, spouse, parent or child controls or of which is director or senior officer

Municipal Conflict of Interest Act: What to do (pecuniary interest)

1. Disclose interest prior to consideration
[recorded in minutes]
2. Do not take part in discussion or vote
3. Before, during and after, do not attempt to influence voting
4. If meeting is closed, leave meeting

Municipal Conflict of Interest Act: Additional steps

5. File written statement with Clerk, or secretary of committee
6. Do not attempt in any way to influence decision or recommendation of officer or employee of municipality
7. If absent from meeting, disclose conflict at first meeting when present

Municipal Conflict of Interest Act:

Exceptions include:

- Member is user of public utility service, or is entitled to receive municipal service or benefit, on terms and conditions common to others
- Member filling vacancy, office or position on council or local board
- Member is director or senior officer of corporation incorporated to carry on business for municipality, or is appointed by council to a board, commission, or other body

Municipal Conflict of Interest Act:

Exceptions include:

- Allowance, remuneration or benefit to which member is entitled by reason of being council member or volunteer fire fighter
- Member has pecuniary interest in common with electors generally
- Member's interest so remote or insignificant that it cannot reasonably be regarded as likely to influence the member
- Plus four other exceptions

Municipal Conflict of Interest Act: Enforcement

- Only a judge may impose penalties for breach of MCIA
- Elector or person acting demonstrably in public interest has two options:
 - A. Apply to a judge
 - B. Apply to Integrity Commissioner – Integrity Commissioner will decide whether to apply to a judge
- Scenario A: Applicant pays (subject to cost award against losing party)
- Scenario B: Municipality pays (subject to cost award against losing party)

Municipal Conflict of Interest Act: Enforcement

In event of contravention, judge may:

- Reprimand member or former member
- Suspend remuneration for up to 90 days
- Declare seat vacant
- Disqualify member or former member from office for up to seven years
- If contravention resulted in personal financial gain, require member or former member to make restitution to party suffering the loss, or, if party's identity is not readily ascertainable, to municipality or local board

Municipal Conflict of Interest Act: Reasons for discretion

In determining penalty, judge may consider whether the member:

- Took reasonable measures to prevent contravention
- Disclosed pecuniary interest and all known facts to Integrity Commissioner in a request for advice and acted in accordance with advice, if any, provided by Commissioner
- Committed contravention through inadvertence or by reason of error in judgment made in good faith

Municipal Conflict of Interest Act: Examples

- *Budarick v. Brudenell, Lyndoch and Raglan (Integrity Commissioner) (2021) (appeal 2022)*
 - Councillor's son invoiced after fire department responded to his violation of fire ban
 - Fire department appeared before Council to seek approval of its service charges
 - Councillor questioned fire department about its finances, donations, practices, procedures, and alleged money mismanagement. Questions covered who was and who was not warned about the fire ban, other people's invoices, and past issuance of unapproved invoices
 - Section 5 breached. Seat declared vacant. Upheld on appeal.

Municipal Conflict of Interest Act: Examples

- *Elliott Lake v. Pearce* (2021)
 - Councillor was director of Elliot Lake and North Shore Corporation for Business Development – not-for-profit corporation established to stimulate economic growth in the City and surrounding area
 - City owed \$30,000 to the not-for-profit corporation
 - Councillor took part in debate or vote on whether City should repay the amount owed
 - Councillor had indirect pecuniary interest as director of not-for-profit corporation. Reprimand issued

Municipal Conflict of Interest Act: Examples

- *Duncan v. Hewitt* (2021)
 - Non-profit group appeared and told Council its efforts to preserve a historic landmark had failed
 - Member's parent was officer of non-profit group
 - Council directed staff to report back on legal implications of potential disbanding of non-profit group
 - Neither the group's report to Council nor the direction to staff affected a pecuniary interest of the group:

“I am not satisfied that the direction to investigate or take further steps could be categorized as anything more, without knowing the outcome of the investigation, let alone as a direction which would have impacted the financial position of the [non-profit group]”

Municipal Conflict of Interest Act: Examples

- *Yorke v. Harris* (2020)
 - Member moved and voted for resolution encouraging Province to amend labour legislation so additional unions could bid on municipal construction projects
 - Member's spouse worked for union that would benefit from the amendment
 - No pecuniary interest in Council's resolution:
 - Council had no jurisdiction or control over labour law
 - Pecuniary interest was speculative and hypothetical: it was contingent on the Province doing something

Municipal Conflict of Interest Act: Examples

- *Cauchi v. Marai* (2019)
 - Several school trustees received 2014 campaign contributions from OECTA, a teachers' union
 - OECTA had contributed \$400 to each respondent trustee, and endorsed him or her
 - A campaign contribution and endorsement were not sufficient to create a relationship such that a trustee had an indirect pecuniary interest in matters affecting OECTA

Municipal Conflict of Interest Act: Examples

- *Cooper v. Wiancko* (2018)
 - Three Township of Georgian Bay councillors were members of chamber of commerce that received municipal grant
 - This constituted indirect pecuniary interest
 - In two cases, interest so remote or insignificant it could not reasonably be regarded as likely to influence the members
 - In third case, interest was reasonably regarded as likely to influence

Municipal Conflict of Interest Act: Examples

- *Rivett v. Braid* (2018)
 - Township of Georgian Bay Council voted on whether to audit township's lease with chamber of commerce
 - Several council members belonged to chamber of commerce; spouse of one council member was CEO of chamber of commerce
 - Audit of the lease did not affect the finances of the chamber of commerce and therefore was not a pecuniary interest

Municipal Conflict of Interest Act: Examples

- *Davidson v. Christopher* (2017)
 - Belleville Mayor co-owned company that owned vacant land in area of road improvement
 - Municipality needed to purchase this land to complete the project
 - On several occasions Mayor declared conflict on project and did not vote
 - Mayor did, however, vote on one occasion, on issue of replacing roundabout with traffic signals
 - While land acquisition was not specifically discussed, implication of switch to traffic signals was:
 - Less land needed for project
 - Municipality would therefore not need to buy land owned by Mayor's company
 - Mayor had a pecuniary interest in vote on switching to traffic signal from roundabout; should have declared conflict

Municipal Conflict of Interest Act: Examples

- *Adamiak v Callaghan* (2014)
 - Spouse of Town of Erin council member was fire chief
 - Council member contravened Act by voting on across-the-board pay increases for municipal employees (including fire chief)
 - Council member did not contravene Act by voting on operational review of town services
- *Aurora (Town) v. Ontario* (2013)
 - Town councillor was appointed by Council to sit on board of a cultural centre
 - This fell under the exemption in the Act: “the [council] member being a member of a board, commission, or other body as an appointee of a council or local board”

2. Code of Conduct

By-Law No. 11-2019

By-Law to Adopt a Code of Conduct for Members of Council &
Members of Local Boards

Council Code of Conduct

- 1.3** “No member shall use the influence of office for any purpose other than the exercise of their official duties.”
- 1.4** Gifts and benefits connected directly or indirectly with performance of duties, except tokens, mementoes, souvenirs, or incidents or protocol of social obligation up to and including value of \$100

Council Code of Conduct

1.5 Confidentiality

1.6 Township property

1.7 Use of Township facilities, services, or property or employees' paid time, for election campaign

Council Code of Conduct

- 1.8 Participate diligently in agencies, boards, commissions
- 1.9 Influence on the staff
- 1.10 No borrowing money from someone doing business with municipality
- 1.12 “Members shall encourage public respect for the Township and its by-laws.”

Council Code of Conduct

1.13 Attendance at meetings

1.14 Conduct during meetings

1.15 Harassment

1.16 Bullying

3. Council-Staff Relations

Council-Staff Relations

Code of Conduct

Do not use influence of office for any purpose other than exercise of official duties	1.3
Do not seek or obtain by reason of office any personal privilege or advantage with respect to Township services not otherwise available to general public and not consequent to official duties	1.4
Respect that the staff works for Township as a body corporate	1.9
Respect that staff members are charged with making recommendations that reflect their professional expertise and corporate perspective	1.9

Council-Staff Relations

Code of Conduct

Respect that the staff is charged with making recommendations without undue influence from any individual Member or group of Council Members

1.9

Show courtesy and not distract from business of Council or Committee during presentations

1.14

Avoid any conduct towards a member of staff that

- is known or ought reasonably to be known to be unwelcome
- offends, embarrasses or intimidates
- reflects intolerance towards any group or individual

1.14

Council-Staff Relations

Code of Conduct

Harassment (defined by <i>Human Rights Code</i>) is misconduct	1.15
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Workplace bullying is repeated unreasonable behaviour directed towards an employee or a group, that creates a risk to health and safety	1.16
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Unreasonable behaviour: harms, intimidates, threatens, victimizes, undermines, offends, degrades or humiliates a staff member	
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4. Roles of Staff and Council

The Staff

- Serves the Township and Council as a whole
- Reports to the CAO/Clerk
- Has certain statutory responsibilities
- Offers professional advice in the form of recommendations
- Carries out Council decisions and administers Township policies

Council

- Collective decision-making body
- Decisions and directions are contained in by-laws, resolutions, and minutes
 - (Technically all decisions made by by-law; hence by-law to confirm proceedings of Council at end of each meeting)
- Considers recommendations
- Exercises representative function (represents public)
- Role includes evaluating policies and programs, and ensuring accountability and transparency
- See section 224, *Municipal Act*

Observations

Disagreement ≠ Disrespect

- Council Members may disagree with the staff, but they must always show respect

Making recommendations ≠ Voting on recommendations

- The staff makes recommendations without political influence
- Council is then free to accept the recommendations or not

Accountability and direction ≠ Harassment or bullying

- Lawful role of Council (as a whole) is to ensure accountability and give direction
- Not acceptable is behaviour that harms, intimidates, threatens, victimizes, undermines, offends, degrades, or humiliates

5. Requests for Advice

Advice from Integrity Commissioner

- Integrity Commissioner handles:
 - Requests from members of council and local boards for advice respecting **their** obligations under codes of conduct.
 - Requests from members of council and local boards for advice respecting their obligations under a procedure, rule or policy of municipality or local board, governing ethical behaviour of members
 - Requests from members of council and local boards for advice respecting their obligations under *Municipal Conflict of Interest Act*
- Request for advice must be in writing
- Advice must be given in writing

Written advice (more)

- Integrity Commissioner may release written advice with member's written consent
- If member releases only part of Integrity Commissioner's written advice, Commissioner may release part or all of the advice without member's consent
- Integrity Commissioner may disclose such information as in his opinion is necessary:
 - for purposes of a public meeting about MCIA complaint
 - in application to a judge under MCIA
 - in written reasons on decision whether or not to make MCIA application to a judge

Contact

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