

CODES, CONFLICTS & COMMISSIONERS

Presentation to Members of Council, Committees and Local
Boards of the Town of The Blue Mountains

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TOPICS

- I. CODES OF CONDUCT
- II. MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (MFIPPA)
- III. INTEGRITY COMMISSIONERS
- IV. MUNICIPAL CONFLICT OF INTEREST ACT (MCIA)

I. CODES OF CONDUCT

- Municipalities must establish codes of conduct for members of the council of the municipality and of its local boards and appoint an Integrity Commissioner
- Regulations prescribe four mandatory subject matters to be included in any code of conduct:
 - Gifts, benefits and hospitality
 - Respectful conduct, including conduct toward officers and employees of the municipality or the local board
 - Confidential information
 - Use of property of the municipality or of the local board
- Commissioners now responsible for application of and advice under the *Municipal Conflict of Interest Act*
- Municipality may impose either a reprimand or suspension of the remuneration paid to the member in respect of his or her services as a member of council for a period of up to 90 days

PROTOCOL POLICY FOR COMPLAINTS

POL.COR.18.04

Part A – Informal Complaint Procedure

- Ask the Member to acknowledge and agree to stop the conduct
- Document incidents
- Tell a third party about your concerns
- Ask the Integrity Commissioner to help

Part B – Formal Complaint Procedure

- File with the Clerk a formal complaint form setting out reasonable and probably grounds
- IC decides whether to investigate
- IC provides outline of the complaint and gives Member 10 days to make a response
- Response given to complainant
- IC may interview any person and access documents
- IC reports to Council outlining findings and any recommended remedial action or sanction

UP-DATE ON THE TOWN'S CODE

- A sub-committee of Council is currently reviewing the Code of Conduct and intends to have the work complete by November 2019.
- Major revisions to the policy include a larger definition section, clarification of the Gifts and Benefits section, a stronger focus on discreditable conduct including harassment, bullying and violence, expanded language for confidentiality & communication and media relations.
- The policy will also combine the previously approved Complaint Protocol in to the Code of Conduct, it will also include a version of the Code of Conduct with matters that apply only to Members of Committees and Local Boards and will require an Affidavit to be sworn by both the complainant and the respondent.
- The revised policy has been to Council once in June and will return in the fall after one final sub-committee review and legal & Integrity Commissioner review. It will then be the subject of a public meeting to receive feedback from members of the public.

II. MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (“MFIPPA”)

Every person has a right of access to a record or part of a record in the custody or under the control of an institution unless,

- (a) The record or part of the record falls within one of the exemptions under sections 6 to 15; or
- (b) The head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

The head of an institution must ensure that reasonable measures respecting the records in the custody or under the control of the institution are developed, documented and put into place to preserve the records.

MFIPPA - EXEMPTIONS

A head may refuse to disclose a record if disclosure would reveal:

1. a draft of a by-law or the substance of deliberations of a meeting in the absence of the public;
2. advice or recommendations from staff;
3. a law enforcement matter or an investigation etc.;
4. information received in confidence from another government;
5. a trade secret, etc., supplied in confidence from a third party;
6. trade secrets, etc., that belong to the institution and has a monetary value;
7. advice subject to solicitor-client privilege; or
8. personal information.

Exemptions don't apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

A person may appeal any decision of a head to the Information and Privacy Commissioner.

MFIPPA APPEALS

- A person may appeal any decision of a head to the Information and Privacy Commissioner (IPC)
- IPC may conduct an inquiry to review the head's decision.
- It is an offence to wilfully disclose personal information, wilfully maintain a personal information bank, make a false request for personal information, wilfully obstruct, or make a false statement to, or fail to comply with an order of the Commissioner.
- On conviction person is liable to a fine not exceeding \$5,000

III. ROLE OF THE INTEGRITY COMMISSIONER

1. The application of the code of conduct and any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards
2. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards.
3. Requests from members of council and of local boards for advice respecting their obligations under: 1) the Code of Conduct, etc.; and 2) the *Municipal Conflict of Interest Act*.
4. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

COMMISSIONER'S POWERS

- Municipality shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry
- Commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality
- Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*:
 - Require any person by summons to give evidence or produce documents and things
 - Establish procedures to be followed on an inquiry
 - Hearings open to the public

ADVICE

- Request and advice must be in writing
- Advice may only be released with the Member's written consent
- Except if a Member releases only part of the advice the Commissioner may release part or all of the advice without the Member's consent
- Commissioner may disclose such information as in the Commissioner's opinion is necessary,
 1. For the purposes of a public meeting under subsection 223.4.1(8)
 2. In an application to a judge, or
 3. In the written reasons given by the Commissioner

INQUIRIES ARE CONFIDENTIAL

- Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge (except information may be disclosed in a criminal proceeding)
- Duty of confidentiality prevails over the *Municipal Freedom of Information and Protection of Privacy Act*
- Commissioner is not a competent or compellable witness in a civil proceeding in connection with anything done under Part V.1
- BUT if the Commissioner determines there are reasonable grounds to believe there has been a contravention of any other Act (other than the MCI/A) or of the *Criminal Code* he or she shall immediately refer the matter to the appropriate authorities and suspend the inquiry until resulting police investigation and charge have been finally disposed of and shall report the suspension to council

ELECTIONS

- The MCI A imposes a moratorium between nomination day and voting day – no requests, reports or penalties
- If the Commissioner has not completed an inquiry before nomination day the Commissioner shall terminate the inquiry
- If inquiry terminated the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day, there is a written request to continue

A CODE OF CONDUCT INVESTIGATION

1. The Complaint should be in writing, signed (or sworn), describe the conduct and the Code violation.
2. Notice of complaint provided to Member of Council
 - Member must know details of the allegation and be given an opportunity to respond
 - Name of complainant should be withheld, unless required
3. Interviews (Confidential)
 - Complainant
 - Respondent
 - Witnesses (provided by complainant and respondent)
 - Staff

A CODE OF CONDUCT INVESTIGATION

4. Report Writing

- Sources remain confidential
- Full details of inquiry not required to be reported
- Summarize facts
- Consider and apply the code of conduct and relevant law
- Make finding as to any breach of the code
- If a breach is found, make recommendations concerning penalties

5. Report to Council

- Commissioner attends and reports to council in open session

COMMON COMPLAINTS

- Discreditable behaviour
 - Intimidating, abusive and bullying behaviour
 - Discriminatory and harassing behaviour (*Ontario Human Rights Code*)
 - Workplace discrimination and harassment (Municipal Policy and *Occupation Health and Safety Act*)
- Conduct at Council and Committee meetings
 - Lack of decorum and respect
- Conduct respecting municipal employees
 - Members demanding action directly from staff
 - Lack of respect for staff's neutrality and professional advice
 - Injury to professional or ethical reputation of staff
- Improper use of influence
 - Use of status as member to improperly influence decisions to private advantage
- Disclosure of confidential information

IV. MUNICIPAL CONFLICT OF INTEREST ACT

Section 5 (1): Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- Shall disclose the interest and the general nature thereof
- Shall not take part in the discussion of or vote on any question in respect of the matter
- Shall not attempt in any way whether before, during or after the meeting to influence the voting

MCIA - “INDIRECT” PECUNIARY INTERESTS

Member has an indirect pecuniary interest if:

1. The Member is a shareholder, director or senior officer of a corporation that does not offer its securities to the public (Private Company);
2. The Member has a controlling interest in or is a director or senior officer of a corporation that offers its securities to the public (Public Company);
3. The Member is a member of a body that has a pecuniary interest in the matter; or
4. The Member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

MCIA - “DEEMED” PECUNIARY INTERESTS

- The pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall be deemed to be also the pecuniary interest of the Member.
- Siblings not included in the list

MCIA - EXCEPTIONS

Section 5 rules do not apply to certain pecuniary interests, including:

- In respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member maybe entitled
- By reason of the member having a pecuniary interest which is an interest in common with electors generally
- By reason of an interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member
- If Commissioner recommends suspension of pay member may take part in discussion, may attempt to influence the voting, but is not permitted to vote

MCIA – TIMELINE

An application to a judge by an elector, an Integrity Commissioner, or a person acting in the public interest, may only be made within six weeks after the applicant became aware of the alleged contravention (some exceptions)

No application shall be made after the sixth anniversary of the alleged contravention.

Commissioner to complete the inquiry within 180 days of receiving complete application.

WRITTEN STATEMENT AND REGISTRY

At a meeting at which a member discloses an interest under section 5, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board, as the case may be.

Every Municipality and local board shall establish and maintain a registry in which shall be kept,

- a) a copy of each statement filed under section 5.1; and
- b) a copy of each declaration recorded under section 6.

The registry shall be available for public inspection in the manner and during the time that the municipality or local board, as the case may be, may determine.

LACK OF QUORUM (MCIA)

Where the number of members are disabled from participating in a meeting is such that at that meeting the remaining members are not of sufficient number to constitute a quorum, then, the remaining number of members shall be deemed to constitute a quorum, provided such number is not less than two.

MCIA – APPLICATION TO A JUDGE

An elector, an Integrity Commissioner, or a person demonstrably acting in the public interest may apply to a judge for a determination of whether a member (or former member while a member) has contravened section 5, 5.1 or 5.2

If judge determines that the member contravened section 5, 5.1 or 5.2, the judge may:

- Reprimand the member
- Suspend the remuneration paid to the member up to 90 days
- Declare the member's seat vacant
- Disqualify the member from being a member for not more than seven years
- Require the member to make restitution to the party suffering the loss

MCIA - JUDICIAL CONSIDERATIONS

Judge may consider, among other matters, whether the member or former member:

1. Took reasonable measures to prevent the contravention
2. Disclosed the pecuniary interest to an Integrity Commissioner in a request for advice and acted in accordance with the advice
3. Committed the contravention through inadvertence or by reason of an error in judgment made in good faith

THANK YOU AND QUESTIONS