

Code of Conduct Transparency and Integrity at the Municipal Level

Town of The Blue Mountains Information Session

New Council Orientation

December 7, 2018

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Where it all began

- ▶ The Toronto Computer Leasing Inquiry was a judicial inquiry into allegations of conflict of interest, bribery and misappropriation of funds around computer leasing contracts at the City of Toronto in 1998
- ▶ Over the duration of the agreement, the city paid \$85 million to MFP, rather than the original \$43 million approved by city council. As well, many of the equipment schedules were for five-year leases rather than three
- ▶ Justice Bellamy released her final report on September 12, 2005. She found that the testimony of Councillor Jakobek and Mr. Domi was not convincing. She made 241 recommendations



Justice Bellamy's Report

➤ *What went wrong*

"Some people disgraced themselves, failed in their duty to their City, lied, put self-interest first, or simply did not do their jobs. Many City processes and procedures were not yet up to the high standards that the people of Toronto have a right to expect."

➤ *How to prevent it*

Justice Bellamy made 241 recommendations, grouping broad themes of ethics, governance, lobbying and procurement.

➤ *What the City did*

"The City has taken governance matters seriously and has taken action," Judge Bellamy writes, noting that the city has already:

- ✓ Tried to clarify the responsibilities and accountability for each step of the procurement process.
- ✓ Developed a new procurement policy.
- ✓ Amended its conflict-of-interest policy.
- ✓ Created the office of integrity commissioner.
- ✓ Created a voluntary lobbyist registry.

Municipal Accountability

- ▶ Bill 130 created Part V.1 of the *Municipal Act, 2001* giving municipalities authority to:
 - ▶ Establish Codes of Conduct
 - ▶ Appoint Accountability Officers
 - ▶ Integrity Commissioners
 - ▶ Auditors General
 - ▶ Ombudsmen
 - ▶ Lobbyist Registrars and create Lobbyist Registries
 - ▶ Closed Meeting Investigators

Elected officials are trustees for the public

- They:
 - Act as surrogates for the public with fairness toward all and avoiding preferential treatment to any specialized interest group
 - Avoid any interest or activity which is in financial and personal conflict with their official duties
 - Responsibly oversee management of the public purse and accept that all monies held by the municipality are for the official duties
- Facilitate complete, understandable and timely access to information by the public

Town of The Blue Mountains

- The Blue Mountains Council adopted the Code of Conduct to set minimum standards for the behaviour of Council Members in carrying out their functions so that they may :
 - ▶ 1. Understand the standards of conduct that are expected of them and the law that applies in relation to these standards;
 - ▶ 2. Fulfill their duty to act honestly and exercise reasonable care and diligence; and
 - ▶ 3. Act in a way that enhances public confidence in local government.

Duties of the Integrity Commissioner

- Advice and Recommendations
- Education and Outreach
- Annual Report
- Complaint Investigation

Roles and Obligations

- Role of Council
- Role of Head of Council
- Role of Officers and Employees
- Purpose and Standards of the Code

Code of Conduct Guiding Principles and Rules

- The Code sets out the:
 - Definitions
 - General Standards and Statement of Principle that cover the responsibilities of Members of Council and Local Boards
 - 12 Conduct Rules, 1 Rule on Advice and 1 Rule on Respect for the Code and the Office of the Integrity Commissioner
 - Separate Complaint Procedure with which an individual may request an inquiry by the Integrity Commissioner into whether a Member has contravened the Code of Conduct

The Role of the IC

- Enforces the Code of Conduct Rules through the application of the Complaint Procedure
- Maintains Confidentiality regarding all matters that come to her attention with the exception of public reporting
- Presents Investigation Reports of Findings and Sanctions
- Outside the Commissioner's jurisdiction:
Ombudsman of Ontario

Investigation Report

- Upon completion of the investigation:
 - the Integrity Commissioner will submit a report to the parties containing a determination of whether the violation alleged in the complaint has been established
 - this report is submitted to Council with any recommendations for action
 - Council makes the decision to impose sanctions and remedial actions

Commissioner recommended penalties

- **VIOLATIONS** of the Code of Conduct can bring Council-imposed sanctions including a reprimand, loss of pay for up to 90 days, and/or recommendations of remedial action such as removal from membership or as Chair, repayment or reimbursement of funds, return of property or its value, and a request for an apology

Bill 68: Modernizing Ontario's Municipal Legislation Act, 2016

- ▶ Bill 68 *requires* municipalities to:
 - ▶ Establish Codes of Conduct
 - ▶ Appoint an Integrity Commissioner
 - ▶ Set minimum Code of Conduct standards
 - ▶ Establish protocols for interaction between elected officials and staff
 - ▶ Expand IC jurisdiction - MCIA

Changes to the Municipal Act, Code of Conduct

- **Comes into force March 1, 2019**
- Codes of conduct and having an Integrity Commissioner are now mandatory
- Municipalities shall establish codes of conduct for members of council and local boards.

Expanded jurisdiction of Integrity Commissioner

- Responsibilities of Integrity Commissioners have been expanded. They are responsible for:
 1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
 2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
 3. *Receipt of complaints in respect of sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act to members of council and of local boards.*
 4. *Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.*
 5. *Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.*
 6. *Requests from members of council and of local boards for advice respecting their obligations under the Municipal Conflict of Interest Act.*
 7. *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, 2017, c. 10, Sched. 1, s. 19 (1).*

Municipal Conflict of Interest Act (MCIA): Purpose

- Purpose: To prohibit members of Council from engaging in the decision-making process in relation to matters in which they have a personal, economic interest
- Underlying Principle: No person can serve two masters

Integrity Commissioner and the MCIA

Comes into force March 1, 2019

- The Integrity Commissioner can investigate complaints alleging contraventions of s 5, 5.1 or 5.2 of the *MCIA* (s 223.4.1)
- What can the inquiry be about?
 - ▶ A contravention of section 5, 5.1 or 5.2 of the *MCIA*
- Who can apply for bring an MCIA complaint to the Commissioner?
 - ▶ An elector or an individual demonstrably acting in the public interest.
- How
 - ▶ In writing to the Commissioner
- When
 - ▶ Within six weeks after the applicant became aware of the alleged contravention
 - ▶ Not during the period of time starting on nomination day for a regular election and ending on voting day of a regular election
 - ▶ There are exceptions
 - ▶ Commissioner shall complete inquiry within 180 days of receiving completed application unless the inquiry is terminated

Code investigation of MCIA Complaint

- The complaint
 - Shall set out reasons for believing the alleged contravention occurred
 - Shall include a statutory declaration attesting that the applicant became aware of the alleged contravention not more than six weeks before the date of the application.
- ▶ Information
 - ▶ Municipality and local boards shall give Commissioner such information as Commissioner believes to be necessary for inquiry
- ▶ Completion
 - ▶ Upon completing the inquiry the Commissioner may apply to a judge under s 8 of the MCIA for a determination as to whether a member contravened 5, 5.1 or 5.2 of the MCIA
 - ▶ Commissioner shall advise the Complainant where she decides not to make an application to a judge
- ▶ Reasons after inquiry
 - ▶ After deciding whether or not to apply to a judge, the Commissioner shall give notice to the Complainant and publish written reasons for the decision.
- ▶ Costs
 - ▶ The costs of applying to a judge shall be paid by the municipality or the local board as applicable

MClA Definitions

- ▶ Definitions: “local board” means a school board, board of directors of a children’s aid society, committee of adjustment, conservation authority, court of revision, land division committee...
- ▶ “meeting” includes any regular, special, committee or other meeting of a council or local board, as the case may be
- ▶ “parent”, “spouse”, “child”

MCIA Conflict of Interest

Interest of certain persons deemed that of member

- ▶ 3. For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member

Who enforces alleged contraventions of MCI A?

- The question of whether or not a member has contravened subsection 5(1), (2), (3) of the MCI A may be **reviewed and determined by a judge** on application of an elector (prior to March 2019)
- Post March 2019, an elector, an Integrity Commissioner *of a municipality* or a person demonstrably acting in the public interest may apply to a judge for a determination of a question of whether,
 - A member has contravened sections 5, 5.1 of 5.2; or
 - A former member contravened section 5, 5.1 or 5.2 while he or she was member
- An application may only be made within six weeks after the applicant became aware of the alleged contravention

MCIA Requirements

When present at meeting at which matter considered

- 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,
 - (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
 - (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
 - (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question

Where member to leave closed meeting

- (2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the is under consideration.

Obligations of Members

- MCIA responsibilities of Member when Member has a pecuniary interest:
 - Declare the conflict and disclose general nature of interest before discussion occurs
 - Do not participate in discussions
 - Do not attempt to influence
 - Do not vote
 - If closed meeting, leave the meeting
 - If absent, declare at next meeting

Exempted Pecuniary Interest

- 9 specific exemptions
- 2 general exemptions:
 - “interest in common with electors generally”
 - Interest “so remote or insignificant”

Decision to suspend Member's remuneration under the Code of Conduct - New

- Section 5.1 states that where a Member has a pecuniary interest in a matter and is present at the meeting, they shall not take part in the discussion of, or vote on any question in respect of the matter and shall not attempt in any way to influence the voting on any such question
- New exception added in new section 5 (2.1)
- Where the matter being considered is whether to suspend the remuneration paid to a member on recommendation of the Integrity Commissioner, the member may take part in a the discussion of the matter and may attempt to influence voting
- Member may also attend the meeting if it is not open to the public
- Member, however, is still not allowed to vote on the matter

Public Registry - New

New section 6.1

- Requires municipalities and local boards to establish and maintain registries that keep copies of:
 - Statements of disclosure filed under section 5.1; and
 - Declarations recorded under section 6
- Subsection 6.1(2) requires that the registry be available for public inspection

MCIA Penalties

If court finds there has been a breach:

A judge now has additional penalties to consider

- ▶ Subsection 9(2) provides judges with the discretion to determine the appropriate action; no longer required to declare seat vacant
- ▶ Subsection 9(2) provides factors which the judge may consider in exercising his or her discretion. Factors include whether:
 - ▶ The member took reasonable steps to prevent the contravention
 - ▶ *The member disclosed the interest to the Integrity Commissioner**
 - ▶ The member committed the contravention through inadvertence or an error in judgment made in good faith
- ▶ Section 9(2) provides for an extended list of powers compared to former section 10. A judge may do any or all of the following:
 - ▶ Reprimand member
 - ▶ Suspend remuneration for up to 90 days
 - ▶ Declare member's seat vacant
 - ▶ Disqualify member from being member up to seven years after date of order
 - ▶ If member received personal financial gain, may require member to make restitution to party suffering loss or municipality/board

Savings provisions:

- Inadvertence
- Error in judgment

Proactive Measures By Members

- ▶ Proactively determine whether Member and his/her family have an interest which could pose a conflict and document those efforts (e.g. due diligence letter)
- ▶ Carefully review meeting Agendas to become aware of any matter before it comes up
- ▶ Discuss with Integrity Commissioner
- ▶ Seek independent legal advice
- ▶ Carefully review Minutes to ensure declaration of conflict and general nature of interest has been documented in proper location in the Minutes
- ▶ Make declarations at all meetings, including committees
- ▶ Always leave meeting room for closed meetings after declaring to have a pecuniary interest and ensure the departure is documented in Minutes

Council and Administration working together

- ▶ Role of Council
- ▶ Role of Head of Council
- ▶ Role of Officers and Employees
- ▶ Purpose and Standards of the Code

The Role of Council

- ▶ Municipal Council is the decision making body and the decisions of Council are paramount in all matters within its authority.
- ▶ Come into force March 1, 2019
- ▶ New policies required by municipalities
- ▶ Municipality shall adopt and maintain policies with respect to:
 - ▶ The relationship between members of council and the officers and employees of the municipality

The Role of Council Members

- ▶ The *Municipal Act* does not set out any specific role of a municipal councillor
- ▶ The Municipal Councillor's Guide states the general role
 - ▶ To set policy direction
 - ▶ To carry out a fiduciary duty
 - ▶ To act as representatives

Closed Meetings and Confidentiality

- **DO NOT** seek access to confidential information from the Town staff unless it is necessary for the carrying out of your functions and there is no Town policy denying you access to that information
- **DO NOT** disclose confidential information obtained as a result of your office, unless required by law or authorized by Council
- **DO NOT** use confidential information for personal or private gain, or for the gain of others

Council Policies

- **FAMILIARIZE YOURSELF WITH AND FOLLOW** all Council policies and procedures regulating the performance of your duties
- Not knowing about a Town policy or procedure **DOES NOT** serve as a defense for your actions in a Code complaint investigation

ETHICS and INTEGRITY: Doing the right thing when held to a higher standard



Accountability and Governance: where do we go from here?



- ▶ *This story was originally published by The Free Press on June 23, 2016*
- ▶ It's Maureen Cassidy's move now.
- ▶ With a spokesperson to his left, and his church minister to the right, Mayor Matt Brown's political survival skills kicked in Wednesday as he stepped out of a self-imposed exile to say he won't resign amid a sex scandal.
- ▶ Brown's return, announced at city hall with at least one furious-looking council colleague standing nearby, means he's back in office just as a fresh poll conducted exclusively for The London Free Press and Postmedia found more than half of Londoners want him gone.
- ▶ But Brown doesn't have to go — the toothless Municipal Act that rules Ontario's municipal governments has virtually no requirement that would compel a mayoral resignation.

Government Ethics

Public service integrity always revolves around managing conflicts of interest. It entails balancing personal interest and obligations of service to the community. ...Where you stand directly influences what you see. We see things involving others with a clarity which escapes us when we have personal involvement. Not infrequently, we do not see impropriety in our own actions, and cannot understand why others see personal interest.

Beith Atkinson, then Senior Advisor, Trust and Values, New Zealand State Services Commission