

CODE OF CONDUCT AND CONFLICT OF INTEREST

❖ What You Need to Know

BILL 68

- ❖ Bill 68, “Modernizing Ontario’s Municipal Legislation Act”, received Royal Assent on May 30th, 2017.
- ❖ By March 2019, it required municipalities to establish Codes of Conduct that must include, as a minimum, guidance on:
 - 1) gifts and benefits and hospitality
 - 2) respectful conduct
 - 3) confidential information
 - 4) use of property of the municipality or local board - see Regulation 55/10.

- ❖ The Bill also mandates that municipalities and their local boards provide access to an Integrity Commissioner (IC), either their own or in conjunction with another municipality.
- ❖ The IC was also given expanded powers to follow up on Conflict of Interest complaints.

THE CODE

- ❖ Purpose: Provides guidelines for acceptable behaviour and ensures that interpersonal conduct, behaviour and communications are consistent with legal requirements.
- ❖ Aim: To foster a civil and respectful environment based on fairness, respect and ethical behaviour.
- ❖ Simple Rule: *Don't Get Personal, Be Professional.*

LEGAL OBLIGATIONS

- ❖ It starts with your Oath of Office.”to truly, faithfully and IMPARTIALLY exercise the office of....
- ❖ The key word is “impartially”, meaning to treat everyone equally and fairly.
- ❖ Civil and respectful treatment of other Members, staff and the general public.

- ❖ Your procedural by-law may have restrictions against using “offensive” words, unparliamentary language or “personal” comments.
- ❖ Statutory obligations exist. Human Rights Legislation / Workplace Harassment Policies / Health and Safety Regulations are designed to protect people from unwanted conduct.

- ❖ Read and learn your Code of Conduct.
- ❖ Following it will protect you.

THE CODE - PHILOSOPHY

- ❖ It is Council's Code - you decide what goes in it, subject to basic legislative/regulatory requirements.
- ❖ It is an administrative document, not a legal one.
- ❖ It is not an offense (legally) if it is violated.
- ❖ The Integrity Commissioner provides independent advice and opinion on an alleged infraction through recommendation(s).

- ❖ Council has the ultimate authority to act on any recommendation or to amend it or file it..... You are the final arbitrator.
- ❖ Again, the Integrity Commissioner's authority comes from Council.

IC'S PROCESS

- ❖ Early resolution: resolving the allegation to the satisfaction of both parties without a formal inquiry is desired.
- ❖ Sometimes a simple but meaningful apology resolves the matter. No need for a formal report.
- ❖ The legislation is not meant to embarrass elected representatives - therefore, early resolution is paramount.

- ❖ If a formal inquiry is necessary, then interviews will be held and preliminary findings will be shared with the respondent.
- ❖ Council will then receive the advice of the IC and determine how it wishes to proceed. It's your call.....It's your Code.

SANCTIONS

- ❖ If a Member has been found to violate the Code then the following may be recommended according to legislation:
- ❖ a reprimand
- ❖ suspension of pay up to 90 days for each occurrence
- ❖ remedial remedies (sensitivity training, a formal apology)

- ❖ In determining the recommendation, the IC has regard for:
 - ** the severity of the infraction
 - ** the attitude and demeanor of the respondent
 - ** whether this is the first offense

- ❖ The IC may dismiss an allegation if it is politically motivated, frivolous or vexatious.

GOVERNING PRINCIPLES

- ❖ You owe your elected office to the public.
- ❖ Members have obligations (Statutes, policies, by-laws) regardless of your “personal” opinion or to whom you believe you owe your allegiance to.
- ❖ The “will” of Council supersedes what an individual Member may desire or have promised to a constituent.
- ❖ You are not an independent contractor but rather part of a collective decision-making body.

- ❖ You are held to a high standard.
- ❖ Having the privilege of holding office carries with it significant responsibilities such as fairness and respect for different opinions.
- ❖ The Code is designed to promote and encourage such behaviour.

❖ Of course, you have the right to disagree, to argue your point, to request more timely information or to be disappointed. You can even claim that the information provided is out of touch with community needs, in your opinion.

❖ However, there are limits. Don't get personal, stay professional and refrain from using colourful adjectives.

CODE - HIGHLIGHTS

- ❖ There are many sections to the Code. Please read and understand them.
- ❖ Sections such as General Duties of Members emphasize the need for civil and respectful conduct and the requirement to follow legislation.
- ❖ There is information on accepting gifts and participating in events. Note: if you receive a gift that exceeds \$200 in value then you must disclose it in writing. Your Clerk has the necessary form.

- ❖ Remember the Disclosure Statement is a public document and there are other obligations regarding gifts to be considered.
- ❖ There is a section on confidentiality. You must hold in strict confidence all information supplied in confidence.

SOLICITOR - CLIENT PRIVILEGE

- ❖ The “privilege” rests with the Council/Board receiving the advice. It belongs to the assembly and not to the individual Councillor.
- ❖ If Council/Board considers the matter as confidential then it must stay that way.

❖ As mentioned there are many other Sections in the Code to be reviewed and understood, such as Interaction with the Public, Other Members and Staff, The Improper Use of Influence, and obligations respecting Conflict of Interest to name a few.

HELPFUL HINTS

- ❖ Know that there is a heightened awareness and sensitivity around interpersonal behaviour and conduct.
- ❖ Treat people with respect, be patient and measure your reaction.
- ❖ Recognize that as a public official you are held to a high standard of conduct.
- ❖ Don't hesitate to check with your IC - there is no charge for advice.

- ❖ Remember you have obligations (legal) regardless of your personal feelings or views.
- ❖ The “will” of Council supersedes your own.
- ❖ Don’t say it or do it unless you’re prepared to defend it.
- ❖ **READ THE CODE!**

THE LAST MESSAGE

- ❖ Old Truism: “measure twice, cut once”
- ❖ New Adage: “think twice, speak once”

CONFLICT OF INTEREST

- ❖ In its simplest terms: refers to a situation where a person has a private or personal interest which appears to influence the objective exercise of his/her official duties.
- ❖ Pecuniary Interest: a financial interest or things that can be measured in terms of financial value (assets, rights, competitive position).
- ❖ Any matter where a Member's self-interest may be in conflict with that Member's public duty.

- ❖ The Municipal Conflict of Interest Act (MCIA) is designed to prohibit Members from using the decision-making process to further their personal economic interest.
- ❖ Example, you can't discuss, influence or vote on a project where you are a part owner.

LEGAL OBLIGATIONS

- ❖ You took an Oath: ...Solemnly promise to disclose “any pecuniary interest, direct or indirect in accordance with the Act...”
- ❖ Direct and indirect are not defined in the Act.
- ❖ However, case law permits that Direct interest is an interest that has an expressed impact on finances, economic prospects or property value.
- ❖ It can be positive or negative (avoid a loss).

- ❖ Indirect - if you are a director or senior officer of a public or private enterprise or a member of a body - see Section 2 of MCIA for complete definition.
- ❖ Deemed interest: a direct or indirect interest of a spouse, child or parent.

- ❖ Section 223.4 of the legislation permits an elector or person demonstrably acting in the public interest to apply in writing to the IC requesting an inquiry into the allegation(s).

YOUR DUTY

- ❖ must disclose the interest and general nature thereof before any consideration of the matter
- ❖ cannot take part in any discussion or vote on the item
- ❖ cannot attempt to influence voting in any way
- ❖ You are required to provide your Clerk with a signed declaration on the prescribed form

❖ If the matter is the subject of a closed meeting (in-camera) then you must leave the meeting while it is being discussed.

THERE ARE EXEMPTIONS

- ❖ Section 5 of the Act outlines a number of specific exemptions whereby you do not have to declare a conflict.
- ❖ For example, you can discuss and vote on your Council remuneration and benefits or if you have an interest in common with electors generally, then you do not have to declare a conflict (e.g. you can discuss and vote on lowering water rates, even though you may benefit from that).

- ❖ The list of exemptions is long and should be reviewed and understood.
- ❖ Also, absence from a meeting does not exempt you from disclosing your interest - you must do so at the next meeting you attend.

ALLEGED CONTRAVENTION

- ❖ An application has to be brought before a Superior Court of Justice within 6 weeks of the alleged conflict.
- ❖ The matter can be referred to the Integrity Commissioner (IC) who shall determine if there is merit in referring it to the Justice.
- ❖ The IC has 180 days to complete the inquiry.

PENALTIES

- ❖ Only a Judge can:
 - **reprimand a Member
 - **declare the seat vacant
 - **disqualify someone from holding office for up to 7 years
 - **order restitution of financial gain
 - **suspend remuneration up to 90 days

SAVING PROVISIONS

- ❖ If the conflict was through inadvertence
- ❖ If there was a genuine error in judgement
- ❖ Can be appealed to Ontario Divisional Court

SUMMARY

- ❖ Be mindful of potential conflicts of interest including your spouse, child or parent.
- ❖ A written declaration of your conflict must be registered with your Clerk in addition to a verbal declaration at the meeting.
- ❖ Check with your IC when in doubt - this must be in writing and the response from the IC must also be in writing according to the Act.

QUESTIONS?

❖ THANK YOU!

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