

Transparency and Integrity: A Guide for Municipal Councillors

**Presentation to Town of Halton Hills Council
Council Education Workshop
April 29, 2024
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Outline

- Governance principles
- Roles and Responsibilities
- Code of Conduct
- Municipal Conflict of Interest Act (MCIA)
- Council Member Use of Social Media

Why do we have Codes of Conduct?

Key Judicial Inquiry Reports on Municipal Governance:

- Justice Bellamy: City of Toronto Computer Leasing Inquiry; Toronto External Contracts Inquiry (2005)
- Justice Cunningham: Mississauga – Updating the Ethical Infrastructure (2011)
- Justice Marrocco: Collingwood – Transparency and the Public Trust (2020)

Governance Structure

► Generally:

- **Council:** exercises power of municipality (s. 5) - the directing mind of the corporation; the board of directors
- **Administration:** staff – exercise power delegated by Council or required by statute
- **Local boards, committees:** delegated power by council to exercise specific purposes and authority
- **Accountability offices** (Integrity Commissioner, closed meeting investigator)

Role of Mayor

- ▶ **Municipal Act s. 225:** It is the role of the head of council,
 - (a) to act as chief executive officer of the municipality;
 - (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
 - (c) to provide leadership to the council;
 - (c1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);
 - (d) to represent the municipality at official functions; and
 - (e) to carry out the duties of the head of council under this or any other Act.

Mayor as CEO

- **Municipal Act s.226.1:** As chief executive officer of a municipality, the head of council shall,
- (a) uphold and promote the purposes of the municipality;
 - (b) promote public involvement in the municipality's activities;
 - (c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and
 - (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

Head of Council

Strong Mayors, Building Homes Act, 2022

- ▶ Special executive powers for mayors of Toronto and Ottawa
 - ▶ powers of CAO
 - ▶ directions to municipal staff
 - ▶ development of organizational structure
 - ▶ veto powers [for “provincial priorities”]

- ▶ On October 17, 2022, Premier indicated that other “large” municipalities will be given strong mayor powers in 2023.

- ▶ On June 16, 2023, the Province announced that as of July 1, 2023, strong mayor’s powers would be extended to heads of council in 26 large and fast-growing municipalities who have submitted a housing pledge.

- ▶ As of November 1, 2023, the Ontario government expanded strong Mayor powers to the Town of Halton Hills under [O.Reg. 530/22](#).

Role of Council

Municipal Act s. 224 It is the role of council,

- a) to represent the public and to consider the well-being and interests of the municipality;
- b) to develop and evaluate the policies and programs of the municipality;
- c) to determine which services the municipality provides;
- d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
 - (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- e) to maintain the financial integrity of the municipality; and
- f) to carry out the duties of council under this or any other Act.

Individual Members of Council

- Each member of council has one vote at council. (Municipal Act)
- Are elected officials, not employees of the Town
- Governed by Code of Conduct for Members of Council and Local Boards and other applicable Town policies (e.g. Respectful Workplace Policy)
- Municipal Conflict of Interest Act applies – cannot engage in decision-making where there is a personal economic interest: declaration at Council
- Individually, unless authority is delegated by Council, there is no delegated authority to act or bind the Town, or to direct staff.

Individual Members of Council

Ministry of Municipal Affairs and Housing
The Ontario Municipal Councillor's Guide (2022)

Role of the councillor

“As a councillor, you have three main roles to play in your municipality: a **representative**, a **policy-maker**, and a **steward**. These roles may often overlap. You will be called on to consider and make decisions on issues that will sometimes be complex and controversial. Many of those decisions will have long-term consequences for your municipality that extend beyond your four-year term of office, and should be made in the context of your municipality's plans for the long-term health and welfare of your community.”

Individual Members of Council

Villeneuve v. North Stormont (Township),
2022 ONSC 6551 (Div. Ct.) at para. 38

“The relative **power imbalance** between staff, who do not have a voice at Council, and elected Members, who do, mean that their respective roles and responsibilities must be acknowledged and respected.”

Individual Members of Council: Different Roles

Member of Another Body

Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50

Indirect pecuniary interest

2 For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

(a) the member or his or her nominee,

...

(iii) is a member of a **body**,

that has a pecuniary interest in the matter

- ▶ “body” is not a defined term but should be interpreted “broadly”

Individual Members of Council: Different Roles

- ▶ A member of council may be a member of a body (non-profit, charitable, community association, etc.) in their personal capacity (not as an appointee of council)
- ▶ A member must be mindful of the obligations they have under the *Municipal Conflict of Interest Act*:
 - ▶ indirect pecuniary interest under s. 2

Individual Members of Council: Different Roles

Council Appointee to Local Board

Walker v. Toronto (City)
(1993), 15 M.P.L.R. (2d) 213 (Ont. Gen. Div.)

“[T]he applicants believe that they are acting in the best interests of the THC. It would appear that Mayor Rowlands believes that the city-appointed commissioners should act in a way representing the interests of the City. If she believes that the three city-appointed commissioners are agents of the City, she is in error. The THC commissioners’ responsibility is not only to the City but to the Federal Government and the public generally. **The members thereof must act in the best interests of the THC regardless of who appointed them, even if that interest is contrary to the wishes of those who appointed them.** This principle applies whether the city appointees are members of the city council, members of the city staff or outsiders.”

Individual Members of Council: Bias

- ▶ In general, decision-makers must be un-biased in their decision-making and must also be *perceived* to be un-biased

Municipal councillors wear many hats and there is an expectation that they will take firm positions on various matters

- ▶ Council act in different capacities:
 - ▶ political or policy decision (i.e., legislative or executive)
or
 - ▶ quasi-judicial (i.e., adjudicative)
- ▶ different bias tests are applicable depending on nature of council's decision

Individual Members of Council: Bias

***Old St. Boniface Residents Association v. Winnipeg (City)*, [1990] 3 S.C.R. 1170, 2 M.P.L.R. (2d) 217**

“...some degree of **prejudgment is inherent** in the role of municipal councillor...”

The party alleging disqualifying bias must establish that there is a prejudgment of the matter, in fact, to the extent that any representations in variance with the view, which has been adopted, will be futile. Statements by individual members of council while they may very well give rise to an appearance of bias will not satisfy the test unless the court concludes that they are the expression of a final opinion on the matter, which cannot be dislodged.”

***Save Richmond Farmland Society v. Richmond (Township)*, [1990] 3 S.C.R. 1213, 2 M.P.L.R. (2d) 288**

“ ... a member of a municipal council is not disqualified by reason of bias unless he or she has prejudged the matter to be decided to the extent of being **no longer capable of persuasion.**”

Individual Members of Council: Bias

Reasonable Apprehension of Bias

- ▶ the special bias rule does not apply when a council is acting in an **adjudicative** capacity

Chiarelli v. Ottawa (City), 2021 ONSC 8256 (Div. Ct.)

- ▶ when council sits as a tribunal to make a quasi-judicial decision it acts in an adjudicative capacity and, as such, it cannot give the appearance of a predetermination of the matter
 - ▶ members must consider their responsibility to adjudicate fairly and with an open mind
 - ▶ test is a reasonable apprehension of bias

Role of the Municipal Administration

Municipal Act, 2001

Municipal Administration

227 It is the role of the officers and employees of the municipality,

- (a) to implement **council's** decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) to undertake research and provide advice to **council** on the policies and the programs of the municipality; and
- (c) to carry out other duties required under this or any Act and other duties assigned by the **municipality**.

Role of the Municipal Administration

Transparency and the Public Trust
Report of the Collingwood Judicial Inquiry Report
Volume 1 (Collingwood, 2020) at p. 39:

Staff

Municipal staff are imperative to the functioning of the Town. It is staff 's role to provide Council with objective information and recommendations, to inform Council's decision making, and to carry out Council's directions in a manner that maintains public confidence in the integrity of Council, staff, and the municipality. Staff are subject to a number of pressures and require clear guidelines, boundaries, and resources to respond appropriately.

Municipal Staff

Transparency and the Public Trust
Report of the Collingwood Judicial Inquiry Report
Volume 1 (Collingwood, 2020) at p. 22:

“... members of Council are **trustees** of the public interest. Council members must ensure that this trust governs all their actions and decisions. **Members of Council must also respect the need for a neutral and impartial public service**, which gives its best advice based on the merits of the question before it. When this respect is lacking, staff’s work risks becoming politicized and staff are in danger of failing to fulfill their obligations to the public, which in turn creates the risk of loss of public confidence.”

Statutory Officers

- ▶ Members of the administration that derive their authority from statute and who have an independent power to deal with specific matters
 - ▶ Clerk – s. 228 of the *Municipal Act, 2001*
 - ▶ Treasurer – s. 286 of the *Municipal Act, 2001*
 - ▶ Auditor – s. 296 of the *Municipal Act, 2001*
 - ▶ Integrity Commissioner – s. 223.3 of *Municipal Act, 2001*
 - ▶ Chief Building Official – s. 3 of *Building Code Act, 1992*
 - ▶ Fire chief – s. 6 of *Fire Protection and Prevention Act, 1997*

Code of Conduct: Enforcement

- Code Complaint Procedure (MCIA)
- Confidentiality
- Respectful Workplace-concurrent jurisdiction
- Presentation of Findings and Sanctions
- Outside the Commissioner's jurisdiction
- Complaint Investigation

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 (MCIA only referral with reasons)

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 “wear two hats”

MCIA 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...board of management of an improvement area
- ▶ “meeting” includes any regular, special, committee or other meeting of a council or local board, as the case may be
- ▶ Direct pecuniary interest– financial interest of the Member
- ▶ Indirect pecuniary interest – financial interest of the Member’s employer, company...etc.
- ▶ Deemed pecuniary interest – financial interest of the Member’s “parent”, “spouse”, “child”

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

MCIA Complaint Investigation Completion

- ▶ 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

Exempted Pecuniary Interest

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

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

Closed Meetings and Confidentiality

- **DO NOT** seek access to confidential information from the City staff unless it is necessary for the carrying out of your functions and there is no City 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

Councillor Use of Social Media

- ▶ Although Councillor Matlow quickly deleted this Tweet, it was immediately picked up by online media and remains “live” to this day. Metaphorically, deleting this Tweet could not “unring that bell” in the world of online content. Deleting a comment is not the same as retracting a statement. A retraction is a public acknowledgement that something needs to be withdrawn because it is inaccurate or hurtful. As a courtesy, a retraction is often then coupled with an apology
 - ▶ Jonathan Batty, Integrity Commissioner Toronto, Dec.2021

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