

# TOPICS

- I. CODES OF CONDUCT
- II. INTEGRITY COMMISSIONERS
- III. CONFLICTS OF INTEREST

# I. CODES OF CONDUCT

**March 1<sup>st</sup>, 2019**

- Municipality must establish codes of conduct for members of the council of the municipality and of its local boards
- Municipalities will be required to 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 responsible for application of and advice under the *Municipal Conflict of Interest Act*

# CODES OF CONDUCT

## Background

- Part V.1 – Accountability and Transparency – introduced by Bill 130
- Serves as a check and balance against new powers given to municipalities
- Introduced Integrity Commissioners, Codes of Conduct, Ombudsman, Auditor General and Lobbyist Registrar
- From Justice Bellamy's report in the *Toronto Computer Leasing Inquiry*
- In *DiBiase v. Vaughan (City)* the Divisional Court upheld the Commissioner's report and confirmed the independence and confidential nature of the Commissioner's investigation

# CODES OF CONDUCT

**Purpose -** ~~Code of Conduct of the Council (Members)~~

A municipality is a responsible level of government. Improving the quality of municipal governance and administration can best be achieved by encouraging high standards of conduct on the part of all Members. In particular, the public is entitled to expect the highest standards of conduct from the Members of its local government. In turn, adherence to these standards will protect and promote the Municipality's reputation and integrity.

# PENALTIES

Code cannot provide that a member who contravenes a code of conduct is guilty of an offence

Municipality may impose either of the following penalties on a member of council if the Commissioner reports that, in his or her opinion, the member has contravened the code of conduct:

- A reprimand.
- 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

Note: The Act does not preclude other sanctions, e.g. an apology, but other measures must not be punitive

## II. ROLE OF THE INTEGRITY COMMISSIONER

### Municipalities:

- 1) must appoint an Integrity Commissioner;
- 2) who reports to council; and
- 3) who is responsible for performing in an independent manner the functions assigned by the municipality with respect to:

# 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

- Commissioner may exercise such powers and shall perform such duties as may be assigned by the municipality
- 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 for advice from members shall be in writing
- Advice from Commissioner shall be given in writing
- Advice provided by the Commissioner to a member may be released with the member's written consent
- If a member releases only part of the advice provided to the member by the Commissioner, 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, BUT COMMISSIONER HAS A DUTY TO REPORT

- 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

- 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, the person who made the request or the member makes a written request that the inquiry be commenced
- No requests for an inquiry during election period
- Commissioner shall not report to the municipality about a contravention has occurred
- No penalties shall be considered

# A CODE OF CONDUCT INVESTIGATION FORMAL COMPLAINT

1. The Complaint
  - Should have a written complaint protocol
    - In writing
    - Signed (some require a sworn affidavit)
    - Describe the conduct and reference section of the code
2. Notice of complaint and copy to respondent 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 Conduct
  - 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

### III. 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

# WRITTEN STATEMENT OF INTEREST

## Section 5.1:

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.

# CONFLICTS REGISTRY

## Requirement to establish registry

6.1 (1) 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.

## Access to Registry

6.1 (2) 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.

# MCIA COMPLAINT PROCESS

- An elector or a person demonstrably acting in the public interest may apply in writing to the Commissioner for an inquiry to be carried out concerning an alleged contravention of sections 5, 5.1 and 5.2 of the MCIA by a member of council or a member of a local board
- An application may only be made within six weeks after the applicant became aware of the alleged contravention
- Inquiry to be completed within 180 days of either a complaint received or Commissioner's own inquiry
- No application for an inquiry shall be made to the Commissioner during the period of time starting on nomination day and ending on voting day

# 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 of 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

# SUMMARY AND CONCLUSIONS

1. Codes of Conduct and Integrity Commissioners now mandatory
2. Conflict of Interest allegations now at the municipal level
3. Commissioners able to provide advice to members on all matters ethical and advice may protect member