Code of Conduct: Accountability and Transparency

Town of The Blue Mountains Information Session
Council Information Session
May 5, 2020
Suzanne Craig, Integrity Commissioner
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 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 officials duties
  • Responsibly oversee management of the public purse
  • Facilitate complete, understandable and timely access to information by the public
  • Do not direct staff as individual Member
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
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

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
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 (pecuniary) interest

- **Underlying Principle:** The Councillor’s Oath of Office to not use her/his office for private or personal gain
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
MCIA 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 MCIA?

- The question of whether or not a member has contravened subsection 5(1), (2), (3) of the MCIA 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.
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 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.
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
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
No individual Member shall direct staff or share confidential information to persons other than those who are entitled to have access.
What will they remember

How do you solve a problem like Justin Altmann?

By Heather Mallick
Star Columnist

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Thank you!

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