

Code of Conduct Workshop Newmarket

January 28, 2019

Robert Swayze, Integrity Commissioner,
Town of Newmarket

Management vs. Governance

“In my opinion, the rationale for the Ontario municipal system, . . . is that a municipality must be managed by professional managers, hired for the purpose, who have the experience and education to succeed in the increased challenges facing municipalities today. However, those managers must be made to keep the values and mores of the community in the forefront. This is accomplished by placing an elected Council in charge. It is critical, in my view, that a majority of Council, guided by recommendations from professionals, is in charge and not an autocratic Mayor without the support of Council.”

Roles and Responsibilities

This Code of Conduct operates along with and as a supplement to Federal and Provincial legislation that govern the conduct of members of Council, those being:

- * The Criminal Code of Canada;
- * The Municipal Conflict of Interest Act,
- * The Municipal Elections Act, 7996
- * The Municipal Freedom of Information and Protection of Privacy Act;
- * The Municipal Act,
- * The Human Rights Code
- * Planning Act
- * All by-laws and policies approved by Council of the Town of * * * *,

Key Principles

- * **1.2** The public expects the highest moral and ethical standards of conduct from Members that it elects. The behaviour and actions of Members is expected to reflect the principles of accountability, transparency, and public trust. Adherence to these standards will protect and maintain the Town's reputation and integrity.

Key Principles, Cont'd

- * 1. 1.3 The key statements of principle that underline this Code are as follows:
 - * (a) the decision-making process of Council is open, accessible and equitable and respects the Town's governance structure;
 - * (b) public office is not to be used for the personal financial benefit of any Member;
 - * (c) Town residents should have confidence in the integrity of their local government and of their Members; and
 - * (d) the conduct of each Member demonstrates fairness, respect for differences and a duty to work with other Members together for the common good.

Principles are not Rules

Legal Opinion to Toronto Integrity Commissioner – 2005

“Therefore we conclude that the statement of principles in the Code Conduct do not provide an independent or stand alone set of obligations, the alleged violation of which, can be the proper subject of an investigation by the Integrity Commissioner”

Code applies to Members of Council and Local Boards

- * 4.1 This Code applies to every Member. This Code shall be applied to all members of Local Boards who are not members of Council, with necessary modifications applied in the discretion of the Integrity Commissioner.

Rule 1: Disclosure of Confidential Information

A Member shall:

- (a) only be entitled to have access to information in the possession of the Town that is relevant to matters before Council or a Committee or that is relevant to their role as Members of Council. Otherwise, they have the same access rights to information as any member of the public. and
- (b) have a continuing obligation to keep information confidential, even if the Member ceases to be a Member.

Rule 1: Disclosure of Confidential Information

No Member shall:

(b) disclose, release or publish by any means, including social media any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so;

(d) use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body;.

Rule 2: Undue Use of Influence

- * No Member shall use their status as a Member of Council to improperly influence the actions or decisions of staff or others to the private advantage of the Member or his or her family, employees or business associates.

Rule 3: Staff Relations

8.1 Only Council as a whole and no single Member including the Mayor, has the authority to direct employees, approve budgets, policy, and other such matters, unless specifically authorized by Council.

8.3 No Member shall:

- (a) maliciously or falsely impugn the professional or ethical reputation of any staff;
- (b) compel staff to engage in partisan political activities, or subject staff to threat or discrimination for refusing to engage in such activities; or
- (c) use their authority or influence to threaten, intimidate, or coerce staff or improperly interfere the lawful exercise of the duties of staff.

Rule 4: Gifts

9.1 No Member shall accept a gift or personal benefit that is connected directly or indirectly with the performance of their duties unless authorized by one of the exceptions below.

Exceptions:

- (a) gifts received as an incident of protocol or social obligation that normally accompany the responsibilities of elected office;
- (f) services provided without compensation by persons volunteering their time;

Rule 4: Gifts

- * Exceptions (Cont'd):
- * (g) a suitable memento of a function with nominal value, honouring the Member or the Town;
- * (i) food, beverages and/or admission fees provided by banquets, receptions or similar events if attendance is the result of protocol or social obligation consistent with the responsibilities of office, and the person extending the invitation has done so infrequently and that person or a representative of the organization is in attendance;

Rule 5: Use of Town Property

- * 10.1 A Member shall:
 - (a) only use Town property for activities relevant to their role as Members of Council; and
 - (b) not obtain any personal financial gain or advantage from the use of Town property.

- * 11.1 Members may not use Town resources for any type of political activity during a municipal election and at any other time, including promoting or opposing the candidacy of any person to elected office in any municipal, provincial and federal campaign.

Rule 6: Harassment

“Any behaviour, conduct or comment by a Member that is directed at or is offensive to another person:

- i) on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status, as well as any other grounds under the provisions of the Human Rights Code; or
- ii) which is reasonably perceived by the recipient as an intention to bully, embarrass, intimidate or ridicule the recipient.”

Rule 7: Social Media

“14.1 A MEMBER SHALL:

- (a) adhere to any and all Town policies and guidelines, regarding social media use; and
- (b) always identify themselves without any attempt to cover, disguise or mislead as to their identity or status as an elected representative of the Town when using social media.

* 14.2 NO MEMBER SHALL:

use social media to publish anything that is dishonest, untrue, offensive, disrespectful, constitutes harassment, is defamatory or misleading in any way.”

Role of the Integrity Commissioner (Advisory)

- * 15.2 (d) Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
- * (e) 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.
- * (f) Requests from members of council and of local boards for advice respecting their obligations under the Municipal Conflict of Interest Act.

Code Complaints Process

- * 16.1 A complaint that a member has contravened the Code may be initiated by any person, any Member of Council, or by Council as follows:
 - (a) a complaint shall be made in writing and shall be sent directly to the Integrity Commissioner by mail, e-mail, fax or courier;
 - (b) a complaint must be signed and dated by the complainant who shall be an identifiable individual (complaints may not be submitted by any group, organization or corporation);

Code Investigations

- 16.3 The Integrity Commissioner shall undertake an initial review of a complaint that has been filed and shall determine whether the matter relates to non-compliance with the Code or other corporate policy applying to Members. The Integrity Commissioner shall have no power or jurisdiction to investigate or otherwise deal with the complaint, if the complaint is not alleging a contravention of the Code or other corporate policy applying to Members or if the complaint relates to the following matters:
- (i) Criminal Matter
 - (ii) Freedom of Information
 - (iii) Municipal Elections Act

Code Investigations

If the Integrity Commissioner is of the opinion that a complaint is frivolous or vexatious or is not made in good faith, or that there are no grounds or insufficient grounds for conducting an investigation, the Integrity Commissioner may choose not to investigate or, if already commenced, may terminate any investigation, or may dispose of the complaint in a summary manner.

Service of Complaints

If the Integrity Commissioner has decided to commence an investigation of a complaint, the Integrity Commissioner shall provide a copy of the complaint and supporting evidence to the Member whose conduct is in question with a request for a written response to be provided within ten (10) days.

Early Notice of Decision

Before finalizing a report to Council which recommends sanctions, the Integrity Commissioner shall provide the Member with the basis for their findings and any sanctions that may be recommended. The Member shall have the opportunity to comment further, either in writing, verbally or in person to the Integrity Commissioner on the proposed findings and sanctions.

Decisions after Code Investigations

16.1 Upon conclusion of a complaint investigation, the Integrity Commissioner shall:

- (a) issue a report to Council on the findings of the investigation and, where there is a finding of contravention of the Code, the report shall contain the detailed findings, any recommended sanctions, or any settlement; and
- (b) provide a copy of the final report to the Member at the same time as the final report is made available to the Clerk and to the complainant at the same time as the report becomes public.

Penalties

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days. 2006.

MCIA Application Process

An elector, as defined in section 1 of the *Municipal Conflict of Interest Act*, 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 section 5, 5.1 or 5.2 of that Act by a member of council or a member of a local board.

Municipal Conflict of Interest Act

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. R.S.O. 1990, c. M.50, s. 5 (1).

Decision on MCIA Investigations

- 16.11 Upon conclusion of an Application investigation, the Integrity Commissioner may, if he/she considers it appropriate, apply to a Judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the member has contravened Section 5, 5.1 or 5.2 of the Act.

Reporting on MCI A Investigations

16.12 THE INTEGRITY COMMISSIONER SHALL:

- (a) advise the applicant if he or she will not be making an application to a judge; and
- (b) after deciding whether or not to apply to a judge, provide a written report providing reasons for the decision.