



**AGENDA**  
**Community Policing Advisory Committee**

January 16, 2019

9:00 am

Council Chambers, Town Hall  
175 Queen Street East, St. Marys

Pages

**1. CALL TO ORDER**

**2. INTRODUCTIONS**

**3. APPOINTMENT OF CHAIR**

Presided over by the Committee Secretary

THAT \_\_\_\_\_ be appointed Chair of the Community Policing Advisory Committee effective January 16, 2019 to January December 15, 2020.

**4. APPOINTMENT OF VICE CHAIR**

THAT \_\_\_\_\_ be appointed Chair of the Community Policing Advisory Committee effective January 16, 2019 to January December 15, 2020.

**5. DECLARATION OF PECUNIARY INTEREST**

**6. ADDITIONS TO THE AGENDA**

THAT the January 16, 2019 Community Policing Advisory Committee meeting agenda be accepted as presented.

**7. ADOPTION OF MINUTES FROM PREVIOUS MEETING**

3

THAT the minutes of the November 22, 2018 Community Policing Advisory Committee meeting be approved and signed by the Chair and Secretary

**8. BUSINESS ARISING FROM MINUTES**

**9. DELEGATIONS**

None received.

## **10. REPORTS**

- 10.1 Stratford Police Service Monthly Operational Report

7

**THAT the December 2018 Stratford Police Services monthly report be received.**

- 10.2 Report on Community Concerns

- 10.2.1 Customs House Noise Complaints

- 10.2.2 Tent Community on St. Marys Cement Lands

## **11. CORRESPONDENCE**

None received.

## **12. OTHER BUSINESS**

- 12.1 Committee Orientation

Refer to materials provided in the Committee orientation binder

- 12.1.1 Overview of CPAC Terms of Reference

- 12.1.2 Select Preferred Meeting Day and Time

- 12.1.3 Overview of 2016-2017 Policing Review Process

- 12.1.4 Overview of Police Services Contract

- 12.1.5 Overview of Council and Local Board Code of Conduct

11

- 12.1.6 Overview of Town Procedure By-Law

## **13. UPCOMING MEETINGS**

To be determined based on preferred day and time selected by the Committee.

## **14. ADJOURNMENT**

**THAT this meeting of the Community Policing Advisory Committee be adjourned at \_\_\_\_\_ am/pm.**



**MINUTES**  
**Community Policing Advisory Committee**

November 22, 2018  
9:00am  
Council Chambers, Town Hall

Committee Members Present: Peter McAsh  
Mayor Strathdee  
Fred Stam  
Chair Don Van Galen

Committee Members Present: John McGarry

Stratford Police Services Board Present: Chief Greg Skinner  
Deputy Chief Gerald Foster  
Community Resources Officer Nick Keating

Staff Present: Brent Kittmer, Secretary

**1. CALL TO ORDER**

Chair Van Galen called the meeting to order at 9:00 am.

**2. DECLARATION OF PECUNIARY INTEREST**

None declared.

**3. ADDITIONS TO THE AGENDA**

The committee reviewed the agenda as circulated.

**4. ADOPTION OF MINUTES FROM PREVIOUS MEETING**

**Moved By** Fred Stam

**Seconded By** Peter McAsh

**THAT** the October 17, 2018 Community Policing Advisory Committee meeting minutes be approved and signed by the Chair and the Secretary.

**CARRIED**

**5. BUSINESS ARISING FROM MINUTES**

None.

## **6. DELEGATIONS**

None received.

## **7. REPORTS**

### **7.1 OPP MONTHLY STATISTICS**

### **7.2 OPP FALSE ALARM REPORT**

**Moved By** Peter McAsh

**Seconded By** Fred Stam

**THAT** the October 2018 OPP monthly report be received for information;  
and

**THAT** the October 2018 False Alarm Report be received for information.

**CARRIED**

### **7.3 STRATFORD POLICE MONTHLY REPORT**

Chief Greg Skinner distributed a summary of the St. Marys contract statistics over the first two weeks of Stratford having policed the Town. He reviewed the transition activities, and noted that by all accounts the transition went smoothly. He further reported that the Stratford Police Service and the OPP collaborated on the first day with Stratford having officers start shift at 7:00 pm on November 4 and the OPP having officers finishing shift at 7:00 am November 5. The Committee members reported that they had received only positive comments regarding the transition.

Deputy Chief Gerry Foster reviewed the calls for service received by the police over the first two weeks of the contract. In total, 159 calls for service were received over the two week period. This is comparable, but slightly lower than a regular Stratford patrol zone.

Officer Nick Keating reviewed his activities at the local schools, as well as his efforts to walk through the downtown to meet with business owners.

Moving forward, the CPAC requested that the monthly report include a general update on the activities/initiatives/campaigns the police were undertaking in Town and a report on the activities at local schools.

**Moved By** Fred Stam

**Seconded By** Peter McAsh

**THAT** the Stratford Police Monthly Report verbal update be received for information.

**CARRIED**

**8. CORRESPONDENCE**

**8.1 Wanda Mossey re: Skateboard Park Patrol**

**Moved By** Peter McAsh

**Seconded By** Fred Stam

**THAT** the correspondence from Wanda Mossey regarding skateboard park patrol be received for information.

**CARRIED**

**9. OTHER BUSINESS**

**9.1 Discussion - Amend Traffic By-Law to Prohibit Scooter Use on Town Streets**

The Committee members discussed the recent public concerns of scooters using the roadways. Officer Keating clarified that the recent accident involving a scooter was not a result of the scooter operator's fault. The driver was at fault in that situation.

The Committee provided direction to staff to collect further information on this topic and to report back to the Committee for review. The committee would like to know what advice is provided by medical suppliers to scooter users, how a scooter is defined in the *Highway Traffic Act*, the recommendation of the Accessibility Advisory Committee and the Senior Services Board.

**9.2 Discussion - Police Check Fees for Volunteers**

The Committee discussed the possibility of the Town foregoing police check revenue to allow for volunteer positions to continue to receive checks free of charge. Staff was given direction to collect historical stats and report back on police checks so that the financial impact can be determined.

**10. UPCOMING MEETINGS**

Chair Van Galen announced the upcoming meetings as listed on the agenda.

**11. ADJOURNMENT**

**Moved By** Peter McAsh

**Seconded By** Fred Stam

**THAT** this meeting of the Community Policing Advisory Committee be adjourned at 9:40am.

**CARRIED**

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Chair Don Van Galen

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Brent Kittmer, CAO / Clerk, Secretary

*To Serve and Protect in Partnership with Our Community*



# **BOARD MONTHLY STATS**

## **ST MARYS**

### **2018 December**

*Community-Partnerships-Service*

# Stratford Police Service - Board Stats - St Marys



OCCURRENCES	Nov-18	Dec-18	Total
ASSAULT	1	1	2
SEXUAL OFFENCES	0	0	0
DOMESTIC VIOLENCE	7	6	13
ROBBERY	0	0	0
BREAK & ENTER	4	11	15
MISCHIEF	1	3	4
AUTO THEFT	0	2	2
THEFT OVER	0	0	0
THEFT UNDER	7	7	14
DRUG OFFENCES	1	2	3
FRAUDS	3	1	4
FRAUD ATTEMPTS	3	1	4
IMPAIRED BY ALCOHOL	0	1	1
IMPAIRED BY DRUG	0	0	0
CALLS FOR SERVICE	238	260	498
E-TICKETS included in total	55	35	90
PON WARNINGS	32	29	61
YOUTH CHARGED	1	0	1
YOUTH DIVERTED	0	2	2
MVC Total	14	8	22
MVC Personal Injury	2	0	2
MVC PD Only	10	5	15
MVC Hit & Run	2	3	5
MVC Fatal	0	0	0
VEHICLE PURSUITS / FAIL TO STOP	0	2	2
HATE / BIAS INCIDENTS	0	0	0
FALSE ALARMS	4	9	13



Dec-18		Community	Resource- St. Marys								
	Arrests	Criminal Charges	CDSA Charges	Drug Cautions	Criminal Cautions	HTA Charge	LLA Charge	Diversions Program	Missing Persons	MHA	TPA
	0	1	0	0	0	1	0	1	0	0	0
YEAR TO DATE											
	Arrests	Criminal Charges	CDSA Charges	Drug Cautions	Criminal Cautions	HTA Charge	LLA Charge	Diversions Program	Missing Persons	MHA	TPA
	2	7	0	0	0	2	0	1	0	1	6
<b>PRESENTATIONS:</b>		Drug Talk at DCVI to gr 9 girls									
		social media/internet safety talk at little falls to Gr5 class									
		Police as community helpers to Gr 1/2 class at Holy Name									
		Drug talk to Gr 9 Boys class at DCVI									
		Career talk to Gr 8 class at DCVI									
<b>COMMUNITY EVENTS:</b>		Food drive at Independent in St Marys 290 bags of food collected									
		Toy drive at Canadian Tire St Marys filled cruiser 5 times									
		Food drive in Stratford at Food Basics and No Frills									
<b>MEETINGS:</b>		Crimestoppers									
		Attended staff meetings at DCVI, Little Falls, and Holy Name and introduced myself and what talks I do									
<b>OTHER:</b>		Chief and Deputy Swearing in Ceremony greeter/security									
		Attended CAS meeting about St Marys family which may come into contact w Police									
		Attend DCVI on a daily basis									
		Attend Holy Name and Little Falls a couple times per week									
		Did traffic patrol around all three schools in a daily basis									
		15 hours of foot patrol in the downtown									
		Attended some calls for service									



# Code of Conduct and Integrity Commissioner

The Corporation of the Town of St. Marys

John Mascarin

December 18, 2018

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## CODE OF CONDUCT

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2

## Code of Conduct

### Codes of Conduct - s. 223.2(1)

- codes of conduct are now **mandatory** for members of council and local boards

#### Code of conduct

**223.2 (1)** A municipality shall establish codes of conduct for members of the council of the municipality and of its local boards

## What is a Code of Conduct?

Gregory Levine, *Municipal Ethics Regimes*, (2<sup>nd</sup> Ed.) at 7:

“Codes of ethics in the public sector are intended to promote integrity in public affairs and to provide guides to acceptable behavior.

Codes are reference points for public servants, as well, they are tools for the public to view government actions. They provide a set of standards by which the public may judge government action or evaluate the action of officials they have encountered.”

- a code of conduct is *not* an encyclopedia
- a code of conduct should be credible, useful & functional

## Mandatory Subject Matters

- O. Reg. 55/18 – Prescribed Subject Matters:
  1. Gifts, benefits and hospitality.
  2. Respectful conduct, including conduct toward officers and employees of the municipality or the local board, as the case may be.
  3. Confidential information.
  4. Use of property of the municipality or of the local board, as the case may be.

## Code of Conduct

- Key Principles (s. 1)
- Definitions (s. 2)
- **Gifts, Benefits & Hospitality** (ss. 3-8)
- Improper Use of Influence (s. 9)
- Business Relations (ss. 10-12)
- **Confidentiality** (ss. 13-16)
- Conduct While Representing the Town (ss. 17-20)
- Conduct at Meetings (s. 21)

## Code of Conduct

- Conduct While Representing the Town (ss. 17-20)
- Conduct at Meetings (s. 21)
- **Conduct Respecting Staff** (s. 22-29)
- Compliance with Town Policies and By-laws (s. 30-31)
- Harassment (s. 32-34)
- **Use of Town Property, Services & Other Resources** (s. 35)
- Conflict of Interest (ss. 36)
- Election Campaign Work (ss. 37-40)

## Complaint Protocol

- Complaints Procedure (ss. 42-44)
  - informal complaints (s. 47)
  - formal complaints (s. 48)
- Inquiry (s. 49)
- Complaint Classification / Referral (ss. 50-51)
- Investigation Procedure (ss. 52-58)
- Investigation Report (ss. 59-61)
- Council Consideration of Report (ss. 62-63)

## Miscellaneous

- Penalties (s. 64)
- Remedial Actions (s. 65)
- Confidentiality of Complaint Documents (ss. 66-68)
- Interim, Annual & Other Reports (ss. 69-70)
- Vacancy – Integrity Commissioner (s. 71)
- Reprisals, Obstruction and Non-Compliance (s. 72)
- Advice (ss. 73-78)

## INTEGRITY COMMISSIONERS

## Integrity Commissioner

- statutory officer who reports directly to council – s. 223.3
- exercises his or her functions independently
- functions are assigned by the municipality with respect to the code of conduct and *Municipal Conflict of Interest Act*:
  - *advising* council or members to prevent violations
  - *educating* members re responsibilities and obligations
  - *investigating* complaints and conducting *inquiries*
  - *adjudicating* complaints
  - *recommending* penalties and corrective or remedial measures to be imposed for contraventions

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19

## Integrity Commissioner

- *Toronto Computer Leasing Inquiry Commission Report*, (Toronto: City of Toronto, 2005), Vol. 2 [page. 46]:

“An effective Integrity Commissioner system provides two basic services:

- An **advisory service**, to help councillors and staff who seek advice before they act.
- An **investigative or enforcement service**, to examine conduct alleged to be an ethical breach.”

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22



## Integrity Commissioners - Mandatory

### Mandatory Accountability Officer

- as of March 1, 2019
- s. 223.3(1.1) – municipalities that have not appointed an integrity commissioner are required to make arrangements for all of the responsibilities of an integrity commissioner to be provided by an integrity commissioner of another municipality
- s. 223.3(1.2) – municipalities that have appointed an integrity commissioner but have *not* assigned them all of the functions and responsibilities set out in subsection 223.3(1), must make arrangements for those services to be provided by an integrity commissioner of another municipality

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23

## Integrity Commissioner - Functions

### Functions of Integrity Commissioner

- s. 223.3(1) - expanded functions of an integrity commissioner:
  - application and enforcement of codes of conduct and other ethical policies or guidelines
  - application and enforcement of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*
  - written advice to members re: their obligations under the code of conduct and the *Municipal Conflict of Interest Act*
  - provision of educational information to members of council and local boards, the municipality and the public re: codes of conduct and the *Municipal Conflict of Interest Act*

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24

## Integrity Commissioner

### Indemnification

- an Integrity Commissioner is a statutory officer of the municipality – as such the officer is immune from liability if he or she acts in good faith in accordance with s. 448 of the *Municipal Act, 2001*
- however, there is an additional specific indemnification requirement:

#### Indemnity

**223.3 (6)** A municipality shall indemnify and save harmless the Commissioner or any person acting under the instructions of that officer for costs reasonably incurred by either of them in connection with the defence of a proceeding if the proceeding relates to an act done in good faith in the performance or intended performance of a duty or authority under this Part or a by-law passed under it or an alleged neglect or default in the performance in good faith of the duty or authority.

## INVESTIGATIONS

## Investigative Powers

### General

- in general, an Integrity Commissioner investigates or undertakes an inquiry on a complaint or request basis
- council may request that an Integrity Commissioner investigate or research a matter
- the Integrity Commissioner has no authority to act on its own volition or initiative
  - the “own initiative” authority was included in the first reading version of Bill 68 but was removed
- code of conduct / complaint protocol sets out the terms for an Integrity Commissioner to investigate / inquire

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28

## Investigative Powers

### Inquiry by Commissioner

**223.4** (2) The Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, in which case those sections apply to the inquiry.

### Information

(3) The municipality ... shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry.

### Same

(4) The 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... that the Commissioner believes to be necessary for an inquiry.

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28

## Investigative Obligations

### Duty of confidentiality

**223.5** (1) The Commissioner may and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

### Exception

(2) Despite subsection (1), information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part.

### Section prevails

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

## Investigative Obligations

### Reference to appropriate authorities

**223.8** If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council.

## Investigative Authority

### ***Di Biase v. Vaughan (City) Integrity Commissioner*** **(2016), 55 M.P.L.R. (5th) 173 (Ont. Div. Ct.)**

- first judicial review of an Integrity Commissioner's investigation and report under a code of conduct in Ontario
- Divisional Court clarifies the broad discretion given to an Integrity Commissioner with respect to its investigation and process
- the decision highlights the weight of municipal codes of conduct and complaint protocols in reviewing the actions undertaken with respect to an investigation
- Integrity Commissioner received a detailed complaint against the deputy mayor alleging that he had improperly used his influence to assist a contractor in seeking to secure city business

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31

## Investigative Authority

### ***Di Biase v. Vaughan (City) Integrity Commissioner***

- Integrity Commissioner's report found that the deputy mayor had:
  - violated the city's code of conduct by swearing at and bullying city staff who would not hand over confidential details about city bids to him
  - emailed confidential city information to an outside source, whose reply was partially copied and pasted into emails to his fellow councilors and municipal staff
  - undertaken acts "with a view to exercising influence or assisting" the constructor to secure city business
- city council accepted the Integrity Commissioner's final report and recommendation and voted to suspend the deputy mayor's pay for the maximum of 90 days

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32

## Investigative Authority

### *Di Biase v. Vaughan (City) Integrity Commissioner*

- Divisional Court determined that the Integrity Commissioner:
  - could decide when to investigate or not investigate a complaint
  - was entitled to re-formulate a complaint
  - had provided sufficient procedural fairness to the deputy mayor
  - correctly did not suspend investigation re: one criminal aspect
  - undertook a proper targeted search of emails on the city system
  - properly did not disclose the names of 32 city witnesses
  - City did not err in accepting the Integrity Commissioner's report

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33

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24

## Reporting – IC Duties

### Report to council

**223.6** (1) If the Commissioner provides a **periodic report** to the municipality on his or her **activities**, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned.

### Report about conduct

(2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has **contravened the applicable code of conduct**, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report.

## Reporting – Municipal Duty

### Publication of reports

**223.6** (3) The municipality and each local board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public.

- contrast this duty to publicly disclose with the general position under MFIPPA where a report alleging *any wrongdoing* is typically held to be personal information which is **not** subject to disclosure
- although s. 16 of MFIPPA contains a compelling public interest exception

## Enforcement

### Penalties

**223.4** (1) 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.
- integrity commissioner prepares the report and makes recommendations – council imposes penalties

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37

## Enforcement

### Remedial or Corrective Measures

- sanctioned by the Ontario Divisional Court in *Magder v. Ford*:  
 “We agree with the application judge that a generous reading of the City's power to pass a code of conduct, in accordance with s. 6(1) of the [*City of Toronto Act, 2006*], would support the validity of including remedial measures in such a code. We need not determine the precise ambit of permissible remedial measures in this appeal.”
- *Altmann v. Whitchurch-Stouffville (Town)*:
  - “other actions” imposed by a council for contravention of a code of conduct must actually be corrective or remedial – they cannot be punitive sanctions or penalties

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28



# CONCLUSIONS

## Conclusions

- **March 1, 2019** – a new era of municipal accountability and transparency
  - **all** members of council and local boards will be subject to code of conduct with some mandatory subject matters
  - integrity commissioner has broad new authorities, including providing specific and individual advice to members of councils and local boards on the code of conduct as well as the *Municipal Conflict of Interest Act*
  - integrity commissioner can investigate a complaint that a member did not comply with ss. 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*

~ *fin* ~

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# Municipal Conflict of Interest

The Corporation of the Town of St. Marys

John Mascarin

December 18, 2018

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## Background

- Ontario's *Municipal Conflict of Interest Act* ("MCIA") was originally enacted in 1972
- MCIA codifies provisions found in previous versions of the *Municipal Act*, dating back to 1849
- legislation has received substantial judicial consideration
- there are no regulations under the MCIA
- MCIA is applicable to members of a municipal council and to members of "local boards" (broadly defined in s. 1 of the MCIA); *not* applicable to municipal staff – applies only to "members" (i.e. elected or appointed officials)

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2

## Purpose

*Moll v. Fisher* (1979), 8 M.P.L.R. 266 (Ont. Div. Ct.)

“The obvious purpose of the [Municipal Conflict of Interest] Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest... There is no need to find corruption on his part or actual loss on the part of council or board. So long as the member fails to honour the standard of conduct prescribed by the statute, then regardless of his good faith or the propriety of his motive, he is in contravention of the statute.”

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3

## Declaration of Office

- in order to take their seat at council, a member must solemnly promise and declare four oaths including:
  - 3. I will disclose any pecuniary interest, direct or indirect, in accordance with the *Municipal Conflict of Interest Act*.**
- obligation to abide by the MCIA is personal to the member
  - members must, at the very least, read and seek to understand the MCIA

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4

## Principles

### Principles – s. 1.1

1. the importance of integrity, independence and accountability in local government decision-making
2. the importance of certainty in reconciling the public duties and pecuniary interests of members
3. members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny
4. there is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise

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5

## Conflict of Interest

- *common meaning:*
  - “a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as, say, a public official, an employee, or a professional”
- *MCIA meaning:*
  - direct, indirect or deemed *pecuniary* interest
    - no definition of “direct” or “indirect” in the MCIA

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6

## Pecuniary Interest

- pecuniary interest only
- pecuniary = financial
  - a pecuniary interest is one “concerning or consisting of money . . . an interest that has a **monetary or financial value**”: *Mondoux v. Tuchenhausen* (2010), 79 M.P.L.R. (4th) 1 (Ont. S.C.J.)
- direct, indirect or deemed
- positive or negative
- arises in a matter before council or committee for consideration or before municipal staff for consideration

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7

## Direct Interest

- a *direct* pecuniary interest is one that expressly or unequivocally has an impact on a member's finances or property value
  - member has the interest themselves
- impact may be positive (gain) or negative (loss)
- a potential interest does not necessarily constitute an interest but where a party, without further conduct on its part, stands to have its financial position affected, a potential interest may be considered a pecuniary interest: *Moffat v. Wetstein* (1996), 29 O.R. (3d) 371 (Gen. Div.)

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8

## Indirect Interest

- s. 2 of MCIA - where a member (or their “nominee”):
  - is a director or senior officer of a public or private company
  - is a shareholder of a private company
  - has a controlling interest in a public company (>10%)
  - is a “member of a body”
    - not a defined term but should be interpreted “broadly”
      - *Orangeville (Town) v. Dufferin (County)*
  - is a partner
  - is an employee

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9

## Deemed Interest

- s. 3 of MCIA:
  - a direct or indirect interest of a:
    - spouse
    - child (regardless of age)
    - parent

“if known to the member” is *deemed* to be the member’s own interest

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10

## Duty of Member

- s. 5 of MCIA:
  - where a member has a pecuniary interest in any matter and is present at a meeting of the council at which the matter is the subject of consideration, the member *shall*:
    - *disclose* the interest and the general nature prior to any consideration of the matter
    - *not* take part in any discussion or vote
    - *not* attempt to influence the voting in any way

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11

## Duty of Member

### No Influence of Municipal Officers or Employees

- s. 5.2(1) - where a member has a pecuniary interest in any matter that is being considered by an ***officer or employee*** of the municipality or local board, the member is not permitted to use his or her office to influence any decision or recommendation that results from consideration of the matter
  - expands MCIA *beyond* legislative and deliberative meetings of councils, committees and local boards
  - preclusion is not applicable where the power to suspend the remuneration of a councillor is delegated to a person or body

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12



## Exceptions

- nine *specific* exemptions and two *general* exemptions from the requirements in s. 5 are set out in s. 4 of MCIA:
  - (a) as user of public utility;
  - (b) entitlement to any service, subsidy, loan or benefit common to other persons;
  - (c) purchase or ownership of debenture;
  - (d) deposit with municipality;
  - (e) interest property affected by *Drainage Act* works or local improvements;

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13

## Exceptions

- (f) interest in exempted farm lands;
- (g) eligibility for election to fill vacancy;
- (h) director or senior officer of municipal corporation;
- (i) regarding allowance, remuneration, salary or benefit for being a member;
- (j) interest in common with electors generally;**
- (k) remote or insignificant interest.**

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14

## Interest in Common with Electors

- s. 1 of MCIA:  
 “interest in common with electors generally” means a pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects **only part of the area** of jurisdiction, means a pecuniary interest in common with the electors *within that part*
- an interest in common generally does *not* always mean the entire municipality
- a difference in **kind** or **degree**?

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15

## Remote or Insignificant Interest

- the relationship between the member and the subject matter must be so indirect or trivial that it leads to the conclusion that potential personal gain was not a motivating factor in the member’s decision making
- test – *Whiteley v. Schnurr* (1999), 4 M.P.L.R. (2d) 26 (Ont. Gen. Div.):  
 “Would a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councillor as likely to influence the councillor’s action and decision on the question?”

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16

## Remote or Insignificant Interest

- the question of remoteness or insignificance does not relate to the quantum of the financial interest at issue
- the fact that the value of the pecuniary interest is particularly small does not relieve a member from compliance with the MCI: *D'Arcey v. Mino* (1991), 4 M.P.L.R. (2d) 26 (Ont. Gen. Div.)
- the question relates to the *importance* of the matter to the member: *Magder v. Ford* (2012), 5 M.P.L.R. (5th) 1 (Ont. S.C.J.)

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17

## Remote or Insignificant Interest

- two-stage test when the pecuniary interest is either a deemed or an indirect pecuniary interest: *Ferri v. Ontario (AG)* (2015), 40 M.P.L.R. (5th) 223 (Ont. C.A.) at para. 15:

The application judge erred in reaching this conclusion. The analysis of whether a councillor's pecuniary interest is too remote or insignificant to be reasonably regarded as likely to influence the councillor **cannot be premised on the notion that, unless proven otherwise, the councillor is fixed with the same level of proximity and significance as his child**. The s. 4(k) analysis must commence afresh and focus on the proximity and significance of the councillor's pecuniary interest in the context of all the circumstances.

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18

## Exception - Code of Conduct Report

- s. 5(2.1) where the matter under consideration at a meeting is whether to suspend the remuneration paid to the member for a contravention of the code of conduct:
  - the member is able to take part in the discussion of the matter, including making submissions to council, and may attempt to influence the voting on any question in respect of the matter
  - the member is not permitted to vote on the matter
  - the member is able to attend a closed meeting during which the matter is under consideration

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19

## Duty of Disclosure

- duty arises *at the meeting* at which the pecuniary interest is to be discussed
- member must disclose:
  - the interest
  - the general nature of the conflict
- absence from a meeting is not a declaration (the member should declare the conflict at the next meeting at which he or she is present)

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20

## Duty of Disclosure

### Written Statement re Disclosure - s. 5.1

- where a member has declared a pecuniary interest, the member is also required to file a *written statement* of the nature of the interest with the clerk or secretary

### Registry - s. 6.1

- every municipality is required to establish and maintain a publicly accessible registry of:
  - a copy of each statement of disclosure
  - each declaration recorded in meeting minutes

## Duty of Disclosure

- disclosure must be made even if the member is voting against their own interest
- in *Re Jackson and Wall* (1978), 21 O.R. (2d) 147 (Co. Ct.) a council member voted against a resolution approving a new arterial road to relieve traffic on a street upon which he resided
- despite the fact that he voted against the motion (and seemingly on its face, contrary to his own personal interest), the member had breached the MCIA because he failed to declare an interest and voted in the matter

## Duty of Disclosure & Recusal

- member's obligation to comply is a *personal* duty
- Bill 68 has amended the duties and responsibilities of a municipal Integrity Commissioner under s. 223.3(1) of the *Municipal Act, 2001* to include advising upon:
  6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
- requests for advice from members and responses from the Integrity Commissioner must be **in writing** [s. 223.3(2.1) and (2.2.)]

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23

## Requirements (I)

### Member's Obligations

1. **Disclosure** – s. 5(1)(a):
  - members must disclose any direct, indirect or deemed *pecuniary* interest prior to consideration of matter
  - disclosure should include the following two components:
    - identify the type of pecuniary interest that the member has in all circumstances (direct, indirect, deemed)
    - describe sufficient facts to provide some context for the general nature of the interest at hand
    - written disclosure now required

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24

## Requirements (II)

### 2. Non-Participation – s. 5(1)(b):

- a member is obligated to not participate in the decision-making process once the member's interest has been disclosed
- a member shall not:
  - take part in discussion, or
  - vote

## Requirements (III)

### 3. No Influence – s. 5(1)(c):

- a member declaring an interest cannot in *any way*:
  - attempt to influence voting
  - either before, during or after the meeting

## Requirements (IV)

### 4. Exit **Closed Meeting** – s. 5(2):

- if the conflict arises at a closed or *in-camera* meeting, a member is also required to leave the meeting
- this is good practice even if the meeting is not closed as it visibly demonstrates that the member is making no attempt to influence the discussion or the outcome of the voting

## Requirements (V) & (VI)

### 5. File Written Statement – s. 5.1

- member must file a written statement of disclosure and its general nature with the clerk at the meeting at which disclosure is made

### 6. No Influence on Employees – s. 5.2

- member cannot not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter by an officer, employee or other body



## Record of Disclosure

- s. 6 of MCIA:
  - clerk or board secretary is required to record in minutes of the meeting (both open and closed)
    - the declaration of the conflict
    - that the member left the meeting
  - if member is absent from meeting, member must declare conflict at next attended meeting
  - registry of written statements of disclosure to be maintained under s. 6.1

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29

## Quorum

- s. 7 of MCIA – quorum deemed constituted
  - where number of members are disabled from participating due to MCIA, “the remaining number of members shall be deemed to constitute a quorum, provided such number is not less than two”
  - if less than 2 members, council or local board may apply to a judge for an order that council or local board may consider matter

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30

## Alleged Contravention

### Applicants

- s. 8(1) – an application to a judge to determine whether a council member breached the MCIA may be brought by:
  - an elector
  - a municipal integrity commissioner
  - a person “demonstrably acting in the public interest”
    - the original version of Bill 68 proposed to permit “any person” to bring an application - amended at Standing Committee
    - query: does a “person” demonstrably acting in the public interest include a “municipality”?

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31

## Alleged Contravention

### Application Periods

- s. 8(2) – an application may only be made within six weeks after the applicant became aware of the alleged contravention
  - *MacDonald v. Ford* (2015), 41 M.P.L.R. (5th) 175 (Ont. S.C.J.): “onus is on the applicant to establish that he or she satisfies this criterion for an application”
  - *Hervey v. Morris* (2013), 9 M.P.L.R. (5th) 96 (Ont. S.C.J.): “reasonable subjective belief”
- s. 8(6): no application may be made after the 6<sup>th</sup> year anniversary of the alleged contravention
  - *MacDonald v. Ford* - “genuine conventional limitation period” which sets out an “absolute limitation period”

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32

## Alleged Contravention

### Election Blackout Period

- s. 8(4.1) – an Integrity Commissioner cannot bring an application to a judge during an election period (between nomination day and voting day)
  - added to Bill 68 by Standing Committee
  - preclusion does not apply to an elector or to a person “demonstrably acting in the public interest”
  - Integrity Commissioner must terminate inquiry if not completed before nomination day (but can be recommenced if the applicant re-files his or her request)

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33

## Alleged Contravention

### Inquiry by Integrity Commissioner

- s. 223.4.1 of *Municipal Act, 2001*: an application may be made to an Integrity Commissioner to conduct an inquiry as to whether there has been a contravention of ss. 5, 5.1 or 5.2 of the MCIA
  - applicant – an elector or a person demonstrably acting in the public interest
  - inquiry must be completed within 180 days
  - upon completion of the inquiry, Integrity Commissioner may apply to a judge under s. 8 of MCIA
    - municipality is responsible for costs [s. 223.4.1(18)]

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34

## Penalties for Contravention

- as of March 1, 2019 new s. 9(1) of MCIA:
  - expanded range of penalties for contravention of MCIA
    - *any or all* of the following may be imposed:
      1. reprimand
      2. suspension of remuneration to member for up to 90 days
      3. removal from office
      4. disqualification for up to seven years
      5. restitution of any personal financial gain

## Considerations re Penalties

- as of March 1, 2019, in exercising his or her discretion to impose a penalty, the judge may consider under s. 9(2) among other matters, whether the member:
  - (a) took reasonable measures to prevent the contravention
  - (b) disclosed the pecuniary interest and all relevant facts known to him or her to an integrity commissioner in a request for advice and acted in accordance with the advice, if any, provided to the member by the integrity commissioner
  - (c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith

## Appeals

- s. 11 of MCIA contains a narrow as-of-right appeal to the Ontario Divisional Court from an *order* under s. 10:

**11** (1) An appeal lies from **any order** made under section 10 to the Divisional Court in accordance with the rules of court.

(2) The Divisional Court may give any judgment that ought to have been pronounced, in which case **its decision is final**, or the Divisional Court may grant a new trial for the purpose of taking evidence or additional evidence and may remit the case to the trial judge or another judge and, subject to any directions of the Divisional Court, the case shall be proceeded with as if there had been no appeal.

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37

## Consequence of Contravention

- s. 12 of MCIA:
  - a member's failure to comply with ss. 5, 5.1 or 5.2 does not in itself invalidate any proceedings in the matter
  - however, the proceedings are *voidable* at the instance of the municipality or of the local board
  - limitation – two years from the date of the passing of the by-law or resolution authorizing the matter
  - proceedings will *not* be voided if to do so would adversely affect the rights of any person acquired under or by virtue of the proceedings who acted in good faith and without actual notice of the failure to comply with s. 5

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38

## Conclusions

- a conflict of interest under the MCIA is not nearly as broad as general public likely thinks it is
- *pecuniary* (i.e. financial) interest is key
- positive personal duty on members to declare a pecuniary interest
- large number of exemptions under s. 4 and s. 5(2.1)
- significant sanctions (including loss of office)
- saving provisions for taking reasonable steps to prevent contravention; for following written advice of IC; for acting inadvertently or by a good faith error in judgment
- abundant &, at times, contradictory judicial decisions

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39

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