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CHAMBERS

Integrity Commissioner Office
for the Town of Orangeville

TOWN OF ORANGEVILLE
EDUCATION SESSION

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CHARLES A. HARNICK

INTEGRITY COMMISSIONER

OCTOBER 25, 2021

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INTEGRITY COMMISSIONER

- Integrity Commissioner for the Municipality of Leamington, City of Kawartha Lakes, Haldimand County, Township of Larder Lake, County of Dufferin, City of Richmond Hill, Township of McGarry, City of Markham and Town of Orangeville
- Mediator, Arbitrator and Investigator
- Recipient of the Law Society Medal for outstanding service in accordance with the highest ideals of the legal profession
- Chair of Legal Aid Ontario
- Former Attorney General of Ontario

ADR CHAMBERS

- ADR Chambers provides dispute resolution services throughout Canada and internationally
- Has operated an Office of the Integrity Commissioner since 2011
- ADR Chambers provides services to municipal clients under the *Municipal Act, 2001*, and the *Municipal Conflict of Interest Act*

INTEGRITY COMMISSIONER FUNCTIONS

The Integrity Commissioner has two primary functions:

- To review and report on complaints or requests for inquiry; and
- To provide advice to Council and Council Members.

ROLE OF THE INTEGRITY COMMISSIONER

Role of the Integrity Commissioner expanded significantly on March 1, 2019, as a result of the Bill 68 amendments to the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*.

- jurisdiction to investigate an alleged contravention of the Code of Conduct
- jurisdiction to investigate an alleged breach of sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* (MCIA)

CODE OF CONDUCT AND COMPLAINT PROTOCOL

The standards of conduct for Council Members are set out in Orangeville's Code of Conduct for Council, Local Boards and Committees. These standards supplement the legislative parameters within which Members must operate.

<https://www.orangeville.ca/en/living-here/resources/Documents/Code%20of%20Conduct%20for%20Council,%20Local%20Boards%20and%20Committees%20Policy.pdf>

The procedures for addressing Code complaints are set out in a separate document:

<https://www.orangeville.ca/en/living-here/resources/Documents/Complaint%20Protocol%20-%20Code%20of%20Conduct.pdf>

CODE OF CONDUCT

PURPOSE AND APPLICATION

- Ensure Members share a common basis for acceptable conduct
- Provide a reference point and a supplement to legislative parameters within which Members must operate
- Enhance public confidence that Members operate with integrity, justice, and courtesy
- Applies to every Member of Council, including the Mayor

CODE OF CONDUCT

GENERAL PRINCIPLES

Members shall:

- serve and be seen to serve their constituents in a conscientious and diligent manner, avoiding the improper use of the influence of their office, and conflicts of interest, both real and apparent
- perform their duties in office in a manner that promotes public confidence and will bear close public scrutiny
- overriding objective is to enhance public confidence in government and the political process

CODE OF CONDUCT GENERAL STANDARDS

- Members are responsible for making honest statements. No member shall make a statement when they know that statement is false. No member shall make a statement with the intent to mislead Council or members of the public.
- Members will conduct their dealings with each other in ways that maintain public confidence in the office to which they have been elected or appointed, are open and honest, focus on issues rather than personalities, and avoid aggressive, offensive or abusive conduct.

CODE OF CONDUCT

RESPONSIBILITIES OF COUNCIL AND MEMBERS

- Only Council as a whole has the authority to direct staff, approve budget, policy or processes, including the structures and procedures for committees and other such matters. Authority to act on behalf of Council, including through a committee, can only be delegated by Council or through law.
- Council is responsible for and dedicated to providing good and effective government for the public in an open, accountable and transparent manner.
- Members of Council when appointed to local boards, committees or other bodies as part of their duties shall make every effort to participate diligently in the activities of these bodies with good faith and care.

CODE OF CONDUCT

RESPECT FOR DECISION-MAKING PROCESS

- Members shall accurately and adequately communicate the decisions of Council and local boards so that respect for the decision and decision making process is fostered.
- Members shall not attempt directly or indirectly to influence the decision making process as it relates to the award of contracts or settlement of claims.

CODE OF CONDUCT

CONDUCT AT COUNCIL MEETINGS

- During meetings, members shall conduct themselves with decorum.
- Respect for delegations and fellow members and staff requires that all members show courtesy and not distract from the business of the Council or Committee during presentations and when other members have the floor.
- Members of Council shall set all handheld electronic devices to a non-audible signal, and shall not use electronic equipment (including smartphone, pager, laptop computer or similar device) in a manner which interrupts the proceedings of the Council.
- Members of Council shall not engage in private conversation during a Council meeting in a manner which interrupts the proceedings of the Council.

CODE OF CONDUCT

CONDUCT TOWARDS STAFF

- Members shall be respectful of the fact that staff work for the Town as a body corporate and are charged with making impartial recommendations that reflect their professional expertise and corporate perspective. Any individual member or faction of Council shall refrain from any conduct which may deter, interfere or unduly influence staff in the performance of such duties and obligations.
- No member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the Town.

CODE OF CONDUCT

RESPECT FOR OTHERS

- Members shall treat every person, including other members, the public, staff and volunteers, with dignity, understanding and respect.
- All members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation. All members shall ensure that their work environment is free from discrimination and personal and sexual harassment.

CODE OF CONDUCT

PRESERVATION OF CONFIDENTIALITY

- All information, documents and deliberations received, reviewed or taken in closed session of Council and its committees are confidential, except as otherwise directed by Council.
- Members shall not disclose or release verbally, in writing or by any other means, any confidential information acquired by virtue of their office, except when required by law to do so.
- Members shall not permit any persons other than those who are entitled thereto to have access to information that is confidential.

EXAMPLES OF CONFIDENTIAL INFORMATION

- Personal information under the *Municipal Freedom of Information and Protection of Privacy Act*, or other legislation
- A matter that has been debated or discussed at a meeting of Council closed to the public, unless the matter is subsequently discussed in Open Council, or is authorized to be released by Council
- Reports of consultants, draft documents and internal communications, which, if disclosed may prejudice the reputation of the City, its officers and employees, or its effective operation
- Information concerning litigation, negotiation or personnel matters

CODE OF CONDUCT GIFTS AND BENEFITS

- Members shall not accept fees, gifts, hospitality or personal benefits that are connected directly or indirectly with the performance of their duties, except compensation authorized by law. (exception if value \$100 or less and received as an incident of protocol or social obligation that normally accompanies the responsibilities of office)
- No member shall seek or obtain by reason of their office any personal privilege or advantage with respect to Town services not otherwise available to the general public and not consequent to their official duties.

CODE OF CONDUCT

REPRISALS AND OBSTRUCTION

- Any reprisal or threat of reprisal against a complainant or anyone for providing relevant information to the Integrity Commissioner is prohibited.
- It is a violation of the Code to obstruct the Integrity Commissioner in the carrying out of his or her responsibilities, as, for example, providing inaccurate or misleading information to the Integrity Commissioner, refusing to answer inquiries or by the destruction of (records) documents or the erasing of electronic communications.

CODE OF CONDUCT CONFLICT OF INTEREST

- Members shall avoid conflict of interest or unethical behavior.
- Members shall comply with the *Municipal Conflict of Interest Act*.

CODE REVIEW

- Recommend that Code of Conduct be updated to include provisions with respect to the use of social media and a limitation period

REQUEST FOR ADVICE FROM THE INTEGRITY COMMISSIONER

- Members, or Council as a whole, may contact the Integrity Commissioner in writing to ask questions and obtain advice.
- The Integrity Commissioner will endeavour to respond in writing to such requests within 5 business days (or less in urgent cases) of receipt.

CONFLICT OF INTEREST

MUNICIPAL CONFLICT OF INTEREST ACT

- An elector or person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry into an alleged contravention of sections 5, 5.1, or 5.2 of the *Municipal Conflict of Interest Act* by a Member of Council or a Member of a local board.

MUNICIPAL CONFLICT OF INTEREST ACT (SECTION 2) PECUNIARY INTEREST

A Member has an indirect pecuniary interest in any matter in which the Council or local board is concerned, if,

(a) the Member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a Member of a body,

that has a pecuniary interest in the matter; or

(b) 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.

MUNICIPAL CONFLICT OF INTEREST ACT (SECTION 3) INTEREST DEEMED THAT OF MEMBER

For the purposes of the *Municipal Conflict of Interest 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.

MUNICIPAL CONFLICT OF INTEREST ACT (SECTION 5) DUTY OF MEMBER WHEN PRESENT AT MEETING

- Where a Member has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of 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.
- Where the meeting is not open to the public, in addition to complying with the above requirements, the Member shall leave the meeting or the part of the meeting during which the matter is under consideration.

MUNICIPAL CONFLICT OF INTEREST ACT (SECTION 5) WHEN ABSENT FROM MEETING

Where the interest of a Member has not been disclosed as required by reason of the Member's absence from the meeting, the Member shall disclose the interest and otherwise comply with the disclosure requirements at the first meeting of Council or local board attended by the Member after the meeting.

MUNICIPAL CONFLICT OF INTEREST ACT (SECTION 5.1) WRITTEN STATEMENT RE DISCLOSURE

At a meeting at which a Member discloses an interest under section 5 of the *Municipal Conflict of Interest Act*, or as soon as possible afterwards, the Member shall file a written statement of the interest and its general nature with the Clerk or the secretary of the committee or local board, as the case may be.

COMPLAINTS

Requires a written request by an identifiable individual (no verbal or anonymous complaints) in respect of a possible Code or MCIA contravention.

Complaint must set out the grounds for the allegation that the Member has breached the Code or MCIA with specificity. (Complaint Form on website)

Some municipalities set time limits for the submission of a Code complaint. An MCIA complaint must be brought within six weeks of the Complainant becoming aware of the alleged contravention (s. 223.4.1(4) *Municipal Act, 2001*).

Filed directly with the Office of the Integrity Commissioner.

INFORMAL PROCEDURE

The Complaint Protocol includes an informal complaint procedure that permits, among other avenues, the Integrity Commissioner to mediate a complaint, with the consent of the Complainant and Member.

Engaging in the informal procedure is not a pre-requisite to filing a formal complaint.

INITIAL REVIEW

- Initial review to determine if complaint within the IC's jurisdiction: outside jurisdiction if relates more properly to another law, complaint process or dispute resolution procedure (e.g. Criminal Code charges, human rights complaint, Municipal Freedom of Information and Protection of Privacy request).
- Allegations, if substantiated, must constitute a breach of the Code or MCIA.
- IC has discretion to decline frivolous, vexatious and bad faith complaints. If Member makes such a complaint then IC may identify the Member to Council.

CODE INVESTIGATION PROTOCOL

- IC sends the complaint and supporting material to the Member whose conduct is in question and requests a written response within 7 business days.
- IC sends the Member's response to the Complainant who may provide a written reply within 7 business days.
- IC may speak to anyone relevant to the complaint and may access and examine any information relevant to the complaint.

INVESTIGATION REPORT – CODE

- Draft Investigation Report
 - Sent to Member for comment within 7 business days
- Final Investigation Report
 - Completed within 45 days of the Complaint or such longer period as deemed necessary
 - If more than 90 days required, IC will issue an interim report
 - May recommend a penalty
 - Final report delivered to Complainant, Respondent and Clerk (for delivery to Council)
 - All reports from the Integrity Commissioner to Council will be made available to the public on the Town Website

PENALTIES AND RECOMMENDATIONS

Council may impose either of the following penalties on a Member if the Integrity Commissioner reports that, in his opinion, the Member has contravened the Code of Conduct:

- A reprimand; or
- Suspension of the remuneration paid to the Member in respect of his or her service as a Member of Council for a period of up to 90 days.

CONFIDENTIALITY

- The Integrity Commissioner shall preserve secrecy with respect to all matters that come before the Integrity Commissioner.
- In a report on whether a Member has contravened the Code, the Integrity Commissioner may disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.
- Parties shall maintain confidentiality until final report delivered to Council.

CRIMINAL ACTIVITY OR BREACH OF OTHER LAWS

- If the Integrity Commissioner has reasonable grounds to believe there was a contravention of the Criminal Code or any other Act, the Integrity Commissioner will suspend the investigation, report to the appropriate authorities, and report to Council.
- The Investigation will remain suspended until any police investigation and charges have been finally disposed of.

MCIA INVESTIGATION PROTOCOL

- Similar investigation protocol for alleged MCIA contravention
- IC has 180 days to complete the investigation from the date of submission of the complaint.
- Upon completion of the investigation, the IC decides whether or not to apply to a judge under Section 8 of the MCIA for a determination as to whether the Member has contravened Sections 5, 5.1, or 5.2 of the MCIA.
- The IC provides the Municipality's Clerk, the Complainant and the Member with written reasons for the decision about whether or not to apply to a judge.

QUESTIONS?

- Any questions?

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