



ADR
CHAMBERS

Integrity Commissioner Office
for the City of Markham

CITY OF MARKHAM
EDUCATION SESSION

CHARLES A. HARNICK
Integrity Commissioner
February 13, 2023

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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, Town of Orangeville and County of Norfolk
- Mediator, Arbitrator and Investigator
- Recipient of the Law Society Medal for outstanding service in accordance with the highest ideals of the legal profession
- Former Chair of Legal Aid Ontario
- Former Attorney General of Ontario

ADR CHAMBERS

- ADR Chambers provides dispute resolution services throughout Canada and internationally
- ADR Chambers 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*, R.S.O.1990, c. M.50 ("Municipal Conflict of Interest Act" or "MCIA")

INTEGRITY COMMISSIONER FUNCTIONS

The Integrity Commissioner has three primary functions:

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

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)

THE CODE OF CONDUCT

- As a newly elected Member, have you read the Code of Conduct?
- As a re-elected Member, when is the last time that you have read the Code of Conduct?

THE CODE OF CONDUCT

The Code of Conduct is a general standard that augments the provincial laws and municipal by-laws governing the conduct of Members of Council.

https://www.markham.ca/wps/wcm/connect/markham/ee78ef3d-8dbd-4075-8b0d-ec1ed62351f3/council-code-of-conduct.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_2QD4H901OGV160QC8BLCRJ1001-ee78ef3d-8dbd-4075-8b0d-ec1ed62351f3-mBPtboxa

CODE OF CONDUCT

SECTION 1 - PURPOSE

- Establishes guidelines for appropriate conduct for Members of Council to ensure that Members share a common basis for acceptable conduct
- To ensure Members serve their constituents in an accountable and transparent manner and uphold a high standard of behaviour and conduct
- To ensure that public office is not used for personal gain
- To provide a reference guide and a supplement to the legislative parameters within which the Members must operate
- To enhance public confidence that City's elected representatives operate from a base of integrity, justice, and courtesy
- To ensure fairness and respect for differences of opinion and that there is a duty to work together for the common good
- To uphold the City's principles, goals and values and set standards for appropriate interaction between Members, Staff, the public and Elected Officials

CODE OF CONDUCT

SECTION 2 – FRAMEWORK & INTERPRETATION

- Applies to every Member of Council, including the Mayor and Local Boards
- Exception with respect to Members own municipal election campaign related activities (Must comply with Section 12)
- Members seeking clarification of any part of the Code should consult with Markham's Integrity Commissioner
- Members are required to comply with existing provincial and federal legislation, as amended

CODE OF CONDUCT

SECTION 3 - GUIDING 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 functions with integrity and transparency
- 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

SECTION 4 - DEFINITIONS

- Defines key terms used throughout the Code, such as "Confidential information," "Gift," "Harassment," "Member," "Personal Information," "Staff" et cetera

CODE OF CONDUCT

SECTION 5 – ROLES & OBLIGATIONS OF MEMBERS

- All Members are expected to:
- Respect the diversity of community views in developing an overall strategy for the future of the City
- Set objectives and determine strategies to achieve the goals of the City
- Ensure sound financial management, planning and accountability
- Be aware of and understand statutory obligations imposed on Council and Members individually

CODE OF CONDUCT

SECTION 6 - CONFIDENTIALITY

- No disclosure of any confidential information except when authorized by Council
- No misuse of confidential information that may cause benefit or detriment to the Member or others
- No unauthorized disclosure in respect of a confidential meeting/closed session
- Abide by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("MFIPPA")
- No unauthorized disclosure of information that is subject to solicitor/client privilege
- Members have a continuing obligation to keep information confidential even if the Member ceases to be a Member of Council

EXAMPLES OF CONFIDENTIAL INFORMATION

- Personal information under *Municipal Freedom of Information and Protection of Privacy Act*
- Human resource/personal letters
- Advice on litigation or potential litigation
- Items under negotiation (labour relations, employment, or acquisition of municipal assets)
- Information regarding contract tenders

CODE OF CONDUCT

SECTION 7 – PERSONAL INFORMATION

- Members shall not disclose Personal Information without the consent of the individual, or the City Clerk, in the case of Personal Information contained in City records
- Members shall not permit any persons, unless entitled thereto, to have access to Personal Information
- Members shall not use Personal Information for personal or private gain, or for the gain of their Family, or any other person or corporation
- Members shall not attempt to gain access to Personal Information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy or MFIPPA

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; (“renseignements personnels”)

CODE OF CONDUCT

SECTION 8 -COMMUNICATIONS WITH THE PUBLIC & MEDIA RELATIONS

1. Members, when communicating with the public and media, are expected to accurately communicate the decisions of Council, even where a Member disagreed with the decision of Council, so that there is respect for and integrity in the decision making process of Council.
2. In all media communications, including Social Media, Members will treat each other, Staff and members of the public with respect and shall avoid messaging that amounts to abuse, bullying or intimidation.

CODE OF CONDUCT

SECTION 9 – RELATIONS WITH STAFF

- Members shall work through the Senior Executive and their designates and not attempt to direct the activities of Staff or departments
- Members shall be respectful of Staff and direct any criticisms of Staff to the Senior Executive and refrain from criticizing Staff in public and the media
- Members shall honour the requirement for Staff to remain neutral and not compel Staff to engage in partisan political activities or subject Staff to threats or intimidation for refusing to engage in such activities

CODE OF CONDUCT

SECTION 10 - GIFTS, HOSPITALITY & BENEFITS

- Members are permitted to accept Gifts specified in Section 10.1 of the Code provided that certain criteria and reporting requirements are met
- Members are not permitted to accept any Gifts that are not listed in this Code connected directly or indirectly with the performance of their duties
- Members shall maintain a list of all Gifts received in a calendar year, where the value of a single Gift, or the cumulative value of Gifts from a single source, exceeds \$350. This list must be available upon request by the Integrity Commissioner for the purposes of determining if the Gift is appropriate. Gifts described in clause 10.1(g) are exempt from the reporting requirement.
- The IC may call upon a Member to justify receipt of any Gift.
- Members shall not accept Gifts that would, to a reasonable member of the public, appear to be in gratitude or compensation for exerting their influence, to induce the Member to exercise their influence, or otherwise to go beyond necessary and appropriate public actions.

CODE OF CONDUCT

SECTION 11 - USE OF CITY PROPERTY, SERVICES & OTHER RESOURCES

- Members shall not use any City property, equipment, supplies, or services for personal purposes
 - Exception: Personal use of city-issued devices such as ipad and cell phone is permitted
- No Member shall obtain financial gain from use of City-developed intellectual property
- No Member shall use information gained in the execution of their duties that is not available to the general public, for any purposes other than their official duties

CODE OF CONDUCT

SECTION 12 – ELECTION CAMPAIGN WORK

1. Members will comply with the provisions of the *Municipal Elections Act*. Members will not use the facilities, equipment, supplies, services or other resources of the City for any election-related activities
2. Members will not undertake campaign-related activities on City property unless permitted by the City Clerk or their designate.
3. Members will not use the services of persons for election-related purposes during hours in which those persons receive compensation from the City.

CODE OF CONDUCT

SECTION 13 – IMPROPER USE OF INFLUENCE

- Members shall not use their influence for any purpose other than the exercise of their official duties
- Lists examples of prohibited conduct by Members, including the use of a Member's 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 their Family, Staff, friends, or associates, business or otherwise

CODE OF CONDUCT

SECTION 14 – BUSINESS RELATIONS

- Members shall not, either personally or through a company they own or control, borrow money *from any person* that regularly does business with the City unless such person is regularly in the business of lending money
- Members shall not, either personally or through a company they own or control, borrow money *from any entity* that regularly does business with the City unless such entity is regularly in the business of lending money
- Members are expected not to act as a paid agent before Council or Committee or any agency, board, or committee of the City except in compliance with the terms of the *Municipal Conflict of Interest Act*
- Members shall not refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit

CODE OF CONDUCT

SECTION 15 – TRANSPARENCY & OPENNESS

- Members shall conduct Council business and their duties in an open and transparent manner other than for those matters which, by virtue of the Municipal Act and other applicable legislation, are required or are authorized to be dealt with in a Confidential Meeting

CODE OF CONDUCT

SECTION 16 – CONDUCT AT MEETINGS

- During City meetings, Members are expected to conduct themselves with decorum, respect, and courtesy

CODE OF CONDUCT

SECTION 17 – CONDUCT OF MEMBERS

- Members are expected to conduct themselves with appropriate decorum at all times and ensure that their behaviour does not bring the reputation of the City into disrepute.
- Members are expected to be respectful of other Members, Staff and the public and their views and encourage others to do the same.

CODE OF CONDUCT

SECTION 18 – HARASSMENT & DISCRIMINATION

- Harassment of another Member, Staff, or any member of the public is misconduct and is prohibited under the *Ontario Human Rights Code*
- Harassment is defined in accordance with the *Ontario Human Rights Code* as vexatious comment or conduct that is unwelcome or ought reasonably to be known to be unwelcome
- Harassment, whether it occurs inside or outside the workplace, or whether it is related to work or other activities of a Member, is inappropriate behaviour
- Members shall not engage in workplace discrimination, harassment or violence when dealing with other Members, Staff, residents or other members of the public (as defined by the the *Ontario Human Rights Code* and the *Ontario Occupational Health and Safety Act*)

CODE OF CONDUCT

SECTION 19 – COMPLIANCE WITH CODE

- Members are accountable to the public throughout the four-year Council term
- Between elections, Members may become disqualified and lose their seat if they were to lose their eligibility under the *Municipal Act*, or for failing to declare a conflict of interest under the *Municipal Conflict of Interest Act*
- The *Municipal Act* authorizes Council to impose penalties on a Member following a report by the Integrity Commissioner that, in his or her opinion, the Member has contravened the Council Code of Conduct
- Penalties may include a reprimand or suspension of the remuneration paid to the Member in respect of their services as a Member of Council for a period of up to 90 days

CODE OF CONDUCT

SECTION 20 - REQUESTS FOR ADVICE FROM IC

- Members, or Council as a whole, may contact the Integrity Commissioner to ask questions and obtain advice and all such requests must be in writing.
- The Integrity Commissioner will respond to requests for advice from Members in writing
- The IC will be bound by the advice given to the Member, as long as the information, facts and circumstances remain unchanged, in the event that the IC is asked to investigate a complaint
- If the IC provides educational information to the public, the IC may summarize advice they have provided in their Annual Report to the City but shall not disclose Confidential Information that could identify a person concerned

CODE OF CONDUCT

SECTION 21 - INVESTIGATIONS

- If a Member, Staff, or a member of the public believes a Member has contravened the Council Code of Conduct they should submit a written complaint in accordance with the established Investigation Protocol (See Appendix "A")
- If a Member, Staff or a member of the public believes a Member has contravened any of Section(s) 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, they should submit a written complaint in accordance with the established Investigation Protocol (See Appendix "B")

CODE OF CONDUCT

SECTION 22 - CONCLUSION

- The Code of Conduct is to be given broad, liberal interpretation in accordance with applicable legislation and the definitions set out in it
- The Code will be brought forward for review to ensure that it remains current and continues to be a useful guide to Members, Staff and the public at the beginning of each term of Council or when relevant legislation is amended, or at other times when appropriate, in the discretion of the City Clerk, or on the instructions of Council.
- The Code should be updated regularly

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.
- A written request with respect to possible contravention of sections 5, 5.1, or 5.2 of the *Municipal Conflict of Interest Act*, will be processed in accordance with the Conflict of Interest Investigation Protocol in Appendix B of the Code of Conduct.

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 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.

COMPLAINT PROCEDURE

- Must be accompanied by an affidavit setting out the supporting evidence and a signed Confidentiality agreement
- Some municipalities charge a filing fee, refundable if the complaint is determined to warrant an investigation, to discourage frivolous and vexatious complaints
- Filed with the Clerk who forwards it to the Integrity Commissioner

INITIAL CLASSIFICATION ACTIONABLE

- Complaint with respect to non-compliance with the Municipality's Code of Conduct or applicable sections of the *Municipal Conflict of Interest Act*
- Two different investigation protocols

INITIAL CLASSIFICATION

NOT ACTIONABLE

- Not a complaint with respect to non-compliance with the Code of Conduct or MCIA
- Complaint covered by another complaint procedure under another Council policy
- Complaint should be pursued under other legislation
- Unrelated criminal activity
- Vexatious or in bad faith
- Issue with timing (e.g. outside time, too close to election)

CODE INVESTIGATION PROTOCOL

- IC sends the complaint and supporting material to the Member whose conduct is in question and requests a written response within 10 working days.
- IC sends the Member's response to the Complainant who may provide a written reply within 10 working days.
- IC may speak to anyone relevant to the complaint and may access and examine any information relevant to the complaint.

SETTLEMENT OF COMPLAINTS

The Integrity Commissioner may attempt to settle a complaint at any point during the investigation process if the Integrity Commissioner deems it appropriate.

INVESTIGATION REPORT – CODE

- Draft Investigation Report
 - If IC finds a Code violation then Member provided with draft report and given opportunity to comment.
- Final Investigation Report
 - Completed within 90 days of the Complaint
 - May recommend a penalty

REPORT TO COUNCIL – CODE

- Where the complaint is sustained in whole or in part, the IC shall report his findings and/or recommended penalty to Council.
- Where the complaint is dismissed, other than in exceptional circumstances, the IC shall not report to Council except as part of an annual or other periodic report.

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.

INTERIM REPORTS

The Integrity Commissioner may make interim reports to Council where necessary to address:

- Instances of interference
- Obstruction
- Retaliation

CONFIDENTIALITY

- The Integrity Commissioner shall preserve secrecy with respect to all matters that come before the Integrity Commissioner.
- If the Integrity Commissioner recommends a sanction, however, that will be reported to Council.
- If the Integrity Commissioner reports to Council an opinion about whether a Member contravened the Code of Conduct, the Integrity Commissioner may disclose in the report such matters the Integrity Commissioner considers necessary for the purposes of the report.

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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