

COUNCIL ORIENTATION

INTEGRITY COMMISSIONER PRESENTATION

NOVEMBER, 2022

OVERVIEW

- ROLES OF COUNCILLORS AND STAFF
- MEETINGS
- MUNICIPAL CONFLICT OF INTEREST ACT
- CODE OF CONDUCT

Council and Staff

1.1

- ROLE OF COUNCIL
- ROLE OF THE HEAD OF COUNCIL
- ROLE OF STAFF
- INTEGRITY COMMISSIONER

ROLE IN MUNICIPAL GOVERNMENT

ROLE OF COUNCIL

(Municipal Act, 2001 section 224)

- Represent the public;
- Consider the well-being and interests of the municipality;
- Develop and evaluate the municipality's policies and programs;
- Determine which services the municipality will provide;
- Ensure that administrative practices and procedures are in place to implement council's decisions;
- Ensure the accountable and transparent operation of the municipality;
- Maintain the financial integrity of the municipality;
- Carry out the duties of council under the Municipal Act or any other Act;

ROLE OF THE HEAD OF COUNCIL

(Municipal Act, 2001 sections 225 and 226.1)

- Act as chief executive officer of the municipality
- Uphold and promote the purposes of the municipality
- Preside over council meetings
- Provide leadership to the council
- Promote public involvement in the municipality's activities
- Foster activities that enhance economic, social and environmental well-being of the municipality and its residents
- Represent the municipality at official functions
- Promote and represent the municipality locally, nationally and internationally
- Carry out the duties of the head of council under the Municipal Act or any other Act



ROLE OF ADMINISTRATION

(Municipal Act, 2001 section 227)

- Implement council's decisions
- Establish administrative practices and procedures to carry out council's decisions
- Undertake research and provide advice to council on the municipality's policies and programs
- Carry out other duties required under the Municipal Act or any Act
- Carry out other duties assigned by the municipality

COUNCIL/STAFF RELATIONS

(a required policy as of March 19, 2019)

- Council sets policy direction and strategic direction
- The CAO directs senior staff to ensure that the direction of Council is followed and goals are met
- Managers and Supervisors direct staff
- Council must respect this hierarchy
 - Competing priorities and direction is counterproductive
 - Attempting to direct staff may have liability implications (ex. Snowplowing)

INTEGRITY COMMISSIONER

- Advice and Opinions
 - any Member may seek an opinion or advice from the Integrity Commissioner.
 - In advance of declaring a conflict of interest
 - About how to comply with the Code of Conduct
 - About ethical obligations of the Member
 - Concerning how to deal with Council/staff relations
 - Advice and opinions are confidential
 - The Integrity Commissioner may deliver training on the Code and ethical obligations
 - The Integrity Commissioner may deliver education for the public
 - An annual report may be prepared – mandatory in Lanark County
 - Not a disclosure of confidential information, but a high-level summary of the types of advice given and the general nature of investigations

INTEGRITY COMMISSIONER

Types of complaints

- Municipal Conflict of Interest Act (MCIA)
- Code of Conduct
- Other ethical policies of the Municipality

INTEGRITY COMMISSIONER

Who can make a complaint

- Under MCIAC
 - An elector, an Integrity Commissioner of a municipality or a person demonstrably acting in the public interest may apply to a judge
 - 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 to the Integrity Commissioner
- Under the Code of Conduct
 - Any person
 - Member of Council
 - Council
 - Staff

INTEGRITY COMMISSIONER

Limitation Periods

- Under MCIAC
 - 6 weeks after the breach
 - 6 weeks after the breach came to the attention of the complainant
 - 6 weeks after the breach could reasonably have come to the attention of the complainant
- Under the Code of Conduct
 - No limitation period established in the Municipal Act
 - Code establishes a limitation period of 60 days (16.1(c))
 - 2 year ultimate limitation period
 - 1 year under the Ombudsman Act
- Election periods
 - No complaint after Nomination Day
 - No report can be presented after Nomination Day
 - No investigation terminated because of Nomination Day can be recommenced without written request from the complainant within 6 weeks of Election Day



INTEGRITY COMMISSIONER

- **Process**
 - Preliminary review
 - Consideration of merit
 - Informal resolution
 - Investigation
 - Report and recommendations



Meetings

- WHAT IS A MEETING
- CLOSED MEETINGS

2.1



COUNCIL MEETINGS

- Every Council must have a Procedural by-law governing its meetings (Municipal Act, 2001 s. 238)
- Meetings are to be conducted in accordance with the Procedural By-law
- No secret ballots (except to elect Warden or appoint meeting chair)
- May have recorded votes
- What constitutes a meeting
 - Quorum
 - Discussion that materially advances the business of Council

COUNCIL MEETINGS

- Can an email constitute a meeting of Council?
- Can Councillors meet informally?

COUNCIL MEETINGS

238(3.1) The applicable procedure by-law may provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting to the extent and in the manner set out in the by-law.

- May include closed session
- May impose restrictions in the by-law
 - Advance permission of Council
 - Limit number of times per term
 - Non-COVID meetings should consider whether continuing electronic participation as the normal process is appropriate and whether it will constitute open and transparent decision making
- Intend that votes will be taken (complete alternative to in-person meetings)

CLOSED (IN CAMERA) MEETINGS

- All meetings must be open to the public, unless otherwise permitted by law
- Proper resolution needed for closed meeting
 - Matters related to the security of the municipality's property
 - Personal matters about an identifiable individual, including municipal employees
 - A proposed or pending acquisition/disposition of land
 - Labour relations or employee negotiations
 - Litigation or potential litigation, including matters before the LPAT and other administrative tribunals

CLOSED (IN CAMERA) MEETINGS

- Receiving advice or reviewing communication that is solicitor/client privileged
- To consider a request under the *Municipal Freedom of Information and Protection of Privacy Act* when Council is designated as head of the institution for purposes of that Act
- To educate or train Council as long as there is no discussion about or dealing with matters that materially advance the business or decision-making of the council
- Any matter in respect of which the Council or Committee is authorized by another statute to meet in-camera

CLOSED (IN CAMERA) MEETINGS

- information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

CLOSED (IN CAMERA) MEETINGS

Decisions are expected to be made in open session

Any decision made in closed session MUST relate only to matters that can be discussed in closed meeting

AND

Must be procedural only or to give directions or instructions to officers, employees or agents of the municipality

- Examples:
 - Vote whether to report a matter out in public session and vote on it
 - Vote to amend resolution to be debated and voted on in public session
 - Vote to instruct staff to make inquiries and report back
 - Open session vote cannot be “rubber stamp” of decision made in-camera

CLOSED (IN CAMERA) MEETINGS

Consequence of an Improper Closed Meeting

Any person may request an investigation

- Investigation conducted by investigator appointed by municipality
- If no investigator appointed, by Ontario Ombudsman
- Report published
- Court declare decision invalid
 - Decision is of no force or effect
 - Can invalidate a by-law passed in open session
 - Can lead to court challenges

Conflict of Interest

- MUNICIPAL CONFLICT OF INTEREST ACT

3.1





MUNICIPAL CONFLICT OF INTEREST ACT

- Governs individual councillors, not the municipality
- Duty of each councillor to comply with the Act
- Applies when acting as councillor or member of committee or local board
- Failure to comply can result in the following:
 - Council seat declared vacant
 - Councillor disqualified from holding office for up to 7 years
 - Councillor required to make restitution to any person suffering loss or the municipality

WHAT IS A CONFLICT OF INTEREST?

- Any pecuniary interest, direct or indirect, in any matter under consideration by council, committee or local board
 - Any financial or monetary interest
 - The pecuniary interest can be positive or negative
- A pecuniary interest of the following persons is an indirect interest:
 - Councillor's parent, spouse, same sex partner or natural, adopted or step-child
 - Councillor's employer or business partner
 - A private corporation in which the councillor is a shareholder, director or senior officer
 - A public corporation in which the councillor has a controlling interest

A COUNCILLOR'S OBLIGATIONS

- Disclose the nature of your interest prior to any consideration of the matter at the meeting
- Not take part in the discussion or vote on the matter
- Do not attempt in any way before, during, or after the meeting to influence the vote
- If in closed meeting, immediately leave the room during the discussion
- If absent from the meeting, declare the conflict at the next meeting



EXCEPTIONS TO CONFLICT OF INTEREST

- Having a pecuniary interest in common with electors generally (e.g; property owner, utility customer)
- Receiving an allowance, honorarium, remuneration, salary or benefit as a member of council or as a member of the volunteer fire department
- Having a pecuniary interest that is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor

PENALTY

- **9 (1)** If the judge determines that the member or former member contravened section 5, 5.1 or 5.2, the judge may do any or all of the following:
 1. Reprimand the member or former member.
 2. Suspend the remuneration paid to the member for a period of up to 90 days.
 3. Declare the member's seat vacant.
 4. Disqualify the member or former member from being a member during a period of not more than seven years after the date of the order.
 5. If the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be.
- **(2)** In exercising his or her discretion under subsection (1) the judge may consider, among other matters, whether the member or former 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
 - c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith.

Code of Conduct



4.1



CODE OF CONDUCT

Preamble

Members of Council have the privilege of attaining elected office. That privilege carries significant responsibilities and obligations with respect to the public trust. In order to strengthen the role of Council and to enhance public trust with respect to the obligations of its Members, this Code is established to gov

1. Purpose and 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 Municipality's reputation and integrity.



CODE OF CONDUCT

- This Code also supplements other existing Federal and Provincial legislation and Municipal bylaws and policies that govern Member's conduct which include but are not limited to the following:
 - Criminal Code of Canada;
 - Municipal Act, 2001;
 - Municipal Elections Act;
 - Municipal Conflict of Interest Act;
 - Municipal Freedom of Information and Protection of Privacy Act;
 - Ontario Occupational Health and Safety Act;
 - Ontario Human Rights Code;
 - Planning Act
 - All bylaws and policies approved by Council of the Municipality of Trent Lakes



CODE OF CONDUCT

3. Conduct of Members

A Member shall at all times conduct themselves with propriety, decency and respect and with the understanding that all members of the public, other Members and staff are to be treated with dignity, courtesy and respect, recognizing that a Member is always a representative of the Municipality and of their elected office. The Member shall at all times conduct themselves with decorum and in accordance with the Municipality's Procedure By-law during any meetings and in a manner that demonstrates fairness, respect for individual differences, and intention to work together for the common good and in furtherance of the public interest.

CODE OF CONDUCT

6. Access to Information and Confidentiality

A Member shall:

- a) Only be entitled to have access to information in the possession of the Municipality that is relevant to matters before Council or a Committee or that is relevant to the role as Members of Council. Otherwise, they 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.

No Member shall:

- a) Obtain access, or attempt to gain access, to confidential information in the custody or control of the Municipality except in accordance with MFIPPA
- 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 Counsel or otherwise by law to do so;
- c) Provide to any other person to disclose, release, publish any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Counsel or otherwise by law to do so;

CODE OF CONDUCT

6. Access to Information and Confidentiality

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; or

e) Disclose or discuss, through written, electronic or verbal communication, to any individual or corporate third-party, any information that has been or will be discussed at a closed session meeting of Council or a Committee until such time that Council or a Committee has determined or has been advised by staff that the matter, or any part of the matter, can be made public subject to review by the head or designate under the MFIPPA or if directed to do so by a court.

“confidential Information” is defined in the Code very broadly as information that:

- cannot be disclosed under MFIPPA;
- Information related to a closed session;
- Is subject to solicitor client privilege;
- Confidential matters pertaining to employment matters, contract and tender information, complaints
- Any information lawfully determined by Council to be confidential or required to remain or be kept confidential by legislation



CODE OF CONDUCT

7. 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.



CODE OF CONDUCT

8. Staff Relations

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

8.2 a Member shall:

- a) Respect staff acknowledge that staff is required to provide objective advice while remaining neutral, carry out directions of Council as a whole, and administer the policies of the Municipality without undue influence from any Member.
- b) Respect the administrative structure and direct any staff performance concerns through the appropriate supervisory staff.



CODE OF CONDUCT

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 with the lawful exercise of the duties of staff.



CODE OF CONDUCT

9. 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.

- a) Gifts received as an incident of protocol or social obligation that normally accompany the responsibilities of elected office;
- b) Gifts that are not connected directly or indirectly with the performance or duties of office;
- c) Compensation authorized by law;
- d) A reimbursement of reasonable expenses incurred in the performance of activities connected with the legitimate municipal purpose;
- e) Political contributions that are otherwise offered, accepted and reported in accordance with applicable law



CODE OF CONDUCT

- f) Services provided without compensation for persons volunteering their time;
- g) A suitable Memento of the function with nominal value, honouring the Member or the Municipality;
- h) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, and by the federal government or the government of a foreign country;
- 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, the person extending the invitation has done so infrequently and that personal representative of the organization is in attendance.



CODE OF CONDUCT

10. Conflict of Interest/Perception of Bias

10.1 Member shall ensure that personal views expressed on matters of political controversy or a municipal policy or administration do not impair the public's confidence in the Member's ability to perform his/her official duties with integrity and impartiality or impair the ability of Council or staff to carry out their functions.

10.2 Members shall not act as an agent or a delegation on behalf of 1/3 party before Council any Committee or Board of Council or any other Corporation, agency or board on any matter which will be put before Council for consideration.

10.3 Members shall refrain from undertaking direct fundraising for Municipal projects with individuals, businesses or other organizations.

10.4 notwithstanding section 10.3, Members involved with the event planning as part of their role on a Committee/Board may accept donations of items for the event of a nominal value that could not be reasonably construed as being given in anticipation or recognition of special consideration by the Member.



CODE OF CONDUCT

13. Encouragement of Respect for the Municipality and its By-laws

13.1 a Member shall:

- a) Encourage the public, prospective contractors and members of the public, and their colleagues to abide by the Municipality's by-laws and policies, including this Code; and
- b) Accurately communicate the decisions of Council even if they disagree with the majority decision of Council and by so doing affirmed the respect and integrity in the decision-making processes of Council.

Code of conduct

14.0 Social Media

14.1 a Member shall:

- a) Adhere to any and all Municipal 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 Municipality when using social media.

14.2 no Member shall:

- a) Use social media to publish anything that is dishonest, untrue, offensive, disrespectful, constitutes harassment, is defamatory or misleading in any way.

Code of conduct

17 Penalties

The Integrity Commissioner may recommend penalties: [Note the penalties are drafted as exclusive of one another]

- Reprimand; or
- Suspension of remuneration for up to 90 days

Council may also:

- Remove a member from a Local Board;
- Remove a Member as a chair;
- Request repayment or reimbursement of money or return of property;
- Request an apology
- [Note what is missing is a general category of “behaviour management”]

Code of conduct

Suggestions for Amendments

- “Family Member” includes any of the following, whether by birth, marriage or adoption:
 - A Spouse of the Member;
 - A Child of the Member;
 - A Parent of the Member;
 - A Sibling of the Member;
 - A Grandchild, grandparent, aunt, uncle, niece or nephew of the Member;
 - A Parent-in-law of the Member; and
 - Any person who lives with the Member on a permanent basis;

Code of conduct

Suggestions for Amendments

CONFLICT OF INTEREST

Members must be familiar with and comply with the *Municipal Conflict of Interest Act*, as amended. It is the responsibility of each Member, not Staff, to determine whether they have a direct or indirect pecuniary interest with respect to matters arising before Council, a Board or Committee. Each Member shall determine whether he or she has a direct or indirect pecuniary interest and shall at all times comply with the Act.

For purposes of this Code, a pecuniary interest, direct or indirect, of a Family Member of the Member shall be deemed to also be the personal/pecuniary interest of the Member. All Members shall declare a conflict of interest where they or their Family Member has a pecuniary interest in a matter and shall take all of the actions prescribed in the *Municipal Conflict of Interest Act* as if the Act applied to that interest.

Code of conduct

Suggestions for Amendments

CONFLICT OF INTEREST

In addition to pecuniary interests, Members must perform their duties impartially, such that an objective, reasonable observer would conclude that the Member is exercising their duties objectively and without undue influence.

Direct or indirect personal interests do not include:

- a benefit that is of general application across the Municipality;
- a benefit that affects a Member or his or her Family Members, friends or business colleagues as one of a broad class of persons; or
- the remuneration of Council, a Member or benefits available to Council or Members.

Code of conduct

Suggestions for Amendments

CONFLICT OF INTEREST

Every Member has the following obligations:

- a) To make reasonable inquiries when there is reason to believe that a conflict of interest may exist;
- b) To make Council or the Board or Committee aware of the potential conflict of interest and where appropriate declare the interest;
- c) To refuse to participate in the discussion of Council, the Board or Committee and to not vote on the matter or seek to influence the vote of any other Member where a conflict of interest exists;
- d) To refuse to be involved in any way in the matter once the conflict is identified, including without limitation participating in meetings, facilitating meetings or introductions to Staff or Members or providing advice to any person that would materially advance the matter; and
- e) If the matter which creates the conflict of interest is discussed in closed session, the Member may not attend that portion of the closed session where that matter is discussed.

Code of conduct

Suggestions for Amendments

COMPLAINT PROTOCOL

Operational inquiries and complaints received from the public will be addressed by Members as follows:

- a) Members who are approached by the public with inquiries/complaints regarding operational matters should encourage the party to contact the appropriate department for review/resolution.
- b) where the Member of the public is reluctant to contact the department directly, the Member should take the person's name, phone number and details of the inquiry/complaint and advise them that the matter will be referred to the Chief Administrative Officer for review/resolution.
- c) members of the public should be encouraged to provide their issue/matters of concern in writing to the appropriate department.
- d) where the inquiry/complaint is not resolved to the satisfaction of the member of the public, then the Member shall refer the member of the public to the Municipality's complaint policy for any further action.

Code of conduct

Suggestions for Amendments

LIMITATION (CURRENTLY 60 DAYS)

Any person who has reasonable grounds to believe that a Member has breached this Code may proceed with a complaint and request an investigation. Complaints must be submitted within ninety (90) days after the alleged violation occurred or the alleged violation came to the attention of the complainant. No complaint may be filed under any circumstances where the alleged violation occurred more than six (6) months prior to the complaint being filed.



PROFILE

Tony Fleming is a Partner in the Land Use Planning, Development and Environmental Group and the Municipal Group at Cunningham Swan. Tony is recognized by the Law Society of Upper Canada as a Certified Specialist in Municipal Law (Local Government/ Land Use Planning and Development). As a Certified Specialist, Tony has demonstrated expertise in the fields of municipal law and land use planning and development law.

Tony provides advice to municipalities and private sector companies on all aspects of land use planning and development as well as environmental law. Our municipal clients consult Tony on all aspects of municipal governance and complex land use planning matters. Tony appears frequently before the Ontario Land Tribunal to defend decisions of municipal Councils and Committees of Adjustment. In addition, Tony appears in all levels of Ontario Courts on administrative law matters, including defending challenges to municipal by-laws.

Prior to joining Cunningham Swan, Tony was Senior Legal Counsel with the City of Kingston. Tony focused on providing advice on land use planning and development and environmental law with the City of Kingston, building on his experience in private law firms in Toronto where Tony practised as a land use planning and environmental lawyer.

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