



NOTICE

A SPECIAL MEETING

will be held by the

Council of the Corporation of the Town of Kearney

Senior's Room

8 Main Street, Kearney ON

Thursday, November 7, 2024

10:00 am

1. Call the Meeting to Order

2. Approval of Agenda

3. Disclosure of Interest

[At this time, Members of Council shall declare pecuniary interest, if any, with items on the agenda.]

4. Integrity Commissioner Training

5. Closed Session

Under Section 239 of the Municipal Act, Council moved into closed session under the following subsections:

(3.1) Council Training

(2)(d) Labour Relations or Employee Negotiations

6. Adjournment



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Integrity Commissioner Office
for the Township of Kearney

NOVEMBER 7, 2024

Council Education Session

- Code of Conduct
- Complaint Protocol
- MCIA

MICHAEL L. MAYNARD - INTEGRITY COMMISSIONER

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- Integrity Commissioner (“IC”), Investigator, Mediator, Facilitator, Author
 - Appointed IC for 18 municipalities and 3 public school boards
 - Workplace Investigator – Ontario Government
 - Banking and Municipal Ombudsman Investigator
 - Mediator – Since 2006
 - Over 2,000 mediations
 - Including IC Complaint Mediations

INTEGRITY COMMISSIONER ROLE

- FOUR PILLARS
 - Advice to Council Members / Members of Local Boards
 - Education / Information Sessions
 - Policy Consultation (re: relevant policy intersections)
 - Code of Conduct Complaints / MCIA Applications
 - Mediation / Early Resolution
 - Investigation and Report with recommendations (if warranted)
 - Application to a judge re: MCIA if warranted

PLEASE BE
ADVISED...

This presentation does not replace the existing laws, policies, or procedures. This is merely an overview of some key points to keep in mind.

Councillors are encouraged to review and familiarize themselves with the various applicable laws and policies.

Questions about applicable policies and your duties thereunder may be addressed via a Request for Advice to the Integrity Commissioner, which I will ask for and respond to in writing.

MUNICIPAL ACT AND REGULATIONS

- *Municipal Act, 2001*
 - S. 223.2 requires municipalities to establish a *Code of Conduct* for Councils and Local Boards.
 - S. 223.3 requires municipalities to appoint an IC, or have access to one
- O.Reg 55/18 provides for four prescribed subjects that must be included in a *Code of Conduct*:
 - Gifts, benefits and hospitality;
 - Respectful conduct;
 - Confidential information;
 - Use of property of the municipality or of the local board, as the case may be.

THE CODE

SECTION I: PURPOSE

- Provides overview of the “why”
 - Guidelines for ethical and interpersonal standards of conduct
 - Improve quality of public administration and governance by encouraging high standards of conduct

THE CODE

SECTION 2: STANDARD OF CONDUCT

- Read as underlying principles which establish general duties and obligations:
 - To the community
 - To the corporation
 - To the public good
- Transparency and accountability framework
 - Diligent, faithful, and impartial exercise of office
 - Always act in the best interests of the municipality

THE CODE

SECTION 3: CONDUCT TO BE OBSERVED

- a) Sets out the legislative framework (*Municipal Act, MClA, MFIPPA, etc.*)

- b) *Municipal Act* – Legislated Responsibilities:
 - Council / Board Members
 - Head of Council
 - Officers and Employees

SECTION 3 CONT'D

- c) Confidentiality:
 - Duty to hold confidential information in strict confidence ... continues after term of office.
 - Closed session information – not to be directly or indirectly released, made public, or divulged, unless authorized by Council or required by law.
 - No release of MFIPPA protected information
 - No release of solicitor-client privileged information
 - No release of anything marked “confidential” – which must also be kept securely
 - No misuse of confidential information for private advantage or detriment of oneself or others.

SECTION 3 CONT'D

- d) Personal Gain:
 - Misuse of office / Improper Use of Influence of Office
 - Public Trust
 - Back to first principles – duty owed to the municipality and public
 - No benefit derived from office outside of remuneration as Member
 - E.g., No contracts with the municipality for goods or services, and no financial interest in any business of the municipality
 - Do not appear on behalf of another person before Council, Local Board, or Committee for a fee or other consideration

SECTION 3 CONT'D

- e) Respect Decision Making Process
 - Accurately communicate decisions of council / board / committee
 - Does not require agreement with decisions, but requires Members to refrain from actions that undermine decisions

SECTION 3 CONT'D

- f) Conduct Respecting Staff:
 - Trending area across municipalities
 - Council has authority, individuals do not
 - Staff serve Council, not individual Members
 - Members shall respect the role of staff
 - Staff advise Council based on political neutrality and objectivity, without undue influence

SECTION 3 (F) CONT'D

- No Member shall maliciously or falsely harm the professional or ethical reputation or the prospects or practice of staff.
- Respect professional capabilities of staff
- Do not compel staff to engage in partisan activities
- No improper influence, coercion, threats, intimidation, commanding etc., of staff respecting their duties – including duty to disclose improper activity.

SECTION 3 (F) CONT'D

- Violence and Harassment Policy
 - Scope includes Members of Council
 - Includes in workspaces, work travel, work social events, and online (email, social media)
 - Includes discrimination
 - Protected Grounds under Ontario Human Rights Code
 - Harassment includes:
 - Personal (i.e., bullying)
 - Discrimination
 - Sexual harassment
 - Creating a poisoned work environment

THE CODE

SECTION 4: INTERPERSONAL BEHAVIOUR

- Treat every person with dignity, understanding and respect
- Not to discriminate
- Not to engage in harassment
 - “course of vexatious comment or conduct that is known, or ought reasonably to be known, to be unwelcome”
 - E.g., discriminatory, personal, insulting, or embarrassing comments; unwanted touching or attention; exclusion; abuse and threats (written or verbal)

THE CODE

SECTION 5: GIFTS, HOSPITALITY, BENEFITS

- Acceptance of Gifts
 - Gifts can improperly influence / give the impression of improper influence.
 - Gifts, money, hospitality, etc., shall not be solicited or accepted as personal benefits connected with duties of office. This includes gifts to immediate family or connected businesses.
 - Exceptions:
 - E.g., compensation authorized by law; food / beverage at a function in an official capacity; gifts of a nominal value; suitable tokens / mementos as incident of protocol; volunteer time...
 - Report to Clerk / CAO any unauthorized gift / benefit.
 - Do not place yourself in a position of owing obligations to someone

CODE ENFORCEMENT

- Informal Complaint Procedure
 - Direct between Parties
 - Alternative Dispute Resolution – IC can mediate, where appropriate
- Formal Complaint Procedure
 - Possible Investigation and, if so, a Report
 - Contravention is reported to Council
 - May include recommended penalties
 - Procedural Fairness / Natural Justice

CODE ENFORCEMENT

- Preliminary review to check for jurisdictional issues
 - Timeliness
 - Complete application (all necessary elements)
 - Investigable issue?
 - Another process has precedence?
 - Already dealt with?
 - Frivolous, Vexatious, Bad Faith?
 - Early resolution?

CODE ENFORCEMENT

- Exchange of written documents / submissions
- Interviews (as necessary)
 - Including with third-party witnesses
- Collect evidence independently
- Report:
 - Respondent shall have an opportunity to review and provide feedback on a report that finds a contravention prior to it being finalized / published.
 - Report may recommend penalties per the *Municipal Act / Code*.

CODE ENFORCEMENT

- Penalties for non-Compliance with the Code of Conduct - See *Municipal Act s. 223.4(5)*:
 - (a) a reprimand; or
 - (b) a suspension of the remuneration paid to the Member in respect of his or her services as a Member for a period up to 90 days.
- The IC reports to Council.
- Council is the decision-making body re: penalty.
- No findings = Usually no report to Council

MCIA PROCEDURES

- If an *MCIA* matter, is the Application compliant with requirements of the Act?
 - Timelines – Six-week knowledge time limitation period (suspended during election period)
 - Statutory Declaration
 - Elector or person demonstrably acting in the public interest
- Cited section(s) of the Act
- Evidence
- Witnesses?

CONFIDENTIALITY OF INQUIRIES

- Inquiries / Investigations are confidential and to be carried out in private:
 - IC has duty of secrecy
 - IC includes information they deem “necessary” in public reports

MCIA - OVERVIEW

- *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50.
- Deals only with pecuniary (i.e., money-related) interests.
- Sets duties of Members where a pecuniary interest exists.
- Distinct from Code of Conduct:
 - Separate filing process for *MCIA* and Code.

TYPES OF PECUNIARY INTERESTS

- Direct
 - You have a direct economic stake in the item being considered.
- Indirect
 - A company / organization in which you have a financial, controlling, interest, or a body of which you are a Member, or your employer has a financial stake in the item being considered.
- Deemed
 - An immediate family member (parent, spouse, child) has a direct or indirect interest (if known to the Member)

EXCEPTIONS

- Long list of exceptions where a pecuniary interest need not be declared, including (among others):
 - Interests in common with “electors generally”:
 - Not necessarily meaning “everyone” but a significant definable group of the general population.
 - Public utilities; services on common terms; permitted remuneration for Members;
 - “remote” or “insignificant” interests.
 - Penalties re: Code violations (Member may speak / attempt to influence, but not vote).

DUTIES

- (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.

DUTIES

- If the meeting is “closed” (in-camera) then leave the meeting / portion of the meeting
- Shall file a written statement of disclosure “at the meeting” or “as soon as possible afterwards”
- Disclosure is noted in the minutes and kept in a registry by the Clerk

APPLICATION TO INVESTIGATE BREACH OF MCIA

- An elector, an Integrity Commissioner of a municipality; or a person demonstrably acting in the public interest may apply to a judge for a determination of the question of whether,
 - (a) a member has contravened section 5, 5.1 or 5.2; or
 - (b) a former member contravened section 5, 5.1 or 5.2 while he or she was a member. 2017, c. 10, Sched. 3, s. 7.
- Six-week knowledge time limitation
 - Required statutory declaration to be filed with application (to judge or IC)

REMEDIES

- Power of judge...
- 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...personal financial gain, require the member or former member to make restitution...

DISCRETION / SAVING PROVISIONS

- Consideration as to 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...
 - (c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith.
- Inadvertence = Did not know about the interest.
- Error in judgment = Knew about the interest, but (while acting in good faith) did not reasonably recognize or understand that it was a conflict.

MCIA – A FEW RECENT CASES

- *Elliott Lake v. Pearce (2021)*
 - Councillor was a director of a not-for-profit
 - He participated in Council discussion and vote on whether to pay \$30,000 to the not-for-profit.
 - IC found that he had an indirect pecuniary interest and applied to a judge for a determination of a breach of the MCIA.
 - Member was found in breach and reprimanded by the Court.
 - Appeal to Divisional Court by the IC for stronger sanction was rejected.

MCIA – A FEW RECENT CASES

- *Budarick v. Townships of Brudenell, Lyndoch and Raglan (2022)*
 - A councillor's son received an invoice from the Fire Department for services due to a fire caused by the son on his property during a fire ban.
 - Fire Dept. invoices are presented to Council.
 - The Member declared the interest, but then proceeded to take part in the discussion, asking many questions of the Fire Dept., including about who received notice of the fire ban, its finances, and alleged financial mismanagement.
 - It was found that the Member breached the MCIA by participating in the discussion while retaining a deemed pecuniary interest.
 - The Member's seat was declared vacant, which was later upheld on appeal.

MCIA – A FEW RECENT CASES

- *Yorke v. Harris (2020)*
 - Member's spouse was employed by a union.
 - Member voted for a resolution to encourage the Province to amend labour legislation in a manner that would benefit same union.
 - No pecuniary interest retained, as the interest was speculative:
 - Contingent on the Province doing something.
 - The Council has no authority over labour laws, so the vote did not result in anything which had any tangible or immediate impact.

IC ADVICE - OVERVIEW

- Members may seek advice from the IC respecting their Code and/or *MCIA* and/or other rules/policy obligations concerning ethical conduct.
- Request must be in writing and advice must be in writing per s. 223.3 (2.1) and (2.2) of the *Municipal Act*.
- IC cannot offer legal advice.
- IC cannot offer advice about someone else's conduct.
- Written advice, if all facts were disclosed and if followed, may be relied upon by the Member if challenged later (i.e., if a complaint is made)
- Advice is confidential, unless released (in whole or part) by the Member, or with their consent, or as required by law (e.g., in written reasons or in making an application to a judge respecting an *MCIA* matter).



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