

THE STRUCTURE AND PRINCIPLES OF EFFECTIVE MUNICIPAL GOVERNMENT

A PRESENTATION TO COUNCIL BY THE INTEGRITY COMMISSIONER OF
ARRAN-ELDERSLIE

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TOPICS

Overview

Roles and Responsibilities

Role of the Integrity Commissioner

Municipal Conflict of Interest Act

Collingwood Inquiry

OVERVIEW

- ▶ Municipal governance in Ontario is a rules-based system.
- ▶ The essential powers and obligations of municipalities and members of council are established in the *Municipal Elections Act, 1996*, the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.
- ▶ Council's are to govern as a whole, in a transparent and accountable way, free from conflicts and bias, in a respectful and honest manner.
- ▶ There is a clear division of duties between elected officials and members of staff, which must be respected for municipal governments to be effective.
- ▶ Maintaining the public trust is paramount.

THE ROLE OF COUNCIL

It is the role of Council to:

1. Represent the public and consider the well-being and interests of the Municipality;
2. Develop and evaluate the policies and programs of the Municipality;
3. Determine which services the Municipality provides;
4. Ensure the accountability and transparency of the operations of the Municipality; and
5. Maintain the financial integrity of the Municipality.

THE ROLE OF HEAD OF COUNCIL

1. It is the role of the Head of Council to:
 - Act as the Chief Executive Officer of the Municipality;
 - Uphold and promote the purposes of the Municipality
 - Promote public involvement
 - Act as the representative and promoter of the Municipality
 - Participate in and foster activities that enhance the well-being of the Municipality and its residents
2. Preside over Council meetings, so that its business can be carried out efficiently and effectively;
3. Provide leadership to the Council;
4. Represent the Municipality at official functions; and
5. Provide information/recommendations to Council with respect to the role of council respecting accountability and transparency and the administrative policies, practices and procedures in place to implement the decisions of Council.

THE ROLE OF STAFF

It is the role of the officers and employees of the municipality to:

To implement council's decisions and establish administrative practices and procedures to carry out council's decisions;

To undertake research and provide advice to council on the policies and programs of the municipality; and

To carry out other duties required under this or any Act and other duties assigned by the municipality.

THE ROLE OF A COUNCILLOR

Municipal Act contains no specific job description or authority for Members of Council, however, Ontario's Municipal Councillor's Guide says Councillors have three main roles:

1. A representative;
2. A policy-maker; and
3. A steward.

Councillors are public officials, with no management powers.

THE INTEGRITY COMMISSIONER

Is independent

Undertakes confidential inquiries

Reports to Council in open session

Applies the Code of Conduct and other ethical rules

Applies the MCIA

Provides advice on Code and MCIA matters to Members

Provides education to Members, the municipality and the public

ADVICE

- Request for advice from members shall be in writing
- Advice from Commissioner shall be given in writing
- Advice provided by the Commissioner to a member may be released with the member's written consent
- If a member releases only part of the advice provided to the member by the Commissioner, the Commissioner may release part or all of the advice without the member's consent
- Commissioner may disclose such information as in the Commissioner's opinion is necessary,
 1. For the purposes of a public meeting under subsection 223.4.1 (8)
 2. In an application to a judge, or
 3. In the written reasons given by the Commissioner

INQUIRIES ARE CONFIDENTIAL

- ▶ Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge (except information may be disclosed in a criminal proceeding)
- ▶ Duty of confidentiality prevails over the *Municipal Freedom of Information and Protection of Privacy Act*
- ▶ Commissioner is not a competent or compellable witness in a civil proceeding in connection with anything done under Part V.1
- ▶ BUT if the Commissioner determines there are reasonable grounds to believe there has been a contravention of any other Act (other than the MCI A) or of the *Criminal Code* he or she shall immediately refer the matter to the appropriate authorities and suspend the inquiry until resulting police investigation and charge have been finally disposed of and shall report the suspension to council

COMMON CODE OF CONDUCT COMPLAINTS

Conflict of Interest – Pecuniary and Personal

Discreditable Conduct

Conduct at council and committee meetings

Conduct respecting municipal employees

Improper use of influence

Disclosure of confidential information

MUNICIPAL CONFLICT OF INTEREST ACT

1.1 The Province of Ontario endorses the following principles in relation to the duties of members of councils and of local boards under this Act:

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.

MUNICIPAL CONFLICT OF INTEREST ACT

Duty of Member

Section 5 (1): Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- ▶ Shall disclose the interest and the general nature thereof;
- ▶ Shall not take part in the discussion of or vote on any question in respect of the matter; and
- ▶ Shall not attempt in any way whether before, during or after the meeting to influence the voting.

“INDIRECT” & “DEEMED” PECUNIARY INTERESTS

- Member has an indirect pecuniary interest if:
 1. The Member is a shareholder, director or senior officer of a corporation that does not offer its securities to the public (Private Company);
 2. The Member has a controlling interest in or is a director or senior officer of a corporation that offers its securities to the public (Public Company);
 3. The Member is a member of a body that has a pecuniary interest in the matter; or
 4. 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.
- The pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall be deemed to be also the pecuniary interest of the Member.

Note: siblings not included in the list

MCIA s. 4 EXCEPTIONS

Section 5 and 5.2 do not apply to certain pecuniary interests, including:

- ▶ In respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member maybe entitled
- ▶ By reason of the member having a pecuniary interest which is an interest in common with electors generally*
- ▶ By reason of an interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member

* "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

COLLINGWOOD INQUIRY

- ▶ Section 274 of *Municipal Act, 2001* – Investigation by Judge
- ▶ Investigate breach of trust, inquire into any matter connected to good government or conduct of any part of the public business
- ▶ Collingwood Inquiry - Justice Marrocco's Report
- ▶ Findings on two multi-million dollar transactions (sale of power company and dome over facilities) summarized as: *undisclosed conflicts, unfair procurements, and lack of transparency stained both transactions, leading to troubling concerns*
- ▶ 306 recommendations in almost 1,000 pages

COLLINGWOOD INQUIRY

Significantly enhanced role for Integrity Commissioner (5-year term)

Councillors to annually disclose all private financial interests, in a manner similar to provincial and federal elected officials

Conflict of interest and Codes of Conduct applicable to staff

Expanded provisions on gifts, favours, benefits, hospitality and trips, disclosure of confidential information

Rules restricting former Councillors and staff from accepting employment or lobbying (1 year)

New, much broader definition of “family”

COLLINGWOOD INQUIRY

Refining roles of Mayor and CAO (6-year term)

Mayor not able to bind municipality and clear separation between elected representatives and impartial public service

84 recommendations on procurement of goods and services (competitive, open, honest)

Council's role to be minimal in procurement

Stronger rules for lobbyists (36 recommendations)

Introduction of “disqualifying” and “non-disqualifying” interests

THANK YOU AND
QUESTIONS