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The Cost of Not Complying with the
Municipal Conflict of Interest Act
&
The Role of the Integrity
Commissioner



Overview

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Overview

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Overview

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The Principles of the MCI



Introduction to the MCIA:

- *Municipal Conflict of Interest Act (“MCIA”)*
- Originally enacted in 1972 to codify provisions contained in previous versions of the *Municipal Act*
- Applies to municipal members of council or local boards
- Imposes statutory burdens on municipal councilors and board members to behave in a manner free from pecuniary conflicts of interest



MCIA: Principles

- Section 1.1 sets out principles, endorsed by the Province of Ontario, in relation to the duties of members of councils and local boards
- The principles guide interpretation and application of the Act:



MCIA: Principles

- 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.
- 4. There is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise.



What is a Pecuniary Interest



“pecuniary interest”...

The Term “pecuniary interest” is not defined in the MClA, however, the courts have interpreted it to mean “a financial interest, an interest related to or involving money”:

see Mondoux v. Tuchenhagen (2010), 107 OR (3d) 675, 79 MPLR (4th) 1 (Ont SCJ) at para 31.



Your Obligations When You Have a Pecuniary Interest



the *MCI*A says.....

- You must declare your pecuniary interest; &
- You must not influence consideration of the matter before, during or after the meeting



How do I declare a conflict/pecuniary interest?

- Conflicts of interest **MUST** be declared in writing
- Best practice:
 - When the agenda is circulated – declare right away
 - At the meeting – declare as soon as you believe you are in a conflict
 - Your municipality will have a policy or protocol about how to declare
- If you miss a meeting where there was a matter you had a conflict with declare prior to the start of the next meeting



How do I declare a conflict/pecuniary interest?

- Written declarations should include ALL known pecuniary interests:
 - Inquiry resulted in a finding that the Councillor had a pecuniary interest when he participated in a matter
 - Declared on two matters (spouse; member of body)
 - Did not declare on direct (catering)
 - Litigated Declaration re multiple issues on agenda
- Important that declarations clearly identify the interest



It is not a bad thing to have and declare a conflict.... Remember not to influence

- The term “influence” is not defined in the *MCI*
- It has not been litigated prior to 2019 – Patrie matter in Elliot Lake
 - Influenced another Councillor
 - An officer/employee of the City
- It will be considered broadly



The Cost of Not Complying with the MCIA



I have been elected to make decisions, why does this apply to me...

- The *Municipal Conflict of Interest Act (MCI/A)* applies to prohibit Members of Council from taking part in any discussion or vote at any meeting and from attempting to influence the vote on any matters in which the Member has a direct or indirect ***pecuniary interest***.



I have been elected to make decisions, why does this apply to me...

- The *(MCIA)* new section 1.1 makes it clear that the changes are designed to encourage Integrity, Independence and Transparency.
- It indicates that Members are expected to perform in a manner that bears “the closest scrutiny”.



Complaint Process – THIS IS A GAME CHANGER

AFTER MARCH 1, 2019, COMPLAINTS ARE FREE!!

- Complaints are made to the Integrity Commissioner
- Complaints are to be made within 6 weeks of when the complainant became aware of the breach – they must swear and affidavit confirming this
- Once a complaint is made, it must be investigated by the Integrity Commissioner
 - Funded by the Municipality



Complaint Process – THIS IS A GAME CHANGER

If the Integrity Commissioner determines that a breach has occurred, they are encouraged by the legislation to prosecute the matter in the Superior Court

- This litigation on behalf of the Integrity Commissioner is funded by the Municipality
- The Counsellor may have to fund their own defence
- The successful party is typically awarded “costs” by the Court

\$\$ THIS MAY HAVE MAJOR FINANCIAL IMPACT ON COUNCILLORS \$\$
\$\$ FOUND IN BREACH OF THE ACT \$\$



Complaint Process – THIS IS A GAME CHANGER

If the Integrity Commissioner determines that a breach has occurred and they decide NOT to prosecute the matter in Court, they MUST publish written reasons why they have made the decision not to go to Court.

- This provides some discretion where there are good reasons that the conflict was “innocent” or the Councillor was diligent in attempting to determine a conflict.



What Does this mean for My Municipality

- We predict that most municipalities WILL experience one or more complaints during this term of Council.
- We are concerned that “experienced” Members may continue a course of action where they have not previously been challenged.
- As indicated, investigations have cost between \$8,000.00 and \$180,000.00.
- Litigation in Superior Court will increase this cost.
- It will be prudent to budget for investigations by developing an appropriate Reserve Fund.



What Does this mean for Me as a Councillor

- First and above all, *before* participating in an issue, CONSIDER WHETHER YOU MAY HAVE A CONFLICT
- PLEASE NOTE - It is NOT a bad thing to have or to declare a conflict
- When you have a conflict you are prohibited from influencing the vote Before, During or After consideration of the matter.
- Get Advice
- Tell the Integrity Commissioner the Whole Story when seeking advice



Significant costs to municipality and Member

- City of Elliot Lake – 2018 to 2022 = \$1,450,923
 - Cost award \$89,000 re: Patrie
- Brudenell, Lyndoch and Raglan \$300,000+ incl. OHSA
 - Cost awards \$42,000+ re: Budarick
- Town of Espanola VanAlstine Matter \$339,459.05 (2 IC code inquiries 1 MCIA matter/Legal for Court costs)



What About False Complaints?

- We have developed an Integrity Commissioner Protocol that is passed by Municipalities and governs the process of advising and investigating on *MCI*A matters.
- We have included the right of a Municipality to seek to recover its costs from a vexatious complainant
 - This would mean the Municipality suing the Complainant, likely in Small Claims Court.



BREAK



How do You Know if You Have a Pecuniary Interest



Direct Conflict of Interest

- The Member has a personal “pecuniary interest” in the matter being considered by Council, Committee of Council or Local Board.
 - Personal financial gain (positive)
 - Personal financial loss (negative)
- NOTE: There is no threshold for quantum



Indirect Conflict of Interest

- *Section 2 of the MCI*
- *2 For the purposes of this Act, a Member has an indirect pecuniary interest in any matter in which the Council or Local Board, as the case may be, is concerned, if,*
- *The Member or his nominee,*
- *is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,*
- *Has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or*
- *Is a Member of a body,*
- *that has a pecuniary interest in the matter ; or*



Indirect Conflict of Interest

- *Section 2 of the MCI Act continued.....*

(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



Deemed Conflict of Interest

- *Section 3 of the MCI*
- *Interest of certain persons deemed that of Member*

For the purposes of this 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.



Exemptions...Tricky & Misunderstood

- *Section 4 of the MCI*
- *a) as a user of any public utility service supplied to the Member by the Municipality or Local Board in like manner and subject to the like conditions as are applicable in the case of persons who are not Members;*
- *(b) by reason of the Member being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the Municipality or Local Board;*
- *(c) by reason of the Member purchasing or owning a debenture of the Municipality or Local Board;*



Exemptions...Tricky & Misunderstood

- *Section 4 of the MClA*
- *(d) by reason of the member having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to the member in like manner as such a deposit is or may be returnable to all other electors;*
- *(e) by reason of having an interest in any property affected by a work under the Drainage Act or by a work under a regulation made under Part XII of the Municipal Act, 2001 or Part IX of the City of Toronto Act, 2006, as the case may be, relating to local improvements;*
- *(f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the Assessment Act;*



Exemptions...Tricky & Misunderstood

- *(g) by reason of the Member being eligible for election or appointment to fill a vacancy, office or position in the Council or Local Board when the Council or Local Board is empowered or required by any general or special Act to fill such vacancy, office or position;*
- *(h) by reason only of the Member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the Municipality or Local Board or by reason only of the Member being a Member of a board, commission, or other body as an appointee of a Council or Local Board;*



Exemptions...Tricky & Misunderstood

- *(i) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the Member may be entitled by reason of being a Member or as a Member of a volunteer fire brigade, as the case may be;*
- *(j) by reason of the Member having a pecuniary interest which is an interest in common with electors generally; or*
- *(k) by reason only of an interest of the Member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the Member. R.S.O. 1990, c. M.50, s. 4; 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (1).*



Exemptions...Tricky & Misunderstood

Exemptions Take-Away...

**GET ADVICE – THAT IS WHY YOU HAVE AN INTEGRITY
COMMISSIONER**



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What about quorum?



What about quorum?

- if a meeting starts with quorum and the number of Members declaring a conflict reduces the number below that of quorum the remaining Members can still debate and decide on the matter
- Unless the number of remaining members is one (1) and then only a judge can decide
 - United Townships of Head Clara & Maria
 - Laurentian Hills



Role of the Integrity Commissioner



Integrity Commissioner

- An Integrity Commissioner is responsible for the following:
 1. The application of the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards.
 2. The application of any procedures, rules and policies of the Municipality and Local Boards governing the ethical behaviour of Members of Council and of Local Boards
 3. The application of sections 5, 5.1 [written declarations] and 5.2 [use of influence] of the Municipal Conflict of Interest Act to Members of Council and of Local Boards.
 4. Requests from Members of Council and of Local Boards for advice respecting their obligations under the Code of Conduct applicable to the Member.



Integrity Commissioner

..... continued:

5. Requests from Members of Council and of Local Boards for advice respecting their obligations under a procedure, rule or policy of the Municipality or of the Local Board, as the case may be, governing the ethical behaviour of Members.

6. Requests from Members of Council and of Local Boards for advice respecting their obligations under the Municipal Conflict of Interest Act.

7. The provision of educational information to Members of Council, Members of Local Boards, the Municipality and the public about the Municipality's Codes of Conduct for Members of Council and Members of Local Boards and about the Municipal Conflict of Interest Act. 2017, c. 10, Sched. 1, s. 19 (1).



Integrity Commissioner

Dual Purpose Role - Members

- Advisory Role; and
- Investigative/Enforcement Role;

(Paid for by the Municipality)



Advice

- 223.3(1)(4, 5 &6)
 - Integrity Commissioner can advise Members with respect to their obligations under the Code of Conduct;
 - Integrity Commissioner can advise Members with respect to their obligations under other ethics related procedures, policies and by-laws
 - Integrity Commissioner can advise Members with respect to their obligations pursuant to the Municipal Conflict of Interest Act



Advice continued....

- Requests for Advice must be in Writing
- Advice from Integrity Commissioner shall be provided in writing
- This process is confidential
- Municipalities are wise to decide how the seeking of advice will be administered and funded
 - Many options exist
 - Individual budgets
 - Limit on spending
 - Personal expense after a cap



Advice continued....

- Advice from an Integrity Commissioner needs to be timely. Often an issue will appear on an agenda and a Councillor will need advice before the meeting.
- Some more complex questions may require longer. Develop a process to defer matters where Councillors are seeking advice.



Public Education

- 223.3(1)(7)
- Integrity Commissioners can provide educational information with respect to *MClA*, Codes of Conduct and related policies, procedures and By-Laws to Members, the Municipality and Members of the public
- If the Integrity Commissioner is providing education about questions received, they can summarize the question but may not reveal confidential information



Investigations/Inquiry

- Integrity Commissioner has the power to hold an inquiry and has the authorities provided by sections 33 and 34 of the *Public Inquiries Act, 2009*.
- Includes
 - Power to hold a hearing
 - Power to compel testimony under oath or production of documents
- Integrity Commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers things or property belonging to or used by the Municipality



The Bottom Line...

- Consideration must be given by Council to budgeting for the pending cost of this new regime;
- The investigations that we have been involved in over the last 2 years have cost between \$8,000 and \$120,000;
- The expense is incurred by Municipality both for Code of Conduct and *MCIA* inquiries.



The Bottom Line...

- Impacts to Municipal Budgets
 - Advice – set limits
 - Public Education
 - Investigations
- Impacts to Personal Finances
 - Loss of Section 448 protection
 - Litigation cost
 - Payback of Benefit





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