

Office of the Integrity Commissioner  
Town of Gravenhurst  
Information Bulletin

---

**DATE:** July 18, 2019  
**TO:** Mayor and Members of Council  
**FROM:** Suzanne Craig, Integrity Commissioner  
**RE:** **Municipal Conflict of Interest Rules**

---

I have prepared this memorandum to help Members of Council understand their obligations under the [Municipal Conflict of Interest Act](#) (“MCIA”) and to clarify some of the information provided at the Tuesday June 25, 2019 Council Code of Conduct Information session. Relevant excerpts of the MCIA are set out in Appendix “A”.

**Purpose of the MCIA**

The MCIA provides a legislative framework for Members of Council and Local Boards to identify and disclose their own personal pecuniary interest in any matter being considered at a meeting.

**Identifying and Disclosing Personal Pecuniary Interests under the MCIA**

Members should follow this analysis when assessing whether a personal pecuniary interest exists, whether to declare it, and how to handle the declaration process. A Member’s declaration of office leaves no doubt that the obligation to comply with the requirements of the statute is a personal one. A Member may seek out advice from the Integrity Commissioner to assist in making their decision regarding whether they should disclose a personal pecuniary interest. A Member may also consider obtaining independent legal advice to assist them in making their personal decision.

**(1) Do you have a direct, indirect or deemed pecuniary interest as defined under the MCIA?**

A pecuniary interest can be direct, indirect, or deemed.

A “pecuniary interest” is not defined in the MCIA but is generally considered a personal financial/monetary interest (whether positive or negative) in a matter that is subject of consideration at a meeting.

A “meeting” includes any regular, special, committee or other meeting (including Committee of the Whole).

Office of the Integrity Commissioner  
Town of Gravenhurst  
Information Bulletin

---

The MCIA identifies a person with an “indirect pecuniary interest” if the Member,  
(a) is a shareholder in, or a director or senior officer of, a corporation<sup>1</sup>, has a controlling interest in or is a director or senior officer of, a corporation<sup>2</sup>, and is a member of a body, that has a pecuniary interest in the matter; or  
(b) is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

In addition, a Member may be “deemed” to have a pecuniary interest if the parent, spouse, or child of the Member, if known to the Member, has a pecuniary interest.

**(2) If yes, are there any exceptions from the requirement to declare a personal pecuniary interest?**

A Member who has a personal pecuniary interest may be exempt from the requirement to declare such interest if the Member, for example:

- is eligible for election or appointment to fill a vacancy, office or position on a Committee or Local Board of the municipality;
- is a director or senior officer of a corporation incorporated for the purpose of carrying on business for the municipality;
- may be entitled to an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit;
- has a pecuniary interest which is an interest in common with electors generally; or
- has an interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the Member.

Please see section 4 of the MCIA for the full list of exceptions.

**(3) What must you do if you identify a personal pecuniary interest?**

Where a Member has identified a direct, indirect or deemed personal pecuniary interest that comes before a meeting of Council or Local Board, the Member who is present at the meeting is required to:

1. Verbally disclose the pecuniary interest prior to the matter being considered at the meeting;
2. Not take part in the discussion of, or vote on any question in respect of the matter; and
3. Not in any way attempt before, during or after the meeting to influence the voting on any question;
4. If the meeting is closed under section 239 of the *Municipal Act*, leave the meeting.

If the Member is absent from the meeting, the Member must take the above steps 1 to 3 at the first meeting attended by the Member after the meeting referred to above.

---

<sup>1</sup> A corporation that does not offer its securities to the public.

<sup>2</sup> A corporation that offers its securities to the public.

Office of the Integrity Commissioner  
Town of Gravenhurst  
Information Bulletin

---

The MCIA imposes obligations on a Member where she or he has an actual, perceived, or potential conflict of interest. A Member is personally responsible for identifying whether they have a pecuniary interest in a matter being discussed at a Council or Committee meeting. A Member is under no statutory or Code of Conduct obligation to identify a potential conflict of interest that another Member may have in a matter. The determinant for declaring a conflict of interest under the MCIA is not whether the personal interest will actually affect the way the Member will behave in that role, but rather if a reasonable elector, given all the information about the Member's circumstances, would consider that the interest would influence the Member's action and decision on the question.

In summary, when a Member has a pecuniary interest to which no exception applies:

- Declare the conflict and disclose general nature of interest before discussion occurs
- Do **not** participate in discussions
- Do **not** attempt to influence
- Do **not** vote
- If closed meeting, leave the meeting
- If absent, declare at next meeting

**(4) What are some best practices that a Member should follow when deciding on whether she or he has a personal pecuniary interest.**

Although the following are not required under the MCIA, Members should consider adopting the following best practices:

- Proactively determine whether you or your family have an interest which could pose a conflict and document those efforts (i.e. a due diligence letter)
- Carefully review meeting Agendas to become aware of any matter before it comes up
- Discuss potential conflicts of interest with Integrity Commissioner
- Consider seeking independent legal advice
- Carefully review Minutes to ensure declaration of conflict and general nature of interest has been documented in proper location in the Minutes (and in the public registry as of March 2019)
- Make declarations at all meetings, including committees (as the matter may be considered at more than one meeting)
- After declaring to have a pecuniary interest and leaving the meeting room of a closed meeting, ensure the departure is documented in Minutes
- If the matter is being discussed in public session, it is a good practice to leave the meeting room as it visibly demonstrates that the Member is making no attempt to influence the discussion or the outcome of the voting.

---

**(5) How is a Code Conflict different from a MCIA Conflict: Code Contravention -Improper Use of Influence:**

Several Ontario municipalities, including the Town of Gravenhurst, have enacted Codes of Conduct that include (Improper Use of) Influence rules that prohibit a member of council from using the influence of his or her office for any purpose other than for the exercise of his or her official duties. Examples of prohibited conduct under Improper Use of Influence rules include the use or the perception of using one's status as a member of Council to improperly influence the decision of another person (for example, planning staff) to the private advantage of oneself, or family members or business associates or holding out of the prospect of promise of future advantage through a member's supposed influence within Council in return for present actions or inaction.<sup>3</sup>

Whether a Member of Council is interacting with other Members of Council, Town staff, Committee Members or the public, the intent of the Code provision is to prohibit behavior or actions that would unduly influence or be perceived to influence a government decision to the advantage of the Member or third parties. This includes "bias", "pre-judgement" and "closed mindedness". When considering whether or not a Code conflict exists, it is important to consider whether there are any grounds for a reasonable person to think that one exists." This prohibition should be read together with the general principles of the Code.

It is a basic premise of decision-making at the municipal level that Council decisions be fair and that they appear to be fair to the informed and reasonable observer. If actual or apprehended bias arises from a Councillor's words or actions, then the elected official has exceeded her or his jurisdiction and should disqualify themselves. Impartiality is a statement of mind in which the Councillor is disinterested in the outcome and is open to persuasion by the staff reports and public submissions and all information that comes before Committees and Council. Bias denotes a state of mind that is in some way predisposed to a particular result or that is closed in regard to a particular issue.<sup>4</sup>

In *Old St. Boniface Residents Assn Inc v Winnipeg (City)*, Sopinka J, writing for the majority, commented on the meaning of "conflict of interest", as understood under common law:

I would distinguish between a case of partiality by reason of pre-judgment on the one hand and by reason of personal interest on the other. It is apparent ... that some degree of pre-judgment is inherent in the role of a councillor. That is not the case in respect of interest. There is nothing inherent in the hybrid functions, political, legislative or otherwise, of municipal councillors that would make it mandatory or desirable to excuse

---

<sup>3</sup> Lorne Sossin, Formerly Dean of Osgoode Hall Law School, 2011.

<sup>4</sup> *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484 (S.C.C.) at paras 91, 99, 104-105

Office of the Integrity Commissioner  
Town of Gravenhurst  
Information Bulletin

---

them from the requirement that they refrain from dealing with matters in respect of which they have a personal or other interest. It is not part of the job description that municipal councillors be personally interested in matters that come before them beyond the interest that they have in common with the other citizens in the municipality. Where such an interest is found, both at common law and by statute, a member of Council is disqualified if the interest is so related to the exercise of public duty that a reasonably well-informed person would conclude that the interest might influence the exercise of that duty. This is commonly referred to as a conflict of interest.

Members are required to be free from bias and prejudice in respect of the decisions that are part of a Member's political and legislative duties. When investigating a Code of Conduct complaint, the Integrity Commissioner will use the **reasonable apprehension of bias** test. The test often used to explain the existence of a reasonable apprehension of bias is that set out by the Grandpré in *Committee for Justice & Liberty v. Canada (National Energy Board)* (1976), [1978] 1 S.C.R. 369 (S.C.C.), at 394-395:

...the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information.... [T]hat test is 'what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly?'

Rule 2.3 of the Code requires Members to avoid the improper use of influence and prohibits them from extending preferential treatment to individuals or organizations in which they have a **non-pecuniary** interest:

A Member shall not use his or her position to seek to influence a decision of another person or council to the private advantage or non-pecuniary interest of themselves, their parents, children or grandchildren, spouse, or friends or associates, or for the purpose of creating a disadvantage to another person or for providing an advantage to themselves

The Code states that it is important to consider whether there are any grounds for a reasonable person to think that a conflict exists.

For example, if a Member is being investigated by the Integrity Commissioner for an allegation of MCIA or Code conflict, the Member's executive position on a ratepayers' organization may not trigger a MCIA conflict but could reasonably be perceived to grant preferential treatment towards the position of the group to which the Member belongs. In such a circumstance, the Integrity Commissioner will likely require the Member to step down from her or his executive position.

## **Concluding Remarks**

A number of important changes to the MCIA came into force on March 1, 2019 including, for example, an explicit set of governing principles, an exception to the requirement to leave meetings when the matter being discussed relates to an Integrity Commissioner's recommendation for financial penalties, creation of a public registry of written statements of the interest and its general nature...

Members are always encouraged to seek clarification on their MCIA and Code obligations from the Integrity Commissioner or by obtaining independent legal advice.

A Code of Conduct complaint will almost always give rise to speculation about whether an investigation is being conducted and what if any findings the Integrity Commissioner has made. Parties to a Code complaint are always advised by the Integrity Commissioner to refrain from disclosing any complaint investigation communications with third parties and failure to adhere to the Integrity Commissioner's instructions on confidentiality may be considered in her final determination.

If a Code complaint is dismissed by the Integrity Commissioner or the Integrity Commissioner deems there to be no longer grounds to continue the investigation or the matter is otherwise settled informally between the parties with the participation of the Integrity Commissioner, no report will go to Council. This is a decision solely of the Integrity Commissioner.

An informal resolution of a Code complaint may mean that the Integrity Commissioner has made recommendations to the parties for a negotiated resolution of the matter without an investigation. This does not mean that there has not been a Code of Conduct contravention, but rather that the Integrity Commissioner has advised of actions that the Member make take to conclude the matter. Only following an investigation will the Integrity Commissioner bring a report to Council.

If you have any questions, please contact:

Suzanne Craig

Office of the Integrity Commissioner

[SuzanneCraigIntegrity@gmail.com](mailto:SuzanneCraigIntegrity@gmail.com)

---

---

**APPENDIX "A"**

**RELEVANT EXCERPTS FROM THE MUNICIPAL CONFLICT OF INTEREST ACT**

Definitions

1 In this Act,

"child" means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;

"controlling interest" means the interest that a person has in a corporation when the person beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding;

...

"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;

...

"meeting" includes any regular, special, committee or other meeting of a council or local board, as the case may be; ("réunion")

...

"parent" means a person who has demonstrated a settled intention to treat a child as a member of his or her family;

...

"spouse" means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage

...

Office of the Integrity Commissioner  
Town of Gravenhurst  
Information Bulletin

---

Indirect pecuniary interest

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,

(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.

Interest of certain persons deemed that of member

3 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.

Exceptions

Where s. 5 does not apply

4 Section 5 does not apply to a pecuniary interest in any matter that a member may have,

(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;

Office of the Integrity Commissioner  
Town of Gravenhurst  
Information Bulletin

---

(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;

(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;

(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.

#### Duty of Member

#### When present at meeting at which matter considered

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,

(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

Office of the Integrity Commissioner  
Town of Gravenhurst  
Information Bulletin

---

(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

Where member to leave closed meeting

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration.

When absent from meeting at which matter considered

(3) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1).

Record of Disclosure

Disclosure to be recorded in minutes

6 (1) Every declaration of interest and the general nature thereof made under section 5 shall, where the meeting is open to the public, be recorded in the minutes of the meeting by the clerk of the municipality or secretary of the committee or local board, as the case may be.

Idem

(2) Every declaration of interest made under section 5, but not the general nature of that interest, shall, where the meeting is not open to the public, be recorded in the minutes of the next meeting that is open to the public.

...