



**City of Hamilton**  
**SELECTION COMMITTEE**

**Meeting #:** 23-003  
**Date:** June 5, 2023  
**Time:** 9:30 a.m.  
**Location:** Room 264, 2nd Floor, City Hall (hybrid)  
(RM)  
71 Main Street West

Loren Kolar, Legislative Coordinator (905) 546-2424 ext. 2604

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**Pages**

**4. COMMUNICATIONS**

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June 1, 2023

To: City of Hamilton  
Members of the Selection Committee  
For Agencies, Boards and Sub-Committees

Re: Conflicts of Interest and Personal Relations

We are providing this memorandum in response to a motion approved by Council on May 24, 2023:

2. Requesting a Written Response from the Integrity Commissioner (Item 4.2)

That a written document be presented to the Selection Committee from the Integrity Commissioner regarding Conflicts of Interest and Personal Relations that need to be considered in fulfilling the role of members of the Selection Committee.

We understand that members of the Selection Committee are seeking guidance on avoiding conflicts of interest which might arise in consideration of the relationships that may exist between themselves and candidates being considered for appointment.

Our guidance is provided with reference to both the *Municipal Conflict of Interest Act* (MCIA) and the Code of Conduct, which taken together address your responsibility to avoid statutory and non-statutory conflicts of interests. In other words Committee members have the responsibility to avoid conflicts that would be established under the MCIA, and those established at common law.

The Starting Point - *Municipal Conflict of Interest Act* (MCIA)

As members of Council you are subject to subsections 5(1) and 5(2) of the *Municipal Conflict of Interest Act* (MCIA). These sections are triggered by the presence of a pecuniary interest that you may have directly or indirectly in a matter.

Where applicable, those sections require that you declare an interest and recuse yourself, meaning that you cannot take part in discussions or voting on the matter, or attempt in any way before, during or after a meeting, to influence the vote on the matter. Those sections also require you to disclose the general nature of the interest, and where the matter under consideration takes place in a forum not open to the public, to not be present.

Section 3 of the MCIA provides that “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.”

This 'deeming' provision in the MCI does not include 'siblings' within the defined list of family members to whom it applies. As noted below the prevailing view, underscored in recent municipal inquiries, is that the pecuniary interests of siblings must also be considered as giving rise to a conflict of interest.

Code of Conduct or 'Common Law' Conflict of Interest  
(Apparent and Perceived Conflicts of Interest)

In addition to the question of pecuniary interests under the MCI, and the narrow list of persons from whom direct and indirect interests are attributed to you, there is the issue of when a relationship can give rise to an apparent or perceived conflict of interest even though the MCI may not be triggered.

Such conflicts of interest (sometimes referred to as non-pecuniary interests) fall within a category of conflicts of interest established by the common law. These conflicts of interest are variously known as 'apparent' or 'perceived' conflicts of interest and they are typically incorporated into municipal codes of conduct. In the case of the City of Hamilton's code, the relevant provisions state as follows:

2(2) every Member shall be committed to performing his or her functions with integrity and to avoiding the improper use of the influence of his or her office, and conflicts of interest, both apparent and real;

and

10(2)(a) No Member shall use her or his status as a Member of Council to influence, or try to influence, improperly, any action or decision of another person or entity to the private advantage of:

- (i) the Member;
  - (ii) any member of the Member's family;
  - (iii) any City employee;
  - (iv) any friend, or business or other associate;
- or attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of constituents as part of their official duties.

Members are required by the common law - and expected by their constituents - to avoid apparent or perceived conflicts of interest both by arranging their business affairs so as to preclude such conflicts from arising, and by disclosing and potentially stepping away from participation in matters where there may be an apparent or perceived conflict.

The test for perceiving if there is an apparent conflict of interest is an objective test:

“Would a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councillor as likely to influence that councillor’s action and decision on the question...”

(Re Mel Lastman and The Queen in Right of Ontario.)

An apparent conflict of interest “...exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists.”

(Stevens v. Canada (Attorney General) 2004 FC 1746, reversed on other grounds)

As such, where a relationship exists between the member and a candidate, the nature of that relationship is an important consideration. Examples we reference in orientation training as raising red flags that a disqualifying interest might exist (resulting in a conflict of interest, should the member participate) include:

A very close personal friendship, such as a close family friend, business associate or confidante;

The close personal friend or business associate of a Member’s parent, child, spouse (significant other), or sibling;

The Member’s landlord, tenant, employer, employee, or someone with a similar relationship with a Member’s family member.

The MCIA acknowledges that “[t]here 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.

It will not be the case, then, that casual relationships, perhaps those gleaned through professional connections or more broadly in the community, will necessarily trigger your disqualification from considering the merits of an application for appointment to a City of Hamilton Committee (unless the MCIA specifically identifies the relationship as noted above). As members of Council it is expected that you would have extensive connections in the community, and it is not unreasonable to think that some of those ‘connections’ would be in competition with each other as candidates for appointment.

When however is a connection too close?

It may be helpful to understand the line at which you should recuse from a candidacy discussion in terms of your obligation from time to time to provide procedural fairness and conduct yourself with impartiality. Where the rights, privileges or interest of an individual are to be determined by a Council decision (as might be the case when considering an Integrity Commissioner’s report about a local board member), you are obliged to avoid a reasonable apprehension of bias, the test for which is similar to the ‘reasonable person test’ used to determine conflicts of interest:

a reasonable apprehension of bias exists when a reasonable person, viewing the matter realistically and practically, and having thought the matter through – would conclude that it is more likely than not that the Member, whether consciously or unconsciously, would not be able to render a fair decision on the matter.

Determining whether you have a disqualifying interest, or could be perceived to be biased, can be a difficult task. This is why Integrity Commissioner’s advice-giving is the most important function of the office. Where a member is unable to determine on their own whether they would be in breach of the MCI, or whether their continued engagement would trigger an apparent conflict of interest, they may seek definitive, confidential advice from the Integrity Commissioner who will make the assessment realistically and practically, whether the interest is sufficient to make the rendering of a fair decision impossible.

Where the circumstances arise, members are encouraged to reach out to us for their individual advice should there be facts which warrant closer consideration.

Trusting this is responsive to your request,

Principles *Integrity*,  
Integrity Commissioner for the City of Hamilton