

City of Hamilton Local Board Code of Conduct

Local Board
Integrity Framework Virtual Training
June 7, 2022

Principles *Integrity*

Integrity Commissioner for the City of Hamilton
Jeffrey A. Abrams & Janice Atwood-Petkovski

What we intend to cover today...

- ▶ Introductions
- ▶ Code of Conduct
- ▶ Conflicts of Interest
- ▶ Conduct and Decorum
- ▶ Scenarios
- ▶ Discussion

Part A

Introduction



Principles *Integrity*



Co-Principals

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Municipal Experts

Solutions Oriented to Support the Public Interest

Independent - Impartial - Collaborative

Credible - Respected

Experienced in governance, law, procedure, and ethics

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an Integrity Commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

Code of Conduct for Local Boards

- Code Guidance is an Important Aspect of Good Governance
- Local Board Codes of Conduct, and Access to an Integrity Commissioner, is Required under *Municipal Act*
- Local Boards: Established by Council, Serving a City Interest, Membership appointed by Council (some exceptions)
 - Adjudicative
 - Non-Adjudicative, includes Advisory

Purpose of a Local Board Code of Conduct

- Provides Basis for Guidance to Committee/Board Members
- Provides Framework for Ethical Accountability
- Helps Ensure the Primacy of Council

Access to Advice, Training

- *Municipal Conflict of Interest Act (MCIA)*
- Education and training on Code & MCIA
- Access to Integrity Commissioner
- Confidential, binding advice
- Independent review of complaints

Advice from Integrity Commissioner

▶ Binding Advice

In exercising his or her discretion...the judge may consider, among other matters, whether the member or former member..

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, if any, provided to the member by the Integrity Commissioner.

▶ Duty of Confidentiality

Information disclosed to Integrity Commissioner, whether for advice or during investigation, is confidential

Integrity Commissioner - Independent:

- ▶ Performing in an **independent** manner:
 - ▶ A consideration of procedural fairness
 - ▶ Structural Conditions within which decisions are made that support impartial decision-making

Such as: Freedom to set own process

- Absence of arbitrary controls
- Absence of reporting
- Security of tenure
- Access to all relevant information
- Sufficiency of funding

Part B

Code of Conduct

Code as a Guide



- A Code of Conduct is a Policy Document (“Code’ in a sense is a misnomer)
- As a Policy - to be given Broad Liberal Interpretation
- Purpose is to Support Ability of Local Boards to Support Council’s Needs
- Code acts as a Guidepost for Members

Ethical Guidepost

- Ethical conduct and behaviour are core to public confidence in government
- Political leaders are held to higher standard
- Officials carry out duties with impartiality and equality of service to all
- Private interests must not provide potential or appearance of advantage, benefit

Behavioural Guidepost

- Officials should not be disparaging of others
- Officials should keep confidences
- Officials should not be influenced, or appear to be influenced, by the receipt of gifts

Guidepost to Fair Treatment

- Procedure to review assertions of non-compliance
- Procedural Fairness to be afforded to participants
- Potential for the recommendation of sanctions

Code of Conduct Provisions - Types

Local Boards:

- Adjudicative = decides rights
- Non-adjudicative = advisory

Role of Advisory Committee

- Primacy of Council
- Role of committees: special expertise, wider view, balance of inputs, information gathering
- Committees provide recommendations,
- Some local boards oversee management (BIA)
- Council debates, decides
- Seek guidance from staff, not Council

Role of Adjudicative Body

- Hear, consider all relevant information
- May have special expertise
- Make reasoned decisions based on facts
- No role for Council
- Seek guidance from staff, not members of Council

Specific Questions from Feedback

- Members ability to advocate on an issue
- Cannot appear before own body
- When advocating, should not hold out status as member of body
- Questions pertaining to body should be referred: to City staff or to Chair as appropriate
- Complaint Protocol

Advisory Committee Members' Code of Conduct Framework and Guiding Principles

- Broad, Purposeful Interpretation
- Fulfill mandate
- Respect due process and role of Chair
- Demonstrate respect for Members, Council, staff and public
- Due diligence preparing

Advisory Committee Members' Code of Conduct Framework and Guiding Principles

- Professionalism, transparency, accountability
- Adhere to by-laws, policies, procedures
- Contribute constructively

Advisory Committee Members' Code of Conduct Framework and Guiding Principles

- Avoid bias, perception of preferential treatment
- Avoid real or apparent conflict of interest
- Avoid appearance of improper influence

There's No Big Secret to Compliance - Civility, Decorum, Respect

- Practice the “Golden Rule”
- Chair ~ Procedure By-law
- Take advice from Clerk
- Accommodation
- Polite & firm
- Recess
- Respect the institution

Model Code of Conduct

General Introduction, Framework and Interpretation	Guiding Principles
Rule 1: Avoidance of Conflicts*	Rule 2: Gifts, Benefits & Hospitality* (+AB)
Rule 3: Confidential Information	Rule 4: Use of City Resources
Rule 5: Election Campaigns* (+AB)	Rule 6: Improper Use of Influence
Rule 7: Business Relations	Rule 8: Member Conduct*
Rule 9: Media Communications* (+AB)	Rule 10: Respect for By-laws & Policies
Rule 11: Respectful Workplace	Rule 12: Conduct Respecting Staff
Rule 13: Reprisals and Obstructing	Rule 14: Acting on Advice of IC*
Rule 15: Adjudicative Body Rules*	Rule 16: Communications with Parties
Rule 17: Independence of Body	Complaint Protocol

Conflicts of Interest – Statute & Common law

- Municipal Conflict of Interest Act (MClA)
 - Pecuniary
 - Direct
 - Indirect
 - Deemed
- Code requirement to avoid conflicts of interest (common law concept)

Municipal Conflict of Interest Act

Key Elements:

- Applies to Pecuniary Interests
- Direct: Member's own personal financial interest
- Deemed: Direct or Indirect Interest of Parent, Child or Spouse, if known
- Indirect: Shareholder, director or senior officer of non-public corporation
- Controlling interest, director or senior officer of public corporation
- Member of a Body that has a Pecuniary Interest
- Partner, or employee of person or body with interest

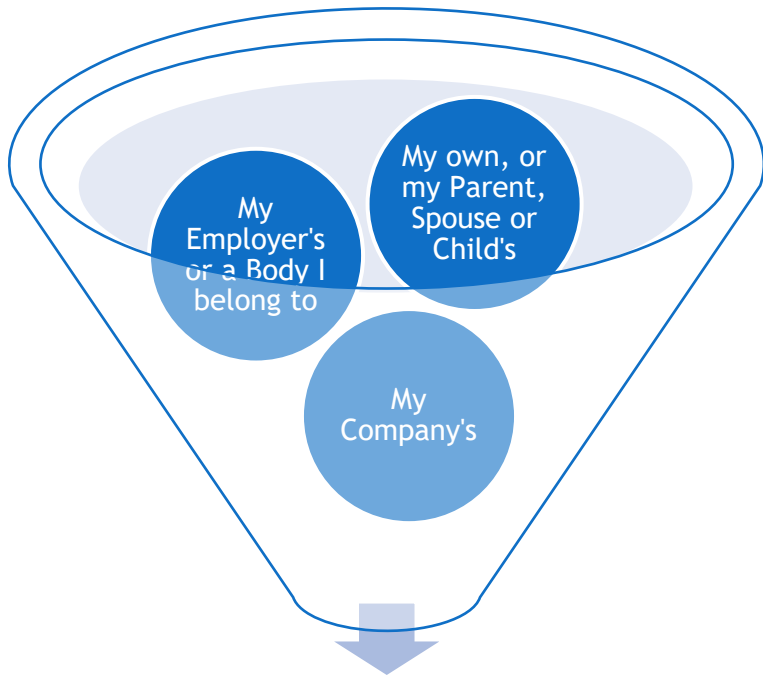
Avoidance of Conflicts of Interest

Conflict of Interest under *Municipal Conflict of Interest Act*

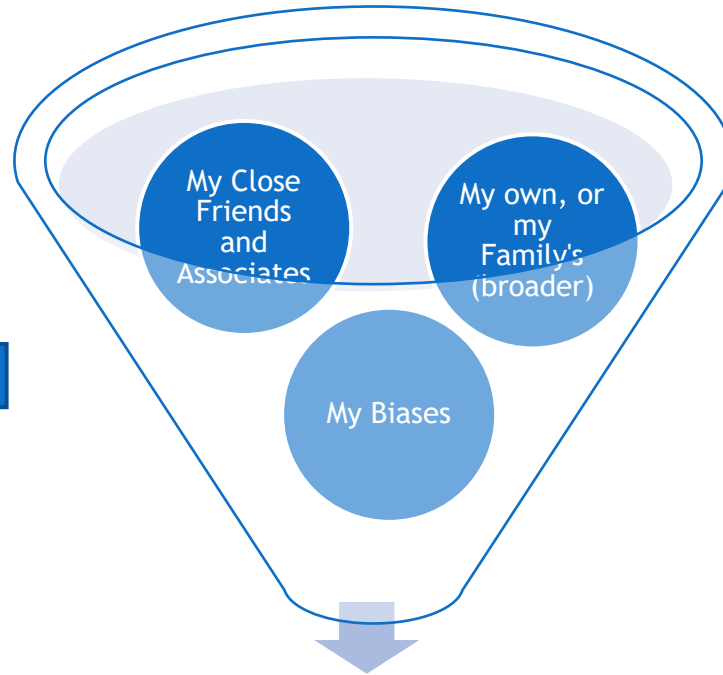
Conflict of Interest under Code of Conduct (common law concept)

= “disqualifying interest”

Disqualifying Interests



Direct, Deemed or Indirect Pecuniary Interest under MCI A



Common Law, Reasonable Person, Apparent or Perceived Interests

Avoidance of Conflicts of Interest

- May not participate when you have a disqualifying interest
- Recognizing and Dealing with Conflicts of Interest
 - Declare nature of interest (disqualifying interest) and step away
 - Do not participate, attempt to influence, vote
 - If in doubt, seek advice

Gifts, Benefits and Hospitality

- Prevent perception that member is improperly benefitting, influenced
- Advisory Committee Members:
 - Incidental mementos or tokens of appreciation
- Adjudicative Committee Members:
 - Receipt of Gift Requires Recusal

Election Campaigns

- Municipalities cannot contribute to election campaigns
- Advisory Committee Members:
 - WHILE identifying as member of a Local Board – restrictions on campaigning, fundraising
- Adjudicative Committee Members:
 - Prohibited from fundraising, endorsing or otherwise contributing to the election campaign of any person running for a seat on Council

Election Campaigns

Commentary (Rule 5)

This Code does not limit a person's right to participate fully in an electoral process so long as they do so without using their status as a Member of the local board for such purposes. For example, it would not be contrary to the Code for a person to:

- Stand for Election;*
- Contribute to an election campaign;*
- In their own name, exhibit an intention to support one party or platform over another;*
- While standing for election, indicate on their election material (without in any way suggesting endorsement) that they have served on a City of Hamilton local board amongst their other credentials and experiences.*

Member Conduct

- Appropriate Decorum at all times
- Demonstrate respect and dignity
- Maintain control of meeting proceedings
 - Dealing with critics and criticism
- Three missed meetings

Communications

- Respect for decision-making process
- Accurately communicate proceedings
- Exercise restraint in social media
- Caution with Facebook, blogs & twitter
- Follow policy (Chair take lead)

Adjudicative Boards

Gifts

- Recuse where any perception of bias or conflict of interest as a result of a gift or benefit

Adjudicative Boards

Communications with Parties

- In writing, through secretary of board or municipal staff only
- Oral communications only in presence of all parties

Adjudicative Boards

Independent Nature of Board

- Operating arm's-length from Council
- Refrain from seeking advice from Council members
- Seek advice from appropriate municipal staff

Acting on Advice of Integrity Commissioner

- written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner
 - in any subsequent consideration in the same matter,
 - as long as all the relevant facts were disclosed to the Integrity Commissioner,
 - and the Member adhered to the advice given.
- If in doubt, ask Integrity Commissioner

Contacting the Integrity Commissioner

- Requests for Advice to be in writing [subsection 223.3 (2.1)]
- Integrity Commissioner's Advice to be in writing [subsection 223.3 (2.2)]
- Assistance in Formulating the Request for Advice:
 - Email postoffice@principlesintegrity.org with your question or to set up a telephone conversation
 - Telephone (and conference facility): 647-259-8697
- Review Agendas for potential interests; request advice early

Direct Contact:

jeff@principlesintegrity.org

Telephone Option #2

janice@principlesintegrity.org

Telephone Option #3

Discussion

- Where are the ethical 'grey areas' for you?
- When might you need advice?
- Other questions -

Scenario 1

Committee of Adjustment and independence of adjudicative boards

- C/A will be dealing with an application for a minor variance. Member knows there have been issues of by-law enforcement complaints and that councillor has been involved. Should member contact councillor to discuss? What if councillor contacts member of C/A to discuss?

Scenario 2

BIA and Conflicts of Interest

- BIA Board wants to hold a street festival and some members of the BIA want to contribute to it

Scenario 3

Special Interest Bias

- You've been appointed to the Environmental Advisory Committee specifically for your expertise. The "Friends of the Hamilton Watershed", to which you belong, seeks to delegate to the advisory committee – can you participate?

Scenario 4

Representativeness

- You have been appointed to an advisory committee which was established because Council did not feel that it was adequately representative of the issues affecting a specific community. As a member of that community you understand that the representation issue is nuanced and the appointed members do not necessarily include all aspects of the broader community. What do you do to be more inclusive?