

Role of Integrity Commissioner, *Municipal Conflict of Interest Act*, and Council Code of Conduct

Presentation to
Council, Municipality of Calvin
September 26, 2023
Guy Giorno, Integrity Commissioner

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Overview

1. **Role of Integrity Commissioner**
2. **Role of Council Members**
3. *Municipal Conflict of Interest Act*
4. **Council Code of Conduct**
5. **Council-Staff Relations**

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1. Role of Integrity Commissioner

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Background

- Lawyer – conflict of interest, government ethics, law of lobbying
- Former Chair, Law of Lobbying and Ethics Committee, Canadian Bar Association
- Municipal Integrity Commissioner
- Member, Council on Governmental Ethics Laws
- “well respected as an expert in accountability and ethics law” (*Huffington Post*)
- “one of the country’s leading experts on lobbying registration law” (*The Globe and Mail*)

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Municipal Act, section 223.3

- Integrity Commissioner functions:
 - Application of Code of Conduct
 - Application of *Municipal Conflict of Interest Act*
 - Members' requests for advice
 - Educational information to Members, Municipality, public
- Nature of role:
 - Accountability officer of Municipality
 - Reporting: to Council
 - Operates independently
 - Mandated by Province but funded by each municipality

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Advice from Integrity Commissioner

- Integrity Commissioner handles:
 - Requests from members of council and local boards for advice respecting **their** obligations under codes of conduct.
 - Requests from members of council and local boards for advice respecting their obligations under a procedure, rule or policy of municipality or local board, governing ethical behaviour of members
 - Requests from members of council and local boards for advice respecting their obligations under *Municipal Conflict of Interest Act*
- Request for advice must be in writing
- Advice must be given in writing

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Written advice (more)

- Integrity Commissioner may release written advice with member's written consent
- If member releases only part of Integrity Commissioner's written advice, Commissioner may release part or all of the advice without member's consent
- Integrity Commissioner may disclose such information as in his opinion is necessary:
 - for purposes of a public meeting about MCIA complaint
 - in application to a judge under MCIA
 - in written reasons on decision whether or not to make MCIA application to a judge

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Inquiries

- Statutory right to request inquiry into alleged breach of Code of Conduct or of *Municipal Conflict of Interest Act*
- Whether to conduct inquiry lies in Integrity Commissioner's discretion
- Inquiry won't be held if subject matter more suitably covered by another legal process
- Inquiry conducted at the Municipality's expense
- Alternatives to formal Code of Conduct complaint:
 - Attempt informal resolution directly with individual
 - Voice disagreement with the conduct
 - Raise point of order/point of privilege during meeting
 - Seek recourse under other policy or law

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Costs of Integrity Commissioners

- Cost of Integrity Commissioners and inquiries borne by the municipal tax base
- Province has mandated Integrity Commissioners and Codes of Conduct but provides no additional funding
- During last Council term (2018-2022) Elliott Lake was charged \$827,904 for Integrity Commissioner services
 - Patrie Conflict of Interest case \$360,534
 - Pearce Conflict of Interest case \$263, 259
 - Other investigations \$ 77,759
 - IC reports and Council relations \$126, 353
- Source: <https://pub-elliottlake.escribemeetings.com/filestream.ashx?DocumentId=4853>

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Costs of Integrity Commissioners

- In 2022, the Municipal Manager of Brudenell, Lyndoch and Raglan (popn. 1503) reported two IC cases cost \$176,473:
 - Integrity Commissioner \$ 36,330
 - IC's investigators \$ 20,304
 - IC's lawyers \$119,839
- Source: <https://blrtownship.ca/wp-content/uploads/2022/09/Regular-meeting-revised-Apr-6-2022.pdf> [page 23]
- Many Integrity Commissioners, including some that are lawyers, hire their lawyers at municipal expense (I don't do this)

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Brampton Integrity Commissioners Annualized Amounts Paid

Commissioner	Served	Annualized Amount
Muneeza Sheikh	2019-2022	\$ 329,932
Robert Swayze	2014-2017	\$72,381
ADR Chambers	2011-2014	\$71,337
Principles Integrity	2022-2023	\$44,504
Guy Giorno	2017-2019	\$21,290
Suzanne Craig	2019	\$19,630

Source: Jessica R. Durling, *The Pointer* (February 10, 2023)

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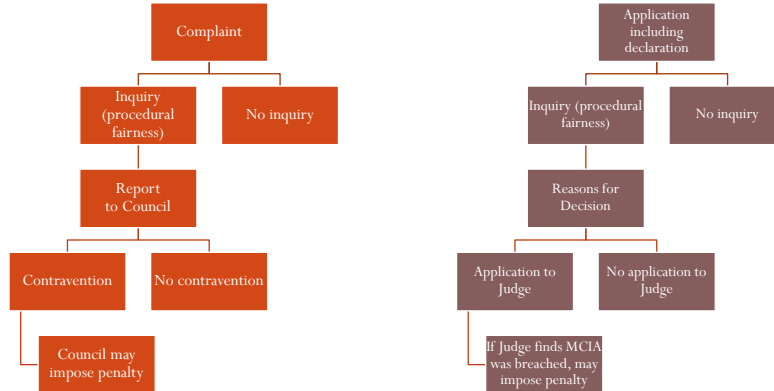
Calvin's IC Agreement: Unique Clauses

- “While the requirements of the *Municipal Act* must at all times be satisfied and upheld, Giorno undertakes to discharge his functions in a manner that is **reasonable and efficient** and that **avoids duplication and unnecessary cost**”
- “The parties recognize that an Integrity Commissioner must understand and be able to interpret and apply applicable laws. Consequently, except in the event of litigation, **Giorno and the Law Firm undertake not to ask the Municipality to pay for external legal advice to them.**”
- In the event of litigation, “Giorno will first consult with Chief Administrative Officer/Municipal Clerk about the selection of litigation counsel and the reasonableness and estimated amount of such counsel’s fees.”

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Complaints and Applications

- Alleged breach of Code of Conduct
- *Municipal Act*, s. 223.4
- Alleged breach of *Municipal Conflict of Interest Act*
- *Municipal Act*, s. 223.4.1



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To seek advice
or to contact for any reason:

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2. Role of Council Members

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Council

- Collective decision-making body
- Decisions and directions are contained in by-laws, resolutions, and minutes
 - (Technically all decisions made by by-law; hence by-law to confirm proceedings of Council at end of each meeting)
- Considers recommendations
- Exercises representative function (represents public)
- Role includes evaluating policies and programs, and ensuring accountability and transparency
- See section 224, *Municipal Act*

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Individual Council Members

- Authority is collective: belongs to Council as a whole
- Hybrid function: legislative (law-making) and representative
- Communication with public (both ways) part of role
 - Not limited to explaining what Municipality is already doing
 - Entitled to express views
 - May take “an open leadership role” on issues
- Use municipal resources only for purposes connected with discharge of Council duties or Municipality’s business

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3. *Municipal Conflict of Interest Act*

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Municipal Conflict of Interest Act: Pecuniary interest

- Concerned only with “pecuniary interest” (financial or economic interest)
- Pecuniary interest may be direct or indirect
- Direct: Member, spouse, parent or child has pecuniary interest in matter in which Council or local board is concerned
- Indirect: Any of the following has a pecuniary interest in matter in which Council or local board is concerned:
 - Employer of Member, spouse, parent or child
 - Partner of Member, spouse, parent or child
 - Body to which Member, spouse, parent or child belongs
 - Private corporation of which Member, spouse, parent or child is shareholder, director or senior officer
 - Publicly-traded company that Member, spouse, parent or child controls or of which is director or senior officer

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Municipal Conflict of Interest Act:
What to do (pecuniary interest)

1. Disclose interest prior to consideration
[recorded in minutes]
2. Do not take part in discussion or vote
3. Before, during and after, do not attempt to influence voting
4. If meeting is closed, leave meeting

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Municipal Conflict of Interest Act:
Additional steps

5. File written statement with Clerk, or secretary of committee
6. Do not attempt in any way to influence decision or recommendation of officer or employee of municipality
7. If absent from meeting, disclose conflict at first meeting when present

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Municipal Conflict of Interest Act:
Exceptions include:

- Member is user of public utility service, or is entitled to receive municipal service or benefit, on terms and conditions common to others
- Member filling vacancy, office or position on council or local board
- Member is director or senior officer of corporation incorporated to carry on business for municipality, or is appointed by council to a board, commission, or other body

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Municipal Conflict of Interest Act:
Exceptions include:

- Allowance, remuneration or benefit to which member is entitled by reason of being council member or volunteer fire fighter
- Member has pecuniary interest in common with electors generally
- Member's interest so remote or insignificant that it cannot reasonably be regarded as likely to influence the member
- Plus four other exceptions

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Municipal Conflict of Interest Act: Enforcement

- Only a judge may impose penalties for breach of MCIA
- Elector or person acting demonstrably in public interest has two options:
 - A. Apply to a judge
 - B. Apply to Integrity Commissioner – Integrity Commissioner will decide whether to apply to a judge
- Scenario A: Applicant pays (subject to cost award against losing party)
- Scenario B: Municipality pays (subject to cost award against losing party)

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Municipal Conflict of Interest Act: Enforcement

In event of contravention, judge may:

- Reprimand member or former member
- Suspend remuneration for up to 90 days
- Declare seat vacant
- Disqualify member or former member from office for up to seven years
- If contravention resulted in personal financial gain, require member or former member to make restitution to party suffering the loss, or, if party's identity is not readily ascertainable, to municipality or local board

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Municipal Conflict of Interest Act: **Reasons for discretion**

In determining penalty, judge may consider whether the member:

- Took reasonable measures to prevent contravention
- Disclosed pecuniary interest and all known facts to Integrity Commissioner in a request for advice and acted in accordance with advice, if any, provided by Commissioner
- Committed contravention through inadvertence or by reason of error in judgment made in good faith

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Council Code of Conduct covers gaps left by the MCIA

- [Section 10] “Examples of prohibited conduct are the use of one’s status to influence the decision of another person to the private advantage of oneself, one’s parents, children or spouse, or staff members friends, or associates, business or otherwise.”

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Municipal Conflict of Interest Act: Examples

- *Elliot Lake (Integrity Commissioner) v. Patrie (2023)*
 - Court application filed by Integrity Commissioner after IC's appointment had been terminated
 - Councillor repeatedly, during meetings and in discussions with other Council Members and the staff, attempted to influence decision-making on a downtown recreational project
 - One possible location was behind shopping plaza co-owned by Councillor and wife
 - Expert evidence: Location would economically benefit shopping plaza
 - Section 5 breached. Seat of Patrie (now Mayor) declared vacant; disqualified from holding municipal office for two years

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Municipal Conflict of Interest Act: Examples

- *Budarick v. Brudenell, Lyndoch and Raglan (Integrity Commissioner) (2021) (appeal 2022)*
 - Councillor's son invoiced after fire department responded to his violation of fire ban
 - Fire department appeared before Council to seek approval of its service charges
 - Councillor questioned fire department about its finances, donations, practices, procedures, and alleged money mismanagement. Questions covered who was and who was not warned about the fire ban, other people's invoices, and past issuance of unapproved invoices
 - Section 5 breached. Seat declared vacant. Upheld on appeal.

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Municipal Conflict of Interest Act: Examples

- *Elliott Lake v. Pearce* (2021)
 - Councillor was director of Elliot Lake and North Shore Corporation for Business Development – not-for-profit corporation established to stimulate economic growth in the City and surrounding area
 - City owed \$30,000 to the not-for-profit corporation
 - Councillor took part in debate or vote on whether City should repay the amount owed
 - Councillor had indirect pecuniary interest as director of not-for-profit corporation. Reprimand issued

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Municipal Conflict of Interest Act: Examples

- *Duncan v. Hewitt* (2021)
 - Non-profit group appeared and told Council its efforts to preserve a historic landmark had failed
 - Member's parent was officer of non-profit group
 - Council directed staff to report back on legal implications of potential disbanding of non-profit group
 - Neither the group's report to Council nor the direction to staff affected a pecuniary interest of the group:

“I am not satisfied that the direction to investigate or take further steps could be categorized as anything more, without knowing the outcome of the investigation, let alone as a direction which would have impacted the financial position of the [non-profit group]”

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Municipal Conflict of Interest Act: **Examples**

- *Yorke v. Harris* (2020)
 - Member moved and voted for resolution encouraging Province to amend labour legislation so additional unions could bid on municipal construction projects
 - Member's spouse worked for union that would benefit from the amendment
 - No pecuniary interest in Council's resolution:
 - Council had no jurisdiction or control over labour law
 - Pecuniary interest was speculative and hypothetical: it was contingent on the Province doing something

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Municipal Conflict of Interest Act: **Examples**

- *Cooper v. Wiancko* (2018)
 - Three Township of Georgian Bay councillors were members of chamber of commerce that received municipal grant
 - This constituted indirect pecuniary interest
 - In two cases, interest so remote or insignificant it could not reasonably be regarded as likely to influence the members
 - In third case, interest was reasonably regarded as likely to influence

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Municipal Conflict of Interest Act: Examples

- *Rivett v. Braid* (2018)
 - Township of Georgian Bay Council voted on whether to audit township's lease with chamber of commerce
 - Several council members belonged to chamber of commerce; spouse of one council member was CEO of chamber of commerce
 - Audit of the lease did not affect the finances of the chamber of commerce and therefore was not a pecuniary interest

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Municipal Conflict of Interest Act: Examples

- *Davidson v. Christopher* (2017)
 - Belleville Mayor co-owned company that owned vacant land in area of road improvement
 - Municipality needed to purchase this land to complete the project
 - On several occasions Mayor declared conflict on project and did not vote
 - Mayor did, however, vote on one occasion, on issue of replacing roundabout with traffic signals
 - While land acquisition was not specifically discussed, implication of switch to traffic signals was:
 - Less land needed for project
 - Municipality would therefore not need to buy land owned by Mayor's company
 - Mayor had a pecuniary interest in vote on switching to traffic signal from roundabout; should have declared conflict

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4. Council Code of Conduct

By-Law 2023-009, Schedule A

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Council Code of Conduct

1. Preamble (including five principles)
6. Gifts and Benefits
7. Confidential Information
8. Use of Municipal Property, Services
10. Improper Use of Influence
12. Current and Prospective Employment
13. Conduct at Meetings
14. Conduct Respecting Staff
15. Discreditable Conduct

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Gifts and Benefits: Overview

	What Code provides
Gift to spouse	Deemed to be gift to Member if provided with Member's knowledge and connected directly or indirectly to performance of Member's
Gift to parent	
Gift to child	
Gift to staff	
Disclosure to IC (made public)	> \$100
Prohibited	> \$300

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Gift, Benefit, Hospitality: Basic restriction

No member shall accept
fee, advance, gift, or personal benefit
connected directly or indirectly
with performance of duties of office
unless permitted by an exception

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Gift, Benefit, Hospitality: Exceptions (allowed)

Allowed and not subject to disclosure

- Compensation authorized by law
- Gift or benefit that normally accompanies the responsibilities of office and is received as an incident of protocol or social obligation
- Political contribution otherwise reported (as required by law), in the case of a Member running for office
- Services provided without compensation by persons volunteering their time
- Suitable memento of function honouring the Member

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Gift, Benefit, Hospitality: Exceptions (allowed)

Allowed and not subject to disclosure

- Food, lodging, transportation or entertainment provided by a provincial or local government or political subdivision, the federal government, a foreign government, or by a conference, seminar or event organizer where Member is speaking or attending in official capacity
- Food and beverages consumed at banquet, reception or similar event, if:
 - attendance by Member serves a legitimate purpose
 - person extending invitation, or representative of organization, is in attendance
 - value is reasonable
 - invitations are infrequent

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5. Council-Staff Relations

Contained within Council Code of Conduct

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Council-Staff Relations

Code of Conduct	
Treat the staff appropriately and without abuse, bullying or intimidation, and ensure their work environment is free from discrimination and harassment	15
Respect role of the staff to provide advice based on political neutrality and objectivity and without undue influence from any individual member or a faction of Council	14
Do not maliciously or falsely injure the professional or ethical reputation, or the prospects or practice, of the staff	14

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Council-Staff Relations

Code of Conduct	
Do not compel the staff to engage in political activities or subject the staff to threats or discrimination for refusing to engage in such activities	14
Do not use, or attempt to use, authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intention of interfering with that person's duties	14

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Independence of Law Enforcement

- Law enforcement, including the decision to lay (or not to lay) a charge under a by-law, must be free from political interference
- Council collectively has the right to enact by-laws, set policies, fix budgets, uphold accountability, and address general (but not case-specific) matters of by-law enforcement
- Code, Section 14: Do not interfere with staff duties (including interference in duties under *Provincial Offences Act*)

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The Staff

- Serves the Township and Council as a whole
- Reports to the CAO
- Has certain statutory responsibilities
- Offers professional advice in the form of recommendations
- Carries out Council decisions and administers Township policies

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Observations

Disagreement ≠ Disrespect

- Council Members may disagree with the staff, but they must always show respect

Making recommendations ≠ Voting on recommendations

- The staff makes recommendations without political influence
- Council is then free to accept the recommendations or not

Accountability and direction ≠ Harassment or bullying

- Lawful role of Council (as a whole) is to ensure accountability and give direction
- Unacceptable is behaviour that harms, intimidates, threatens, victimizes, undermines, offends, degrades, or humiliates

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