

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

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Introductory Comments

- Welcome
- Goal: to provide helpful tips in an enjoyable learning environment
- This is an overview
- Not intended to replace legal advice in specific fact situations

Introductory Comments

- Participation is encouraged
 - Questions and discussion are welcome along the way
 - Many differing views on the same topic/fact situation
- General information in plain language (purposely simplified)
- Remember: re: interpretation - views of judges and others may differ (not a pure science)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Municipal Codes of Conduct

- What are they?
 - Requirements for them are found under Part V.I of the Municipal Act, 2001 (Accountability and Transparency)
 - Code established for council members and local board members
 - Wide range of conduct may be regulated
 - Examples of matters covered in a Code of Conduct
 - Conduct at meetings
 - Conduct respecting staff
 - Protection of confidential information
 - Discreditable conduct
 - Failure to follow council policies and procedures
 - Receipt of gifts and benefits
 - Use of city property

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

What's Coming

- Amendments to Part V.I of the Municipal Act, 2001 (Accountability and Transparency) will bring many changes once they are in force
 - some are quite significant

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

- Amendments are not yet in force
- Presentation today provides an overview of them
 - proposed changes are significant
 - will take time to implement
 - good to know about them in advance
- A walkthrough of them

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

Definition Change:

- minor change to definition of local board - see s. 223.1(a)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

Who needs to have a Code of Conduct?

When amendments are in force:

- will be mandatory
- see s. 223.2
 - “shall establish”

Limitation

- a contravention of a code cannot be made an offence
- same - cannot make a contravention subject to the payment of an administrative penalty, see s. 223.2(3)
 - this part is new

Minister may make regulations prescribing subject matters for inclusion in a Code of Conduct

- also new
- keep up to date

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

Integrity Commissioner

Now:

- Council authorized to appoint one
 - see s. 223.3(1)

Soon:

- Still authorized to appoint one, but Integrity Commissioner to have much broader functions
 - see new s. 223.3(1)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

Integrity Commissioner (Cont'd)

- What if your municipality does not appoint one?
 - any guesses?

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

Integrity Commissioner (cont'd)

- Then...
 - municipality must make arrangements for the functions set out in s. 223.3(1) to be carried out by a Commissioner for another municipality
- What if your municipality has appointed a Commissioner but not assigned functions to him or her with respect to one or more commissioner responsibilities?
 - any guesses?

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

Integrity Commissioner (cont'd)

- Then...
 - municipality must make arrangements for these responsibilities to be provided by another municipality's commissioner
 - see ss. 223.3 (1.1) and (1.2)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

So what are the functions that will be assigned to the Commissioner when the amendments come into force?

- see 223.3 (1)
- Commissioner must be independent

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

So what are the functions that will be assigned to the Commissioner when the amendments come into force? (cont'd)

Functions assigned by the Municipality with respect to any or all of the following:

1. Application of the Code of Conduct
2. Procedures, rules and policies governing members' ethical behaviour
3. Application of ss. 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act ("MClA") to members
4. Requests for advice from members respecting their code of conduct obligations
5. Requests for advice from members respecting their obligations under a procedure, rule or policy governing ethical behaviour of members

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

So what are the functions that will be assigned to the Commissioner when the amendments come into force? (cont'd)

Functions assigned by the Municipality with respect to any of the following (cont'd):

6. Request for advice from members respecting their MCIA obligations
7. Provision of educational information
 - for the municipality and the public as well as member
 - re: Code of Conduct and MCIA
- Note: re: any ethical information given to the public - Commissioner may summarize advice he or she has provided but shall not disclose confidential information that could identify a person concerned; see s. 223.3(2.3)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

Exercise of Powers and Duties by a Commissioner

- Member must request advice in writing – re: paras. 4 – 6 referred to above
 - see s. 223.3(2.1)
- any advice given in response to a request shall be given by the Commissioner in writing
 - see s. 223.3(2.2)
- Commissioner still has delegation powers
 - see s. 223.3(3) and (4)
 - cannot delegate to a member of council
- Commissioner not required to be a municipal employee
 - see s. 223.3 (5)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

So what if the Commissioner or person acting under his or her instructions gets sued?

- any guesses?

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

So what if the Commissioner or person acting under his or her instructions gets sued?

- see ss. 223.3(6) and (7)
- Municipality shall indemnify and save harmless
 - reasonable costs incurred
 - in connection with the defence of the proceeding

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Amendments

So what if the Commissioner gets sued? (cont'd)

If...

- Act done in good faith in the performance or intended performance of a duty or authority under this Part of the Act or a by-law passed under this Part or an alleged neglect or default in the performance in good faith of the duty or authority
- Discussion
 - could be very expensive
 - no dollar cap on indemnity amount
 - choose your Commissioner carefully

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Commissioner Powers on Inquiry

- see section 223.4
- s. 223.4 (1) – (6) remain unchanged, but (7) – (9) have been added to cover election periods
- Overview of 223.4(1) – (6)
 - powers in respect of a request made by Council, a member of council or a member of the public about whether a council or local board member has contravened the code of conduct
- Also provision respecting requests made regarding local boards or local board members

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Commissioner Powers on Inquiry

- Wide
- Commissioner may elect to exercise the powers set out in ss. 33 & 34 of the Public Inquiries Act, 2009
- What do these provisions say?
- Let's take a look

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Mandatory Duty to Provide Information

- No changes here
- Municipality/local board shall give such information as the Commissioner believes is necessary
- Commissioner also entitled to free access to numerous records, (hard copy and electronic) as well as things or property belonging to or used by the municipality/local board
 - if the Commissioner believes they are necessary for the inquiry
 - see s. 223.4(3) and (4)

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So what if the Commissioner reports that I have contravened the Code of Conduct?

- See s. 223.4(5) and (6)
- No changes here
- Ball is passed to the municipality
 - see s. 223.4(5) re: municipalities
- Municipality may impose either of the following penalties
 1. a reprimand
 2. suspension of remuneration for up to 90 days
- Local board
 - similar to above but
 - cannot be a double penalty
 - see (6) re: Local Boards

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

What safeguards are there so someone does not use these provisions as part of an election strategy against me?

- these are the new provisions added to section 223.4 – see ss. 223.4 (7) – (9)
- Inquiry must terminate when regular election begins
 - if not completed by nomination day, shall be terminated on nomination day
- Inquiry is only revived if, within 6 weeks after voting day, the requester or the member whose conduct was in issue makes a written request for another inquiry to commence
 - see 223.4 (7) and (8)

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What about inquiry requests made between nomination day and election day?

- any guesses?

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

What about inquiry requests made between nomination day and election day? (cont'd)

Other applicable rules during an election

- Between nomination day and voting day
 - No requests for code of conduct contravention inquiries permitted
 - No Commissioner reports to municipality about member code of conduct contravention
 - No penalties to be considered
 - Penalties not to be imposed

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA (ss. 5, 5.1, 5.2) Commissioner Inquiries

- This will be new
- Note: can't be such an inquiry during a regular election (similar to above regarding code of conduct contraventions) – see s. 223.4.1 (3), (12) and (13)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA (ss. 5, 5.1, 5.2) Commissioner Inquiries (cont'd)

- For ease of reference...

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA Inquiry

Duty of a 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
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA Inquiry

Duty of a Member (cont'd)

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. R.S.O. 1990, c. M.50, s. 5 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 5 of the Act is amended by adding the following subsection: (See: 2017, c. 10, Sched. 3, s. 3)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA Inquiry

- Exception, consideration of penalty

(2.1) The following rules apply if the matter under consideration at a meeting or a part of a meeting is to consider whether to suspend the remuneration paid to the member under subsection 223.4 (5) or (6) of the *Municipal Act, 2001* or under subsection 160 (5) or (6) of the *City of Toronto Act, 2006*:

1. Despite clauses (1) (b) and (c), the member may take part in the discussion of the matter, including making submissions to council or the local board, as the case may be, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting. However, the member is not permitted to vote on any question in respect of the matter.
2. Despite subsection (2), in the case of a meeting that is not open to the public, the member may attend the meeting or part of the meeting during which the matter is under consideration. 2017, c. 10, Sched. 3, s. 3.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA Inquiry

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). R.S.O. 1990, c. M.50, s. 5 (3).

- **Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following sections before the heading "Record of Disclosure": (See: 2017, c. 10, Sched. 3, s. 4)**

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA Inquiry

- Written statement re disclosure
 - **5.1** At a meeting at which a member discloses an interest under section 5, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board, as the case may be. 2017, c. 10, Sched. 3, s. 4.
- Influence
 - **5.2 (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 that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter. 2017, c. 10, Sched. 3, s. 4

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA Inquiry

Duty of a Member (cont'd)

- Exception
 - (2) However, if a municipality delegates a power to suspend the remuneration paid to a member under subsection 223.4 (5) of the *Municipal Act, 2001* or subsection 160 (5) of the *City of Toronto Act, 2006* to a person or body, and the person or body is considering exercising that power with respect to a member, subsection (1) of this section does not prevent the member from attempting to influence any decision or recommendation of the person or body that results from consideration of the matter. 2017, c. 10, Sched. 3, s. 4.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA Inquiry

See 223.4(1) – (18)

Who May Apply?

- an elector or
- a person demonstrably acting in the public interest

The Application

- must apply in writing
- concerning an alleged contravention by a member of s. 5, 5.1 or 5.2
- must do so within 6 weeks of becoming aware of the contravention (with limited extensions when the Municipal Elections Act provisions are triggered)
 - remember the special rules regarding regular election periods referred to earlier

Contents of application - shall set out the reasons for believing there has been a contravention – shall include a statutory declaration attesting to time became aware of the contravention (to verify meeting of the statutory limitation period to bring the application)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA Inquiry

Inquiry Issue will be?

- Did the member contravene ss. 5, 5.1 or 5.2 of the MCIA, as applicable?
- Inquiry
 - Commissioner may but is not required to conduct an inquiry
 - Commissioner may have a public meeting to discuss the Inquiry
 - see ss. 223.4.1(7) and (8)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA Inquiry

Inquiry Issue will be? (cont'd)

- Commissioner may exercise s. 33 and s. 34 Public Inquiries Act powers
 - see s. 223.4.1(9)
- Municipality/local board
 - Mandatory obligation to provide information and free access to records, things or property
 - see s. 223.4.1 (10) and (11)
 - Termination of inquiry when regular election begins
 - see s. 223.4.1(12) and (13)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

What Happens Once the Inquiry is Complete?

- Inquiry to be completed within 180 days (unless terminated because a regular election began)
 - see s. 223.4.1(14)
- Commissioner may apply to a judge under s. 8 of the MCIA for a determination of the member contravention issue

(**Note:** section 8 is on the next few slides for ease of reference)
- Notice must be given to the applicant by the Commissioner if decides not to apply to a judge and, either way, Commissioner must publish written reasons for the decision
 - see s. 223.4.1 (16) and (17)
- Commissioner's court application costs are on the Municipality or the local board as the case may be

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

MCIA – Section 8

- **Current provision**
- **8.** The question of whether or not a member has contravened subsection 5 (1), (2) or (3) may be tried and determined by a judge. R.S.O. 1990, c. M.50, s. 8.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

- **New Provision not yet in force**
- **8. Note: On a day to be named by proclamation of the Lieutenant Governor, section 8 of the Act is repealed and the following substituted: (See: 2017, c. 10, Sched. 3, s. 7)**
- Application
- **8 (1)** An elector, an Integrity Commissioner of a municipality or a person demonstrably acting in the public interest may apply to a judge for a determination of the question of whether,
 - (a) a member has contravened section 5, 5.1 or 5.2; or
 - (b) a former member contravened section 5, 5.1 or 5.2 while he or she was a member.2017, c. 10, Sched. 3, s. 7.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

New Provision not yet in force (cont'd)

- (2) An application may only be made within six weeks after the applicant became aware of the alleged contravention. 2017, c. 10, Sched. 3, s. 7.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

New Provision not yet in force (cont'd)

- Exception
- (3) Despite subsection (2), an application may be made more than six weeks after the applicant became aware of the alleged contravention if all of the following conditions are satisfied:
 1. The applicant applied to an Integrity Commissioner for an inquiry under section 223.4.1 of the Municipal Act, 2001 or under section 160.1 of the City of Toronto Act, 2006 in accordance with those sections.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

New Provision not yet in force (cont'd)

- 2. The Integrity Commissioner conducted an inquiry under section 223.4.1 of the *Municipal Act, 2001* or under section 160.1 of the *City of Toronto Act, 2006* and the Commissioner,
 - i. has advised the applicant under subsection 223.4.1 (16) of the *Municipal Act, 2001* or under subsection 160.1 (16) of the *City of Toronto Act, 2006* that the Commissioner will not be making an application to a judge,
 - ii. has not completed the inquiry within the time limit set out in subsection 223.4.1 (14) of the *Municipal Act, 2001* or subsection 160.1 (14) of the *City of Toronto Act, 2006*, or
 - iii. has terminated the inquiry under subsection 223.4.1 (12) of the *Municipal Act, 2001* or subsection 160.1 (12) of the *City of Toronto Act, 2006*.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

New Provision not yet in force (cont'd)

3. The application under this section includes a copy of the applicant's statutory declaration made under subsection 223.4.1 (6) of the *Municipal Act, 2001* or under subsection 160.1 (6) of the *City of Toronto Act, 2006*.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

New Provision not yet in force (cont'd)

- 4. The application under this section is made within six weeks after the earlier of the following,
 - i. the day the Commissioner advised the applicant under subsection 223.4.1 (16) of the *Municipal Act, 2001* or under subsection 160.1 (16) of the *City of Toronto Act, 2006* that the Commissioner will not be making an application to a judge,
 - ii. the last day on which the Commissioner is required under subsection 223.4.1 (14) of the *Municipal Act, 2001* or subsection 160.1 (14) of the *City of Toronto Act, 2006* to complete the inquiry referred to in paragraph 2 of this subsection, and
 - iii. the day the inquiry was terminated under subsection 223.4.1 (12) of the *Municipal Act, 2001* or subsection 160.1 (12) of the *City of Toronto Act, 2006*.
2017, c. 10, Sched. 3, s. 7.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

New Provision not yet in force (cont'd)

- Same, application by Integrity Commissioner
- (4) Despite subsection (2), an application may be made more than six weeks after the applicant became aware of the alleged contravention if the applicant is an Integrity Commissioner and if the application relates to an inquiry conducted by the Commissioner under section 223.4.1 of the *Municipal Act, 2001* or under section 160.1 of the *City of Toronto Act, 2006*. 2017, c. 10, Sched. 3, s. 7.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

New Provision not yet in force (cont'd)

- No application by Integrity Commissioner during regular election
- (5) No application shall be made by an Integrity Commissioner of a municipality during the period of time starting on nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act, 1996*, and ending on voting day in a regular election, as set out in section 5 of that Act. 2017, c. 10, Sched. 3, s. 7.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

New Provision not yet in force (cont'd)

- Limitation
- (6) Despite subsections (2), (3) and (4), no application shall be made after the sixth anniversary of the alleged contravention.
2017, c. 10, Sched. 3, s. 7.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

New Provision not yet in force (cont'd)

- Contents of notice of application
- (7) The notice of application shall state the grounds for finding that the member or former member contravened section 5, 5.1 or 5.2. 2017, c. 10, Sched. 3, s. 7.

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Confidentiality Duties

What about confidentiality duties of the Commissioner?

- Commissioner and every person acting under his or her instructions,
 - ...shall preserve secrecy
 - with respect to all matters that come to his or her knowledge in the course of his or her duties under this part.
- Exceptions:
 - a criminal proceeding or otherwise in accordance with this Part of the Municipal Act, 2001 - see s. 223.5(2)
 - see s. 223.5(1) and (2), which are not changing, but sections 223.5(1) and (2) are being added

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Confidentiality Duties

What about confidentiality duties of the Commissioner? (cont'd)

- With the member's consent, advice may be released
 - see 223.5(2.1)
- What if the member partially releases advice?
 - then the Commissioner can release the rest
 - see 223.5(2.2)

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Confidentiality Duties

Other Circumstances

- Commissioner may disclose such information as
 - in the Commissioner's opinion is necessary
 - for s. 223.4.1(8) public meeting purpose
 - in application to a judge under s. 223.4.1(15)
 - in the written reasons given by the Commissioner under s. 223.4.1(17)
 - see s. 223.5(2.3)
 - **Note:** see s. 223.5 – section 223.5 prevails over Municipal Freedom of Information and Protection of Privacy Act
- Periodic Reports may be provided to Council
 - on Commissioner activities
 - may summarize advice but shall not disclose confidential information that could identify a person concerned
 - same as before – see s.223.6

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Reports About Conduct of a Member

- May disclose in the reports information that, in the Commissioner's opinion, is necessary for the purposes of the report – see s. 223.6(2)

Reports to be made Public

- see s. 223.6 (3)

Not Compellable

- Commissioner and those acting under him or her are not compellable to testify
 - in civil proceeding
 - Re: anything done under this Part of the Municipal Act, 2001
 - see s. 223.7

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

What if Commissioner Believes a Contravention of Any Other Act or of the Criminal Code Has Been Committed?

- Mandatory duty to refer the matter to appropriate authorities and to suspend the inquiry until investigation and charges have been finally disposed of
- Council to be notified
- See s. 223.8
- However, the following will be new,
 - a reasonable belief that there has been a contravention of the MCIAC does not suspend the inquiry – inquiry under MCIAC will be able to continue – see s. 223.8

Municipal Codes of Conduct and the Role of the Integrity Commissioner: What's New

Questions and Discussion

Thank You

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