

Council Code of Conduct, Proposed Amended Code, and Process for Advice to Individual Members

Presentation to Committee of the Whole
Township of Centre Wellington
January 27, 2020
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Overview

- 1. Current Council Code of Conduct**
- 2. Considerations for Proposed, Amended Code**
- 3. Considerations for Council-Staff Relations Policy**
- 3. Advice to Individual Members**

Current Council Code of Conduct

Township's Code of Conduct

Sec. Content

1. Policy Statement
2. Key Principles
 - Mixture of vague and specific
 - Mixture of aspirational and tangible
 - What is enforceable and what is not?
3. Statutory Provisions
 - Extremely common provision, but what is the purpose and is it intended to be enforceable?

Township's Code of Conduct

Sec. Content

4. Definitions
 - “Committee of Council/Council Committee” defined but this exact wording is not used again
 - “Disrespectful Behaviour” defined but never used
 - “Member” defined to include external appointees
5. Scope
 - Is it consistent with definition of “Member”?
6. Appointment of Integrity Commissioner

Township's Code of Conduct

Sec. Content

7. Confidential Information
8. Conduct at Council/Committee Meetings
 - Who enforces this provision?
 - Many Integrity Commissioners defer to jurisdiction of the Presiding Officer
 - Items 8.2 (ii), (iii) and (v) already in the Procedural By-law
9. Conduct at Public Events
10. Discrimination and Harassment

Township’s Code of Conduct

Sec. Content

- 11. Improper Use of Influence
- 12. Use of Municipal Property and Resources
- 13. Conduct Respecting Staff
 - Sections 13.1, 13.2, 13.3 provide background: are they enforceable?
 - The staff is not subject to this Code, yet section 13.3 enumerates expectations
 - Section 13.5(ii) is unique: only provision of section 13 that addresses other people in addition to the staff

Section 14: Gifts, Benefits and Hospitality

	Covered
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 duties
Gift to parent	Deemed to be gift to Member if connected directly or indirectly to performance of Member’s duties
Gift to child	Deemed to be gift to Member if connected directly or indirectly to performance of Member’s duties
Gift to staff member	Deemed to be gift to Member if connected directly or indirectly to performance of Member’s duties

Section 14: Gifts, Benefits and Hospitality

Disclosure Threshold	> \$300
Disclosure Deadline	March 31 of following year
Maximum Value	n.a.

Township's Code of Conduct

Sec. Content

15. Conduct During an Election Campaign
16. Professional Development
 - Is this aspirational or meant to be enforceable?
17. Communications and Media Relations
 - Is section 17.1 meant to be a rule for Members? It is not worded that way. Also, "generally" is vague.
 - Unclear whether section 17.2 means "comment" or "information"

Township's Code of Conduct

Sec. Content

- 18. Compliance with the Code of Conduct
- 19. Complaint Protocol
- 20. Procedure for Seeking Advice
 - Addressed later in this presentation
- 21. MCIA Inquiry
 - Not covered in this presentation
- “A” Complaint Form
- “B” Disclosure Statement

Considerations for Proposed, Amended Code

Mandatory Content of Code (Ontario Regulation 55/18)

- Gifts, benefits and hospitality
- Respectful conduct, including conduct toward officers and employees of the municipality or the local board, as the case may be
- Confidential information
- Use of property of the municipality or of the local board, as the case may be

Considerations re. Rules

- Contravention of Code exposes a Member to penalty
- Where a penalty is involved, the contravention should be of a rule or standard that is:
 - Known
 - Clear
 - Certain (Predictable)
 - Measurable
- Options for provisions of the Code lacking these qualities:
 - Treat as unenforceable (aspirational only)
 - Amend so they are clear, certain and measurable

Objective or Subjective?

- In any situation, Member should know:
 - What conduct is required
 - What conduct is prohibited
- Some typical foundations for obligations and prohibitions:
 - Actual knowledge/awareness
 - Reasonable person test (“should reasonably know”)
 - Reasonable perception of others (“would reasonably be perceived”)

Specific Observations

- 1.5 “Disrespectful Behaviour”
 - Second sentence based on somebody else’s reaction. Could reword to use “reasonable person” standard
- 3.1 Interference
 - There is a distinction between specific law enforcement cases (no interference tolerable) and general policy matters related to how laws are enforced (appropriate for Council to discuss and to decide).
 - Raising with the CAO a concern about a specific law enforcement case might possibly interfere with the independence of by-law enforcement

Specific Observations

- 9. Respectful Conduct
 - My 2018 draft contemplated conduct at meetings; if wider applicable is intended then this could be clarified
- 9.3(c) False and Misleading Statements
 - The Supreme Court of Canada has cautioned about the difficulty of trying to prohibit false speech: “Different people may draw from the same statement different meanings at different times. . . . The result is that a statement that is true on one level or for one person may be false on another level for a different person.”

Specific Observations

- 10.2 Public Statements
 - Internal contradiction/confusion between “comment” and “information”
 - Is third paragraph intended to capture media requests to Council?
 - Use of “opinion” further confuses what “comment” means. Are they the same or different? As a rule, different words should only be used to convey different meanings.
 - First and second paragraphs are inconsistent, unless “expected to” means *not mandatory*. If not mandatory, what is the intended effect?
 - Some municipalities take an alternative approach, and simply require that if Council decision is discussed it be presented accurately (and confirm that a Member can explain why Member opposed/opposes it).
 - Courts have a recognized that a Member is entitled to champion changes to existing law/policy
 - Does last paragraph refer to outgoing (from Council Members) or incoming (from constituents) communications?

Considerations for Council- Staff Relations Policy

Considerations

- No comment on specific content of proposed Policy
- I am aware of the collaboration and effort, including facilitated discussion, that led to the articulated principles
- It is certainly open to Council to decide that the policy will be:
 - Values-based not rules-based
 - Focused on goals
- This choice, however, has implications for enforcement

Considerations

- Integrity Commissioner / Code of Conduct process:
 - Complaint-triggered
 - Two parties (adversarial process)
 - Investigation
 - Findings: findings of fact based on interpretation of rules
 - Conclusion: there was / was not a breach
 - Recommendation: range of sanctions
- In short: Process suitable where there exist:
 - Clear rules (standards)
 - Ascertainable facts that will establish whether the rules (standards) were contravened

Considerations

- Complaint-investigation is not the only way to uphold a policy
 - E.g., “respectfully holding each other accountable to these agreed-upon behaviours”
- Given the approach taken in this policy, does the concept of “contravention” even apply?
- What are the expectations for when behaviour falls short of the mark?
- Should certain parts of the Policy be acknowledged to be unenforceable?

Considerations

- Integrity Commissioner performs functions assigned by the Council
- In this case, the Code of Conduct process may have to be modified – or perhaps a new process adopted entirely – to uphold the Council Staff-Relations Policy

Advice to Individual Members

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

Municipal Act does not contemplate

- Policy-development advice to individual members
 - Council as a whole can assign the Integrity Commissioner that function
- A research service for individual members
 - *E.g.*, requests for case citations
 - Long list of questions
- Advice on somebody else's conduct
- Advice that goes beyond:
 - Code of Conduct
 - *Municipal Conflict of Interest Act*
 - Another policy or by-law dealing with **ethical conduct**

Disclosure of advice

- Member free to disclose at any time. Integrity Commissioner not.
- 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