
HALDIMAND COUNTY

Report CLS-08-2019 Updated Council Code of Conduct

For Consideration by Council in Committee on August 27, 2019



OBJECTIVE:

To recommend an updated Council Code of Conduct to align with revised legislation and best practices.

RECOMMENDATIONS:

1. THAT Report CLS-08-2019 Updated Council Code of conduct be received;
2. AND THAT the updated Council Code of Conduct, included as Attachment #1 to Report CLS-08-2019, be adopted.

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Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

With new legislated accountability and transparency measures coming into place as of March 1, 2019, it is an appropriate time to review the existing Council Code of Conduct and to update the document to reflect the revised legislation and best practices in the field. Through consultation with the County's Integrity Commissioner (IC), a draft document is included with this report for adoption by Council. The recommended changes in the updated document generally reflect updated references rather than significant changes, and those changes are identified and explained in this report. As there are some discretionary amendments suggested for consideration, staff are seeking confirmation or alternate direction from Council on the following matters related to the code:

- Filing fee
- Gift registry
- Limitation period for code of conduct complaints

BACKGROUND:

The *Municipal Act* was completely revised in 2001 to provide municipalities with broader powers to govern with more authority, accountability and flexibility than the previously prescriptive version of the act. Revisions to the *Municipal Act, 2001* (Act) in 2007 introduced certain accountability and transparency measures for municipalities to provide a balance to the increased powers in the act, and partially in response to the Bellamy Report, which made recommendations pursuant to the Toronto Computer Leasing/Toronto External Contracts judicial inquiry.

One of the discretionary measures introduced at that time was to authorize the establishment of a code of conduct for council and local boards, and in 2008, Haldimand County adopted a Code of Conduct for Members of Council (Policy 2008-02), along with a process for appointing an IC who was

responsible for investigating any alleged contraventions of the code and reporting to Council on such matters. Bill 68, which received royal assent in September 2017, strengthened the accountability measures in Section 223 of the Act to require the adoption of a code of conduct for council and for local boards; require the appointment of an IC, and to broaden the scope of responsibilities for the IC in terms of providing advice and reviewing complaints related to the code and to the Municipal Conflict of Interest Act (MCIA).

On March 4, 2019, following a competitive procurement process, Haldimand County appointed Charles Harnick of ADR Chambers Ltd. as IC for the municipality. While the County has had a code of conduct in place for over 10 years, this report introduces an updated version of the code that reflects legislative amendments since 2008 and best practices in the field.

ANALYSIS:

Haldimand County established the Code of Conduct for Members of Council in 2008. Aside from one minor amendment in 2013 regarding the appointment of an IC on an as-needed basis, the code has not been updated since that time. As the relevant legislation has changed through Bill 68, it is timely to update the code to reflect new legislated requirements and the broader scope of responsibility for the IC. A draft version of the revised code is included as Attachment #1 to this report, with tracked changes included to illustrate the proposed amendments.

The County's IC, Mr. Harnick, was asked to review the existing code and to make recommendations on suggested amendments, and additional clarification was requested from him on certain matters. Through Mr. Harnick's review of the code, he indicates that in comparing it with other codes, it is clear, precise and comprehensive and he commended the quality of the existing code. He has made some suggestions and they are noted in the commentary below. Other amendments have been made by staff through their review of the document.

Role of the IC

As reference, section 223.3 of the Act outlines the responsibilities of the IC as follows:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act to members of council and of local boards.
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the Municipal Conflict of Interest Act.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the Municipal Conflict of Interest Act.

(The Act goes on to say that if an IC is not appointed, or if any of the responsibilities are not assigned to the IC, arrangements shall be made for the responsibilities to be provided by the IC of another municipality.) Of note, the responsibility for providing advice to members respecting obligations under the MCIA is a new responsibility for the IC, introduced through Bill 68. Previously, if members were

seeking advice concerning MCIA obligations, they had to seek that advice through their own legal counsel. While that option remains, members may now seek advice through the IC.

Legislated Requirements

The following section speaks to amendments to the code reflecting legislative changes, specifically: the requirement for a code to be in place for councils and local boards; the existence of a regulation that defines what needs to be in a code; a blackout period during regular elections; the request for, and provision of advice having to be in writing, and the application of the *Public Inquiries Act* to section 223 of the Act.

Haldimand County's adoption of a code of conduct in 2008 was one of the requirements laid out in the County's Accountability and Transparency Policy 2007-05 (mandated by section 270 of the Act). Establishment of a code of conduct is now a mandatory requirement, so reference to the County's Accountability and Transparency policy is removed from the code.

When the code of conduct and IC framework was introduced by legislation in 2007, it also included discretionary authority for a code and IC framework to be applicable to local boards. Haldimand County did not include local boards within the code established in 2008, but now that the requirement is mandatory, local boards must also be subject to a code. The draft Code of Conduct, included as Attachment #1, has been amended to also reference members of local boards and the IC agrees with this proposition, noting that the IC has the flexibility to make necessary adjustments for any applications related to local boards.

Based on the definition in the Act relative to a code of conduct, the local boards that would fall within the code and IC requirements of the Act are:

- Accessibility Advisory Committee;
- Local BIAs (Caledonia, Dunnville and Hagersville);
- Heritage Haldimand, and
- Committee of Adjustment

The Act excludes Police Services Boards and boards defined under the Public Libraries Act. (To clarify, the MCIA applies to a broad definition of local boards, including Police Services Board, Library Board, etc., but the IC's ability to conduct an inquiry related to the MCIA is limited to the narrower definition of local boards as noted above.) Throughout the code, the word "members" refers to members of Council as well as members of local boards.

Previously, there were no guidelines as to what should be included in a code, and now, Ontario Regulation 55/18, which came into effect on March 1, 2019, prescribes the following subject matters to be included in a code of conduct for members of council and of its local boards:

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

Generally speaking, the existing code already includes the above-noted regulated requirements.

Additional amendments to the updated code address the following legislated matters:

- The Act has been updated with a blackout period when no requests, reports or imposition of penalties may proceed within the period beginning on Nomination Day of a regular election and ending on Voting Day.

- The Act authorizes the IC to provide advice to members of Council regarding: the code of conduct; a procedure, rule or policy governing ethical behaviour; and the MCIA. The Act requires that any request for advice must be provided in writing and the advice itself shall be provided in writing. A form for requesting advice from the IC has been provided to members of Council for their reference and use.
- The Act authorizes the IC to utilize the powers under sections 33 and 34 of the *Public Inquiries Act, 2009* for conducting an inquiry which essentially allows the IC to exercise the powers of a commission. Reference is made to this authority in both the code of conduct complaint protocol and the MCIA investigations protocol that are included as schedules to the code.

Discretionary Amendments

There are a number of discretionary items that Council may consider as additional amendments to the code, as recommended by the IC. The items listed immediately below are included in the updated code attached to this report. The IC's recommendations on these matters come as a result of reviewing several municipal codes of conduct and best practices for members of Council.

Wording re: Integrity of the Code

In Part 10 of the code, additional wording has been added on the recommendation of the IC to clarify that members shall not undertake any act of reprisal against a complainant or obstruct the IC or any official in applying the requirements of the code. Staff agree that formalizing this approach into the code of conduct strengthens its integrity.

Filing Fee

The existing complaint protocol includes a filing fee of \$200 for any formal complaints submitted, which is refundable if the complaint warrants investigation. The IC indicates that while a fee may prevent frivolous inquiries, it may prevent legitimate complaints from coming forward.

An informal poll of municipalities shows that over 75% do not charge any filing fee for formal code complaints, and of those that do, \$200 is on the higher end of fees charged, the majority being between \$25 and \$150. In most cases, the fee is partially or fully refundable if it meets a certain pre-determined threshold. The IC is recommending not to charge a filing fee. Although the protocol allows the IC to manage weeding out of frivolous complaints early in the process, each investigation involves use of the IC at a cost to the municipality. If a fee is to remain, staff would advise that there needs to be a balance between preventing frivolous matters at the taxpayers expense, while not being too restrictive to allow legitimate complaints to come forward. The existing \$200 fee remains in the updated code and if Council opts to remove the fee requirement or adjust the current fee, staff should be directed to make the amendment.

Protocols to the Code of Conduct

Separate protocols have been included as attachments to the revised code of conduct – one for a complaint under the code (amended version of existing protocol) and one for complaints under the MCIA (new protocol). Although there are similarities to the protocols, they are separate procedures for alleged contraventions of a) a policy (code) that governs the conduct and behaviour of members or b) provincial legislation concerning pecuniary conflict of interest, and they have different conclusions and consequences.

In terms of the code of conduct:

- the IC will report to Council or the board, and if applicable, Council or the board will make a decision on a penalty in response to a contravention, which could include:
 - a reprimand, or
 - suspension of remuneration of up to 90 days.

An inquiry related to the MCIA may result in:

- the IC applying to a judge for a determination of an alleged contravention of the MCIA. If a judge determines that the member has contravened section 5, 5.1 or 5.2 of the MCIA, the judge may:
 - reprimand the member;
 - suspend remuneration up to 90 days;
 - declare the member's seat vacant;
 - disqualify the member from being a member for up to 7 years, and/or
 - require the member to make restitution.

Limitation on Code of Conduct Complaint Timeframe

The IC has suggested consideration of a limitation period for complaints to be submitted under the code of conduct. Applications for an MCIA complaint are restricted to a legislated limitation period of six weeks from the applicant being aware of the contravention for an application to be made. Legislation does not prescribe any time limit for complaints under the code and the IC recommends that a limitation period could be six weeks, and in any event, should not be more than six months. The updated code includes a limitation period of six weeks to mirror the MCIA limit. If Council feels that an alternate time limit would be appropriate, staff should be directed to make the amendment.

Gift Registry

The IC has recommended the establishment of a gift registry and a disclosure requirement with respect to gifts received by members. Within 30 days of receiving a gift or benefit as allowed in Part 6 of the code, the member would advise the Clerk of the gift, the estimated value of the gift or benefit, and the person or organization from which it was received, for inclusion on the registry which would be publicly available on the County's website. \$350 for a single gift or cumulative gifts from a single source has been suggested by the IC as a potential threshold for such a registry.

While such a registry would provide additional transparency for all members, the adoption of a gift registry would also involve the development of procedures around such a registry as well as additional administration by staff in the Citizen & Legislative Services Division. This discretionary amendment has not been included in the updated code attached to this report. If Council supports the inclusion of a registry into the code, staff should be directed to make the amendment.

Other Related Items

ADR Chambers has requested that all communication regarding complaints go through the Manager, Citizen & Legislative Services/Municipal Clerk first and will be forwarded to the IC. ADR Chambers has provided a Code of Conduct Complaint Form and Affidavit for use with applications and they also require that anyone submitting a formal complaint must complete a Consent and Confidentiality Agreement. These documents will be made available on the County's website for public access.

FINANCIAL/LEGAL IMPLICATIONS:

\$20,000 has been budgeted as an initial estimate for annual costs related to the revised legislated framework for the IC, which includes review of and education regarding the code of conduct. Training of members of Council and local boards is a legislated requirement and is included in this estimate. Additional fees may be incurred related to advice sought from the IC by members of Council concerning the code and relevant sections of the MCIA, as well as with any inquiries and investigations related to apparent contraventions of the code or of the MCIA.

STAKEHOLDER IMPACTS:

One of the functions assigned to the IC is that of providing educational information to members of council, members of local boards, the municipality and the public about the code of conduct and the MCIA. In order to provide education to council, the municipality and the public, a Committee of the Whole meeting will be scheduled for early November. This meeting will be streamed via the County's website so that members of the public may attend in person or watch online. An invitation to attend will also be extended to members of local boards affected by the code, although a subsequent education session will be arranged specifically for local boards.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: Yes

ATTACHMENTS:

1. Draft updated Council Code of Conduct – Policy 2008-02