

Conflicts of Interest

Rick O'Connor, City Clerk City of Ottawa

Valerie Jepson, Integrity Commissioner City of Toronto

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Terminology

- ▶ Parker Commission Definitions:
 - ▶ Real Conflict of Interest (straightforward, principles-based concept - related to tenet: cannot serve two masters)
 - ▶ Potential (Foreseeable) Conflict of Interest (notion that a member/public servant seek advice from an IC, Ethics executive, etc. when a foreseeable COI arises)
 - ▶ Apparent Conflict of Interest (less straightforward than “real”, but as important, per Parker J) (See Paper: Jepson, V - Apparent COI)
- ▶ Pecuniary (Conflict of) Interest (special concept: MCIA): direct, indirect and deemed financial interests.
- ▶ Common law conflicts of interest (see Mullan paper, Cunningham report, others). Query: what is the remedy?
- ▶ Code of Conduct Conflict of Interest (see Simcoe Code of Conduct; Principles Integrity model)

Other related concepts

- ▶ Avoiding Improper Use of Influence
- ▶ Avoiding Preferential Treatment
- ▶ Avoiding gifts, creating senses of personal obligation.
- ▶ Rules against nepotism.
- ▶ Proactive disclosure, unrelated to particular matters
- ▶ Disclosure of conflicts and recusal
- ▶ Disclosure of conflicts

Why do we worry about conflicts of interests?

- ▶ We expect government actors to make decisions that advance the greater good. We believe that to do this, personal considerations must not come to bear.
 - ▶ Cannot serve two masters.
 - ▶ Decision-making for the greater good, in fact, and in appearance. (Justice must not only be done but *be seen* to be done.)
- ▶ We don't do this because we think all public officials are self-interested or corrupt but we recognize that the actions of public officials impact on what the public thinks about the integrity of decision-making.

How do we deal with it at the municipal level?

- ▶ Statutory breach with most severe consequences for PECUNIARY INTERESTS only. (MCIA)
 - ▶ But, note that case law interpreting MCIA has arguably urged a much broader understanding of COI and adopts fully the main motivating policy principle: *Moll and Fisher*
 - ▶ Result: there is a disproportionate (although understandable) emphasis on pecuniary interests, no matter how small
- ▶ Uncertainty and ambiguity about whether other types of COI matter. Post March 2019, there is an opportunity to streamline and clarify this, but theoretically there may be 444 different solutions.
 - ▶ Province could have addressed this by prescribing that Codes include a COI provision.
- ▶ Inconsistent treatment of staff obligations/duties across the province.

Solutions?

- ▶ Acknowledge that it's not always easy to know when something is a COI and that advice from an IC or ethics executive can assist. (In fact, new law may require that advice be sought.) This is true for staff and elected officials.
 - ▶ Councillors: De-stigmatize consultations with ICs. Protect IC's as institutions.
 - ▶ Staff: Provide City staff with similar resources - Ethics Executive system modelled after *Public Service of Ontario Act, 2006* or the *Toronto Public Service Bylaw*.
- ▶ Amend MCIA to deem interests of an expanded group of family members to be those of the member. Consider definition of “close relative” in section 2(1) of *MFIPPA*.
- ▶ Acknowledge that members may run afoul of the Codes of Conduct and that these can be opportunities to learn and improve for the future. These are no criminal offences and we need to stop treating them like they are. (If we want to change the criminal law, we can do that.)

Solutions, cont'd

- ▶ Some Codes of Conduct include a full range of conflict of interest. (Example: Simcoe - Principles Integrity)
 - ▶ The beauty of this is that not all interests are disqualifying but they bring a sufficient level of transparency to provide the electorate with enough information to scrutinize actions.
 - ▶ Possible solution: recommend that Regulation 55/18 be amended to require that Codes of Conduct deal with conflicts of interest, which would include apparent conflicts of interest.
- ▶ Transparency and Non-disqualifying disclosures (See sample form, in fact adopted by Collingwood or use points of personal privilege to disclose.)

Require proactive financial disclosure

- ▶ Amend Municipal Act to introduce mandatory annual disclosure of private interests for elected and certain senior public officials. The types of interests to be disclosed could include financial interests (*i.e.* assets, liabilities, real property, debts), outside employment, and outside directorships.
- ▶ Several jurisdictions across Canada and in the United States permit or require mandatory disclosure of personal interests of elected officials at the municipal level.
- ▶ The Province of Ontario lags behind other provinces in this regard. The Provinces of Quebec, British Columbia, Saskatchewan, Newfoundland and Labrador, and Manitoba either require or permit municipalities to introduce personal financial disclosure systems. In British Columbia, all elected officials, including local government officials, are required to make annual financial disclosures. In the absence of legislative authority or requirement, the members of the Calgary City Council disclose their financial interests on an annual basis.