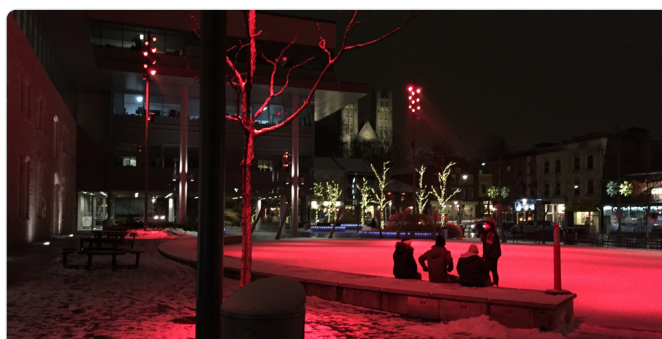




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Feb 15 · 61 tweets · [adamadonaldson/status/1625992211803373569](https://twitter.com/adamadonaldson/status/1625992211803373569)

Coming up at 6 pm, a council workshop covering the role of the Integrity Commissioner and Municipal Conflict of Interest!



City Council Preview – What's on the Agenda for the February 15 Meeti...

Workshop Wednesdays continues with one of the most basic areas of governance, the rules for running city council. To learn more about the rules and the acts governing them, this council session wil...

<https://guelphpolitico.ca/2023/02/03/city-council-preview-whats-on-the-agenda-for-the-f...>

Mayor Guthrie calls the meeting to order. Notes that there are regrets tonight from Cllrs Klassen and perhaps O'Rourke too.

Disclosure of Pecuniary Interest and General Nature Thereof.

Not for nothing, but there are only two members of council here in the chambers in person, Guthrie and Cllr Richardson.

Guthrie welcomes members of local boards and committees who are attending in-person or watching online. This information will serve them too.

City Clerk Stephen O'Brien introduces John Mascarin, the City of Guelph's Integrity Commissioner. He notes that his firm is technically the commissioner, and he's not a one-man operation.

Mascarin promises some really interesting things with updates to the Conflict of Interest Act, which have resulted in three removals in the last 15 months.



In 2018, Ontario made it mandatory for all councils to have a code of conduct, and that the code should cover local boards and committees too. It's not unusual for municipalities to have one code for both council and boards.

The Code is not a bylaw per se, and Mascarin says it's not a policy either. Why? It can pose significant penalties if broken.

Mascarin says a Code of Conduct is "not a cookbook". It sets out certain standards for acceptable behaviour and it sets up penalties for certain actions.

IT COVERS:

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

Mascarin says the two biggest sources of complaints is staff being bullied, harassed or otherwise maltreated by council. This came from a court case where a councillor (not in Guelph) accused a CAO of lying to council.

Fun fact: There are 14 reasons that council can meet in closed session.

Mascarin talks about how mayors have to be careful how they use the chain of office. An incumbent mayor can't send out campaign materials with a picture of themselves where the chain, and they can't put it on their dog for a fun photo (that's inappropriate).

Mascarin says they dismiss about 50% of the complaints they get it because they have no justifiable basis for proceeding. That means it may be frivolous, vexatious, or an abuse of process. It may be outside jurisdiction or there's no reason to warrant spending public funds.

Procedure is that Mascarin and his colleagues don't tell someone they've received a complaint unless they're going to investigate. There are a few exceptions, but he says there can be a lot of disorder just tipping the hat before deciding their justification.

Secret Origin of the Integrity Commissioner: Toronto Computer Leasing Inquiry Commission Report,
(Toronto: City of Toronto, 2005)!

In Vol. #2 it says on pg 46: "An effective Integrity Commissioner system provides 2 basic services: An advisory service, to help councillors and staff who seek advice before they act. An investigative or enforcement service, to examine conduct alleged to be an ethical breach."

FYI: You can't call the Integrity Commissioner and tell them that you think you say something untoward and if they think that council members is guilty. The last thing Mascarin wants is for someone to quote him without the evidence provided through investigation.

The integrity commissioner can be reached by members of council to talk about their own conduct, and not about the conduct of others.

They can give advice about: the code of conduct, any ethical policy guidelines/procedure, or section 5, 5.1 or 5.2 of the Conflict/Interest Act.

When it comes to advice:

a) it must be requested in writing by the member
and

b) the response must be provided in writing by the Integrity Commissioner

Mascarin says his least favourite thing to do is investigations, so he delegates those to his law partner.

This is one of the recent investigations the firm's overseen at the request of council.
<https://www.cbc.ca/news/canada/toronto/mississauga-integrity-commissioner-report-1.6512312>

Everything the integrity commissioner learns during the course of their work is kept confidential. The only exception: "information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part."

Fun fact about IC confidentiality: "This section prevails over the Municipal Freedom of Information and Protection of Privacy Act."

The municipality and each local board has to make each report from the IC public. This happens at least once on an annual basis when the IC presents his yearly report to council. I believe that comes in either April or May. 🤔

Questions from council? Cllr Caton asks what a councillor can do if the IC chooses not to do a report and they want to proceed. Mascarin says they can make a complaint to the ombudsman in that case. He tells his team to make it clear that's an option too.

Cllr Richardson asks if there's an appeal if a councillor disagrees with the remedial action. Mascarin says no, but that councillor can file a judicial review, or bring an application to quash (legit legal term apparently). Either way, you're going to court.

Guthrie asks if conflict between members ends with them burying the hatchet even if they're order to stay away, can they come back to council to override. Mascarin says he's never heard of such a case, but it's possible.

Next up, Mascarin's Municipal Conflict of Interest presentation. The act goes back to 1972, but it's not used that often.

MCIA applies to councils and local boards, but not staff.

"The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest."

It's no one else's obligation to identify *your* conflict of interest, you have to know what you're conflicted.

The meaning: "a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as, say, a public official, an employee, or a professional"

In other words: 💰💰💰💰

There's 3 types of interest: direct (you have the interest), indirect (have a role/shareholder in public or private company), or deemed (spouse, child, family member).

Mascarin notes that the first one is easy, it's the other two that are dicey and he says that's he had members of Guelph council reach out to him to be sure on these matters.

So if you have a pecuniary interest, you have to:

- disclose the interest and the general nature prior to any consideration of the matter
- not take part in any discussion or vote
- not attempt to influence the voting in any way

This is the new part: No Influence of Municipal Officers or Employees. This was added because of the late Hazel McCallion who declared conflict in meetings about her son's development co but twisted arms offline.

Exceptions? There are 11

- a) as user of public utility and subject to similar conditions as other persons;
- b) entitlement to any service, subsidy, loan or benefit common to other persons;
- c) purchase or ownership of debenture;
- d) returnable deposit with municipality;

- e) interest property affected by Drainage Act works or local improvements;
- f) interest in exempted farm lands;
- g) eligibility for election or appointment to fill vacancy;
- h) director or senior officer of municipal corporation or appointee to board, commission or other body;
- i) any allowance, remuneration, salary or benefit that member may be entitled to by reason of being a member or as a member of a volunteer fire brigade;

And these two, which are the most common:

- j) interest in common with electors generally;
- k) remote or insignificant interest.

What's a "remote of insignificant interest"? This is apparently pretty tricky?

The definition: "Would a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councillor as likely to influence the councillor's action and decision on the question?"

Remoteness – relates to the immediacy and potential of the financial or economic interest.

Significance – relates to the importance of the matter.

Mascarin refers to the case of Rob Ford's conflict of interest in regards to his football charity. The \$3,150 for mailings was an amount of money most would consider "significant" and it was "important" to RF b/c he testified to why the charity matters.

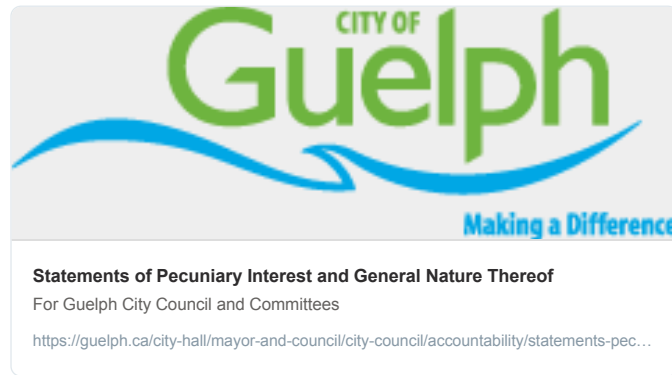
Voila: The Rob Ford amendment:

Limited Exception re Suspension of Remuneration

- s. 5(2.1) - where the matter under consideration at a meeting is whether to suspend the remuneration paid to the member for a contravention of the code of conduct: (1/3)
- the member is able to take part in the discussion of the matter, including making submissions to council, and may attempt to influence the voting on any question in respect of the matter
- the member is not permitted to vote on the matter (2/3)
- the member is able to attend a closed meeting during which the matter is under consideration (3/3).

Duty disclose. You have to disclose at the meeting, or failing that, at the immediate next meeting. And you have to add the conflict in writing to the registry of conflicts.

Here's the Guelph registry of pecuniary interest:



Members have to disclose their interest. They have to describe what kind of conflict and some general information why it applies, and then have it in writing.

Fun fact: Ontario is one of 2 provinces where members with PI don't have to leave unless in-camera, but Mascarin recommends it anyway.

Once the interest is declared, the member can't take part in debate and can't vote. They also can't attempt to influence the vote before, during or after the meeting.

There are a lot of contradictory judicial decisions, which is what makes this stuff so complicated so long story short, trust your IC and their advice.

Richardson asks if they can declare in the middle of a meeting if they suddenly realise this is a conflict. Mascarin says yes, get the attention of the chair right away.

But can they take it back after declaring a conflict and then getting advice to the contrary? Mascarin notes that there's no obligation, but a councillor might want to say something if they want to be thorough and avoid confusion with the public.

Cllr Busuttil asks about campaign donations. Mascarin says he gets complaints about financial disclosures and there have been no cases in Ontario, but there have in B.C. Councillors are allowed to fundraise, so long as they do so in the limits and disclose.

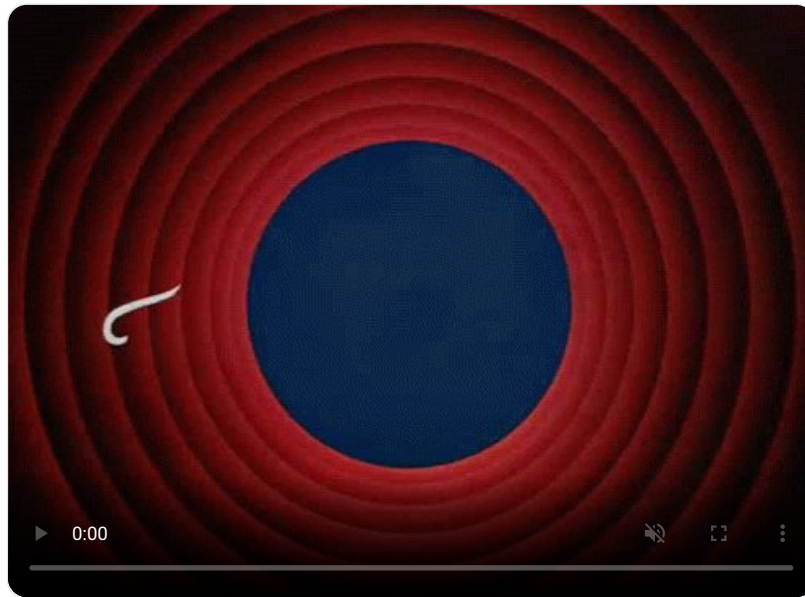
Busuttil notes that this information might be handy for candidates at the beginning of the process.

Guthrie asks if there's a line that shouldn't be crossed when talking about council decisions after the fact? Mascarin says cllrs are entitled to say they disagree, don't belittle, disparage or denigrate the decisions as best practice.

Guthrie says that over the years Mascarin comes with his annual report and his gone in 10 minutes, which shows the respect that team members have for each other in Guelph.

Mascarin says he wishes all his municipalities were like Guelph, and thanks council for the trust and support. Their comportment speaks volumes.

Workshop adjourned!



[@threadreaderapp](#), unroll please!

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