



OFFICE OF THE
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COMMISSIONER
TORONTO

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Sent via Email (No Original to Follow)

Attention: Chairs
City of Toronto Business Improvement Area Board of Management
Toronto, ON

Dear Chair:

Re: New Duties under the *Municipal Conflict of Interest Act* (MCIA)

On March 1, 2019, significant amendments to the *City of Toronto Act, 2006* and the *Municipal Conflict of Interest Act* ("MCIA" or "Act") are coming into force. I am writing to draw your attention to these changes and how they affect members of BIA boards of management.

- Effective March 1, 2019, members of BIA boards of management are required to file written declarations of interest in addition to the existing requirement to make a verbal declaration at a meeting (new section 5.1).
- The City and its boards are required to establish a registry of declared interests and make it available for public inspection.
- The *City of Toronto Act, 2006* has been amended, effective March 1, 2019, to give additional powers to the Integrity Commissioner to provide advice to members of BIA boards of management on their obligations under the Act. This advice can be taken into consideration by a Court dealing with an MCIA complaint (section 9).
- There is a new prohibition on members of BIA boards of management using their office to influence City of Toronto or board officials on matters where the member has a direct or indirect pecuniary interest, even if this matter does not come before a meeting for decision (new section 5.2).
- There is a new provision allowing any member of the public to file a complaint with the Integrity Commissioner that a member of a BIA board has failed to meet their obligations under the Act. Previously a complainant needed to make application to a court.
- The MCIA now makes a broader range of penalties available to a judge for contravention of the Act. Previously, the only penalty available was removal from office.

I am pleased to provide the attached interpretation bulletin to help members meet their new duties under the *Municipal Conflict of Interest Act*.

Thank you for your help to distribute this letter and the bulletin to all board members.

Yours truly,



Valerie Jepson
Integrity Commissioner

Enclosure (1): February 2019 Interpretation Bulletin: Identifying and Declaring Pecuniary Conflicts of Interest at Meetings

c.c.: Mike Major, BIA Office

Identifying and Declaring Pecuniary Interests at Meetings

Purpose and Scope of the Bulletin

1. The purpose of this Interpretation Bulletin is to assist members of Council and local boards (restricted definition) (referred to as "a member" or "members" in this Bulletin) to understand their duty to identify, recuse themselves from and disclose pecuniary (or financial) interests.
2. This Bulletin provides guidance about members' obligations set out in sections 5 and 5.1 of the *Municipal Conflict of Interest Act* ("MCIA" or "Act").
3. This Bulletin does not address members' other duties under section 5.2 of the MCIA which prohibits members from using their office to attempt to in any way influence any decision or recommendation in matters in which they have a pecuniary interest, or the applicable code of conduct.
4. Members should seek confidential advice from the Integrity Commissioner to address their specific interests and concerns, as they arise. The Act indicates that when reviewing MCIA complaints, a Court may consider whether the member sought and followed the advice of an Integrity Commissioner.

Disclosure and Recusal Obligations

5. When a matter comes before a meeting of Council or the board for which a member and/or his or her parent, child, or spouse, has a pecuniary interest, either directly or indirectly, the MCIA requires that the member:
 - a. verbally disclose the pecuniary interest prior to any consideration of the matter at the meeting;
 - b. not take part in the discussion of, or vote on any question with respect to, that matter;
 - c. if the meeting is not open to the public, the member must immediately leave the meeting or the part of the meeting during which the matter is under consideration;

- d. not in any way attempt before, during or after the meeting to influence the voting on any such matter; and,
 - e. either at the meeting, or as soon possible afterwards, file a written statement of his or her interest, and its general nature, with the City Clerk (in the case of Council) or the secretary (in the case of a board).
- 6. A meeting includes regular, special or committee meetings of Council or a board.

Identifying a Pecuniary Interest

- 7. Determining whether there is a pecuniary interest requires application of the MCIA and review of case law. Certain interests are deemed to be "indirect pecuniary interests" and so careful attention is required for each situation. Members should seek advice from the Integrity Commissioner about specific situations.
- 8. Direct pecuniary interest: A member may have a pecuniary interest when the result of a matter before Council or the board could impact, either positively or negatively, the member's finances, economic prospects or asset value. This could include, for example, a decision that would lead to an increase or decrease in value of property, creating new economic opportunities, or greater employment benefits.
- 9. Indirect pecuniary interest: A member may also have a pecuniary interest under the MCIA where he or she has an indirect pecuniary interest in the matter as a result of a relationship with another entity. An indirect pecuniary interest can arise when the matter before Council or the board will impact the finances, economic prospects or property value of:
 - a. a private corporation in which the member is a shareholder, director or senior officer;
 - b. a public corporation in which the member has a controlling interest, or is a director or senior officer of;
 - c. a body of which the member of Council or board is also a member;
 - d. a member's business partner; or
 - e. a member's employer.
- 10. The direct and indirect pecuniary interests of a member's spouse, child (regardless of age) or parent are deemed to be the same interests of the member

for the purpose of the MCIA. For example, if a member's father's business interests may be affected by a decision, the member may be deemed to have the same pecuniary interest as her father, and must declare that interest and recuse herself from any consideration of that matter.

11. The question is not whether the interest at stake will actually affect the way a member behaves or votes, but rather whether a reasonable elector, being apprised of all the circumstances, would consider that the interest would influence the member's action and decision on the question.
12. The MCIA includes some exceptions to allow members to participate in decisions for which they have a pecuniary interest. Before determining whether any of the exceptions apply, members should seek advice from the Integrity Commissioner which would demonstrate the member's intention to meet the duties in the MCIA.

Best Practices and Sample Declarations

13. Members should review agendas in advance of all meetings to identify matters that could give rise to direct and/or indirect pecuniary interests under the Act, and seek advice as soon as possible from the Integrity Commissioner.
14. Subject to the Integrity Commissioner's advice in a particular situation, a member who identifies a pecuniary interest may consider the following general guidelines:
 - a. Complete the [form](#) provided for this purpose by the [Office of the City Clerk](#) or prepare a written statement with the following information:

Heading - Written Statement of Interest declared at [date] Meeting of [name of meeting]

Declaration - I declare an interest in item number [agenda item number] titled [title of agenda item] because [nature of interest].

Purpose - I make this declaration in accordance with section 5.1 of the *Municipal Conflict of Interest Act*.

Name - Name of Member

- b. At the beginning of the meeting during the "declarations of interest" portion, read the declaration using language identical to the prepared written statement.
- c. File the written statement with the Clerk or Secretary.

15. While members should use best efforts to identify possible pecuniary interests in advance of meetings, members may not identify a pecuniary interest until the meeting is in progress for a variety of reasons. In circumstances where a member becomes aware that a matter before Council or a board may engage their pecuniary interests, members should follow the above best practices to the best of their ability, including seeking advice from the Integrity Commissioner on an urgent basis.
16. Members can consider the following sample statements to assist with the understanding of the nature of their duty under the Act. These examples are not replacements for specific advice.

Written Statement of Interest declared at the August 25, 2019 meeting of Toronto City Council

I declare an interest in item number PG35.79, titled 2019 Toronto Road – Official Plan Amendment, Zoning Amendment and Draft Plan of Subdivision Applications – Request for Direction Report, because my spouse is employed by the applicant.

I make this declaration in accordance with section 5.1 of the Municipal Conflict of Interest Act.

*John Smith,
Councillor for Ward 50*

Written Statement of Interest declared at the July 25, 2019 meeting of the Board of Management for the New Zone Business Improvement Area

I declare an interest in item number 3, titled Festival Sub-committee planning update Report, because my spouse is employed by Face Painting on the Street, a company providing service to the Festival.

I make this declaration in accordance with section 5.1 of the Municipal Conflict of Interest Act.

*John Smith,
Member, Board of Management New Zone Business Improvement Area*

Further Information

This interpretation bulletin provides general information only. Members are encouraged to seek confidential advice from the Integrity Commissioner with respect to specific situations, including whether they must declare a pecuniary interest and the wording of their declaration.

If you have any questions, please contact:

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