



BY-LAW NO. 378-2018

**A BY-LAW TO ESTABLISH POLICY
FOR CODE OF CONDUCT, COMPLAINTS AND OTHER
GOVERNANCE RESPONSIBILITIES OF BOARD MEMBERS**

1. PREAMBLE

- 1.1 WHEREAS subsection 31(1)(c) of the *Police Services Act* provides that a Board is responsible for the provision of adequate and effective police services in the municipality and shall establish policies for the effective management of the police force;
- 1.2 AND whereas Section 37 of the *Police Services Act* provides that a Police Services Board shall establish its own rules and procedures in performing its duties under this *Act*;
- 1.3 AND whereas the *Police Services Act* provides that Board members will comply with the "Members of Police Services Boards – Code of Conduct", Ontario Regulation 421/97;
- 1.4 AND whereas the Board deems it expedient to enact this by-law to ensure that the response to complaints by the Board adheres to the principles set out in Article 3 below, the *Police Services Act*, Ontario Regulation 421/97, and to the provisions *Municipal Conflict of Interest Act*, R.S.O. 1990, ch. M50, and amendments thereto, to avoid conflict of interest with respect to their governance responsibilities.

NOW THEREFORE THE REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD ENACTS AS FOLLOWS:

2. DEFINITIONS

- 2.1 "Act" means *Police Services Act*, R.S.O. 1990, c.P.15, as amended;
- 2.2 "Board" means the Regional Municipality of Niagara Police Services Board;
- 2.3 "Board Member" means a member of the Niagara Police Services Board;
- 2.4 "Executive Director" means the Executive Director of the Board;
- 2.5 "Ministry" means the Ministry of Community Safety and Correctional Services;

2.6 "OCPC" means the Ontario Civilian Police Commission.

3. BOARD POLICY

3.1 The Board commits itself and its members to ethical, professional and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members.

3.2 The Board recognizes and adheres to the principle that fair, open, prompt, thorough and efficient response to Board Member Conduct Complaints is a cornerstone to establishing and maintaining a positive community-police relationship, and it is therefore the policy of the Board that such complaints be dealt with in a professional and thorough manner in accordance with *the Police Services Act*, Ontario Regulation 421/97 and as directed in this By-law.

3.3 Board Members will comply with the "Members of Police Services Boards – Code of Conduct", Ontario Regulation 421/97 (see Appendix "A"), and the *Municipal Conflict of Interest Act* (see Appendix "B") as attached hereto and ensure their conduct adheres to the requirements contained therein.

4. COMPLAINTS PROCESS FOR BOARD MEMBER CONDUCT

4.1 It is the policy of the Board that:

4.2 All complaints will be received in writing with the complainant's name and return address identified.

4.3 If the complaint alleges a breach of the pecuniary conflict of interest under the *Municipal Conflict of Interest Act*, the complaint shall be returned to the Complainant with an explanation that such complaints are outside of the jurisdiction of the Board, and must be dealt with under that Act.

4.4 The Chair, or any member of the Board, will be required to bring forward all complaints about the conduct of the Chair or any other member of the Board to the entire Board, at a Board meeting for review. At the discretion of the Board, the Board member who is the subject of the complaint may be excluded from this meeting.

4.5 The Board member who is the subject of the complaint shall be provided with a copy of the complaint at the time it is brought to the Board under 4.4 above.

4.6 The Board shall retain legal counsel at the request of the Board Chair (or the Vice-Chair in the Chair's absence or if the Chair is the subject of the complaint).

4.7 The Chair (or the Vice-Chair in the Chair's absence or if the Chair is the subject of the complaint) will make a recommendation as to how the Board should review the complaint.

4.8 The affected Board Member will be permitted to provide a written or oral response to the Board regarding the allegations contained in the complaint, if he/she chooses to do so.

ONTARIO REGULATION 421/97

MEMBERS OF POLICE SERVICES BOARDS — CODE OF CONDUCT

Last amendment: O.Reg. 298/05.

This Regulation is made in English only.

1. Board members shall attend and actively participate in all board meetings. O. Reg. 421/97, s. 1.
2. Board members shall not interfere with the police force's operational decisions and responsibilities or with the day-to-day operation of the police force, including the recruitment and promotion of police officers. O. Reg. 421/97, s. 2.
3. Board members shall undergo any training that may be provided or required for them by the Solicitor General. O. Reg. 421/97, s. 3.
4. Board members shall keep confidential any information disclosed or discussed at a meeting of the board, or part of a meeting of the board, that was closed to the public. O. Reg. 421/97, s. 4.
5. No board member shall purport to speak on behalf of the board unless he or she is authorized by the board to do so. O. Reg. 421/97, s. 5.
6. A board member who expresses disagreement with a decision of the board shall make it clear that he or she is expressing a personal opinion. O. Reg. 421/97, s. 6.
7. Board members shall discharge their duties loyally, faithfully, impartially and according to the Act, any other Act and any regulation, rule or by-law, as provided in their oath or affirmation of office. O. Reg. 421/97, s. 7.
8. Board members shall uphold the letter and spirit of the Code of Conduct set out in this Regulation and shall discharge their duties in a manner that will inspire public confidence in the abilities and integrity of the board. O. Reg. 421/97, s. 8.
9. Board members shall discharge their duties in a manner that respects the dignity of individuals and in accordance with the Human Rights Code and the Charter of Rights and Freedoms (Canada). O. Reg. 421/97, s. 9.
10. Board members shall not use their office to advance their interests or the interests of any person or organization with whom or with which they are associated. O. Reg. 421/97, s. 10.
11. (1) Board members shall not use their office to obtain employment with the board or the police force for themselves or their family member. O. Reg. 298/05, s. 1.

(2) For the purpose of subsection (1),

"family member" means the parent, spouse or child of the person, as those terms are defined in section 1 of the Municipal Conflict of Interest Act. O. Reg. 421/97, s. 11 (2).
12. A board member who applies for employment with the police force, including employment on contract or on fee for service, shall immediately resign from the board. O. Reg. 421/97, s. 12.

13. Board members shall refrain from engaging in conduct that would discredit or compromise the integrity of the board or the police force. O. Reg. 421/97, s. 13.
 14. (1) A board member whose conduct or performance is being investigated or inquired into by the Commission under section 25 of the Act or is the subject of a hearing before the Commission under that section shall decline to exercise his or her duties as a member of the board for the duration of the investigation or inquiry and hearing. O. Reg. 277/00, s. 1.
 - (2) If the application of subsection (1) results in a board not having enough members able to exercise their duties in order to constitute a quorum during an investigation, inquiry or hearing under section 25 of the Act, the chair of the Commission may appoint that number of persons necessary to constitute a quorum, who shall act in the place of the members who are unable to exercise their duties. O. Reg. 277/00, s. 1.
 - (3) The chair of the Commission,
 - (a) shall specify in an appointment made under subsection (2) that the appointee may only exercise such duties as are necessary for the effective operation of the board during the investigation, inquiry or hearing and, for such purpose, may specify the duties the appointee may or may not exercise; and
 - (b) shall cancel an appointment made under subsection (2) as soon as a member of the board who declined to exercise his or her duties under subsection (1) resumes exercising his or her duties or is replaced under subsection 25 (8) of the Act. O. Reg. 277/00, s. 1.
 15. If the board determines that a board member has breached the Code of Conduct set out in this Regulation, the board shall record that determination in its minutes and may,
 - (a) require the member to appear before the board and be reprimanded;
 - (b) request that the Ministry of the Solicitor General conduct an investigation into the member's conduct; or
 - (c) request that the Commission conduct an investigation into the member's conduct under section 25 of the Act. O. Reg. 421/97, s. 15.
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**MUNICIPAL CONFLICT OF INTEREST ACT
R.S.O. 1990, CHAPTER M.50**

Last amendment: 2007, c. 8, s. 219.

Definitions

1. In this Act,

“child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family; (“enfant”)

“controlling interest” means the interest that a person has in a corporation when the person beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding;

“council” means the council of a municipality;

“elector” means,

(a) in respect of a municipality, or a local board thereof, other than a school board, a person entitled to vote at a municipal election in the municipality, and

(b) in respect of a school board, a person entitled to vote at the election of members of the school board;

“interest in common with electors generally” means a pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part;

“judge” means a judge of the Superior Court of Justice;

“local board” means a school board, board of directors of a children’s aid society, committee of adjustment, conservation authority, court of revision, land division committee, municipal service board, public library board, board of management of an improvement area, board of health, police services board, planning board, district social services administration board, trustees of a police village, board of trustees of a police village, board or committee of management of a home for the aged, or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act in respect of any of the affairs or purposes, including school purposes, of one or more municipalities or parts thereof, but does not include a committee of management of a community recreation centre appointed by a school board or a local roads board;

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “local board” is amended by the Statutes of Ontario, 2007, chapter 8, section 219 by striking out “home for the aged” and substituting “long-term care home”. See: 2007, c. 8, ss. 219, 232 (2).

“meeting” includes any regular, special, committee or other meeting of a council or local board, as the case may be;

“member” means a member of a council or of a local board;

“municipality” includes a board, commission or other local authority exercising any power in respect of municipal affairs or purposes, including school purposes, in territory without municipal organization, but does not include a committee of management of a community recreation centre appointed by a school board, a local roads board or a local services board;

“parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;

“school board” means a board as defined in subsection 1 (1) of the Education Act, and, where the context requires, includes an old board within the meaning of subsection 1 (1) of the Education Act;

“senior officer” means the chair or any vice-chair of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other person who performs functions for the corporation similar to those normally performed by a person occupying any such office;

“spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage. (“conjoint”) R.S.O. 1990, c. M.50, s. 1; 1997, c. 25, Sched. E, s. 7; 1997, c. 31, s. 156 (1); 1999, c. 6, s. 41 (1); 2002, c. 17, Sched. F, Table; 2005, c. 5, s. 45 (1, 2); 2006, c. 19, Sched. C, s. 1 (1); 2006, c. 32, Sched. D, s. 10.

Indirect pecuniary interest

2. For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

(a) the member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body,

that has a pecuniary interest in the matter; or

(b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter. R.S.O. 1990, c. M.50, s. 2.

Interest of certain persons deemed that of member

3. For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member. R.S.O. 1990, c. M.50, s. 3; 1999, c. 6, s. 41 (2); 2005, c. 5, s. 45 (3).

Exceptions

Where s. 5 does not apply

4. Section 5 does not apply to a pecuniary interest in any matter that a member may have,
- (a) as a user of any public utility service supplied to the member by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members;
 - (b) by reason of the member being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;
 - (c) by reason of the member purchasing or owning a debenture of the municipality or local board;
 - (d) by reason of the member having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to the member in like manner as such a deposit is or may be returnable to all other electors;
 - (e) by reason of having an interest in any property affected by a work under the Drainage Act or by a work under a regulation made under Part XII of the Municipal Act, 2001 or Part IX of the City of Toronto Act, 2006, as the case may be, relating to local improvements;
 - (f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the Assessment Act;
 - (g) by reason of the member being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;
 - (h) by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board;
 - (i) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member or as a member of a volunteer fire brigade, as the case may be;
 - (j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or
 - (k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member. R.S.O. 1990, c. M.50, s. 4; 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (1).

Duty of Member

When present at meeting at which matter considered

5. (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

Where member to leave closed meeting

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration. R.S.O. 1990, c. M.50, s. 5 (2).

When absent from meeting at which matter considered

(3) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1). R.S.O. 1990, c. M.50, s. 5 (3).

Record of Disclosure

Disclosure to be recorded in minutes

6. (1) Every declaration of interest and the general nature thereof made under section 5 shall, where the meeting is open to the public, be recorded in the minutes of the meeting by the clerk of the municipality or secretary of the committee or local board, as the case may be. R.S.O. 1990, c. M.50, s. 6 (1).

Idem

(2) Every declaration of interest made under section 5, but not the general nature of that interest, shall, where the meeting is not open to the public, be recorded in the minutes of the next meeting that is open to the public. R.S.O. 1990, c. M.50, s. 6 (2).

Remedy for Lack of Quorum

Quorum deemed constituted

7. (1) Where the number of members who, by reason of the provisions of this Act, are disabled from participating in a meeting is such that at that meeting the remaining members are not of sufficient number to constitute a quorum, then, despite any other general or special Act, the remaining number of members shall be deemed to constitute a quorum, provided such number is not less than two. R.S.O. 1990, c. M.50, s. 7 (1).

Application to judge

(2) Where in the circumstances mentioned in subsection (1), the remaining number of members who are not disabled from participating in the meeting is less than two, the council or local board may apply to a judge without notice for an order authorizing the council or local board, as the case may be, to give consideration to, discuss and vote on the matter out of which the interest arises. R.S.O. 1990, c. M.50, s. 7 (2).

Power of judge to declare s. 5 not to apply

(3) The judge may, on an application brought under subsection (2), by order, declare that section 5 does not apply to the council or local board, as the case may be, in respect of the matter in relation to which the application is brought, and the council or local board thereupon may give consideration to, discuss and vote on the matter in the same manner as though none of the members had any interest therein, subject only to such conditions and directions as the judge may consider appropriate and so order. R.S.O. 1990, c. M.50, s. 7 (3).

Action where Contravention Alleged

Who may try alleged contravention of s. 5 (1-3)

8. The question of whether or not a member has contravened subsection 5 (1), (2) or (3) may be tried and determined by a judge. R.S.O. 1990, c. M.50, s. 8.

Who may apply to judge

9. (1) Subject to subsection (3), an elector may, within six weeks after the fact comes to his or her knowledge that a member may have contravened subsection 5 (1), (2) or (3), apply to the judge for a determination of the question of whether the member has contravened subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 9 (1).

Contents of notice of application

(2) The elector in his or her notice of application shall state the grounds for finding a contravention by the member of subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 9 (2).

Time for bringing application limited

(3) No application shall be brought under subsection (1) after the expiration of six years from the time at which the contravention is alleged to have occurred. R.S.O. 1990, c. M.50, s. 9 (3).

Power of judge to declare seat vacant, disqualify member and require restitution

10. (1) Subject to subsection (2), where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), the judge,

(a) shall, in the case of a member, declare the seat of the member vacant; and

(b) may disqualify the member or former member from being a member during a period thereafter of not more than seven years; and

(c) may, where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or local board of which he or she is a member or former member. R.S.O. 1990, c. M.50, s. 10 (1).

Saving by reason of inadvertence or error

(2) Where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), if the judge finds that the contravention was committed through inadvertence or by reason of an error in judgment, the member is not subject to having his or her seat declared vacant and the member or former member is not subject to being disqualified as a member, as provided by subsection (1). R.S.O. 1990, c. M.50, s. 10 (2).

Member not to be suspended

(3) The authority to disqualify a member in subsection (1) does not include the right to suspend a member. R.S.O. 1990, c. M.50, s. 10 (3).

Transition: disqualification

(4) A disqualification of a member of a school board under this section that would have continued after December 31, 1997 but for the dissolution of the school board continues for its duration with respect to membership on any board whose members are elected by members of the electoral group who elected the member. 1997, c. 31, s. 156 (2).

Definition

(5) In subsection (4),

“electoral group” has the same meaning as in Part VIII of the Education Act as the Part read on January 1, 1997. 1997, c. 31, s. 156 (2).

Appeal to Divisional Court

11. (1) An appeal lies from any order made under section 10 to the Divisional Court in accordance with the rules of court. R.S.O. 1990, c. M.50, s. 11 (1).

Judgment or new trial

(2) The Divisional Court may give any judgment that ought to have been pronounced, in which case its decision is final, or the Divisional Court may grant a new trial for the purpose of taking evidence or additional evidence and may remit the case to the trial judge or another judge and, subject to any directions of the Divisional Court, the case shall be proceeded with as if there had been no appeal. R.S.O. 1990, c. M.50, s. 11 (2).

Appeal from order or new trial

(3) Where the case is remitted to a judge under subsection (2), an appeal lies from the order of the judge to the Divisional Court in accordance with the provisions of this section. R.S.O. 1990, c. M.50, s. 11 (3).

Proceedings not invalidated but voidable

12. The failure of any person to comply with subsection 5 (1), (2) or (3) does not of itself invalidate any proceedings in respect of any such matter but the proceedings in respect of such matter are voidable at the instance of the municipality or of the local board, as the case may be, before the expiration of two years from the date of the passing of the by-law or resolution authorizing such matter unless to make void the proceedings would adversely affect the rights of any person acquired under or by virtue of the proceedings who acted in good faith and without actual notice of the failure to comply with subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 12.

Other procedures prohibited

13. Proceedings to declare a seat vacant or to disqualify a member or former member for conflict of interest, or to require a member or former member to make restitution where a contravention has resulted in personal financial gain, shall be had and taken only under this Act. R.S.O. 1990, c. M.50, s. 13.

General

Insurance

14. (1) Despite section 279 of the Municipal Act, 2001 or section 218 of the City of Toronto Act, 2006, as the case may be, the council of every municipality may at any time pass by-laws,

(a) for contracting for insurance;

(b) despite the Insurance Act, to enable the municipality to act as an insurer; and

(c) for exchanging with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the Insurance Act,

to protect a member of the council or of any local board thereof who has been found not to have contravened section 5, against any costs or expenses incurred by the member as a result of a proceeding brought under this Act, and for paying on behalf of or reimbursing the member for any such costs or expenses. R.S.O. 1990, c. M.50, s. 14 (1); 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (2).

Insurance Act does not apply

(2) The Insurance Act does not apply to a municipality acting as an insurer for the purposes of subsection (1). R.S.O. 1990, c. M.50, s. 14 (2).

Surplus funds

(3) Despite section 387 of the Insurance Act, any surplus funds and the reserve fund of a municipal reciprocal exchange may be invested only in such securities as a municipality may invest in under the Municipal Act, 2001 or the City of Toronto Act, 2006, as the case may be. R.S.O. 1990, c. M.50, s. 14 (3); 1996, c. 32, s. 76 (1); 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (3); 2007, c. 7, Sched. 27, s. 1.

Reserve funds

(4) The money raised for a reserve fund of a municipal reciprocal exchange may be expended or pledged for, or applied to, a purpose other than that for which the fund was established if two-thirds of the municipalities that are members of the exchange together with two-thirds of the municipalities that previously were members of the exchange and that may be subject to claims arising while they were members of the exchange agree in writing and if section 386 of the Insurance Act is complied with. R.S.O. 1990, c. M.50, s. 14 (4).

Local boards

(5) A local board has the same powers to provide insurance for or to make payments to or on behalf of its members as are conferred upon the council of a municipality under this section in respect of its members. R.S.O. 1990, c. M.50, s. 14 (5).

Former members

(6) A by-law passed under this section may provide that it applies to a person who was a member at the time the circumstances giving rise to the proceeding occurred but who, prior to the judgment in the proceeding, has ceased to be a member. R.S.O. 1990, c. M.50, s. 14 (6).

Conflict with other Acts

15. In the event of conflict between any provision of this Act and any provision of any general or special Act, the provision of this Act prevails. R.S.O. 1990, c. M.50, s. 15.
