Northumberland OPP Detachment Board Policy

Conflict of Interest

Policy No: 2024-2

Effective Date: April 1, 2024

Rescinds all other Policies and Procedures relating to this subject.

1. Policy Statement

1.1. *Community Safety and Policing Act, 2019* ("CSPA") ss.11(1) requires that adequate and effective policing for which the OPP Commissioner is responsible (not the Board per CSPA s.10) be delivered in accordance with a prescribed standard with respect to the avoidance of conflicts of interest monitored by the Inspector General.

1.2. The Conflict of Interest Regulation O. Reg. 401/23 under the CSPA is not worded to apply directly to OPP detachment boards. Rather, it applies in limited circumstances described in O. Reg. 401/23 with respect to a "potential institutional conflict" in relation to where a member of the police service must take action or make a decision in relation to criminal conduct alleged/reasonably suspected to have been committed by, or against, a list of people which includes an OPP detachment board member.

1.3. The conflict of interest requirements applicable to the conduct of OPP detachment boards are set out in s.17-22 of the Code of Conduct regulation (O. Reg. 409/23).

1.4. Under ss.12(1) of O. Reg. 401/23 the avoidance of actual institutional conflicts and personal conflicts in the provision of policing functions is prescribed for the purposes of clause 60(1)(f) of the CSPA which means the Minister must prescribe any conflict of interest policy that would be applicable to the conduct of OPP detachment board members specifically, apart from the conflicts provisions in the Code of Conduct regulation. To date, there are none.

1.5. Note also that to the extent the Board is a "local board" as defined in the Municipal Conflict of Interest Act ("MCIA"), the MCIA applies to the Board. While the Board's position is that it is not a "local board" (see discussion in section 5 below), through this Policy the Board has voluntarily assumed this is the case for purposes of voluntarily adopting the MCIA requirements as a matter of good governance.

1.6. Unless and until the Minister prescribes additional conflict of interest policy requirements pursuant to s.12(1) of O. Reg. 401/23, Board members shall comply with the conflict of interest provisions of the Code of Conduct and the following principles based on the Board's voluntary adoption of MCIA requirements:

(a) As a general principle, there must be no direct or indirect self-dealing or any conduct of private business or personal services between any Board member and the Board, except as disclosed to the Board and procedurally controlled to assure openness, competitive opportunity, equal access to "inside" information and avoidance of conflicts of interest and pecuniary interest.

(b) Board members must perform their duties as fiduciaries of the public interest without engaging in actions or behaviours that may reasonably be perceived to be a conflict of interest having regard to their fiduciary responsibilities. To do so Board members are required to:

(i) identify potential conflicts;

(ii) disclose potential conflicts to other Board members in a timely manner; and

(iii) comply with Board decisions made to resolve potential and actual conflicts.[1]

(c) Board members must not use their positions to obtain for themselves, family members or close associates, employment within the Board or police service;

(d) Board members must not use their positions to obtain for themselves, family members, or close associates any advantage, immunity from prosecution or favour during any police investigation or other police dealings.

2. Statutory Authority or References

2.1. CSPA; O. Reg. 401/23; Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50 (the "Act")

3. Purpose

3.1. Compliance with the requirements of O. Reg. 401/23, the Code of Conduct O. Reg. 409/23 and, the Act to the extent the Board is a "local board" as defined in the Act.

4. Scope

4.1. This Policy will apply to Board Members and the Executive Assistant in the conduct of their duties.

5. Definitions

5.1. A "conflict of interest" or pecuniary interest may be either direct or indirect [2] and includes.

(a) Direct pecuniary interest which relates to the financial gain or loss of a member in a particular matter before the Board;

(b) Indirect pecuniary interest which exists if:

(i) the member or their nominee is a shareholder in, or a director or senior officer of a corporation that does not offer its securities to the public, and that has a pecuniary interest in a matter before the Board; or

(ii) the member or their nominee has a controlling interest in, or is a director or senior officer of, a corporation that offers its securities to the public and that has a pecuniary interest in a matter before the Board; and

(c) Other conflict of interest which while not pecuniary in nature represents an interest or involvement in a matter before the Board the outcome of which is reasonably expected to affect the member in some material way.

5.2. For purposes of clause 5.1(b)(ii) above, a controlling interest exists if the member:

[1] Note potential conflicts and actual may be resolved in most cases by disclosure and consent/recusal, however, actual conflicts may require additional steps to resolve.

[2] Under the Act, the direct or indirect pecuniary interest of a parent, spouse, or any child of the member, if known to the member, is deemed to be the pecuniary interest of the member.

(a) beneficially owns, directly or indirectly, or exercises control or direction over, equity shares carrying more than 10% of the voting rights attached to all equity shares of the corporation that has a pecuniary interest in a matter before the Board:
(b) is a member of a body that has a pecuniary interest in a matter before the Board;

(c) is a partner of a person that has a pecuniary interest in a matter before the Board; or

(d) is in the employment of a person or body that has a pecuniary interest in a matter before the Board.

5.3. Under the Act a "local board" is defined as follows:

"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 service board[3], 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 long-term care home, *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;

It is arguable that OPP detachment boards may not come within this definition from and after April 1, 2024, since they are not "police service boards" as defined under the CSPA. Prior to April 1, 2024, the Police Services Act (PSA) included both s.10 (OPP) and s.31 boards in the term "police service board" and therefore both were clearly "local boards" under the Act. Was this exclusion of OPP detachment boards from the local board definition intentional? Is it arguable that OPP detachment boards are still included in the definition by virtue of the words "*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*"? Some case law suggests otherwise.[4] This requires clarification from the Ministry.

5.4. As defined herein.

6. Exceptions under the Act

6.1. Exceptions under the Act include:

(a) an interest that a member may have 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) a pecuniary interest a member may have which is an interest in common with electors generally; or

(c) 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.

[3] Prior to April 1, 2024, this read "police services board" as per the PSA definition.
[4] *Ontario Ombudsman v. Hamilton (City),* 2018 ONCA 502 (CanLII); *County of Lambton Community Development Corporation v Municipal Property Assessment Corporation et al*., 2023 ONSC 3434 (CanLII).

7. Policy Guidelines and Procedure

7.1. Where a Board member has any potential conflict of interest or pecuniary interest, direct or indirect, and is present at a meeting of the Board at which the matter is the subject of consideration, he or she shall:

(a) prior to any consideration of the matter, disclose his or her interest and the general nature thereof;

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

(c) not attempt in any way, whether before, during, or after the meeting, to influence the voting on any such question.

7.2. Where a meeting of the Board referred to in paragraph 7.1 above is not open to the public, in addition to complying with the requirements of the paragraph, the member shall leave the meeting or the part of the meeting during which the matter is under consideration, unless the Board requests or permits otherwise or as contemplated under subsection 5(2.1) of the Act in relation the consideration of a penalty.

7.3. Where the interest of a member has not been disclosed as required by paragraph 7.1 by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with paragraph 7.1 at the first meeting of the Board attended by the member after the meeting referred to in paragraph 7.1.

7.4. At a meeting at which a member discloses an interest under paragraph 7.1, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the Executive Assistant.

7.5. 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 that is being considered by the Board, or by a person or body to which the Board has delegated a power or duty, the member shall not, unless otherwise permitted under subsection 5.2 of the Act, use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter.

7.6. Every disclosure of interest and the general nature thereof made under paragraph 7.1:

(a) Shall be recorded in the minutes of the meeting where the declaration is made by the Executive Assistant; and

(b) where the meeting in subparagraph 7.6(a) is not open to the public, shall also be recorded in the minutes of the next meeting that is open to the public, subject to such modifications as the Board determines are appropriate having regard to privacy and confidentiality considerations.

7.7. Where the number of members who, by reason of the provisions of this Policy, 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 the Board's by-laws, the remaining number of members shall be deemed to constitute a quorum, provided such number is not less than two, or otherwise in reliance on subsections 7(2) and (3) of the Act.

8. Review and Revision History

Revision Date	Description of Changes
April 1, 2024	Reflect new CSPA

Approved and ratified by the Board effective April 1, 2024.

John Davison

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Chair

Lou Rinaldi

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Vice-Chair