Policy No.:	Policy #LS-2026-04 – Conflict of Interest in relation to the Administrative Penalty System Program
Department:	Legal Services
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Approved By:	#C-08-26
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Subject

Conflict of Interest in relation to the Administrative Penalty System (APS) Program.

Purpose

Ontario Regulation 333/07 (the "Regulation") under the *Municipal Act,* 2001, S.O. 2001, c.25 requires the Municipality to establish a policy relating to conflicts of interest in the administration of the APS program. In accordance with the Regulation, the policy must define what constitutes a conflict of interest, to prevent such conflicts and to redress such conflicts should they occur.

This policy shall establish conflict of interest guidelines to ensure the program is conducted in accordance with the fundamental principles of justice which include judicial and prosecutorial independence, fairness, impartiality, competency and integrity.

Scope

This policy applies to all members of Council, Screening Officers, Hearing Officers and Employees involved in the administration of the program.

For members of Council, this policy should be read and interpreted within the context of Provincial legislation (i.e. *Municipal Conflict of Interest Act,* R.S.O. 1990, c. M.50) and the Council Code of Conduct and its related policies, procedures and guidelines.

For Employees, the Municipal Staff Code of Conduct, and any successor policy, shall apply in regard to the activities of an Employee in the administration of the program.

For Hearing Officers, the provisions of any agreement governing the retainer between the Municipality and the Hearing Officer shall apply in regard to the activities of the Hearing Officer. In the event of a conflict between this policy and the agreement, this policy shall supersede.

Definitions

"**APS**" means the Administrative Penalty System;

"**Council**" means the Council for the Corporation of the Municipality of Leamington;

"**Director**" means the Director of Legal and Legislative Services or his or her delegate.

"**Employee**" means an employee of the Municipality;

"**Hearing Officer**" means a person appointed by the Municipality to perform the functions of a Hearing Office in accordance with the Administrative Penalty System By-law;

"**Hearing Review**" means the review of a Screening Decision as set out in the Administrative Penalty System By-law;

"**Penalty Notice**" means a notice issued pursuant to the Administrative Penalty System By-law;

"**Municipality**" means the Corporation of the Municipality of Leamington;

"**Screening Officer**" means a person who performs the functions of a Screening Officer in accordance with the Administrative Penalty System By-law;

"**Screening Review**" means the review of an Administrative Penalty made pursuant to the Administrative Penalty System By-law.

Policy

Appointment of Screening Officers and Hearing Officers

1. Screening Officers are individuals appointed to conduct Screening Reviews in the public interest.

2. Hearing Officers are individuals appointed to conduct Hearing Reviews in the public interest.

3. The following persons shall not be eligible for appointment or to remain as a Screening Officer or Hearing Officer:

    a) A member of Council or a relative of a member of Council;

    b) An individual indebted to the Municipality other than:

        i. in respect to current real property taxes; or

        ii. pursuant to an agreement with the Municipality, where the individual is in compliance with the terms thereof; and

        iii. in the case of a Hearing Officer, an employee of the Municipality.

Conflict of Interest

4. A conflict of interest arises where a Screening Officer, Hearing Officer or Employee involved in the administration of APS has a personal or business interest that conflicts, might conflict, or may be perceived to conflict with the interests of the proper administration of APS. A conflict of interest includes a pecuniary or non-pecuniary, actual, perceived or potential conflict and could arise in relation to personal or business matters including:

    a) directorship or employment;

    b) interests in business enterprises or professional practices;

    c) share ownership or beneficial interests in trusts;

    d) professional or personal associations with a person;

    e) professional associations or relationships with other organizations; and

    f) personal associations with other groups or organizations, or family relationships including relatives.

5. Screening Officers shall be impartial at all times. A Screening Officer shall not review a Penalty Notice for a personal or business acquaintance or relative.

6. Hearing Offices are obligated to conduct Hearing Reviews in an impartial manner. Hearing Officers, in conducting a Hearing Review, are bound by the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as well as bound by general

administrative common law principles (i.e. procedural fairness, natural justice, impartial and unbiased decision making, etc.).

7. Every Screening Officer, Hearing Officer and Employee involved in the administration of APS must disclose any obligation, commitment, relationship, or interests in the administration of APS directly to the Director.

8. A Screening Officer or Hearing Officer shall not represent any person at a Screening Review or Hearing Review.

Conduct of Screening Officers and Hearing Officers

9. All Screening Officers and Hearing Officers shall:

   a) both be and appear to be independent, impartial and unbiased;

   b) avoid all conflicts of interest, whether real or perceived, and are responsible for promptly taking appropriate steps to disclose, resolve, or obtain advice with respect to such conflicts when they arise;

   c) not be influenced by partisan interests, public opinion, or by fear of criticism;

   d) not use their title and position to promote their own interests or the interests of others;

   e) discharge their duties in accordance with the law, municipal by-laws and policies, procedures and guidelines;

   f) maintain and upgrade their knowledge and competence through their work, by participating in training and education courses and by seeking guidance from their colleagues and the Municipality as required;

   g) remain up to date on changes in the in the law, municipal bylaws, policies and procedures relevant to their function;

   h) act with integrity, as they are subject to ongoing public scrutiny; respect and comply with the law and conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of APS;

   i) approach their duties in a calm and courteous manner when dealing with the public and others and present and conduct themselves in a manner consistent with the integrity of APS and their appointment;

j) convey their decisions in plain language;

k) safeguard the confidentiality of information that comes to them by virtue of their work and not disclosure that information except as required by law;

l) in discharging their duties, treat those with whom they deal with in respectful and tolerant manner regardless of the gender, sexual orientation, race, religion, culture, language, mental abilities, or physical abilities of those Persons;

m) refrain from openly and publicly criticizing the administration of APS or the conduct of others;

n) deal with the tasks that come before them in a timely manner and should make themselves accessible to those requiring their services;

o) not knowingly exercise a power or function for which they have not been trained or designated.

Preventing Conflict of Interest

10. The keys to preventing conflicts of interest are identification, disclosure, and withdrawal from the power of decision with respect to a Screening Review or Hearing Review.

11. The need for identification, disclosure and withdrawal from a power of decision applies to any real, potential or perceived conflict of interest.

12. If a Screening Officer or Hearing Officer becomes aware of any real or perceived conflict of interest in regard to a review of an administrative penalty or Screening Decision, the Screening Officer or Hearing Officer shall notify the Director of the conflict of interest and

    a) in the case of a scheduled review of an administrative penalty or Screening Decision that has not commenced, request another Screening Officer or Hearing Officer to conduct the review to avoid actual, perceived or potential conflict of interest; or

    b) in the case of a review of a Penalty Notice or Screening Decision that has commenced, adjourn the review and withdraw from the power of decision, and advise the Director. The Municipality will reschedule the Screening Review or Hearing Review with another Screening Officer or Hearing Officer.

13. If all appointed Screening Officers or Hearing Officers have a conflict of interest with a matter, the Director shall assign another Screening Officer or Hearing Officer to handle the matter that is the subject of the conflict of interest.

14. Screening Officers and Hearing Officers are not permitted to dispute their own Penalty Notice.

Addressing Conflicts of Interest if they Occur

15. If an individual suspects that a Screening Officer or Hearing Officer conducted a Screening Review or Hearing Review where there was a conflict of interest, they may make a:

    a) complaint to the Director; and/or

    b) formal complaint, in accordance with the Municipality's Public Complaints respecting Administration of APS Policy.

16. Any finding of a conflict of interest may result in a disciplinary action, up to and including termination of employment or revocation of appointment. Issues involving potential criminal matters will be forwarded to the Ontario Provincial Police.

Influence

17. No person shall attempt, directly or indirectly, to communicate for the purpose of influencing or interfering financially, politically, or otherwise, with Employees or other persons performing duties related to the administration of APS.

18. No person shall attempt, directly or indirectly, to communicate for the purpose of influencing or interfering, financially, politically, or otherwise, a Screening Officer or Hearing Officer respecting the determination of an administrative penalty matter and/or respecting a delegated power of decision in a proceeding that is or will be pending before the Screening Officer or Hearing Officer, except a person who is entitled to be heard in a Screening Review or Hearing Review.

Changes under the Criminal Code or Other Statutes or Regulations

19. Where a Screening Officer or Hearing Officer is charged with an offence under the Criminal Code of Canada or any other federal statute or regulation that is dealt with under the Criminal Code of Canada, such charge shall be disclosed to the Director within five (5) business days of the charge being laid.

20. Determination will be made by the Director as to whether or not an actual, potential or perceived conflict of interest exists or if public confidence in the administration of APS has been compromised and, if so, the Screening Officer or Hearing Officer may be removed from his or her duties until the final disposition of the charge.

Accountability

21. All Screening Officers, Hearing Officers and Employees involved in the administration of the APS program are accountable for implementing and abiding by this policy. Accountability for interpretation of this policy in relation to a real or perceived conflict of interest shall be determined by the Director.

Implementation

22. This policy shall form part of the orientation for all current and new Screening Officers and Hearing Officers and Employees involved in the administration of APS.

References and Related Policies

- *Municipal Act*, 2001, S.O. 2001, c. 25
- Ontario Regulation 333/07 Administrative Penalties
- *Municipal Conflict of Interest Ac*t, R.S.O. 1990, c. M.50
- *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22
- Municipality's Administrative Penalty System By-law
- H00 – Code of Conduct – Members of Council and local boards
- The Municipality of Leamington Employee Code of Conduct

(Report LS-19-25)