YOUNG ANDERSON
BARRISTERS & SOLICITORS

CONTROLLING COUNCILLOR CONDUCT

NOVEMBER 29, 2013

Barry Williamson

CONTROLLING COUNCILLOR CONDUCT

I. INTRODUCTION

This paper will consider the power to, and the processes by which a council may address the misconduct of one of its members. After reviewing the two decisions in BC that directly bear on this question, the paper will review the provisions of the *Community Charter* concerning councillor misconduct and then turn to a consideration of the Ontario regime where codes of councillor conduct are a significant feature and have a basis in statute. The paper ends with a discussion of the relative merits of the Ontario and BC approaches and considers the place for codes of conduct in British Columbia.

A. Power to Discipline Councillors

The question of whether a council or board has the power to sanction its members has now been considered in two decisions in this province. The first case, *Barnett v. Cariboo Regional District*, 2009 BCSC 471, dealt with a resolution that would have prohibited Director Barnett from contacting or communicating with staff, except through email or written communications delivered to the front desk of the regional district office, and through the CAO. Barnett's alleged conduct during his years as an area director had led to numerous complaints from staff, other directors and the public.

There was no explicit statutory basis for the limitation on Director Barnett being able to communicate directly with staff. Barnett argued that the board lacked jurisdiction to pass the resolution. Although the resolution was set aside on procedural grounds (to be discussed further below), the court was satisfied that the board had the jurisdiction to adopt the resolution. In relatively brief reasons on this point, Mr. Justice McKinnon acknowledged that the case law and the *Local Government Act* (LGA) required that the court take a broad and purposive approach to the interpretation of the regional district's powers. Noting that the "powers, duties and functions of a regional district are to be exercised and performed by its board", he reasoned that there were no provisions in the LGA that limited the board from exercising those "powers, duties and functions" in addressing the day-to-day conduct of its directors.

Further, he accepted that the regional district's purpose of providing good government would be impaired if it could not deal with conduct issues between directors and staff. As a result there must be a process for addressing those issues. It was, he concluded, a matter of the board's ability to determine its own internal procedures that it must be able to control director misconduct.

The jurisdictional issue was raised again in *Skakun v. Prince George*, 2011 BCSC 1796. Coun. Skakun had been convicted of disclosing personal information contrary to section 30.4 of the *Freedom of Information and Protection of Privacy Act* (FOI Act) and fined $750. He challenged,

by judicial review, a proposed censure resolution that would also have removed him from certain council committees and from the rotation for acting mayor. Mr. Justice Crawford followed a similar path of reasoning as Justice McKinnon, finding that municipal legislation should be interpreted broadly and allowing for "gaps" to be appropriately filled by the implication of a power. While the Legislature had seen fit to deal with the most serious matters of misconduct, such as conflict of interest, that could result in disqualification, this did not leave a municipal council without power to deal with lesser misconduct that did not give rise to statutory disqualification. In Coun. Skakun's case his conduct not only contravened the FOI Act, but also breached section 117 of the *Community Charter* requiring council members to keep confidential any record held in confidence (the record was an independent investigator's report of harassment allegations received at an in camera meeting).

The judge analogized to professional discipline: the misconduct of a doctor or lawyer could result in a court process, but also attract a professional body's discipline process. Thus he considered it reasonable to imply an "obligation" to regulate councillor misconduct that fell substantially below the expected standard of conduct.

There were several parts to the draft council resolution; the first being the censure aspect, that council express its disapproval of the councillor's conduct in releasing the report. That was followed by directions to apologize, to comply with the oath of office, not to release any further confidential or third party personal information. The only real sanctions were the proposed removal of the councillor from rotating positions of acting mayor and chair of the committee of the whole. While apparently satisfied he could imply a power to exercise censure, the judge stated that he was less confident of the basis for sanction. He acknowledged however, that the *Interpretation Act* states that a provision authorizing the appointment of an officer includes the power to terminate the appointment or remove the officer. The judge did not, in the final analysis, resolve this uncertainty before addressing the procedural issues raised by the petition.

The *Barnett* and *Skakun* decisions provide support for the broad notion that municipal councils and regional boards are not without power to address misconduct of councillors or directors. The outer limits of that power, in terms of the range of consequences or sanctions that may be visited on a council member will be considered later.

B. Procedural Fairness Requirements

The process adopted by the board in the *Barnett* case was badly flawed and it was not surprising that the court found the director had been denied procedural fairness. Barnett had no notice of the proposed resolution and did not have the opportunity to review beforehand the report of the CAO which provided an overview of the difficulties staff had apparently encountered with Barnett. The report had been prepared on the instructions of the chair and vice-chair of the regional district. Again, Barnett had no indication the report had been requested. The court found that the report was vague, lacking any details of specific conduct or the identities of staff that had complained. General references to "harassment" and "intimidation" were insufficient to "permit a reasoned and structured response." In addition to

the lack of notice of the precise nature of the alleged misconduct, the court was also critical of the lack of any process having been developed to permit a meaningful discussion of the alleged misconduct.

In the *Skakun* case no complaint of substance was made that the councillor was not given adequate notice of the proposed action or the basis upon which council proposed to act. The contentious point on the fairness of the proposed censure and sanction process was whether Coun. Skakun had the right to call witnesses before council. The proposed witnesses were the persons whose complaints of harassment had been considered by the independent investigator, whose report had been leaked to the media by the councillor in breach of the FOI Act. Justice Crawford declined to make an order that council hear the witnesses. He noted that the complainants had filed affidavits, including transcripts of their evidence in the Provincial Court prosecution. The judge considered it would be adequate if council had this material before it for the hearing on the censure motion. The judge offered suggestions as to the process for council receiving submissions, for deliberating on the motion and on outlining its reasons. As long as the basic requirements of procedural fairness were observed, the judge considered he could not tell council how to proceed with the matter. The decision in the Skakun case shows that a strictly regimented process is not required and that some latitude will be afforded to the judgment of council as to how it conducts its own process, provided the basic requirements of notice of the alleged misconduct and an opportunity to respond have been met.

Justice Crawford sounded one important note of caution on the right of an elected council to take action regarding a council member's misconduct. The power to decide whether a council member's conduct falls below the expected standard of conduct must be exercised with great care and discretion:

> "Far too easily, this could turn into an abuse of process for cheap political gain, and any council that sets out in this direction must be careful in what it is doing."

He went on to find that there was no suggestion of that in the case before him.

C. Statutory Regulation of Council Member Conduct

Before addressing the subject of codes of conduct, it is worth acknowledging that the *Community Charter* has expanded the scope of the rules governing councillor conduct beyond the long-standing rules proscribing pecuniary conflict of interest, which had as their focus the

participation of council members in the formal voting and debate processes of council. The expanded rules are found within both Division 6 – Conflict of Interest in Part 4 and Division 1 – Council Roles and Responsibilities in Part 5. A brief summary of these provisions is as follows:

"**Restrictions on accepting gifts**

105 (1) A council member must not, directly or indirectly, accept a fee, gift or personal benefit that is connected with the member's performance of the duties of office.

(2) Subsection (1) does not apply to

(a) a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office,

(b) compensation authorized by law, or

(c) a lawful contribution made to a member who is a candidate for election to a local government.

(3) A person who contravenes this section is disqualified from holding an office described in, and for the period established by, section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Disclosure of gifts

106 (1) This section applies if

(a) a council member receives a gift or personal benefit referred to in section 105 (2) (a) that exceeds $250 in value, or

(b) the total value of such gifts and benefits, received directly or indirectly from one source in any 12 month period, exceeds $250.

(2) In the circumstances described in subsection (1), the council member must file with the corporate officer, as soon as reasonably practicable, a disclosure statement indicating

(a) the nature of the gift or benefit,

(b) its source, including, if it is from a corporation, the full names and addresses of at least 2 individuals who are directors of the corporation,

(c) when it was received, and

(d) the circumstances under which it was given and accepted.

(3) A person who contravenes this section is disqualified from holding an office described in, and for the period established by, section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Disclosure of contracts with council members and former council members

107 (1) If a municipality enters into a contract in which

(a) a council member, or

(b) a person who was a council member at any time during the previous 6 months,

has a direct or indirect pecuniary interest, this must be reported as soon as reasonably practicable at a council meeting that is open to the public.

(2) In addition to the obligation under section 100 *[disclosure of conflict]*, a council member or former council member must advise the corporate officer, as soon as reasonably practicable, of any contracts that must be reported under subsection (1) in relation to that person.

(3) A person who contravenes subsection (2) is disqualified from holding an office described in, and for the period established by, section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Restrictions on use of insider information

108 (1) A council member or former council member must not use information or a record that

(a) was obtained in the performance of the member's office, and

(b) is not available to the general public,

for the purpose of gaining or furthering a direct or indirect pecuniary interest of the council member or former council member.

(2) A person who contravenes this section is disqualified from holding an office described in, and for the period established by, section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Court order for person to give up financial gain

109 (1) If a council member or former council member has

(a) contravened this Division, and

(b) realized financial gain in relation to that contravention,

the municipality or an elector may apply to the Supreme Court for an order under this section.

(2) Within 7 days after the petition commencing an application under this section is filed, it must be served on

(a) the council member or former council member, and

(b) in the case of an application brought by an elector, the municipality.

(3) On an application under this section, the Supreme Court may order the council member or former council member to pay to the municipality an amount equal to all or part of the person's financial gain as specified by the court.

(4) In the case of an application made by an elector, if the court makes an order under subsection (3), the municipality must promptly pay the elector's costs within the meaning of the Supreme Court Civil Rules.

(5) The court may order that costs to be paid under subsection (4) may be recovered by the municipality from any other person as directed by the court in the same manner as a judgment of the Supreme Court.

(6) Except as provided in subsection (4), the costs of an application are in the discretion of the court."

The common element in each of the foregoing provisions is that they relate to a pecuniary benefit, as with gifts, or they have application only where a pecuniary interest of the council

member is found to be present. The penalty for contravening any of these provisions is disqualification. For a breach of the confidentiality requirements in Part 5 there are financial consequences, but not disqualification from office:

> "**Duty to respect confidentiality**
>
> 117 (1) A council member or former council member must, unless specifically authorized otherwise by council,
>
> (a) keep in confidence any record held in confidence by the municipality, until the record is released to the public as lawfully authorized or required, and
>
> (b) keep in confidence information considered in any part of a council meeting or council committee meeting that was lawfully closed to the public, until the council or committee discusses the information at a meeting that is open to the public or releases the information to the public.
>
> (2) If the municipality suffers loss or damage because a person contravenes subsection (1) and the contravention was not inadvertent, the municipality may recover damages from the person for the loss or damage."

D. Codes of Conduct and Mayor Rob Ford

Unlike British Columbia, the municipal legislation in Ontario provides for the adoption of codes of conduct governing elected council members. For Toronto its enabling statute, *The City of Toronto Act,* requires that the City establish codes of conduct for members of city council and members of local boards. In addition the City must appoint an Integrity Commissioner, to which council may assign "functions" relating to the application of the code of conduct and may exercise certain powers available under the Pubic Inquiries Act. The most significant function of the Integrity Commissioner is to investigate and report on alleged conduct code breaches. The Commissioner may conduct an inquiry and may draw on the powers to summon witnesses and documents found in the *Public Inquiries Act*. Where the Commissioner reports that, in his or her opinion, a council member has contravened the code of conduct, council may impose either of two penalties:

- a reprimand; or
- a suspension of the member's remuneration for a period of up to 90 days.

It is perquisite to imposition of a penalty that the Commissioner has reported to council that a member has breached the code. In other words, council cannot act to impose a penalty on a council colleague without the benefit of a commissioner's report of a breach.

The *Municipal Act* makes similar provision for all other municipalities in Ontario in respect of codes and conduct and the appointment of integrity commissioners, except that the adoption of a code and appointment of a commissioner is not mandatory, but rather at the discretion of the municipality.

It was the alleged breach of the City of Toronto's code of conduct that was at the root of the proceedings that led to the initial disqualification of Mayor Ford by an Ontario Superior Court justice, whose decision was overturned earlier this year by the Ontario Divisional Court; *Magder v. Ford*, 2013 ONSC 263. Toronto's Integrity Commissioner had found that the mayor had breached several provisions of the code by using the city's logo, his status as a councillor and city resources in soliciting funds for his private football foundation. Although no funds had been received by the mayor personally (all having gone for the purchase of football equipment by a separate community foundation), the Integrity Commissioner recommended that Ford reimburse the $3,150.00 in donations made by a lobbyist and corporate donors. Her report and recommended sanction were approved initially without debate. Ford ignored correspondence from the commissioner urging him to reimburse the donors and the commissioner subsequently recommended to council that Ford provide evidence of repayment by a specified date. Ford participated in the council debate on whether to accept the commissioner's deadline for repayment and in the later vote to rescind council's earlier resolution to adopt the commissioner's report and recommendation. His debate participation and vote led to the application that he be disqualified from holding office for breach of the *Municipal Conflict of Interest Act.* The allegation was that the recommendation to repay the donor contributions engaged the mayor's pecuniary interest.

On appeal, the Divisional Court justices found the lower court erred in determining that Ford had a pecuniary interest in the resolution to accept the Integrity Commissioner's recommendation that he be required to report on his compliance with the resolution requiring reimbursement of the donors. No further sanction was recommended; the financial sanction having already been imposed, no pecuniary interest was engaged. However, the Divisional Court agreed that Ford had a pecuniary interest in the motion to rescind the previous council resolution accepting the commissioner's repayment recommendation. That led the court to consider the further issue of the validity of the earlier resolution.

As noted above, the *City of Toronto Act* and Ontario *Municipal Act* provide for the imposition of one of two penalties in the case of a code of conduct contravention. The City of Toronto's code of conduct provided that council could take one of five "other actions" in the event of a code of conduct breach, including "repayment or reimbursement of monies received." The court accepted that a generous reading of the City's power to pass a code of conduct would support the inclusion of remedial measures in addition to penalties. A request for an apology (one of the five "other actions" in the code) was considered to be remedial in nature. However, disagreeing with the lower court judge, the Divisional Court held the repayment requirement in Ford's case could not be construed as a remedial measure that was distinctly different in character from a penalty.

While the Supreme Court of Canada has adopted a benevolent approach to the interpretation of municipal regulatory powers, it had also noted that in the interaction of general enabling powers with more specific powers, "when general powers have been provided for, the general power should not be used to extend the clear scope of the specific provisions." The Legislature had set out two penalties in the enabling statute for contraventions of a code of conduct. It was not appropriate therefore to draw on other general powers to attempt to support the inclusion of other sanctions or penalties in Toronto's conduct code.

With the finding that the repayment sanction was a nullity it followed that Ford did not have a pecuniary interest in the matter when voting on the resolution to rescind the repayment requirement. The court set aside the order disqualifying him from office.

E. Toronto Code of Conduct provisions

The Ontario *Municipal Conflict of Interest Act* is by and large limited to the prohibition of the classic direct and indirect pecuniary interests that could influence councillors in debating and voting matters at council. It leaves to the judgment of individual local governments whether or not to deal with the additional matters addressed by BC's *Community Charter.* Taking the Toronto Code of Conduct as representative for comparative purposes, the following table sets out the matters in Toronto's code, whether our Legislature has dealt with the subject, and the comparable *Community Charter* provision where it has.

Toronto Code of Conduct	**Community Charter comparable provision**
Gifts or benefits – receipt and disclosure	Sections 105, 106
Confidential information	Sections 108, 117
Use of City property, services and other resources	No equivalent
Election campaign work - follow provisions of *Municipal Elections Act* and no use of City facilities, resources	No CC equivalent – but stringent campaign financing provisions in *Local Government Act*
Improper use of influence	Section 102 – inside influence Section 103 – outside influence
Business relations – councillor not to act as paid agent before Council	Section 100 – basic pecuniary conflict

Toronto Code of Conduct	**Community Charter comparable provision**
Conduct regarding current & prospective employment affecting performance of City duties	No equivalent – but could be pecuniary conflict
Conduct at council and committee meetings – with decorum	No equivalent
Conduct respecting staff – respect role of staff and be respectful	No equivalent
Conduct respecting lobbyists	No equivalent
Discreditable conduct – no bullying, intimidation, discrimination or harassment	No equivalent

In respect of the last noted provision of the Toronto Code dealing with discreditable conduct, while there is no equivalent legislative proscription, recall that in *Barnett* the various complaints included harassment and intimidation. Although the board's resolution was set aside for lack of procedural fairness, Justice McKinnon affirmed the power of the board to deal with such misconduct. Thus the absence of a code of conduct does not leave BC local governments powerless to address the improper actions of councillors or directors.

F. Codes of Conduct in British Columbia – Pros and Cons

On the assumption that the Code of Conduct for Canada's largest city represents a reasonable guide on subject content for designing a councillor code of conduct, we can consider whether there are potential benefits of attempting to implement a similar code of conduct for a BC local government and the extent to which a code may be superfluous to existing legislative requirements.

1. Issue Coverage

There is a greater impetus for Ontario municipalities to adopt codes of conduct given that the Ontario *Municipal Act* and *Municipal Conflict of Interest Act* do not address the matters of improper influence, gifts and benefits and misuse of insider information. Once it is recognized that the *Community Charter* provides a mechanism to deal with these issues, the question arises what would be the point of covering the same ground in a code of conduct? Perhaps including a more detailed commentary with examples or scenarios in which a councillor might be found to exercise improper inside or outside influence might be useful. Beyond that it is questionable what further benefit for the good governance of the local government would come from basically replicating the proscriptions in the *Community Charter* in a municipal

conduct code. Apart from the matters already covered in the *Community Charter*, does council perceive a need, through a code of conduct, to remind members that they should not attempt to issue directions to, nor berate or intimidate staff?

2. Validity

As seen from the *Barnett* and *Skakun* decisions, the power to address councillor misconduct is not founded on an express power, but on the implication of a power in order to fill what would otherwise be a gap in the legislation as a matter of council controlling its internal procedures; per McKinnon J. in *Barnett*. However, the Ontario Divisional Court decision in *Magder* shows that where a specific power already exists a court will be wary of interpreting a general power (including, as here, one that arises by implication) that extend its scope beyond the matters provided for in the specific power. In this context, a court would likely be reluctant to permit a BC local government to create a parallel process for addressing improper influence, acceptance of gifts and benefits or the use of insider information resulting in personal gain.

In respect of the breach of the s. 117 duty to maintain confidence over confidential records, the *Community Charter* does not provide for disqualification from office; rather a right to recover any loss or damage arising from improper disclosure is given by s. 117(2). Justice Crawford in *Skakun* noted that the councillor's admitted disclosure of the investigator's report amounted to a breach of s. 117, an appropriate basis for the proposed resolution of censure and sanction. Accordingly, there is no need for a local government to incorporate a requirement to uphold the confidentiality of records in a code of conduct, although duplication alone may not give rise to as strong an argument of invalidity where the legislation does not offer such a strong sanction as disqualification.

3. Procedure

Barnett reminds us of the challenge in ensuring fairness in any process dealing with the conduct of elected officials. The importance of the decision to the affected individual is one of the five factors that determine the content of the duty of procedural fairness in a particular case. Even a motion of censure, without more, may be seen as serious, as it may diminish the reputation of the councillor and potentially affect their electability in the future. Thus even at the lower end of the scale of consequences a local government should afford a council member procedural fairness when determining if there has been misconduct.

The Ontario model's reliance on an independent integrity commissioner to investigate and report on conduct code breaches has the benefit of separating council from parts of the process that can produce procedural fairness challenges. The concern that will lurk in the back of many judge's minds (alluded to by Justice Crawford in *Skakun*) that council not abuse the process for cheap political gain is met to some extent in Ontario by the requirement that the integrity commissioner must first report that the member has contravened the conduct code before council is able to impose one of the prescribed penalties.

While not mandated by the *Community Charter*, it is open to a municipal council to employ an outside investigator to inquire into and report on an alleged code of conduct violation. Workplace investigators are experienced in ensuring that they carry out a process that is procedurally fair. They cannot compel individuals to participate and submit to questioning. Another option is the appointment of a special committee under s. 142 (which must include one member of council) to inquire into the matter and report its findings and opinion to council. Such a committee has the power (under the mayor's signature) to summon witnesses to be examined under oath. We know of one municipality that commenced a committee process to deal with allegations of harassment against a council member but abandoned the process in favour of mediation.

For the matters that are dealt with in sections 105 – 108 of the *Community Charter* procedural fairness risks are substantially lower. Council may, on a two/thirds majority, apply to the Supreme Court for a determination that the member has breached one of those provisions. Essentially any concerns respecting the fairness of the process become the responsibility of the court.

The factual circumstances may vary widely and not all complaints may require the more elaborate process of an investigation and report. *Skakun* is one such example where the RCMP had conducted the investigation and the prosecution had ended in a conviction. Council could proceed on the basis of the outcome in Provincial Court establishing misconduct and a breach of s. 117.

At the point in the process where council may determine if the actions of the council member have breached a code of conduct and some sanction is being considered, the *Community Charter* has one significant advantage over the Ontario model as demonstrated in *Magder.* Mayor Ford argued that despite any apparent breach of the conflict of interest legislation he was entitled, as a matter of procedural fairness, to participate in the discussion and to vote on any resolution requiring him to repay any donations. However, if the integrity commissioner's report recommends a financial sanction, that creates a pecuniary conflict. Procedural fairness considerations had to give way to the clear effect of the statute. The court concluded that it was for the legislature to address the matter by creating an exception in the conflict legislation to give a council member the right to make submissions before council imposed a financial penalty.

The *Community Charter*, on the other hand, provides in s. 104(2) that where a council member would have a legal right to be heard in respect of a matter or to make representations to council, and cannot do so as a result of the *Charter's* conflict of interest provisions, the member may appoint another person to represent the member's interests. That begs the question of whether the member's pecuniary interests would be engaged through any proposed action by council.

4. Remedy and Sanctions

The decision in *Magder* had the effect of limiting the available penalty to those provided in the enabling legislation, either the *City of Toronto Act* or the *Municipal Act*, one of which is suspension of the member's remuneration for a period up to 90 days. There is no comparable power authority in either the *Community Charter* or the LGA, and none could be implied.

One remedy available to BC councils or boards on a finding of misconduct is a motion of censure. The purpose of such a motion is to draw attention to the conduct and to formally express council's disapproval. Council denouncing the conduct serves to disassociate the other members from the offending member's conduct. Presumably the process of bringing a spotlight on the offence may induce the member not to repeat the conduct. The Ontario legislation provides for a reprimand as the other penalty. The distinction between a censure motion and a reprimand is elusive. While the courts in BC will be extremely reluctant to imply a power to levy penalties, they will likely emphasize the remedial nature of a censure motion if the argument is made that council lacks power to censure because it amounts to a penalty.

The power to impose restrictions on councillor access or communications to staff as remedy to address harassment or intimidation of staff found support in *Barnett*, again, in the absence of an express power, but as a matter of the board controlling its internal process.

The *Community Charter* is significantly more robust in its treatment of contraventions of improper influence, wrongful receipt of gifts and benefits and disclosure of confidential benefit. The remedy is disqualification from office, except that in the case of use of insider information it is necessary that the purpose of using the information was to gain or further a pecuniary interest of the member. A member may still be required to compensate the local government for any loss or damage occasioned by the disclosure of confidential information, irrespective of whether the purpose was to advance the member's pecuniary interests.

Beyond the more common forms of remedies and penalties, the additional services that could be provided through an Ontario style integrity commissioner are worth considering. In addition to the role of investigating and reporting on conduct code breaches, Ontario integrity commissioners may provide pro-active advice to council members, effectively acting as a confidential counsellor, as well as providing seminars for elected officials and staff. This outreach function is seen as being potentially more effective than the complaints function of the position [see: "Updating the Ethical Infrastructure" (2011) Report of the Mississauga Judicial Inquiry, The Honourable J. Douglas Cunningham].

II. FINAL THOUGHTS

The real benefits of introducing a municipal code of conduct are less likely to be found in the exhortations to appropriate conduct that have likely already been provided in the form of newly elected seminars or other learning opportunities for council members. Instead, legislative amendments to provide a statutory foundation for the role of an integrity

commissioner, similar to Ontario, would be improvement over the ad hoc procedures that local governments must craft in responding to allegations of councillor misconduct. Additionally, there is a good case for legislative reform to allow council to impose limited penalties, including docking a council member's pay similar to Ontario.

The recent report of the Mississauga Judicial Inquiry Commissioner recommended adopting a range of lesser sanctions less apart from disqualification for breaches of the *Municipal Conflict of Interest Act*. In addition, he was supportive of the range of sanctions provided for in the Mississauga Code of Conduct which mirror those of the Toronto Code, the validity of some of which were questioned in *Magder*. The *Community Charter* treats the subjects of improper influence and misuse of insider information for personal gain with the requisite seriousness for corrupt conduct; that is with disqualification from office. Those matters should continue to be adjudicated by judges, not by a council member's colleagues. It would be a retrograde development to introduce greater flexibility in sanctions, as in Ontario, for those serious contraventions. A code of conduct may prove a useful tool for dealing with some incidents of councillor misconduct, but not for conduct already subject to serious sanction in the *Community Charter*.

NOTES

NOTES