

## Hidden in Plain Sight: The Inherent Risk in Council-Appointed Board Members

### What would you do?

You are a municipal council-appointed member of a Board of Directors of an organization. The Board of Directors is considering an opportunity which you think will not be in the best interest of the municipality. What do you do?

- a) Discuss the opportunity with the municipality seeking its direction on how the Board should proceed and bring this direction to the Board of Directors' discussion.
- b) Bring your own experience and knowledge to the Board discussion of the opportunity for the benefit of the organization.
- c) Do nothing, say nothing and hope the opportunity goes away.

If you picked “b”, then you are on the right track. Here’s why.

### Background

It is quite common for municipalities to have representation on the boards of various agencies, boards, and/or commissions (ABCs). This is often mandated by the governing bylaws or legislation establishing these organizations. The idea is to ensure the interests and perspectives of the municipality are considered in the decision-making processes of these bodies. Typically, the representative from the municipality might be an elected official, such as a Councillor or the Mayor. However, in some cases, the seat might be held by a senior municipal staff member, depending on the nature of the ABC and the expertise required.

In the municipal context, ABCs are special-purpose bodies, created under provincial or municipal powers, serving a single function or a limited range of functions and receiving at least part of their revenue from municipal government, provincial government, and/or user charges (based on the definition from Susan J. Dolbey, *Local Special Purpose Bodies in the Province of Ontario*, Toronto: Municipal Affairs, Municipal Research Branch, Regional Government Studies Section, 1970, p. 2.).<sup>1</sup>

For greater clarity, ABCs include local boards as defined in Ontario’s Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50<sup>2</sup> including organizations such as school boards, public library boards, boards of management of improvement areas, police service boards, etc.

How ABCs function, and the degree of control the municipality may have over them, is in large part a function of the legal authority under which the ABC was created. This creation authority is

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<sup>1</sup> This explanation is an extract from a report in City of Burlington. December 7, 2023 - [Accountability Framework for Agencies and Joint Venture \(JV\) organizations.pdf](#)

<sup>2</sup> Refer to “local boards” in the Definitions section of [Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50](#)

a factor in determining what municipal legislation (e.g. Municipal Conflict of Interest Act, Municipal Freedom of Information and Protection of Privacy Act, Municipal Act, etc.) apply to the ABCs.<sup>3</sup>

Councillors, or other staff appointed by the municipal council, may also have a seat at the Board table of an organization whose by-laws and articles of incorporation, and any operating agreement between the municipality and the organization, make it fully independent of the municipal government. This seat is often related to the accountability the municipality seeks as it is typically a significant source of funding for the organization.

In any of these situations, it is critical for all involved — the municipal council and administration, the ABC and independent organization Board, and the individual Board members (Directors) — to understand how the organization functions and what level of control can be exerted by the municipal council through its appointed Board representation.

### **Role of Council-appointed Board Members**

There are ABCs and independent organizations where municipal governments can or are required by legislation to appoint Board members. Often members appointed to a Board by a municipality are the members of council themselves. In other cases, it may be employees of the municipality (e.g. Chief Administration Officer, City Manager, or their delegate, etc.) whom Council appoints to the organization's Board of Directors.

What is important to understand is the role of the council-appointed Board member in providing for strong and effective governance of the organization on whose Board they sit while being free of any bias from their role and responsibilities at the municipality. However, it must be clear the council-appointed person is NOT a representative of the municipality; they lose that title once they enter the Board meeting.

### **What purpose does a board of directors serve?**

A Board of Directors plays a critical role in the success and sustainability of an organization. Boards guide the company towards achieving its objectives while maintaining ethical standards and regulatory compliance. Whether the organization is corporate or not-for-profit, public or private, the Board of Directors works with and oversees management ensuring on-going success and resilience of the organization. To this end, the board has a role and responsibility to provide:

- strategic oversight and guidance,
- governance of enterprise risk,
- effective corporate governance and compliance,
- leadership and succession planning,

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<sup>3</sup> This explanation is an extract from a report in City of Burlington. December 7, 2023 - [Accountability Framework for Agencies and Join.pdf \(wsimg.com\)](#)

- a positive and ethical tone from the top, and
- stewardship over and monitoring of operational and financial health.

Boards have a duty to the organization and the organization in turn has a duty to its stakeholders. Every Board and Director must understand they are to act with a view to the best interests of the organization, align interests with the organization's purpose and consider the interests of the stakeholders of the organization including the long-term sustainability of the organization's business and purpose.

### **What are the risks?**

The risks are hiding in plain sight; overlooked or ignored because council-appointed Board members are often seen by themselves, the Boards they serve on, and the municipality's administration, as the municipality's representative on the Board. Their seat at the Board table — as a Director — must be understood as having a duty only to the ABC and independent organization and in turn the stakeholders.

The following section explores five such risks to understand how they can occur and what impact they may have on the council-appointed Board member, municipal councils, the ABC and independent organization Board members, the ABC and independent organization itself, and the ABC and the independent organization's stakeholders. For ease of reference, the collective above-mentioned groups will be referred to as concerned parties; and the term ABC will include both ABCs and independent organizations.

#### ▪ *Conflict of Interest*

All Board members face this risk as each is wearing two hats — Board member and businessperson/individual — with interests outside of the ABC. What complicates the situation for the council-appointed Board member is the duty owed to both the municipality and the ABCs. In both cases, the council-appointed Board member can find themselves facing a real or perceived conflict of interest.

The impact of a conflict of interest could derail the ABC and independent organization and/or damage reputation of the concerned parties. Stephanie James and Joanna Track of Young Anderson Barristers & Solicitors describe it best:

*“Conflicts can arise when a local government elected official or employee also sits as a director of a company or society. On the one hand, the official or employee owes his or her local government a duty of fidelity and loyalty and is tasked with advancing the local government's best interest. What is in the local government's best interest may be adverse to what is in the company's or the society's best interest. In those situations, even the possibility of a conflict, or the perceived*

*conflict, may be sufficient to require an elected official to declare a conflict of interest under the Community Charter and for both an elected official and an employee to abstain from participation in the local government's management of matters involving the company or society.*<sup>4</sup>

When a person enters a Board meeting, they can have only one interest — to conduct their duty in good faith and with a standard of care to the ABC. They must make decisions which are in the best interest of the ABC. In fact, indemnification for a person acting in a Director role is not provided if the Director conducts themselves with wilful neglect or default. That can be the case when a decision made at the Board table by a Director was biased in favour of an entity other than ABC.

- *Political Influence*

Board members appointed by municipal councils often face allegations of political interference, as their decisions may be swayed by the interests of the council who appointed them. This influence may cause council-appointed Board members to prioritize political agendas over the ABC strategic goals. Similar to the conflict of interest risk, this risk may affect the reputation of the concerned parties. The situation can lead to conflicts of interest and hinder objective Board decision-making which is to be in the best interest of the ABC, and not the municipality.

- *Lack of Expertise*

Board talent and composition are important components of an organization's governance. Council-appointed Board members may lack the necessary knowledge, expertise and experience needed for effective governance in the specific ABC. This situation can result in Boards not fully understanding or addressing the complexities of their responsibilities. Until the council-appointed Board member develops the expertise, there may be concerns about their ability to contribute effectively to the ABC Board's decisions and overall governance.

- *Commitment and Engagement*

In Canada, the average time commitment for a Board member of a not-for-profit organization is estimated to fall within 100–150 hours annually. The average time commitment on a corporate Board is twice as much falling within 200–300 hours. This commitment includes regular meetings, committee work, and strategic planning. Depending on the type of Board — operating or governance — and the growth phase or challenges the organization may be

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<sup>4</sup> [Sauce For The Gander: Conflict of Interest For Elected Officials And Employees. December 3, 2010. Stephanie James and Joanna Track. Young Anderson Barristers & Solicitors.](#) Page 19. In this excerpt, Community Charter refers to British Columbian legislation. The conflict of interest description would hold true if the Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50 was cited.

facing, Board members may need to meet more frequently consuming more time. This risk applies to all members of the Board.

As it relates to council-appointed Board members, the time commitment is often not known or acknowledged when an individual is elected to Council, putting additional pressure on the council-appointed Board member. It is exacerbated when council-appointed Board members have been appointed to more than one Board. The governance of the ABCs and their Board decision-making processes depends on the commitment and engagement of all their Board members.

- *Collaboration and Cohesion*

Not only are Board talent and composition important to a Board, so is collaboration and cohesion. Board members perform best when they act like a team and need to feel trust in the board room. The introduction of council-appointed Board members can sometimes disrupt the existing Board dynamics, making it difficult to achieve a cohesive and collaborative working environment.

This disruption may stem from a sense of concern that the council-appointed Board member may share confidential information about the ABC with the appointing Council. Or it may take the form of a felt need to appease the council-appointed Board member to get funding for the ABC or so the other Board member's own personal or business interests with the municipality are not impaired.

The change in dynamics can impact the Board's effectiveness in achieving its objectives and hinder the open dialogue necessary for governance and decision-making.

Conflict of interest, political interference, lack of expertise, commitment and engagement, and collaboration and cohesion are the most significant risks inherent in council-appointed Board members. These risks need to be identified, assessed and managed.

### **How can the risks be managed?**

How we respond to risks depends on how significant the impact might be and how likely the risk is to occur. In managing risks, often a single action will help to minimize the impact or likelihood of more than one risk. The following explores a multi-pronged approach to respond to the inherent risks in council-appointed Board members.

- *Laws and Regulations/Code of Conduct*

Members of Ontario councils (and by extension certain relatives of the councillor) are subject to the Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50<sup>5</sup>. In addition, members of council in their oath of office declare they will disclose any direct or indirect pecuniary<sup>6</sup> interest in accordance with the Municipal Conflict of Interest Act. As a legal requirement, non-compliance can result in consequences ranging from public reprimands and mandatory training to removal from office.

Members of staff and administration in Ontario municipalities are not subject to the municipal conflict of interest act. However, these individuals are subject to the Municipal Act, 2001 as well as internal code of conduct policies including conflict of interest provisions. Non-compliance with the Municipal Act and internal codes of conduct also have a range of consequences including termination.

For ABCs and independent organizations, the use of a Board of Director's code of conduct is a widely adopted practice in governance to ensure Directors' ethical behavior and compliance with legal standards. All Board members, including council-appointed members, are expected to acknowledge the code of conduct by signature and comply with ABC's code of conduct. This declaration draws the clear line of where the duty of all Board members lies; that is, a duty to the ABC when acting in the role of an ABC Director. For the ABC, an annual or bi-annual review and sign-off process may serve to refresh and reinforce the requirements for all Board members again drawing the clear line of where the duty of all Board members lie.

- *Disclosure*

Elected officials and employees are well served to disclose all possible conflicts of interest early and to seek appropriate assistance navigating their various duties. Where the Councillor is also a council-appointed Board member of an ABC, the Councillor must be cognizant of the risk of potential or real conflict of interest when sitting at the Council table and dealing with issues of the ABC. In this situation, the Councillor can seek advice from the municipality's integrity commissioner. The Councillor may also wish to follow the adage — when in doubt, disclose.

When making a disclosure, the Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50 sections 6 and 6.1 are clear. Councillors are required to have their disclosure recorded in the minutes of the Council meeting as well as included in the municipality's publicly accessible registry. This process ensures there is transparency to the public and enhances accountability.

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<sup>5</sup> [Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50](#)

<sup>6</sup> Pecuniary includes monetary, economic or financial interest.

- *Orientation and Education*

Board orientation and continued education of Board members serves to enhance decision-making, increase accountability, improve risk management and strengthen leadership.

Through an effective orientation program, newly appointed Board members are introduced to the ABC, its mission and its operations. In addition, the role of the Board member is emphasized and explained. For Board members appointed by a municipality, this orientation provides the opportunity to clarify their responsibilities to the ABC. It helps them understand that when they are sitting at the board table, they are a member of the ABC and not a municipal representative.

Continued education of the Board is an opportunity for all to explore and learn leading to shared understandings, collaboration and cohesion.

- *Clear Mandate and Guidelines/Terms of Reference*

All Board members benefit from a clear mandate and guidelines outlining the roles, responsibilities, and expectations of a Director — whether council-appointed or Board nominated. This approach ensures all Board members understand their duty to the organization, all stakeholders including the public, while maintaining the Board's independence. ABCs and independent organizations often use terms of reference to ensure Board members understand the workings of the Board of Directors. Like the review of a code of conduct, an annual or bi-annual review of terms of reference by all Board members is an opportunity to confirm shared understanding of roles, responsibilities and expectations of the Board member and reflect on performance during the previous year(s).

Municipalities can go a step further for Councillors and staff appointed to ABCs with the use of a council-appointed Board member mandate. Such a mandate is designed to set out the council-appointed Board member's obligations to the ABC and to the municipality. It is not meant to be at odds with the ABC's own code of conduct or terms of reference. Rather, it is intended to assist the council-appointed Board member in further understanding their dual roles as an ABC Board member and an elected member of Council.

The act of signing the municipality's council-appointed Board member mandate demonstrates the individual has read, understood and agrees to comply with the mandate further enhancing the accountability in carrying out their dual roles.

Further transparency and accountability can be attained by disclosing the municipality's signed council-appointed Board member mandate through the municipality's normal information disclosure process. This transparency serves to increase accountability of the

council-appointed Board member to the ABC and independent organization Board and to the Council constituents.

- ***Talent-Based Appointment Process***

As corporate and not-for-profit Boards evolve their governance practices, more are adopting a talent-based approach to their Board composition. Municipalities who appoint councillors or staff to ABC and independent organization Boards can support this talent-based approach by working with the Board before appointing councillors. The Board relationship would benefit from open discussion about the talent the Board requires and working with the municipal council and administration to provide the best match with the talent of the councillors and staff.

## **Summary of Risk and Actions**

Taking a single action often serves to help manage more than one risk. The following table highlights how actions align to help manage the risks.

<b>Action</b>	<b>Risk</b>	<b>Conflict of Interest</b>	<b>Political Influence</b>	<b>Lack of Expertise</b>	<b>Commitment and Engagement</b>	<b>Collaboration and Cohesion</b>
<b>Laws and Regulations/Code of Conduct</b>		✓	✓			
<b>Disclosure</b>		✓	✓			
<b>Orientation and Education</b>		✓	✓	✓	✓	✓
<b>Clear Mandate and Guidelines/Terms of Reference</b>		✓		✓	✓	✓
<b>Talent-Based Appointment Process</b>				✓		

## **Conclusion**

While it is common for municipalities to have a seat at the Board table of an agency, board and commission, and an organization considered independent of the municipality, there are inherent risks to municipalities, councils, Boards and Board members. These risks must be identified, assessed and managed. The impact on reputation, trust, transparency and accountability is real. Through the actions of councils, Boards and municipal administrations, the impact and likelihood of a conflict of interest, political influence, lack of expertise, commitment and engagement, and collaboration and cohesion are reduced. Taking these actions will serve to preserve reputation, improve transparency, accountability and trust among municipal councils, Boards, municipal administrators and the public.

## **About the Author**



**Sheila M. Jones** is Principal of Vox Veritas Consulting. Sheila is an accomplished executive with expertise in enhancing business performance, managing risk, conducting internal audits, and investigating fraud, offering a comprehensive approach to business operations. She has demonstrated success in providing outstanding strategic planning, professional guidance, and decision-making support to organizations across diverse sizes and cultures in both public and private sectors. Sheila has an MBA and is a Chartered Director, Certified Internal Auditor, Certified Fraud Examiner, and Certified Change Practitioner. She is also certified in Control Self-Assessment and Risk Management Assurance.