



Town of Whitby Policy

Policy Title:	Conflict of Interest in Relation to the Administration of the Administrative Penalty System Program
Policy Number:	To be assigned following Council approval
Reference:	Legislation, other Policies, Council Resolution #, etc.
Date Approved:	Click here to enter a date.
Date Revised:	Click here to enter a date.
Approval:	Council
Point of Contact:	Legal and Enforcement Services

Policy Statement

The Corporation of the Town of Whitby (the “Town”) is committed to ensuring that Town employees, members of Boards and members of Council conduct themselves with personal integrity, honesty and diligence in the performance of their duties. This policy builds on this commitment by addressing conflicts of interest in the administration of the Town’s Administrative Penalty System (“APS”).

Purpose

Ontario Regulation 333/07 under the Municipal Act, 2001 requires the Town to develop guidelines to define what constitutes a conflict of interest in relation to the administration of the APS program, to prevent such conflicts and to redress such conflicts should they occur. The purpose of this policy is to address these matters.

This policy establishes conflict of interest guidelines in relation to the administration of the APS program. This Policy sets out the requirements relating to Screening Officers, Hearing Officers, Members of Council, Members of Boards and Town staff in order to prevent actual, potential and perceived conflicts of interest, and to set out the steps to be taken in the event that an actual, potential or perceived conflict of interest arises. This will ensure that the duties and responsibilities of the APS program are carried out in accordance with the principals of fundamental justice and to enhance the integrity of the APS program.

Scope

This Policy applies to all Screening Officers, Hearing Officers and all Town employees involved in the administration of the APS program.

The following shall apply in addition to this Policy:

- (a) For Town employees involved in the administration of the APS program, the Employee Code of Conduct shall also apply in regard to the activities of an employee in the administration of the APS program. In the event of a conflict between the provisions of this Policy and the provisions of the Employee Code of Conduct in relation to APS, this Policy shall apply.
- (b) For members of Council, this Policy should be read and interpreted within the context of applicable Provincial legislation and the Council Code of Conduct.
- (c) For Screening Officers and Hearing Officers, the provisions of any agreement governing the retainer between the Town and a Screening Office and/or a Hearing Officer and the provisions of the APS By-Law shall also apply.

This Policy shall apply in addition to all applicable law, including but not limited to the *Municipal Act*, 2001 and the *Municipal Conflict of Interest Act*. A breach of applicable law relevant to any matters set out in this Policy shall be deemed to be a breach of this Policy.

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1. Definitions

- 1.1. “APS” means Administrative Penalty System, established pursuant to the Administrative Penalty By-Law XXX-24;
- 1.2. “APS By-Law” means the Administrative Penalty By-Law XXX-24, passed by the Town, as amended from time to time, or any successor thereof;
- 1.3. “Clerk” means the Town Clerk, or their designate;
- 1.4. “Commissioner” means the Commissioner of Legal and Enforcement Services/Town Solicitor or their designate;
- 1.5. “Council” means the Council of the Town of Whitby;
- 1.6. “Employee Code of Conduct” means the policy adopted by the Town to govern employee conduct, provide ethical standards and conflict of interest, as amended from time to time, or any successor thereof;

- 1.7. "Hearing Officer" means any person appointed by the Town from time to time pursuant to the APS By-Law, to perform the functions of a hearing officer in accordance with the APS By-Law;
- 1.8. "Hearing Review" means the process related to the review of a Screening Decision, as set out in section 5 of the APS By-Law;
- 1.9. "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;
- 1.10. "Penalty Notice" means a ticket issued pursuant to Section 3 of the APS By-Law;
- 1.11. "Person" includes an individual or a corporation;
- 1.12. "Power of Decision" means a power or right, conferred by or under the APS By-Law to make a decision deciding or prescribing the legal rights, powers, privileges, immunities, duties or liabilities of any Person;
- 1.13. "Relative" includes any of the following persons:
 - 1.13.1. Spouse, common-law partner, or any person with whom the Person is living as a spouse outside of marriage;
 - 1.13.2. Parent or legal guardian;
 - 1.13.3. Child, including a step-child and grandchild;
 - 1.13.4. Siblings and children of siblings;
 - 1.13.5. Aunt, uncle and any children of an aunt or an uncle;
 - 1.13.6. In-laws, including mother, father, sister, brother, daughter and son; or
 - 1.13.7. Any person who lives with the person on a permanent basis.
- 1.14. "Screening Decision" means a notice that contains the decision made by a Screening Officer and delivered in accordance with Section 8 of the APS By-Law;
- 1.15. "Screening Officer" means any person appointed by the Town from time to time pursuant to the APS By-Law to perform the functions of a screening officer in accordance with the APS By-Law;
- 1.16. "Screening Review" means the process related to review of a Penalty Notice as set out in Section 4 of the APS By-Law;
- 1.17. "SPPA" means the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended from time to time, or any successor thereof; and

1.18. "Town" means the Corporation of the Town of Whitby.

2. Policy

- 2.1. The APS By-Law establishes the rules regarding the appointment of Screening Officers and Hearing Officers.
- 2.2. The following persons are not eligible for appointment as a Screening Officer or Hearing Officer:
 - 2.2.1. A member of Council;
 - 2.2.2. A Relative of a member of Council;
 - 2.2.3. In the case of a Hearing Officer, an employee of the Town; or
 - 2.2.4. A Person indebted to the Town other than:
 - 2.2.4.1 In respect of current real property taxes; or
 - 2.2.4.2 Pursuant to an agreement with the Town, where the person is in compliance with the terms thereof.
- 2.3. A Screening Officer or Hearing Officer shall have no authority to delegate his or her powers or duties.
- 2.4. A conflict of interest arises where a Screening Officer, Hearing Officer or Town employee involved in the administration of the APS, or any Relative of same has a direct or indirect personal, business or financial interest:
 - 2.4.1. Such that they could influence a decision made in relation to the APS;
 - 2.4.2. That may effect the performance of their job duties in relation to the APS;
 - 2.4.3. That conflicts, might conflict, or may be perceived to conflict with the interests of the proper administration of the APS; or
 - 2.4.4. That may adversely affect the reputation of the Town as a public authority in relation to the APS.
- 2.5. A conflict of interest includes a pecuniary or non-pecuniary interest, actual, perceived or potential conflict, that could arise in relation to personal, business or financial matters, including but not limited to:
 - 2.5.1. Directorships or employment.
 - 2.5.2. Interest in business enterprises or professional practices.
 - 2.5.3. Share ownership or beneficial interests in trusts.

- 2.5.4. Professional or personal associations with a Person.
- 2.5.5. Professional associations or relationships with other organizations.
- 2.5.6. Personal associations with other groups or organizations; or
- 2.5.7. Family relationships, including Relatives.
- 2.6. Screening Officers are employees of the Town and therefore must abide by the Town's Employee Code of Conduct. Screening Officers must be and appear to be impartial at all times. Screening Officers shall not review a Penalty Notice for a personal or business acquaintance or Relative.
- 2.7. Hearing Officers have an obligation to conduct Hearing Reviews in a fair and impartial manner. Hearing Officers are bound by the SPPA as well as the principals of procedural fairness and natural justice. Hearing Officers must be and appear to be impartial at all times. A Hearing Officer shall not review a Screening Decision for a personal or business acquaintance or Relative. Hearing Officers must abide by the terms of any agreement governing the retainer between the Hearing Officer and the Town and the APS By-Law.
- 2.8. Screening Officers and Hearing Officers shall disclose any obligation, commitment, relationship or interest that could conflict or be perceived to conflict with their duties to or interests in the administration of the APS.
- 2.9. Screening Officers and Hearing Officers are prohibited from representing and Person at a Screening Review or a Hearing Review.

3. Conduct of Screening Officers and Hearing Officers

- 3.1. All Screening Officers and Hearing Officers shall conduct themselves in the following manner:
 - 3.1.1. With independence:
 - 3.1.1.1 Must be and appear to be independent, impartial and unbiased.
 - 3.1.1.2 Must avoid all conflicts of interest, whether real or perceived and must promptly take appropriate steps to disclose, resolve or obtain advice with respect to such conflicts when they arise.
 - 3.1.1.3 Must not be influenced by partisan interests, public opinion or by fear of criticism.
 - 3.1.1.4 Must not use their title and position to promote their own interests or the interests of others.

- 3.1.1.5 Shall discharge their duties in accordance with all applicable laws, including but not limited to legislation, regulations, Town By-Laws, and Town policies.
 - 3.1.1.6 Shall not accept, arrange to accept, give or request to be given a reward, gift, advantage or benefit of any kind from any person or entity that influences or could be perceived to influence the performance of the Screening Officer or Hearing Officer's duties.
- 3.1.2. With knowledge:
 - 3.1.2.1 Shall maintain their competence through their work by participating in training and education courses and by seeking guidance from their colleagues and the Town as required.
 - 3.1.2.2 Shall remain up to date in the law, Town By-Laws, policies and procedures relevant to their role as a Screening Officer or a Hearing Officer.
- 3.1.3. Shall conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the APS program;
- 3.1.4. Shall approach their duties in a calm and courteous manner when dealing with the public and others and shall present and conduct themselves in a manner consistent with the dignity of the APS program and their appointment;
- 3.1.5. Shall convey their decisions and the reasons for their decisions in plain language and in a manner that is easily accessible and understandable for the general public;
- 3.1.6. Shall not directly or indirectly use or disclose any confidential information obtained by them during the course of their duties to another person or entity unless required by law;
- 3.1.7. Shall treat those with whom they deal when discharging their duties in a respectful and tolerant manner regardless of the gender, sexual orientation, gender identity, gender expression, race, religion, culture, language, mental or physical abilities of those persons.
- 3.1.8. Shall refrain from openly and publicly criticizing the administration of the APS program or the conduct of others. Only the Commissioner is permitted to speak publicly on behalf of the Town's APS program. Any criticisms, suggestions or concerns regarding the APS program and a Screening Officer or Hearing Officer has shall be communicated to the Commissioner.

- 3.1.9. Shall conduct Screening Reviews and Hearing Reviews in a timely manner and render their decisions within ninety (90) days of the Screening Review or Hearing Review as applicable.
- 3.1.10. Shall not exercise a power or function for which they have not been designated or which is outside of the scope of their role. In the event that any clarification as to the scope of their role is required, a Screening Officer or Hearing Officer shall seek guidance from the Commissioner.

4. Preventing Conflicts of Interest

- 4.1. Disclosure of any real, potential, or perceived conflict of interest and the withdrawal from making a decision where a real, potential or perceived conflict of interest exists are of vital importance to preventing conflicts of interest and maintain the integrity of the APS program.
- 4.2. If a Screening Officer or Hearing Officer becomes aware of any real, potential, or perceived conflict of interest in regard to a review of an administrative penalty or Screening Decision as applicable, the Screening Officer or Hearing Officer shall notify the Commissioner of the conflict of interest and:
 - 4.2.1. In the case of a Screening Review or Hearing Review which has been scheduled but not yet commenced, request that another Screening Officer or Hearing Officer conduct the Screening Review or Hearing Review as applicable.
 - 4.2.2. In the case of a Screening Review or Hearing Review which has commenced, adjourn the Screening Review or Hearing Review, withdraw from the decision and advise the Commissioner. The Town will re-assign the Screening Review or Hearing Review to a new Screening Officer or Hearing Officer. The Screening Review or Hearing Review will be rescheduled with the new Screening Officer or Hearing Officer. The rescheduled Screening Review or Hearing Review shall proceed as though it were the first Screening Review or Hearing Review.
- 4.3. If all appointed Screening Officers or Hearing Officers have a conflict of interest on a particular matter, the Commissioner shall retain another Screening Officer or Hearing Officer to conduct the review of the matter which is the subject of the conflict of interest.
- 4.4. Screening Officers and Hearing Officers are not permitted to dispute their own Penalty Notices. It is expected that any administrative penalty for an infraction committed by a Screening Officer or Hearing Officer be paid in a timely manner.

5. Addressing Conflicts if they Occur

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- 5.1. Any breaches of this Policy by an employee involved in the administration of the APS program will be addressed by the Employee Code of Conduct.
- 5.2. If a Person suspects that a Screening Officer or Hearing Officer conducted a Screening Review or Hearing Review where a conflict of interest existed, the Person may make a complaint in accordance with the APS Public Complaint Policy.
- 5.3. Notwithstanding Section 2.9 of the APS Public Complaint Policy, if a complaint is received and it is determined that the Screening Officer or Hearing Officer made a decision in a review of a Penalty Notice or a review of a Screening Decision and that there was a conflict of interest, the decision will be set aside and the Screening Review or Hearing Review will be scheduled with another Screening Officer or Hearing Officer as applicable.
- 5.4. If it is determined that a Screening Officer or Hearing Officer made a decision in a review of a Penalty Notice or the review of a Screening Decision and that there was a conflict of interest, in addition to Article 5.2 above, the Screening Officer or Hearing Officer may be subject to discipline up to and including the revocation of their appointment.

6. Influence

- 6.1. No person shall communicate, or attempt to communicate, directly or indirectly for the purpose of influencing or interfering with employees or other persons performing duties related to the administration of the APS program.
- 6.2. No person shall communicate, or attempt to communicate, directly or indirectly for the purpose of influencing or interfering with a Screening Officer or Hearing Officer with respect to the determination of an administrative penalty 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 or the Person's lawyer, authorized agent or authorized representative.
- 6.3. If a Person attempts to influence a Screening Officer or Hearing Officer contrary to Article 6.2 above, the Screening Officer or Hearing Officer shall report the incident to the Commissioner as soon as possible. No action will be taken against the Screening Officer or Hearing Officer for making such a report in good faith.

7. Charges Under the Criminal Code of Canada or Other Statutes or Regulations

- 7.1. In the event that a Screening Officer or Hearing Officer is charged with any offence under the Criminal Code of Canada, or other Federal or Provincial Statutes or Regulations, the Screening Officer or Hearing Officer shall promptly disclose the charge to the Commissioner.

- 7.2. The Commissioner will make a determination as to whether or not an actual, potential or perceived conflict of interest exists as a result of the charge, or if public confidence in the administration of the APS program has been compromised as a result of the charge. Where the Commissioner determines that there is an actual, potential or perceived conflict of interest as a result of the charge, or that the public confidence in the administration of the APS program is compromised as a result of the charge, the Screening Officer or the Hearing Officer may be removed from their duties until the final disposition of the charge.

8. Implementation

- 8.1. This Policy shall be provided to all staff involved in the administration of the APS program, as well as all Screening Officers and Hearing Officers. This Policy shall form part of the orientation for all new staff involved with the administration of the APS program and all new Screening Officers and Hearing Officers.

9. Accountability

- 9.1. All Screening Officers, Hearing Officers and Town employees involved in the administration of the APS program are responsible for adherence to this Policy. Accountability for interpretation of this Policy in relation to a real, potential or perceived conflict of interest shall be determined by the Commissioner.

This Policy is hereby approved by Council Resolution #_____ on this _____ day of _____, 20__.