



THE REGIONAL MUNICIPALITY OF NIAGARA
COMMITTEE OF THE WHOLE
FINAL AGENDA

COTW 03-2019

Thursday, April 11, 2019

6:30 p.m.

Council Chamber

Niagara Region Headquarters, Campbell West

1815 Sir Isaac Brock Way, Thorold, ON

	Pages
1. <u>CALL TO ORDER</u>	
2. <u>DISCLOSURES OF PECUNIARY INTEREST</u>	
3. <u>PRESENTATIONS</u>	
3.1 <u>"Final Report" Niagara Region Independent External Governance Auditor</u> Dr. Timothy Cobban, Andrew Sancton Consulting Limited	3 - 16
A copy of the report is attached to this agenda item as COTW-C 04-2019.	
4. <u>DELEGATIONS</u>	
5. <u>ITEMS FOR CONSIDERATION</u>	
6. <u>CONSENT ITEMS FOR INFORMATION</u>	
6.1 <u>COTW-C 05-2019</u>	17
A memorandum from A.-M. Norio, Regional Clerk, dated April 11, 2019, respecting Next Steps - "Final Report" Niagara Region Independent External Governance Auditor.	
6.2 <u>COTW-C 06-2019</u>	18 - 27
A memorandum from A.-M. Norio, Regional Clerk, dated April 11, 2019, respecting J. Mascarin Draft Code of Conduct.	
7. <u>OTHER BUSINESS</u>	

8. **NEXT MEETING**

The next meeting is scheduled for Thursday, May 2, 2019 at 6:30 p.m. in the Council Chamber.

9. **ADJOURNMENT**

If you require any accommodations for a disability in order to attend or participate in meetings or events, please contact the Accessibility Advisory Coordinator at 905-980-6000 (office), 289-929-8376 (cellphone) or accessibility@niagararegion.ca (email).

FINAL REPORT

Prepared by Andrew Sancton Consulting:

Dr. Andrew Sancton

Dr. Timothy Cobban

April 5, 2019

Niagara Region Independent External Governance Auditor

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Niagara Region Independent External Governance Auditor

1. INTRODUCTION

We are pleased to submit our second and final report as Independent External Governance Auditor for Niagara Region. This *Final Report* follows our *First Report* (dated 6 December 2018 and presented to Regional Council on 13 December 2018), and our *Fact Book* (dated 30 September and presented to Regional Council on 4 October 2018). It presents the findings from the second and third phases of our *Work Plan*, and addresses the following subjects:

- Councillor remuneration
- Councillor expenses
- Non-financial resources for councillors
- Code of Conduct
- A “review framework” for representation on Regional Council.

2. COUNCILLOR REMUNERATION

The second phase of our Work Plan, approved by Regional Council at its meeting on 26 July 2018, required that we provide our analysis and recommendations concerning the remuneration members of Niagara Region Council. Compensation for members of Niagara Regional Council has become an issue in large part because of recent changes to the *Income Tax Act*, which no longer allow municipalities—such as Niagara Region—to declare one-third of politicians’ salaries as expenses and thus tax-exempt. As we explained in our *Fact Book*, many—perhaps most—municipalities have responded to the elimination of the tax exemption by adjusting councillors’ salaries upwards to offset the income lost to the additional taxation, while at least some municipalities have chosen to leave their salaries unchanged. As we also document in our *Fact Book*, the salaries of the members of Niagara Regional Council (including the Chair) are the lowest among Ontario’s regional governments, but its council is also the largest and its population and annual operating budget the smallest.

During our consultations, (see the Introduction to our *First Report*), about one-third of respondents indicated that they thought the salary for regional councillors was too probably too low, given the demands on their time to attend community functions, prepare for and attend council and committee meetings, and to meet with and serve citizens. About one-half of respondents thought that the salary was probably fair, though some thought that councillors’ salaries should be “topped-up” in response to income tax changes. At the public meeting, there appeared to be little support for increasing council remuneration.

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As we wrote in our *Fact Book*, there is little that can be said with any certainty about determining appropriate levels of compensation for elected officials. In Niagara Region, our consultations revealed that nearly everyone thought that the position of a regional councillor was a part-time position, and should be compensated as such. We agree. Many of those we interviewed also explained that financial compensation was not a main motivation in their decision to run for regional council. This was especially true for those that had retired from their professions with healthy pensions, or had other significant sources of income or wealth. No one—including us—wants politicians that are primarily seeking to enrich themselves through elected office. But it is important that the compensation be sufficient enough so that the position of regional councillor remains accessible to individuals from a variety of socio-economic backgrounds.

At least one respondent raised the possibility of tying council remuneration more directly to local economic conditions. In the City of London, where we both reside, a citizen task force reviewing council compensation recommended exactly this in 2017, and councillors' salaries were set to equal median employment income for full-time, full-year workers.¹ As we previously stated, we do not believe the role of regional councillor in Niagara should be viewed as a full-time position. A more appropriate statistical measure for Niagara Region, therefore, might be median total income, a figure which includes those who work part-time as well as those who are fully employed. As reported in the 2016 Census, this figure is \$31,601 for Niagara Region.² Adjusted for inflation using monthly consumer price index data, this amounts to \$33,894 in 2019. However, as this exercise has just demonstrated, the selection of this particular statistic over the alternatives is somewhat arbitrary. Median total income probably *is* a better choice than median full-time income because the former includes part-time workers while the latter excludes them, but the main reason to prefer it is that the dollar amount (\$33,894) is much closer to the current salary for regional councillors than the one calculated using median full-time income (\$53,382). Because the selection of the appropriate statistic is arbitrary, and because the connection between regional councillors and local economic performance is a tenuous one at best, we prefer adopting a simpler approach. Our recommendation is that:

Remuneration of the Regional Chair and councillors be increased to sufficiently offset the loss in after-tax income due to the removal of 1/3rd federal income tax exemption.

¹ <https://pub-london.escrimetings.com/filestream.ashx?DocumentId=32906>

² <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CD&Code1=3526&Geo2=PR&Code2=35&Data=Count&SearchText=Niagara&SearchType=Begins&SearchPR=01&B1=All&GeoLevel=PR&GeoCode=3526&TABID=1>

3. COUNCILLOR EXPENSES

3.1 *Limits*

From our investigations and consultative process, it is clear to us that the current council expense policy needs improvement. Almost everyone we spoke to was in favour of imposing limits on councillor expenses. As we note in our *Fact Book*, this can be accomplished in different ways. One approach is to establish an overall budget limit for expenses for each member of council, either annually or per four-year council term. The difficulty with such an approach for Niagara Region is that it may not be possible to set a budget limit that is fair and appropriate for all councillors, enables them to perform their various functions and duties, and still acts as an effective constraint on spending. An expense limit designed to cover the cost of producing and mailing a modest annual newsletter for regional councillors elected at-large in St. Catharines, for example, would not be very relevant to a councillor undertaking the same activity in Wainfleet. A similar example can be made using mileage; obviously councillors in Grimsby have farther to travel to attend council meetings than do those in Thorold. We do not oppose creating an overall budget limit for individual councillor expenses. But, for the reasons we identify above, we think it will be more effective if the existing council expense policy is amended to include the following changes:

3.11 *Conference attendance*

There is currently no limit on the number of conferences councillors can attend in a given year, or on the number of councillors that can attend any particular conference. We recommend:

That councillors may attend up to 3 conferences per year of two or more days in duration requiring overnight accommodations. Conferences must be related to their duties as a Regional Councillor, and they must register as a Regional Councillor (i.e., not as a Mayor). Conferences must be located within continental North America. No more than 4 council members may attend any one particular conference. Exceptions to these stipulations require approval of Council.

3.12 *Annual newsletter*

We understand that newsletters are an important means through which municipal councillors communicate with their constituents. We recommend:

That councillors be reimbursed for the expenses of producing and distributing 1 newsletter annually.

3.13 *Mileage*

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It was made clear to us during our consultations that there has been controversy surrounding when mileage should be claimed for regional councillors. In our view, it is perfectly appropriate for regional councillors to be reimbursed for the cost of travelling to and from official regional business functions, such as council meetings, committee meetings (provided they are a member), training sessions, etc.. We do not think it is necessary, however, for regional councillors to be reimbursed for travel costs related to other activities that, while they may relate to their duties and responsibilities as regional councillors, do not constitute official regional business (e.g., attending community events, meeting with constituents). We recommend:

That councillors be reimbursed for mileage for attending official regional functions only.

3.2 *Legal Costs*

In addition to these changes, we also believe that legal costs arising from or in any way related to complaints under the Code of Conduct should be deemed ineligible expenses. As we document in our *Fact Book*, Niagara Region is alone among regional governments in reimbursing such expenses. While some other Ontario municipalities do reimburse legal expenses related to Code of Conduct complaints, most do so *only if* the council member is found not to have been in violation of the Code of Conduct. We do not support such a policy for two reasons. First, as a practical matter, it does not offer much guidance to councillors in their decision on whether or not to retain legal counsel in the event of a complaint, since they cannot know in advance the outcome. Second, even in the unfortunate case of a wholly vexatious or unfounded complaint, where a councillor feels highly confident of a decision in their favour, there ought to be little reason to seek legal advice; the integrity commissioner process in Ontario is designed precisely to avoid making such expenses necessary. Finally, as we explain in greater detail below, we are optimistic that the culture of the current council will be significantly improved from that of 2014-2018, and that councillors need not be as concerned about protecting themselves from vexatious or politically motivated complaints. We therefore recommend:

That legal expenses arising from or in any way related to complaints under the Code of Conduct be deemed ineligible expenses.

3.3 *Role of Staff*

We were also asked to review the role of regional staff in administering the councillor expense policy. The current Councillors Expense Policy By-law specifies the following role for staff

5.2. Regional Administrative Staff

- a) Ensure consistent application of this policy;

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- b) Process expenses in accordance with this policy;
- c) Ensure the supporting documentation is in place and that expenditures conform to this policy;
- d) Advise Members if any submitted or proposed expenditure is an Ineligible Expense or a breach of this policy;
- e) Track actual expenses against approved budget; and
- f) Each year, incorporate budget dollars in the annual budget for Council to consider for funding or reimbursing Members' Eligible Expenses
- g) Complete the yearly Councillor Remuneration Report as required by the Act

Based on our consultations and investigations, there appears little reason to change or modify the role of staff in a significant way. We do think it is important, however, that staff not be placed in the difficult position of determining whether or not a particular expense claim is eligible. We therefore recommend:

That staff be required to forward any expense claims that do not clearly conform to the expense policy to the Audit Committee.

As per the terms of the current regional council expense policy, it would then be the responsibility of the Audit Committee to review the claim, and provide a recommendation to Council, who makes the final decision.

Finally, to enhance transparency and accountability, we also recommend:

That staff publish the councillor expenses quarterly disclosures on the Niagara Regional Council webpage.

4. NON-FINANCIAL RESOURCES FOR COUNCILLORS

Our investigations concerning non-financial resources for councillors centred on the suitability of the existing office and lounge space for regional councillors, and the adequacy of the administrative support provided to them. Through our consultative process, we learned that administrative support for councillors is provided largely through the Clerk's Office. There, staff provide administrative assistance to councillors as required and respond to their inquiries either directly, or by steering them to the appropriate department. As we outlined in our *Fact Book*, an alternative arrangement can be found in Waterloo Region, where councillors share one full-administrative assistant.

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Among the outgoing and returning councillors that we interviewed, the overwhelming consensus was that the existing administrative resources for regional councillors were more than adequate. Most saw little to no advantage in having a full-time administrative assistant dedicated to regional councillors over the current arrangement, and many wondered how such a person's time could be evenly (or fairly) divided among 31 councillors.

Similarly, our consultations revealed that the existing office and meeting space for councillors was generally considered to be adequate. While most councillors use the space to collect mail and occasionally meet with other councillors around council and committee meetings, some councillors—generally those living in closer proximity to regional headquarters—did use the space to meet with citizens.

Our recommendation is that:

No changes should be made to the existing non-financial resources for regional councillors.

5. CODE OF CONDUCT

Under Ontario's Municipal Act, each municipal integrity commissioner is responsible, among other things, for receiving complaints about violations of the municipality's Code of Conduct. In our *Fact Book* dated 30 September 2018, we wrote the following:

In his recent annual report, Niagara's Integrity Commissioner outlined his activities over the preceding year. Unfortunately, his annual report contains no links to his reports on individual incidents, nor does Integrity Commissioner's webpage on the Region's website. We discovered some of these individual reports in the Agendas of regional council meetings only with the help of reports in the *St. Catharine's Standard* that were found through Google.

In order for regional councillors and the general public to have a better idea of how Niagara's Code of Conduct has been interpreted, our first recommendation is that:

The Region's website contain separate pages for the Integrity Commissioner which will contain links not only to the Code of Conduct and to complaints procedures but also to the various annual reports of the integrity commissioner and to his/her reports relating to particular complaints over a significant period of time, five years perhaps.

A possible model for such webpages can be found on the website of the Regional Municipality of York at: https://www.vaughan.ca/cityhall/integrity_commissioner/Pages/default.aspx

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From our own investigations and from our consultative process we have determined that there are two related problems concerning Niagara Region's Code of Conduct.

1. The content of the Code itself, especially the extent to which it purports to govern all aspects of regional councillors' lives or whether it relates only to their actions "in an official capacity".
2. The Code has been "weaponized" in the sense that citizens and councillors with different political views from particular councillors appear to complain too frequently to the Integrity Commissioner as a way of discrediting their political opponents.

It is our view that changing the content of the Code cannot prevent its weaponization. The Code can only be effective if it is used carefully and for the purposes for which it was intended. In our view this means that complaints by one councillor against another should be made only in the most egregious of circumstances (e.g., if a councillor received hateful personal insults or threats from a council colleague).

On the basis of our consultations, we are optimistic that the culture of the current council will be significantly improved from that of the 2014-18 council. We sensed a desire from newly-elected councillors not to continue old political battles involving the Code and its weaponization.

Regardless of future patterns of councillor behaviour, Niagara Region needs a Code of Conduct. The current one³ is clearly outdated in that it makes no reference to the role of the Integrity Commissioner. It states instead that "Members of Council are encouraged to discuss any situations of concern or doubt regarding the code with the Regional Chair." The role of the Integrity Commissioner is, however, briefly referred to on the Region's webpage relating to "Complaint Process for Council Code of Conduct".⁴

In 2017 Regional Council hired a well-respected municipal lawyer, John Mascarin, to advise the Council's Procedural Bylaw Review Committee on the preparation of a new Code of Conduct. His advice and draft code can be found on pp.5-27 of the committee's agenda for 16 May 2017.⁵ The Committee substantially amended the draft code before presenting it to council.⁶ The most significant amendments related to insuring that the code only applied to members when they were acting "in their official capacities". After a long debate on 14 December 2017, Regional Council rejected the amended version, meaning that nothing resulted from the Mascarin draft.

On the basis of our consultations, we are convinced that many, perhaps most, of the current council would adopt Mr. Mascarin's proposed Code of Conduct. These councillors generally see

³ <https://www.niagararegion.ca/government/council/code-of-conduct/code-of-conduct.pdf>

⁴ <https://www.niagararegion.ca/government/council/code-of-conduct/submit-complaint.aspx>

⁵ www.niagararegion.ca/council/Council%20Documents/2017/PBLRC-agenda-may-16-2017.pdf

⁶ For the amended document, see: <https://www.niagararegion.ca/council/Council%20Documents/2017/COTW-agenda-dec-14-2017.pdf>

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no reason to restrict the code's applicability to their actions "in their official capacities". Nobody seemed much interest in reviving old debates about exactly what may or may not be involved in their "official capacity. Like us, most of our interviewees had faith that no integrity commissioner would attempt to bring the Region's Code of Conduct into their private lives at home or into their activities as an entrepreneur or employee, unless their behaviour in these settings was so public and objectionable as to bring the Region into serious disrepute.

Having faith that the Region would engage reasonable and sensible integrity commissioners, we recommend that:

Regional Council adopt the Code of Conduct proposed by Mr. John Mascarin in May 2017 that can be found on pp.20-27 of the document that is referenced in footnote 3 above.

6. A "REVIEW FRAMEWORK" FOR REGIONAL COUNCIL

The final phase of our Work Plan required that we "analyze the options and make recommendations concerning a 'review framework' for Regional Council to consider concerning the determination of the number of members of its council that will represent each lower-tier municipality after the municipal election of 2022."

In our *Fact Book* we stated the following:

In 2017 Regional Council added an additional seat for West Lincoln in accordance Sections 218 and 219 of the Ontario Municipal Act. Although this action has helped equalize representation for the less populous area municipalities in Niagara, it has exacerbated the obvious under-representation of the more populous, especially Niagara Falls and St. Catharines. Because Niagara made a change to its council composition during the period 2014-18 and because of the provisions of Section 218 (11) of the Ontario Municipal Act, the Niagara Regional Council is not obliged to review its representation system until after the municipal election of 2026. If Regional Council does not affirm or amend its representation system between 2018 and 2028, the Minister of Municipal Affairs may make a regulation under subsection (7) to change the representation of one or more area municipalities. Subsection (10) states that "When considering whether to make a regulation under subsection (7), the Minister shall, in addition to anything else the Minister wishes to consider, have regard to the principle of representation by population." A lot can change between now and 2028. However, even if subsection (10) did not exist, there is much to be said for the argument that representation on regional councils, including Niagara's, should adhere more closely to

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the principle of representation by population. In this regard, Halton Region after 2018 can serve as a model.

The paragraph quoted above was designed to show that, because the Niagara Regional Council *did* change its composition for the 2018 municipal elections, it was *not* obliged to review its representational system prior to 2026. Our conclusion on this matter seemed to differ from that of the Regional CAO at the time, with whom we had briefly discussed this matter as we developed our *Work Plan*. As indicated above, however, we still believe that Regional Council, as a matter of principle, should do all it can to ensure that all Niagara Region residents are represented equally on its council.

In our *Fact Book* we presented data about the representational system in Ontario's other regional municipalities and suggested that one way by which the size of Niagara's regional council could be reduced while simultaneously adhering more closely to the principle of representation by population would be to adopt a system of weighted voting for members of regional council, a mechanism provided for in Section 218 (3) of the Municipal Act. We described how this system works for the county council in Simcoe.

6.1 Consultations

During our consultations, there were very few respondents who were interested in discussing the principle of representation by population in general and weighted voting in particular. Instead, many councillors told us they believed this part of our mandate was largely irrelevant because they expected the new provincial government to take more drastic action to change the nature of regional government in Niagara. This possibility will be addressed in the next section of this report.

A significant number of people we consulted proposed that members of Niagara regional Council be elected from the four federal and provincial electoral districts that currently cover the entirety of Niagara's territory. With two councillors from each district, this would create a regional council having at least eight members. The proposal was obviously inspired by recent provincial legislation for the City of Toronto that created a 25-member council, the wards of which corresponded to Toronto's 25 federal and provincial electoral districts. We carefully considered this proposal but do not recommend its adoption for two main reasons.

1. If mayors were also on the regional council, they would outnumber the other elected members of the council. This is not a problem in itself, but the fact that there is such a variation in the populations of the lower-tier municipalities *is* a problem. We should be able to assume that the electoral districts have roughly equal populations. But the mayors certainly do not represent municipalities of equal populations. The only way to fix this problem would be to introduce weighted voting for the mayors. It would be possible, of course, *not* to include mayors on the regional council. Such an arrangement existed for

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the two-tier Corporation of Greater Winnipeg (1961-71) and the Regional Municipality of Ottawa-Carleton (1994-2000). In both cases, severe conflict broke out between the two tiers, leading to provincial legislation for complete amalgamation. We would never recommend the establishment of an upper-tier regional council without membership from the lower-tier mayors.

2. A more serious problem is that there will be another federal redistribution of electoral districts following the 2021 federal census and there is no guarantee that the federal Electoral Boundaries commission for Ontario will not create an electoral district in western Niagara that might also include Haldimand County and/or parts of the City of Hamilton. Many will remember that, prior to the 2013 federal redistribution, there was a federal and provincial electoral district called Niagara West—Glanbrook. A similar electoral district might have to be created again, depending on 2021 population figures for Niagara, the City of Hamilton, and Haldimand. Because the City of Toronto is about six times more populous than the Region of Niagara, the creation of a reconfigured electoral district crossing Niagara's borders is much more likely than the creation of an electoral district crossing the boundaries of the City of Toronto. The creation of such a cross-border electoral district in Niagara would mean that Niagara could not use the federal and provincial electoral districts in the 2026 municipal election and would therefore have to devise some other representational system following the 2022 municipal election.

6.2 *The Province's Regional Government Review*

On 15 January 2019 the provincial government announced that it had appointed two special advisors to assist in a "Regional Government Review". (For details, see <https://www.ontario.ca/page/regional-government-review#tor>.) The mandate of the advisors is to:

...is to provide expert advice to the Minister of Municipal Affairs and Housing and to make recommendations to the government on opportunities to improve regional governance and service delivery.

Recommendations from the advisory body will focus on the following questions:

Questions on municipal governance and decision-making;

- a. Is the decision-making (mechanisms and priorities) of upper- and lower-tier municipalities efficiently aligned?
- b. Does the existing model support the capacity of the municipalities to make decisions efficiently?
- c. Are two-tier structures appropriate for all of these municipalities?
- d. Does the distribution of councillors represent the residents well?

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- e. Do the ways that regional councillors/heads of council get elected/appointed to serve on regional council help to align lower- and upper-tier priorities?

Questions on municipal service delivery;

- f. Is there opportunity for more efficient allocation of various service responsibilities?
- g. Is there duplication of activities?
- h. Are there opportunities for cost savings?
- i. Are there barriers to making effective and responsive infrastructure and service delivery decisions?

This mandate clearly overlaps with the subject matter of this, our *Third Report*.

6.3 Recommendations

When our *Work Plan* was formulated, we were under the impression that recent amendments to the *Municipal Act* would require Niagara Region to review its representational system prior to the municipal election of 2022. As indicated in the introductory paragraphs of this section, we quickly realized that this was not the case, because the addition of one representative for West Lincoln in 2018 meant that Niagara would not need a representational review until prior to the 2026 election. Nevertheless, we believe that there are serious problems with current arrangements. As indicated in our *Fact Book*, Niagara Falls and, to a somewhat lesser extent, St. Catharines are grossly under-represented on regional council in relation to the principle of representation by population.

We have already noted that weighted voting on regional council attracted little support during our consultations. Nevertheless, we believe that, in the context of the provincial Regional Government Review, it should be revisited. In the Table below, we present a revised version of the weighted-voting plan we presented in our *Fact Book*. This revised plan adheres even more closely to the principle of representation by population. More importantly, in the context of the province's apparent desire to reduce the total number of municipal politicians, this plan reduces the size of the Niagara Regional Council (excluding the Chair) from 31 to 25. Some may see such a reduction as relatively insignificant in the overall scheme of things, but it is an action that can be taken in Niagara without any additional provincial legislation and without affecting any current municipal boundaries. It would also show that Niagara is willing to adopt innovative solutions not previously adopted by any other Ontario regional government.

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Lower-tier municipality	Population (2016 Census)	Share of regional population (%)	Number of regional councillors	Number of regional votes	Share of regional votes (%)	Number of residents per regional vote	Relationship to regional average
Fort Erie	30,710	6.9	2	2	5.6	15,355	+23.4
Grimsby	27,314	6.1	2	2	5.6	13,657	+9.8
Lincoln	23,787	5.3	2	2	5.6	11,894	-4.4
Niagara Falls	88,071	19.7	3	3x2=6	16.7	14,679	+18.0
Niagara-on-the-Lake	17,511	3.9	2	2	5.6	8,756	-29.6
Pelham	17,110	3.8	2	2	5.6	8,555	-31.2
Port Colborne	18,306	4.1	2	2	5.6	9,153	-26.4
St. Catharines	133,113	29.7	3	3x3=9	25	14,790	+18.9
Thorold	18,801	4.2	2	2	5.6	9,401	-24.4
Wainfleet	6,372	1.4	1	1	2.8	6,372	-48.8
Welland	52,293	11.7	2	2x2=4	11.1	13,073	+5.1
West Lincoln	14,500	3.2	2	2	5.6	7,250	-41.7
TOTALS	447,888	100	25	36	100.4	12,441	--

We recommend:

That, in accordance with Sections 218 and 219 of the Ontario Municipal Act and with the approval of the majority of its constituent municipalities, representing a majority of the Region's electors, Niagara Regional Council reduce its membership (excluding the Regional Chair) from 31 to 25 and enact a system of weighted voting as illustrated in the Table above for the municipal election of 2022.

We fully recognize that, as a result of the provincial Regional Government Review, municipal arrangements in Niagara might be so different in 2022 so as to make irrelevant the changes we are recommending. We believe, however, that regardless of the structural preferences of the Region's constituent municipalities and/or the provincial government, Regional Council should itself take action so as to indicate its openness to change and innovation. In the event that the Regional Government Review does not lead to structural changes in Niagara, we are convinced that the representational system we propose for 2022 is considerably superior to what is now in place.

MEMORANDUM

COTW-C 05-2019

Subject: Next Steps – “Final Report” Niagara Region Independent External Governance Auditor

Date: April 11, 2019

To: Regional Council

From: Ann-Marie Norio, Regional Clerk

The “Final Report” of the Niagara Region Independent External Governance Auditor includes recommendations for processes that directly impact Councillors.

In order to ensure fulsome review of these items, including potential budget implications, staff are recommending that these topics be brought before Council in report format to allow for an in-depth examination of the topics.

Council Remuneration

Council will recall that this topic was being held in abeyance pending Council's receipt of the Independent External Governance Auditor report. As there are budget implications with decisions related to this, staff are committed to bringing a report on the topic of Councillor remuneration to the Corporate Services Committee meeting being held on May 8, 2019.

Council Expenses

Council has a number of options with respect to its expense policy as outlined by Drs. Sancton and Cobban. In order to ensure processes are reasonable and can be undertaken by staff, a report outlining options and alternatives can be prepared for Council's consideration.

Code of Conduct

Correspondence Item COTW-C 06-2019 Appendix 1 includes the draft Code of Conduct presented to the Procedural By-law Review Committee in May 2017. Should Council wish to consider adoption of this Code, it will need to be reviewed to ensure compliance with current legislation.

Respectfully submitted and signed by

Ann-Marie Norio
Regional Clerk

MEMORANDUM

COTW-C 06-2019

Subject: J. Mascarin Draft Code of Conduct

Date: April 11, 2019

To: Regional Council

From: Ann-Marie Norio, Regional Clerk

The “Final Report” of the Independent External Governance Auditor, dated April 5, 2019, (Agenda Item 3.1) includes a recommendation that Regional Council adopt the Code of Conduct proposed by Mr. John Mascarin in May 2017.

For Council’s reference, please find attached the Code of Conduct as drafted by John Mascarin, Niagara Region’s previous Integrity Commissioner.

Respectfully submitted and signed by

Ann-Marie Norio
Regional Clerk

Appendix A

Code of Conduct

REGIONAL MUNICIPALITY OF NIAGARA
CODE OF CONDUCT FOR MEMBERS OF COUNCIL
[MAY, 2017]

1.0 Application

1.1 This Code of Conduct applies to Members of the Council of Niagara Region, including the Regional Chair.

1.2 The purpose of this Code of Conduct is to establish a general standard to provide a common basis for the acceptable conduct of Members and to which all Members are expected to adhere to and comply with. This Code of Conduct augments other laws which Members are governed by and which requires Members to follow the Procedural By-law and other sources of applicable law, including but not limited to:

- *Municipal Act, 2001*
- *Municipal Conflict of Interest Act*
- *Municipal Elections Act, 1996*
- *Municipal Freedom of Information and Protection of Privacy Act*
- *Human Rights Code*
- *Occupational Health and Safety Act*
- *Provincial Offences Act*
- *Criminal Code*

2.0 Statement of Principles

2.1 This Code of Conduct is intended to set a high standard of conduct for Members in order to provide good governance and a high level of public confidence in the administration of the Region by its Members as duly elected public representatives to ensure that they each operate from a foundation of integrity, justice, truth, honesty and courtesy.

2.2 The following key statements of principle are intended to guide Members and assist with the interpretation of the Code of Conduct:

- Members shall serve the public in a conscientious and diligent manner;
- Members shall observe and act with the highest standard of ethical conduct and integrity;
- Members shall avoid the improper use of the influence of their office and act without self-interest;

- Members shall act and are expected to perform their functions with honesty, integrity, accountability and transparency;
- Members shall perform their duties and arrange their private affairs in a manner that promotes public confidence and that will bear public scrutiny;
- Members shall be cognizant that they are at all times representatives of the Region and of Council, recognize the importance of their duties and responsibilities, take into account the public character of their function, and always maintain and promote the public trust in the Region; and
- Members will uphold the letter of the laws of Canada, Ontario and the laws and policies adopted by Council from time to time.

3.0 Definitions

3.1 The following terms shall have the following meanings in this Code of Conduct:

- (a) “CAO” means the Chief Administrative Officer of the Region;
- (b) “child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;
- (c) “Chair” means the Regional Chair;
- (d) “confidential information” means information or records that are in the possession, in the custody or under the control of the Region that the Region is either precluded from disclosing under the *Municipal Act, 2001* or other applicable legislation, its Procedural By-law or any of its other by-laws, policies, rules or procedures, or that it is required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act* or other legislation;
- (e) “conflict of interest” means a situation in which a Member has competing interests or loyalties between the Member’s personal or private interests and his or her public interests as an elected representative such that it might influence his or her decision in a particular a matter;
- (f) “Council” means the Regional Council for Niagara Region;
- (f) “fiduciary” means the obligation of a person in a position of authority to act on behalf of another, assuming a duty to act in good faith and with care, candour and loyalty in fulfilling this obligation;
- (g) “frivolous” means something that is not worthy of serious consideration, or that is of little or no importance, due to its lack of seriousness or sense;
- (h) “Member” means a Member of the Council for the Region;

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- (i) “non-pecuniary interest” means a private or personal interest that a Member may have that is non-financial in nature and that would be considered by a reasonable person, apprised of all the circumstances, as being likely to influence the Member’s decision in any matter in which the non-pecuniary interest arises, and may include, but is not limited to, an interest that arises from a relationship with a person or entity;
 - (j) “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;
 - (k) “Region” means the Regional Municipality of Niagara;
 - (l) “spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage;
 - (m) “staff” means the CAO and all commissioners, officers, directors, managers, supervisors and all non-union and union staff, whether full-time, part-time, contract, seasonal or volunteer, as well as agents and consultants acting in furtherance of the Region’s business and interest;
 - (m) “vexatious” means something that is instituted without sufficient grounds and serving only to cause annoyance, frustration or worry.

4.0 Responsibilities of Council

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- 4.1 Council is responsible for and dedicated to providing good and effective government for the public in the Region in an open, accountable and transparent manner.
- 4.2 A fiduciary relationship exists between the Council and residents of the Region.

5.0 General Obligations

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- 5.1 In carrying out their duties, Members shall:
- (a) make every effort to act with good faith and care;
 - (b) conduct themselves with integrity, courtesy and respectability at all meetings of the Council or any committee and in accordance with the Region’s Procedural By-law or other applicable procedural rules and policies;
 - (c) seek to advance the public interest with honesty;
 - (d) respect the individual rights, values, beliefs and personality traits of any other person and refrain from imposing their own personal moral and religious beliefs on others;
 - (e) refrain from making statements known to be false or with the intent to mislead Council or the public;

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- (f) accurately communicate the decisions of Council and respect Council's decision-making process even if they disagree with Council's ultimate determinations and rulings; and
 - (g) refrain from making disparaging comments about another Member or unfounded and speculative accusations about the motives of another Member.

6.0 The Role of Staff

6.1 Council as a whole approves the budget, policies and governance of the Region through its by-laws and resolutions. Individual Members do not direct or oversee the functions of the staff of the Region.

6.2 The Region's staff serve Council and work for the Region as a body corporate under the direction of the CAO. Inquiries of staff from Members should be directed to the CAO or to the appropriate senior staff as directed by the CAO. Members shall not publicly criticize staff. Should a Member have any issue with respect to staff such issue shall be referred to the CAO who will direct the matter to the particular staff member's appropriate superior.

6.3 Members shall respect the role of staff in the administration of the business affairs of the Region. Members shall respect that staff:

- (a) provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations and that Members must not falsely or maliciously injure the reputation of staff members whether professional or ethical or otherwise;
- (b) work within the administration of justice and Members must not make requests, statements or take actions which may be construed as an attempt to influence the independent administration of justice and, therefore, Members shall not attempt to intimidate, threaten, or influence any staff member from carrying out that person's duties, including any duty to disclose improper activity; and
- (c) carry out their duties based on political neutrality and without undue influence from any individual Member and, therefore, Members must not invite or pressure any member of staff to engage in partisan political activities or be subjected to discrimination or reprisal for refusing to engage in such activities.

7.0 Regional Property

7.1 Council is the custodian of the assets of the Region. The community places its trust in Council and those it appoints to make decisions for the public good in relation to these assets.

7.2 By virtue of their office or appointment, Members must not use or permit the use of the Region's land, facilities, equipment, supplies, services, staff or other resources for activities other than the business of the Region. No Member shall seek financial

gain for themselves, family or friends from the use or sale of Region-owned intellectual property, computer programs, technological innovations, or other patent, trademarks or copyright held by the Region.

8.0 Gifts and Benefits

8.1 Gifts to Members risk the appearance of improper influence. Gifts may improperly induce influence or create an incentive for Members to make decisions on the basis of relationships rather than in the best interests of the Region. A Member shall not accept a fee, advance, gift, gift certificate, cash, hospitality or any form of personal benefit connected directly or indirectly with the performance of his or her duties. A gift, benefit or hospitality provided with the Member's knowledge to a Member's spouse, child, or parent, or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to that Member. Any doubt concerning the propriety of the gift should be resolved by the Member not accepting or keeping it.

8.2 For greater clarity, Members shall not accept any gift or benefits in their public capacity other than in the following circumstances:

- (a) compensation authorized by law;
- (b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- (c) a political contribution otherwise reported by law, in the case of Members running for office;
- (d) services provided without compensation by persons volunteering their time;
- (e) a suitable token, memento or souvenir received as an incident of protocol or social obligation that normally accompanies the responsibilities of elected office or at a function honouring the Member;
- (f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or any agencies or subdivisions of them or by the federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity;
- (g) food and beverages consumed at banquets, receptions or similar events, if:
 - (i) attendance serves a legitimate purpose related to the normal business of the Region,
 - (ii) the person extending the invitation or a representative of the organization is in attendance, and
 - (iii) the value is reasonable and the invitations are infrequent;

- (h) gifts of nominal value (for example, a baseball cap, t-shirt, flash drive, book, etc.); and
- (i) any gift or benefit, if the Integrity Commissioner is of the opinion, before the gift or personal benefit has been accepted, that it is unlikely that receipt of the gift or benefit gives rise to a reasonable presumption that the gift or benefit was given in order to influence the Member in the performance of his or her duties.

9.0 Confidentiality

- 9.1 Members receive confidential information from a number of sources as part of their work as elected officials. This includes information received in confidence by the Region that falls under the privacy provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and other applicable privacy laws and information received during closed meetings of Council. Members shall comply with the Region's "Information Access and Privacy Protection Policy".
- 9.2 A Member shall not disclose the content of any confidential information, or the substance of deliberations, of a closed meeting and the Member has a duty to hold any information received at closed meetings in strict confidence for as long and as broadly as the confidence applies. A Member shall not, either directly or indirectly, release, make public or in any way divulge any such information or any confidential aspect of the closed deliberations to anyone, unless authorized by Council or as required by law.
- 9.3 A Member shall not disclose, use or release confidential information in contravention of applicable privacy laws. Members are only entitled to information in the possession of the Region that is relevant to matters before the Council, or a committee. Otherwise, Members enjoy the same access rights to information as any other member of the community or resident of the Region and must follow the same processes as any private citizen to obtain such information.
- 9.4 Members shall not release information subject to solicitor-client privilege, unless expressly authorized by Council or as required by law.
- 9.5 Members shall not misuse confidential information in any way or manner such that it may cause detriment to the Region, Council or any other person, or will benefit themselves or others.
- 9.6 Members shall respect the right to confidentiality and privacy of all clients, volunteers and staff, and should be aware of their responsibilities under applicable legislation, Regional policies, procedures and rules, ethical standards and, where appropriate, professional standards.

10.0 Discrimination and Harassment

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10.1 Members shall treat all members of the public, another Member and staff with respect and without abuse, bullying or intimidation and ensure that their work environment is free from discrimination and harassment.

10.2 Members shall not use indecent, abusive or insulting words, phrases or expressions toward any member of the public, another Member or staff. Members shall not make an expression in any manner that is discriminatory to any individual based on the individual's race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability.

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11.0 Improper Use of Influence

11.1 Members shall not use the influence of their office or appointment for any purpose other than the exercise of his or her official duties in the public interest.

11.2 Members shall not use the status of their position to influence the decision of another person to the private advantage or non-pecuniary interest of themselves, their parents, children or grandchildren, spouse, or friends or associates, or for the purpose of creating a disadvantage to another person or for providing an advantage to themselves.

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11.3 Members who are asked to support charitable activities within the community may do so by accepting honorary roles, lending their names to organizations or events and encouraging public support of events. In doing so, Members shall ensure that they do not have a conflict between their private interest and their duties to the public. Members shall not directly solicit funds nor receive funds for charitable purposes in their role as a Member. Members shall remain at arms-length from financial aspects of external events which they support in their public capacity and shall not participate in decisions concerning the disbursement of funds or determining the beneficiaries of the funds.

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12.0 Conflicts of Interest

12.1 Members shall avoid conflicts of interest, both pecuniary and non-pecuniary. Members shall take proactive steps to mitigate conflicts of interest in order to maintain public confidence in the Region and its elected officials. Members are encouraged to seek guidance from the Integrity Commissioner when they become aware that they may have a conflict between their responsibilities to the public as a Member and any other interest, pecuniary or non-pecuniary.

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13.0 Council Policies and Procedures

13.1 Members shall strictly observe and adhere to the policies, procedures and rules established by Council.

14.0 Election Activity

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- 14.1 Members of Council are required to conduct themselves in accordance with the *Municipal Elections Act, 1996* and any Region policies. The use of the Region's resources, both property and staff time, for any election-related activity is strictly prohibited. Election-related activity applies to the Member's campaign and any other election campaigns for municipal, provincial or federal office.

15.0 Respect for the Code of Conduct

- 15.1 Members shall respect the process for complaints made under the Code of Conduct or through any process for complaints adopted by the Region. Members shall not act in reprisal or threaten reprisal against a person who makes a complaint or provides information to the Integrity Commissioner during an investigation. Members shall interact courteously and respectfully with the Integrity Commissioner and with any person acting under the direction of the Integrity Commissioner.

- 15.2 Members shall cooperate with requests for information during any investigations or inquiries under the Code. Members shall not destroy documents or erase electronic communications or refuse to respond to the Integrity Commissioner where a complaint has been lodged under the Code or any process for complaints adopted by the Region.

16.0 Penalties for Non-Compliance with the Code of Conduct

- 16.1 Where Council receives a report from the Integrity Commissioner that there has been a violation of the Code of Conduct by a Member, Council may impose the following penalties on the Member:

- (a) a reprimand; or
- (b) a suspension of the remuneration paid to the Member in respect of his or her services as a Member for a period up to 90 days.

- 16.2 Council may, on the basis of a recommendation from the Integrity Commissioner, also take any or all of the following actions in furtherance of a reprimand, and require that the Member:

- (a) provide a written or verbal apology;
- (b) return property or make reimbursement of its value or of money spent;
- (c) be removed from or not be appointed to the membership on a committee of Council;
- (d) be removed from or not be appointed as chair of a committee of Council.

17.0 Complaint Protocol

- 17.1 The Complaint Protocol – Code of Conduct is Appendix 1 to the Code of Conduct.