



# TECHtalk

*Providing a Voice for Planning Technicians Across Canada*

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## Helping to Create More Walkable, Bikeable and Livable Places around Transit

*By Lyle Walker MCIP, RPP and Michelle Babiuk, PIBC Candidate Member*

TransLink is often asked by municipal staff across Metro Vancouver for the secret to bringing fast, frequent and reliable transit service to their communities. Recognizing that the “best transportation plan is a supportive land use plan” and that land use is the domain of local government, TransLink has developed several resources for municipalities and other stakeholders seeking to create places that support not just transit, but increased levels of walking and cycling as well. These resources are part of a collaborative approach to coordinating land use and transportation that supports Metro Vancouver’s Regional Growth Strategy (RGS), TransLink’s Regional Transportation Strategy (RTS), and municipal land use and transportation plans.

### ***Shifting from Transit Oriented Development to Transit-Oriented Communities***

As planning professionals, we have often focused on “transit-oriented development” (TOD) with an emphasis on individual buildings or development projects adjacent to rapid transit stations. However, because the design of entire regions, communities and neighbourhoods affects transportation choice, we prefer to focus the conversation on “transit-oriented communities” (TOCs) with its broader focus beyond individual development sites to the design of the entire community at all spatial scales.

#### **Transit-Oriented Communities Design Guidelines**

*Creating more livable places around transit in Metro Vancouver*



## ...Helping to Create More Walkable, Bikeable and Livable Places around Transit

Transit-oriented communities are places that, by their design, allow people to drive less and walk, cycle, and take transit more. In practice, this means concentrating higher density, mixed-use, pedestrian friendly development within walking distance of frequent transit, in combination with measures to discourage unnecessary driving. As people in these communities tend to shift their travel away from driving, they generally consume less fossil fuel energy, use more of their own energy (which leads to health benefits) and produce fewer greenhouse gas emissions. In addition, these types of communities improve the cost-effectiveness of transit service. When paired with an improved public realm, they improve livability and are the foundation for a sustainable transportation system and region.



*A sample cross-section from the Transit-Oriented Communities Design Guidelines: The five zones of the sidewalk each have a role to play in designing streets for people. Illustration by Steer Davies Gleave.*

### **Coordinating Land Use with Frequent Transit**

Traditionally, rapid transit has been top of mind as the type of transit that is well suited for higher density development. However, this focus ignores the high accessibility and level of service provided by other high-quality transit services. Recognizing this, both Metro Vancouver's RGS and TransLink's RTS use the Frequent Transit Network (FTN) as the framework for coordinating land use and transportation. The FTN is a network of corridors where transit service is frequent enough that passengers do not need to refer to a schedule. These corridors connect most urban centres and major activity areas, thereby reinforcing the region's centres and corridors concept. Corridors included in the FTN have transit service of every 15 minutes or better throughout the day and into the evening, 7 days a week.

### **Shifting Development Focus to Transit**

Just because planners think something is a good idea, doesn't necessarily mean that there is a market for those ideas. However, there has been a recent, remarkable shift in development activity in Metro Vancouver. Bob Rennie, the Condo King, has recently proposed that in the 1990s the development mantra was "location, location, location", in the 2000s it was "timing, timing, timing" and in this decade and beyond it is "transit, transit, transit". The market has responded - the developer now recognizes the benefits of transit and has seen an increased market interest in high density and transit-oriented development. This shift reflects people's increasing willingness to pay a premium to locate in areas that are easily accessible, walkable and livable without needing to own or rely on a car. As a result, substantial development activity in Urban Centres, around existing rapid transit lines and along the Evergreen Line has created a transit-oriented renaissance. Market interest in walkable, mixed-use, higher density transit-oriented development is likely to continue to grow, especially at locations with a high level of transit service and an array of community amenities.

In addition to this longer-observed trend in the residential market, a similar trend is now occurring for office development. A new Rapid Transit Office Index for Metro Vancouver, developed by Jones Lang Lasalle, has found that office developments around rapid transit have higher lease rates and lower vacancies than elsewhere in the region. Developers are now seeing the compelling business case for developing in areas with high quality transit, and the tenants are willing to pay a premium for this accessibility.

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### The “6 Ds” – It’s not just about Density

So how do we go from the theory of transit-oriented communities to actually designing them? There is no single “right way” to create successful TOCs. There are, however, six key attributes that contribute to high levels of transit demand – Destinations, Distance, Design, Density, Diversity, and Demand Management – what we refer to as the “6 Ds” of transit-oriented communities. While there is much focus on the role of density, the literature shows that density alone has a very weak direct relationship with travel behaviour. Instead, density is a proxy for the other “Ds” – dense settings commonly have central locations, short blocks, mixed uses, good transit, and parking management in place.

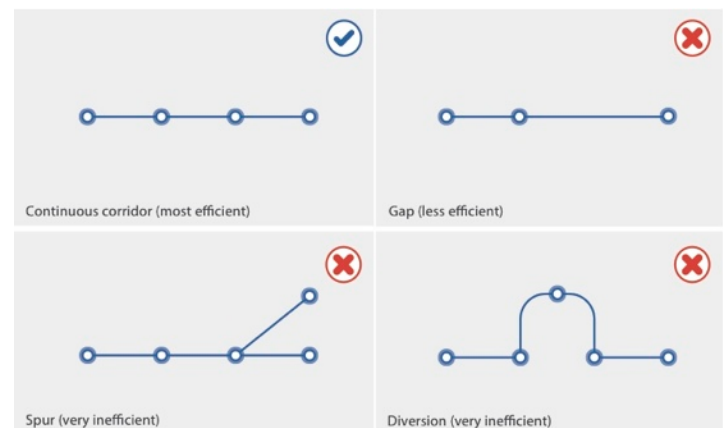
Ultimately, to be most effective at increasing walking, cycling and transit and decreasing driving, all “6 Ds” need to be implemented in concert at the regional, corridor, neighbourhood and site scales. To assist communities with incorporating these attributes in their plans and processes, TransLink, in consultation with our stakeholders, has developed a set of Transit-Oriented Communities Design Guidelines organized around the “6 Ds”.

### Putting the Guidelines into Practice

The TOC Guidelines are available for anyone to help support the planning of both new communities and the retrofiting of more mature neighbourhoods. While we encourage you to borrow liberally from this document, we also expect that you will need to adapt the guidelines to suit the local context, local input and unique situation of each community.

The TOC Guidelines are intended to provide ideas and best practices as input to:

- OCPs, neighbourhood, station area and corridor plans
- Implementing community energy and emissions plans
- Development proposal creation and review
- Transportation network design
- Street design standards
- Transit facility integration, and
- Design charrettes.



*A sample illustration from the Transit-Oriented Communities Design Guidelines: Locating destinations appropriately will improve the efficiency of transit corridors.*

### Resources

TransLink has also developed other resources as indicated below to help our stakeholders plan more livable communities around transit:

**Table: TransLink Resources for Creating Transit-Oriented Communities**

TransLink Resources	Description	Audience
Transit-Oriented Communities: A Primer on Key Concepts	This short Primer introduces the FTN and the “6 Ds” and illustrates the key concepts with graphics for a non-technical audience.	<ul style="list-style-type: none"><li>• General public</li><li>• Elected officials</li><li>• Municipal staff (planners, engineers, architects, etc.)</li><li>• Developers</li></ul>
Transit-Oriented Communities Design Guidelines	These Guidelines outline strategies for designing communities around frequent transit to support walking, cycling and transit. Case studies, checklists and other resources help translate guidelines into implementation.	<ul style="list-style-type: none"><li>• Municipal staff (planners, engineers, architects, etc.)</li><li>• Developers</li><li>• Consultants</li></ul>

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Transit-Oriented Communities Checklists	To streamline planning and development application review, a set of checklists for transit-orientation is provided for the corridor, neighbourhood and site planning scales.	<ul style="list-style-type: none"> <li>• Development planners</li> <li>• Developers</li> </ul>
Transit Passenger Facility Design Guidelines	This document offers guidance to TransLink and its municipal partners in designing transit passenger facilities (stations, exchanges and stops) and integrating them with neighbourhoods.	<ul style="list-style-type: none"> <li>• TransLink and municipal planning staff (planners, engineers, architects, etc.)</li> </ul>
Managing the Transit Network: A Primer on Key Concepts	This Primer outlines the objectives, principles and considerations, including land use, that TransLink takes into account when designing new transit services or making changes to existing services.	<ul style="list-style-type: none"> <li>• Municipal planners</li> <li>• Elected officials</li> <li>• General public</li> </ul>
Frequent Transit Network Map	This map, showing the existing FTN in Metro Vancouver, is an essential feature for the walls of planning and engineering departments around the region.	<ul style="list-style-type: none"> <li>• Municipal staff (planners, engineers, etc.)</li> <li>• Developers</li> <li>• Realtors</li> <li>• General public</li> </ul>

All the above resources and more can be found on TransLink's web site at: [www.translink.ca/TOCs](http://www.translink.ca/TOCs)

### Future Activities

Over the next year, TransLink will be reaching out to share these materials with more stakeholders. We will also be working with Metro Vancouver to implement related concepts in the implementation of the Regional Growth Strategy and incorporating elements of transit-oriented communities in our updated Regional Transportation Strategy. We'll also be conducting empirical research on how the "6 Ds" affect transportation outcomes to help inform municipal decisions on land use densities and neighbourhood design. Finally, we will continue to collaborate with municipalities to improve land use and transportation coordination at all spatial scales.

We hope that you find these resources helpful in your efforts to create more walkable and bikeable places around transit.

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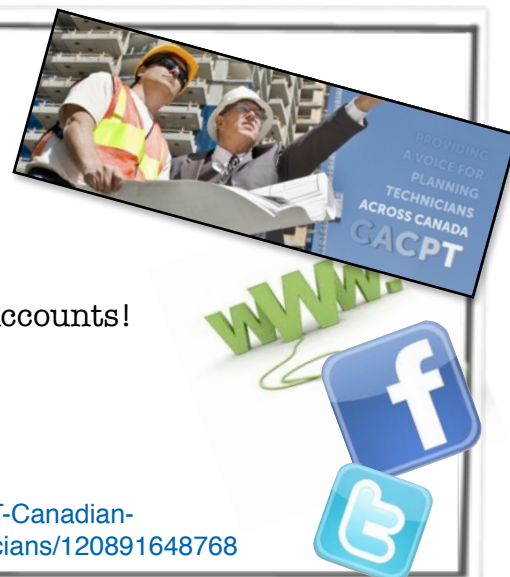
CACPT is proud to announce the launching of the new website [www.cacpt.org](http://www.cacpt.org)

Highlights include discussion boards, members area with exclusive content, job postings, photo galleries, online payment available for conferences and membership dues, and much more!

Also be sure to check out the CACPT Facebook Page and Twitter Accounts!



<https://www.facebook.com/pages/CACPT-Canadian-Association-of-Certified-Planning-Technicians/120891648768>





# Understanding Municipal Conflicts of Interest

by John Mascarin

## Introduction

On November 26, 2012, Justice Charles Hackland of the Ontario Superior Court of Justice issued his decision on a conflict of interest application brought against Toronto Mayor Rob Ford. To the great surprise of many, the decision in *Magder v. Ford*<sup>1</sup> declared the seat of Rob Ford, as mayor of Toronto, to be vacant.

To say that the judgment has raised the awareness of the general public to Ontario's *Municipal Conflict of Interest Act*<sup>2</sup> would be an understatement. This statute, which has been in place for over 40 years, has probably never generated as much debate and discussion as it has in the past two months since the release of the judgment.<sup>3</sup> The judgment ought not to have been shocking to anyone who has even a passing familiarity with the MCIA and who had followed the case.



The intense media scrutiny on *Magder v. Ford* has created much misinformation regarding how the legislation functions. This article will provide a primer on the MCIA so that the decision can be understood.

## *Magder v. Ford*

At the meeting of Toronto City Council on February 7, 2012, the council had before it a report of the city's Integrity Commissioner which reported that Mayor Ford had not reimbursed donors in the amount of \$3,150 that he had improperly solicited for his charitable football foundation by using city letterhead while he was a councillor. He had previously been ordered to personally reimburse the amounts to the donors.

Mr. Ford did not declare a pecuniary interest in the matter. He spoke directly to the issue ahead of the vote and implored council not to enforce its previous resolution. Another member of city council moved to rescind the earlier decision and to not take any additional action with respect to the matter. While Mr. Ford did not speak to that motion directly he subsequently cast a vote in favour of rescinding the previous decision which passed on a vote of 22 to 12.

## Municipal Conflict of Interest Act

### (a) General

The original *Municipal Conflict of Interest Act, 1972* was first enacted in Ontario over four decades ago.<sup>4</sup> Although a number of shortcomings were identified in the statute (which led to the enactment of the *Municipal Conflict of Interest*

<sup>1</sup> *Magder v. Ford* (November 26, 2012), Doc. CV-12-448487 (Ont. S.C.J.).

<sup>2</sup> *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 ("MCIA").

<sup>3</sup> Jeffrey Lem, *Law Times*, "Magder teaches lesson about conflicts of interest" (December 3, 2012), 7:

This year has had its fair share of controversial, politicized and precedent-setting court decisions. No decision, however, has shaken the political landscape of the province as much as the recent ruling by Justice Charles Hackland of the Ontario Superior Court of Justice in *Magder v. Ford* that threatens to remove Toronto Mayor Rob Ford from office.

<sup>4</sup> *Municipal Conflict of Interest Act, 1972*, S.O. 1972, c. 142.

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Act, 1983<sup>5</sup>) its provisions have remained very much the same for the past 40 years with minimal modifications. The currently notorious automatic declaration of vacancy has existed since the *Municipal Conflict of Interest Act, 1972*.<sup>6</sup>

An overhaul of the MCIA was proposed nine years later when the *Local Government Disclosure of Interest Act, 1994* actually received Royal Assent and was proclaimed to come into force on April 15, 1994.<sup>7</sup> However, a change in government revoked the proclamation a mere two days before its effective date. This statute would have implemented a discretionary power to declare a member's seat vacant for contravention.

As noted in a recent decision, "The MCIA governs the conduct of local government members regarding conflicts of interest. It reflects the need for integrity and accountability as the cornerstones of a strong local government system."<sup>8</sup> The MCIA sets out a legislative framework for when local decision-makers must declare an interest and must recuse themselves from participation and from voting in the decision-making process. The MCIA is not at all dissimilar to municipal conflict of interest legislation in other jurisdictions throughout all of Canada.

The MCIA is a statute of general application to all "members" (broadly defined and including former members) of a municipal council or a local board in Ontario. Conflict of interest legislation is strict. The MCIA has recently been described as a "sledgehammer" and an "intrusion into the democratic process by the courts".<sup>9</sup> Justice Hackland refers to it as a "very blunt instrument." Commissioner Cunningham in his *Report of the Mississauga Judicial Inquiry – Updating the Ethical Infrastructure* (which investigated Mayor Hazel McCallion's dealings regarding her son's interest in land surrounding Mississauga Square One and City Hall) wrote that the sanctions available under the MCIA are "severe" and "draconian."<sup>10</sup>

This is because the MCIA expressly provides that if a member of council has breached his or her obligations under the statute, and no exception applies and there is no other "excuse", the member must be removed from office. The removal from office is an automatic penalty under the MCIA – a judge has no discretion in the matter. This is why it is so important for members of local councils and for the public to understand precisely how the statute operates.

The statute was meant to be strict and unforgiving. Justice Belleghem articulated the severity of the MCIA in *Halton Hills (Town) v. Equity Waste Management of Canada* in the following terms:

The *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, provides for the automatic unseating of any council member who votes on any public matter in which he or she has any financial interest.

The Act is crystal-clear. It is harsh. It must be. It controls the actions of council members. They are the repositories of the citizens' highest trust. They must at once be strong in their debate to put forward their electorates' concerns; they must always have an ear to the dissent in their voters. They must not only be unshirkingly honest — they must be seen to be so — by those who voted *for* them, and those who voted *against* them. Their role, though noble in its calling, is demanding in its execution. It is onerous in the extreme.<sup>11</sup>



<sup>5</sup> *Municipal Conflict of Interest Act, 1983*, S.O. 1983, c. 8.

<sup>6</sup> Both s. 5(1) of the *Municipal Conflict of Interest Act, 1972* and s. 10 of the *Municipal Conflict of Interest Act, 1983* expressly provided that a member who has contravened the declaration of interest and abstention requirements of the statute must have his or her seat declared vacant. The mandatory penalty of the vacating of the council member's seat has been in place for over 40 years.

<sup>7</sup> *Local Government Disclosure of Interest Act, 1994*, S.O. 1994, c. 23, Sched. B. It was finally by the *Municipal Act, 2001*, S.O. 2001, c. 25.

<sup>8</sup> *Lorello v. Meffe* (2010), 99 M.P.L.R. (4th) 107 (Ont. S.C.J.) at 113.

<sup>9</sup> Professor David Mullan in a report to Toronto City Council, as quoted in the decision at para. 46, and current Mississauga Integrity Commissioner, Robert Swayze, as quoted in the *Toronto Star* (December 2, 2012).

<sup>10</sup> Justice J. Douglas Cunningham, *Report of the Mississauga Judicial Inquiry – Updating the Ethical Infrastructure* (City of Mississauga, 2011) at 158 and 171.

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It is curious that so many people have decried the statute and the mandatory removal from office for contravention as undemocratic when it was enacted by elected provincial legislators who believed that strict conflict of interest requirements were needed to keep local government officials in line. The automatic removal from office provision has been in place for over 40 years (and *Magder v. Ford* is not the first time that a sitting member has been ordered removed from office).<sup>12</sup>

The MCIA may be “outdated” but it remains the law until the provincial legislators change it.

### (b) Pecuniary Interest

The statute does not apply to conflicts of interest in the broad sense; instead it targets the “pecuniary interest” of a member of council. A pecuniary interest is not defined in the MCIA but has been held to be one that is “concerning or consisting of money...an interest that has a monetary or financial value.”<sup>13</sup> It is a financial interest. The interest may be direct, indirect or deemed (meaning that the financial interest that of a member’s close family). Interestingly, it is only the interests of a member’s spouse, children or parents that are deemed to be the member’s interests.<sup>14</sup>

### (c) Obligations of Council Members

The MCIA does not preclude a council member from having a financial interest in a matter being considered by the council or a committee – the statute simply provides that the member cannot participate or vote in the matter. These obligations are set out in s. 5 of the statute:

5. (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question

Section 5 sets out the general responsibilities of a member of council. The obligations are *personal* ones that the member of council is solely responsible to discharge.

It is important to know that a person cannot take a seat on a council until the person takes a declaration of office.<sup>15</sup> The declaration of office is a standard form provided by the Minister of Municipal Affairs and Housing and sets out four simple sentences which elected, acclaimed or appointed members solemnly promise and declare to abide by and fulfill. The third declaration states as follows:



<sup>11</sup> *Halton Hills (Town) v. Equity Waste Management of Canada* (1995), 30 M.P.L.R. (2d) 232 (Ont. Gen. Div.).

<sup>12</sup> Removal from office is rare but it has happened. In 2009 a trustee and former chair of the Toronto Catholic District School Board had his seat vacated pursuant to s. 10(1)(a) of MCIA: *Baillargeon v. Carroll* (2009), 56 M.P.L.R. (4th) 161 (Ont. S.C.J.).

<sup>13</sup> *Mondoux v. Tuchenhausen* (2010), 79 M.P.L.R. (4th) 1 (Ont. S.C.J.).

<sup>14</sup> Excluded are non-familial and more remote family interests.

<sup>15</sup> *Municipal Act, 2001*, S.O. 2001, c. 25, s. 232(1); *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, s. 186.

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3. I will disclose any pecuniary interest, direct or indirect, in accordance with the *Municipal Conflict of Interest Act*.

The declaration of office leaves no doubt that the obligation to comply with the requirements of the statute is a personal responsibility of the member of council. A member of council cannot offload responsibility and claim that the municipal solicitor, the clerk, the chief administrative officer or any other member of council has a duty to caution, warn or discharge the obligation under the MCIA.

### (d) Exceptions

Section 4 recognizes that there are a number of instances where a member of council may have a pecuniary interest but that various interests shall not serve to trigger the obligations under s. 5. There are eleven express exceptions: the first nine refer to narrow and specific matters and the last two are general and have consequently generated the most judicial consideration:

4. Section 5 does not apply to a pecuniary interest in any matter that a member may have,

...

- (j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or
- (k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

There is no exception for permitting a member of council to make submissions regarding a finding or recommended penalty in an Integrity Commissioner's report which was precisely the issue in *Magder v. Ford*.

### (e) Penalties

As noted, the penalty for contravening the MCIA is severe. Section 10 provides that if a judge determines that a member has contravened the MCIA, the member's seat must be declared vacant. Unless one of the saving provisions is applicable, the judge has *no* discretion and the member's seat is automatically vacated.<sup>16</sup> The judge does have a discretion to further disqualify the member from being elected for up to seven years and also to order reimbursement of any financial gain.

Subsection 10(1) provides as follows:

10. (1) Subject to subsection (2), where the judge determines that a member or a former member while he or she was a member has contravened subsection 5(1), (2) or (3), the judge,
  - (a) shall, in the case of a member, declare the seat of the member vacant; and
  - (b) may disqualify the member or former member from being a member during a period thereafter of not more than seven years; and
  - (c) may, where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or local board of which he or she is a member or former member.

<sup>16</sup> Much of the publicity surrounding the judicial decision was directed at the draconian nature of the penalty under s. 10(1) which ordered the removal of Mayor Ford from office. However, such a provision is not usual in similar legislation in other jurisdictions throughout Canada.



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While the disqualification and reimbursement penalties are optional orders that a judge may impose if a contravention is found, the mandating of the member's seat is imperative under the statute and the judge has no discretion not to impose it.

### (f) Saving Provisions

By virtue of the express language of s. 10, a judge does retain the ability to excuse a member's contravention and not order his or her seat vacant if the judge determines that the member contravened the statute through inadvertence or an error in judgment:

10. (2) Where the judge determines that a member or a former member while he or she was a member has contravened subsection 5(1), (2) or (3), if the judge finds that the contravention was committed through *inadvertence* or by reason of an *error in judgment*, the member is not subject to having his or her seat declared vacant and the member or former member is not subject to being disqualified as a member, as provided by subsection (1). (emphasis added)



Subsection 10(3) of the MCIA expressly provides that a member cannot be suspended.

### (g) Enforcement

Enforcement of the MCIA is by *private* court application commenced by an elector under s. 9:

9. (1) Subject to subsection (3), an elector may, within six weeks after the fact comes to his or her knowledge that a member may have contravened subsection 5 (1), (2) or (3), apply to the judge for a determination of the question of whether the member has contravened subsection 5 (1), (2) or (3).

“Elector” is defined in s. 1 of the MCIA to mean (with respect to a municipality) “a person entitled to vote at a municipal election in the municipality.” It is arduous and expensive to commence an application (it is not like an appeal under the *Planning Act* that can be filed with a simple letter setting out objections and paying a fee of \$125). Many have argued that the private enforcement of the statute is too difficult and cumbersome. It is likely that the legislative drafters intended this and made it “less easy” to bring challenges for purported conflict of interest violations.

### The Decision in *Magder v. Ford*

Mr. Ford defended the application on four grounds:

- the MCIA did not apply to violations of Toronto's *Code of Conduct*;
- the initial resolution of city council requiring the respondent to reimburse the \$3,150 in donations was a nullity as it exceeded the statutory powers of the city under the *City of Toronto Act, 2006*;
- the exception in s. 4(k) of the MCIA applied since the amount was so remote or insignificant as to not be regarded as likely to influence the respondent's actions; and
- the saving provisions in s. 10(2) of the statute applied as the respondent's contravention of the MCIA was committed by inadvertence or an error in judgment.

Justice Hackland considered each of the grounds of defence and determined as follows:

- “s. 5(1) of the *MCIA* means what it clearly says and that there is no interpretive basis for excluding the operation of s. 5(1) from municipal *Code of Conduct* matters.... There is no basis on which the court can

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restrict or read down the meaning of ‘any matter’ to exclude potential financial sanctions arising from *Code of Conduct* violations.”

- the city had the authority to require Mr. Ford to personally reimburse \$3,150 to the donors pursuant to the *City of Toronto Act, 2006*.
- “While s. 4(k) appears to provide for an objective standard of reasonableness, I am respectfully of the view that the respondent has taken himself outside of the potential application of the exemption by asserting in his remarks to City Council that personal repayment of \$3,150.00 is precisely the issue that he objects to and delivering this message was his clear reason for speaking and voting as he did at the Council meeting.”
- Mr. Ford’s contravention was neither inadvertent (in the sense that it was an oversight or occasioned by inattentiveness) nor a good faith error in judgment (in fact, Mr. Ford was found to have been wilfully blind of his obligations and ignorance is no defence of the law).

In view of the following determinations, Hackland R.S.J. had no choice but to declare Mr. Ford’s seat vacant. He was mandated by s. 10(1)(a) of the MCIA to remove Mr. Ford from office. The learned justice noted the matter did not involve corruption, that it had originated out of a worthwhile charitable endeavour, that it involved a modest amount of money and that his breach “was an unfortunate and arguably technical breach” of the MCIA. However, he was bound to follow and apply the law. Because of the mitigating circumstances he noted, Hackland R.S.J. elected not to exercise his discretion under s. 10(1)(b) of the MCIA to disqualify Mr. Ford from running for office in the future.

Mr. Ford has appealed the decision and on December 5, 2012 obtained a stay of the order removing him from office pending the appeal decision.<sup>17</sup> Mr. Ford’s appeal (before a three-judge panel of the Divisional Court) was scheduled for hearing on January 7, 2013.

When *Magder v. Ford* was first released and Mr. Ford vowed to immediately appeal, many assumed that it would be years before all appeals were exhausted and that accordingly Mr. Ford would (if he obtained a stay pending appeal) be certain to remain in the mayor’s seat for the remainder of the term of council. Interestingly, s. 11(2) of the MCIA expressly provides that the Divisional Court’s “decision is final.” Even more interesting, however, is a little known provision in the *Supreme Court Act* that allows a person to by-pass the highest appellate court of the province and appeal directly to the Supreme Court of Canada. While it has never happened in Ontario with the MCIA, there is a remote possibility that the matter may end up at the Supreme Court of Canada.

### Conclusions

The decision in *Magder v. Ford* proves that the MCIA is harsh and severe. Many excellent commentators have pointed to the draconian nature of the statute (particularly the mandatory removal from office). However, a judge must interpret and apply the law as it stands; a judge is not a legislator and a judge cannot (or should not) create the law.

Those who argue that the decision in *Magder v. Ford* is flawed choose to ignore or simply refuse to accept that what Mr. Ford did was expressly prohibited by the MCIA because he had a pecuniary interest in the repayment of \$3,150 and should not have spoken to or voted on the matter. The evidence was clear that Mr. Ford had not read the statute (although he took four oaths of office solemnly promising to abide by the requirements of the MCIA) and that the repayment of \$3,150 was of importance and significance to him. In view of these facts, Justice Hackland reached the only conclusion that he could have and imposed the penalty that was dictated by the MCIA.

It is appropriate to conclude with the oft-quoted words of Robins J. in *Moll v. Fisher* which have been consistently adopted and applied by decisions on the MCIA for well over 30 years:

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<sup>17</sup> *Magder v. Ford* (December 5, 2012) Doc. 560/12 (Ont. Div. Ct.)

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The obvious purpose of the Act is to prohibit members of Councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. The scope of the Act is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest. There is no need to find corruption on his part or actual loss on the part of council or board. So long as the member fails to honour the standard of conduct prescribed by the statute, then regardless of his good faith or the propriety of his motive, he is in contravention of the statute.<sup>18</sup>

The MCIA is unforgiving. It was intended to be so. It is imperative that municipal council members read and understand the statute and appreciate their obligations. This is what they have sworn to do.

### Editor's Note

*This article was submitted prior to the release of the decision of the Ontario Divisional Court in Magder v. Ford on January 25, 2012. The Divisional Court upheld each of the application judge's determinations except for the ruling on the jurisdiction of the City of Toronto to impose the original reimbursement requirement on Rob Ford. The Divisional Court determined that the council had no power to make such an order and therefore it was a nullity. Accordingly, because the reimbursement requirement was null and void Rob Ford did not have a pecuniary interest under the MCIA when he spoke to and voted on the matter.*

*John Mascarin is a partner with Aird & Berlis LLP in Toronto. He is a Certified Specialist (Municipal Law: Local Government & Land Use Planning and Development). John would like to acknowledge the assistance provided to him in researching and drafting this article by Brett Kenworthy, student-at-law at Aird & Berlis LLP.*

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<sup>18</sup> *Moll v. Fisher* (1979), 8 M.P.L.R. 266, 23 O.R. (2d) 609, 96 D.L.R. (3d) 506 (Div. Ct).

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# Highlights

## 2012 CACPT Professional Development Conference & AGM



The Association's annual Professional Development Conference and Annual General Meeting were held October 19<sup>th</sup> at the Rudy H. Brown Rural Development Centre, located on the Ridgetown Campus of the University of Guelph, within the Municipality of Chatham-Kent.

The venue provided an excellent and relevant backdrop for our PDC theme this year:

### **LARGE-SCALE RENEWABLE ENERGY PROJECTS: A LOOK AT POLICY AND TECHNICAL DESIGN CONSTRAINTS**

as Chatham-Kent is host to numerous wind farms, and both large and small-scale solar projects.

All those in attendance – approximately 230 full and associate members, students and guests – were treated to an exciting and enlightening day filled with presentations, workshops and tours dealing with renewable energy, and in a broader sense, the land use planning industry in general.

Highlights of the day included:

- CACPT Annual General Meeting
- CACPT Awards Presentation
- Recognition and special award presentation to Diane LeBreton, retiring from CACPT Executive Director position
- Welcome address by Paul Lacina, Chief Building Officer, Municipality of Chatham-Kent
- Presentation by William Pol, MPA, MCIP, RPP & Tom Storey, M.Sc., MCIP, RPP – Renewable Energy Approvals through the Green Energy Act
- Presentation by Nicolas Muszynski – Planning a Wind Farm: The Role of GIS
- Presentation by Stephen Hook, OLS – The Role of a Surveyor
- Presentation by David Farnsworth – GIS Technology: ESRI
- Group tours which included stops at a 2.3 MW turbine; an 80 acre, 9.3 MW solar farm; and a bio-diesel / bio-gas electrical generation facility



Our annual professional development day is an opportunity for our members and other related planning professionals to gather and exchange information and ideas, expand their education, and interact with colleagues.



## ...highlights of the 2012 Professional Development Conference & AGM

Thanks to the generosity of our sponsors, this year was one of our most successful, from both delivery and financial perspectives.

The CACPT Executive and Council-at-Large wish to thank all CACPT members for their unwavering support of the Association, and by extension, our annual Professional Development Conferences. As the CACPT is a not-for-profit organization, the monies generated through PDC sponsorship and registration not only funds the PDC itself, but provides a portion of our yearly operating capital. This capital assists the CACPT in ensuring the continuing growth and development of planning technicians and related planning professionals in Canada for which the Canadian Association of Certified Planning Technicians is recognized.

Although we do not know what the theme of the 2013 PDC will be, or where it will be held, we are confident that it too will be relevant, exciting and enlightening, and look forward to next year. If you have any suggestions for future PDC themes and/or locations, or would like to help out in any way, please forward your suggestions / intentions to our business office or one of our Council members

*David French, BA, CPT*

*CACPT Treasurer,  
2012 Professional Development Conference Chair*



## Alberta News

### OLDS ACCREDITATION

On September 28, 2012, CACPT recognized the Rural Land Use Planning Major Program, Environmental Stewardship and Rural Planning Program offered at OLDS COLLEGE, Olds, Alberta as being fully accredited.

Check out the following links to planning and development news, updates and articles in Alberta:

Community Planning Association of Alberta: <http://www.cpaabiz/>

Alberta Municipal Affairs: [http://www.municipalaffairs.alberta.ca/am\\_planning\\_and\\_development.cfm](http://www.municipalaffairs.alberta.ca/am_planning_and_development.cfm)



# Planning & PlaceSpeak: A Vancouver-Grown Public Consultation Platform

*By Maureen Mendoza, PIBC Student Member*

## **Imagining Online Consultation**

When Colleen Hardwick wanted to affect the decision-making process around transit development in her Vancouver neighbourhood, she started by imagining a different landscape for public consultation.

Recognizing that many traditional methods of current public consultation - mailers, telephone polls, open houses – no longer gain response rates from citizens as they may have in the past, Hardwick realized that people are online as the Internet provides both an invitation and challenge to improve civic participation.

Hardwick imagined a series of what-ifs: what if you could be notified of consultations relevant to where you live, work and play? What if people had to verify who and where they were online in order to be legitimately counted in consultation? What if citizens could influence outcomes because their verified input enabled evidence-based decision-making?

Imagining just how different public consultation could be for planners, government officials and decision makers if those what-ifs were realities, Hardwick realized that there was no online platform at the time that satisfied those unique requirements – she would have to build it. She did and called it PlaceSpeak.

## **PlaceSpeak: How it Works**

PlaceSpeak was developed to connect people to consultation topics based on their location. PlaceSpeak verifies a user's online identity with their addresses of residence, work, and recreation so they can voice their opinions on local issues. This geo-verification is key, differentiating the platform from other online engagement tools. Given the increasing need for qualitative and quantitative data in the decision-making process, PlaceSpeak provides proponents with the confidence that they are receiving feedback from the right places and that users are non-anonymous as they are authenticated to participate.

PlaceSpeak enhances community consultation in three distinct ways:

1. By connecting users' digital identity to their real world identity through an authentication process;
2. By using the geo-verification process to transform the way people in neighbourhoods interact with "location-based issues"; and
3. By advancing the public consultation process through an online platform that enables, and encourages inclusive, informed participation, allowing evidence-based decision-making.

Within the past year, PlaceSpeak has gained momentum in the Lower Mainland, steadily achieving province-wide support and interest across Canada. Its encouragement for residents to "Claim your Place, Speak your Mind" resonates, affirming to users that local decision makers value their input.

For planners who do stakeholder engagement as part of their work but face challenges in getting feedback, bringing the conversation online presents the potential of connecting with citizens who have lost trust in the decision-making process, or who may never participate otherwise. Part of PlaceSpeak's strategy is to develop the "gamification" aspect of a user-friendly platform, using non-monetary rewards and an enticing interface to encourage participation.

Once a consultation is created, proponents map out specific consultation boundaries. This geographic control allows for spatially defined data comparison. Proponents then gain input and provide user information in a variety of ways, including discussion forums, event pages, polls and surveys, media galleries and notice boards. The platform easily allows for social media integration and shares plug-in widgets so specific projects can be featured on websites and linked to its PlaceSpeak consultation page.

# ...Planning and PlaceSpeak: A Vancouver-Grown Public Communication Platform

By Maureen Mendoza, PIBC Student Member

A key PlaceSpeak feature allows proponents to deliver mass notifications about public open houses or report updates. This notification capability is vital in communicating outcomes of the consultation to residents after it is completed. Another key differentiator is that PlaceSpeak serves as a bank, as users can be notified of subsequent topics once they have signed on.

## *PlaceSpeak's Early Adopters: Engaging Citizens, Connecting Issues, Influencing Decisions*

PlaceSpeak continues to grow at its early adopter stage, as online consultation is still a great leap of faith for many experimenting in digital engagement. A year young, the platform has hosted a variety of consultations in the Lower Mainland and across BC. In the past year, PlaceSpeak consultations have included:

- City of New Westminster's Master Transportation Plan, including Pattullo Bridge replacement options
- The Greater Vancouver Urban Futures Survey 2012
- City of Vancouver Mayor's Task Force on Housing Affordability
- The Islands Trust Strategic Plan
- District of Tofino's Tsunami Siren Test (Pilot Study)
- Town of Gibsons' Harbour Area Plan (Pilot Study)

One example of PlaceSpeak's consultations has been the City of New Westminster's consultation regarding their Master Transportation Plan that sought input regarding the expansion of the Pattullo Bridge.

At the start of the consultation, each proponent is given a "Best Online and Offline Practices" checklist to promote their topic. New Westminster's planning and communication team followed these practices that included a press release and municipal website integration. As a result, almost two hundred residents connected to take the survey – a much higher response rate than received from the open houses the city conducted. Thanks in part to the authenticated results from the PlaceSpeak consultations, TransLink reversed its decision and has decided to collaborate with Surrey and New Westminster in reviewing other alternatives for the Pattullo redevelopment.

Jerry Behl, a Transportation Engineer for the City of New Westminster and key contact for the consultations was impressed with the outreach and was "surprised by the sheer number of people who logged on and took a look; we covered a lot of bases this way. We gave the people the option of turning up at an open house in the afternoon, in the evening, or coming on to PlaceSpeak."

Behl acknowledges that non-anonymity required on PlaceSpeak adds legitimacy to information because " ...the fact that people have to register with PlaceSpeak and give some sort of identification address – although that's confidential and people don't see that – it gives us a sense of comfort that these people are there, they're who they say they are." Behl affirms that becoming more accountable to citizens and connecting through public consultation is the key: "They're the people we work for and we want to hear from them".

PlaceSpeak also continues old surveys with new technology. The Urban Futures Survey began in 1973 and was repeated in 1990. The survey provided the basis for many of the policies in the Livable Region Strategic Plan adopted in 1996 by the Greater Vancouver Regional District (now Metro Vancouver). The new Urban Futures survey is currently being deployed online (as of October 1, 2012) to get input from residents to plan for the future of the MetroVancouver region. Ken Cameron FCIP, who has held senior planning and management positions with the City of New Westminster and Metro Vancouver, appreciates taking the old survey and putting it in this new online format. He said, "Doing the 2012 survey online through PlaceSpeak not only provides updated data at a fraction of the cost, it also means that future surveys can be done more frequently and more economically."

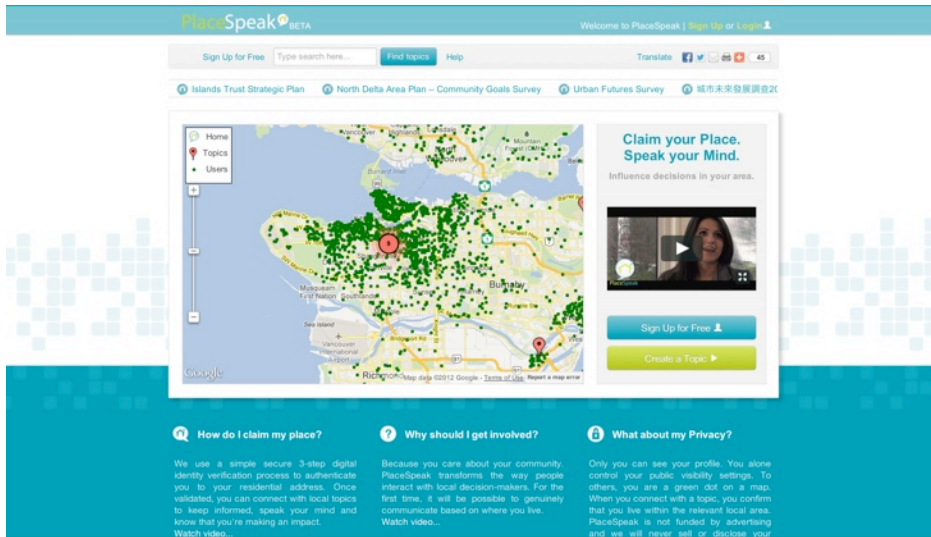
This fall, PlaceSpeak will begin to host consultations for Metro Vancouver and TransLink. The platform continues to garner interest from planners who not only acknowledge the challenging realities of public consultation but also the potential opportunities for online innovation. Planners should certainly be appreciated for taking a chance on new civic technology.

Hardwick recently submitted a white paper on Best Practices in Online Public Consultation to the City of Vancouver, highlighting key ways local governments and decision-makers – planners included – can turn to digital technology to enhance citizen participation. Hardwick acknowledges that the success of an online consultation is largely determined by



# ...Planning and PlaceSpeak: A Vancouver-Grown Public Communication Platform

By Maureen Mendoza, PIBC Student Member



offline efforts. Among her recommendations is to centralize consultation through open-data arrangements so that online consultations become as standard and operationalized as open houses. This will be aided by PlaceSpeak's API (application programming interface) development, enabling third-party collaboration with other engagement tools in need of the platform's geo-authentication technology.

Online engagement requires the continuous imagination of what is possible in an age when technology is constantly being developed and changing. As planners look for new ideas for engagement, PlaceSpeak stands out for its innovative approach.

How big is the potential? Ken Cameron puts it this way: "PlaceSpeak can be to spatial networking what Facebook is to social networking."

*Ken Cameron, FCIP is a founding director of and investor in New City Venture Inc., which is the private company that has developed and is marketing PlaceSpeak.*

## COGS Geomatics Career Fair

March 5 & 6, 2013

NSCC - Centre of Geographic Sciences (COGS)

50 Elliott Road, Lawrencetown, NS BOS 1M0

The faculty and staff of the Centre of Geographic Sciences (COGS) would like to invite you to participate in the Geomatics Career Fair 2013. Our event offers recruiters and potential employers a chance to meet our Geomatics students and faculty. The Networking and Career Fair is an outstanding opportunity for you to meet with high quality candidates that will be able to make significant contributions to your organization as interns or as employees. We look forward to providing you with a venue to visit with and collect resumes from students and soon-to-be graduates. We realize that your organization may not be hiring immediately. However, please consider this an opportunity to acquaint yourselves with the skills that our graduates possess and to network with our younger students to lay the groundwork for your future employment needs. If you are unable to attend in person during these dates feel free to book a video conference to do an information session or visit the campus on an alternative date.

We hope you will consider sponsoring or supporting one of our events. Please contact if you are interested and I can send along details.

### List of Programs:

[http://www.nscc.ca/learning\\_programs/programs/ProgramListing.aspx?camp=ANNAP&cat=C25&grp=&k=](http://www.nscc.ca/learning_programs/programs/ProgramListing.aspx?camp=ANNAP&cat=C25&grp=&k=)

### Click on the link below to register:

<http://bit.ly/COGSCareerFair2013>



## NEWS FLASH.....

The Province of Ontario has just released the following with respect to the new **Accessibility Standards** for the **design of public spaces**.

### Ministry of Community and Social Services

Accessibility Directorate  
of Ontario  
6th Floor, Suite 601a  
777 Bay Street  
Toronto ON M7A 2J4

### Ministère des Services sociaux et communautaires

Direction générale de l'accessibilité  
pour l'Ontario  
6e étage, bureau 601a  
777, rue Bay  
Toronto (Ontario) M7A 2J4



### **New Accessibility Standards for the Design of Public Spaces added to the Integrated Accessibility Standards Regulation (IASR)**

On January 1, 2013, the Government of Ontario achieved another milestone in implementing the Accessibility for Ontarians with Disabilities Act, 2005 (AODA). The Integrated Accessibility Standards Regulation (Ontario Regulation 191/11) was amended to include accessibility requirements for the Design of Public Spaces (Accessibility Standards for the Built Environment).

Beginning in 2015, public and private sector organizations will have to meet accessibility requirements when **constructing and maintaining new or redeveloped** elements of public spaces including:

- Recreational trails and beach access routes
- Outdoor eating areas for public use
- Outdoor play spaces (such as playgrounds)
- Exterior paths of travel (such as walkways across parks or between buildings)
- Accessible on- and off-street parking
- Service counters and waiting areas

Organizations are not required to make changes to their public spaces. The standard only applies when organizations build new or make major changes to existing elements of public spaces.

The new requirements can be accessed on e-laws by following this link:

[www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_110191\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_110191_e.htm)

For further information on the Accessibility Standard for the Design of Public Spaces, please visit [ontario.ca/AccessON](http://ontario.ca/AccessON).

### **Accessibility Enhancements to the Ontario's Building Code**

The Ministry of Municipal Affairs and Housing (MMAH) is developing potential enhancements to current accessibility requirements in buildings. Public consultation on potential updates to accessibility requirements in the Ontario's Building Code is now underway. A consultation paper and details of the potential technical changes are available online. Stakeholders and the public have until March 1, 2013 to submit comments to MMAH.

To review the public consultation document for the Ontario's Building Code visit: [www.mah.gov.on.ca/Page10160.aspx](http://www.mah.gov.on.ca/Page10160.aspx)

For further information on the Ontario's Building Code, contact the Ministry of Municipal Affairs and Housing:

Email: [codeinfo@ontario.ca](mailto:codeinfo@ontario.ca)

Phone: 416-585-6666

Fax: 416-585-7532

# CACPT Tenure Award Recipients

*Thanks for your ongoing commitment to CACPT!!*

*30 Years...* Robert Townley

*25 Years...* Victor Labreche, Les Boggs, Alex Galloway, Laverne Kirkness, Steve Loughran, Glen Harrison, Rich Jokinen

*20 Years...* Valerie Norris Kirk, Tony Huguenin, Joyce English

*15 Years...* Greg MacKenzie, Todd Weatherell, Jack Bernardi

*10 Years...* Janet Kuipers, Simo Narancic, Peter McNamara, Tony Withall, Craig Linton, Dean McCartney

*5 Years...* Kris Orsan, Bryan Pearce, Joanne Sutherland, Michael Wortel, Nicholas Dyjach, Jeremy Ordog, Kathy Jazvac, Darka Jensen, Nick Coric, Lindsay Gosnell, Justin Hogberg, Neil Lovitt, Gilbert Davis



# Dr. Norman Pearson CACPT Bursary - 2012

Congratulations to the winners of this award - the awards were based on academic achievement and contributions to the program, college and wider community during their first year of the program 2011-2012.

## NELSON LOCKWOOD

NOVA SCOTIA COMMUNITY COLLEGE, CENTRE OF GEOGRAPHIC SCIENCES  
GIS/PLANNING: LAND INFORMATION TECHNOLOGY PROGRAM

## EMELINE LEX

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APPLIED URBAN AND RURAL PLANNING PROGRAM

## BENJAMIN MISENER

OLDS COLLEGE, OLDS, AB  
RURAL LAND USE PLANNING PROGRAM



## CACPT Membership Renewal

Membership renewals are now due for 2013. New this year.... Invoices have been sent out by email. Payments can be made online.



# CACPT Merit Award Recipients



This award recognizes employers who show support for CACPT through certification, membership, professional development, volunteerism, and/or promotion of Planning Technicians within their organization.

Municipal Employer of the Year... **City of Markham**

Private Sector Employer of the Year... **GSP Group**

Design... **RGC Design Group**

Sylvan Avenue/Havelock Street  
Luxury Townhome Infill Development  
Toronto, ON

Report/Design... **ParioPlan**

Fournier Place  
Great Slave Lake, AB

Student Design... **Wilrik Banda**

Mitchell May Phase 1 Site Plan  
Village of Binbrook, City of Hamilton, ON



## NEWS FLASH.....

The **2012 Membership Survey Results** have been tabulated! Visit our new website to find out where our members are working and how our organization is doing!



# Our Members...

## New & Upgraded Associate Members

Mukhtar Aidarus, Mathew Cambell, Anthony DeCrenzo, Hilda DeJong, Alicia Eichinger, Heather Ireland, Martin Knutson, Veronica Leskien, Melissa Nottley, Latoya Powder, Paul Siggers, Emma Tillery and Christopher Wilcott

## New & Upgraded Full Members

Angela Buonamici, Jillian Burton, Hardev Gill, Eric Hyatt, Lawrence Jewell, Michael McLean, Nick Skerratt, Kara Smith, Amanda VanWychen, Meghan Wong and Michael Zipf

## New Student Members

### Fanshawe College

Theo Andrews, Frank Bond, Jacy Brydges, Jakob Burke, Janey Burns, Kyle Cameron, Joannah Campbell, Matt Cavin, Dinesh Chalasani, Chris Clarke, Alexandra Colesberry, Jared Conn, Jenna Daum, Linzey Davis, Justin Dobie, Christine Fandrich, Nile Fredericks, Jalen Henry, Brandon Heycock, Eryn Holborn, James Ironside, Jennifer Jaruczek, Suzana Krizsan, Crystal Kubu, Nick Kueuneman, Matt Kyle, Josephine Lenkey, Patrick Lypko, Faren MacNeill, Daniel Mancini, Dustin Matheson, Ian McGaughey, Adam Misikowetz, Tamar Niescier, Carla Pereira, Pashen Peters, Jeffrey Platt, Diana Rodriguez, Wyatt Rotteam, Andrew Sabourin, Mohammed Sefian, Haris Sidran, Neil Stevenson, Christine Strupat, Qian Sun, Christopher Thom, Brenden Ussel, Daniel Villalobos, Mark Wyatt, Matthias Yeh, James Young

### Langara College - Julia Healy

### Mohawk College

Muhammad Alkharsan, Jourdene Barrett, Katie Bartninkas, Sebastien Blais, John Bouzranis, William Brodnicki, Katelyn Capone, Danielle Cass, Myles Chevers-Forrester, John Clark, Alexa Cooper, Mark Dalaire, Andrea Daniel, Chris Downey, Michael Doyle, Julian Drozdibob, Tomlyn Graovac, Shelly Hartrick, Daryl Heinrichs, Thomas Houston, Daniel Jackman, Graham Jeffries, Daniel Joao, Luke Johns, Yuri Langlois, Christine Lee, Brent McCopper, Caitlin Mead, Allan Mekli, Elyse Meneray, Dixon Midigo, Mitchell Moher, Andrew Muir, Robert Noonan, Arash Oturkar, Roberto Paplia, Jason Roberts, David Shortt, Adam Skiland, Samantha Stubbington, Karen Trujillo, Lauren Unelli, Yeu Wang



## Calling all Members...

If you are interested in submitting an article for our next Tech Talk Newsletter about planning topics, technology, member profiles or projects and case studies in your area please send your articles to Cathy Burke ([cathy.burke@shaw.ca](mailto:cathy.burke@shaw.ca)) or Jillian Burton ([jbarton@gspgroup.ca](mailto:jbarton@gspgroup.ca))

# CACPT EXECUTIVE



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**Laura Ricon** (Mohawk)  
**Benjamin Misener** (Olds)

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CACPT helps to define your profession and supports you with information and contacts.  
**USE US, GET INVOLVED AND EXPAND YOUR KNOWLEDGE BASE!**

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Fanshawe College, Urban and Regional Planning Technology (GIS/CAD) (London, ON)  
Mohawk College, Urban and Regional Planning Technician with GIS (Hamilton, ON)  
College of Geographic Sciences, Planning Land Information Technology (Lawrencetown, NS)  
Langara College, Applied Urban and Regional Planning Program (Vancouver, BC)  
Olds College, Rural Land Use Planning Major/Land and Water Resources (Accreditation Review 2013) (Olds, Alberta)

## Accredited Programs Not Currently in Operation

Holland College (Winterside, PEI)  
Northern Alberta Institute of Technology (Edmonton, AB)  
Sheridan College (Oakville, ON)

## New College Program in Operation - Accreditation Pending

Fanshawe College, Integrated Land Planning Technologies (Bachelor's Degree) (London, ON)



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