

Interim Integrity Commissioner's Periodic Report  
City of Hamilton

Principles *Integrity* is pleased to submit this periodic report, covering the period from its appointment in July, 2018 up to the end of August, 2020. The report has been updated from its initial version whose delivery was delayed due to exigencies related to the COVID-19 pandemic.

The purpose of an integrity commissioner's periodic report is to provide the public with the opportunity to understand the ethical well-being of the City's elected and appointed officials through the lens of our activities.

About Us:

Principles *Integrity*, formed in 2017, is a partnership focused on accountability and governance matters for municipalities. Since its formation, Principles *Integrity* has been appointed as integrity commissioner (and occasionally as lobbyist registrar and closed meeting investigator) in over 40 Ontario municipalities and other public bodies. Principles *Integrity* is an active member of the Municipal Integrity Commissioner of Ontario (MICO).

Principles Integrity is the city of Hamilton's integrity commissioner. During much of the period covered by this report we were the City's interim integrity commissioner.

Our status as interim integrity commissioner, and the difficulties of serving during a pandemic, made our role marginally more limited than otherwise would be the case. Important work such as training and code development require more permanence of a relationship with members of council and is now the focus of the next phase of our work.

The Role of Integrity Commissioner, Generally:

Recent amendments to the *Municipal Act, 2001* mandated that all municipalities have codes of conduct and integrity commissioners for elected and appointed (local board) officials as of March 1, 2019.

The integrity commissioner's statutory role is to carry out the following functions in an independent manner. Put succinctly, the role is to:

- Advise on ethical policy development
- Educate on matters relating to ethical behaviour
- Provide, on request, advice and opinions to members of Council and Local Boards
- Provide, on request, advice and opinions to Council
- Provide a mechanism to receive inquiries (often referred to as 'complaints') which

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allege a breach of ethical responsibilities

- Resolve complaints
- And where it is in the public interest to do so, investigate, report and make recommendations to council within the statutory framework, while guided by Council's codes, policies and protocols.

This might contrast with the popular yet incorrect view that the role of the integrity commissioner is primarily to hold elected officials to account; to investigate alleged transgressions and to recommend 'punishment'. The better view is that integrity commissioners serve as an independent resource, coach and guide focused on enhancing the municipality's ethical culture.

The operating philosophy of Principles *Integrity* recites this perspective. We believe there is one overarching objective for a municipality in appointing an Integrity Commissioner, and that is to raise the public's perception that its elected and appointed officials conduct themselves with integrity:

*The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an Integrity Commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.*

In carrying out our broad functions, the role falls into two principle areas. 'Municipal Act' functions, focused on codes of conduct and other policies relating to ethical behaviour, and 'MCIA' or *Municipal Conflict of Interest Act* functions, set out graphically in the following two charts:

## The broad role of an Integrity Commissioner: Municipal Act Functions

Assist in adopting Conduct Codes and other ethical polices, rules and procedures



Assist in interpreting these ethical polices and how they are applied to Council and Local Boards: Education and Training to Members of Council and Local Boards, to the Municipality, and the Public



Upon Written Request, provide advice to members of Council and Local Boards respecting their ethical behaviour polices, rules, procedures

Receive Complaint

[Resolve]

Investigate

Report

Recommend Sanction as appropriate

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## The broad role of an Integrity Commissioner: MCIA Functions

Assist in interpreting the *Municipal Conflict of Interest Act*, particularly sections 5, 5.1 and 5.2, for Members of Council and Local Boards: Education and Training to Members of Council and Local Boards, to the Municipality, and the Public



Upon Written Request, provide advice to members of Council and Local Boards respecting their obligations under the MCIA

Receive Application from elector or person in public interest

Six weeks

[Resolve]

Investigate (public meeting)

Complete within 180 days

Decide whether to apply to judge

Issue Reasons

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In each of the charts above the primary functions of the integrity commissioner are

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summarized in the horizontal boxes to the left, and the review mechanism (or inquiry function) appears in the vertical box on the right.

The emphasis of Principles *Integrity* is to help municipalities enhance their ethical foundations and reputations through the drafting of effective codes of conduct and other policies governing ethical behaviour, to provide meaningful education related to such policies, and to provide pragmatic binding advice to Members seeking clarification on ethical issues. As noted in the Toronto Computer Leasing Inquiry report authored by the Honourable Madam Justice Bellamy (the “Bellamy Report”, seen by many as the inspiration for the introduction of integrity commissioners and other accountability officers into the municipal landscape), *“Busy councillors and staff cannot be expected to track with precision the development of ethical norms. The Integrity Commissioner can therefore serve as an important source of ethical expertise.”*

Because the development of policy and the provision of education and advice is not in every case a full solution, the broad role of the integrity commissioner includes the function of seeking and facilitating resolutions when allegations of ethical transgressions are made, and, where it is appropriate and in the public interest to do so, conducting and reporting on formal investigations. This in our view is best seen as a residual and not primary role.

### Confidentiality:

Much of the work of an integrity commissioner is done under a cloak of confidentiality. While in some cases secrecy is required by statute, the promise of confidentiality encourages full disclosure by the people who engage with us. We maintain the discretion to release confidential information when it is necessary to do so for the purposes of a public report, but those disclosures would be limited and rare.

### Our Activity on your behalf:

Since starting our role with the City of Hamilton, we have been engaged in a moderate level of activity which subdivides roughly into three categories:

#### 1. Education

On November 15, 2018, following the Municipal Elections in the fall of 2018, we provided abbreviated training to Council on the Municipal Conflict of Interest Act and Council Code of Conduct as part of the City’s general orientation program. When the opportunity presents itself as social distancing requirements are adjusted, we will be conducting more fulsome training for Council, and then for the City’s local boards in due course.

#### 2. Advice

The advice function of the integrity commissioner is available to all Members of Council, and to Members of local boards, on matters relating to the code of conduct, the *Municipal Conflict of Interest Act* and any other matter touching upon the ethical conduct of Members. Advice provided by the integrity commissioner is confidential and

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independent, and where all the relevant facts are disclosed, is binding upon the integrity commissioner.

Our advice is typically provided in a short Advice Memorandum which confirms all relevant facts and provides with clarity our analysis and a recommended course of action. As required by the legislation, advice must be provided in writing.

Though advice is confidential, we can advise that some of the issues we provided guidance on this year arose in the context of properly identifying and appropriately recognizing actual and perceived conflicts of interest. The clarifications and guidance provided to Members seemed to be readily understood and welcome.

During the period covered by this report, we have responded to and provided Code and/or Conflict of Interest Advice on 39 such requests.

### 3. Inquiry (Complaint) Investigation and Resolution

In the *Municipal Act* complaints to an integrity commissioner are referred to as 'inquiries'. The use of that term is appropriate given that in many cases prospective complainants begin the process by making unofficial inquiries of the integrity commissioner, and are guided on whether the matter that concerns them can be addressed by us, and the processes they must use in making a formal complaint.

Our approach to reviewing complaints starts with a determination as to whether an inquiry to us is within our jurisdiction, is beyond a trifling matter, is not either frivolous or vexatious, and importantly, whether in its totality it is in the public interest to pursue. We always look to the possibility of informal resolution in favour of formal investigation and reporting. Once a formal investigation is commenced, the opportunity to seek informal resolution is not abandoned.

Where formal investigations commence, they are conducted under the tenets of procedural fairness and Members are confidentially provided with the name of the Complainant and such information as is necessary to enable them to respond to the allegations raised.

The City of Hamilton has delegated the role of complaint administration, including the assignment of sanctions authorized by the Municipal Act, to the integrity commissioner. For most councils in Ontario, the integrity commissioner has the specific, albeit authoritative, role of making recommendations to council for the imposition of sanctions.

During the period covered by this report 15 inquiries have resulted in us opening files. Of these, 14 have been resolved without the need for a formal report from us - meaning that either:

- the complainant and respondent have recognized and acknowledged each other's perspectives in the matter and have agreed that the course of action recommended by us (for example to acknowledge that the behaviour alleged does not represent

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an ethical transgression, or where it does to discontinue a practice, or to communicate more appropriately in the future...) represents an appropriate resolution to the matter. It is our view that in appropriate circumstances such resolutions best serve the public's interest in correcting behaviours, improving conduct, and administering complaints in a cost-effective manner

- we determined that there was an insufficiency of circumstances to pursue the matter. This was because facts complained of were beyond our jurisdiction, involved a matter not pertaining to the ethical behaviour of members of council or a local board, were the result of a policy decision of council or an operational matter within the responsibility of city staff, or related to a matter that involved the City only peripherally, or not at all
- it was determined that other bodies had already dealt with, or would be dealing with, the matter (such as the Red Hill Valley Parkway Inquiry, and other litigation). Though we otherwise had jurisdiction to deal with the matter, we determined that it would not be in the public interest to conduct formal investigations because that effort would be duplicative of other bodies with competent jurisdiction.

### Themes in Hamilton

Our observation is that from an ethical perspective Council is operating effectively and within the boundaries set by the Code of Conduct, the *Municipal Conflict of Interest Act*, and the common law. Speaking generally, in our view Council and its Members meet the community's expectation of fair and purposeful behaviour in support of the public interest. Council Member interactions are not expected to be without friction – that is a reality in any organization including political enterprises – but it is important to recognize that there are limits that ought not to be breached. It is clearly understood that behaviour should never amount to bullying, or harassment. Persistent disparaging commentary, aggressive interactions with members of the public, and the making of untruthful statements should and must be avoided. Public discourse should be respectful and supportive of the institution of municipal government and its elected Council. Criticism of staff, if necessary, should be done professionally, respectfully and in the proper forum. Similarly, interactions with members of the public must be based in respect; if the circumstances are such that respectful engagement cannot be sustained, then it is a Member's responsibility to avoid confrontation.

As noted, our general observation is that Council Members have operated within the standards expected of them. At times individual Members of Council have been subject to an allegation that the ethical standards that apply to them have been breached and we have become involved in addressing the matter, including as noted above.

From a thematic perspective, the complaints we have received fell generally into the following categories:

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### Honesty:

The business of politics requires, at times, a thickness of skin. Deliberations on Council matters are accompanied by efforts to persuade other persons that a particular course of action is the desired one. Efforts to persuade should be forthright. Efforts to persuade however must be done in a way that complies with a Member's responsibilities under the Code of Conduct and the rules of decorum that apply. In particular it is difficult to conceive of circumstances where it would be considered appropriate or ethical to mislead a person, and such conduct should always be avoided.

### Non-responsiveness:

The public has a high expectation that their elected representatives will respond quickly, and with the exact remedy they seek. While a laudable goal, this is not the ethical standard Members are required to meet.

It *is* the responsibility of Members to carry out a reasonable level of communication and to explain their decisions to take or not take action. The maintenance of such open lines of communication, even with difficult clients, serves to maintain a respectful relationship and raises citizen's confidence that their municipal institution is operating with integrity. In some situations, where a Member believes that despite their reasonable response, a constituent remains persistent, the office of the Integrity Commissioner is available to advise on best practices and to suggest an ethically compliant response. Members who seek and follow the integrity commissioner's advice are protected against any complaints that may be subsequently filed on the matter.

### Avoiding allegations of bullying or other disrespectful behaviour:

It is recognized that Members of Council must adhere to adopted ethical standards such as appear in their Code of Conduct whereas the persons that interact with them may not be subject to a similar ethical framework. The Member's perception may be that in the course of a Council or committee meeting, the behaviour of a member of the public is not in keeping with general standards of behaviour. Only the presiding member at the meeting, however, has the authority and responsibility to determine what rules of conduct may apply in the circumstances in accordance with the City's procedure by-law. Where a Member feels that a member of the public has behaved improperly, the proper mechanism to have the matter resolved is through the chair of the meeting and not by direct personal intervention.

Members must recognize that in a public forum opinions can and do conflict, passions are engaged, and unsolicited criticism is often offered. That is part of the democratic process of government and Members should not unilaterally address what they perceive to be offending behaviour. Because of the perceived authority inherent in being a Member of Council, or due to their choice of words and/or actions, personally addressing the matter may give rise to an accusation that the Member has engaged in bullying or harassing conduct. Findings of bullying or harassment can result in the imposition of sanctions

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under the Code of Conduct.

Collateral actions in the course of litigation:

The Integrity Commissioner's office is a forum for the making of complaints concerning the ethical behaviour of Members of Council (and respecting the behaviour of Members of the City's local boards). The office plays an important role in the administration of justice, and provides an opportunity for citizens to file legitimate inquiries without being burdened with inordinate legal costs. The integrity commissioner, in playing that role, also serves the interests of justice by removing from an over-burdened court system matters that are within the jurisdiction of the integrity commissioner and which are in the public interest to pursue.

However, when a matter has been adjudicated by a tribunal or is in the course of adjudication, the integrity commissioner must be wary of pursuing the matter. It is not in the public interest to 're-litigate' the findings or decisions of a competent adjudicator who, having heard all of the relevant evidence, has rendered a decision; and it is not in the public interest to allow the office to be used when the persons involved in the dispute are or have been engaged in procedures established by other legal mechanisms. There may be a residual role for the integrity commissioner, but that role should be exercised sparingly – only when it is in the public interest to do so.

### Other Ethical Themes Around the Province:

Given our role as integrity commissioner for a number of municipalities and public bodies in Ontario, and with due regard to our obligation to maintain confidentiality, this periodic report enables us to identify learning opportunities from advice requests and investigations conducted in a variety of municipalities.

One area of prominence is the failure of some Members of Council to adhere to rules against disparagement. Members of Council are entitled, and indeed expected to disagree on all manner of issues. However, one of the cornerstones to democracy must be the recognition that different opinions and perspectives are to be respected, and disagreement should not devolve into disrespect, disparagement and name-calling.

Some Members of Council hold a view that they are entitled to freely express their opinion, even if that includes disparagement of others, and so long as they share it via personal email (or texts), and not on the municipal server, they are not constrained by any rules around decorum. This is incorrect. Members are bound by the Code provisions of respectful and non-disparaging communication, whether sharing views on their own email, social media, or elsewhere.

Regardless of the medium, regardless of the intended audience, and regardless of motive, we have observed several instances where Members of Council in municipalities around the province have been found to have breached ethical standards by saying or recording things they have come to regret.



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Another area Members frequently require additional clarification on is recognizing and appropriately identifying conflicts of interest when they arise. These often include situations where members are part of another organization or club whose interests are impacted by a matter before Council, or when members are active professionally within the community and a matter before Council may potentially impact one of their current or past clients.

As always, obtaining clear and reliable advice can help avoid a costly and time-consuming investigation.

### Conclusion:

We wish to recognize Members of Council all of whom are responsible for making decisions at the local level in the public interest. It has been a privilege to assist you in your work by providing advice about the Code of Conduct, the avoidance of conflicts of interest, and by resolving complaints. We recognize that public service is not easy and that while the ethical issues that arise can be challenging, the public rightly demands the highest standard from those who serve them. Several of the complaints we dealt with were able to be resolved when the Member recognized that their actions fell short of an applicable ethical standard, and they undertook course correction that the complainant acknowledged to be constructive. We congratulate those Members and Council for striving to meet the high standards expected of them.

Finally, we wish to thank the Clerk and the City Solicitor for their professionalism and assistance where required. Although an Integrity Commissioner is not part of Hamilton's administrative hierarchy, the work of our office depends on the facilitation of access to information and policy in order to carry out the mandate. This was done willingly and efficiently by the staff of the City.

We would be pleased to attend Council or the appropriate Committee to discuss this report.

All of which is respectfully submitted,

**Principles *Integrity***

Integrity Commissioner for the City of Hamilton