

Integrity Commissioner's Annual Report
City of Hamilton

Principles *Integrity* is pleased to submit this annual report, covering the period from September 1, 2020, the date of our last annual report, to August 31, 2021.

The purpose of an integrity commissioner's annual 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. On the assumption that not all readers of this report would have read our last periodic report, key information is repeated for ease of reference.

About Us:

In 2017 we formed Principles *Integrity*, 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).

The Role of Integrity Commissioner, Generally:

An integrity commissioner's statutory role is to carry out, in an independent manner, the following functions:

- Advice on ethical policy development
- Education on matters relating to ethical behaviour
- Providing on request, advice and opinions to members of Council and members of Local Boards
- Providing, on request, advice and opinions to Council
- Provide a mechanism to receive inquiries (often referred to as 'complaints') which allege a breach of ethical responsibilities
- Resolving complaints, and
- Where it is in the public interest to do so, investigating, reporting and making recommendations to council within the statutory framework, while being 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

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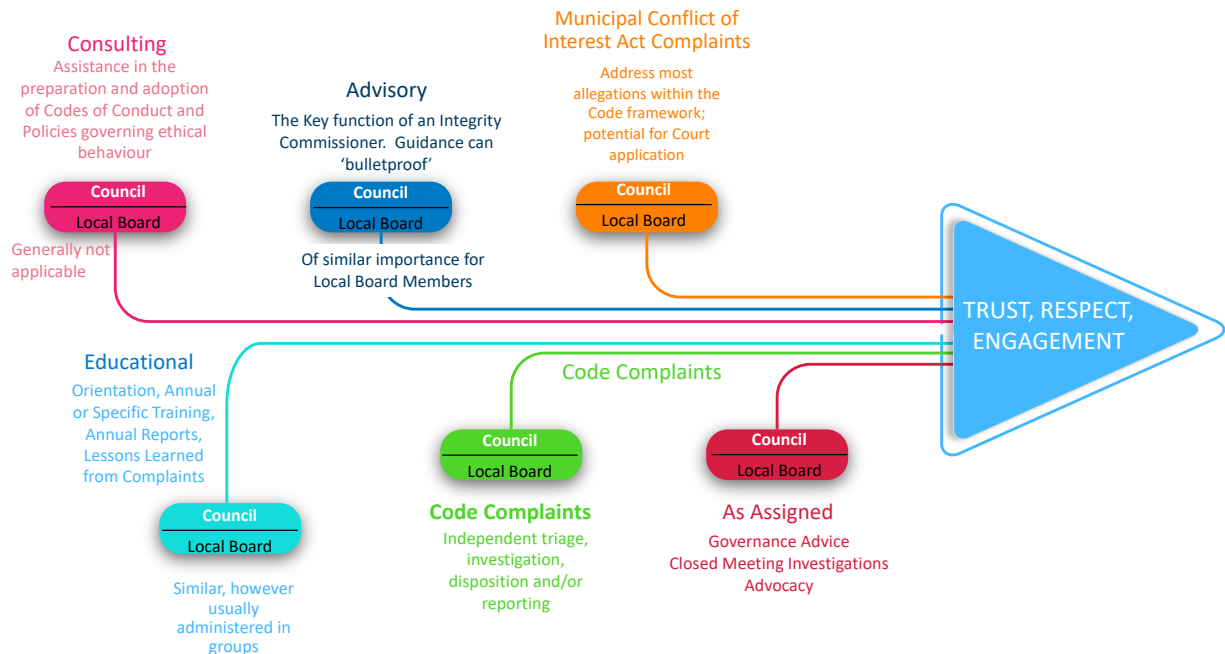
the municipality's ethical culture.

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.

The practical effect of achieving this objective is an increase in trust, respect and engagement in local and county affairs.

In carrying out our broad functions, the role falls into two principal 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. From an activity perspective, an integrity commissioner's role can be depicted this way:



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

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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 for the City:

During the period covered by this report, we have been engaged in a moderate level of activity as Integrity Commissioner for the City of Hamilton which subdivides roughly into three categories:

1. Policy Development and Education

On December 2, 2020, January 25, 2021 and February 23, 2021 we attended Governance Review Sub-Committee to present and discuss the proposed workplan to accomplish the policy reviews identified under the City’s RFP and requested by staff.

Our draft Code of Conduct for Local Boards and draft Complaint Protocol is anticipated to be before General Issues Committee later this fall.

2. Advice

The advice function of the integrity commissioner is available to all Members of Council and where applicable their staff and 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 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

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facts and provides with clarity our analysis and a recommended course of action.

Though advice is confidential, we can advise that the bulk 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, including in circumstances where the 'interest in common' exception might apply. The clarifications and guidance provided to Members seemed to be readily understood and welcome.

During the period covered by this report, we responded to 12 such requests for advice.

3. Complaint Investigation and Resolution

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 we are able to resolve a matter without concluding a formal investigation, our practice is to provide a written explanation in the form of a Disposition Letter to the complainant to close the matter. Often the respondent Member is involved in preliminary fact-finding and will also be provided with a summary of the disposition.

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.

During the period covered by this report, 6 separate complaints were filed with the Integrity Commissioner, one from multiple complainants. 2 of these complaints were resolved or disposed of without the need for a recommendation report. In those cases, Disposition Letters were provided to the complainants and respondents, explaining our determination

In two of the complaints, following a fair and balanced investigation, we provided our recommendation report to the complainant, the respondent and publicly to Council. The two remaining outstanding complaints will be publicly reported on this fall.

Ethical Themes Around the Province:

With due regard to our obligation to maintain confidentiality, this annual report enables us to identify learning opportunities from advice requests and investigations conducted in a variety of municipalities.

Non-disparagement

One area of prominence continues to be the failure of some Members of Council to adhere

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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.

Disrespectful interactions and/treatment of others can fall along a continuum which may manifest as occasional incivility and micro-aggressions, but when unchecked can culminate in bullying and harassment. Members of Council should be mindful to treat each other, staff and the public with appropriate respect and professionalism at all times.

Some Members of Council hold a view that they are entitled to their freely express their opinion, even if that includes disparagement of others, and so long as they share it via personal email, 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.

Recognizing and avoiding conflicts of interest

Another area Members frequently require additional clarification on is recognizing and appropriately identifying conflicts of interest when they arise. These often include when 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.

Take-aways from the Collingwood Inquiry

The Collingwood judicial inquiry published its report, entitled “Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry,” on November 2, 2020. This Report contains 306 recommendations relating to best practices in municipal governance.

In particular, the Report contains important discussion regarding the rules relating to conflicts of interest applied to municipal councillors under the Municipal Conflict of Interest Act (“MCIA”), which are overly narrow, focusing on pecuniary (i.e. monetary) interests. The Report warns against considering “pecuniary interest” as the sole criterion in assessing whether a councillor is subject to a conflict of interest:

...it is far too easy to misconstrue the Municipal Conflict of Interest Act as addressing all the kinds of conflict of interest that Council members must confront. Despite its name, the Municipal Conflict of Interest Act does not provide a complete conflict of interest code for municipal actors. It addresses the pecuniary interests of a narrowly defined group of family members related

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to a Council member which are by virtue of the Act deemed to be pecuniary interests of the Council member. Council members are obligated to avoid all forms of conflicts of interest or, where that is not possible, to appropriately disclose and otherwise address those conflicts.

The City's Code of Conduct, recognizes that Members are responsible for avoiding conflicts of interest 'both apparent and real', however it does not contain a mechanism to guide Members to determine when they have a disqualifying interest beyond those found in the *Municipal Conflict of Interest Act*. Incorporating such a provision should be a priority when the Code of Conduct is next reviewed.

As always, obtaining clear and reliable advice from the integrity commissioner is available where the proper course of action may not be sufficiently clear.

Staying in your lane

One area of concern that still arises from time to time is members of Council overstepping their role, attempting to 'take the reins' to fix a constituent's problem, or directing staff how to do their job. Members of Council serve an important role in putting constituents in touch with appropriate staff, and following established processes, but it is important to strike the correct balance. Failing to recognize this may be perceived by staff as undermining staff or interfering with their duties, and may attract exposure for the Member and the municipality where the Member's activities are not in compliance with the relevant regulatory scheme (such as using mandated personal protective equipment; following proper risk management processes; ensuring safety for the Member, their constituents, and the general public). Equally importantly, it interferes with the line-management routines properly established by the municipality so that its workers have clarity in who they are to take instructions from.

Social media and blocking

Another theme which has been the subject of complaints is members' activity on social media. It has come to be understood that an elected official's social media – open twitter accounts and Facebook pages – on which public information is provided, may be considered a kind of 'public forum' or 'town square'. Elected officials typically utilize such accounts and pages to share and disseminate information pertaining to government events, programs or services. It is understood that these open accounts and pages provide a forum for interaction and public debate, similar to what might occur in a town square.

Because they represent forums which engender public debate, elected officials should not arbitrarily block access simply because someone disagrees with their point of view. In other words, it is less than transparent for an elected official to 'scrub' and erase from the discussion voices of dissent or those expressing alternative points of view.

Access to public discussion on an elected official's social media, which site is utilized to share

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and disseminate information about events, programs, or services, should therefore not be blocked simply because a participant is critical of the elected official or of a program or a perspective. On the other hand, blocking users because their tweets or posts are profane, offensive, racist, misogynistic, abusive or harassing is necessary and appropriate.

We recommend Council consider adopting a social media policy to address these newly emerging issues. Such a policy should require that blocking on an open social media site should only occur when and as necessary, and be accompanied with notice to the offending party, describing the reasons for the blocking, and the period of time the sanction would be in place.

Provincial Consultation

Council is likely aware that the Province of Ontario has recently concluded a consultation regarding municipal codes of conduct, with the apparent intent to review options for strengthening enforcement mechanisms. Our perspective on the need for reform is that the regime largely functions well, and that the most egregious instances of bad behaviour should not be the basis for legislative amendments which could inadvertently render the integrity commissioner complaint mechanism less effective, more costly, and more litigious. Principles *Integrity* led the preparation of a submission by the Municipal Integrity Commissioners of Ontario (MICO) which spoke to a variety of suggested amendments seeking to improve the current system.

Conclusion:

We look forward to continuing to work with Members of Council to ensure a strong ethical framework. We embrace the opportunity to elevate Members' familiarity with their obligations under the Code and to respond to emerging issues. As always, we welcome Members' questions and look forward to continuing to serve as your Integrity Commissioner.

We wish to recognize the Members of Council who 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 and resolving complaints. We recognize that public service is not easy and the ethical issues that arise can be challenging. The public rightly demands the highest standard from those who serve them, and we congratulate Council for its aspirational objective to strive to meet that standard.

Finally, we wish to thank the Clerk for her professionalism and assistance where required. Although an Integrity Commissioner is not part of the 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 City staff.