

Integrity Commissioner's Periodic Report
Regional Municipality of Peel

Principles *Integrity* is pleased to submit this periodic report, covering the period from January 2018 to August 2021.

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 municipality's elected and appointed officials through the lens of our activities. On the assumption that not all readers are familiar with the role of an integrity commissioner, some foundational information is provided.

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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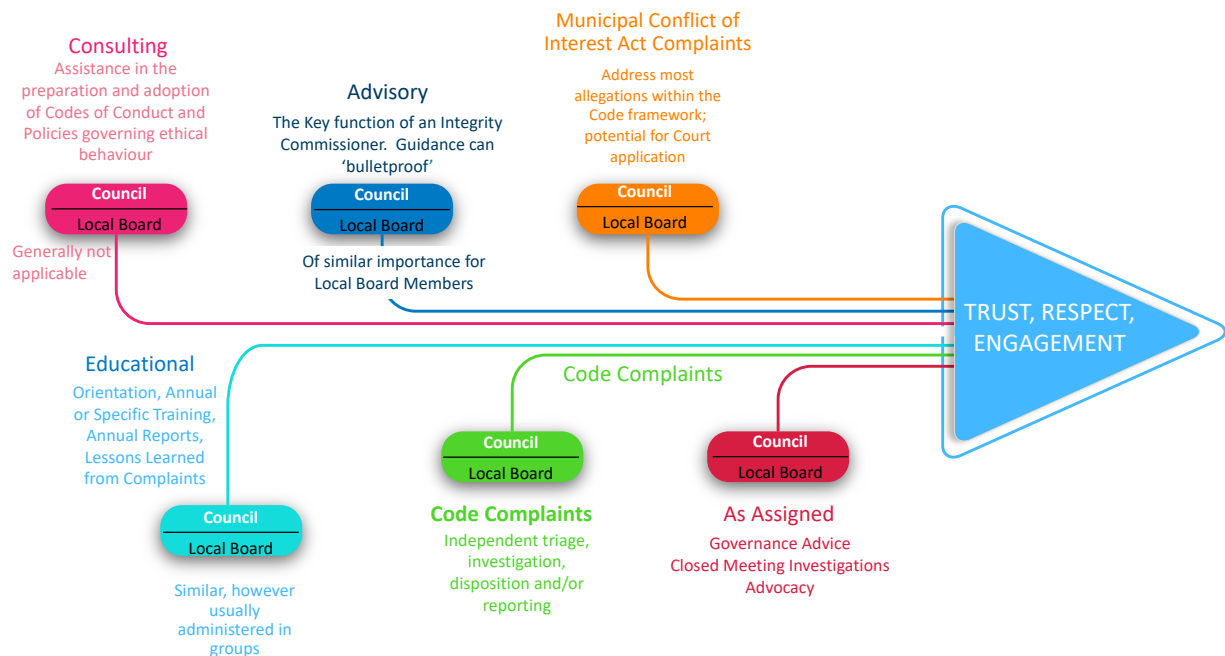
the municipality's ethical culture.

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.

Region of Peel Activity:

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

1. Policy Development and Education

Shortly after our engagement, in February 2018, we provided a brief high-level overview to Council of the Code of Conduct and the ethical framework of the legislation. Following the 2018 Municipal Elections, in early January 2019, we had the opportunity to provide a brief overview of Council’s ethical expectations during Orientation.

We supported a review of the Council Code of Conduct, and attended meetings of the Peel Policies and Procedures Review Committee, meeting with that Committee on January 30, 2020 and again on October 1, 2020, following work with administrative staff to develop Region-specific guidance on particular policies. The work resulted in Regional Council adopting a new Code of Conduct on October 22, 2020 which reflects best practices gleaned from the Codes of Conduct of its constituent municipalities along with provisions which explicitly accommodate the unique structural governance model of the Region.

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 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. The clarifications and guidance provided to Members seemed to be readily understood and welcome.

During the period covered by this report, we responded to 5 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, 12 complaints were filed with the Integrity Commissioner, with all but two being resolved without the need for a recommendation report.

In the complaints resolved and/or disposed of without report, following a thorough review, we determined that no contravention of the Code of Conduct or the *Municipal Conflict of Interest Act* was found to exist, on the facts as alleged; that the matter complained of did not properly fall within our jurisdiction; or that an alternative proceeding having been pursued, it was not appropriate to embark on an investigation. In all cases, a Disposition Letter with explanation was provided to the complainants, setting out the basis for our determination.

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In one instance, with respect to a recommendation report by the integrity commissioner of one of the Region's constituent municipalities involving a member who also sat on Regional Council, we determined that there was no proper basis for Regional Council to impose a suspension of pay or other sanction without an investigation conducted by the Regional Integrity Commissioner which would include due process protections for the respondent councillor. The referral of the lower-tier integrity commissioner's report was not a sufficient basis to trigger a recommendation from the Regional Integrity Commissioner on additional sanctions.

The Regional Code of Conduct now provides guidance on the treatment to be given when alleged conduct touches upon a member's role at both the lower-tier council and Regional Council:

"in applicable circumstances the integrity commissioners for a Member's lower-tier municipality and Regional Council will consult on the appropriate forum and jurisdiction for a complaint. In rare circumstances, where joint jurisdiction is determined, the integrity commissioners are expected to cooperate in the investigation and prepare a joint report to both councils if findings substantiate contraventions of both codes of conduct."

In another instance involving a complaint against three members of council alleging that they breached health protocols in effect under the *Emergency Management and Civil Protection Act* for participation in two parades in support of front line workers, it was determined that although possibly constituting a technical breach of a provincial regulation, given that the province had clearly deferred enforcement to the local level and the local police service was organizing the parades, it would not be in the public interest to sustain a complaint under the Code of Conduct.

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 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.

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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, 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 (“MCI Act”), 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 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 Region’s Code of Conduct already incorporates this broader concept for the avoidance of conflicts of interest, providing members of Regional Council, and its local boards, with clear guidance on their responsibilities when confronted with interests which could disqualify them from participating in Council’s or a Local Board’s consideration of a matter.

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The Code, importantly, also enables members to make transparent an interest that might be thought to disqualify them but in actuality is non-disqualifying – allowing them to participate as long as the interest is disclosed.

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

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 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.

During discussion of the Council Code of Conduct with the Peel Policies and Procedures Committee we undertook to provide Commentary which could be included in the new Code. As noted, Commentary does not form part of the approved Code, but can be updated and annotated as the need arises.

We recommend that the Commentary following Rule 10, Media Communications, be updated by including the attached Commentary regarding social media.

Provincial Consultation

Council is likely aware that the Province of Ontario has recently concluded a consultation

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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 enforcement mechanism less effective, more costly, and more litigious. That said, a submission to the consultations has been made by the Municipal Integrity Commissioners of Ontario (MICO) which speaks to a variety of suggested amendments intended to make the application of codes of conduct more fair, and more effective, across the Province of Ontario.

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 the staff of the Region.

Commentary – Media Communications – Social Media

The following commentary supplements the provision in the Code of Conduct which applies to communication on social media.

Members who engage in social media should recognize that the rules around decorum and respect apply regardless of the communications medium used. Because social media posts attract participation by others, Members hosting such sites or accounts should consider articulating and posting their own policy of addressing how frequently they will monitor the site for the purpose of identifying and removing disparaging, abusive or hateful comments.

For open sites (where no approval of participation is required) Members should also not block persons from reading or posting on the site unless their posts are not compliant with the policy, such as by engaging in openly abusive or threatening language. If blocking becomes appropriate, Members should not do so without notice to the person to be blocked, containing the reasons for the blocking, and the length of time the blocking is to be in place. Members should take care not to block persons from their social media sites merely because a person disagrees with the Members viewpoint or political stance.