

Codes of Conduct and Role of the Integrity Commissioner

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CODE OF CONDUCT

Codes of Conduct

Codes of Conduct - s. 223.2(1)

- codes of conduct are now **mandatory** for members of council and local boards

Code of conduct

223.2 (1) A municipality shall establish codes of conduct for members of the council of the municipality and of its local boards.

- a by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence or is required to pay an administrative penalty – s. 223.2(2)
- “Code of Conduct for Members of Council and Local Boards” adopted February 25, 2013 and revised December 17, 2018 by the 2018 Governance Review detailed in Staff Report [CS-2018-66](#)

What is a Code of Conduct?

Gregory Levine, *Municipal Ethics Regimes*, (2nd Ed.) at p. 7:

“Codes of ethics in the public sector are intended to promote integrity in public affairs and to provide guides to acceptable behaviour.

Codes are reference points for public servants, as well, they are tools for the public to view government actions. They provide a set of standards by which the public may judge government action or evaluate the action of officials they have encountered.”

- a code of conduct is *not* an encyclopedia

Mandatory Subject Matters

O. Reg. 55/18 – Prescribed Subject Matters

1. Gifts, benefits and hospitality.
 2. Respectful conduct, including conduct toward officers and employees of the municipality or the local board, as the case may be.
 3. Confidential information.
 4. Use of property of the municipality or of the local board, as the case may be.
- s. 223.2(4) - The Minister may make regulations prescribing one or more subject matters that a municipality is required to include in a code of conduct.

Code of Conduct for Council and Local Boards

1. Policy Statement
2. Purpose
3. Application
4. Definitions
5. Gifts and Benefits
6. Confidentiality
7. The Use of Corporate Resources
8. Conduct Respecting Current and Prospective Employment

Code of Conduct

9. Business Relations
10. Conduct
11. Influence on Staff
12. Improper Use of Influence
13. Complaints Alleging Violation of the Code of Conduct or the *MCIA*
14. Appendix 1 – Complaint Protocol
15. Appendix 2 – Complaint Form, Code of Conduct
16. Appendix 3 – Complaint Form, *MCIA*

Complaint Protocol

What is a Complaint Protocol?

- a complaint protocol is a procedural guide for the conduct of an investigation
 - it seeks to provide for a process and procedure that is fair and equitable for all parties involved in a complaint, including the complainant and the respondent member
- a complaint protocol is considered part of the “**statutory scheme**” (together with Part V.1 of the *Municipal Act, 2001* and the Code of Conduct) respecting the enforcement of code of conduct complaints

Complaint Protocol

- complaint protocol provides for such matters as:
 - filing and submission
 - forms
 - in-take and review procedures
 - summary dismissal and termination
 - evidence gathering: response, reply, sur-reply
 - timelines
 - final comments from parties
 - completion and transmission
 - receipt and consideration of report by council

INTEGRITY COMMISSIONERS

Integrity Commissioner

Toronto Computer Leasing Inquiry Commission Report,
(Toronto: City of Toronto, 2005), Vol. 2 [page 46]:

“An effective Integrity Commissioner system provides two basic services:

- An **advisory service**, to help councillors and staff who seek advice before they act.
- An **investigative or enforcement service**, to examine conduct alleged to be an ethical breach.”

Integrity Commissioner

Mandatory Accountability Officer

- statutory officer who reports directly to council – s. 223.3
- exercises his or her functions independently
- functions are assigned by the municipality with respect to the code of conduct and *Municipal Conflict of Interest Act*:
 - *advising* council or members to prevent violations
 - *educating* members on responsibilities and obligations
 - *investigating* complaints and conducting *inquiries*
 - *adjudicating* complaints
 - *recommending* penalties and corrective or remedial measures to be imposed for contraventions

Integrity Commissioner - Functions

Functions of Integrity Commissioner

- s. 223.3(1) - functions of an Integrity Commissioner:
 - application and enforcement of codes of conduct and other ethical policies or guidelines
 - application and enforcement of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*
 - written advice to members re their obligations under the code of conduct and the *Municipal Conflict of Interest Act*
 - provision of educational information to members of council and local boards, the municipality and the public re codes of conduct and the *Municipal Conflict of Interest Act*

Integrity Commissioner – Additional Functions

Kroetsch v. Hamilton (City) Integrity Commissioner **2021 ONSC 7982 (Ont. Div. Ct.)**

- an Integrity Commissioner may be assigned all or some of the statutory functions set out in s. 223.3(1) of the *Municipal Act, 2001* by council
- however, a council has power pursuant to ss. 9 and 10 of the *Municipal Act, 2001* to request its Integrity Commissioner to investigate other matters or to undertake other services on behalf of the municipality
 - for example, investigate members of advisory committees; give advice under employee code of conduct, etc.

ADVICE

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Advice-Giving Function

- Integrity Commissioner is now **expressly authorized** to provide specific advice to members of council and the municipality's local boards on *their* obligations (not those of other members) regarding:
 - the code of conduct
 - any ethical policy guidelines or procedure
 - section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*
- advice must be:
 - requested in writing by the member; and
 - provided in writing by the Integrity Commissioner
- members may rely upon advice if all relevant facts are provided to the Integrity Commissioner and its written advice is followed

INVESTIGATIONS

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Investigative Powers

General

- in general, an Integrity Commissioner investigates or undertakes an inquiry on a complaint or request basis
- council may request that an Integrity Commissioner investigate or research a matter and report
- the Integrity Commissioner has no authority to act on its own volition or initiative
 - the “own initiative” authority was included in the first reading version of Bill 68 but was removed
- code of conduct / complaint protocol sets out the terms for an Integrity Commissioner to investigate / inquire

Investigative Powers

Inquiry by Commissioner

223.4 (2) The Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, in which case those sections apply to the inquiry.

Information

(3) The municipality ... shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry.

Same

(4) The Commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality... that the Commissioner believes to be necessary for an inquiry.

Investigative Obligations

Duty of confidentiality

223.5(1) The Commissioner may and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

Exception

(2) Despite subsection (1), information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part.

Section prevails

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

Investigative Obligations

Reference to appropriate authorities

223.8 If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and **suspend** the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council.

Investigative Authority

***Di Biase v. Vaughan (City)* (2016), 55 M.P.L.R. (5th) 173 (Div. Ct.)**

- Integrity Commissioner has relatively low obligations of disclosure
 - “The investigating body is...the master of its own procedure.”

***Watson v. Stirling-Rawdon (Municipality)*, 2021 ONSC 2436 (Div. Ct.)**

- Integrity Commissioner carries out functions with “significant autonomy” and is not required to disclose each and every detail of an investigation

***Dhillon v. Brampton (City)*, 2021 ONSC 4165 (Div. Ct.)**

- Integrity Commissioner must afford the parties a reasonable level of procedural fairness which requires a fair procedure

ENFORCEMENT

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Reporting – Integrity Commissioner Duty

Report about conduct

223.6 (2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has **contravened the applicable code of conduct**, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report.

Reporting – Municipal Duty

Publication of reports

223.6 (3) The municipality and each local board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public.

- contrast this duty to publicly disclose with the general position under MFIPPA where a report alleging *any wrongdoing* is typically held to be personal information which is **not** subject to disclosure
- although s. 16 of MFIPPA contains a compelling public interest exception

Enforcement

Penalties

223.4 (5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A **reprimand**.
2. **Suspension of the remuneration** paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.

Integrity Commissioner makes **recommendations**
and Council imposes **penalties / remedial measures**

Enforcement

Penalties

Magder v. Ford

(2013), 7 M.P.L.R. (5th) 1 (Ont. Div. Ct.) at para. 66:

“The literal reading of [s. 223.4(5) of the *Municipal Act, 2001*] is that there are only two sanctions or penalties that council can impose for a breach of the Code.”

- Integrity Commissioner **recommends** penalties and/or remedial measures or corrective actions
- Council **decides** upon to impose (or not) any penalties and/or remedial measures or corrective actions that are recommended

Enforcement

Remedial or Corrective Measures

Magder v. Ford
(2013), 7 M.P.L.R. (5th) 1 (Ont. Div. Ct.)

“We agree with the application judge that a generous reading of the City's power to pass a code of conduct, in accordance with s. 6(1) of the [*City of Toronto Act, 2006*], would support the validity of including remedial measures in such a code. We need not determine the precise ambit of permissible remedial measures in this appeal.”

Villeneuve v. North Stormont (Township)
2022 ONSC 6551 (Div. Ct.)

“... a municipal council may require remedial actions in addition to these penalties, to respond to the conduct underlying the complaint and provide redress for a complaint.”

Enforcement

Remedial or Corrective Measures

***Altmann v. Whitchurch-Stouffville (Town)*
(2018), 81 M.P.L.R. (5th) 1 (Ont. S.C.J.) [paras. 39 & 49]:**

- “other actions” imposed by a council for contravention of a code of conduct must actually be corrective or remedial in nature
 - they cannot be punitive sanctions or penalties
 - principles affirmed in *Dhillon v. Brampton (City)* and *Villeneuve v. North Stormont (Township)*
 - all three decisions held that some remedial measures imposed by council were punitive in nature and were accordingly invalid

Investigation vs. Adjudication

***Chiarelli v. Ottawa (City)*, 2021 ONSC 8256 (Div. Ct.)**

- investigation and determination of contravention or breach of code of conduct: **Integrity Commissioner**
 - investigative capacity
- decision on the imposition of penalties and/or remedial measures or corrective actions where a contravention is reported: **Council**
 - adjudicative capacity
 - “Council’s duty is to consider and respond to the report” – not to make a determination re breach

Council's Consideration of Investigative Report

Assaly v. Hawkesbury (Town),
2021 ONSC 1690 (Div. Ct.)
at para. 11:

“If the Integrity Commissioner concludes that a council member has contravened the Code of Conduct, the municipality has **no power** to contest or question that conclusion. Its only power is to determine whether a penalty should be imposed and, if so, to issue a reprimand or suspend the member’s remuneration for up to 90 days under s. 223.4(5).”

Council's Consideration of Investigative Report

Toronto Integrity Commissioner Annual Report 2019

“It is plain to see that any value gained by assigning a neutral, independent, expert officer to investigate misconduct on Council’s behalf is lost when Council attempts to go behind the findings or challenge the lines of inquiry or analysis undertaken. It is also unfair to the parties and others involved and has the overall impact of undermining the accountability framework and the Office of the Integrity Commissioner itself.”

No Right to “Appeal” Investigative Report

- there is no right of appeal in the *Municipal Act, 2001* from a decision of council when it receives and responds to an Integrity Commissioner’s report
- the decision of council and the Integrity Commissioner’s investigation can be judicially reviewed pursuant to section 2 of the *Judicial Review Procedure Act* to the Ontario Divisional Court
 - *Fallis v. Orillia (City)*, 2022 ONSC 5737 (Div. Ct.)
- the Integrity Commissioner’s investigation can be reviewed by the Ontario Ombudsman under section 14 of the *Ombudsman Act*

INTEGRITY COMMISSIONER TEAM MEMBERS

Integrity Commissioner Team Members

Lawyer	Title	Year of Call
John Mascarini	Partner	1989
Meghan Cowan	Partner	2013
Paula Boutis	Counsel	2001
Laura Dean	Partner	2015
Meaghan Barrett	Associate	2016
Daria Peregoudova	Associate	2017
John Pappas	Associate	2020

CONCLUSIONS

Conclusions

- **all** members of council and local boards are subject to a code of conduct
 - four mandatory subject matters under O. Reg. 55/18
- integrity commissioners have broad authorities:
 - to investigate complaints and to report, and
 - to provide specific and individual written advice to members of councils and local boards on the code of conduct as well as the *Municipal Conflict of Interest Act*
- integrity commissioners can inquire as to whether a member did not comply with section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* and commence court application

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