

June 2023

Integrity Commissioner's Periodic Report
City of Burlington

Principles *Integrity* is pleased to submit this periodic report, covering the period between August 1, 2021, the date of our last periodic report, and May 31, 2023.

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. It also serves to introduce recent developments in that regard across the municipal sector.

About Us:

Principles *Integrity* 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 numerous 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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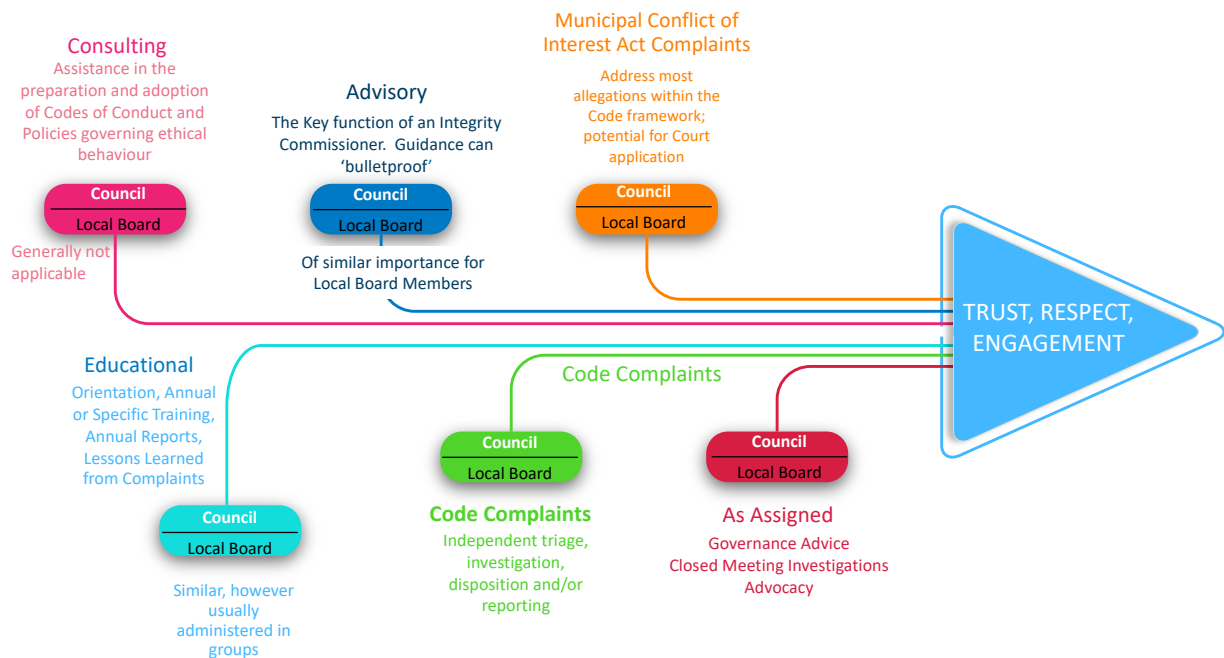
the municipality's ethical culture.

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 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:



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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:

During the period covered by this report, we have been engaged in a moderate level of activity as your Integrity Commissioner subdividing roughly into three categories:

1. Policy Development and Education

During the period covered by this report, we have not had the opportunity to provide any education or training for Council or appointed members of local boards. Following a report in April 2023, pursuant to our recommendation, Council directed administration to arrange for training and education for local board members. At the time of writing, we are working with City staff to arrange that training.

As part of our responsibilities as Integrity Commissioner, we have suggested that the City of Burlington’s Code of Good Governance be updated on the basis that the document lacks several ‘best practices’ provisions and contains no explanations, examples or other commentary to assist the reader. We are encouraged that progress will be made under collaboration with the Executive Director of Community Relations & Engagement.

We encourage Council to consider updating its Code to a more robust version with

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better policy guidance to serve members of Council and the public.

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 eleven (11) 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, thirteen (13) complaints were received, most of which were resolved informally and concluded with an explanatory Disposition letter. Two (2) complaints resulted in formal investigations which culminated in public recommendation reports to Council. In both cases Council adopted our recommendations.

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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.

Avoiding Council Leaks

Maintaining confidentiality around closed session documents and information is cardinal rule for members of Council, and is one that is regularly referenced during orientation and training of newly-elected councillors, and reiterated repeatedly during the term. Regardless of the reason, disclosure of confidential information is a serious breach of the Code.

Respect for confidentiality of closed deliberations allows for vigorous debate. When there is a risk that one Member of Council may not maintain that confidentiality, others will feel constrained and closed debates will be less productive.

As well, staff who are expected to provide legal or other advice in closed session may be hesitant to share information, for fear that it may be inappropriately leaked to the municipality's disadvantage.

Because of its importance to good governance, knowingly breaching one's obligation to maintain confidentiality, if proved, warrants a sanction.

Avoiding disparagement, disrespect, harassment

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. Members of Council are entitled, and indeed expected to disagree on all manner of issues. However, Members of Council should treat each other, staff and the public with appropriate respect and professionalism at all times.

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.

Some newly-elected Members fresh off the campaign trail arrive in office believing their job is to run the municipality, and may overstep their proper role, inadvertently getting into staff's management, administration, or operational functions. Individual Members of Council have no role telling staff what to do or how to do it. Only Council as a whole may give direction to staff, and even then, only to the CAO and the small circle of department heads.

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Interrogating or cross-examining staff because a Member wants a *different* answer than staff are able to provide, or to repeatedly hammer one's point, will be experienced as harassment or intimidation even when the Member claims to be merely 'asking the hard questions'. All Members of Council and not only the chair have a role to play in reining in such inappropriate behaviour when it occurs in Council and Committee meetings, and helping restore a safe, respectful and productive environment for all.

Egregious Acts of Harassment

Of particular note, the topic of what might be done with elected officials who commit egregious acts of harassment and who refuse to acknowledge and correct their bad behaviour has recently been the subject of lobbying efforts, particularly from the group 'The Women of Ontario Say No', which sought to encourage municipal councils to support the enactment of Bill 5, a private member's bill titled *Stopping Harassment and Abuse by Local Leaders Act, 2022*.

The Bill did not pass second reading.

Prior to the group's lobbying campaign, the same concern seems to have been the rationale for the initiation of a provincial consultation with the stated purpose "to ensure that councillors and heads of council maintain a safe and respectful workplace and carry out their duties as elected officials in an ethical and responsible manner by the strengthening of municipal codes of conduct and the role of integrity commissioners".

The genesis for both initiatives would appear to be unsuccessful attempts by the City of Ottawa's Integrity Commissioner to address the behaviour of former City of Ottawa Councillor Rick Chiarelli¹, and other examples of inappropriate behaviour on the part of elected officials.

Regrettably, the approach that was set out in the Bill fell short of providing the tools that would be helpful to parties aggrieved by the bad behaviour of municipal councillors. The Bill purported to do two things: First, to require that municipal elected officials be obliged to abide by their respective municipality's workplace violence and harassment policies, and second, to permit municipalities to direct their Integrity Commissioner to apply to court to vacate a member's seat for failing to comply with those policies.

The first objective can be easily achieved by regulation, without the need for legislation.

In our view, the second objective also misses the mark.

Removal from office after judicial process may well be warranted in some rare egregious circumstances. However, Bill 5, failed to address the changes which should

¹ Integrity Commissioner Reports concerning the behaviour of former Ottawa Councillor Chiarelli can be found [here](#), [here](#), and [here](#).

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have come about with the thoughtful conclusion of the province's 2021 consultation.

To remove an elected official from municipal office would require court process – with the concomitant delays, expense and uncertainties associated with applications to court.

It was hoped that through the province's consultations it could have been clarified that following conclusion of an Integrity Commissioner's investigation, which can usually be achieved in a matter of 3-4 months as opposed to 1-2 years to get through court, await a judgement, and perhaps an appeal – a process that would offer at best an uncertain outcome – municipal councils could apply an Integrity Commissioner's recommendations to address the very acts complained of, restricting access to staff, for example. With minor legislative adjustments, it can be clarified that a municipal council may restrict one of its members from the privileges enjoyed by all other members, almost immediately, to provide protection to victims and potential victims of a member's egregious behaviour. An application to court for removal can still be on the table, but the legislative amendments should ensure an early decision point so that not all investigations need be structured to provide a court-ready evidentiary record in the event Council directs the Integrity Commissioner to pursue removal as the remedy, or in addition to the specific protective remedies immediately imposable upon adopting the Integrity Commissioner's recommendations.

One example of a possible remedy can be found in the *Education Act* which provides School Boards with the authority to bar or suspend members from board or committee meetings for a period of time. Without legislative amendment, it is unclear whether a municipal council could adopt a similar remedial measure.

In circumstances of the most egregious harassment, it would be quite appropriate for councils to have the authority to suspend or bar attendance from committee or council meetings (not merely suspending pay, but suspending a member's privilege of participation).

Recognizing and avoiding conflicts of interest

Another area for which Members frequently require clarification is on 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.

Despite its name, the *Municipal Conflict of Interest Act* does not provide a complete conflict of interest code. It addresses the pecuniary interests of Members along with a narrowly defined group of family members and business relations which are by virtue of the Act are attributed as the pecuniary interests of the Council member.

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Council members are obligated to avoid all forms of conflicts of interest by appropriately disclosing and otherwise recusing themselves from the discussion.

The Act also requires Members with a disqualifying interest to avoid influencing municipal officials with delegated or operational responsibility for a matter, even when the matter is not before Council for consideration. We have in several cases established conditions for Council Member interaction with the municipality in situations where it would be impossible for the Member to enjoy the rights of being a citizen of the municipality at the same time as they serve on Council.

Despite its name, the *Municipal Conflict of Interest Act* does not provide a complete conflict of interest code. It addresses the pecuniary interests of Members along with a narrowly defined group of family members and business relations which are by virtue of the Act attributed as the pecuniary interests of the Council member. There are other interests, variously described as apparent, perceived or common law interests, that can also disqualify a member. In these instances the test is not just whether there has been strict compliance with the statute. Rather, the determination is based on the application of the *reasonable person* test – ‘what would a reasonable person reasonably aware of all the relevant facts and circumstances conclude about whether the member could properly separate their personal interests from their public duty?’

In this respect we have for example counselled Members to recuse themselves from Council debates which have involved the Member’s sibling (sibling is not listed as a triggering family class under the *Municipal Conflict of Interest Act*), but have also, through the setting of conditions, enabled Members to interact with municipal staff when there exists a technical pecuniary interest that can be managed through the careful avoidance of undue influence.

As always, obtaining clear and reliable advice from the Integrity Commissioner can help avoid costly and time-consuming investigations.

Conclusion:

We wish to recognize the Members of Council who are responsible for making decisions at the local level in the public interest. 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. We will continue to work with Members of Council to support their understanding of their ethical obligations. As we reference in the chart above, a strong ethical framework and a culture of ethical compliance strengthens the trust, respect and engagement members of the Burlington community will have in their elected representatives.