



J. Paul Dubé, Ombudsman

## **SENT BY EMAIL**

December 3, 2024

Council for the City of Burlington  
426 Brant Street, PO Box 5013,  
Burlington, Ontario L7R 3Z6

### **Re: Best practices regarding Codes of Conduct and Integrity Commissioners**

Dear Members of Council for the City of Burlington:

My Office received a complaint related to the City of Burlington's Code of Conduct for Members of Local Boards and Committees and the City's appointed Integrity Commissioner.

I am writing to provide the City with a summary of our review and to share information contained in my Office's recently released resources about municipal integrity commissioners. My key best practice is that the City of Burlington make more clear and specific some aspects of its Code of Conduct.

### **The Ombudsman's authority and role**

The Ombudsman is an independent and impartial Officer of the Ontario Legislature with the authority to review and investigate complaints about the administrative conduct of public sector bodies in Ontario, including municipalities such as the City of Burlington.

When reviewing complaints about municipal government administration, the Ombudsman may consider whether relevant law, policies, and procedures were followed. If he identifies concerns, he may share best practices to improve municipal processes, as well as strengthen local governance, transparency and accountability.

The Ombudsman can also review complaints about municipal integrity commissioners. The Ombudsman's Office is not an appeal body, and the Ombudsman does not substitute his decision for that of a local integrity commissioner. When we review a complaint about a municipal integrity commissioner, we look at such matters as whether they:

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- Acted in accordance with the relevant legislation, terms of reference, and policy;
- Considered the issues before them;
- Followed a fair practice;
- Obtained and considered relevant information; and
- Provided sufficient reasons to support their decision based on the available evidence.

In accordance with the *Ombudsman Act*, the Ombudsman can only consider issues within the jurisdiction of a municipally-appointed integrity commissioner if the integrity commissioner has refused to investigate, the time for bringing a complaint has expired, or the integrity commissioner has conducted and concluded an investigation or inquiry.

Based on our experience reviewing complaints related to municipalities since 2016, my Office has prepared Guides for municipalities and integrity commissioners that contain best practices for creating codes of conduct and complaint and inquiry protocols, and for appointing integrity commissioners. These Guides are now available on our Municipal Resources website: [www.ombudsman.on.ca/resources/brochures-and-posters/municipal-resources](http://www.ombudsman.on.ca/resources/brochures-and-posters/municipal-resources).

## Complaint Summary

The complaint submitted to my Office raised several issues with a decision of the City's Integrity Commissioner, including that the Integrity Commissioner:

- Made findings regarding procedural rules that apply to quasi-judicial administrative tribunals;
- Enforced a rule in the Code of Conduct that applies to the Chair of a local board against a member of the Committee of Adjustment who was not the Chair; and
- the Integrity Commissioner found that the member of the Committee of Adjustment breached the Code of Conduct's Guiding Principles.

## Review

As part of my review, members of my Office spoke with the Integrity Commissioner. We reviewed the Integrity Commissioner's Recommendation Report dated April 6, 2023<sup>1</sup> (the "Report"), and the City's Code of Conduct for Members of Local Boards and Committees (the "Code of Conduct").

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<sup>1</sup> <https://burlingtonpublishing.escribemeetings.com/filestream.ashx?DocumentId=68342>



## **The committee of adjustment as a local board**

Integrity commissioners may investigate the conduct of members of municipal councils and local boards. In 2019, the Ontario Court of Appeal found that the City of Hamilton's Property Standards Committee and Election Compliance Audit Committee serve an investigative/adjudicative function and are not local boards for the purposes of the *Municipal Act*.<sup>2</sup>

A municipal committee of adjustment is a quasi-judicial body with an adjudicative function. Committees of adjustment have a statutory mandate to adjudicate applications for planning-related matters. Committees of adjustment are intended to operate independently of council and municipal staff.

My Guides include information about local boards and the case law on local boards, which I advise the City to review. As a best practice, I encourage the City to identify and publicize a list of all of its local boards, and to ensure that all local board members understand their obligations under the Code of Conduct.

## **The scope of the powers and duties of a municipal integrity commissioner**

My Office's Guides encourage municipalities and their integrity commissioners to understand the scope of an integrity commissioner's authority as set out in the *Municipal Act, 2001* and the local code of conduct and investigation procedures.

### *The Committee of Adjustment's hearing procedures*

Integrity commissioners are empowered to conduct inquiries as they consider necessary and have wide discretion to determine how they carry out their functions. However, they must do so in accordance with legislation and the powers and duties assigned by the municipality. Integrity commissioners should understand the scope of their authority, and especially the nature of conduct they may investigate.

In the Report, the Integrity Commissioner found that the Committee member contravened the Code of Conduct when they made statements during a Committee of Adjustment hearing that the Integrity Commissioner described as "hearsay".

Investigating conduct that occurs during a hearing conducted by a quasi-judicial body like the Committee of Adjustment may interfere with the body's control over its own processes and independence in its decision-making. The Code of Conduct recognizes that

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<sup>2</sup> Ontario Ombudsman v. Hamilton (City), 2018 ONCA 502 (CanLII)

adjudicative boards operate at arm's length from the City and are independent in nature<sup>3</sup>. As a best practice, the City should ensure that the extent of the Integrity Commissioner's powers and duties, especially related to the conduct of hearings, are set out in the Code of Conduct, investigation procedures, or terms of reference for the integrity commissioner.

My Office identified municipalities with codes of conduct that apply to members of a committee of adjustment: the City of London<sup>4</sup> and the City of Toronto.<sup>5</sup> These codes recognize that adjudicative bodies act at arm's-length and have a quasi-judicial nature. The City may find these examples helpful.

### *Code of Conduct – Rule 16: Independent Nature of Local Boards*

It is up to council to determine the ethical standards to be applied to members of local boards and councils in the code of conduct, beyond the four topics required by the *Municipal Act*. My Office's Guides encourage municipalities to avoid uncertainty by setting out the obligations of members in the code of conduct in clear terms.

In the Report, the Integrity Commissioner found that a member of the City's Committee of Adjustment contravened the Code of Conduct by ignoring the "underlying principle articulated in Rule 16" of the Code. Rule 16 states that:

The Chairs of Local Board should ensure that the actions of any member, as well as Council members and staff attending adjudicative board meetings, are consistent with the arm's-length, quasi-judicial nature of the adjudicative board. Any actions compromising this position should be immediately dealt with by the Chair or panel chair. [emphasis added]

The member of the Committee of Adjustment who is the subject of the Report, is not the Chair. A plain language reading of the Rule indicates that it applies to the chairs of local boards, and not other board members.

Should the City intend for Rule 16 to apply to all members of local boards, rather than just chairs, I encourage it to consider amending the Code of Conduct to reflect this intention. For example, the City of London's Code of Conduct for Local Boards provides that all

<sup>3</sup> Code of Conduct for Local Boards and Committees, Part Two, Rule 16.

<sup>4</sup> The City of London, *Code of Conduct for Local Boards*, CPOL.-384-91, available online at: <https://london.ca/council-policies/code-conduct-local-boards>.

<sup>5</sup> The City of Toronto, *Code of Conduct for Members of Adjudicative Boards*, available online at: <https://www.toronto.ca/wp-content/uploads/2022/08/8ef5-2022-06-08-Appendix-3-New-Code-of-Conduct-for-Members-of-Adjudicative-Boards-FINAL.pdf>

The Corporation Of The Town Of Caledon, By-Law No. 2018-81 *Appeal Board By-law*, Available online at: [https://www.caledon.ca/uploads/14/Doc\\_637202991343891152.pdf?ts=638604350795917464](https://www.caledon.ca/uploads/14/Doc_637202991343891152.pdf?ts=638604350795917464)



members of an adjudicative board, rather than chairs, should “ensure that their actions are consistent with the arms-length, quasi-judicial nature of an adjudicative board”.

Providing clarity with respect to the application of provisions in the Code will provide more certainty for members who may be the subject of complaints, and ensure that council, the Integrity Commissioner, members of local boards, my Office, and the public can interpret the Code in a consistent and fair manner.

### *The Code of Conduct's Guiding Principles*

In the Report, the Integrity Commissioner found that the member's conduct was in breach of the Guiding Principles found in the preamble to the Code of Conduct.

The Report acknowledges that there is disagreement over whether guiding principles or preambles can form the basis of a contravention of the Code of Conduct. I encourage municipalities to avoid uncertainty about whether guiding principles or preambles create substantive enforceable obligations. As a best practice, the City should consider amending its Code of Conduct to clarify whether the Guiding Principles are substantive provisions that may result in consequences if breached. If this is the case, the City should also consider further defining the conduct captured by the preamble to avoid confusion in future.

### **Conclusion**

I appreciate the time taken by the City and the Integrity Commissioner to discuss these issues with my Office. I encourage you to share my Office's Guides with council members, municipal staff, and your appointed Integrity Commissioner. We have confirmed with the Clerk that this letter will be added to the next council agenda.

Sincerely,



Paul Dubé  
Ontario Ombudsman

cc: Principles Integrity

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