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Town of Aurora
Information Report
No. CS23-042

Subject: Integrity Commissioner's Periodic Report

Prepared by: Michael de Rond, Town Clerk

Department: Corporate Services

Date: July 4, 2023

In accordance with the Procedure By-law, any Member of Council may request that this Information Report be placed on an upcoming General Committee or Council meeting agenda for discussion.

Executive Summary

This report and attachment provide information to Council regarding the work of the Town's Integrity Commissioner since January 2021.

Background

Council appointed Principles Integrity on December 18, 2018. The attached report provides information regarding their role and the activity as it relates to the Town between January 2021 and May 31, 2023

Analysis

See attached report.

Advisory Committee Review

None

Legal Considerations

The terms of the agreement entered into with the Town's Integrity Commissioner requires the Integrity Commissioner to provide a periodic report to Council.

Financial Implications

None

Communications Considerations

None

Climate Change Considerations

None

Link to Strategic Plan

By appointing an Integrity Commissioner, the Town is working to ensure high ethical standards are being followed which promotes good governance.

Alternative(s) to the Recommendation

1. Council provide direction.

Conclusions

None

Attachments

Attachment 1 – Integrity Commissioner’s Periodic Report

Previous Reports

CS21-001 – Annual Report from the Integrity Commissioner

Pre-submission Review

Friday, June 16, 2023

Approvals

Approved by Patricia De Sario, Director, Corporate Services/Town Solicitor

Approved by Doug Nadorozny, Chief Administrative Officer

June 2023

Integrity Commissioner's Periodic Report
Town of Aurora

Principles *Integrity* is pleased to submit this periodic report, covering the period from January 2021 to 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 Town's elected and appointed officials through the lens of our activities.

About Us:

Principles *Integrity* is a partnership focused on accountability and governance matters for municipalities as well as other locally-elected and appointed governing bodies. Since its formation, Principles *Integrity* has been appointed as Integrity Commissioner (and as Lobbyist Registrar and Closed Meeting Investigator for some clients) in over 50 Ontario municipalities and other public bodies. Part of our mission is to advance the Municipal Integrity Commissioner of Ontario (MICO), where we have led development of MICO's response to the Provincial consultations and Ombudsman Office relations.

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 Council, members of Council and members of Local Boards
- Providing a mechanism to receive inquiries (often referred to as 'complaints') which allege a breach of ethical responsibilities
- Resolving complaints informally, where appropriate, and
- Investigating, reporting and making recommendations to Council on those complaints that cannot be resolved informally, 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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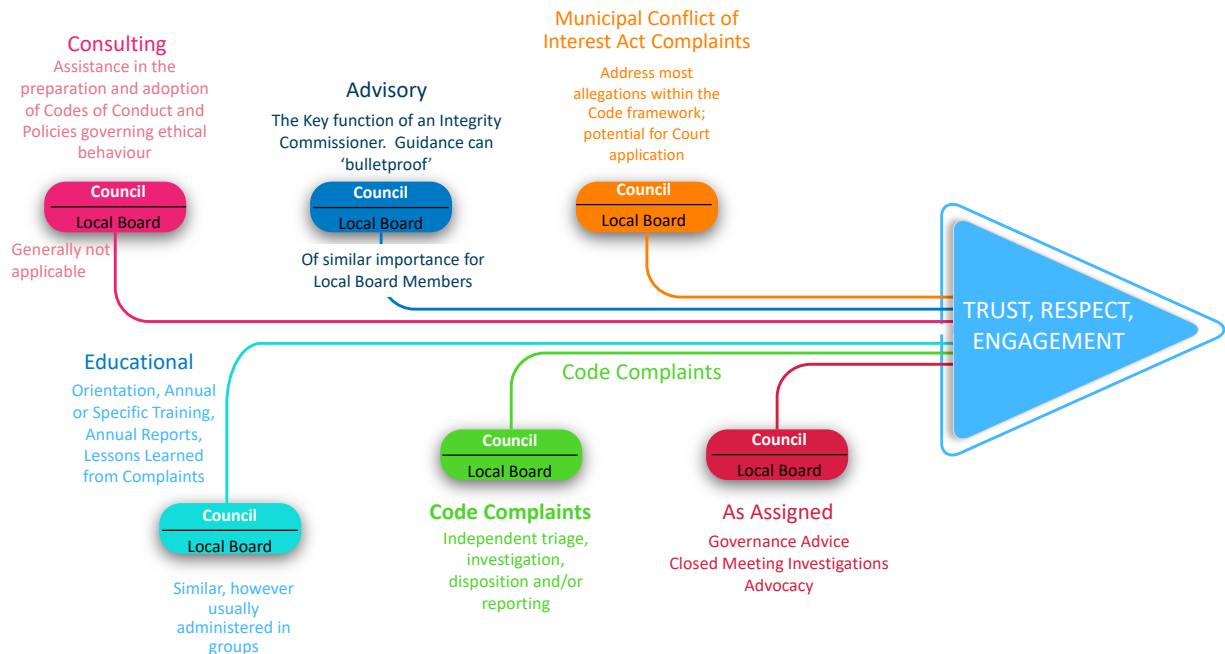
the municipality's ethical culture.

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:



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 graphic, we believe that the support we give to Members of Council increases the public's perception of them, which in turn leads to greater trust, respect and engagement.

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 most cases secrecy is required by statute, the promise of confidentiality also 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 Town of Aurora:

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

1. Policy Development and Education

Following the municipal elections we attended Council on December 4, 2022 to provide education and training on the ethical obligations of members under their Code of Conduct and the *Municipal Conflict of Interest Act*.

On March 15 & 16, 2023 and April 12, 2023 we provided ethical training to members of Local Boards.

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.

During the period covered by this report, we responded to nine (9) such requests for advice.

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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.

Typically, where we close a file without bringing a public recommendation report to Council, we nevertheless provide a comprehensive disposition letter to the complainant, explaining our conclusion. A summary is typically provided to the respondent-member where the complaint has already been initiated. We do this not only so that the complainant understands why we are not proceeding, but also because the Provincial Ombudsman may be requested by a complainant to investigate a matter where the Integrity Commissioner is not investigating it. Our disposition letter provides a starting point for the Provincial Ombudsman to understand the conclusion.

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, eight (8) inquiries were made to us with respect to potential complaints. In all cases, the matters were able to be resolved or disposed of without a public report.

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.

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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.

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.

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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 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

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

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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 attributed as the pecuniary interests of the Council member.

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.

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In this respect we have for example counselled Members to recuse themselves from

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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 look forward to continuing to work with Members of Council to ensure a strong ethical framework. As always, we welcome Members' questions and look forward to continuing to serve as your Integrity Commissioner.

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 staff for their professionalism and assistance where required. Although an Integrity Commissioner is not part of the Town's 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 Town.