



Codes of Conduct and Integrity Commissioners

Guide for Municipalities

INCLUDES BEST PRACTICES
FOR INTEGRITY COMMISSIONERS



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TOP 10 BEST PRACTICES

Municipalities should:

1. Remove barriers to making complaints
2. Include reasonable time limits for filing/review of complaints
3. Have a preliminary reporting process for integrity commissioner reports
4. Appoint the integrity commissioner by resolution or by-law, with clear terms of reference
5. Ensure the integrity commissioner has no conflicts of interest, e.g., other municipal roles

Integrity commissioners should:

6. Seek out and keep a record of all relevant evidence
7. Provide an opportunity to respond to allegations
8. Include a preliminary reporting process
9. Communicate with the parties
10. Issue a public report with reasons

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This guide can be downloaded and printed from the Ombudsman’s website, www.ombudsman.on.ca. To make inquiries or request hard copies, email info@ombudsman.on.ca.

Please note that this guide is provided for information purposes only and should not be considered or relied upon as legal advice.

Message from the Ombudsman

Municipal governments are important democratic institutions. They are the level of government that is literally closest to home. Given the important local services municipalities provide, it's essential that they operate in a way that is accountable, transparent and fair.

The Ontario Ombudsman is also an important democratic institution. Our role, as an impartial, non-partisan and independent organization, is to foster sound public administration by promoting accountability, transparency, fairness and a respect for rights.

Anyone can complain to us about the administrative conduct of hundreds of Ontario government and public sector bodies – including municipalities. We intervene to resolve or investigate issues and make evidence-based recommendations for corrective action when necessary.

As experts in good governance, we also share best practices to help public sector bodies optimize the services they provide. Municipalities are a key focus of our work, because there are 444 of them in Ontario. They differ immensely in population, geography and resources, but their residents all have identical rights to fairness and accountability.

Every municipality is required to have a code of conduct for members of council and local boards, and provide the services of an integrity commissioner. Every municipality is also required to have an investigator for complaints about closed meetings. In our work with municipalities, we have heard a strong demand – from the public and municipal officials alike – for guidance in all of these areas.

This guide is intended as a quick reference to the rules and legislation surrounding municipal codes of conduct

and integrity commissioners. It outlines numerous best practices, based on evidence our team has gathered in resolving hundreds of complaints on these topics, and on our decades of experience with complaint processes and conducting investigations. This guide, and the other resources we have developed to assist municipal collaborators, attest to our Office's unwavering dedication to promoting rights, transparency, and accountability in the service of Ontarians.

Our role is not to replace local accountability mechanisms, but to ensure they are working as they should. Our aim in suggesting best practices – and with this guide – is to avert future complaints and promote consistent standards across the province.

For well over a decade, we have published a similar resource – **Open Meetings: Guide for Municipalities** – that sets out the rules and best practices for open meetings. We also created a public, searchable, regularly updated digital digest of hundreds of our open meeting cases, the only database of its kind in Ontario.

Anyone who has a complaint or a question – including municipal officials – is welcome to contact us, whether it's about these municipal issues or any of the more than 1,000 bodies that we oversee. Please feel free to consult our website or call our staff at **1-800-263-1830** to find out how we can help.



Paul Dubé
Ombudsman of Ontario



Introduction

An integrity commissioner is a municipal accountability officer who is responsible for applying the rules governing the ethical conduct of members of municipal councils and local boards, including codes of conduct, and for providing advice and education on those rules.

The *Municipal Act, 2001*¹ provides the framework within which municipal integrity commissioners are appointed and carry out their functions.

Every municipality must establish a code of conduct for members of council and local boards [s. 223.2(1)], and appoint an integrity commissioner or use the services of an integrity commissioner from another municipality [s. 223.3(1.1)–(1.2)]. Integrity commissioners must function in an independent manner and report directly to municipal council [s. 223.3(1)].

The functions of integrity commissioners include:

- Applying the code of conduct and any procedures, rules and policies governing the ethical behaviour of members of councils and local boards, including conducting investigations and inquiries² into complaints about alleged contraventions of a code of conduct;
- Conducting inquiries concerning alleged contraventions of the *Municipal Conflict of Interest Act*;
- Providing advice to members respecting their obligations under the code of conduct, procedures, rules or policies governing the ethical behaviour of mem-

¹ SO 2001, c 25. See Part V.1, Accountability and Transparency. The *City of Toronto Act, 2006*, SO 2006, c 11, Sched. A contains the provisions concerning the City of Toronto's integrity commissioner. This Guide only refers to the relevant section numbers in the *Municipal Act, 2001*.

² While the *Municipal Act, 2001* refers to "inquiries", the word "investigation" is often used interchangeably. We adopt this practice at times in this guide.

- Providing educational information about the code of conduct and the *Municipal Conflict of Interest Act* [s. 223.3(1)].

Municipal Conflict of Interest Act

In 2019, integrity commissioners were given the authority to review allegations of conflict of interest under the *Municipal Conflict of Interest Act* (“MCIA”).³ Previously, these matters could only be dealt with through court applications. While individuals who believe the MCIA has been contravened can still apply to a judge for a determination on the matter directly, the legislation now provides an option for integrity commissioners to conduct an inquiry into an alleged contravention and the discretion to apply to a judge themselves.

The *Municipal Conflict of Interest Act* sets out rules to prevent members of councils and local boards from influencing, discussing, or voting on any matter that is before the body for consideration if they have a pecuniary interest in the matter. The interest can be direct or indirect, and the MCIA provides that the pecuniary interest of a parent, spouse, or child of the member is also deemed to be the member’s pecuniary interest [MCIA, s. 3]. Any member who has a pecuniary interest in a matter is required to disclose the interest before it is considered, and is prohibited from attempting to influence voting or to vote on the matter [MCIA, s. 5].⁴ If the matter is considered in a closed meeting, the member must leave the meeting. The MCIA sets out specific exceptions for cir-

³ RSO 1990, c M.50.

⁴ There is an exception in the legislation if the discussion is about whether a penalty should be imposed on a member where the integrity commissioner has found that they violated the code of conduct: *Municipal Conflict of Interest Act*, RSO 1990, c M.50, s 5(2.1), 5.2(2) [MCIA]. In such cases, the member is not prevented from participating at the meeting where the penalty is being considered or attempting to influence the decision on the matter, but is not entitled to vote on the matter.

cumstances where a member is not barred from influencing, discussing or voting on a matter despite a pecuniary interest [MCIA, s. 4].

Members who have a pecuniary interest in a matter are also barred from using their office to attempt to influence a municipal employee, officer, or other delegate responsible for making a decision or recommendation on the matter [MCIA, s. 5.2]. Additional rules apply to the special powers granted to heads of council in cases where the head has a pecuniary interest in a matter [MCIA, s. 5.3].

Any member who declares a conflict is required to file a written statement of the interest and its general nature [MCIA, s. 5.1].

Complaint / inquiry protocols

In addition to developing a code of conduct, municipalities should adopt a complaint or inquiry protocol or procedure. A protocol can set out how to file complaints against members of council and local boards relating to alleged contraventions of the code of conduct, and applications alleging contraventions of the *Municipal Conflict of Interest Act*. It can also guide the integrity commissioner's inquiries.

Ontario Ombudsman role

Ombudsman Ontario is an office of last resort, and recognizes that municipal issues are generally best addressed locally. The Ombudsman does not act as an integrity commissioner for municipalities. However, the Ombudsman can review and investigate complaints about municipal integrity commissioners once they have completed their process or declined to review a complaint.⁵ The Ombudsman can also initiate an investigation on his own motion.⁶

⁵ *Ombudsman Act*, RSO 1990, c O.6, s 14(4.4).

⁶ *Ibid*, ss 14(2), 14(4.5).

If a municipality receives a complaint about an integrity commissioner after the completion of a review or inquiry, they may wish to refer the individual to the Ontario Ombudsman.

When reviewing decisions of integrity commissioners, the Ombudsman's Office does not act as an appeal body and the Ombudsman does not substitute his decisions for those of commissioners. Instead, what the Ombudsman's Office looks at includes whether commissioners:

- Acted in accordance with relevant legislation or procedure, including with respect to timelines;
- Considered the issues before them;
- Followed a fair practice;
- Obtained and considered relevant information; and
- Provided sufficient and adequate reasons to support their decision based on the available evidence.

The role of integrity commissioners is broad and includes providing advice and education regarding codes of conduct, ethical rules, and the *Municipal Conflict of Interest Act*. However, the complaints received by the Ombudsman generally relate to integrity commissioner inquiries into alleged contraventions of a code of conduct or the *MCIA*.

Based on our experience in this area, the Ombudsman has developed this best practice guide to help municipalities develop codes of conduct, establish complaint/inquiry protocols, and appoint integrity commissioners, as well as to help integrity commissioners in their work. These guides are also available to the public to help individuals better understand the requirements and best practices for codes of conduct and integrity commissioners.

Note: Unless otherwise indicated, all references to legislative provisions are to the *Municipal Act, 2001*. For provisions governing the integrity commissioner for the City of Toronto, see the *City of Toronto Act, 2006*.

Codes of conduct

Subsection 223.2(1) of the *Municipal Act, 2001* requires every municipality to establish codes of conduct that apply to members of council and local boards. There can be one code for all members, or separate ones for members of council and members of local boards.

All council members and members of local boards should be provided with training to ensure they are familiar with and understand the code of conduct. The code of conduct should be easily accessible to the public – e.g., posted on the municipality’s website.

Once a code of conduct applying to local boards is developed, municipalities should identify all of their local boards and ensure that all members understand their obligations under the code. Local boards include municipal service boards, transportation commissions, planning boards, and any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities.

In 2018, the Ontario Court of Appeal found that the City of Hamilton’s Property Standards Committee and Election Compliance Audit Committee were not local boards for the purposes of the open meeting rules, because neither body provided “services which are integral to the day-to-day operation of the business” of the city. In 2021, Ontario’s Divisional Court provided additional guidance, finding that the City of Hamilton’s Lesbian, Gay, Bisexual, Transgender and Queer Advisory Committee was a local board. The decision noted that the function of the Committee related to the city’s “affairs and purposes” by helping the city meet its obligations to the community. The Court found the committee was not an “independent and/or adjudicative” body, and was also not an *ad hoc* informal committee.

We have come across local boards, such as Business Improvement Area boards, that did not know they were subject to a code of conduct or integrity commissioner oversight. Municipalities should provide education and support to these bodies to ensure they understand their legal obligations and have the capacity to comply. For greater clarity, municipalities should publicize a list of local boards.

What a code of conduct should include

Prescribed subject matters

Regulation 55/18 under the *Municipal Act, 2001* requires codes of conduct to address four topics:

1. Gifts, benefits and hospitality;
2. Respectful conduct, including conduct towards officers and employees;⁷
3. Confidential information;⁸ and
4. Use of property of the municipality or the local board.⁹

Additional subject areas

Beyond these four topics, it is up to council to determine any additional ethical standards to be applied to council members and members of local boards.

Municipalities should consider incorporating additional provisions or policies into the code of conduct, such as:

Decorum during meetings

Generally, conduct during meetings is governed by the meeting chair in accordance with the municipality or local board's procedure by-law. If a municipality intends for its

⁷ The code should reference other relevant policies and by-laws, such as the mandatory staff-council relations policy required by s. 270 of the *Municipal Act, 2001*.

⁸ The code can specifically require members not to disclose information discussed during closed meetings.

⁹ O Reg. 55/18, s 1.

code to apply to such conduct – and enable the integrity commissioner to review complaints about it – this should be stated explicitly.

Social media use

If a municipality intends for its code of conduct to apply to members' conduct on social media and other online platforms – e.g., sharing information and communicating with the public – this should be clearly stated in the code.

Communication on behalf of council or the local board

A code of conduct can address whether, when and how members may communicate on behalf of the council or local board, including to the media.

Conflicts of interest outside the scope of the Municipal Conflict of Interest Act

The *Municipal Conflict of Interest Act* applies specifically to pecuniary conflicts of interest, as defined in the legislation. If a municipality intends for its code of conduct to apply to conflicts outside the scope of that Act, this should be explicitly stated. For instance, the code could address a member using their position to benefit a friend, or a relative other than a parent, spouse, or child.

Workplace harassment

Some complaints may raise issues that could be covered by both the code of conduct and the municipality's workplace harassment policy. We have received complaints from council members who did not know if they were being "investigated" under the code of conduct or for harassment under a workplace policy. In some cases, the integrity commissioner themselves did not distinguish between the two, or take care to clarify which procedures applied to their review.

Codes of conduct should set out whether the integrity commissioner can investigate complaints related to work-

place harassment, or whether these should be directed to another process. Workplace harassment and violence policies should specify whether they are intended to apply to members of council and local boards.

Penalties

Under subsections 223.4(5)–(6) of the *Municipal Act, 2001*, an integrity commissioner can recommend that council or a local board impose a penalty on a member (e.g., a reprimand; a suspension of remuneration for up to 90 days) if the commissioner has found that the member contravened the code of conduct. Codes of conduct should reflect these statutory penalties.

Council is entitled to impose a penalty on members of council or a local board following a finding by the integrity commissioner that the member has violated the code of conduct. Local boards are also entitled to impose a penalty on a local board member, if council has not imposed a penalty on the member for the same contravention [s. 223.4(6)].

Remedial measures

In addition to recommending penalties for members who have contravened the code of conduct, integrity commissioners can recommend that councils or local boards impose remedial measures. The courts have found, for example, that commissioners can recommend “other actions” as long as they are remedial and not punitive,¹⁰ are permitted in law and designed to ensure that the inappropriate behaviour does not continue,¹¹ and do not prevent the member from carrying out their duties.¹² Municipalities that wish to authorize their integrity com-

¹⁰ *Magder v. Ford*, 2013 ONSC 263 at para 67; *Dhillon v. The Corporation of the City of Brampton*, 2021 ONSC 4165 at para 94 [Dhillon].

¹¹ *Dhillon*, supra note 10 at para 87.

¹² *Villeneuve v. North Stormont (Township)*, 2022 ONSC 6551 at para 59 [Villeneuve].

missioners to recommend such measures – such as apologies to council or to complainants, or the return of municipal property – should expressly do so in their codes of conduct.

Protection from reprisal

Codes of conduct should specify that members should not engage in any reprisal or threat of reprisal against anyone for filing a complaint under the code of conduct or for co-operating with an integrity commissioner during their inquiry.

Co-operation with the integrity commissioner

Codes of conduct should clearly require that members of council and local boards co-operate with the integrity commissioner's inquiries. They should also specifically prohibit members from obstructing or attempting to obstruct an inquiry by the integrity commissioner; this enables the commissioner to find that failure to co-operate with an inquiry is a contravention of the code.¹³

Expansion beyond council and local boards

If a municipality wishes to have its code of conduct apply to members of committees who are not members of council or a local board, the code should state this explicitly.

¹³ Dhillon, *supra* note 10 at paras 69–76.

Complaint / inquiry protocols

Municipalities should have clear procedures and processes for complaints and applications filed with integrity commissioners.¹⁴ Most of the complaints the Ombudsman receives about integrity commissioners relate to their processes – or lack thereof. Many could have been prevented if the municipalities had a robust, fair, and flexible protocol to deal with complaints and applications.

The courts have recognized that a municipality is “master of its own procedure” for such matters.¹⁵ Municipalities can choose to have separate protocols for complaints related to codes of conduct and applications related to the *Municipal Conflict of Interest Act*, or combine them.

Adopt a complaint/inquiry protocol, as a best practice

In addition to a code of conduct, every municipality should adopt a clear process for any person to file a complaint about a council or local board member related to the code of conduct or an application respecting the *Municipal Conflict of Interest Act*. The protocol should set out how the integrity commissioner will respond to complaints and applications, from receipt to final disposition. Complaint protocols not only provide valuable guidance to integrity commissioners, they also let the public and members of councils and local boards know what to expect.

¹⁴ Many municipalities refer to these documents as “complaint protocols” because they address the receipt and processing of complaints under a code of conduct or applications under the *MCI Act*. Others refer to them as “inquiry protocols” because they set out the processes to be followed during a commissioner’s inquiry. In this guide, we refer to complaint/inquiry protocols interchangeably.

¹⁵ *Michael Di Biase v. City of Vaughan*, 2016 ONSC 5620 at para 131 [Di Biase].

Make complaint/inquiry protocols public and easy to access

Protocols should be published and easily accessible to the public, e.g., posted on the municipality's website.

Terms common to code of conduct and MCIA matters

Municipalities should consider including the following provisions in their complaint/inquiry protocols. These apply to matters involving codes of conduct as well as those related to the *Municipal Conflict of Interest Act*.

Complaint instructions

Complaint protocols should include instructions on how to submit a complaint under a code of conduct or an application under the *MCIA* to the integrity commissioner and information about what to expect from the process. They should also include information for individuals who may require an accommodation to participate in the process.

Independence and discretion

Integrity commissioners are intended to perform the functions assigned by a municipality in an independent manner [s. 223.3(1)]. Complaint protocols should make note of the integrity commissioner's independence.

In our experience, it is often not publicly understood that integrity commissioners have considerable discretion in carrying out their functions. Accordingly, municipalities may want to note that if a matter is not covered specifically in the protocol, the commissioner can exercise their discretion to address it.

Evidence

Municipalities and local boards are required to provide information or access to property that integrity commis-

sioners believe is necessary for their review of complaints, whether it is an inquiry under the code of conduct [s. 223.4(3), (4)] or related to the *MClA* [s.223.4.1(10), (11)]. Complaint protocols should note that integrity commissioners may gather any additional information, including by speaking with people and obtaining documents, that they consider necessary.¹⁶

Confidentiality

Integrity commissioners are required to preserve the secrecy of all matters that come to their knowledge in the course of their work [s. 223.5(1)]. This confidentiality prevails over the *Municipal Freedom of Information and Protection of Privacy Act*¹⁷ [s. 223.5(3)]. However, integrity commissioners can disclose information in certain specific circumstances.¹⁸ In reporting findings about a member's conduct under the code to council or a local board, for instance, they "may disclose in the report such matters as in the commissioner's opinion are necessary for the purposes of the report" [s. 223.6(2)].

Complaint/inquiry protocols should state that information obtained by integrity commissioners is confidential, subject to the limits in the legislation. They should provide commissioners with discretion to decide how much information to disclose, taking local circumstances into account.¹⁹

¹⁶ In reviewing a similar complaint protocol provision, the court noted that the commissioner is not limited to the information provided by the complainant: *Ibid* at para 34.

¹⁷ SO 1990, c M.56.

¹⁸ Integrity commissioners may disclose information that is required to be disclosed during a criminal proceeding; during an inquiry respecting the *Municipal Conflict of Interest Act*, if the integrity commissioner holds a public meeting, applies to a judge, or when publishing reasons; or in summary form when providing a periodic report to the municipality on their activities, without including confidential information that could identify an individual: *Municipal Act, 2001*, SO 2001, c 25, ss 223.5(2), 223.5(2.3), 223.6(1) [*Municipal Act*].

¹⁹ *Di Biase*, *supra* note 15 at para 121.

In accordance with procedural fairness, the council or local board member who is the subject of a complaint should be made aware of the substance of the allegations in order to have a fair opportunity to answer. A commissioner can satisfy this requirement by providing the broad grounds for the complaint, and need not disclose details, share evidence, or identify witnesses.²⁰

Complaint protocols should specify that commissioners can disclose such information as they consider necessary when informing respondents about allegations, and when reporting their findings to councils or local boards.

Declining to commence or discontinuing an inquiry

Complaint protocols should give integrity commissioners the discretion to decline to commence or to discontinue an inquiry in certain circumstances. For example, if:

- The matter is outside of the integrity commissioner's jurisdiction;
- The complaint or application is frivolous, vexatious, or not made in good faith;
- The issue has already been, or is being, addressed by the commissioner or another process (e.g., a court proceeding, or a workplace harassment investigation); or
- It is clear that even if the allegations are proven, there would be no breach of the code of conduct or the *Municipal Conflict of Interest Act*.

Municipalities can also give commissioners the discretion to discontinue an inquiry if they determine that the matter does not warrant further action, or that it would not be in the public interest to take further steps.

²⁰ *Ibid* at paras 146–49, citing *Syndicat des employés de production du Québec et de l'Acadie v. Canada* (Canadian Human Rights Commission), 1989 CanLII 44 (SCC), [1989] 2 SCR 879 at para 27; *Irvine v. Canada* (Restrictive Trade Practices Commission), 1987 CanLII 81 (SCC), [1987] 1 SCR 181 at para 71.

Complaint protocols should clearly specify whether integrity commissioners can exercise their discretion to decline to commence or discontinue an inquiry at any stage of the process. They should also require commissioners to inform complainants in writing of such decisions (and, where appropriate, respondents as well), and provide reasons, with reference to the information considered.

Informal resolution

Municipalities should consider incorporating options for mediation or informal resolution in their complaint/inquiry protocols. Establishing an informal mechanism alongside a formal complaint process provides a range of ways for integrity commissioners to resolve matters, and can save time and money for all involved.

Complaint/inquiry protocols should clearly distinguish between informal complaint resolution mechanisms and formal inquiries, and include clear paths for each.

Municipalities may choose to note that it is not mandatory to engage the informal process before pursuing a formal complaint.

Municipalities should proceed cautiously if they intend for integrity commissioners to have the ability to deal informally with applications relating to alleged contraventions of the *Municipal Conflict of Interest Act*. Even if an inquiry protocol includes an informal resolution mechanism, there is still a strict 180-day time limit applying to *MCIA* inquiries [s. 223.4.1(14)]. The 180-day period begins when a completed application is received, whether or not the commissioner chooses to engage in an informal review process.

Contravention of another Act

Any integrity commissioner who, during an inquiry, has reasonable grounds to believe there has been a contravention of the *Criminal Code* or other legislation, with the exception of the *Municipal Conflict of Interest Act*, must

immediately refer the matter to the appropriate authorities. The commissioner's inquiry must be suspended until "any resulting police investigation and charge have been finally disposed of," and commissioners are required to report the suspension to council [s. 223.8].

Commissioners can resume their inquiry into such matters after any charges have been finally disposed of. As the courts explained in *Di Biase v. Vaughan*:

"The onus of proof in a criminal case is higher than the onus of proof in a civil matter. This means that a police service may decide not to lay charges, or charges may be dismissed because they are not provable beyond a reasonable doubt. Conduct that cannot be proven beyond a reasonable doubt may be provable on a balance of probabilities and thus a violation of the Code of Ethical Conduct may be proven despite an acquittal or a decision not to proceed with criminal charges."²¹

Complaint protocols should reflect this, and provide for a process by which integrity commissioners can restart inquiries following disposition of a police investigation and/or any charges.

Public inquiry powers

Complaint/inquiry protocols should note that integrity commissioners can elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*²² when conducting a code of conduct inquiry [s. 223.4(2)] or MCIA inquiry [s. 223.4.1(9)]. These powers include the ability to summon witnesses to give evidence under oath or affirmation and to produce documents.

Record keeping

Complaint/inquiry protocols should specify the records

²¹ *Di Biase*, *supra* note 15 at para 210.

²² SO 2009, c 33, Sched. 6.

that integrity commissioners must keep and for how long (e.g., the original complaint, correspondence related to the case, evidence collected, and any reports issued).

Municipal elections

Complaint/inquiry protocols should explain the special rules that apply during regular municipal election periods. For example, between nomination day and voting day:

- No complaints alleging contravention of codes of conduct or applications related to the *MCIA* can be filed with integrity commissioners [s. 223.4(9)(1), s. 223.4.1(3)];
- Commissioners cannot report on any alleged code contraventions, and councils and local boards cannot consider imposing penalties for code violations [s. 223.4(9)(2)–(3)];
- If a commissioner has not completed a code of conduct or *MCIA* inquiry before nomination day for a regular municipal election, the inquiry must be terminated on that day [s. 223.4(7), s. 223.4.1(12)]. If that occurs, the commissioner cannot start another inquiry into that matter unless, within six weeks of voting day for the election, the original complainant/applicant or respondent member makes a written request to the commissioner to recommence the inquiry [s. 223.4(8), s. 223.4.1(13)].

Best practices specific to a code of conduct complaint protocol

Certain specific procedures should be included in protocols for complaints alleging members of councils or local boards have violated a code of conduct. These procedures are distinct from those that apply to an inquiry into an alleged violation of the *Municipal Conflict of Interest Act*, which are addressed below.

Remove barriers to making a complaint

There should be no barriers to making a complaint to the integrity commissioner, such as fees or onerous administrative requirements (e.g., requiring complainants to swear an affidavit). Municipalities sometimes impose such conditions in an attempt to discourage frivolous and vexatious complaints. Instead, they should address this concern by giving integrity commissioners discretion to dismiss complaints for these reasons.

The Ombudsman has strongly and repeatedly denounced the practice of charging a complaint fee because it penalizes complainants for exercising their statutory rights and may prevent legitimate complaints from being raised. He has noted that it is “entirely inconsistent with the primary intent of the integrity commissioner scheme, which is to foster democratic legitimacy and public trust at the local level.”²³ A number of municipalities have removed their fees and changed their codes of conduct in light of this position.

Do not restrict who can make a complaint

There should be no restrictions on who can file a complaint, whether or not they live in the municipality. The *Municipal Act, 2001* does not restrict municipal employees from filing a complaint with the integrity commissioner.²⁴ Complaint/inquiry protocols should specify whether anonymous complaints will be accepted by the integrity commissioner, and whether the commissioner has the discretion to protect the identity of complainants.

Include reasonable time limits for filing complaints

The *Municipal Act, 2001* does not include any restriction

²³ Letter from Ontario Ombudsman Paul Dubé to Hamilton City Council (January 12, 2022) in Ontario Ombudsman, *Annual Report 2021-2022* (10 August 2022) at 27, online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/annual-reports/2021-2022-annual-report/#Integrity%20Commissioners%20and%20local%20accountability>>.

²⁴ *Villeneuve*, *supra* note 12 at para 20.

on how soon a complaint must be filed after an alleged violation of a code of conduct. Municipalities can choose to include a time limit for complaints, but complaint protocols should give integrity commissioners the discretion and flexibility to accept complaints outside of that limit, based on the specific circumstances of the case.

Include reasonable time limits for review of complaints

There are no statutory timelines for integrity commissioners to complete inquiries concerning code of conduct complaints – unlike *MCIA* matters, which are subject to strict timeframes.²⁵ However, delays can undermine public confidence in the complaint process, and we frequently hear from people who are dissatisfied with the length of time some integrity commissioners take to complete reviews.

To increase accountability and ensure all parties know what to expect, complaint protocols should set out reasonable timelines for integrity commissioners to respond to code of conduct complaints. They should include timeframes for:

- Acknowledging receipt of the complaint;
- Completing a preliminary review;
- Engaging an informal complaint resolution mechanism (if appropriate); and
- Completing an inquiry (if warranted), and report.

Integrity commissioners should also have the flexibility to extend timelines if required, based on the specific circumstances of the case. Complainants and respondents should be informed in writing of any extensions and the reasons for them, along with a new expected completion date.

²⁵ Integrity commissioners must complete a review of complaints made under the *MCIA* within 180 days after receiving the complaint: *Municipal Act*, *supra* note 18, s 223.4.1(14).

Include a preliminary reporting process

Complaint protocols should include a preliminary reporting process. In the interest of fairness, integrity commissioners should provide members who are the subject of an inquiry with the opportunity to review and respond to preliminary findings before any report is made public. Complaint protocols should specify how and when members will be provided with this opportunity, and indicate that any comments they provide should be considered by the commissioner before any report is finalized. Generally, only the member subject to a complaint is provided with the chance to comment on preliminary findings. If a municipality wishes to give other parties, such as complainants, the opportunity to comment on the commissioner's preliminary report, this should be set out clearly in the protocol.

Make reports public

When integrity commissioners report their findings on code of conduct inquiries to council or a local board, the municipality or board is required to make these public [s. 223.6(3)] (e.g., as part of a published meeting agenda). Complaint protocols should address how and when such reports will be made available to the public.

Consider reports during an open meeting

In cases where an integrity commissioner finds that a member contravened the code of conduct, council or the local board can consider the commissioner's report and decide whether to impose penalties and/or remedial measures. The meeting should be open to the public, unless the subject of the discussion fits squarely within one of the exceptions to the open meeting rules set out in s. 239(2) of the *Municipal Act*. This should be noted in the complaint protocol.

Reflect the role of council

If the commissioner reports that a member has contravened the code of conduct, council can decide to impose

a penalty or remedial measures on the member of council or local board. In the alternative, the local board can do so if council has not already imposed a penalty for the same contravention.

Commissioners may suggest specific penalties or remedial measures in their reports, but it is up to councils or local boards to decide whether any penalty or remedial measure should be imposed, and if so, what it should entail.

As the court noted in a 2021 case involving the City of Ottawa, council plays an adjudicative role when deciding whether to impose a sanction based on a commissioner's report,²⁶ and members should do so fairly and with an open mind (while acknowledging that members are also acting in a political capacity).²⁷ The commissioner determines if the complaint is sustained, but council's duty is to consider and respond to the commissioner's report.²⁸ The council or local board decides what steps to take, including voting on appropriate penalties and/or remedial actions.

Complaint protocols should set out the respective roles of the commissioner and council.

Note the respondent's right to participate

In the interest of fairness, members whose conduct is the subject of an integrity commissioner's report should be given a reasonable opportunity to address council or the local board about the report and any potential penalties and remedial measures.²⁹ While the member cannot vote on the matter, they can attempt to influence the decision despite their pecuniary interest – a specific exception in the *MCIA* permits this [*MCIA*, s. 5(2.1)].

²⁶ *Chiarelli v. Ottawa (City of)*, 2021 ONSC 8256 at para 147 [*Chiarelli*].

²⁷ *Ibid* at para 151.

²⁸ *Ibid* at para 148.

²⁹ For instances where members were provided an opportunity to address council, see e.g. *Villeneuve*, *supra* note 12 at para 49; *Kroetsch v. Integrity Commissioner for the City of Hamilton*, 2021 ONSC 7982 at paras 69–72 [*Kroetsch*].

Complaint protocols should set out how the member will be able to address a report, including whether it will be in writing, orally, or both.

Consider including a process for reopening an inquiry

Municipalities can choose to give integrity commissioners discretion to reopen inquiries. Complaint protocols should set out under what circumstances this can occur – e.g., in cases where new evidence is submitted – and the process for doing so. They should also specify any time limitation for requests to reopen inquiries and the process for reporting back to council.

Best practices specific to a *Municipal Conflict of Interest Act* inquiry protocol

There are specific statutory requirements relating to applications alleging contraventions of the *Municipal Conflict of Interest Act* that should be reflected in complaint/inquiry protocols.

An integrity commissioner may conduct “such inquiry as he or she considers necessary” [s. 223.4.1(7)] regarding *MCIA* contraventions, and may hold a public meeting to discuss it [s. 223.4.1(8)].

Explain who can make an application

Unlike in code of conduct cases, only an elector (a person entitled to vote in an election for the body in question) or a person demonstrably acting in the public interest can make an application to the commissioner regarding an alleged *MCIA* contravention [s. 223.4.1(2)]. Complaint/inquiry protocols should specifically outline these requirements for applications made under the *MCIA*.

Note the required time limits to file applications and for completing an inquiry

An application under the *MCIA* can only be made to the commissioner within six weeks of when the applicant

became aware of the alleged contravention [s.223.4.1(4)] or within six weeks of voting day if the applicant became aware of the alleged contravention after nomination day [s. 223.4.1(5)]. Complaint/inquiry protocols should reflect these time limits.

There is a strict 180-day time limit within which integrity commissioners must either terminate or complete *MCIA* inquiries [s. 223.4.1(14)], and the *Municipal Act, 2001* does not provide for any extensions. Complaint/inquiry protocols should reflect that the clock begins to tick on the day the commissioner receives a completed application.

No additional time is provided for the commissioner, regardless of whether they choose to conduct a preliminary review or engage in an informal resolution process.

Specify how applications must be made

Applications regarding allegations of *MCIA* contraventions must be made in writing [s. 223.4.1(2)]. They must set out the reasons the applicant believes the member contravened the *MCIA*, and include a statutory declaration attesting that the applicant became aware of the alleged contravention during the applicable six-week limitation period [s. 223.4.1(6)]. Complaint/inquiry protocols should include these requirements.

Set out the process and requirements for completing an inquiry

After completing an inquiry, a commissioner may choose to apply to a judge under section 8 of the *MCIA* for a determination as to whether a member has violated that Act [s. 223.4.1(15)]. This is discretionary; an application to a judge is not required even if a commissioner believes a contravention of the Act may have occurred, but the applicant must be advised [s. 223.4.1(16)].

Integrity commissioners must publish written reasons for their decisions [s. 223.4.1(17)]. Complaint/inquiry protocols should reflect this, as well as where and how the commissioner's reasons will be made public.

If a commissioner chooses not to apply to a judge, the applicant can do so directly. They have only six weeks to do so, from either the expiry of the commissioner's 180-day inquiry deadline, or the date the integrity commissioner advises that they will not be applying to a judge (whichever comes first) [MCIA s. 8(3)].³⁰

No application to a judge can be made more than six years after the date of the alleged contravention [MCIA, s. 8(6)].

Given these time limits, complaint protocols should require commissioners to notify applicants as soon as possible once they terminate an inquiry or decide not to apply to a judge.

³⁰ The applicant also has six weeks to apply to a judge directly if the commissioner's inquiry was terminated at the start of a regular election: *Municipal Conflict of Interest Act*, *supra* note 4, s 8(3).

Integrity commissioners

Every municipality must make the services of an integrity commissioner available, either by appointing a commissioner [s. 223.3(1)], or by making arrangements for another municipality's commissioner to provide this service [s. 223.3(1.1)–(1.2)]. The commissioner is not required to be an employee of the municipality [s. 223.3(5)].

Integrity commissioners deal with complex, sensitive issues. It is important that they carry out their duties in a way that earns them the trust and confidence of the community and the members whose conduct they oversee. It is also important that the municipality have a formal, transparent appointment process.

Best practices for appointing integrity commissioners

Municipalities should consider the following best practices in making such appointments:

Research potential appointees

During the recruitment process, municipalities should obtain as much information as possible about prospective integrity commissioners' services, skills, experience and availability, in order to make informed decisions about their qualifications. Municipalities should consider factors like experience with local government and municipal law in Ontario, understanding of administrative fairness, and written and oral communication skills.

Appoint by resolution or by-law

When appointing an integrity commissioner or making arrangements to use one appointed by another municipality, municipalities should do so via a resolution or by-law. A new integrity commissioner should be appointed

promptly if the role is vacant, for instance, if the incumbent retires or their term expires. The courts have recognized that an appointment by-law can apply retroactively.³¹

Establish clear terms of reference

Terms of reference that set out the integrity commissioner's duties can help council, the public, and the commissioner understand the role and the processes to be followed.

Terms of reference should detail:

- The duties of the integrity commissioner, including any obligations to report to council;
- That the integrity commissioner is intended to perform in an independent manner;
- The scope of issues that the integrity commissioner can investigate, including the code of conduct and any additional responsibilities assigned by council;
- If and when the integrity commissioner may delegate their duties and the process they should follow to do so. Delegation must be in writing and can be to anyone other than a member of council, according to s. 223.3(3) of the *Municipal Act*.
- Indemnification of the commissioner, as required by s. 223.3(6) of the Act;
- That the municipality or local board will pay the costs associated with a commissioner applying to a judge under the *MCIA* [s. 223.4.1(18)], and specify whether costs of any associated appeals will be covered; and
- Under what circumstances the commissioner can be removed or replaced, including provision for how any ongoing inquiries will be dealt with if this occurs.

³¹ *City of Elliot Lake (Integrity Commissioner) v. Patrie*, 2023 ONSC 223 at para 82.

Set a fixed term

To reinforce their independence and reduce the risk of political interference, integrity commissioners should be appointed for a fixed term, subject to dismissal by council. Council should have the option to renew or extend the commissioner's term, and the authority to dismiss and replace the commissioner when necessary. Decisions to dismiss or replace an integrity commissioner should be well informed, and evidence-based.

Avoid conflicts of interest

Municipalities should require integrity commissioners to declare, as a condition of their appointment, that they have no potential conflicts of interest, including financial interests, which might interfere with their ability to carry out their role independently.

Municipalities should impose an ongoing obligation on commissioners to declare any potential conflicts that might arise during their term, and define the process for doing so.

An integrity commissioner's independence, both real and perceived, from the council, local boards and municipal staff should be maintained to the greatest degree possible. Integrity commissioners should be prevented from taking on other roles or responsibilities for the municipality during the time they serve as commissioner, including acting as legal counsel, municipal clerk, workplace harassment investigator or policy advisor.

When integrity commissioners carry out multiple functions in a municipality, there is significant potential for public confusion, distrust, and both real and perceived conflicts of interest. This practice undermines public confidence in the independence of integrity commissioners and their decisions, and it should be avoided.

Best practices for integrity commissioners

Integrity commissioners play a vital role in local government by providing advice, education, and complaint resolution to municipal councils and local boards. Their findings are significant for the public because they help determine whether local officials are acting ethically and meeting the high standards expected of them.

Integrity commissioners who carry out their duties in accordance with their legislative authority, terms of reference, and complaint/inquiry protocols can foster public confidence in the accountability of municipal governance. The courts have explained that the level of procedural fairness owed by an integrity commissioner is low because their function is investigative, not adjudicative – they can only make findings and recommendations, and their reports cannot cause councillors to be removed from office.³² However, by following best practices for a fair process, commissioners can increase the acceptance of their findings by members and the public.

Know your authority

Under the *Municipal Act, 2001*, every municipality must establish a code of conduct and should, as a best practice, adopt a protocol setting out procedures for complaints and applications to the integrity commissioner. The code and complaint/inquiry protocol are established locally and, aside from four subject areas prescribed by regulation, their content varies from municipality to municipality.

Integrity commissioners should know the scope of their authority and should avoid overstepping their mandate. For example, they should not involve themselves in matters within the jurisdiction of other accountability officers,

³² *Dhillon*, *supra* note 10 at para 49; *Chiarelli*, *supra* note 26 at para 74.

closed meeting investigators, or workplace harassment investigators.

Integrity commissioners must act within their legislated mandate and limit their reviews to issues within their legal authority. They should be familiar with the scope of their authority under the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act*, their municipality's code of conduct, and any relevant terms of reference, complaint/inquiry protocols, local procedures, rules or policies governing ethical conduct. They should also understand the roles of other accountability officers, and of the Office of the Ombudsman.

Although integrity commissioners can review complaints regarding the ethical conduct of council or local board members, they do not oversee the council or local board itself. As the court noted in a 2021 case regarding the City of Ottawa, the council “is not responsible to and is not subject to having its decisions reviewed by the commissioner.”³³

When commissioners choose to delegate their authority to investigate a complaint (as permitted by the *Municipal Act* s. 223.3(3)), they should ensure that relevant local processes are followed and that the parties are informed in writing.

Follow the local code of conduct and complaint/inquiry protocol

Municipalities should adopt protocols to help integrity commissioners carry out their role and inform the public of what to expect. If a municipality does not have a complaint/inquiry protocol, the integrity commissioner may wish to encourage them to do so in accordance with the best practices in this guide.

³³ *Chiarelli*, *supra* note 26 at para 68.

If a municipality has established procedures for inquiries, the commissioner should follow them. If there is a need to depart from an established procedure, the commissioner should inform the relevant parties and provide an explanation in writing.

Among the most common complaints the Ombudsman's Office receives about integrity commissioners is that they take too long to review complaints. Complaint protocols should include timelines for these reviews, and integrity commissioners should adhere to them.

If a time extension is required, the commissioner should inform all relevant parties and provide reasons to support the extension along with a new expected completion date. Undue delays can be unfair for the participants and undermine confidence in the process.

Be familiar with the strict requirements for complaints involving the *Municipal Conflict of Interest Act (MCIA)*

The provisions in the *Municipal Act, 2001* regarding conflict of interest matters are separate and distinct from those related to code of conduct complaints. Integrity commissioners must familiarize themselves with the formal requirements for *MCIA*-related matters. For example:

- A conflict of interest application must be set out in the prescribed form, which includes a statutory declaration from the applicant [s. 223.4.1(6)].
- There is a strict statutory timeline of 180 days for the integrity commissioner to complete the inquiry [s. 223.4.1(14)]. This has significance for applicants, as they have a right to apply to court themselves under certain circumstances.

If an integrity commissioner decides not to apply to a judge for a determination as to whether the member violated the *Municipal Conflict of Interest Act*, the applicant must be informed [s. 223.4.1(16)]. There is no timeframe

set out in the *MCIA* for making this notification, but it is important to do so promptly, as complainants who wish to make an application to a judge themselves have only six weeks to do so, from either the expiry of the 180-day period or the date the integrity commissioner advises that they will not be applying to a judge (whichever comes first) [*MCIA* s. 8(3)].

If the commissioner does not promptly advise the applicant of their decision not to apply to a judge, the applicant may not realize that the six-week limitation period has started. Conversely, if the commissioner does intend to bring the matter to court but does not promptly publish their reasons and intention to do so, the applicant might begin to take steps to do so themselves.

Note that the 180-day time period begins when a complete application is received, regardless of whether the commissioner engages in any preliminary or informal review of the matter. The legislation does not provide for a commissioner to extend the time frame or to postpone commencing an inquiry.

Assess the complaint or application

When a code of conduct complaint or application relating to the *MCIA* is received, the integrity commissioner should understand the events that form the allegation(s), as well as the specific parts of the code of conduct or *MCIA* that have allegedly been contravened. If there are multiple concerns or allegations, the integrity commissioner should carefully consider and assess each one and determine at the outset whether each falls within their authority.

Seeking additional information

Integrity commissioners should ensure that they fully understand the basis of allegations before dismissing them. This may include communicating with complainants/applicants, and providing them with the opportunity

to submit more evidence. The public may be unfamiliar with how to frame complaints or applications, and unclear about the type of information required to support their allegations. We have heard from several who told us about integrity commissioners who dismissed their complaints for lack of evidence without giving them an opportunity to provide additional clarification or materials.

The courts have recognized that commissioners have the authority to communicate with complainants to clarify or obtain additional information about a complaint.³⁴ In a 2016 case involving the City of Brampton, the court noted: “[T]o the extent a Complaint Form does not contain the required information, it is open to the integrity commissioner to contact a complainant and supplement the information provided. There is nothing that restrains an integrity commissioner from doing so”.³⁵

If a complaint or application is unclear or if information is missing, the commissioner should ask for clarification.

Early termination of an inquiry (e.g., frivolous or vexatious complaints)

The Ombudsman’s position is that integrity commissioners should have the discretion to refuse to conduct an inquiry, in order to ensure they use the municipality’s resources efficiently. Many complaint/inquiry protocols empower integrity commissioners to dismiss complaints or applications at an early stage in the process if they are frivolous, vexatious, not made in good faith, or lack sufficient evidence.

Complaints or applications that lack sufficient evidence should be distinguished from those that are considered frivolous or vexatious. The courts have defined “frivolous”

³⁴ *Di Biase*, *supra* note 15 at para 32.

³⁵ *Dhillon*, *supra* note 10 at para 42.

to mean a complaint “readily recognizable as devoid of merit, as one having little prospect of success,”³⁶ and “vexatious” as one made to “annoy or embarrass the opposite party” or conducted in a “less than diligent” manner.³⁷ Prior to making a determination that a complaint or application is frivolous or vexatious, the integrity commissioner should assess the information provided by the complainant/applicant.

Generally, integrity commissioners can also dismiss a complaint or application if it is clear that even if the allegations are proven, there would be no breach of the code of conduct or the *Municipal Conflict of Interest Act*. Some can also be dismissed for lack of jurisdiction. Where appropriate, integrity commissioners should inform complainants/applicants in these cases and make referrals.

When declining to conduct an inquiry or review a matter further, the commissioner should provide reasons for that decision in writing to the complainant/applicant. The commissioner should explain the decision based on the applicable rules and the evidence reviewed, and go beyond merely referring to provisions of complaint protocols.

Before dismissing a matter, the integrity commissioner should ensure the municipality’s complaint/inquiry protocol provides for this and follow any applicable procedural requirements.

Identify the issues

In reviewing complaints, integrity commissioners should identify the issues to be considered at the outset, to avoid unnecessary complications and delay. In a 2016 judgment involving the City of Vaughan (*Di Biase v. Vaughan*),

³⁶ *Pickard v. London Police Services Board*, 2010 ONCA 643 at para 19.

³⁷ *York University v. Markicevic*, 2017 ONCA 651 at para 32; *Henderson v. Wright*, 2016 ONCA 89 at para 20.

the court observed that integrity commissioners have the power to reformulate code of conduct complaints from the public.³⁸

“In exercising the powers conferred upon her, the integrity commissioner must be able to interpret and reformulate complaints submitted by members of the public who may lack specific knowledge of the Code of Conduct and the Complaints Protocol and who may therefore not be familiar with how to identify and formulate alleged breaches.”³⁹

The Ombudsman’s 2019 report, *Inside Job*, which detailed his investigation of a municipal hiring process and a local ombudsman’s review of it, identified best practices for municipal ombudsman investigations. These can be applied to other accountability officers, including integrity commissioners. As the report explains, the first step in an investigation should be to establish a clear plan that outlines the issues or allegations to be investigated:

“Identifying and framing the issues is one of the most important aspects of any investigation. The issues set the course for the investigation; they lead to the questions that must be answered in order to address the issues, which in turn lead to findings.”⁴⁰

Commissioners can decide not to review or investigate some issues raised in a complaint, but continue to review or investigate others. In *Di Biase v. Vaughan*, the court noted that even though the commissioner was required to refer some issues raised in the complaint to the police, she was entitled to continue with her inquiry

³⁸ *Di Biase*, *supra* note 15 at para 39.

³⁹ *Ibid* at para 42.

⁴⁰ Ontario Ombudsman, *Inside Job: Investigation into matters relating to the Regional Municipality of Niagara’s hiring of its Chief Administrative Officer, and its administration of his contract* (November 2019) at para 257, online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2019/inside-job>> [*Inside Job*].

into the other matters raised.⁴¹

Seek out and keep records of all relevant evidence

The *Municipal Act, 2001* provides wide discretion for integrity commissioners to determine what information they need to address complaints in a meaningful and appropriate way, and states they shall have access to all information they believe is “necessary” for their review [s. 223.4(3)]. This includes the discretion to determine which witnesses to interview and what documentation to obtain. They may also choose to conduct an inquiry using powers under the *Public Inquiries Act, 2009*, such as issuing summonses and holding hearings.⁴²

As a best practice, integrity commissioners should obtain all evidence relevant to the allegations before them – particularly in cases where that evidence could determine the outcome of the investigation. Thorough evidence gathering typically requires that investigators speak with complainants/applicants, respondents and other relevant parties, and request relevant documents from all sources, such as meeting minutes, personal notes, emails, files, and social media posts. There may be many potential sources of evidence, including municipal staff and the public, depending on the issue raised.

In addition to ensuring that commissioners have the necessary evidence for their decisions, these steps help demonstrate the fairness of the investigation process itself.

In *Inside Job*, the Ombudsman noted that investigators are sometimes faced with conflicting evidence or dubious witness statements, which might require them to assess whose version of events is more credible and reliable.⁴³

⁴¹ *Di Biase*, *supra* note 15 at paras 200–01.

⁴² *Public Inquiries Act, 2009*, SO 2009, c 33, Sched. 6, ss 33–4.

⁴³ *Inside Job*, *supra* note 40 at para 271.

Seeking out other sources of evidence can help corroborate or refute witness statements.

When providing reasons for their decisions, integrity commissioners should explain the key evidence they considered in making their findings, why they chose to obtain (or not obtain) certain evidence, their reasons for any findings about witness credibility or reliability, and how the key evidence relates to their findings.

Integrity commissioners should keep detailed and thorough records of investigations, including evidence gathered, and notes from discussions with complainants and witnesses.

Provide an opportunity to respond to allegations

Individuals under investigation have the right to be heard and to speak to the complaints made against them. Unless a complaint is dismissed at an early stage, integrity commissioners should ensure that council or local board members who are the subject of complaints or applications have the opportunity to be interviewed or provide statements. As the court in a 2021 case involving the City of Hamilton found, sending the member a summary of the complaint and supporting evidence, if appropriate, can indicate that a fair process was followed.⁴⁴

It may not be necessary to provide certain details to the member under investigation, such as the identity of the complainant or witnesses. However, the member should be provided with sufficient information in order to meaningfully respond to the allegations. This increases the fairness of the process and ensures the integrity commissioner has the necessary information to reach a decision.

Preliminary reporting process

Members of council or local boards who are under investigation should also be given an opportunity to respond to any adverse findings against them and any recommended

⁴⁴ *Kroetsch*, *supra* note 29 at paras 64, 66.

penalties or remedial actions. This can safeguard the procedural fairness of the integrity commissioner's process.

The courts have recognized the ability of members to review and comment on a draft report as part of a procedurally fair process.⁴⁵

Through a preliminary reporting process, additional facts or contradictory evidence may come to light and be considered by the integrity commissioner before a final report is made public.

Communicate with the parties

Integrity commissioners should communicate with the parties involved in a complaint or application as appropriate. For instance, they should acknowledge receipt of complaints, applications, responses, etc. generally and manage the parties' expectations with respect to communications during an inquiry. They should also communicate their decisions and supporting reasons, including their decisions not to investigate or to apply to a judge.

Preserve confidentiality

Integrity commissioners are required to preserve the secrecy of all matters that come to their knowledge in the course of their work [s. 223.5(1)].

However, they may disclose information:

- Where required by law in a criminal proceeding [s. 223.5(2)];
- With respect to advice provided to a member, with that member's consent [s. 223.5(2.1)–(2.2)];
- During an inquiry respecting the *Municipal Conflict of Interest Act*, if the integrity commissioner holds a public meeting, applies to a judge, or when publishing reasons [s. 223.5(2.3)];
- In summary form when providing a periodic report to the municipality on their activities, without

⁴⁵ *Ibid* at para 64.

- including confidential information that could identify an individual [s. 223.6(1)]; and
- When reporting to the municipality or local board as to whether a member has contravened the code of conduct [s. 223.6(2)].

In *Di Biase v. Vaughan*, the court found the integrity commissioner had “significant autonomy regarding the disclosure of her investigation,”⁴⁶ and noted that section 223.6(2) of the *Municipal Act, 2001* “recognizes that when deciding how much information must be disclosed, the integrity commissioner may take into account specific local concerns associated with such disclosure that require confidentiality or protection of informants’ identities.”⁴⁷ Disclosing evidence in a report that, in the integrity commissioner’s opinion, is necessary does not constitute waiver of the integrity commissioner’s discretion to maintain confidentiality of their investigation.⁴⁸

In the 2016 decision in *Dhillon v. Brampton*, the court found a councillor was not entitled to additional disclosure after he was told the “substance of the case and provided with sufficient particulars to enable him to respond to the allegations of the incident,” and given a preliminary version of the commissioner’s report.⁴⁹

Because the extent of disclosure is within the discretion of the commissioner, complainants/applicants and witnesses should be told if their identity will be disclosed, including when it is necessary to disclose a complainant’s name to the member whose conduct is under review.

Issue a public report with reasons

When integrity commissioners report to council at the conclusion of their inquiries, the *Municipal Act, 2001*

⁴⁶ *Di Biase*, *supra* note 15 at para 120.

⁴⁷ *Ibid* at para 121.

⁴⁸ *Watson v. The Corporation of the Municipality of Stirling-Rawdon*, 2021 ONSC 2436 at para 14.

⁴⁹ *Dhillon*, *supra* note 10 at paras 57–8.

provides that they can disclose “such matters as in the commissioner’s opinion are necessary for the purposes of the report” [s. 223.6(2)]. The municipality or local board is required to ensure that reports received from the commissioner are made available to the public [s. 223.6(3)].

Similarly, commissioners are required to “publish written reasons” after they decide to apply – or not apply – to a judge under the *Municipal Conflict of Interest Act* [s. 223.4.1(17)].

Integrity commissioners should issue their findings in writing. It is important that their reports include:

- Summaries of the complaint, the investigative process and the evidence obtained during the investigation;
- The relevant conduct standard or other applicable rules;
- An explanation that clearly explains how the commissioner weighed the evidence against that standard; and
- A clear conclusion based on the evidence.

When reporting on a review of allegations against more than one council or local board member, it is a best practice for the integrity commissioner to issue separate reports for each member, clearly separating the allegations, issues, analysis, and conclusions that are made with respect to each one.

Integrity commissioners can disclose anything they deem necessary in their reports to council, however, as noted in *Di Biase v. Vaughan*, they may choose to protect the identity of witnesses, based on specific local concerns.⁵⁰

Municipal councils may require integrity commissioners to provide periodic or annual reports on their work. In such reports, integrity commissioners can summarize advice

⁵⁰ *Di Biase*, *supra* note 15 at para 121.

they have provided to members, but shall not disclose confidential information “that could identify a person concerned” [s. 223.6(1)].

Know the rules for election years

During municipal election years, integrity commissioners must terminate any ongoing inquiries on nomination day [s. 223.4(7), s. 223.4.1(12)], and they may not be relaunched unless the complainant/applicant or respondent makes a written request within six weeks of voting day [s. 223.4(8), s. 223.4.1(13)].

During the period between nomination day and voting day, no requests for inquiries regarding potential contraventions of the code of conduct or applications for inquiries under the *MCIA* may be made to a commissioner [s. 223.4(9)(1), s. 223.4.1(3)]. They also cannot report on any alleged code contraventions during this period, nor can councils or local boards consider imposing penalties for code violations [s. 223.4(9)(2)– (3)]. The commissioner is also not permitted to apply to a judge under the *Municipal Conflict of Interest Act* during this time period [*MCIA*, s. 8(5)].

Integrity commissioners should familiarize themselves with the statutory requirements for election years and plan ahead as much as possible to complete reviews and investigations before nomination day.

As a best practice, integrity commissioners should advise complainants in advance if an inquiry might be affected by the election period. They should also inform affected complainants and members when investigations must be terminated due to an election.

For any *Municipal Conflict of Interest Act* inquiries that are terminated, integrity commissioners should explain to applicants that they may apply to the courts themselves under the *MCIA* within six weeks of the termination [*MCIA*, s. 8(3)].



WHAT WE DO

The Office of the Ombudsman of Ontario takes complaints about the administrative decisions and actions of more than 1,000 public sector and government bodies in Ontario, as well as French language services and services provided in the child protection sector.

We provide free assistance to people who need help accessing public services or having their rights respected.

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