

September 22, 2020

His Worship David Barrow and Members of Council
c/o Stephen M.A. Huycke
Director of Legislative Services, City Clerk
City of Richmond Hill, ON L4B 3P4
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Dear Mayor Barrow and Members of Council:

2020 Annual Report of the Integrity Commissioner for the City of Richmond Hill

Overview

On December 23, 2019, our firm was appointed to provide Integrity Commissioner services to the City of Richmond Hill. This is our first annual report.

Upon our appointment to the role of Integrity Commissioner, our office inherited 22 formal complaints about alleged violations of the *Council Code of Conduct*. While section 8.3 of the *Integrity Commissioner Procedures* provides that an Integrity Commissioner must file his annual report no later than six months after his initial appointment, the volume of complaints required us to take additional time so that we could review all of the active complaints and carry out a preliminary review of the applicable law, rules and procedures in order to deal with them in a timely manner.

The Mandate of the Integrity Commissioner

The role of the municipal integrity commissioner is a relatively new one in Ontario. The legislation permitting municipal councils to establish a code of conduct and to appoint an integrity commissioner was only enacted on January 1, 2007. The Council of the City of Richmond Hill first adopted a Council Code of Conduct (the “Code”) on March 8, 2010. It was only last year that these requirements became mandatory for all municipalities. Bill 68, the *Modernizing Ontario’s Municipal Legislation Act*, came into force on March 1, 2019 and requires that every municipality in Ontario establish Codes of Conduct for members of council and local boards and makes it mandatory for all municipalities to appoint an integrity commissioner.

Bill 68 also expanded the statutory role of the Integrity Commissioner by amending s. 223.3 of the *Municipal Act, 2001*, to expand the list of the Commissioner’s responsibilities, which are now as follows:

1. the application of the Code of Conduct for members of council and the Code of Conduct for members of local boards;

2. the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards;
3. the application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards;
4. requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member;
5. requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members;
6. requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*; and
7. the provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

Issues We Have Addressed Since December 2019

1) Provision of Advice

We have received one request for advice from a Member concerning obligations under the *Municipal Conflict of Interest Act* ("MCIA").

2) Outreach Activities to Members of Council

On February 11, 2020, I attended an introductory meeting with Members of Council. At this meeting, a consultant to the City gave a presentation on civility between Council members.

3) Complaint Review and Investigation

Although the Integrity Commissioner has a range of potential responsibilities, to date the focus of our office has been on the review and investigation of formal Code of Conduct complaints.

As noted above, upon our appointment to the role of Integrity Commissioner, we inherited 22 formal complaints about alleged violations of the Code, and 3 more have been submitted since our firm was appointed to provide Integrity Commissioner services. These complaints span a 6-month period from July 2019 to January 2020.

As part of our preliminary review of these complaints we reviewed the most recent annual reports from other larger municipalities to get a sense of the expected volume and nature of formal complaints to the Integrity Commissioner.

Municipality	Size of Council	Formal Complaints Received
Toronto	Mayor + 25 councillors	2017 – 16 2018 – 13 ¹ 2019 – 14
Ottawa	Mayor + 23 councillors	2018 – 2 ² 2019 – 9
London	Mayor + 14 councillors	2017 – 14, of which 12 were summarily dismissed
Barrie	Mayor + 10 councillors	2017 – 3
Windsor	Mayor + 10 councillors	2017 – 9, about half of which were denied for a lack of jurisdiction
Richmond Hill	Mayor + 8 councillors	2016 – 4 2017 – 2 2018 – 8 2019 – 29

Although we appreciate that every council is unique, this survey indicated that the volume of formal complaints is relatively high for Richmond Hill, especially in light of its smaller Council. Given the volume and nature of the Code complaints, as well as the fact that all of them concerned conduct alleged to be rude, abusive or disrespectful, as a preliminary step in handling these files we engaged in legal research in order to develop guidelines for assessing whether certain conduct alleged to be rude, abusive or disrespectful actually constitutes a violation of the Code of Conduct.

Although the provision of strong principled reasons for decisions should be the objective of any Integrity Commissioner, we deemed this to be of crucial importance for the files we were investigating given the high level of animosity and interpersonal conflict among current members of Council and between some members of council and public attendees at Council meetings. It is our view that the most efficient and effective way of managing complaint files going forward, and possibly reducing the number of complaints filed, is by establishing clear guidelines about what behaviour does and does not constitute a violation of the Code, and in order to maintain consistency in our approach, we deemed it necessary to investigate a number of the complaints together before finalizing the reports.

In addition, we contacted the Integrity Commissioner for the City of Toronto and spoke with him to discuss – in general terms – some of the issues facing the Council for the City of Richmond Hill and how such issues are handled in the City of Toronto.

¹ In the Annual Report it is noted that 2018 was a municipal election year and that restrictions around complaints and investigative reports at such times might account for lower numbers than usual.

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Disposition of Complaints Submitted to Our Office

Investigated, not sustained	7
Investigated, sustained and reported to Council	0
Dismissed before undertaking investigation	15
Withdrawn by complainant	2
Ongoing	1
	25

In addition to the sheer volume of the complaints, what is noteworthy is that 21 of the 25 complaints are based on conduct that occurred at Council or Committee meetings, including 12 based on conduct that occurred at the Council meeting on October 16, 2019. Broadly speaking, all complaints concern behaviour perceived as rude, abusive and disrespectful. Half of the complaints (12) are between councillors. 11 complaints were generated by one councillor alone. Of all of the complaints that were dismissed before undertaking investigation, the decision not to investigate was based on the lack of jurisdiction of the Integrity Commissioner to do so.

We have not received any *Municipal Conflict of Interest Act* complaints.

4) Associations

Through contact with the Office of the Integrity Commissioner for the City of Toronto, we have been advised of an organization of integrity commissioners from municipalities across the province known as the Municipal Integrity Commissioners of Ontario (MICO). We have been added to the mailing list for this group. They hold two meetings per year. This year's spring meeting was scheduled to be held in Ottawa on April 17, 2020, but was cancelled due to the COVID-19 pandemic.

City of Toronto Integrity Commissioner Batty subsequently organized a virtual meeting that was held on May 14, 2020. At the meeting, integrity commissioners from a number of municipalities discussed some of the issues and challenges they encountered in carrying out their responsibilities. Erin Stoik from our office attended.

Due to the fact that the role of the municipal integrity commissioner is still in its infancy, so to speak, there is not yet an established body of decisions that can provide guidance and precedent as to how the governing rules and legislation are interpreted and applied. For this reason, membership in MICO is an important resource for this office.

We have also learned that the Canadian Legal Information Institute (CanLII) is working with MICO to include integrity commissioner reports in its free, public, online database of Canadian legal decisions and authorities. CanLII is a non-profit organization engaged by members of the Federation of Law Societies of Canada to establish a virtual library of Canadian legal information. The collection of integrity commissioner reports, which is continually being updated, is available here: <https://www.canlii.org/en/on/onmic/>. The collection currently includes 133 reports from integrity commissioners across Ontario. As this database grows, it will be an invaluable resource for guidance and precedent for us and other municipal integrity commissioners in Ontario.

Issues and Recommendations

The volume and nature of the formal complaints made under the Code of Conduct raises concerns that the role and jurisdiction of the Integrity Commissioner is misunderstood and consequently that numerous complaints are made causing excessive spending to the detriment of the Integrity Commissioner being able to carry out other duties and responsibilities such as guidance and advice to members regarding code compliance, internal outreach, education and training, and public outreach.

Lack of Jurisdiction over Complaints about Conduct at Council Meetings

The main issue in a large majority of the complaints was the conduct of councillors at Council or Committee meetings. We reviewed the applicable policies and procedures for the City of Richmond Hill, and also reviewed reports by Integrity Commissioners in other jurisdictions. This analysis led us to the conclusion that the Integrity Commissioner likely does not have the jurisdiction to investigate those type of complaints, as the conduct of councillors at Council or committee meetings is properly addressed under the Procedure By-law.

The Procedure By-law sets clear rules of decorum and gives the meeting chair all the tools necessary to enforce order. A summary of the applicable legislation and procedures that support this conclusion is attached as Schedule “A” to this report. To state otherwise, we are of the view that the Integrity Commissioner lacks jurisdiction over meeting conduct where the subject matter of the complaint falls within the boundaries of the rules and enforcement mechanisms of the Procedure By-law.

The applicable legislation provides that keeping order at Council meetings is the responsibility of the meeting Chair. In addition, all councillors have the right and responsibility to take action in the Council chamber using their authority under the Procedure By-law and Robert’s Rules of Order to call for a point of order to question the Chair as to whether a breach of any of the procedures in the by-law have occurred.³

This being said, the Integrity Commissioner can obtain jurisdiction over such conduct if there is a Council resolution asking the Integrity Commissioner to become involved.⁴ Another option is that Council could amend the Procedure By-law to provide for review of civilian and staff complaints about the behaviour of councillors in Council or in Committee by Council itself or by the Integrity Commissioner at the request of Council.

The above does not address a situation in which a member of the public alleges that he or she was specifically treated unfairly or in an abusive or harassing way by a Councillor at a Council or Committee meeting. Although the Integrity Commissioner may lack the jurisdiction to investigate misconduct at Council and Committee meetings, it is important to note that there is work to be done to improve this conduct in light of feedback from members of the public who find raised concerns by conduct of Members that is described as “intimidating”, “unprofessional” and “egregious”.

These concerns highlight the importance of Members using careful judgment in dealing with and responding to members of the public who attend Council meetings, and to be conscious of how

³ *Pomponi v. Eddy et al.*, 2017 ONMIC 11 (CanLII) at para. 98.

⁴ See, for example: *Peplinski (Re)*, 2018 ONMIC 12 (CanLII) at paras. 32-34, IC Giorno.

tone and the context in which language is used may be interpreted by members of the public. Further, Members should remain alert to the dangers to the effective operation of municipal government and grassroots democracy if members of the public are discouraged from attending or appearing before Council meetings because they appear to be hostile or intimidating environments.

The Role of the Chair in Maintaining Order

A related issue is the importance of Members understanding and abiding by the role of the meeting chair in maintaining order and decorum. Section 4.6(i) of the Procedure By-law provides that it is the exclusive responsibility of the meeting Chair to enforce – on all occasions – the rules and the observance of order and decorum amongst the Members.

As there has been training of Council members since our office was appointed as the Integrity Commissioner, we are of the view that Members are expected to understand and respect the role of Chair in maintaining order and that the Chair understands his powers to control members who may not be exhibiting the appropriate level of decorum at a meeting.

Conclusion

It has been an honour and pleasure to provide Integrity Commissioner services to the City of Richmond Hill and I look forward to continuing to fulfilling my responsibilities as Integrity Commissioner and reporting to Council on the work of this office during the course of my term in this role. I am open to again attending a Council meeting to discuss this report.

Respectfully submitted,



Norman J. Groot
Integrity Commissioner for the City of Richmond Hill