

Office of the Integrity Commissioner 2023 Annual Report

I. Commissioner's Remarks

I was appointed as the Town of The Blue Mountain's ("the Town") Integrity Commissioner in 2018. This is my last Annual Report as the Town's Integrity Commissioner.

Subsection 223.6(1) of the *Municipal Act* states that the Integrity Commissioner shall provide a periodic report to the municipality on his or her activities. This Report covers the period from the October 2022 Municipal Election to December 2023. Since my mandate has been extended to facilitate continuity in the transition to the new Integrity Commissioner, I have included the activities up to March 4, 2024 in this report.

As in past the past reports, this Office received informal inquiries that related to areas that go beyond the mandate of the Office, including but not limited to matters relating to, Council meeting procedural rules, public comment at Council meetings and allegations of staff wrongdoing. These matters were beyond my authority to receive or investigate. Given the statutory limitations imposed on the Integrity Commissioner by virtue of the *Municipal Act* and the Town by-law that created this Office, I am unable to resolve such matters.

II. Issues of Note

Individual Members Involvement in Town Staff Matters

My Office received queries with reference to Members' obligations regarding conduct towards staff and how to appropriately conduct business of the Town, in particular with respect to having conversations with senior officials and the Chief Administrative Office (the "CAO"). In response to these queries, I advised that the rules of the Code enshrine, as a general proposition of a municipal accountability regime, that individual Members of Council must recognize the importance of conducting the business of the Town in accordance with the rules of the Procedural By-law at properly constituted meetings of Council and respect for the professional roles of staff. Members of Council are to strive to create an atmosphere before, during and after Council meetings and through email and social media communications that is conducive to solving issues before Council, using respectful language and behavior in relation to fellow members, staff and the public.

The Code has updated definitions for, "Abuse", "Discreditable Conduct" and "Discrimination and Harassment". As part of the deliberations on the most recent revisions to the Code approved in November 2021, Council focused in particular, on these definitions to ensure that going forward, their commitment to a respectful workplace would be enshrined in the Code rules, vis a vis Council staff relations, as well as respectful conduct among Members of Council.

Under the Code “Abuse” is defined an attempt to control the behaviour of another Person through a misuse of power, trust or dependency and may include an attempt to control the behaviour of another person through improper use of office or position of authority. Under the Discreditable Conduct heading, all Members of Council are required to ensure that their work environment is utterly free and completely devoid of discrimination, personal and sexual harassment. Members shall be respectful of the fact that Employees work for the Town as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate perspective. Where a Member has a concern about personnel matters, he or she should speak with the Mayor and the CAO about the concern or alternatively raise the issue with Council during an in camera session.

Finally, Members are responsible for avoiding communications that may constitute Harassment, Intimidation, Bullying or disrespectful behavior, whether in person, in writing, by public comment and on-line, including via Social Media. A Member may be found to have breached the Code if any of the above have occurred. A pattern of conduct in which a Members actions are Intimidating, uncivil, disrespectful or rude, may lead to a finding of Harassment. A pattern of behavior that is perceived to be harmful (e.g. disrespectful) by the target, may constitute Harassment or Intimidation even if the Member did not intend their behavior to have that effect.

In a 2021 article in Municipal World, Professor David Siegel and Michael Fenn set out that Members of Council and staff must be aware of local concerns, however they bring different perspectives:

"Senior staff members derive their legitimacy from specialized professional expertise. The best public policy comes about not when one side defeats the other and gets its way, but when a policy resides at the intersection of the two interests [in the best interests of the public]. The two groups need to find solution that reflect both the local culture and rational professional values."

As a best practice, Members of Council should not publicly state or imply that a particular public servant, or a group of public servants, acted for political or private motivations or in a way that is negligent or that failed to meet professional standards. Serious concerns about staff misconduct should be raised with the public servant's supervisor, the CAO, or as a last resort, through a decision in closed session, to have the matter reviewed by an independent third party. As stated by the former Integrity Commissioner of the City of Toronto, statements made at public meetings that disparage staff will not normally be tolerated by a Chair in a Council proceeding, and could result in a Councillor making the statement being found to have contravened the Code of Conduct.

Members' Comments at Council and Committee Meetings

This Office received informal concerns with respect to comments made by Members of Council at Council and Committee meetings. Council meetings are where decisions are made that give direction to staff and Council delegates as a body, the operationalization of those policies to the CAO and her or his staff.

It is not within the jurisdiction of the Integrity Commissioner to address decisions made by the Town Council . If an individual believes that the Town Council has made a decision which was uninformed or premised on incorrect information, the individual may follow whatever process may be in place to vary it by, for example, a request for reconsideration, if this is permitted under the rules of the Procedure By-law or seek a judicial review.

Members of Council are expected to conduct themselves at meetings with decorum. Respect for members of the public, fellow Members and staff requires that all Members show courtesy and respect in their comments.

Staff has authority to make recommendations to Council in their professional capacity. Whether Planners, Engineers, HR Professionals, Bylaw enforcement or Fire Services, staff have subject matter expertise . When decisions have been delegated through by-law to staff or on the basis of their subject-matter expertise, staff have authority to make independent decisions and Members of Council cannot fetter or interfere with that decision-making authority.

Members of Council have the authority to voice their opinions with respect to matters before them on the Council or Committee Agenda. However, comments that cast aspersions on the veracity, accuracy or integrity of staff work, necessarily raise issues of the professionalism of staff themselves. Ontario municipal Integrity Commissioner decisions generally have found that these types of comments amounted to a suggestion that staff have fallen short of her or his professional capacities and this would not be appropriate to raise in an open session of Council.

Conversely, if a Member of Council asks questions seeking clarification or further information, without disparaging the professional integrity of staff, generally these are comments that fall within fair comment of a Member during a Council meeting.

III. Requests for Advice from Members of Council

1. A Member of Council asked if the fact that their property would benefit from a municipal drain system would create a pecuniary interest under the Municipal Conflict of Interest Act (the "MCIA") that would disqualify them from participating or voting on the matter at a Council meeting.

I advised the Member that not every conversation that includes a Member's property creates for him/her a pecuniary interest. The question to be asked is whether the Member's property value will decrease or increase or will she or he be saved money or have to expend money (for cleanup due to flooding, run off, etc.) as a direct result of the "constructing of a drain which will tie into the sewer system subject of the matter before Council. As stated in *Bowers v. Delegarde* at paras. 76-78, possible future plans do not qualify as a pecuniary interest under the MCIA. Generally, there must be a real issue of actual conflict or, at least, there must be a reasonable assumption the conflict will occur. The pecuniary interest must be definable and real rather than hypothetical.

Further, under section 4 of the MCIA (Exceptions) clause (e) states that section 5 does not apply to a pecuniary interest in any matter that a member may have:

(e) by reason having an interest in any property affected by a work under the *Drainage Act* ...].

2. A Member asked if they were allowed to serve on the memberships committee of a Town Board and if this would be a contravention of the Code.

I advised the Member that being a Member of Council does not disqualify one from being a member of Town Committees and organizations. A member needs to be mindful of potential conflict of interest if, for example, the organization for which she or he is a member, goes before Council for a grant or use of a Town facility at a reduced cost or no cost, or that raises any other financial considerations.

Subsection 4 (h) of the Municipal Conflict of Interest Act (the "MCIA"), sets out that the conflict of interest disqualification provisions do not apply to a pecuniary interest that a member may have by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board, or as an appointee of a council or local board. Therefore, if the Member is appointed by Council as a Council appointee to the a Town Board, there would be no conflict that disqualifies the Member. If, on the other hand, the Member is not a Council-appointed member of a Local Board, all Code and MCIA rules apply.

Generally, I advised Members of Council that the Code of Conduct does not act as a barrier to having a career separate and apart from a member's role as an elected official, participating in activities in the community that promote, for example, arts, heritage and the like. If a member is invited to a community event as councillor rather than private citizen, as long as they are mindful that a) they are not representing Council or the municipality (unless the Mayor has delegated this to the member) and b) the member does not make statements that would reasonably be perceived to represent an entrenched position, they are not in contravention of the Code. However, a Member of Town Council must ensure that if they have a private interest in a matter before Council or a Committee of Council/Local Board, that they declare a pecuniary interest, not participate in the discussion about the matter and not vote on the matter or have not previously made statements that will be perceived as having predetermined their vote on the matter.

3. A Member asked if Members of Council attending an opening of a company site could be in contravention of the Closed Meeting Rules of the *Municipal Act*.

I advised that as Integrity Commissioner, I do not have authority to receive and review complaints about closed meeting rules. However, I advised that generally speaking, with reference to quorum being formed, decisions of the Ombudsman Ontario (the default Closed Meeting Investigator for municipalities) have set out clearly the requirements of a meeting.

Section 238(1) of the *Municipal Act, 2001* states that:

"meeting" means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

(a) a quorum of members is present, and

(b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Further, I advised that the general rules in this matter are guided by the decisions of the Ombudsman Ontario. In a December 13, 2021 decision of the Ombudsman Ontario regarding the Town of Wasaga Beach, relating to a ground-breaking ceremony at which all Members of Council attended, the Ombudsman found that the 2 requirements of an open meeting were not met and thus, there was not a meeting for the purposes of the Act.

The Ombudsman found that:

"[...]all members of council were present at the ground-breaking ceremony, meaning there was quorum. However, the second requirement under the above definition was not met. There is no evidence to suggest that there was a discussion between council members or that municipal business was materially advanced. Therefore, the ceremony was not a meeting under the Act and the open meeting rules do not apply."

If the number of Members of Council that will form quorum for a municipality, will be in attendance at an event, Members must be advised that there can be no discussion amongst them at any time during the event, of any council business that would materially advance the business or decision-making of the municipality. If these instructions are followed, the mere assembly of a number of Members of Council that form quorum, will not satisfy the definition of a "meeting" and thus the open meeting rules of notice, etc., will not apply.

IV. Code of Conduct Related Inquiries

From Members of Council	From the Public	From staff	Total Inquiries
12	8	0	20

Code of Conduct Complaints

	2023
Formal complaints	1
- Disposition	1 Report to Council with finding of no contravention
Informal complaints	5
- Disposition	

	1 Dismissed – Council Members Use of Social Media – Training recommended 4 Dismissed – Not Within IC Jurisdiction
Total Code of Conduct Complaints	6

Code of Conduct Inquires – Non-Code application

Relating to staff from staff	0
Relating to process from staff	0
Relating to staff from public	3
Relating to process from public	4
Total non-Code related	7

Total Inquiries Received – 33¹

V. Education and Outreach:

- Conducted new Council Member Code Education Session in collaboration with a Municipal Law Expert on December 15, 2022.
- Advice and information to Members of Council and Local Boards upon request.
- Council Education Session – August 24, 2023 – Working With Respect Under the Code of Conduct
- Advisory Memorandum on Council Member Use of Social Media – February 2024

VI. Statement of Expenditures

\$34,691.00 – Integrity Commissioner Services (including remuneration for advice to Members of Council and Council, Investigation of Formal Code Complaints, Facilitation of Informal Complaints, Council Orientation and Education Sessions, Development and Drafting of Memoranda and Information Bulletins).

Closing Comments

In conclusion, I would like to extend my appreciation to the Town Clerk, Ms. Corrina Giles, who has assisted me in this reporting period and throughout my time as the appointed Integrity Commissioner in an understanding of the rules and policies of the Town and the Town's Procedural By-law. In addition, I would like to extend my sincere thanks to CAO Shawn Everitt. I have worked with many CAO's and City Managers in my time to date as an Integrity Commissioner for over 30 municipalities and CAO Everitt stands head and shoulders above most in his dedication to the Town of The Blue Mountains, staff and Council, through his care, compassion and integrity. It has been an honour and a privilege fulfilling my mandate as Integrity Commissioner for the Town of The Blue Mountains.

¹ Includes queries to the Office of the Integrity Commissioner Code and non-Code related.



Respectfully submitted,




Suzanne Craig
Integrity Commissioner