

Office of the Integrity Commissioner's Annual Report December 2020 – December 2021

A. Overview

The Office of the Integrity Commissioner is an independent office that reports directly to the Town of The Blue Mountains Council. The Office is responsible for providing policy advice to staff with respect to Town policies and procedures that intersect with the Council Code of Conduct, conducting formal complaint investigations and informal complaint resolution, advice and education to Members of Council and Local Boards on issues of ethics and integrity. This is done to maintain high ethical standards at the Town of The Blue Mountains (the "Town"). Elected and appointed officials are required to follow the Council and Committee Member Code of Conduct (the "Code") . The Integrity Commissioner's primary role is to ensure the Code is followed, and this includes:

- Addressing any violations made against the Code
- Assessing requests and complaints made by a member of the public or Council/Local Board
- Educating Council/Local Board Members on the rules of the Code
- Outlining recommendations to deal with any violation that have been found following an investigation.

This Report covers the period from December 2020 to December 2021.

B. Issues of Note

i. Comments made by Members of Council and Local Boards at meetings

Early in this reporting year, this Office received several informal complaints and 1 formal complaint that had as the subject concerns about comments made by Members of Council and Local Boards at Council and Committee meetings. Generally speaking, if information, including social media posts, inaccurately represents a decision of Council or Committee, or purports that a decision of Council was incorrect because it did not take into consideration public comment or ignored public experts, a Member of Council may point this out through the prescribed process (i.e. at Council when the item is properly in discussion as an agenda item). Section 6 of the Code prohibits Members (of Council or volunteer members of Local Boards and Committees) from impugning or maligning a debate or decision or otherwise eroding the authority of Council or Committee. Members of Council and Local Boards/Committees can comment on what transpires at a Council/Committee meeting, stating what happened at a Council or Committee meeting with a view to informing constituents. This is part of the role of a Councillor, in particular the head of council. In addressing the complaints and matters

raised with this Office, I advised that the what the Code prohibits is a Member denigrating a decision of Council or Committee because she or he does not agree with that decision. If the matter is properly before a Council Committee and not Council, the voluntary member may consider bringing a motion to seek clarification from Council.

Chairs of Committee, including voluntary members, have an obligation to encourage respect for the Town's policies, bylaws and decisions. Further, Members generally, have an obligation to accurately communicate decisions of Town Council and Committees, even if they disagreed with the decision, so that there is respect for and integrity in the decision-making processes of Council and local boards. A Member may state that she or he did not support a decision or voted against the decision, but should refrain from making disparaging comments about Members, staff and the processes and decisions of Council or in the local board/committees.

ii. Inaccuracy of public comment

Very often matters discussed at Council and Committees may form part of continued discussions from previous staff reports, may relate to internal projects of the administration, interactions with the County or a conservation authority, law enforcement process, other municipalities and Provincial governments. From time to time, misinformation can be disseminated intentionally or inadvertently. As has been seen generally in various jurisdictions, misinformation may be weaponized to influence politics, economics, and social wellbeing, from potentially affecting elections and referendums to inciting prejudice, confusion, and violence. Deceptive content can often come from objective sources, including members of the community and media sources. This phenomenon of misinformation challenges government to inform the public it serves on what information is published about the government, its services and accurately portray the decisions of the government. The internet and social media have enabled misinformation to evolve and reach the public quickly and for this reason, it is important for local government to ensure there is an accurate record of its services and decisions publicly available to its residents.

As Integrity Commissioner, when I look at comments made by Members of Council or Local Board/Committee, the test of appropriate comment is reasonableness. Where the words are not disrespectful, abusive, intimidating on their face, then the individual claiming the words are disrespectful through a Code complaint must submit supporting documentation to demonstrate that the published or spoken words were contrary to the Code. In deciding whether to pursue an investigation of a complaint and therefore, if the words used by a Member meet the threshold of intimidation or harassment, this Office will look at the words according to the meaning they normally have in everyday language, as well as the reasonable effect of the same. As explained in the informal complaints I negotiated, as Integrity Commissioner I will look at the context within which the comments took place on a case-by-case basis.

Some of the informal complaints related to allegations that a Member of Council or a Local Board had conferred preferential treatment on certain groups. I have endeavored

to explain to parties bringing forward concerns, that a Member may always seek information about a matter on the meeting agenda so that they may fully represent the public and act in the best interests of the Town. However, she or he should never stand in for an individual, individuals or a group. The Member may bring forward concerns of their constituents but not speak on behalf of an individual or group: a Member of Council represents the public but is one part of a whole that cannot effectively function as set out in the Municipal Act if individual Members take entrenched and disparate positions in favour of views that do not consider the approved policies and best interests of the Town. If a Member chooses to seek further information about a matter, they may certainly do so, however without casting aspersions on the actions or decisions of staff or Council and avoiding taking an adversarial position contrary to Council. All Council, Local Board and Committee Members have the responsibility under the Code to ensure that they not only make honest statements and avoid that which will mislead Council or the public, but they have a responsibility to refrain from denigrating decisions of Council, and an obligation to maintain integrity in the Town's statements, act in conjunction with other Council, Board or Committee members in fulfillment of the purpose of the Council or local board and avoid "siding" with any one group.

Finally, a Member of Council, Local Board or Committee cannot use their office to influence matters in a way that gives treatment to one resident that would not be given to all other residents.. As I have pointed out in a July 2019 Memorandum to the Town:

"there is no doubt that an elected member of The Blue Mountains Council could champion a community cause: for example, to advocate for the municipal support of community preservation of parkland. However, promoting or championing the position of one site over another for the location of particular development, may result in violations of the Code of Conduct, if this is based on siding with a particular group to the exclusion of the best advice of staff, as this action may be perceived as prejudgment or bias..."

The Mayor has often taken a leadership role in an attempt to mediation division on Council and even in the community. This is an appropriate role of the Mayor as set out in the Municipal Act as head of Council has an obligation and duty, similar to the Speaker of the House¹, to maintain decorum at Council, facilitate the decision-making authority of Council and the protect the integrity of staff's professional and subject-matter expertise.

iii. Respect for the Work of the Administration

Some of the matters brought forward to my Office raised concerns that the Code prevented Members of Council or Local Boards from querying staff of matters in staff

¹ The Speaker has ruled that Members have a responsibility to protect the innocent, not only from outright slander but from any slur directly or indirectly implied, and has stressed that Members should avoid as much as possible mentioning by name people from outside the House who are unable to reply and defend themselves against innuendo. <https://www.ourcommons.ca/marleaumontpetit/DocumentViewer.aspx?Sec=Ch13&Seq=4&Language=E> In a later ruling following a point of order, Speaker Fraser observed that the use of suggestive language or innuendo with regard to individuals or an individual's associations with others can provoke an angry response which inevitably leads the House into disorder.

reports or even why staff reports had not been brought forward on particular matters of note. I advised that any Member of Council may request information they believe is needed to carry out their function as an elected official. They may seek guidance from the Town Clerk on whether a notice of motion is the best way forward to obtain the information and what the content of the motion may include. A Member should not include in their request for information, suggestions regarding why the information has not been provided to date. Innuendo is a tool through which meaning is attributed to words through inference or implication. The fact that a Member may require information that they believe will provide an informed understanding of an issue may be a legitimate position. That the information has not been provided because of some nefarious intent of staff or perhaps due to their omission of a duty, is inferring wrongdoing. This is not seeking information; this is denigrating staff and is conduct not permitted under the Code. Seeking information is always the right of a Member of Council, Committee or the public, through the appropriate processes and approved procedures, in accordance with the procedural by-law and refraining from disrespectful commentary with innuendo of wrongdoing. If there is a belief that there has been wrongdoing, the Member should consult with the Chief Administrative Officer who will advise on the most appropriate course of action under approved processes.

iv. Conflicts of Interest

Many have brought forward their concerns of the belief that when an elected or appointed official has a dual role, they necessarily must be gaining an unfair advantage for her or himself or business associates based on the offices they hold both on Council and the Local Board and that a conflict of interest exists under the *Municipal Conflict of Interest Act* (the "MCIA") that disqualifies the Member of Council for participating in any discussions that involve the Local Board. Similarly, it is often assumed by the public as evidenced by complaints received in this reporting year, that the role of an individual who is a volunteer member of a local board with private interests in the community, triggers a conflict of interest under the MCIA for which, not only must the Member declare a conflict, but often there exist unethical actions are at play. I found no basis for this position in all the matters that came to my Office. The presence of private interests i.e., holding a position of officer in a private organization in the municipality, did not create a conflict or bias in respect to the decisions before the local board because I found that the volunteer members did not curry favour for the private business associate of the other organization. The purpose of the MCIA has been described throughout the case law, and most frequently from the Divisional Court's decision in *Moll v. Fisher*², Robins, J. stated as follows:

The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process ***in respect to matters in which they have a personal economic interest***. The scope of the Act is not

² *Moll v. Fisher* (1979), 8 M.P.L.R. 266 (Ont. Div. Ct.)

limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest.

There is no need to find corruption on his part or actual loss on the part of the council or board. So long as the member fails to honor the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motives, he is in contravention of the statute. (Emphasis is mine)

C. Code of Conduct Related Inquiries

From Members of Council	From the Public	From staff	Total Inquiries 2020-2021
11*	22	4	37

*Including Advice relating to Pecuniary Interests under the *Municipal Conflict of Interest Act*

Code of Conduct Complaints:

	Dec 2020-Dec 2021
Formal complaints 1 Dismissed 1 Informal Resolution 1 Investigation with Report to Council - Allegations Not Sustained	3
Informal complaints 7 Dismissed 5 Resolved**	12
Total Code of Conduct Complaints	15

**Through Mediation with the Integrity Commissioner

D. Office Expenditures

\$31,753.00 Annual Stipend for Integrity Commissioner Services and office expenses (including remuneration for Complaint investigations, written advice to Members of Council and Local Board Members, and other office expenses).

E. Conclusion

The period covered by this report saw the protracted reality of a new normal and a new way of Town meeting management and doing business as a result of the global pandemic. The change from face-to-face meetings to virtual meetings led to some conduct triggering Code rules, in particular the rule of decorum. With many high-profile issues, Members had to express their concerns through Zoom and social media. At the same time that virtual meetings continued as a regular Council and Committee meeting format, world events highlighting historical biases, as well as economic disparities impacted the discussion of matters being discussed at Council and Committee debates.

The Municipal Integrity Commissioners of Ontario (MICO) bi-annual conference was held on November 4, 2021. Over 35 Integrity Commissioner from across Ontario attended. Presentation topics included the Changing Role of the Integrity Commissioner, the Provincial Consultation on Codes of Conduct, Councillor Misconduct and Social Media, Intersection between Code Breaches / Councillor obligations and Lobbyist Rules.

The Association of Municipalities of Ontario (AMO) was asked during its December 2020 consultation meeting with the Minister of Municipal Affairs and Housing to provide input on potential amendments to council member related accountability procedures at the municipal level. AMO provided a position paper to the Minister on February 3, 2021. The consultation is being led by Jill Dunlop, the Associate Minister of Children and Women's Issues "to hear from members of council, municipal associations as well as municipal staff on how to ensure that municipal staff and officials are supported and respected in the workplace." On March 5, 2021 the Province invited identified groups at the municipal level to provide comments on measures to 'strengthen municipal codes of conduct', through obtaining input on 'ways to increase accountability of council members. The public consultations were being conducted to create standards at municipal councils that will ensure a safe and respectful workplace that allow Members to carry out their duties of office ethically and responsibly. AMO's recommendations to the Minister included:

- Increased financial penalties to encourage compliance.
- Suspension from office for certain violations.
- Removal from office in certain circumstances.
- Better training and standards for integrity commissioners.

The consultation process concluded on July 15th, with comments by the Minister anticipated in Q1 2022.

I consulted with the Town Clerk on the development of the Use of Corporate Resources for Election Purposes. In addition, given that 2022 is a municipal election year, in October, I submitted to the Town Council the Election Year Frequently Asked Questions (FAQs) to provide Members of Council and Local

Boards with guidance on how the Code rules govern their role as elected officials of the Town of The Blue Mountains in respect of election and campaign-related activities.

A Final Word:

The Code is an ethics document containing approved rules upon which Members of Council have agreed that their conduct will be measured. In order for this Office to fairly apply the Code rules to the actions and behaviour of individual Members, the values, vision, processes and rules of the Town must be understood and respected by all of Council. During this reporting year, the Town undertook a review of the Code of Conduct, with input from Members of Council, the public and the Integrity Commissioner. It continues to be my pleasure and honour to serve as Integrity Commissioner for the Town and to report to a Mayor and Council that have demonstrated, through a global pandemic and some very challenging Code complaints, a willingness to have difficult discussions understanding that this can take place while following the approved ethical process of the Code. I look forward to continued work on updates to the Code of Conduct and training for Members of Council and Local Boards. As I write today, the future appears to be less uncertain, and though there have been some missteps, I applaud the efforts of Town Council under the leadership of Mayor Soever who I have seen endeavour to live out and make relevant, integrity and accountability in the year covered by this report.

Respectfully submitted,



Suzanne Craig
Integrity Commissioner