

Office of the Integrity Commissioner's Annual Report Town of Gravenhurst May 2019 – May 2020

Commissioner's Remarks

I was appointed as the Town of Gravenhurst's ("the Town") Integrity Commissioner in March 2019. It has been 15 years since the Province of Ontario put in place the amendments to the *Municipal Act* and the Accountability and Transparency section of the Act came into force. Since then, there has been a slow start to the building of ethical decision-making regimes. Changes resulting from Bill 68 the *Modernizing Ontario's Municipal Legislation Act, 2017* to the *Municipal Act, 2001* passed in May 2017 have resulted in a broader scope of responsibilities for the Integrity Commissioner, most notably, the inclusion in the Integrity Commissioner's mandate of review and investigation of *Municipal Conflict of Interest Act* complaints. These provisions come into effect on March 1, 2019.

The Town's amended Council Code of Conduct has incorporated all of the legislated changes resulting from Bill 68. Some of the changes included:

- Expansion of the scope of the Integrity Commissioner's authority to include the application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* (MCIA) (s. 5, 5.1 and 5.2 outline the duty of members to declare conflicts of interest);
- Requests from members of Council or a local board for advice/obligations;
- Provision of educational information to members of Council, local boards and the public about the municipality's Council and Committee Member Code of Conduct and the MCIA;
- Requests from members of Council or a local board for advice from an Integrity Commissioner must be made in writing;
- Advice provided by an Integrity Commissioner to a member of Council or a local board must be in writing.

In the period covered by this Report, issues of note included the following:

- The roles and responsibilities of members of Local Boards;
- Confidentiality rules under the Code of Conduct;
- Whether a Member of Council can participate in holding the executive positions on community groups;
- MCIA and Code of Conduct conflicts of interest.

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. In the Report, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned. This Report covers the Council term from May 2019 to May 2020.

Many questions were raised by both Members of Council and the public in respect of Council Members' holding an executive position on the board of community groups. I advised that the MCI (s.5) prohibits a Member (of Council or a local board) from participating in a meeting, influencing or attempting to influence or voting on a matter for which the Member has a direct or indirect pecuniary interest. Section 4 of the MCI sets out the exceptions to ss. 5 and 5.2. Of relevance to Members of Council, subsection 4(h) states that Sections 5 and 5.2 do not apply to a pecuniary interest in any matter that a member may have:

(h) 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 by reason only of the member being a member of a board**, commission, or other body **as an appointee of a council or local board**.

Therefore, if the Council of Gravenhurst appoints one of the Councillors to the Chamber of another group, as a Council representative, then the Member is not disabled from discussing or voting on a matter at Council or Committee of Council on an item in which the Chamber has a pecuniary interest. I did however underscore, that the perception of conflicts, real or apparent, influences public confidence in how elected officials discharge their elected duties of office and a Member should not hold executive office on a community group board while they hold office as an elected office of Town Council.

My Office also received queries with reference to Members' obligations regarding conduct towards staff and how to appropriately conduct business of the Town. 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.

I reminded Councillors that as a general proposition, Members of Council should not conduct Town business via email and when Members communicate through informal email and verbal communications, they must do so with decorum. Members of Council should not communicate via email or otherwise in such a way as to denigrate the decisions of Council or the professional reputation of staff. All Members of Council are reminded to conduct themselves with appropriate decorum at all times, including in their electronic communication with one another, Town staff and the public. Town business should be conducted at appropriately convened meetings and official email communication should be conducted on official email accounts.

This Office received informal inquiries that related to a vast array of areas that go beyond the mandate of the Office, including but not limited to matters relating to, Labour Relations

matters. These matters, in particular Council decisions regarding Town-wide issues and staffing, were beyond my authority to 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 issues.

Given the authority of Integrity Commissioners to provide advice to Members of Council on their MCIA obligations, my Office explained to some Members of Council that if they believed they may have a conflict in respect to the MCIA and that this would be an ongoing issue, they may provide my Office with a “*due diligence letter*”. This is not a statutory construct, but rather the practice of some municipal integrity commissioners to recommend that Councillors who have a (parent, spouse or child) active in the community or who have a business in the community, the existence of which may trigger a pecuniary interest for the Member, draft and submit to the Integrity Commissioner, a *due diligence letter* as a demonstration of the Member's understanding of their ethical obligations under the Code, legal obligations under the MCIA and that they have sought out clarification and advice from the Integrity Commissioner.

My Office has advised Members of Council that a due diligence letter may include a statement setting out a Member's:

- a. understanding that the facts of their unique circumstances may create a real, potential or perceived conflict of interest under the MCIA;
- b. understanding that the MCIA sets out a Member's obligation where there is a real or perceived direct, indirect or deemed pecuniary interest;
- c. understanding that where she/he has a pecuniary interest in a matter at a meeting before Council, the Member must declare the interest, avoid attempting to influence the discussion or vote before, during or after the vote, leave the room if the matters is being discussed in closed session;
- d. having raised the potential conflict of interest with the Integrity Commissioner and having obtained advice on the application of the MCIA and the Code provisions to the Member's unique circumstances, the Member understands that they must avoid both MCIA pecuniary interests, as well as, real or perceived Code conflicts in which their participation in a decision may be perceived to afford preferential treatment to a spouse, child or parent.

The *due diligence* letter can be general in nature but should contain sufficient detail to convey that the Member understands how the rules of the Code and the MCIA apply to his/her unique circumstances (i.e. if a Member's parent, spouse or child has a commercial establishment in their ward and a matter is being discussed at council or if a Member's spouse/child/ parent or other family member has an active role in a community organization).

Finally, my Office received several queries from Councillors and members of the public with reference to whether Members of Council would contravene the rules of the Code if they spoke with the public. In response, my Office advised that it is not a Code breach to speak with staff in or out of the Town Hall, if these are general conversations to inform about general Town and/or Council business or social interactions. However,

where there is a discussion about employment status, discipline, Town business or complaints, a Member of Council should follow the Town protocol is in place to address these issues and should not take carriage of the matter. A Councillor does not have authority to make decisions except as part of Committee or Council.

Code of Conduct General Inquiries

From Members of Council	From the Public	From staff	Total Inquiries
32	10	6	48

Code of Conduct Complaints

	2019-20
Formal complaints	2
- Disposition	1 Dismissed 1 finding of contravention that was committed through inadvertence.
Informal complaints	7
- Disposition	4 Negotiated- resolved 3 Dismissed
Total Code of Conduct Complaints	9

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	9
Total Non-Code Related	12

Total Inquiries Received – 69¹

Education and Outreach:

On June 25, 2019 and October 28, 2019, I provided Council training sessions. Topics covered at the session included: roles and responsibilities of the Integrity Commissioner and; Code complaint investigation procedure, confidential information and close meeting rules and the rules of the *Municipal Conflict of Interest Act*.

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

Statement of Expenditures

\$14,336.50 – Integrity Commissioner Services (including remuneration for advice to Members of Council and Council, Investigation of Code Complaints and Professional Fees, Delivery of Council Education Session, mileage, office supplies).

Closing Remarks

The activities of the Office of the Integrity Commissioner in the period covered by this Annual Report have been focused on developing companion documents to Town policies and providing education and clarification by way of written and oral advice to individual Members of Council, Town staff and the public about the application of the rules of the Code and the role of the Integrity Commissioner. The majority of inquiries that came into this Office were with respect to matters covered by MCIA rules and the obligations of Members in respect of their roles in other community groups.

My responses to the questions raised by the public in queries received by email correspondence and telephone calls, was to direct individuals to existing Town processes, to the Chief Administrative Officer (CAO), or I collaborated with the CAO and Town Clerk to develop information bulletins to assist in a better understanding of the intersection between the Code rules and Town policies.

Members' Public Comment on Matters Before Council:

The rules of the Code were not put in place to stifle the opinions of Members of Council, but rather to ensure the avoidance of undue influence and to ensure fairness in decision making. The fundamental principles of the Code require a Member to make every effort to participate diligently in Committee and Council discussions with good faith and care. A Member may state that he or she did not support a decision or voted against the decision. However, a Member should refrain from making disparaging comments about other Members of Council or the Town/Town's decision-making process. While each Member has a right to speak on a matter with conviction and state their own position, the Member should not denigrate a decision of Committee or Council. A Member should clearly distinguish their own personal views from the position of Committee or Council when making public statements. While Parliamentary privilege grants law makers in certain legislatures a protection against civil or criminal liability for statements made in the course of their legislative duties and while the Code was not put in place to infringe on free speech, an individual Member of Council must refrain from making disparaging comments about Council's processes and decisions, or the actions of staff. While a Member of Council may publicly state that they did not support a decision of Council or that they voted against a decision, they must not denigrate the Council decision when responding to a member of the public or otherwise in public statements as this will undermine the confidence in decisions of the Town Council and the policies and by-laws of the Town.

A Member of Council recognizes the importance of cooperation with other Members and respect for the professional roles of staff. Members are required under the Code, to strive to create an atmosphere during Committee and 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.

Of the 69 inquires that were received by the Office of the Integrity Commissioner in this reporting period, only 9 were Code of Conduct Complaints against Council Members. Of the 9 Code complaints, it is important to underscore that only 1 reached the level of a Formal Complaint with an investigation report going to Council with recommendations. The other Formal Complaint was dismissed. Four of the informal complaints were resolved informally and three were dismissed as there were no grounds to continue addressing the matter through the informal Code process. While some individuals were not pleased by my decision to not commence a Code investigation in response to raising their concerns with this Office, the purpose-driven function of the Complaint Protocol allows the Integrity Commissioner the discretion to decide not to commence an investigation or discontinue an investigation where it becomes apparent that there are insufficient grounds to continue or if the matter is frivolous or vexatious.

In conclusion, I would like to extend my appreciation to the Town Clerk, Ms. Kayla Thibeault, who has assisted me in scheduling introductory meetings, organizing Council Member education sessions and assisting me in navigating the various Town policies and processes.

Respectfully submitted,



Suzanne Craig
Integrity Commissioner