

Office of the Integrity Commissioner (Markham)

*Presented by Charles Harnick for ADR
CHAMBERS*



Function

An Integrity Commissioner has two primary functions:

1.

2.

**Distinction from
Ombudsman**



**1. Deal with
complaints or
requests for
inquiry**



2. Give advice to Council / Council Members



COMPARISON: INTEGRITY COMMISSIONER VS OMBUDSMAN

- An Integrity Commissioner deals with complaints or requests for inquiry related to the conduct of Council Members and/or Committee Members
- A Municipal Ombudsman deals with complaints about municipal government actions and decisions, not related to the code of conduct

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**City Clerk will
forward complaints**

Integrity Commissioner: not a named individual for Markham– File is assigned to an approved ADRC Investigator for the Office of the Integrity Commissioner

Actionable

**Not
Actionable**

Actionable

- Complaint with respect to non-compliance with the Council Code of Conduct



Not Actionable

- Unrelated criminal activity
- Unrelated civil matters
- Not a complaint with respect to non-compliance with the Council Code of Conduct
- Complaint covered by other legislation
- Complaint covered by another complaint procedure under another Council policy
- Vexatious or bad-faith complaints



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Process

- IC sends the complaint and supporting material to the Member whose conduct is in question and requests a written response within 10 days
- Response is given to the Complainant who can make a written reply within 10 days
- IC may then speak to anyone relevant to the complaint and may access and examine any information relevant to the complaint

**Settlement
of
Complaints**

**Investigative
Report**

Investigative Report

- IC reports within 90 days after the making of the complaint

- 10 Day Review • Parties review the draft and make comments

- Valid complaint • IC reports to the complainant and the member
- IC reports to Council outlining findings and any recommended penalty and terms of any settlement
 - No report to be issued finding contravention without notice to member and opportunity for member to comment

- Dismissed • IC believes no basis for the complaint & dismissed
- IC shall not report to Council except as part of an annual report

Penalties & Recommendations

- Recommended corrective action or penalty must be permitted by the Municipal Act
- Section 223.4(5) of the Municipal Act allows municipality to recommend (if the IC reports that the Member has contravened the Code):
 - A reprimand; or
 - Suspension of the remuneration paid to the Member in respect of his or her service as a Member of Council, for a period of up to 90 days

MEMBER NOT BLAMEWORTHY

- If the Integrity Commissioner determines:
 - No contravention
 - Contravention, but the Member took all reasonable measures to prevent it
 - Contravention, but trivial or committed through inadvertence or an error of judgment made in good faith
- The IC shall state so in the report and shall recommend no penalty

Interim Reports

IC may make interim reports to Council where necessary to address:

- Instances of interference
- Obstruction
- Retaliation

SETTLEMENT OF COMPLAINTS

- The Integrity Commissioner may, where deemed appropriate, engage the parties in informal settlement discussions (e.g. mediation)
- If there is a consensual settlement of the complaint, the settlement will be reported to Council
- The Office of the Integrity Commissioner is not a party to the settlement and simply acts as a facilitator

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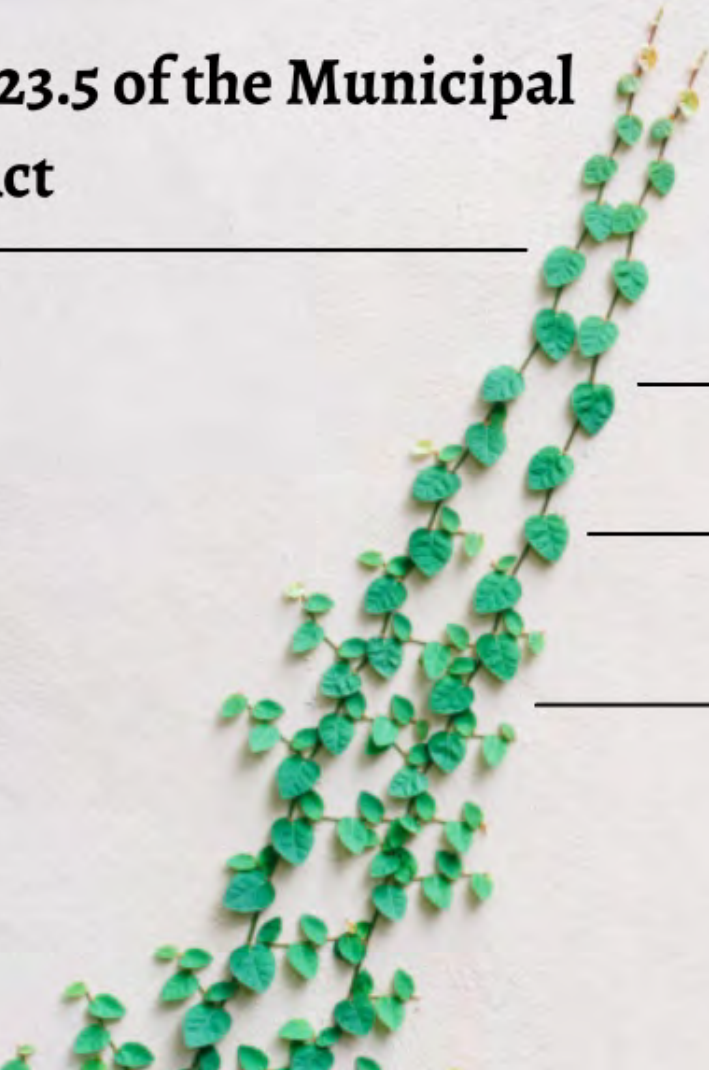
Confidentiality

IC shall preserve secrecy with respect to all matters that come before the IC

- Parties are required to keep the investigation confidential and are not to disclose any part of it to anyone outside of the Office of the Integrity Commissioner or their own legal representative
- If the Integrity Commissioner recommends a sanction, however, that will be reported to Council

**223.5(1) of the
Municipal Act**

223.5 of the Municipal Act



Section prevails over MFIPPA, may disclose necessary details in an investigation report

Reports received by Council or a Board to be made public after being reported out to Council / board Members

IC and office not compellable or competent witnesses in any civil proceeding

CRIMINAL ACTIVITY OR BREACH OF OTHER LAWS

- A breach of the Criminal Code must be reported to the authorities
- If the IC has reasonable grounds to believe there was contravention of the Criminal Code or any other Act, the IC shall suspend the investigation, report to the appropriate authorities, and report to Council.
- Investigation suspended until resulting police investigation and charge have been finally disposed of
- Suspension reported by IC to the Clerk

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Guiding Principles

- Conscientious and diligent service

Integrity:

- Avoiding conflicts of interest
- No improper influence
- Promote Public Confidence

Conduct duties and arrange private affairs to bear close public scrutiny

- Relates to integrity – improper influence, conflicts of interest

Honesty

- Upholding the letter and spirit of the law – federal, provincial and municipal

APPLICATION

**CONFIDENTIAL
INFO**



Application

Code applies to all members of the
Markham City Council

**Areas of
Application**



COMMON AREAS

ELECTION CAMPAIGN WORK

- No use of City's resources for election-related activities
- No campaign-related activity on City property without permission

BUSINESS RELATIONS

- Not to borrow money from person that regularly does business with City unless person is regularly in business of lending money
- Not to act as paid agent
- Not to refer third party in exchange for payment

CONDUCT OF MEMBERS

- Observe appropriate decorum
- Show respect
- Be courteous

STAFF

**DISCREDITABLE
CONDUCT**

**GIFTS AND
BENEFITS**

**IMPROPER
INFLUENCE**

CITY PROPERTY

Relations with Staff

- Work through senior executive and their designates
- Be respectful of staff
- Honour requirement of staff to remain neutral

HARRASSMENT

- Harassment is inappropriate behaviour for the purposes of the Council Code of Conduct
- Whether it occurs inside or outside the workplace
- Whether it is related to the work environment or other activities of a member
- members will not engage in workplace discrimination, harassment or violence

Gifts and Benefits

- Members are permitted to accept gifts that meet specific criteria, subject to reporting requirements
- No gifts not listed in Code
- Be able to justify gift
- No gifts that appear to be to induce member to exercise influence

Exceptions

Disclosure

Permitted Gifts, Subject to reporting requirements

- (a) Where authorized by law
- (b) Would normally accompany the responsibilities of a political office and are received as an incident of protocol or social obligation
- (c) Political contributions reported in accordance with applicable law
- (d) Services provided without compensation by persons volunteering their time to a Member
- (e) Suitable mementos from a function honouring the Member
- (f) Food, lodging, transportation, entertainment provided by the provincial, regional and local governments or political subdivisions of them, by the federal government or by a foreign government within a foreign country or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity at an official event
- (g) Tickets or admission to banquets, receptions, sporting events, cultural events, performances or similar events, for charitable, not-for-profit or community purposes, if:
 - i. Attendance is open and transparent and serves a legitimate charity fundraising or community purpose, and
 - ii. The value and venue location are reasonable
- (h) Business meals that serve a legitimate public duty purpose
- (i) Communications to the offices of a Member, including subscriptions to newspapers and periodicals related to the duties of Office
- (j) Sponsorships and donations for community events or initiatives organized or run by a Member, or a third party on behalf of a Member, where Council has authorized or endorsed the event or initiative

Reporting Requirements

- Maintain list of gifts received in calendar year where value exceeds \$350
- Gifts in 10.1 (g) "tickets or admission to banquets, receptions, sporting events, cultural events, performances or similar events, for charitable, not-for-profit or community purposes" are exempt from reporting requirements

IMPROPER USE OF INFLUENCE

- No Member shall use the influence of her/his office for any purpose other than exercise of official duties
- E.g. Improperly influencing the decision of another to the benefit of oneself or a family member, staff, friend, associate, etc., including preferential treatment.
- Includes holding out promises or prospects of future advantage through a Member's supposed influence in return for present actions or inactions

USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES

- Only for purposes connected with the discharge of City duties
- No financial gain or attempted financial gain from use of City developed intellectual property
- Use information gained in execution of duties only for official duties

CONFIDENTIAL INFORMATION

- No disclosure without authorization
- No disclosure to benefit members or others
- No disclosure of content from confidential meeting
- No permission for other to access
- Keep confidential information confidential

**Personal
Info**

**Communications
with the Public &
Media Relations**

Personal Information

- Personal information in City records subject to MFIPP
- Personal information in constituent records not subject to MFIPP **but** members will treat it in accordance to MFIPPA
- No disclosure without consent of individual or city clerk for personal information in City records
- No access to those not entitled
- Do not use for personal gain or gain of others
- Access must be necessary for performance of duties



Communications with the Public & Media Relations

- Accurately communicate council decisions
- Treat each other, staff and public with respect
- Avoid messaging that amounts to abuse, bullying or intimidation

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Highlights

- Municipalities are now required to have a Code of Conduct for Members and local boards, and provide access to an Integrity Commissioner, either by
 - Appointment of IC;
 - Arranging access to an IC of another municipality; or,
 - Combination

Expanded Responsibilities of Integrity Commissioner

- Apply the Code
- Apply rules for ethical behaviour
- Apply relevant sections of the Municipal Conflict of Interest Act (MCIA)
- Advise council and board members (in writing) of their obligations under the MCIA and their municipality's Code of Conduct and Ethical Behaviour Policies, Procedures and Rules (requests for advice must be in writing)
- Educate Council and Board Members, the Municipality and public regarding the Code and MCIA
- This responsibility is subject to the IC's duty not to disclose confidential information that could identify a person concerned when educating the public.

Section 1:
Principles

Section
2,5,6
Pecuniary
Interest

Powers of a
Judge

Penalty Powers of
Municipalities

Election
Moratorium

Indemnification

Section 1: Principles

- Section 1.1: The Province of Ontario endorses the following principles in relation to the duties of members of councils and of local boards under this Act:
- The importance of integrity, independence and accountability in local government decision-making.
- The importance of certainty in reconciling the public duties and pecuniary interests of members.
- Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.
- There is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise. 2017, c. 10, Sched. 3, s. 1.

Section 2: Pecuniary Interest

Section 2: For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

a) the member or his or her nominee

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body, that has a pecuniary interest in the matter; or

b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter. R.S.O. 1990, c. M.50, s. 2.”

Section 5

Section 6

AMENDMENTS TO MCIA – SEC 5

- Added Section 5(2.1) to permit member to discuss, make submissions or attempt to influence the voting on, and attend any meeting or part thereof, where matter under consideration is whether to suspend member's remuneration for a contravention of the Code of Conduct as found by the IC.
- Member cannot vote on question.
- Requires member to file written statement of pecuniary interest with clerk at meeting where interest disclosed or as soon as possible thereafter
- Member with pecuniary interest can't use his or her office to influence any decision of officer, employee or delegated person or body considering matter with respect to decision or recommendation that results from consideration of matter (unless municipality has delegated power to suspend member's remuneration to another person or body under Section 223.4(5) of M.A.)



AMENDMENTS TO MCIA – NEW SEC 6

Municipality to maintain registry of statements and declarations filed or recorded under Sections 5 and 6.

AMENDMENTS TO MCIA – POWERS OF A JUDGE

- If judge finds contravention of Section 5, judge “may” do any or all of:
- NEW: Reprimand the member or former member.
- NEW: Suspend the remuneration paid to the member for a period of up to 90 days.

JUDGE – POSSIBLE CONSIDERATIONS

- (a) Member took reasonable measures to prevent the contravention;
- (b) Member disclosed the pecuniary interest and all relevant facts known to him or her to an Integrity Commissioner in a request for advice from the Commissioner under the Municipal Act, 2001 or the City of Toronto Act, 2006 and acted in accordance with the advice, if any, provided to the member by the Commissioner; or
- (c) Committed the contravention through inadvertence or by reason of an error in judgment made in good faith. 2017, c. 10, Sched. 3, s. 7.

PENALTY POWERS OF MUNICIPALITIES

- Amendments to MCIA do not affect power of municipality to reprimand a member or suspend a member's remuneration under Section 223.4(5) or (6) of Municipal Act
- Other remedies reserved to judge e.g. declare seat vacant; disqualify a member from being a member for up to 7 years and require restitution.

MUNICIPAL ELECTION PERIODS - MORATORIUM

- If the IC has not advised on an MCIA or Code of Conduct inquiry before the nomination day of a regular election, then the IC must terminate the inquiry.
- Unless the person who made the request (or someone whom the request concerns) makes a written request to the IC within 6 weeks after the voting day, then the IC may not commence another inquiry
- NO requests for inquiries can be made between nomination day and voting day [the “Freeze Period”].
- During the Freeze Period:
 - the IC cannot:
 - report to the municipality or board members about member contravention; or
 - bring an MCIA matter to court; and,
 - the municipality or board members cannot consider whether to impose penalties on a council or board member

INDEMNIFICATION OF INTEGRITY COMMISSIONER

- The municipality is obligated to indemnify the IC and assigns for costs that were reasonably incurred by the IC (or assigns) in connection with the defence of a proceeding.

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WHAT IS A CONFLICT OF INTEREST?

"A personal interest that conflicts with a public or fiduciary interest."

– Duhaime's Law Dictionary

"A conflict of interest occurs where a personal interest is sufficiently connected with public or professional duties that it results in a reasonable apprehension that the personal interest may influence the exercise of professional or public responsibilities."

– Director Duties (Duhaime)

**Disclose
and
Withdraw**

Judge

• **Duty to Disclose Conflict and Withdraw**

(section 5)

- If member has, directly or indirectly, any pecuniary interest in a matter and is present at a council meeting at which the matter is the subject of consideration, the member shall:
 - disclose interest and general nature thereof,
 - not take part in any discussion of or vote on any question in respect of the matter and shall not attempt to influence the voting on any such question.
- If meeting not open to public, member shall forthwith leave the meeting or part thereof where matter is under consideration.
- If member is absent at meeting to consider the matter and interest not disclosed, member to disclose at next meeting member attends.
 - *Duty of Clerk: record all declarations of interest in minutes of meeting so it is open to the public*

Elector may apply to a judge

ALLEGED CONTRAVENTION

- “Elector” may, within 6 weeks after fact came to elector’s attention that the member may have contravened Section 5, apply to a judge for a determination of whether member has contravened Section 5.
- Judge to try and determine question of contravention.

POWER OF JUDGE ON FINDING A CONTRAVENTION

- Declare member’s seat vacant,
- Disqualify member from being a member for up to 7 years,
- If contravention resulted in personal financial gain, require restitution.
- Exceptions
- If judge finds contravention committed through inadvertence or error in judgment, member not subject to having seat declared vacant or being disqualified as a member.

Insurance

INSURANCE AGAINST COSTS

- Municipality can pass by-laws to insure members found not to have contravened Section 5 against costs or expenses incurred as a result of proceedings under MCIA.

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