



**Submission to the Ministry of Municipal Affairs  
and Housing's consultation on strengthening  
accountability for municipal council members**

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## Introduction

Since January 1, 2016, my Office has had the authority to review complaints about municipalities, including municipal boards and corporations. Between January 1, 2016 and March 31, 2021, we received more than **14,000** complaints about municipalities. Through our review and investigation of complaints, we often identify best practices and suggestions to improve municipal processes and strengthen local governance and accountability. Most municipalities appreciate the information that we provide, and are happy to implement improvements locally.

Many of the municipal complaints my Office has received are about the conduct of municipal council members, and the oversight of council members provided by local integrity commissioners. As of March 1, 2019, all municipalities are required to have a code of conduct and appoint an integrity commissioner to oversee the conduct of municipal council members and members of local boards.

Under the *Ombudsman Act*, I cannot review complaints within the jurisdiction of an integrity commissioner (or other local accountability officer), until they have declined the complaint or completed a review. It is not my role to stand in place of an appointed integrity commissioner or replace their investigation with my own. Instead, when I receive a complaint, I consider whether the integrity commissioner acted fairly and within their authority, considered relevant information, based their findings on evidence, and provided reasons for their decisions.

Based on our review and investigation of these complaints over the past five years, my Office has identified several changes to the rules for codes of conduct and integrity commissioners that would strengthen accountability mechanisms for local government. In order to have the greatest impact on the fairness of these mechanisms, the province should:

1. Mandate and standardize protocols for integrity commissioners.
2. Standardize and expand requirements for codes of conduct.
3. Mandate accreditation and training for integrity commissioners.

## 1. Mandate and standardize protocols for integrity commissioners

Just as codes of conduct created by municipalities vary greatly in both content and form across the province, so do the processes and standards for integrity commissioners interpreting and applying those codes.

The Act and regulations do not require municipalities to adopt a protocol setting out how integrity commissioners should carry out their duties, nor do they ensure that only those with the requisite skills, knowledge and experience are appointed as integrity commissioners. As set out in my latest Annual Report<sup>1</sup>, many of the complaints we receive about integrity commissioners relate to the adequacy of their processes and could be addressed through the adoption of a robust complaint protocol.

Not all municipalities have the resources to establish a protocol independently. My Office routinely responds to inquiries from officials at municipalities seeking guidance in developing codes of conduct and processes for integrity commissioners.

Some municipalities have robust processes for code of conduct complaints, while others have none at all – leaving members of the public confused about how to submit a complaint and how the integrity commissioner will carry out a review. Integrity commissioners are also left without the detailed guidance they need to ensure their processes are fair and consistent.

For example, we reviewed a complaint from a councillor who was sanctioned in the wake of an integrity commissioner’s investigation, even though the councillor was not interviewed and had no opportunity to speak to the allegations. The report did not provide evidence to support the findings and recommendations.

In another case, an integrity commissioner decided they did not have to inform complainants of the outcome of an investigation, or even that the process had concluded. This left complainants in the dark.

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<sup>1</sup>Full report: <https://www.ombudsman.on.ca/resources/reports-and-case-summaries/annual-reports/2020-2021-annual-report>; Direct link to section on municipal codes of conduct and integrity commissioners: <https://www.ombudsman.on.ca/resources/reports-and-case-summaries/annual-reports/2020-2021-annual-report#Councils,%20committees%20and%20conduct>.

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**The Ministry should assist municipalities by mandating the adoption of a complaint protocol, and prescribing topics that every municipal complaint protocol must address, including:**

***Timeframes:***

As set out in my latest Annual Report, one of the most frequent areas of complaint with respect to integrity commissioners is delay. We have heard from several complainants who waited over a year for an integrity commissioner to respond to a complaint. We have even received complaints about delay in responding to complaints made under the *Municipal Conflict of Interest Act (MCIA)*, despite its strict time limitations. In one case, a woman spoke with an integrity commissioner just past the six-week time limit to make a *MCIA* complaint. The integrity commissioner encouraged her to focus on other issues she had with the municipality. When she returned almost a year later, he accepted her *MCIA* complaint, but then took seven months to make a finding, exceeding the 180-day timeframe in the Act.

Complaint protocols should be required to set out the time frame within which an integrity commissioner is expected to carry out their review. A protocol should provide that, where an integrity commissioner needs to exceed a set time frame, they should notify council and the complainant.

***Performing multiple roles in the same municipality:***

The legislation requires integrity commissioners to perform their functions “in an independent manner,” and specifies that the integrity commissioner is not required to be a municipal employee. However, it is silent on whether an integrity commissioner can act in other roles for a municipality during their appointment. We have received several complaints from the public regarding integrity commissioners who also act in other capacities, such as municipal solicitor, policy advisor, workplace harassment investigator, or municipal clerk. For example, we received a complaint from an individual who felt unable to make a complaint to the integrity commissioner, as the facts related directly to advice that the integrity commissioner had provided to a member of council while acting as municipal clerk.

It is a fundamental tenet of fairness that justice must not only be done, but also be seen to be done. Public confidence in the independence of integrity commissioners and their decisions can be undermined when integrity commissioners are permitted to act in multiple roles within a single municipality. The Ministry should require integrity commissioners to be truly independent of their appointing municipalities.

**Concurrent investigations:**

We have observed that there is often overlap between the duties of an integrity commissioner and a workplace harassment investigator. This overlap has led to confusion for all involved as to the appropriate rules to apply and process to follow. We have received complaints from council members who did not know if they were being investigated under the code of conduct or for harassment. In some cases, the integrity commissioner themselves did not distinguish between the two, or take care to clarify which procedures applied to their review.

The Ministry should clearly stipulate the role of integrity commissioners, if any, with respect to workplace harassment complaints involving municipal officials, or require municipalities to do so in a complaint protocol. Municipalities should be required to have clear procedures in place for handling workplace harassment complaints against elected officials, including investigation procedures and processes. The Ministry should consider providing municipalities with guidance around how to handle concurrent complaints under the code of conduct and a workplace harassment policy.

**Discretion to dismiss a complaint:**

Municipalities often tell us that they need to impose a complaint barrier, such as a fee, to prevent frivolous or vexatious complaints. Instead of imposing such a barrier, integrity commissioners should be empowered to dismiss a frivolous or vexatious complaint, or a complaint not made in good faith. In such cases, they should be required to communicate the outcome to the complainant and provide reasons in writing.

**Preliminary reporting process:**

In the interest of procedural fairness, many integrity commissioners adopt a preliminary reporting process that provides the parties to a complaint with the opportunity to review preliminary findings and comment. However, this is not consistent across the province. We have received complaints from council members who had no notice that a final report regarding their conduct had been prepared until it was presented on a public agenda. The regulations should require a complaint protocol to provide for a preliminary reporting process.

## 2. Standardize and expand requirements for codes of conduct

Each of Ontario's 444 municipalities is required to establish a code of conduct and appoint an integrity commissioner. Codes of conduct created by municipalities vary greatly in both content and form across the province. As a result, the ethical standards that apply to elected municipal officials are unequal and inconsistent. An integrity commissioner in one municipality might review a complaint about a councillor's behaviour, but find that the same behaviour is not covered by the code of conduct in a neighbouring municipality. This inconsistency erodes public confidence in the ability of integrity commissioners to hold municipal officials to account.

### **The content of codes of conduct should be standardized to address this concern.**

In 2017, my Office provided comments to the Ministry of Municipal Affairs on a proposed regulation prescribing mandatory subject matters for codes of conduct. Subsequent to this consultation, O.Reg 55/18 and O.Reg 58/18 established four mandatory subjects:

- Gifts, benefits and hospitality
- Respectful conduct, including conduct towards officers and employees of the municipality or local board, as the case may be
- Confidential information
- Use of property of the municipality or the local board, as the case may be.

This list does not include many types of conduct about which my Office routinely receives complaints. In addition to those four subjects, the Ministry should consider prescribing the following subject matters for inclusion in every code of conduct:

#### ***Conduct during meetings:***

Some integrity commissioners apply codes of conduct to behaviour that takes place during a council or board meeting, while others decline to do so, citing the authority of the Chair to manage behaviour during meetings. We have received complaints about integrity commissioners who decline to apply the code to conduct that occurs during a meeting, even when the conduct was not part of the official proceedings and the Chair would have had no way to address it. In such cases, an integrity commissioner who refuses to apply the code leaves a gap, where no process exists

to address the conduct. In the interest of consistency, the Ministry should clarify whether integrity commissioners should have a role in reviewing conduct that takes place during a meeting.

***Conflict of Interest outside the scope of the Municipal Conflict of Interest Act:*** Integrity commissioners can consider alleged violations of the *Municipal Conflict of Interest Act*. However, some conflicts do not fit within the scope of the *MClA*, such as non-pecuniary conflicts of interest, or conflicts related to a pecuniary interest of a family member who is not a parent, spouse or child. The regulations should require codes to address conflicts of interest outside the scope of the *MClA*.

***Remedial measures:***

In addition to the sanctions that integrity commissioners may recommend under the applicable legislation, the regulations should require municipalities to specify any other remedial measures that the integrity commissioner may recommend, such as removal from committees.

### **3. Mandate accreditation and training for integrity commissioners**

Under the *Municipal Act, 2001* and the *City of Toronto Act, 2006*, integrity commissioners are required to perform their duties in an independent manner. Other than this requirement, there are no professional standards for integrity commissioners. Complainants and municipal officials alike have raised concerns with my Office about the inconsistency between appointed integrity commissioners. In our work, we have observed a wide range of skills and knowledge amongst individuals acting as municipal integrity commissioners. In some cases, appointed integrity commissioners lack familiarity with applicable legislation and case law, including with respect to procedural fairness.

This has led to problems, especially given the complexities added to the role when integrity commissioners were empowered to review complaints made under the *Municipal Conflict of Interest Act*. Many of the complaints we review result in my staff sharing best practices with integrity commissioners in order to address this lack of consistency.

Mandated training and professional standards or accreditation for integrity commissioners could address this inconsistency and ensure that the public has access to a fair and high-quality review regardless of where they happen to live. Integrity Commissioners and the municipalities they serve would benefit from the establishment of core competencies. Professional standards would also increase the public's confidence in the accountability framework, and would assist when my Office reviews complaints about integrity commissioners.

**The Ministry should establish professional standards and/or an accreditation process for integrity commissioners, including core competencies and a system of peer review.**