

Integrity Commissioner's Periodic Report
City of Brampton

Principles *Integrity* is submitting this periodic report to the City of Brampton to provide a brief overview of our activities and observations in the four months since our appointment on April 6, 2022 as the City's temporary Integrity Commissioner.

Typically, an Integrity Commissioner provides an annual or periodic report to provide the public with the opportunity to understand the ethical framework in place which serves both the public and the City's elected officials. A periodic report is also an opportunity for an Integrity Commissioner to provide general advice and guidance on areas of improvement within our jurisdiction.

We are submitting this periodic report early in our tenure, recognizing the constraints properly imposed on an Integrity Commissioner to report during the election period commencing on Nomination Day (August 19th for the 2022 municipal and school board elections). In the absence, to our knowledge, of a Council meeting to which we might submit this report, we are submitting this to you and the City Clerk individually.

About Us:

Principles *Integrity* is a partnership focused on accountability and governance matters for municipalities – we have been appointed as Integrity Commissioner (and occasionally, as closed meeting investigator and, as in Brampton, Lobbyist Registrar) for approximately 50 Ontario municipalities and other public bodies. Principles *Integrity* is an active member of the Municipal Integrity Commissioner of Ontario (MICO).

The Role of Integrity Commissioner, Generally:

An Integrity Commissioner's statutory role is to carry out, in an independent manner, the following functions:

- Advice on ethical policy development
- Education on matters relating to ethical behaviour
- Providing on request, advice and opinions to members of Council and members of Local Boards
- Providing, on request, advice and opinions to Council
- Providing a mechanism to receive inquiries (often referred to as 'complaints') which allege a breach of ethical responsibilities
- Resolving complaints, and

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- Where it is in the public interest to do so, investigating, reporting and making recommendations to council within the statutory framework, while being guided by Council's codes, policies and protocols.

This might contrast with the popular yet incorrect view that the role of the Integrity Commissioner is primarily to hold elected officials to account; to investigate alleged transgressions and to recommend 'punishment'. The better view is that Integrity Commissioners serve as an independent resource, coach, and guide, focused on enhancing the municipality's ethical culture.

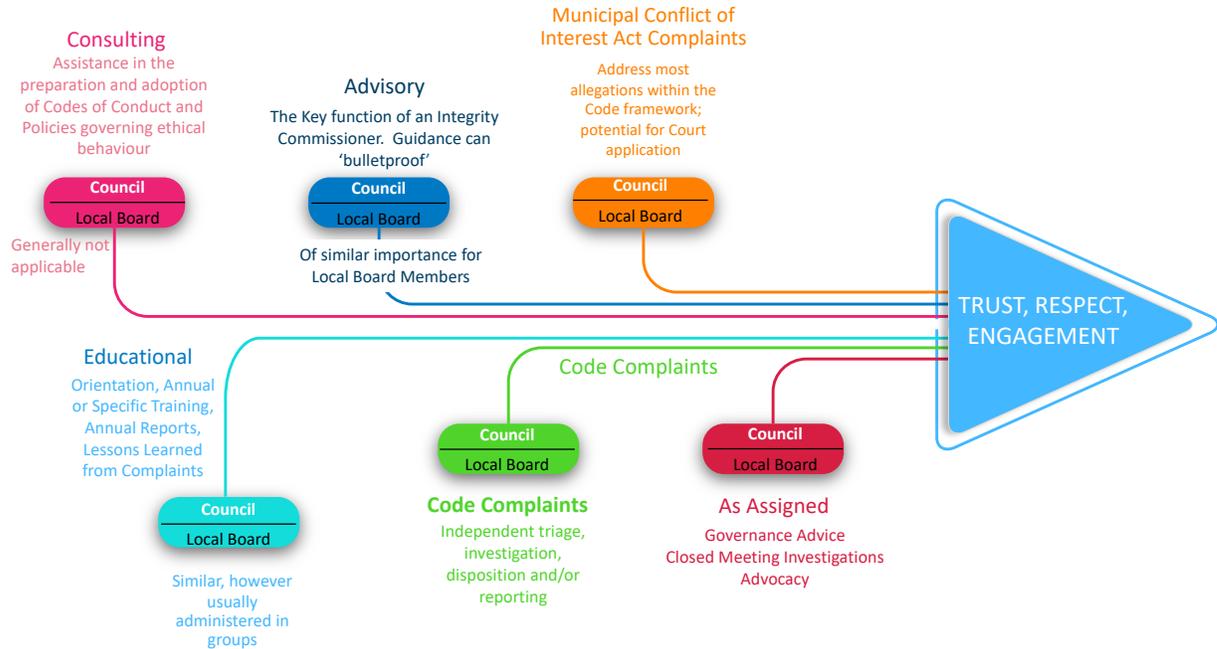
The operating philosophy of Principles *Integrity* recites this perspective. We believe there is one overarching objective for a municipality in appointing an Integrity Commissioner, and that is to raise the public's perception that its elected and appointed officials conduct themselves with integrity:

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an Integrity Commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

In carrying out our broad functions, the role falls into two principal areas. 'Municipal Act' functions, focused on codes of conduct and other policies relating to ethical behaviour, and 'MCIA' or *Municipal Conflict of Interest Act* functions. From an activity perspective, an Integrity Commissioner's role can be depicted this way:

(see graphic on following page)

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The emphasis of Principles *Integrity* is to help municipalities enhance their ethical foundations and reputations through the drafting of effective codes of conduct and other policies governing ethical behaviour, to provide meaningful education related to such policies, and to provide pragmatic binding advice to Members seeking clarification on ethical issues.

Because the development of policy and the provision of education and advice is not in every case a full solution, the broad role of the Integrity Commissioner includes the function of seeking and facilitating resolutions when allegations of ethical transgressions are made, and, where it is appropriate and in the public interest to do so, conducting and reporting on formal investigations. This in our view is best seen as a residual and not primary role.

Confidentiality:

Much of the work of an Integrity Commissioner is done under a cloak of confidentiality. While in some cases secrecy is required by statute, the promise of confidentiality encourages full disclosure by the people who engage with us. We maintain the discretion to release confidential information when it is necessary to do so for the purposes of a public report, but those disclosures would be limited and rare.

Procedural Fairness:

When an investigation is underway, we ensure that the parties involved receive procedural fairness. In the context of an Integrity Commissioner's investigation that means that the respondent (the elected official named in a complaint) is entitled to know the allegations that require a response, the identity of the complainant (unless special circumstances exist), a reasonable period of time to respond, unbiased consideration of the matter, and reasons for the findings and decisions that might be made. Similarly the complainant too is entitled to reasons which are typically embedded either in an Investigation Report to Council (when

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findings of a breach are made) or in a Disposition Letter (where there are no findings of breach, or if we are satisfied that the necessary course correction has taken place.

Course Correction:

In accordance with our operating philosophy, we maintain a focus on achieving course correction when we investigate a complaint. Our task is not simply to determine whether a breach has occurred; the focus is on the achievement of course correction because that better supports the public's perception of Council's overall ethical integrity. A formal investigation report to Council on every found allegation, which may be the desired objective of some, is not always necessary and can in some circumstances be counter-productive, and would not support the objective of increasing trust, respect and engagement from Brampton's citizens.

Course correction can also be achieved through the making of observations and recommendations not directly related to report findings. We will for example sometimes recommend training, or policy development, as ancillary matters in a report. This preventative approach (preventing occurrence or reoccurrence of behaviour that would contravene the Code) provides the most benefit, and minimizes cost to the taxpayer.

Our Activity for Brampton since appointment April 6, 2022:

The work undertaken by an Integrity Commissioner generally falls into three categories:

1. Policy Development and Education

Given the short time that has elapsed since our retainer, and the fact that we are at the end of the current term of Council, there has been no real opportunity for policy development and education. The exception was our work with the City Clerk at the commencement of our retainer to support necessary housekeeping updates to the Code of Conduct to reflect legislative amendments in place since 2019.

On June 27, 2022 we attended virtually at a Council workshop to introduce ourselves and provide a brief overview. Following the election we will have the opportunity to provide training and education to the newly-elected Council.

2. Advice

The advice function of the integrity commissioner is available to all Members of Council and where applicable their staff and Members of local boards on matters relating to the code of conduct, the *Municipal Conflict of Interest Act* and any other matter touching upon the ethical conduct of Members. Advice provided by the integrity commissioner is confidential and independent, and where all the relevant facts are disclosed, is binding upon the integrity commissioner.

Our advice is typically provided in a short Advice Memorandum which confirms all relevant facts and provides with clarity our analysis and a recommended course of action. At times we find it sufficient to simply reply to an email when the matter (and our advice) is straightforward.

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Though specific advice is confidential, we can advise that the bulk of the issues we provided guidance on arose in the context of perceived conflicts of interest. ‘Perceived conflict of interest’ is the term often used to describe a conflict of interest that exists outside the narrow realm of the *Municipal Conflict of Interest Act* which focuses only on pecuniary interests and a narrow definition of family class. The common law applicable in Ontario provides that elected officials are disqualified from participating in other circumstances as well (we refer to the combined application of statutory and common law responsibilities as ‘disqualifying interests’). The determination of whether a disqualifying interest exists in any particular circumstance can be complex.

During the period covered by this report, we provided 2 formal responses requests for advice, not counting the advice that was provided in several quick telephone conversations.

3. Complaint Investigation and Resolution

Our approach to reviewing complaints starts with a determination as to whether an inquiry to us is within our jurisdiction, is beyond a trifling matter, is not either frivolous or vexatious, and importantly, whether in its totality it is in the public interest to pursue. We always look to the possibility of informal resolution in favour of formal investigation and reporting. Once a formal investigation is commenced, the opportunity to seek informal resolution is not abandoned.

Where we are able to resolve a matter without concluding a formal investigation, our practice is to provide a written explanation in the form of a Disposition Letter to the complainant to close the matter. Often the respondent Member is involved in preliminary fact-finding and will also be provided with a summary of the disposition.

Where formal investigations commence, they are conducted under the tenets of procedural fairness and Members are confidentially provided with the name of the complainant and such information as is necessary to enable them to respond to the allegations raised.

At the time of our appointment, 4 open complaints were transmitted to us by the former Integrity Commissioner. During the four months since, 4 additional complaints have been filed, along with 2 referrals by Council bringing matters to our attention.

While it is not the purpose of a periodic report to provide a detailed outline of complaints which have not culminated in a recommendation report to Council, we can advise that some complaints alleged conflicts of interest which, for reasons detailed in Disposition Letters back the complainants, were found not to exist; others alleged use of municipal resources (staff time) for election campaigns, one arising 2020 and another in the spring of 2022.

In the concluding paragraphs of this report, we offer some advice and recommendations to address both of these areas.

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The three categories discussed above are the typical categories of work in which an Integrity Commissioner is engaged. In some municipalities, as in Brampton, a fourth category of work applies:

4. Referrals

On occasion an Integrity Commissioner is asked to consider a matter referred to it by Council. Even where a referral authorized by a resolution of Council is not strictly speaking an inquiry (complaint) under the *Municipal Act* a similar standard of proof (balance of probabilities) and a similar level of procedural fairness is afforded participants in the referral, where relevant.

We have received two referrals from Brampton Council.

The first, dated March 2, 2022 was in respect of the Brampton U file:

C058-2022

1. That the Integrity Commissioner be requested to investigate the following:

a) The relationship between Councillor Santos and the consultant(s) utilized;

2. That the consultant report prepared by the consultants on this matter be released publically, subject to review by the CAO and City Solicitor and determination of confidentiality, and indication of previous dissemination thereof;

3. That the CAO be requested to provide a detailed itemized report (including any travel undertaken and stakeholders consulted, and copies of all press releases issued to update the public on Brampton University, and memoranda of understandings signed with other academic institutions) on the spending undertaken by the City with respect to the Brampton University file; and

4. That no further work be undertaken by staff in respect to advancing the Brampton U file, pending report on the matter by the CAO.

(emphasis added)

The referral was assigned to Brampton's previous integrity commissioner, and so has fallen to us to complete.

Subsequently, on May 18th, Council directed the CAO to "to engage an audit accounting firm to immediately conduct a financial forensic audit of the BramptonU file, ... as well as other information available to the City for the purpose of the investigation;

Given that it would be imprudent for us to report on Council's referral prior to Council's receipt of the forensic report, we will be completing our work on the matter when the forensic information is received.

The second referral, referred to us by Council on May 18th, was recorded as follows:

C154-2022

That the statements made by a member of staff in relation to the behaviour of a Member of Council in relation to the BramptonU item be referred to the Integrity Commissioner for consideration and investigation; and

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That all EFAP available to staff be provided to the impacted staff member.

As outlined above where we find that a complaint can be appropriately resolved without the need for a formal investigation, we issue a Disposition Letter. We proceeded in a similar manner with respect to this referral.

Given that the identities of the Council Member and the staff member were not identified in the referral, it would not be appropriate to speak to our reasonings behind the disposition in this public document. Instead, we are contemporaneously providing under separate cover copies of the Disposition Letter to all Members of Council, and the staff member involved.

Recognizing and avoiding conflicts of interest

Across our client base, it has been our experience that elected officials frequently reach out to us for assistance in recognizing and appropriately identifying conflicts of interest when they arise. These requests often involve the Member being part of an organization or club whose interests are impacted by a matter before Council.

In those circumstances it is important to note that a statutory exception is written into the legislation which clarifies that a Member who **Council appoints to another body** does not have a conflict of interest when that body has a matter before Council. In other circumstances a Member who is a member of another body (what constitutes 'member' is sometimes at issue) must declare their interest and recuse themselves from Council's decision-making on the respective issue.

One area of confusion, and one which we have already encountered in our work with Brampton, involves whether a member is 'conflicted' in any matter involving the Integrity Commissioner when a complaint is made against the Member. It is our view that unless and until an Integrity Commissioner has communicated the likelihood of a monetary sanction being recommended after an investigation is completed, the fact of an investigation in and of itself does not result in a presumption that a direct pecuniary interest exists. To conclude otherwise would be to enable persons interested in any issue involving the Integrity Commissioner to 'conflict' a councillor anticipated to be opposed to the matter merely by filing a complaint. Such a result would be contrary to the public interest.

That said, it is also important to recognize that a non-pecuniary disqualifying interest can arise where there is a relationship which a reasonable person would conclude would influence a Member's impartiality and impede the Member's ability to deal with the matter from the perspective of the public interest. Each such case needs to be evaluated in its own circumstances.

As always, obtaining clear and reliable advice from the integrity commissioner is appropriate where the proper course of action may not be sufficiently clear.

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Members Obligations re Oversight

The *Municipal Elections Act* prohibits the use of municipal resources, including staff time, on municipal election campaigns. The *Election Finances Act* (Ontario) and the *Canada Elections Act* impose similar prohibitions for provincial and federal election campaigns, prohibiting what would amount to a contribution by the municipality-employer for use of municipal staff time.

In January 2022 the City adopted GOV-120, Use of Corporate Resources Policy, which provided the following guidance for staff in regard to election campaigns:

5.9 City Staff Conduct

In recognizing the right of employees and volunteers to participate in political activity, the provisions set out below ensure the requirement for public service to be politically impartial. City Staff, including volunteers, shall not:

(a) Canvass or perform any work in support of a Candidate or Registered Third Party (e.g. campaign), during hours in which a person is working for and/or receiving any compensation from the City, except during scheduled time off (e.g. scheduled vacation time). City Staff shall not post or distribute Campaign material on behalf of a Candidate or Registered Third Party at City facilities or on City property including City parks.

The policy also provides as follows:

6.5 Integrity Commissioner

Subject to limitations set out in the Municipal Act, 2001, regarding inquiries, the Integrity Commissioner may provide guidance or advice to Members of Council, proactively or in response to requests from Members, regarding conduct in relation to their elected official responsibilities, as it relates to this Policy and the Council Code of Conduct.

The Council Office Management Framework makes it clear that Members of Council are individually responsible for ensuring that their own staff comply with all relevant legislation and City policies and procedures:

Member Staff are City of Brampton employees and are therefore subject to all legislative employment requirements and the City's policies and procedures. Consequently, Members have responsibility for managing the Member Staff and ensuring compliance with legislative employment requirements, as well as all applicable City policies and procedures, in order to ensure that both they, and the City, are meeting all obligations and responsibilities as an employer.

In an investigation we conducted respecting allegations of the use of municipal resources (staff time) for partisan election purposes, it became apparent that the employees in question failed to file written records, either in advance or in arrears, to seek approval for vacation/lieu time/unpaid leave in order that they may spend personal time supporting an

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election campaign. To be clear, the corporate electronic time recording system was updated to show that vacation/lieu time was taken, but there were no supporting electronic or written approvals available for review.

Members are reminded of their responsibility to ensure that their staff comply with municipal policy, especially policies that deal with sensitive matters such as time off for election purposes. It is not sufficient, for example, to simply record vacation time in the City's electronic financial systems without some backup information to show the time-off request, the time-off approval, and if done in arrears, some indication why that might be so.

It being election season, every Member, whether they have been the subject of a complaint or not, should ensure that their office procedures are compliant with City policy.

Conclusion:

It is obvious to all observers that there is room for improvement in the relationships among the Members of Brampton Council. The public perception, supported by the patterning of Council votes, is that two primary factions have emerged.

The strength of municipal government is that both Council and senior staff can operate without the burdens of partisan politics. The convention is that Council decisions are made not on the basis of party or other partisan affiliation, but on what might result in the best community impact. Factionalization at Council (a reliance on having 'the votes' rather than on an effort to persuade members to agree with one's perspective on a matter) is not healthy for local democracy and so we encourage each Member of Council to be reflective of their primary role which is to represent the public interest.

We look forward to continuing to work with Members of Council to ensure a strong ethical framework. We embrace the opportunity to elevate Members' familiarity with their obligations under the Code and to respond to emerging issues. As always, we welcome Members' questions and look forward to continuing to serve as your Integrity Commissioner.

Finally, we wish to thank the Clerk for his professionalism and assistance where required. Although an Integrity Commissioner is not part of the administrative hierarchy, the work of our office depends on the facilitation of access to information and policy in order to carry out the mandate.

We would be pleased to answer any questions you may have and to attend any future Council meeting at which this communication might be considered.

All of which is respectfully submitted.