

The Role of the Municipal Integrity Commissioner in Ontario

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The *Municipal Statute Law Amendment Act, 2006* (formerly Bill 130) amended the *Municipal Act, 2001* and the *City of Toronto Act, 2006* to add a new Part, entitled "Accountability and Transparency".

In each case, the provisions in that Part authorize the municipal council to establish codes of conduct for members of both the council and local boards. In each case contravention of the code cannot constitute an offence.

Municipal councils also have the power to pass by-laws respecting accountability and transparency of the municipality and its operations,⁽¹⁾ which could also produce council requirements affecting the ethical behaviour of members.

Each municipal council is also empowered (in the case of Toronto, required) to appoint an integrity commissioner who reports to council and is responsible for performing in an independent manner the functions assigned by the municipality with respect to the application of the code of conduct and of any procedures, rules and policies of the municipality governing the ethical behaviour of members of council and local boards.

In carrying out his or her responsibilities, the integrity commissioner may exercise such powers and perform such duties as are lawfully assigned by the municipality.

The integrity commissioner may delegate in writing to any person, other than a member of council, any of his or her powers and duties.

Precursors to the Creation of the Position

The role of the municipal integrity commissioner was anticipated and recommended by Madam Justice Bellamy in her report as Commissioner of the Toronto Computer Leasing Inquiry, published in 2005.

Commissioner Bellamy's recommendations, under the heading of "Ethics", included many suggestions for the improvement of the City's codes of conduct for councillors and staff, to include broader ethical considerations, and set out the highest ideals and values for which all public servants should be working.

Among Commissioner Bellamy's recommendations to the City were the following:

- a full-time integrity or ethics commissioner should be hired;
- to ensure independence, he or she should serve for a fixed term, be removable only by a two-thirds vote of council, and report directly to council, not the mayor;
- the City should encourage staff and councillors to consult with the integrity commissioner when necessary;
- the integrity commissioner should offer his or her opinion to all members of council who request it, in strictest confidence;
- members of the public should be allowed to make complaints, which may be anonymous, to the integrity commissioner;

- councillors should not be allowed to withhold their co-operation from investigations by the integrity commissioner;
- the integrity commissioner should be free to dismiss frivolous complaints at the outset;
- the integrity commissioner should have summons powers;
- the integrity commissioner should be able to recommend to council an appropriate range of sanctions for ethical misdeeds, including public reprimands, public apologies, expulsion from one or more committee meetings, removal from committee posts or committee chair positions, expulsion from one or more council meetings, or a declaration of vacancy in the councillor's seat;
- the integrity commissioner should not have the power to impose sanctions directly;
- the integrity commissioner should be given the resources to participate actively in the development of ongoing ethical education programmes and materials for councillors.

Comprehensive recommendations were also made relating to the receiving by councillors of gifts, entertainment and other benefits, including requiring a registry of gifts received.

The resultant provisions enacted by Bill 130 followed some, but not all, of the Commissioner's recommendations.

Principal among them was the emphasis on the independence of the integrity commissioner, but also maintaining the authority of the council to establish the code of conduct and to assign to the integrity commissioner responsibilities as to its application, as well as other procedures, rules and policies governing members' ethical behaviour.

The municipality and its local boards are required to give the integrity commissioner such information as he or she believes to be necessary for an inquiry.

The only penalties specifically authorized by the legislation are a reprimand and/or suspension of remuneration of the member for up to 90 days, which may be imposed only if the integrity commissioner reports his or her opinion that the member has contravened the code of conduct. However, the penalties are not stated to be exclusive, and, while it would not appear that a council could suspend remuneration for more than 90 days, other administrative steps might be taken, such as to request an apology, or other consequences within the council's existing powers.

The legislation is specific, in referring to possible duties of an integrity commissioner in conducting an "inquiry", not an "investigation", which, together with the integrity commissioner's duty to report his or her opinion to the council, are directed to characterizing the integrity commissioner's role in that regard as more of an administrative nature, rather than litigious proceedings adverse to the interest of the councillor subject to the inquiry.

The integrity commissioner is not required to make recommendations to the council for penalties or other action which the council might take, but the imposition of a reprimand or a three-month suspension of remuneration may be imposed only if the integrity commissioner reports that in his or her opinion the member has contravened the code.

The integrity commissioner is required to preserve secrecy in all matters that come to his or her knowledge in the course of his or her duties.

At the same time, the municipality is required to ensure that reports received from the integrity commissioner are made available to the public.

The requirement to preserve secrecy, where it applies, prevails over the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.

If the integrity commissioner is authorized to provide a periodic report to the council on his or her activities, he or she may summarize the advice given, but is prohibited from disclosing confidential information that could identify the person concerned. However, where the integrity commissioner reports his or her opinion concerning possible contravention of the code of conduct by a member, "the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report".

The integrity commissioner is given statutory authority to elect to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*, which apply to the inquiry as if it were an inquiry under that Act.(2)

An integrity commissioner may be authorized to conduct an inquiry arising from a request made by council, a member of council, or a member of the public, about whether a member of council has contravened the code of conduct applicable to the member.

While an integrity commissioner's inquiry into possible contravention may lead to serious consequences for a council member, the more significant ongoing responsibilities of the integrity commissioner relate to his or her educational and advisory role, on a continuing basis, to members of council and his or her availability and duty to take appropriate steps to implement the will of council in the application of its code and any other requirements or policies of the council governing the ethical conduct of its members.

Conclusion

Over one dozen Ontario municipalities have appointed integrity commissioners to assist in implementing their codes of conduct.

It is most important that the integrity commissioner maintain as much independence, actual and perceived, as possible from the council whose code of conduct he or she administers. While the legislation appears to anticipate that an integrity commissioner may be an employee of the municipality, that relationship alone could raise awkward issues, and possibly be alleged as a conflict. At the same time, the role of the integrity commissioner is to assist the council in implementing its will as expressed in the code of conduct, and the integrity commissioner fulfills primarily an administrative function, not having the responsibility to either decide that the code has been contravened by a member nor to impose sanctions.

The most important functions of the integrity commissioner are to educate members of council with respect to the application and interpretation of the code, and to be available to respond directly to requests for assistance from individual members, where the council has delegated that responsibility to the integrity commissioner.

For those municipalities which have adopted a code of conduct, or are considering doing so, the role of the integrity commissioner is central to implementing the council's decision and generally assisting members of council and the public, where authorized to do so, in terms of best practices and ethical considerations, which form a vital part of the role of every councillor.

(1) City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A, s. 8(2)2; Municipal Act, 2001, S.O. 2001, c. 25, ss. 10(2)2, 11(2)2

(2) City of Toronto Act, 2006, s. 160(2); Municipal Act, 2001, s. 223.4(2)

About the author



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George Rust-D'Eye is one of Canada's leading municipal law lawyers and is co-head of the firm's municipal, planning and development law practice. In 2007, he was awarded the Ontario Bar Association's Award of Excellence in Municipal Law.

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