Principles *Integrity*

February 26, 2025

Integrity Commissioner's Annual Report
City of London

Principles *Integrity* is pleased to submit this report, covering the period from June 1, 2023, the date of our appointment as the City's Integrity Commissioner, through February 21, 2025.

The purpose of an Integrity Commissioner's periodic report is to provide the public with the opportunity to understand the ethical well-being of the City's elected and appointed officials through the lens of our activities.

About Us:

Principles *Integrity* is a partnership focused on accountability and governance matters for municipalities. Principles *Integrity* currently serves as Integrity Commissioner (and as Lobbyist Registrar/Closed Meeting Investigator/Municipal Ombudsman for some clients) in approximately 60+ Ontario municipalities and other public bodies.

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 Council, members of Council and members of Local Boards
- Providing a mechanism to receive inquiries (often referred to as 'complaints') which allege a breach of ethical responsibilities
- Resolving complaints informally, where appropriate, and
- Investigating, reporting and making recommendations to Council on those complaints that cannot be resolved informally, 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.

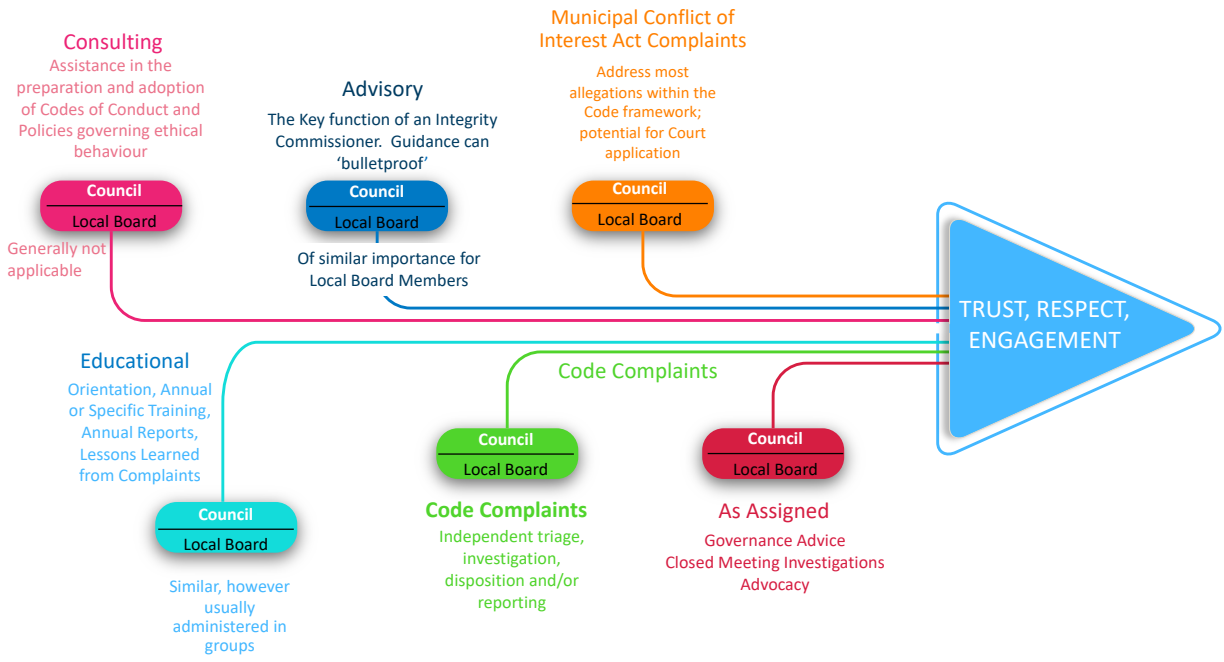
The operating philosophy of Principles *Integrity* recites this perspective. We believe there is one overarching objective for a municipality in appointing an Integrity Commissioner, and that is to raise the public's perception that its elected and appointed officials conduct themselves with integrity:

Principles *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.*

The practical effect of achieving this objective is an increase in trust, respect and engagement in local and upper tier affairs.

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:



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. As noted in the graphic, we believe that the support we give to Members of Council increases the public's perception of them, which in turn leads to greater trust, respect and engagement.

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 most cases secrecy is required by statute, the promise of confidentiality also 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.

City of London Activity:

During the period covered by this report, we have been engaged in a moderate level of activity as Integrity Commissioner for the City of London which subdivides roughly into three categories:

1. Policy Development and Education

   During the period covered by this report, we provided education and training on the Code of Conduct to Council as part of its post-election orientation on September 28, 2023. In the summer of 2024 we engaged in a review of the City's Code of Conduct Policy, although recommendations on modifying the policy have been paused for the time being [see below under *Provincial Review of Code of Conduct/Integrity Commissioner System*].

   In April 2025, we will be providing training for London's Local Boards, focusing on effective governance, roles and responsibilities, conflicts of interest, and other areas of ethical compliance.

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.

   During the period covered by this report, we responded to eighteen (18) such requests for advice.

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 when that information is necessary to enable them to respond to the allegations raised.

During the period covered by this report, we received thirty-nine (39) complaints. At this time, thirty-four (34) were disposed of, two (2) resulted in a report to council, and three (3) are ongoing.

Ethical Themes Around the Province:

With due regard to our obligation to maintain confidentiality, this report enables us to identify learning opportunities from advice requests and investigations conducted in a variety of municipalities.

Disclosure of confidential information from closed meeting sessions

There have been some examples where elected or appointed officials fail to recognize the serious implications of disclosing confidential information, particularly information learned of through attendance in closed session.

A Member's obligation to maintain confidentiality is clear. They may not unilaterally decide to share confidential information, even if they believe the information should be publicly disclosed. This extends to releasing information even to their own legal counsel to obtain a 'second opinion'.

We treat this breach of ethical responsibility as breach of a cardinal rule, and if an allegation in this regard is proved to be true, it tends to attract a recommended sanction at the upper end of the prescribed range. Left unchecked, a breach of confidentiality undermines not only Council's interests on the matter subject to the breach, but destroys the trust required of elected officials, and the staff that support them, to ensure that all relevant, and sensitive, information required to support the deliberation on a matter is freely supplied.

Non-disparagement

One area of prominence continues to be the failure of some Members of Council to adhere to rules against disparagement. Members of Council are entitled, and indeed expected to

disagree on all manner of issues. However, one of the cornerstones to democracy must be the recognition that different opinions and perspectives are to be respected, and disagreement should not devolve into disrespect, disparagement and name-calling.

Disrespectful interactions and/treatment of others can fall along a continuum which may manifest as occasional incivility and micro-aggressions, but when unchecked can culminate in bullying and harassment. Members of Council should be mindful to treat each other, staff and the public with appropriate respect and professionalism at all times.

Some Members of Council hold a view was that they are entitled to their freely express their opinion, even if that includes disparagement of others, and so long as they share it via personal email, and not on the municipal server, they are not constrained by any rules around decorum. This is incorrect. Members are bound by the Code provisions of respectful and non-disparaging communication, whether sharing views on their own email, social media, or elsewhere.

Participation in social media discussions lends its own opportunity for attracting Code of Conduct complaints alleging disparagement. Members should be mindful that comments can be used or amplified in ways that bring municipal integrity into disrepute. It is important that Members be careful, accurate, and non-disparaging even as they attempt to offer what they see as a fair critique of municipal policy and actions. Municipal policy is advanced through the deliberations of Council and so wherever possible the focus should be on facilitating a discussion 'in the Chamber', and not in internet channels, so the general public, staff, and Council colleagues, can participate in the mechanisms through which a variety of important interests can be balanced and distilled into Council decisions made through democratic process.

Regardless of the medium, regardless of the intended audience, and regardless of motive, we have observed several instances where Members of Council in municipalities around the province have been found to have breached ethical standards by saying or recording things they have come to regret. Recognizing and avoiding conflicts of interest

Recognizing and appropriately avoiding conflicts of interest

When they arise is the topic of most advice requests we receive. As confirmed by the Collingwood Judicial Inquiry (November 2020) there can be a complex array of circumstances that can give rise to conflicts of interest, including those that though not covered by the *Municipal Conflict of Interest Act*, are nevertheless covered by the common law

In any event, obtaining clear and reliable advice from the Integrity Commissioner can help avoid costly and time-consuming investigations if there is any uncertainty about the application of the Rule.

Staying in your lane

One area of concern that continues to arise relates to members of Council overstepping their role, attempting to 'take the reins' to fix a constituent's problem, or directing staff how to do their job. Members of Council serve an important role in putting constituents

in touch with appropriate staff, and leading them to established processes, but it is important to strike the correct balance between guiding constituents and becoming their advocate.

It continues to be the case that elected officials attempt to inject themselves in quasi-judicial matters such as by-law enforcement, or with respect to insurance claims. While it is important for Council to retain an oversight role, and have the ability to monitor how its by-laws and programs affect the community, file-level interference by individual elected officials must be avoided.

In municipalities subject to 'stronger mayor powers[1]' the question arises as to whether a mayor with those powers can give direction to staff beyond the specific circumstances mentioned in the Act (essentially to carry out 'Mayoral Decisions' authorized by the Act, or to direct that staff conduct research and provide advice).

For non-'stronger mayors' and for stronger mayors exceeding their jurisdiction, inappropriate interference arises because of a misinterpretation of the *Municipal Act* provision which identifies the role of the Head of Council as 'Chief Executive Officer'. This provision has led to confusion and, occasionally, overreach by Heads of Council in erroneously perceiving a role leading the municipality's administration. Elected officials – even Heads of Council – have no role in the day-to-day administration of municipal government unless specifically authorized by statute.

Failing to recognize this, stepping outside of their proper role as elected officials to 'take the reins' of administration, undermines staff and can be perceived as interfering with management. This overstepping of the proper role by Members, even Mayors, must be recognized as inappropriate under the Code of Conduct and the Council-Staff Relations Policy, both mandated under the *Municipal Act*.

As always, obtaining clear and reliable advice can help avoid a costly and time-consuming investigation.

<u>Provincial Review of Code of Conduct/Integrity Commissioner System</u>

In December 2024, proposed amendments to the *Municipal Act* were introduced by the province in the form of Bill 241, titled '*An Act to amend the City of Toronto Act, 2006 and the Municipal Act, 2001 in relation to codes of conduct*'. With the calling of the election now underway the Bill is no longer capable of adoption, although it signals the approach the government, if returned to office, will take.

Code of Conduct development for the City of London has been paused because the Bill contemplates a universal code of conduct for all municipalities in Ontario. No detail is provided with respect to the form or content of such a code, nor to the future role of the

[1] The recent amendments to the *Municipal Act* which provide designated mayors to make unilateral decisions with respect to municipal organization and prescribed provincial interests is neither indicative of non-designated mayors being 'weak', nor representative of the extensive powers American 'strong mayors' have, particularly in light of the role partisan politics plays in electing administrators there.

Integrity Commissioner of Ontario in developing training or in otherwise influencing the approach municipal integrity commissioners are to take in serving their client municipalities.[2]

What the Bill does specify is a mechanism to remove elected officials from office should a municipal integrity commissioner find after a complaint investigation:

1. The member has contravened the code of conduct.
2. The contravention is of a serious nature.
3. The member's conduct that is the subject of the inquiry has resulted in harm to the health, safety or well-being of any person.
4. The penalties set out in subsection 223.4 (5) [reprimand or suspension of pay] are insufficient to address the contravention or to ensure that the contravention is not repeated.

If such is the case, the municipal integrity commissioner will refer the matter to the Integrity Commissioner of Ontario who will conduct their own inquiry. Upon the completion of that inquiry the Integrity Commissioner of Ontario, if they agree the above criteria have been met, will report to the respective municipal council with a recommendation that the elected official be removed from office. Council must vote unanimously (the respondent elected official cannot vote and is not counted) in order to cause the member's seat to become vacant.

In our view the mechanism set out in the bill is lengthy, uncertain and expensive, and does not adequately deal with what might be done to achieve course correction while the process is underway, nor at the conclusion of a non-unanimous Council vote should the Integrity Commissioner of Ontario recommend that removal from office is appropriate.

Regrettably the Bill represents a virtually single-minded approach to remedying the deficiencies of the current system by focusing on mechanisms leading to removal from office. It is hoped that there will be more fulsome consultations, including with practicing municipal integrity commissioners, prior to any further legislative action.

In the meantime, consideration of Code modifications for the City of London has been paused. It is open to the City to move forward with consideration of amendments, if only to attempt to influence the style and content of any province-wide Code that might someday be mandated through regulation.

<u>Conclusion:</u>

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

[2] It should be noted that the Integrity Commissioner of Ontario does not currently have any role in the administration of municipal code of conduct/integrity commissioner matters.

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.

It has been a privilege to assist you in your work by providing advice about the Code of Conduct and in resolving complaints. We recognize that public service is not easy and the ethical issues that arise can be challenging. The public rightly demands the highest standard from those who serve them, and we congratulate Council for its aspirational objective to strive to meet that standard.

Finally, we wish to thank the Clerk and the City Manager for their 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. This was done willingly and efficiently by the staff of the municipality.