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## MEMORANDUM

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**To:** Council, Town of Orangeville  
**From:** Guy Giorno, Integrity Commissioner  
**Date:** April 30, 2021  
**Re:** Annual Reports (2019-2020, 2020-2021)

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The responsibilities of the Integrity Commissioner include conducting inquiries into whether a Council Member or local board member has contravened the Code of Conduct, conducting inquiries into whether a Council Member or local board member has contravened the *Municipal Conflict of Interest Act*, and responding to requests from Council Members and local board members seeking advice about their obligations under the Code of Conduct and the MCIA.

### Fiscal Overview

Orangeville's costs of Integrity Commissioner services have been as follows:

Jan. to Dec. 2019: \$250 + tax  
Jan. to Dec. 2020: \$260 + tax  
Jan. to Mar. 2021: \$2200 + tax

(These figures do not include the \$90 annual retainer.)

The financial impact of Integrity Commissioner services falls entirely on the municipal tax base. Integrity Commissioners and codes of conduct have been mandated by the Province without any corresponding provincial funding.

A few Ontario municipalities pay Integrity Commissioners salaries or annual retainers, but most municipalities, including Orangeville, primarily compensate Integrity Commissioners by the hour for services rendered. Municipalities are unable, however, to determine the extent of the demand for Integrity Commissioners' time. Under the legislation, any member of the public may request an inquiry into an alleged code of conduct contravention,<sup>1</sup> and any elector "or a person demonstrably acting in the public interest" may request an inquiry into whether the *Municipal Conflict of Interest Act* was contravened.<sup>2</sup> The Act provides that Integrity Commissioners perform their functions in an independent manner,<sup>3</sup> so municipalities cannot intervene in the conduct of inquiries.

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<sup>1</sup> *Municipal Act*, subsection 223.4(1).

<sup>2</sup> *Municipal Act*, subsection 223.4.1(2).

<sup>3</sup> *Municipal Act*, subsection 223.3(1).

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Here, as in most Ontario municipalities, any individual can seek to initiate an Integrity Commissioner inquiry for which the municipality becomes liable to pay.<sup>4</sup> In fact, a person who initiates a Code of Conduct complaint does not need to live in Orangeville or, for that matter, in Dufferin County.

I believe that this legislative regime places on Integrity Commissioners an implied obligation to act reasonably in generating costs to municipalities through the provision of services, in particular through the conduct of inquiries. Integrity Commissioners must act in a manner that is responsive and fair to the individuals who are parties to their inquiries, while at the same time following a process that is efficient, cost-sensitive, and prudent, taking into account the circumstances of each case.

## Code of Conduct Inquiries

Whether to conduct an inquiry into an allegation under the Code of Conduct lies in the Integrity Commissioner's discretion. The Integrity Commissioner does not make the final decision on a Code of Conduct inquiry. Instead, the Integrity Commissioner reports findings and recommendations to Council, and it is Council that makes any decision.

The Complaint Protocol under the Code of Conduct sets 45-day and 90-day targets for the completion of the inquiry process, but it gives the Integrity Commissioner the discretion to extend deadlines as necessary. Generally, inquiries are pursued as expeditiously as possible.

However, the following six factors bear on the timing of inquiries:

1. As explained above, an Integrity Commissioner has an implicit responsibility to manage the volume of inquiry activity in a manner that is reasonable and prudent. When multiple complaints are received around the same time, they cannot all be handled at once. Staggering the inquiries is essential as a matter of fiscal responsibility and time management.
2. In deciding the sequence of inquiries, the Integrity Commissioner may also take into account whether multiple inquiries have been initiated by the same persons. In theory, everyone in the municipality has the right to request an inquiry.
3. If an inquiry is particularly complex, then an Integrity Commissioner has full discretion to extend the time for as long as the process takes.
4. If the Integrity Commissioner attempts to help the parties achieve an informal resolution (*i.e.*, settlement), then the inquiry is paused and the complaint is held in abeyance. Sometimes a particular case will appear to be an ideal candidate for settlement. This

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<sup>4</sup> Some municipalities have attempted to address the uncertainty by asking Integrity Commissioners to agree to "upset limits" in their contracts. The problem with this approach is that individual complainants, not municipalities, determine the demand for Integrity Commissioner inquiries. Integrity Commissioners are Accountability Officers who exercise statutory functions under Part V.1 of the *Municipal Act*, and their statutory obligations do not disappear once an upset limit is reached. Their position is not the same as, for example, that of a contractor that has agreed to regrade a section of municipal highway of known dimensions.

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means that the process will be paused, sometimes for a long while, to give the parties time to settle their differences.

5. COVID-19.
6. Cooperation of the parties and responsiveness of witnesses: In one inquiry prior to 2019, cooperation by a party was significant factor in delay. Currently parties are cooperating fully, but in one case involving multiple witnesses and persons/entities with relevant information, the challenge of obtaining some responses has had a significant impact on timing.

## Settlement

It is a responsible use of the discretion conferred on an Integrity Commissioner to pause the proceeding to give the parties an ample opportunity for resolution and also to allow the parties to consider the matter with the benefit of distance from the actual events. Often the passage of time makes a seemingly intractable difference possible to resolve.

It is important to note that a pause carries no additional cost to the Town. My practice is always to pause when circumstances warrant.

## Status

The following table summarizes Code of Conduct inquiries. The strict confidentiality provisions of the *Municipal Act* prevent the identification of parties unless and until a matter is reported to Council.

File No. and Case Name	Status	Outcome
2019: no complaints	n.a.	n.a.
2020: no complaints	n.a.	n.a.
2021-01-CC Parties confidential because no report <sup>5</sup>	Closed	Complainant did not pursue
2021-02-CC Parties confidential until completed	Active	n.a.
2021-03-CC Parties confidential until completed	Active	n.a.

The confidentiality provisions of the *Municipal Act* prohibit any discussion of the outstanding inquiries, other than to say that the factors discussed above apply to those proceedings.

It would be improper to announce a target date for reporting, but all active matters are expected to be completed before my term ends July 31.

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<sup>5</sup> When an inquiry is terminated without a report to Council, the confidentiality provisions of the *Municipal Act* prevent the Integrity Commissioner from disclosing the parties' names.

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## Inappropriate to seek extension

As explained in my Special Report, because two code of conduct inquiries are ongoing, I do not wish to be considered for further extension of my term past July 31. The inquiries are independent and will be completed independently. Discussion of an extension might be perceived to compromise the independence of the ongoing proceedings.

## ***Municipal Conflict of Interest Act Inquiries***

The legislation treats inquiries into allegations of MCIA breaches somewhat differently than inquiries under a Code of Conduct. Town Council is not the decision maker in an MCIA matter. Instead, it is the Integrity Commissioner, at the conclusion of an MCIA inquiry, who decides whether or not to apply to a Superior Court judge for a declaration that the Member has contravened the MCIA. The Integrity Commissioner must publish written reasons for the decision. I do this providing the reasons to the Canada Legal Information Institute (CanLII), for posting in its online database.

An Integrity Commissioner's MCIA decisions are not subject to Council approval. They are provided to Town Council for information.

The *Municipal Act* requires the Integrity Commissioner to complete the inquiry within 180 days after receiving the completed application. However, Ontario Regulation 73/20 had the effect of suspending the deadline in MCIA applications between March 16 and September 14, 2020.

During the period covered by these reports, I received no applications alleging MCIA contraventions.

## **Requests for Advice**

The role of the Integrity Commissioner also includes providing advice to Council Members and local board members about the following:

4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.

The *Municipal Act* requires that a Council Member's or local board member's request for advice from the Integrity Commissioner shall be made in writing, and that the advice shall be in writing.

A Council Member or local board member is free to disclose, or to choose not to disclose, the advice received. The Integrity Commissioner, on the other hand, is subject to the strict confidentiality requirements of section 223.5 of the Act.

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- (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

...

- (2.1) Advice provided by the Commissioner to a member under paragraph 4, 5 or 6 of subsection 223.3 (1) may be released with the member's written consent.
- (2.2) If a member releases only part of the advice provided to the member by the Commissioner under paragraph 4, 5 or 6 of subsection 223.3 (1), the Commissioner may release part or all of the advice without obtaining the member's consent.
- (2.3) The Commissioner may disclose such information as in the Commissioner's opinion is necessary,  
(a) for the purposes of a public meeting under subsection 223.4.1 (8);  
(b) in an application to a judge referred to in subsection 223.4.1 (15);  
or  
(c) in the written reasons given by the Commissioner under subsection 223.4.1 (17).
- (3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

For accountability and tracking purposes, each request for advice is assigned a file number, and the Clerk is informed the name of the Member associated with each file number. The topic and content of the request for advice are disclosed to nobody.

The following is the status of requests for advice received in 2019 through 2021:

Request No.	Status	Outcome
RFA-2019-01	Advice provided	Confidential advice to Member
RFA-2020-01	Advice provided	Confidential advice to Member
RFA-2020-02	Advice provided	Confidential advice to Member

Respectfully submitted,



Guy Giorno  
Integrity Commissioner