

Integrity Commissioner's Annual Report
Town of Midland

Principles *Integrity* is pleased to submit this annual report, covering the period from its appointment starting in January 2019 to the end of October 2020.

The purpose of an integrity commissioner's annual report is to provide the public with the opportunity to understand the ethical well-being of the Town's elected and appointed officials through the lens of our activities.

This being our first annual report to Council, we also take the opportunity to re-introduce ourselves and state our perspective on our role.

About Us:

In 2017 we formed Principles *Integrity*, a partnership focused on accountability and governance matters for municipalities. Since its formation, Principles *Integrity* has been appointed as integrity commissioner (and occasionally as lobbyist registrar and closed meeting investigator) in over 40 Ontario municipalities. Principles *Integrity* is an active member of the Municipal Integrity Commissioner of Ontario (MICO).

The Role of Integrity Commissioner, Generally:

Recent amendments to the *Municipal Act, 2001* mandated that all municipalities have codes of conduct and integrity commissioners for elected and appointed (local board) officials as of March 1, 2019.

The integrity commissioner's statutory role is to carry out the following functions in an independent manner. Put succinctly, the role is to:

- Advise on ethical policy development
- Educate on matters relating to ethical behaviour
- Provide, on request, advice and opinions to members of Council and Local Boards
- Provide, on request, advice and opinions to Council
- Provide a mechanism to receive inquiries (often referred to as 'complaints') which allege a breach of ethical responsibilities
- Resolve complaints
- And where it is in the public interest to do so, investigate, report and make recommendations to council within the statutory framework, while guided by Council's codes, policies and protocols.

This might contrast with the popular yet incorrect view that the role of the integrity

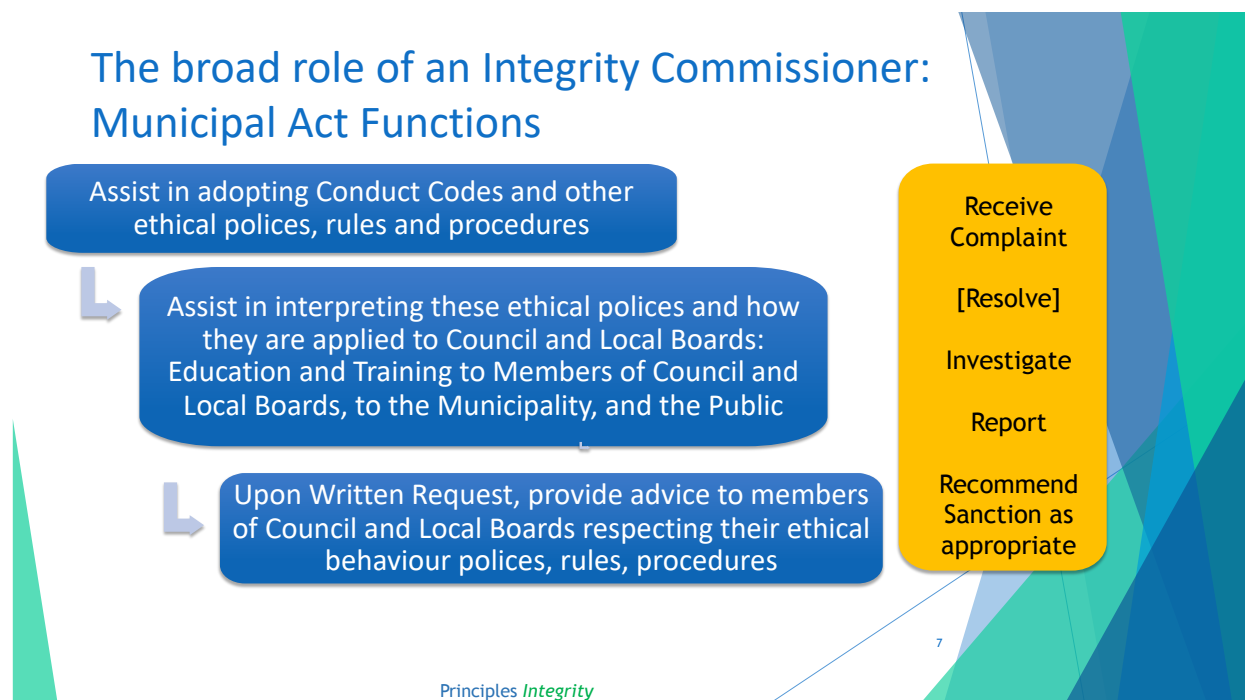
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commissioner is primarily to hold elected officials to account; to investigate alleged transgressions and to recommend 'punishment'. The better view is that integrity commissioners serve as an independent resource, coach and guide focused on enhancing the municipality's ethical culture.

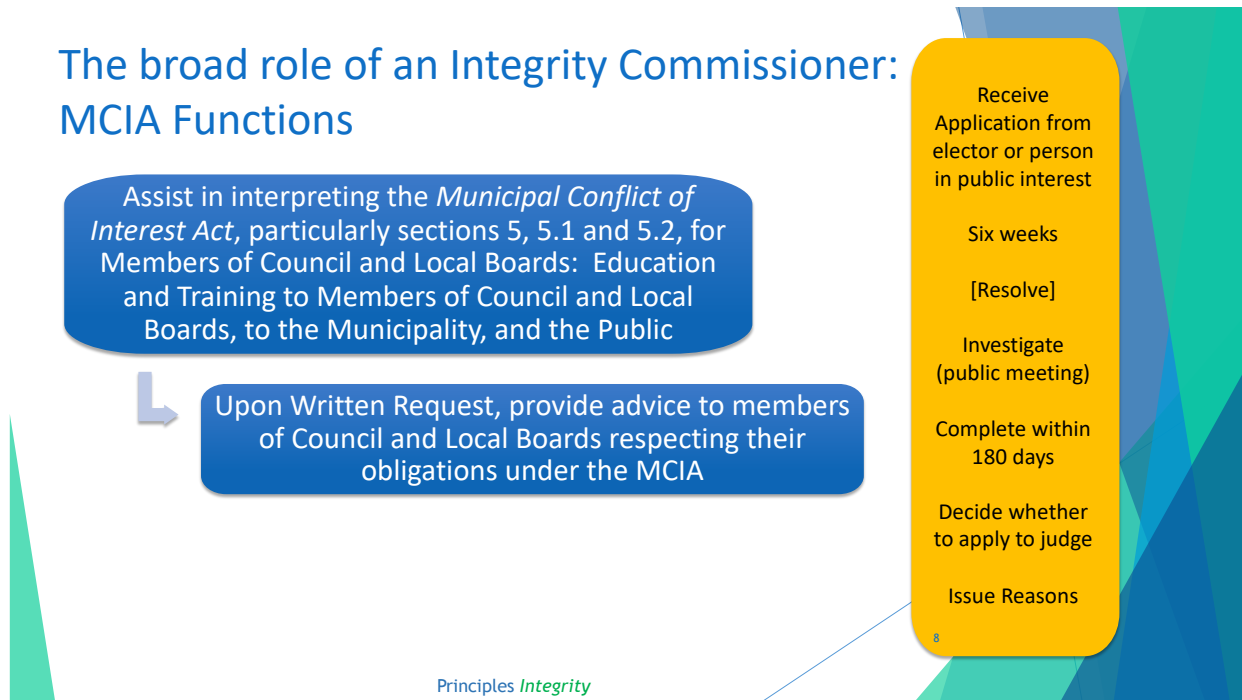
The operating philosophy of Principles *Integrity* recites this perspective. We believe there is one overarching objective for a municipality in appointing an Integrity Commissioner, and that is to raise the public's perception that its elected and appointed officials conduct themselves with integrity:

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 principle 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, set out graphically in the following two charts:



The broad role of an Integrity Commissioner: MCIA Functions



In each of the charts above the primary functions of the integrity commissioner are summarized in the horizontal boxes to the left, and the review mechanism (or inquiry function) appears in the vertical box on the right.

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 Toronto Computer Leasing Inquiry report authored by the Honourable Madam Justice Bellamy (the “Bellamy Report”, seen by many as the inspiration for the introduction of integrity commissioners and other accountability officers into the municipal landscape), “*Busy councillors and staff cannot be expected to track with precision the development of ethical norms. The Integrity Commissioner can therefore serve as an important source of ethical expertise.*”

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.

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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.

Our Activity on your behalf:

Since starting our role with the Town of Midland, we have been engaged in activity which subdivides roughly into three categories:

1. Policy Development and Education

Shortly after our retainer, on January 24, 2019, we provided Education and Training for Members of Council regarding their Code of Conduct and the Municipal Conflict of Interest Act.

We supported staff in recommending a Code of Conduct for Council, a Code of Conduct for Local Boards, and a Council-Staff Relations Policy, as required by the Municipal Act.

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.

Though advice is confidential, we can advise that some of the issues we provided guidance on this year arose in the context of properly identifying and appropriately recognizing actual and perceived conflicts of interest. The clarifications and guidance provided to Members seemed to be readily understood and welcome.

During the period covered by this report, we have responded to and provided Code and/or Conflict of Interest Advice on eleven (11) such requests, most predominantly in regard to managing conflicts of interest.

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

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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 to the complainant to close the matter. Often the potentially respondent Member is involved in preliminary fact-finding and will also be provided with an explanation.

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.

During the period covered by this report, we have received fourteen (14) complaints. In some cases, we have been able to dispose of a complaint without need of a public report, where it has resulted in an acknowledgment and course correction by the Member, where the facts did not substantiate a contravention, or where we have found it not in the public interest to pursue.

On three occasions we have provided recommendation reports to Council following the conclusion of our investigations. Notably, it is our observation that some conduct and behaviour can lead to unnecessarily disruptive and divisive relationships on Council. While robust and vigorous debate is a healthy part of our democratic process, Members of Council must not allow debates to devolve into personal disparagement or name-calling.

Ethical Themes Around the Province:

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

Respect and Non-Disparagement

An area of prominence is 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.

Some Members of Council hold a view that they are entitled to 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.

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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.

Staying in Your Lane

A concern that arises from time to time is 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, but it is important to strike the correct balance between following the established processes and stepping in to fix the problem. Failing to recognize this may be perceived by staff as undermining staff or interfering with their duties, and may attract exposure for the Member and the municipality where the Member's activities are not in compliance with the relevant regulatory scheme (such as using mandated personal protective equipment; following proper risk management processes; ensuring safety for the Member, their constituents, and the general public). Equally importantly, it interferes with the line-management routines properly established by the municipality so that its workers have clarity in who they are to take instructions from.

Conflicts of Interest

One area Members frequently require additional clarification on is recognizing and appropriately identifying conflicts of interest when they arise. These often include when members are part of another organization or club whose interests are impacted by a matter before Council, or when members are active professionally within the community and a matter before Council may potentially impact one of their current or past clients.

The Municipal Conflict of Interest Act governs when elected officials are members of bodies (with the notion of 'membership' being fact dependent) that have a pecuniary interest before Council, resulting in an indirect interest for the elected official triggering obligations under the Act to declare their interest and refrain from participation. With respect to circumstances involving past clients, a waiting period in the order of one-year is typically used before a past client's pecuniary interest is no longer an indirect interest.

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

Public Trust

Recent events have ushered in a new era of electronic participation in meetings, and have challenged municipalities to respond quickly to ensure the health and safety of the municipality, provide social distancing for staff, and ensure public transparency. Public trust in local government rests on confidence that important decisions are subject to public debate and that there exists a strong ethical framework. While the rules around

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participation in electronic meetings have been adjusted, the safeguards around transparency, accountability and ethical conduct remain firmly in place. To the extent routines are changed out of necessity, municipalities should be able to explain why their substituted processes amount to reasonable restrictions on the normal democratic rights of their constituents and be prepared to return to regular practice as soon as practicable.

Conclusion:

As always, we welcome Members' questions and look forward to continuing to serve as Midland's Integrity Commissioner. We wish to recognize the Members of Council who are responsible for making decisions at the local level in the public interest. 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 Administrative staff for their professionalism and assistance where required. Although an Integrity Commissioner is not part of the Midland's 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 Town.