

**Integrity Commissioner for Durham Region
and Brock, Clarington, Oshawa,¹ Pickering,
Scugog, Uxbridge and Whitby**

Annual Report

1. Introduction

I was appointed as Integrity Commissioner for the Regional Municipality of Durham and its local municipalities pursuant to the following by-laws² effective the following dates:

Municipality	By-Law No.	Date Passed	Effective Date
Regional Municipality of Durham	58-2016	Dec. 14, 2016	Jan. 1, 2017
Township of Brock	2715-2017-AP	Jan. 16, 2017	Jan. 1, 2017
Municipality of Clarington	2017-019	Feb. 27, 2017	Feb. 28, 2017
City of Oshawa	45-2018	April 30, 2018	April 30, 2018
City of Pickering	7538/17	Jan.16, 2017	Jan. 1, 2017
Township of Scugog	15-17	March 6, 2017	Jan. 1, 2017
Township of Uxbridge	2017-085	June 26, 2017	June 26, 2017
Town of Whitby	7234-17	Feb. 21, 2017	Feb. 21, 2017

In appointing me all of the local municipalities relied on the Region's Request for Proposal 1042A-2016. Consequently, it makes sense for me to present a joint annual report. However, the different effective dates mean that I have not served each municipality for the same length of time. For the sake of consistency, I propose to issue reports on a calendar year basis. This report covers calendar year 2017.

The Town of Ajax has not appointed me as its Integrity Commissioner and is not covered by this report. The City of Oshawa did not appoint me until 2018 and, therefore, is not covered in this report.

The responsibilities of the Integrity Commissioner include: providing information and advice to councils and members of council on codes of conduct and the issues arising

¹ Because it did not appoint me until 2018, Oshawa is not covered by this annual report.

² Each municipality has adopted its own Code of Conduct for Members of Council and separately appointed me as Integrity Commissioner under section 223.3 of the *Municipal Act, 2001*.

under them; providing advice to councils on other policies and procedures that relate to the ethical behaviour of members; providing information to the public on codes of conduct and the obligations of members under the codes; submitting an annual report to each council; and conducting independent investigations of complaints alleging that a code of conduct has been contravened.

2. Guidance and Advice

While the Integrity Commissioner's independent investigative role is extremely important, it has been observed that the investigation of potential contraventions is a last resort. Ideally, members should act ethically and in compliance with codes so that a contravention never occurs. To this end, the Integrity Commission plays a vital "proactive" role, providing advice and guidance to promote ethical compliance across the Region and the local municipalities.

2.1 Confidential Guidance

One of the Integrity Commissioner's roles is to provide confidential guidance to individual members of councils. While all members of councils are encouraged to reach out to the Integrity Commissioner, some seek guidance while others do not.

In 2017 I provided guidance to three different council members from two local municipalities.

It is important that members be able to rely on advice received from the Integrity Commissioner. While I consider myself to be always bound by advice that I provide to a member, in the interest of transparency and certainty that principle should be enshrined in each code of conduct. For example, Toronto includes the following provision in its code of conduct:

"Any written advice given by the Integrity Commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner."

I recommend that Regional Council and local councils amend their codes to include a similar provision.

I also provided guidance to the administration of some municipalities:

- I provided guidance to three municipalities on amendments to their council codes of conduct.
- I provided guidance to a municipality on its employee code of conduct.
- I provided guidance to a municipality on the application of its employee code of conduct to a particular situation.

- I provided guidance to several municipalities on the portions of Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017*, related to codes of conduct, integrity commissioners and the *Municipal Conflict of Interest Act*.

3. Internal Outreach, Education and Training

During 2017 I conducted the following internal outreach, education and training:

- Monday, October 16: Town of Whitby Council Education and Training Session

4. Complaints and Investigations

An important component of the Integrity Commissioner's role is to receive complaints (from councils, members of councils and members of the public) and to conduct independent investigations to determine whether contraventions have occurred. In the event of a contravention the Integrity Commissioner makes a penalty recommendation (reprimand or suspension of up to 90 days' pay) to council and council has sole responsibility to decide whether the penalty should be imposed.

Not all complaints are investigated. Some complaints relate to rules and laws (e.g., *Municipal Freedom of Information and Protection of Privacy Act*) other than the Code of Conduct. Some complaints fail to contain sufficient grounds to investigate. The Integrity Commissioner may also decline to investigate if a complaint appears to be frivolous, vexatious or made in bad faith.

I issued a total of three investigation reports covering complaints received in 2017. Two of those investigation reports were issued in 2018.

Municipality	Investigation Reports	Contravention Found	No Finding of Contravention
Regional Municipality of Durham	2	0	2
Township of Brock	0	0	0
Municipality of Clarington	0	0	0
City of Pickering	0	0	0
Township of Scugog	1	0	1
Township of Uxbridge	0	0	0
Town of Whitby	0	0	0

5. Public Outreach

Another important role is to provide information to the public about codes of conduct and the obligations of members under the codes. This involves direct contact with members of the public and on occasion with the news media.

While accessibility to the public is an essential aspect of my role, there are certain boundaries that I do not cross:

- I cannot assist anyone to draft a complaint against a member. I limit my role to sending out copies of the Code of Conduct and the Complaint Protocol.
- While I can give general information about the Code to the news media and public, I cannot comment on specific cases, real or hypothetical. (For example, I will not answer “Would it be appropriate for Councillor X to do Y?” or “Did Councillor A contravene the Code by doing B?”) The only individuals to whom I provide specific advice in individual cases are the individual councillors.
- Similarly, I will not give advice to one member of a council concerning the conduct of another member of a council.
- I will not comment to the news media on the conduct of an ongoing investigation, nor even whether an investigation is occurring. Once a report to council is submitted, I let the report speak for itself and will not answer news media questions about it. An exception is made if a council instructs me to explain my report to the media.
- If a news media inquiry were to relate to a municipal program or service, then I would refer the journalist to the appropriate municipal spokesperson.

6. Recommended Code of Conduct Amendments

In my experience, it is not always obvious upon initial review of a Complaint that there are insufficient grounds for an investigation. Sometimes this becomes apparent only after an investigation has commenced and the Integrity Commissioner has the opportunity to consider not just the Complaint but also the Response and the Complainant’s Reply.

In Durham Region Report 2017-02, I recommended that the Region’s Complaint Procedure be amended to confirm that the Integrity Commissioner has the discretion to discontinue an investigation at any point. Specifically, I recommended that the Region’s Complaint Procedure be amended by replacing section 4 in its entirety:

Current:

4. Refusal to Conduct an Investigation

- 4.1 If upon review of a Complaint, the Integrity Commissioner is of the opinion that the Complaint is frivolous, vexatious or not made in good faith, or that there are no or insufficient grounds for an investigation, the Integrity Commissioner will not conduct an investigation and shall communicate this position in writing to the

Complainant and the member identified in the Complaint Form/Affidavit. The Integrity Commissioner is under no obligation to prepare a report for any matters that he or she summarily dismisses or determines not to investigate.

Recommended:

4. Refusal to Conduct an Investigation / Discontinuance of Investigation

- 4.1 If upon review of a Complaint, **or at any time during an investigation**, the Integrity Commissioner is of the opinion that the Complaint is frivolous, vexatious or not made in good faith, or that there are no or insufficient grounds for an investigation, the Integrity Commissioner **shall** not conduct an investigation **or shall discontinue the investigation** and shall communicate this position in writing to the Complainant and the member identified in the Complaint Form/Affidavit. The Integrity Commissioner is under no obligation to prepare a report for any matters that he or she summarily dismisses or determines not to investigate **or after an investigation is discontinued**.

Respectfully submitted,



Guy Giorno
Integrity Commissioner
Regional Municipality of Durham
Township of Brock
Municipality of Clarington
City of Pickering
Township of Scugog
Township of Uxbridge
Town of Whitby

June 26, 2018