

**Integrity Commissioner for Durham Region
and Brock, Clarington, Oshawa, 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-laws¹ 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 issue these reports on a calendar year basis. This report covers calendar year 2018.

I am not the Integrity Commissioner of the Town of Ajax, so Ajax is not covered by 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 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

¹ 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*.

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.

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 2018 I provided guidance to two different council members from one municipality. I also provided guidance to the administration of some municipalities:

- I provided guidance, which eventually was shared with all municipalities in the Region, on the relationship between an integrity commissioner's Bill 68 responsibility to provide written advice to council members on matters that include *Municipal Conflict of Interest Act* compliance and an integrity commissioner's Bill 68 responsibility to consider applications alleging contraventions of the MCIA.
- I provided guidance to a municipality related to the application of the code of conduct to election activity.
- I provided guidance to a municipality on sharing information (or, more precisely, the importance of not sharing information) about specific by-law enforcement files.
- I answered questions from 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 2018, I conducted the following internal outreach, education and training:

- December 6, 2018, Town of Whitby, Council Orientation
- December 6, 2018, City of Oshawa, Special Council Meeting – Education and Training
- December 7, 2018, Municipality of Clarington, Council Orientation 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 two investigation reports covering complaints received in 2018. One of those investigation reports was issued in 2019.

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

The above table that does not include complaints that were not investigated because either they did not provide grounds for investigation or they were withdrawn. For example, I did not investigate a complaint alleging that council members contravened the code of conduct when they failed to accept invitations to various meetings and public gatherings. Also, as Integrity Commissioner I am often copied on emails that members of the public send to council members and other municipal officials. Under the *Municipal Act*, in 2018 I only had jurisdiction over code of conduct complaints and therefore did not respond to communications that did not fall into this category.

To promote transparency, I now attach to each investigation report a statement of the time spent on the investigation and the total cost to the municipality. To my knowledge I am the only Integrity Commissioner in Canada who does this.

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. 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. Bill 68 (changes effective March 1, 2019)

Effective March 1, 2019, important changes to the *Municipal Act* include the following:

- It is now mandatory to adopt codes of conduct applying to council members and members of local boards.
- Requests by members for an Integrity Commissioner's advice, and the Integrity Commissioner's responses, must now be communicated in writing.
- A new section of the *Municipal Act* permits an elector or other person demonstrably acting in the public interest to apply to an Integrity Commissioner when the applicant believes that a council member or local board member has contravened the *Municipal Conflict of Interest Act*.

While these changes were not in effect during 2018, municipalities and I spent time during the year preparing for the March 1, 2019, effective date.

The statutory process for filing an MCI application with the Integrity Commissioner is different than the process for submitting a code of conduct complaint. For example, the applicant must include “a statutory declaration attesting to the fact that the applicant became aware of the contravention not more than six weeks before the date of the application.”

The legislation does not require that a specific form be used to make an MCI application, but the legislation does require that the application include required content. Attached is an application form that covers all the content required by legislation. Municipalities that have not already done so (or issued a similar form) make wish to make it available

7. Access to Integrity Commissioner Reports

Subsection 223.6(3) of the *Municipal Act* provides that “The municipality and each local board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public.”

Some municipalities make the reports public only by including them in the online agenda packages of the meetings where the reports are considered. A few municipalities devote a Web page (or portion of a page) to the Code of Conduct and the role of the Integrity Commissioner, and post any reports there. While the *Municipal Act* does not specify how municipalities are to make reports public, the latter approach is obviously more transparent than the former.

As a separate initiative, the Canadian Legal Information Institute (CanLII) is working to include integrity commissioner reports in its free, public, online database of Canadian legal decisions and authorities. (CanLII is a non-profit organization engaged by members of the Federation of Law Societies of Canada to establish a virtual library of Canadian legal information.) The collection of integrity commissioner reports, which is continually being updated, as available here: <https://www.canlii.org/en/on/onmic/> At the time of writing, the collection includes seven reports involving the Region and its local municipalities.

Respectfully submitted,



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

May 7, 2019

Application for Inquiry into Alleged Contravention of *Municipal Conflict of Interest Act*

About the Applicant

Full Name _____

Address _____

Phone _____

Email _____

Applicant is (check one):

- an elector in the municipality where the Member of Council holds office
- an individual demonstrably acting in the public interest
- a corporation (including a municipality) demonstrably acting in the public interest

Where the Applicant is a corporation please identify its authorized representative for purposes of this application:

About the Allegation

Name of the Member of Council who is the subject of the allegation (complete a separate form for each Member who is the subject of an allegation):

The Applicant alleges that the Member contravened the following sections of the *Municipal Conflict of Interest Act* (check all that apply):

- section 5 section 5.1 section 5.2

The following are the Applicant's reasons for believing that the Member has contravened the above section(s) of the *Municipal Conflict of Interest Act*:

(If more room is required then please attach additional sheets that set out the reasons in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact. If you wish to include exhibits to support this application then please refer to the exhibits as Exhibit A, B, *etc.*, and attach them to this form.)

PLEASE READ BEFORE SIGNING: If the Integrity Commissioner launches an inquiry into an allegation then the content of this form, including the Applicant's identity, will typically be shared with the Member who is the subject of the allegation. Also, information on this form and information obtained during the inquiry, including possibly the identities of the parties involved, might be disclosed in the Integrity Commissioner's published reasons at the end of the inquiry and might be disclosed in an application to the Superior Court. Only sign this application form if you understand and accept the potential for disclosure of your identity and the information you provide.

The Applicant applies to the Integrity Commissioner for an inquiry to be carried out concerning the alleged contravention:

Signature of Applicant
(or of representative if Applicant is a corporation)

Date

Personal Information on this form is collected pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* and Part V.1 of the *Municipal Act* and will be used by the Integrity Commissioner to consider this application and to conduct an inquiry into it. Questions about the collection of this information should be directed to the clerk of the municipality.

Note: The statutory declaration on the next page is a mandatory part of the application (required by the *Municipal Act*). It must be declared before a person authorized to take declarations in Ontario (including any Ontario lawyer).

DECLARATION

Required by subsection 223.4.1(6) of the *Municipal Act*

I, _____ (insert full name), of the _____ (city, town, etc.) of _____ (specify municipality), _____ (add province/country if outside Ontario/Canada) solemnly declare that:

1. I am the Applicant.

1. The Applicant is a corporation and I am its authorized representative.

(strike out the line above that does not apply and initial the striking out)

2. I attest to the fact that the Applicant became aware of the Member's alleged contravention of the *Municipal Conflict of Interest Act* not more than six weeks before today.

2. [In a municipal election year:] I attest to the fact that the Applicant became aware of the Member's alleged contravention of the *Municipal Conflict of Interest Act* within the period of time starting six weeks before the fourth Friday of July, and ending on voting day.

(strike out the paragraph above that does not apply and initial the striking out)

3. I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the)
of this day of)
, 20)
)
)
_____)
A Commissioner, etc.)

Applicant or Representative