



**Submission to the
Ministry of Municipal Affairs and Housing
regarding proposed changes to the municipal code
of conduct and integrity commissioner framework**

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Overview

The Ministry of Municipal Affairs and Housing is seeking feedback on proposed changes to the municipal code of conduct and integrity commissioner framework for Ontario municipalities, in connection with legislative amendments that were proposed in Bill 241, the *Municipal Accountability Act, 2024*.¹

I commend the government for proposing a standardized code of conduct and integrity commissioner inquiry process to enhance accountability in municipal governance, which I called for in my 2021 submission to the Ministry.²

Drawing upon my Office's significant experience in addressing complaints about municipal codes of conduct and integrity commissioners, I am making 22 evidence-based proposals to support the objective of increased transparency and accountability in the municipal sector.

Ombudsman role and jurisdiction

The Ombudsman is an independent, non-partisan Officer of the Ontario Legislature, appointed by all parties under the *Ombudsman Act*,³ whose role is to ensure that the provincial government and public sector serve people in a way that is fair, accountable, transparent, and respectful of their rights.

My Office intervenes to resolve or investigate issues involving government and public sector administration and makes evidence-based recommendations for corrective action when necessary. We do so based on complaints or on our own initiative and are recognized internationally for the calibre and impact of our work.

The Office of the Ontario Ombudsman was established in 1975 and takes complaints about the administrative decisions and actions of more than 1,000 public sector and government bodies in Ontario, including Ontario's municipalities. We also take complaints about child protection services and French language services in Ontario.

Since 1975, we have provided direct assistance to more than one million Ontarians, helping them access justice and essential public services.

¹ Bill 241, *An Act to amend the City of Toronto Act, 2006 and the Municipal Act, 2001 in relation to codes of conduct*, 1 Sess 43rd Leg, Ontario, 2024 (first reading 12 December 2024).

² Ombudsman of Ontario, *Submission to the Ministry of Municipal Affairs and Housing's consultation on strengthening accountability for municipal council members* (July 2021) ["2021 Submission"], online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/submissions-to-government/2021/submission-to-the-ministry-of-municipal-affairs-and-housing>>.

³ RSO 1990, c O.6.

We have also made more than 1,300 evidence-based recommendations that have driven vital systemic reforms, improving the lives of millions of people across our province.

Through our independent and impartial investigations, as well as the implementation of our recommendations, the Ombudsman institution has been instrumental in achieving significant province-wide reforms in public policy, access to justice and service delivery.

As experts in good governance, we also share best practices to help public sector bodies optimize the services they provide. Ontario's 444 municipalities differ in population, geography, and resources, but their residents all have identical rights to fairness and accountability.

Since January 1, 2016, my Office has had the authority to review complaints about municipalities, including about their integrity commissioners and code of conduct complaint processes. As of March 1, 2019, all municipalities have been required to have a code of conduct and use the services of an integrity commissioner.

As Ombudsman, I do not act as an integrity commissioner for municipalities. My Office can review and investigate complaints about municipal integrity commissioners once they have completed a review or inquiry, declined to review a complaint, or the time for bringing a complaint has expired. We do not act as an appeal body and do not substitute our decisions for those of integrity commissioners. Instead, we assess whether integrity commissioners have acted in accordance with relevant legislation and procedures, considered the issues before them, followed fair practices, obtained and considered relevant information, and provided sufficient and adequate reasons to support their decision based on the available evidence.

My Office received more than 300 cases (complaints and inquiries) related to codes of conduct and integrity commissioners between March 1, 2019 and March 31, 2024. Given our experience with resolving cases about integrity commissioners, we have developed best practice resources for municipalities and the public. Our recent publication, *Codes of Conduct and Integrity Commissioners – Guide for Municipalities*, is a handbook offering best practices for municipal council members, staff and integrity commissioners.⁴

⁴ Ombudsman of Ontario, *Codes of Conduct and Integrity Commissioners – Guide for Municipalities* (2024) ["2024 Guide"], online: <https://www.ombudsman.on.ca/resources/brochures,-posters-and-resources/municipal-resources/codes-of-conduct-and-integrity-commissioners-guide-for-municipalities>.

Standardized codes of conduct

The *Municipal Accountability Act, 2024* would have enabled the Lieutenant Governor in Council to prescribe a code of conduct for members of municipal councils and local boards. Consistent with my 2021 submission to the Ministry, which suggested that codes be standardized and expanded, such a change would address inconsistency across municipalities and increase certainty for both members and the public.

In this submission, I am highlighting some key elements that should be included or addressed in a standardized code of conduct to ensure the code maximizes accountability at the local level. We have set out additional information about best practices for creating a code of conduct in *Codes of Conduct and Integrity Commissioners – Guide for Municipalities*. I encourage the Ministry to review the Guide in full and reflect its content in the standardized code of conduct.

Proposal 1

The Ministry of Municipal Affairs and Housing should review my publicly available resource, *Codes of Conduct and Integrity Commissioners – Guide for Municipalities* and reflect its content in the standardized code of conduct it is developing.

Regulations under the *Municipal Act, 2001* and the *City of Toronto Act, 2006* currently require codes of conduct to address: (1) gifts, benefits and hospitality; (2) respectful conduct, including conduct towards officers and employees of the municipality or local board, as the case may be; (3) confidential information; and (4) use of property of the municipality or the local board, as the case may be.

In addition to these subjects, a standardized code of conduct should address:

- Decorum during meetings: At present, there is inconsistency across municipalities as to whether integrity commissioners can take complaints regarding conduct that occurs during a meeting. A standardized code should clarify this point.
- Use of social media: Increasingly, complaints regarding municipal officials relate to conduct on social media platforms. A standardized code should specify whether it applies to this type of conduct, and if so, clarify the applicable standards of conduct for members.

- Communication on behalf of council or the local board: A standardized code may specify whether members are permitted to speak on behalf of the municipality or local board, including to media.
- Conflicts of interest beyond the scope of the *Municipal Conflict of Interest Act*: The *Municipal Conflict of Interest Act* [MCIA] applies to specific types of pecuniary conflicts of interest, as defined in the legislation. A standardized code of conduct should clarify whether it applies to conflicts of interest outside the scope of the MCIA, such as non-pecuniary conflicts, a member using their position to benefit a friend, or a family member other than a parent, spouse, or child, or a perceived conflicts of interest.

Proposal 2

A standardized code of conduct should address the four subject areas currently required by O. Reg. 55/18, as well as decorum during meetings, use of social media, communications on behalf of council or the local board, and conflicts of interest beyond the scope of the *Municipal Conflict of Interest Act*.

Municipalities, as employers, are required to have workplace harassment policies and programs under the *Occupational Health and Safety Act*.⁵ My Office has received complaints concerning circumstances that involved alleged breaches of both a code of conduct and a workplace harassment policy, creating uncertainty about the nature of the inquiry and the role of the integrity commissioner. The standardized code of conduct should specify whether the integrity commissioner can investigate complaints related to workplace harassment, or whether these should be directed to another process.

Proposal 3

A standardized code of conduct should address how the code of conduct interacts with municipal workplace harassment policies.

To ensure that integrity commissioners can carry out their duties in an effective manner, a standardized code of conduct should include protections for those who make code of conduct complaints. Individuals who make a complaint to an integrity commissioner or otherwise comply with an integrity commissioner's process or requests should be protected from reprisal or threat of reprisal.

A standardized code of conduct should also require council and local board members to co-operate with the integrity commissioner and make it a

⁵ RSO 1990, c O.1, s 32.0.6.

contravention for a member to mislead, obstruct or attempt to mislead or obstruct an integrity commissioner in the exercise of their functions.

Proposal 4

A standardized code of conduct should:

- **Include anti-reprisal protections for complainants and for anyone co-operating with an integrity commissioner;**
- **Require council and local board members to co-operate with integrity commissioners; and**
- **Make it a contravention for a member to mislead, obstruct or attempt to mislead or obstruct an integrity commissioner in the exercise of their functions.**

If an integrity commissioner finds that a code has been contravened, the legislation permits them to recommend that council impose a penalty (a reprimand and/or a suspension of remuneration). The courts have found that commissioners may also recommend council impose remedial measures, such as removing a member from committees, requesting or requiring an apology, or requiring the return of municipal property. A standardized code of conduct should reflect that the integrity commissioner has the discretion to recommend remedial measures. To encourage consistency across the province, the standardized code should include a non-exhaustive list of available remedial measures.

Proposal 5

A standardized code of conduct should specify that an integrity commissioner can recommend council impose remedial measures, and include a non-exhaustive list of such measures.

Standardized inquiry processes

I commend the Ministry for proposing to adopt a standardized process for integrity commissioners to receive, review, investigate, and report on complaints.⁶ Most complaints to my Office about integrity commissioners relate to the processes followed or not followed during an inquiry. A robust, fair, and flexible process could prevent many of the problems we observe.

My Office's guide, *Codes of Conduct and Integrity Commissioners – Guide for Municipalities*, identifies best practices at each stage of the inquiry process. I encourage the Ministry to reflect this content in the standardized procedures it is

⁶ While the *Municipal Act, 2001* refers to "inquiries", the word "investigation" is often used interchangeably, and the Ministry's consultation refers to "standardized investigation processes".

developing. In this submission, I am focusing on some key elements that should be addressed to ensure the process is fair, transparent, and accessible. However, I encourage the Ministry to review the entire Guide and reflect its content in the standardized process it is developing.

Proposal 6

The Ministry of Municipal Affairs and Housing should review my publicly available resource, *Codes of Conduct and Integrity Commissioners – Guide for Municipalities* and reflect its content in any standardized inquiry process it is developing.

Filing integrity commissioner complaints and applications

A standardized process should clearly address how an individual can make a complaint, including how to request accommodations if required. The process should specify whether there is an option for an informal resolution or preliminary review prior to a formal inquiry. It should also clarify whether the integrity commissioner can receive anonymous complaints, and provide the commissioner with the discretion to protect the identity of complainants.

I have consistently called for the removal of fees and other barriers to making code of conduct complaints, such as requiring complainants to file sworn affidavits.⁷ Fees and onerous administrative requirements can discourage legitimate complaints and can undermine the effectiveness and accessibility of the integrity commissioner scheme.⁸

Proposal 7

A standardized process should clarify how complaints are to be made. The process should preclude barriers to making a complaint, including the charging of a fee or onerous administrative requirements like filing a sworn affidavit.

⁷ See my 2023-2024, 2021-2022, 2020-2021, and 2017-2018 annual reports, 2017 Submission to the Standing Committee on Social Policy on Bill 68, and best practices guides: Ombudsman of Ontario, “Annual Reports”, online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/annual-reports>>; See also Ombudsman of Ontario, *Submission to the Standing Committee on Social Policy on Bill 68, Modernizing Ontario’s Municipal Legislation Act, 2017* (April 2017), online: <<https://www.ombudsman.on.ca/resources/speeches-and-articles/speeches/2017/submission-on-bill-68,-modernizing-ontarios-municipal-legislation-act,-2017>>; Ombudsman of Ontario, *Tips for Municipalities: Codes of Conduct and Integrity Commissioners*, online: <<https://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Codes-of-Conduct-and-Integrity-Commissioners-EN-accessible.pdf>>; 2024 Guide, *supra* note 4.

⁸ 2024 Guide, *supra* note 4.

If a standardized process includes a time limit for making a complaint, the process should provide integrity commissioners the discretion and flexibility to accept complaints outside of that limit, based on the specific circumstances of the case.

Proposal 8

If a standardized process includes a time limit to file a complaint, it should provide integrity commissioners with the discretion to accept a complaint outside of the time frame, based on the circumstances of the case.

Dismissing complaints

Some municipalities that impose fees and administrative requirements for making complaints have told my Office they do so to discourage frivolous or vexatious complaints. A more effective way to address this concern is to empower integrity commissioners with the discretion to dismiss frivolous and vexatious complaints.

Proposal 9

A standardized process should include robust discretion for integrity commissioners to dismiss frivolous and vexatious complaints, rather than require the payment of a fee.

In addition to being able to dismiss frivolous or vexatious complaints, an integrity commissioner should have the discretion to dismiss a complaint for certain reasons, for example, because it is outside their jurisdiction, the complaint has been or is being addressed by another proceeding (such as a court proceeding or workplace harassment investigation), or if it is clear that even if the allegations were proven, there would be no breach of the code of conduct.

Proposal 10

A standardized process should reflect that integrity commissioners have the discretion to dismiss complaints that are outside of their jurisdiction, have been or are being addressed by a different proceeding, or would not constitute a breach, even if the allegations were proven.

A standardized process should clearly specify whether integrity commissioners can exercise their discretion to decline to commence or discontinue an inquiry at any time, or if this is limited to certain points in the process. It should also require commissioners to inform complainants (and, where appropriate, respondents as well) of such decisions in writing, and provide reasons, with reference to the information considered.

Proposal 11

A standardized process should specify when integrity commissioners may dismiss a complaint or discontinue an inquiry, and require that they provide written notice and reasons.

Time limits

At present, there are no statutory timelines for integrity commissioners to complete inquiries concerning code of conduct complaints. Delays can undermine public confidence in the complaint process, and we frequently hear from people who are dissatisfied with the length of time some integrity commissioners take to complete their work. A standardized process should set out reasonable timelines for integrity commissioners to acknowledge receipt of a complaint, determine whether an inquiry is warranted, and complete an inquiry and report.

Integrity commissioners should also have the flexibility to extend timelines if required, based on the specific circumstances of the case. Complainants and respondents should be informed in writing of any extensions and the reasons for them, along with a new expected completion date.

Proposal 12

A standardized process should establish reasonable time limits for each stage of an integrity commissioner's process. The process should provide that these time limits may be extended as required, provided the integrity commissioner provides written notice of the extension and reasons to all parties along with a new completion date.

Multiple avenues of complaint

My Office has received many complaints that involve alleged violations of both the code of conduct and conflict of interest under the *Municipal Conflict of Interest Act*. A standardized process should clarify how an integrity commissioner will approach a complaint that raises issues under both the code of conduct and the *Municipal Conflict of Interest Act*, given the different procedural requirements for each.

The standardized process should also address what steps an integrity commissioner should take if an inquiry discloses a potential contravention of the *Criminal Code*, another Act, or a municipal policy (such as a workplace

harassment policy), and whether the integrity commissioner may recommence an inquiry following the completion of another process.

Proposal 13

A standardized process should address how integrity commissioners administer complaints that raise issues under both the code of conduct and another statute or policy. It should also address how commissioners address complaints that raise issues best addressed through another process.

Confidentiality

Integrity commissioners are required to preserve the secrecy of all matters that come to their knowledge in the course of their work. A standardized process should state that information obtained by integrity commissioners is confidential, subject to the limits in the legislation. The standardized process should provide commissioners with discretion to decide how much information to disclose, taking local circumstances into account.

In accordance with procedural fairness, the council or local board member who is the subject of a complaint should be made aware of the substance of the allegations in order to have a fair opportunity to answer. The courts have found that a commissioner can satisfy this requirement by providing the broad grounds for the complaint, and need not disclose details, share evidence, or identify witnesses.⁹

Proposal 14

A standardized process should reflect that information obtained by integrity commissioners is confidential, subject to the limits in the legislation, and provide commissioners with the discretion to decide how much information to disclose, including when reporting to council.

Proposal 15

A standardized process should provide integrity commissioners with discretion regarding what information they disclose when informing a council or board member who is the subject of a complaint about

⁹ See *Michael Di Biase v City of Vaughan*, 2016 ONSC 5620 at paras 146–49, citing *Syndicat des Employés de Production de Québec et l'Acadie v Canada* (Canadian Human Rights Commission), 1989 CanLII 44 (SCC), [1989] 2 SCR 879 at para 27; *Irvine v Canada* (Restrictive Trade Practices Commission), 1987 CanLII 81 (SCC), [1987] 1 SCR 181 at para 71.

the nature of the complaint and their inquiry, in accordance with the confidentiality of their process.

Evidence and record keeping

Municipalities and local boards are required to provide information or access to property that integrity commissioners believe is necessary for their review of complaints, whether it is an inquiry under the code of conduct or related to the *MCIA*. A standardized process should note that integrity commissioners can gather any additional information that they consider necessary, including by speaking with people and obtaining documents.

The process should also set out any administrative or record-keeping requirements the commissioner should follow, including what records a commissioner should retain and for how long.

Proposal 16

A standardized process should reflect that integrity commissioners can gather evidence by speaking with people and obtaining documents that they consider necessary. The process should specify any record-keeping practices integrity commissioners should follow, including which documents should be retained and for how long.

Participation rights

A standardized process should provide for how the council or local board member subject to the complaint will participate in the inquiry. It should set out what information should be provided to the member and how the member can respond to the complaint, such as through a preliminary reporting process before the integrity commissioner's report is finalized.

Proposal 17

A standardized process should set out how a council or board member who is the subject of a complaint will be informed and how they can respond. The process should require integrity commissioners to provide the member the opportunity to review and respond to a preliminary version of a report before it is finalized, submitted to council, and made public.

Making integrity commissioners' reports public

Municipalities are required to make integrity commissioners' reports public.¹⁰ We have received complaints in cases where municipalities did not make such reports public in a timely manner. A standardized process should provide guidance to municipalities to ensure transparency for the public, including about the manner and timing of publication of integrity commissioners' reports.

Proposal 18

A standardized process should require municipalities to make integrity commissioners' reports public in a timely manner, such as by ensuring that, once completed, they must be added to the agenda of the next council meeting.

Improving access to integrity commissioner services in small, rural, and northern municipalities

I am encouraged to see that the Ministry is considering how it can improve access to integrity commissioner services to Ontarians in small, rural, and northern municipalities to ensure all Ontarians enjoy the same level of accountability in the municipal sector, regardless of the size or location of the municipality in which they live.

The Ministry is seeking comments on "whether there is a role for the Integrity Commissioner of Ontario to provide integrity commissioner services in certain municipalities." I support the Ministry's efforts to reduce the costs and administration requirements for small and less resourced municipalities, while ensuring all Ontarians have access to an important accountability mechanism.

Training and minimum standards or accreditation for integrity commissioners

I am pleased to see that the Ministry is contemplating requiring all integrity commissioners receive training from the Integrity Commissioner of Ontario on specified areas. As I noted in my 2021 submission to the Ministry, mandated training, professional standards, or accreditation would help ensure that the public has access to fair and high-quality reviews regardless of where they happen to live.¹¹

¹⁰ *Municipal Act, 2001*, s 223.6(3); *City of Toronto Act, 2006*, s 162(3).

¹¹ 2021 Submission, *supra* note 2.

At a minimum, integrity commissioners should receive training on the standardized code of conduct and integrity commissioner inquiry processes. They should also receive training on the powers and obligations of municipalities, integrity commissioners, and the Integrity Commissioner of Ontario under the *Municipal Act, 2001* (and/or *City of Toronto Act, 2006*) and/or *Municipal Conflict of Interest Act*. Commissioners should also receive training on the role of the Ontario Ombudsman, municipal governance, administrative fairness, and effective report writing. My Office has created and made public a number of resources that could assist in the development of this training, including *Codes of Conduct and Integrity Commissioners – Guide for Municipalities*.

Proposal 19

The Ministry of Municipal Affairs and Housing should ensure that training for integrity commissioners addresses municipal governance, the standardized code of conduct and integrity commissioner inquiry processes, administrative fairness, effective report writing, the role of the Ontario Ombudsman, and the respective powers and obligations of municipalities, integrity commissioners, and the Integrity Commissioner of Ontario under the *Municipal Act, 2001* (and/or *City of Toronto Act, 2006*) and *Municipal Conflict of Interest Act*.

I would further encourage the Ministry to consider establishing minimum standards or accreditation for integrity commissioners, whether by the Ministry or the Integrity Commissioner of Ontario. Standards would ensure that municipalities appoint integrity commissioners with the requisite experience and skills.

The Ministry may wish to provide a role for the Integrity Commissioner of Ontario to advise municipalities on the sufficiency of a potential integrity commissioner's experience and qualifications, in addition to the status of an integrity commissioner's training and education.

Proposal 20

The Ministry of Municipal Affairs and Housing should create minimum professional standards for municipal integrity commissioners.

Proposal 21

Minimum professional standards for integrity commissioners should require a minimum amount of work experience in judicial, quasi-judicial, or investigative roles in a legal context that includes

applying rules related to ethics or principles of natural justice and fairness. They should also require knowledge of Ontario's municipal sector and relevant municipal legislation, regulations, and policy, as well as French language fluency where appropriate.

Independence of integrity commissioners

Section 223.3(1) of the *Municipal Act, 2001* (s. 159(1) of the *City of Toronto Act, 2006*) requires that integrity commissioners perform their functions in an independent manner and report directly to municipal council. However, as noted in my 2021 submission to the Ministry,¹² my Office has received complaints regarding the independence of integrity commissioners who perform other roles for the same municipality.

Municipal integrity commissioners play an essential role in the democratic process by promoting accountability and ethical and respectful conduct at the local level. If someone believes a municipality's ethical rules have been broken, the integrity commissioner can review and investigate complaints and conduct inquiries regarding potential conflicts of interest. By reporting publicly and to council on their findings and recommendations, the integrity commissioner can shine a light on unethical conduct or dispel unfounded allegations. To be effective in their roles, integrity commissioners must be credible and their independence beyond reproach.

I was pleased to see that Bill 241 proposed steps to strengthen public confidence in the independence of integrity commissioners by proposing that municipalities could consult the Integrity Commissioner of Ontario regarding the independence of a person who may be appointed as integrity commissioner.

The Ministry should further strengthen the public's confidence in the independence of integrity commissioners by restricting them from serving in multiple roles for the same municipality. Having a fully independent official carry out inquiries, separate from other functions provided to the municipality, increases public confidence in municipal government and helps to ensure councils and local board members can do their work free from disrespectful or unethical conduct.

It is a fundamental tenet of fairness that justice must not only be done, but also be seen to be done. Public confidence in the independence of integrity commissioners and their decisions can be undermined when they are permitted to act in multiple roles within a single municipality. When they do so, there is

¹² 2021 Submission, *supra* note 2.

significant potential for public confusion, distrust and both real and perceived conflicts of interest.

Existing or recent professional relationships between a municipality and its integrity commissioner may lead to the integrity commissioner being perceived as too closely connected with the interests of the council members whose conduct they oversee. The Ministry should ensure that municipalities cannot appoint recent or current employees, or recent or current providers of legal, investigative, or other professional services, as their integrity commissioner.

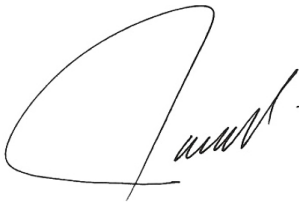
Proposal 22

The Ministry of Municipal Affairs and Housing should ensure that an individual who is currently or has recently been employed by a municipality, or who is providing or has recently provided legal, investigative, or other professional services not related to the role of integrity commissioner, is not eligible to be appointed as an integrity commissioner for that municipality.

Conclusion

I commend the Ministry of Municipal Affairs and Housing for taking steps to create a standard municipal code of conduct and set of integrity commissioner inquiry processes. To ensure all Ontarians have access to high-quality integrity commissioner services, I encourage the Ministry to adopt my proposals for the standardized code of conduct and best practices for municipal integrity commissioner processes.

I also call on the Ministry to implement additional safeguards that will ensure Ontarians have access to integrity commissioners who have the appropriate skills, experience, and independence required to conduct their work competently, fairly, and in a manner that inspires public confidence.



Paul Dubé
Ombudsman of Ontario

Ce mémoire est aussi disponible en français