

OFFICE OF THE
INTEGRITY COMMISSIONER'S

ANNUAL REPORT

2019 - 2020





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Suzanne Craig,
Integrity Commissioner

Message from The Integrity Commissioner

This report covers the 2019 and 2020 reporting years.

I am honoured to present the City of Barrie Integrity Commissioner's 2019-2020 Annual Report that sets out the Office's activities and decisions over these two years. In December 2018, the newly elected Barrie Council was sworn into office. 2019 was marked with several significant Code complaints. At this time, there were specific amendments to the City of Barrie Code of Conduct (the "Code") and Code Protocol that included new rules that codified the expanded role of Integrity Commissioner passed under Bill 68¹. The amendments enhanced the mandate and powers of this Office to investigate allegations of conflicts of interest under the MCIA and to make applications to court to have a judge decide if a Member breached the conflict of interest rules, provides the public with a more accessible accountability tool and an alternative route separate and apart from the courts.

Throughout the two years covered by the report, my office received several significant Code complaints that required this Office to embark into the new territory relating to conduct of Members of Council and Local Boards on social media.

From May 2019 to July 2019, this Office received 15 (fifteen) Formal Complaints, which was an unprecedentedly high number of complaints for



such a period of two months. Of note, is the fact in the 4 years prior to the report, I had received only 4 Formal Complaints compared to 20 Formal Complaints in 2019 and 6 Formal Complaints in 2020. Two of the investigations filed in 2020 were completed in 2021, hence my decision to include the first 6 months of 2021 in this report. I am pleased that the investigations have had noticeably positive outcomes, demonstrating that the public can and does take full advantage of the ability afforded under the Accountability and Transparency provisions of the Municipal Act to hold their elected and appointed officials accountable. Notwithstanding the seriousness of the Formal complaints received in the reporting period, the elected politicians of the City have taken their obligations to participate in the investigations of the Integrity Commissioner seriously. Members of Council have received the reports from my Office and made decisions on my findings and recommendations, respecting my role and the process of this Office.

The number of formal and informal complaint investigations and the City office closures due to Covid-19, significantly impeded the timely reporting obligations of this Office. Nonetheless, the Office of the Integrity Commissioner has endeavoured to accomplish the mission of fostering openness, transparency, fairness and accountability in the application of Code rules.

While municipal accountability officers work as arms-length independent statutory officers, it would remiss of me not to acknowledge the cordial working relationship that has been established with the senior leadership within the City, and in particular, the professional assistance of the City Clerk Wendy Cooke and her staff, that has been instrumental in assisting me in navigating my mandate of effective independence and oversight of Code rules while collaborating on changes to rules that intersect with City policies and Code rules.

¹ Legislative amendments to three key pieces of municipal legislation were passed through Bill 68, which received Royal Assent on May 30th, 2017. Accountability changes to 223.4 of the Municipal Act, 2001 expanded the Integrity Commissioner's portfolio to include investigations concerning the compliance of members of council and of local boards with sections 5, 5.1 and 5.2 of the MCIA; and requests from members of council and of local boards for advice respecting their obligations under the Code of Conduct and the MCIA applicable to the member

About the office of The Integrity Commissioner

The Office of the Integrity Commissioner is an independent office that reports directly to Council. The Office is responsible for providing policy advice, complaint resolution and education to Members of Council and Local Boards on issues of ethics and integrity. This is done to maintain high ethical standards at the City of Barrie. Elected officials are required to follow the [Council and Committee Member Code of Conduct](#). The Integrity Commissioner's primary role is to ensure the code is followed, and this includes:

- Addressing any violations made against the code.
- Assessing requests and complaints made by a member of the public or Council.
- Educating Council Members on the code.
- Outlining recommendations to deal with any violations.

The role of the Integrity Commissioner has been expanded to include the application of the *Municipal Conflict of Interest Act* (the "MCIA") rules in respect of conduct of Members of Council and Local Boards. This means that members of the public can bring complaints alleging MCIA contraventions by Members of Council and Local Boards to the Integrity Commissioner.

- The IC is now specifically empowered to provide advice to members of councils and local boards, including advice on MCIA rules.
- The IC has the power to apply to a judge for a determination of a question of whether a member has contravened sections 5, 5.1 or 5.2 of the MCIA.



Significant Issues

The Search for Equitable Outcomes:

As underscored in several Code Complaint Investigation reports of this Office, the stated objective of the Code is to ensure that the principles of transparency and accountability inform the conduct of individual Members of Council and Local Boards such that the City as a public body responsible to its communities, maintains the confidence of the public. The rules of the Code enshrine a shared commitment to adhere to a common basis for acceptable conduct while in office and apply to all elected and appointed officials. However, what happens when an undercurrent in search of equitable outcomes has the result of triggering conduct that runs afoul of the Code rules?

The period covered by this report saw the development of a new normal and a new way of City meeting management. This is the first Annual Report in two years. The delay in this Office reporting was due in large part to the

number of complaints received by this Office and the new way of doing business as a result of the global pandemic. The change from face-to-face meetings to virtual meetings led to conduct triggering Code rules, in particular the rule of decorum. What began in March 2020 was a new reality of virtual meetings which highlighted the often disrespectful conduct of some elected officials. With many high profile issues, Members expressed their concerns that the communities they represented were without a voice at the Council table. At the same time that virtual meetings became a regular Council and Committee meeting format, world events highlighting historical biases and oppression against people of colour, as well as, economic disparities relating to access to City services in particular for individuals suffering from mental health and addiction issues, rose to the forefront of Council debates.

Activities of the Office of the Integrity Commissioner

In the 2019, the Office received 15 informal complaints and 20 formal complaints in relation to the Code. Of the 20 formal complaints, an investigation file was opened on 10 of which 4 were investigated with findings brought to Council through investigations reports. 3 were mediated with recommendations to the Respondent as part of the settlement negotiations, 7 were dismissed after opening a complaint investigation preliminary file, as it became apparent in the course of the investigation, that there were insufficient grounds to continue. Two of the formal complaints triggered the MCIA rules, however it was determined that there were insufficient grounds to commence an investigation.

In 2020, there were 6 Formal complaints and 4 Informal complaints. Of the 6 Formal complaints, 3 were dismissed, 2 were resolved through informal discussions between the parties and 1 was investigated with findings submitted to Council.

City of Barrie Code Complaints #0119, #0520 and #0620.

This Office dedicated considerable time and thoughtful consideration in 2019 and 2020 to the review of all of Code complaints, however, complaint #0119 was particularly significant.

Code of Conduct Complaint #0119

The Complaint alleged that the Member made comments on his social media page that were false, misleading and disparaging in contravention of sections of the Code that require a Member of Council or Local Board to refrain from conduct that ought reasonably to be known to be offensive, insulting or derogatory.

This complaint investigation raised the issue of Members' constitutional right to freedom of expression under s. 2(b) of the Charter. As set out in Report #0119, a Member's right to freedom of expression is not absolute or unlimited. Some limitations apply broadly such as hate speech and perjury provisions in the Criminal Code and defamation laws, the enforcement of which is not within the jurisdiction of the Integrity Commissioner. Similarly, the expression of municipal councillors is limited by the rules that the council has imposed upon councillors in the Code. As set out in Report #0119, a Member of Council or Local Board cannot rely on freedom of expression provisions of the Charter to skirt their obligations under the Code, including the requirements to refrain from making offensive and insulting comments.

It was clear during the investigation of complaint #0119 that Members of Council of the City of Barrie were concerned that the application of the

Code rules could prevent them from fulfilling their duties as elected officials to speak on behalf of their constituents on matters of significant social, economic and political importance. Complaint investigation report #0119 clearly pointed out that politicians in council meetings, parliament or the legislature are free to engage in vigorous debate. There is a distinction at the federal and provincial levels of government as these levels of government have statutes that set out rules of absolute privilege granted to elected officials during their debates.

However, in a recent court decision, the Ontario Court of Appeal² considered whether municipal councillors are also protected by absolute privilege at municipal council meetings. This decision provides helpful advice to municipal councillors when considering acceptable commentary at Council. The Court confirmed that municipal councillors do not enjoy absolute privilege for offensive and defamatory statements they make during municipal council meetings or otherwise in fulfillment of their official elected office duties.

The Court noted that in contrast to the statutory absolute privilege extended to members of the federal and provincial legislatures, no such statutory protection was extended to members of municipal council. In short, the investigation of complaint #1019 concluded that municipal politicians do not have an unfettered right to make whatever comments that they wish to make even if their intent was not to offend or their intent was to make, what they believe to be a necessary and important social statement. Rather, the rules of municipal Codes of Conduct as well as, rules of the various procedural bylaws, govern their members' conduct and while the Chair has oversight over conduct of Members during Council and Committee meetings, the Integrity

Commissioner has concurrent jurisdiction to receive and investigate complaints with respect to Members' conduct both during a meeting and otherwise when in their official role.

Code Investigation Report #0119 also highlighted the issue of a Councillor's use of social media. It is well recognized that social media is an important and growing part of how government institutions and public officials communicate with the public. The Federal and Provincial government and a number of municipalities across Ontario and the rest of Canada have established multiple social media accounts as part of a new and creative way to provide information to the public.

Given that social media gives the impression of casual conversations between a small number of people and since social media platforms are designed for individuals to easily copy and share content, allowing specific messages, pictures and videos to be shared and distributed innumerable times, elected officials must be mindful that these platforms are "public by default"³. Any item online may be reused and shared multiple times. As a result, it is up to the individual account holder to limit what others see and to post appropriate content.

Given the immediacy and permanence of online comments, the courts have increasingly recognized the potentially damaging effects of social media comment.⁴ As a result of the public nature of social media, prohibitions on hate speech, threats, and spam are standard, and the limits apply to all contents of a post, including, for example, tags, titles, and thumbnail images for YouTube videos.⁵

Code Investigation Report #0119 confirmed that social media provides members of Council with a valuable and convenient tool to communicate,

inform and engage residents about City Council work and members' activities to represent and advocate for ward interests. When used in accordance with the Code of Conduct, social media enables members to showcase their diligent and conscientious service to their constituents and can help to improve trust and confidence in City Council and the City of Barrie.

Use of a member's title in a social media profile provides legitimacy – from the perspective of social media providers and the public – and authority and influence similar to the use of letterhead or other incidents of office. This investigation also confirmed that Facebook comments subject of this complaint were made on the Member's personal Facebook page but this did not shield the Member's comments from the application of the Code of Conduct rules. Given that the social media account had a public profile accessible to all – even those without a Facebook account and since the Member posted about City business and expressed views about City issues on this platform, the lines were blurred between personal and official. Early in the mandate of this Council I advised Members that after one is elected, an official should adopt the best practice of maintaining separate election/personal account and official Councillor account. Members should establish separate and distinct social media accounts for re-election purposes that are clearly labelled as election accounts and that are not "identified as a member's account". Members who establish separate and distinct social media accounts for re-election purposes may continue to use those accounts throughout the "election campaign period" as defined in s. 88.24 of the Municipal Elections Act, 1996. Council is encouraged to work with City staff to ensure that clear and understandable rules are developed around Council and Local Board Member use of social media.

² Gutowski v. Clayton, 2014 ONSC 2908, 2014 ONCA 921

³ <https://twitter.com/tos?lang=en>, s. 1 "Basic Terms".

⁴ See Kumar v. Khurana, supra, note 12, at 208 (quoting Barrick Gold Corp v. Lopehandia (2004), 71 O.R. (3d) 416, [2004] O.J. No. 2329 (C.A.))

⁵ <https://www.youtube.com/yt/policyandsafety/en-GB/communityguidelines.html>

Code of Conduct Complaint #0520

This Complaint dealt with the conduct of a Member at an October 2020 Planning Committee meeting. The Complaint #0520 Investigation Report set out that Committee Members conducted themselves in a way that demonstrated their support of the group seeking funding, however it was Committee's majority position that there was insufficient information to warrant an approval at that time for the funding. The Complaint underscored the challenges faced by Members of Council when debating issues of social relevance for their City, when criteria for funding approval are not clearly established. In addition, this Report set out the dynamic of Committee deliberations when the comments at the meeting cease to focus on the item and issues on the agenda and instead focus on individual members of committee and their personalities. In this Code Complaint investigation, after the comments of a Member were perceived by other Members of the Committee as suggesting that because the Committee was not approving

the funding, the Committee was demonstrating systemic bias/racism, the Respondent to the Complaint made comments that were found to be personally attacking the Complainant and not appropriate under the Code. The Code Complaint #0520 Investigation Report found that The Respondent's concerns about the Complainant's perceived "shaming" and veiled suggestion that the denial of the funding was endemic of and/or motivated by an underlying treatment based on the group race or ethnicity, could and should have been communicated differently with less commentary on a personal level levelled at the person of the Respondent. However, beyond the substantive matters of the merits of the Complaint, Code Complaint #0520 also highlighted the requirement of Members of Council to respond to requests by the Office of the Integrity Commissioner to avoid a ruling of obstruction. Code Complaint #0520 set out the imperative of cooperation with the investigation of the Integrity Commissioner and the requirement to respond to requests from this Office in a timely manner.

Code of Conduct Complaint #0620

In this Code of Conduct Complaint, the conduct of a BIA Board Member was reviewed and found to have contravened the Code rules. At one point during the meeting subject of the Complaint, the Respondent Board Member named in the Complaint spoke to the item claiming that "downtown is not comfortable or safe...". He went on to refer to people downtown using a racial slur.

In this Complaint, the Member that was investigated said at the meeting subject of the Complaint that "they" (being the citizens with mental illness and who suffer from substance additions and are homeless) are not productive not contributing citizens. The Complaint investigation found that the statement by the Member was in and of itself a blanket statement that stigmatizes individuals suffering from mental illness, addiction and homelessness. The perception the Member's statements left was that "those people" who are viewed by

the Respondent as not productive not contributing citizens, lose their worthiness because they are not productive and need to be moved out of the downtown core, or at least far enough away from worthy citizens so that "those people" are not allowed to "screw up other people".

The Code requires Members of Council and Local Boards to refrain from making inappropriate comments to or about an individual where such conduct is known or ought reasonably to be known to be offensive to the person(s) to whom they are directed or are about. The Member ought to have known, even if it was not his intent, that making the remarks he made would be reasonably perceived as inappropriate, offensive, insulting or derogatory. In Code Complaint Report #0620, I stated that I was encouraged that the Member had decided to submit an apology for having made the derogatory remarks. However, this recognition of having disrespected a category of Barrie citizens with his remarks and having given an apology for having made the remarks, did not absolve the Respondent of having fallen short of his ethical obligations set out under the Code.





Councillor Use of Social Media

There were many questions raised during this reporting period about the use by Members of Council of social media to communicate with their constituents. Unlike the City of Toronto, the City of Barrie does not provide Constituency Offices for Members of Council. Parliamentary convention has established that if a Member of Council has established that a social media handle will be used as their official City vehicle for communicating City business and updates, there is an expectation that this space will be a partisan free zone; that is, when constituents visit they should not encounter any evidence of the Member's partisan role or activity. If the Member is using their personal social media account also as a City business account, the lines will be blurred. The requirement that Members not use City resources or property extends beyond the bricks and mortar of City Hall or the Member's office into the online world. A member of the

public who visits a Member's Councillor website should not encounter any partisan content, nor should they be directed to partisan content if they click on any links on the site. The Code prohibits Councillors from using their personal social media feeds, that they use to disseminate City business, to also be used in the 2022 municipal election and beyond.

As I have stated in several Code Complaint reports in the reporting period covered by this Annual Report, the position of an elected or appointed official creates a larger audience with which one communicates on social media. Even if a Member's statement on social media does not reference their elected Council or appointed Board or Advisory Committee role as part of the Facebook or Twitter posts, as a Member to a municipal government agency, a Councillor or Local Board Member's conduct is governed by the Code rules that require a Member to arrange

their public affairs in a way that promotes public confidence and respect, in a conscientious and diligent manner. By posting comments on personal social media accounts, Members expose their comments to a wide audience beyond personal friends and family and because of their official role on City Council or Advisory Committees, enhanced credibility will be given to the assertions made in a social media post.

Members must take affirmative steps to clearly distinguish between use of social media for personal or election purposes on the one hand, and use of social media in his or her capacity as a City official on the other. Municipal Integrity Commissioners, as well as ethics officers at the provincial and federal level of government, agree on fundamental principles that apply to all levels of government, including the requirement to separate partisan activity and third-party business promotion from all members' official duties.

The Process when a Harassment Complaint is made against a Member of Council

During the 2020 reporting year, the Code of Conduct complaint process was reviewed to identify possible ways to address procedural inconsistencies in respect of the Integrity Commissioner's authority and that of the City's complaint procedures set out in the respect in the workplace policy. It is clear that the various Codes of Conduct at the municipal level, do not always have a clear process or suite of rules to determine whether there is concurrent jurisdiction on matters relating to workplace or sexual harassment, or regarding how a Complaint, which involves a Councillor, would be addressed under the City and Integrity Commissioner procedures. In effect, there is often a misunderstanding as to which officer would have carriage of which aspects of the investigation where a Member of Council is named in a harassment complaint.

This lack of clarity is compounded by the different processes set out under the Code of Conduct and the municipal HR Procedures, and even if the rules were clearly set out in the Code protocol regarding the investigation process, the municipality has obligations of confidentiality and the requirement to ensure a workplace free from harassment and discrimination under Ontario Health and Safety legislation and the Ontario Human Rights Code. This confidentiality under the workplace policies of a City, has the effect of barring the HR department from launching a Code complaint unless the individual who experienced the harassment gives consent for disclosure of their allegation.

City policies require the complainant to raise the violation with their supervisor or the HR Director or the CAO or the City Clerk, and an independent HR investigator will carry out the investigation. This process involves strict confidentiality. Whereas when a Member of Council is the Respondent, the process for investigating the complaint should default to the Code investigation protocol. Section 223.4 of the Municipal Act which gives jurisdiction to the Integrity Commissioner to receive and review complaints regarding conduct of Members of Council, there is not clarity on whether this is exclusive jurisdiction.

Most of the municipal Workplace Policies at the municipal level, follow accepted employment and workplace law principles, which do not limit application to interaction as among employees and only at the "office" or at the main workplace. In addition, the policies also apply to members of the public, visitors to City facilities or individuals conducting business with the municipality are expected to adhere to this policy and include refraining from acts of harassment or discrimination against employees, volunteers, members of Council or persons acting on behalf of the municipality. Most Codes of Conduct also contain a general provision on decorum that imposes an obligation on municipal elected officials, to avoid acts of intimidation, bullying or disrespect, that may not rise to the level of workplace or sexual harassment. There is a dilemma of what to do when an HR investigator may make a finding that an action or pattern of conduct of a Councillor did not rise to the level of workplace harassment but in the Code investigation, the IC could find the same conduct, contrary to ethical rules and make an adverse finding.

The problem is clear with this process: there is no transparency involved and often settlement negotiations allow the municipality to request training and or limited access to the employee by the Member of Council, but the wrongdoing is not disclosed publicly, which is often an important component in resolution for a victim – a public acknowledgement of wrongdoing. Public disclosure and reporting is also a cornerstone to municipal ethics regimes. A workplace or sexual harassment complaint is investigated and dealt with in a discreet and confidential manner, to minimize embarrassment to the workplace parties. But to whose benefit is minimizing of embarrassment to the point of closed meeting discussions, when viewing this governance tool through the lens of public accountability? To whom is sexual harassment embarrassing. Whether the complaints are made by elected officials, members of political staff, public servants, or members of the public, if there has been sexual harassment- it is offensive, degrading and certainly is also an experience of embarrassment, however that is usually due to the stigma associated with being a victim.

To be clear, procedural fairness also is required in all investigation processes. Confidentiality is required to mitigate reprisals against the complainant, but also to safeguard the good reputation of a councillor, prior to an investigation and an adverse finding being made.

Expenditures & Activities of the office of The Integrity Commissioner

1. Activities: Complaints

2019

20 Formal Complaints

6 Informal Complaints

1 MCIA*
18 Code**

4 Dismissed
2 With Settlement by the Parties

Investigation under s. 223.4.1 of the Municipal Act

*2 dismissals

**4 full investigation – complaints sustained

**4 with settlements by the parties

**10 dismissals

2020

6 Formal Complaints

4 Informal Complaints

1 MCIA*
5 Code**

2 Dismissed
2 With Settlement by the Parties

Investigation under s. 223.4.1 of the Municipal Act

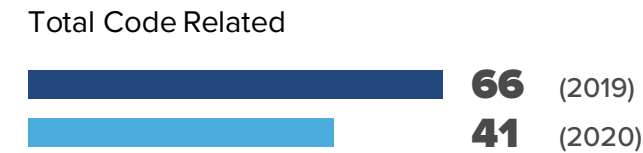
*2 dismissals

**2 full investigation – complaints sustained

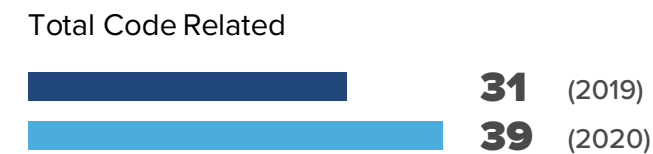
**1 with settlements by the parties

**1 dismissals

Inquiries on Code Application



Inquiries on Non-Code Application



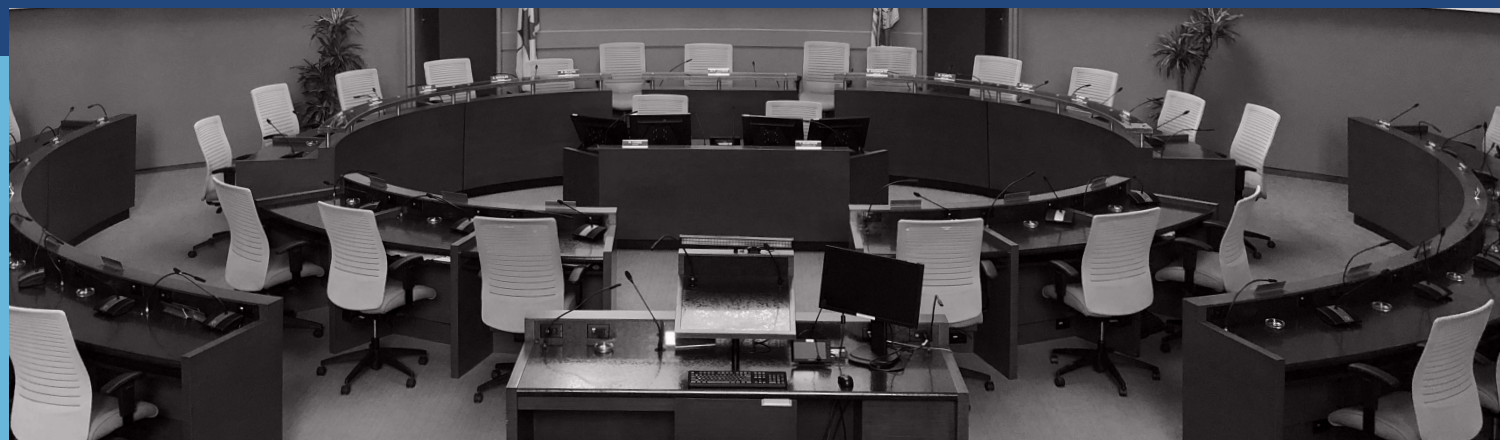
2. Office Expenditures

2019 - \$55,563.33

2020 - \$42,133.24

Annual Stipend for Integrity Commissioner Services (including remuneration for Integrity Commissioner services, Complaint investigations, advice to Members of Council and Local Board Members, mileage, office expenses).

Annual Stipend for Integrity Commissioner Services (including remuneration for Integrity Commissioner services, advice to Members of Council and Local Board Members, office expenses).



Education & Outreach

Collingwood Inquiry – Policy Panel – December 2019

The Town of Collingwood Judicial Inquiry was called by a vote of the Town of Collingwood Council in February 2018, and public hearings began in April 2019. Council asked the inquiry to look into the 50 per cent share sale of Collus to PowerStream in 2012 and the subsequent spending of the proceeds from the sale to cover some of the costs of two fabric membrane structures built as recreation facilities.

The inquiry hearings were split into three phases. The first phase dealt with the share sale and included 29 witnesses testifying at hearing dates from April 15 to June 28.

The third part of the inquiry was called a “policy phase” and hearings ran from Nov. 27 to Dec. 2 with panels of experts on good governance, municipal law, procurement, and lobbying. As 1 of 3 subject matter experts called to act as an expert witness in municipal governance policy in the final panel of the Collingwood Judicial Inquiry, I attended on December 2, 2019 and spoke on the topic of lobbying. The information provided by the Lobbying policy experts served to assist Justice Frank N. Marrocco in forming the recommendations in the final report to the Town of Collingwood.

As a Member of the lobbying policy panel, I provided the Inquiry Commissioner with my own experiences with the Vaughan Lobbyist Registry, and advised on how in the absence of an ethical compliance framework, including a mandatory lobbyist registry, a municipality’s legal and reputational risk is high.

I was quoted as saying that “[w]e have to clearly recognize that development and lobbying is not bad, and this is something that we have to work very hard to communicate and “[a] lobbyist

registry has to ensure that the relationships that members of council have with the community and with staff are transparent. If this does not happen, it hurts the town, it hurts the city, and it hurts business,” “Lobbying is generally perceived as a negative black art by the general public, and that’s largely due to the reputation that lobbying has developed south of the border,” said Robert Marleau. “Knowing that it is legitimate, so long that it is transparent, only enhances the reputation of the public office holder and the reputation of lobbyists.”

In the Collingwood Inquiry, Justice Marrocco set out a concerning picture of circumstances facing the CAO of the Town vis a vis their relation with Members of Council. In the Report, Justice Marrocco stated that “It was apparent in the matters I examined in Parts One and Two of the Inquiry, that the importance of the chief administrative officer (CAO) in the proper functioning of the Town, was not appreciated. This lack of appreciation manifested itself in the manner that the role was treated publicly and in the approach to the role taken behind closed doors. This failure – remarked Justice Marrocco - weakened a key pillar in the structure of the municipality, contributed to the blurring of the boundary between Council and staff, and made it easier to avoid proper procedure in the pursuit of Council’s goals. It was also detrimental to the staff’s confidence and morale and interfered with their efforts to provide objective information to Council.” What Justice Marrocco has identified is what Justice Bellamy identified in the Bellamy Report 20 years ago, which is that without foundational rules and respect for statutory roles and the separation of staff who are tasked with the operational duties of the City and Council, who carry out oversight and set policy, municipal governance is compromised, the morale of staff, the reputation of the municipal corporation and public trust are diminished.

AMCTO Access and Privacy

I was invited to join a planning focus group for the Nov. 15 Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) Annual Access and Privacy Forum. I facilitated a panel of experts at the symposium, which is a premier event that provides a platform for the community of senior municipal professionals to network, learn and discuss key strategic issues and emerging trends in municipal access and privacy management.

Meeting With Other Jurisdictions

Hosted the 10th Annual Municipal Integrity Commissioners of Ontario (MICO) meeting on October 25, 2019. Over 35 Integrity Commissioner from across Ontario attended. Presentation topics included the Changing Role of the Integrity Commissioner, Councillor Misconduct and Social Media, Intersection between Code Breaches / Councillor obligations and Lobbyist Rules. The Keynote speaker was Ms. Nancy Belanger, Commissioner of Lobbying of Canada.

Benchmarking and best practices discussions with Integrity Commissioners across Canada, including with the Integrity Commissioners of the City of Winnipeg, City of Edmonton, and First Nations in Ontario.

The Association of Municipalities of Ontario (AMO) was asked during its December 2020 consultation meeting with the Minister of Municipal Affairs and Housing to provide input on potential amendments to council member related accountability procedures at the municipal level. AMO provided a position paper to the Minister on February 3, 2021.

The consultation is being led by Jill Dunlop, the Associate Minister of Children and Women’s Issues “to hear from members of council,

municipal associations as well as municipal staff on how to ensure that municipal staff and officials are supported and respected in the workplace.” On March 5, 2021 the Province invited identified groups at the municipal level to provide comments on measures ‘strengthen municipal codes of conduct’, through obtaining input on ‘ways to increase accountability of council members’. The public consultations are being conducted to create standards at municipal councils that will ensure a safe and respectful workplace and that Members carry out their duties of office ethically and responsibly.

AMO’s recommendations to the Minister included:

- Increased financial penalties to encourage compliance.
- Suspension from office for certain violations.
- Removal from office in certain circumstances.
- Better training and standards for integrity commissioners.

The consultation process will be concluded on July 15th, with comments by the Minister in the Fall 2021.

Examples of IC Advice/Issues of Note

Q. A Member of Council asked if City staff are tasked with giving advice on whether a Member of Council has a pecuniary interest and conflict of interest in a matter at a meeting of Committee or Council.

A. A Member of Council may contact the Integrity Commissioner to discuss the application of the rules of the Municipal Conflict of Interest Act (MCIA) to their situation and may request a written opinion upon which they may rely for the purposes of a Code complaint alleging a contravention of the MCIA.

City staff, including the City Clerk, do not have an obligation to “flag” a potential conflict with a Member of Council and should refrain from giving any Member of Council advice in this area as the obligation of an elected official to avoid conflicts of interest is a personal responsibility.

Q. A Member of Council wanted to know if they had a non-pecuniary interest in the matter before Council, would they still have to declare an interest and not participate in the vote on the matter.

A. Non-pecuniary conflicts exist when an elected official is held to have a reasonable apprehension of bias and as such, they are not amenable to persuasion- they have a closed mind. A Member does not have a statutory imperative to declare a conflict and not vote on the matter, however if the Member would be reasonably seen to have a bias on the matter being discussed before Council, even if they do not stand to benefit financially from voting on the matter, the Code provisions create a non-pecuniary interest in the matter and the Member should not participate in the discussion or vote of the matter.

Q. A Member of Council was asked by a resident of the City to be in a photoshoot. The Member would not be receiving a monetary payment for their role in the photo shoot.

A. If as a private citizen, a Member participates in a photo shoot and the photos are not used in any way for political purposes, there is no receipt of a gift or benefit in their official capacity and thus, there is likely no Code prohibition. A Member of Council has a life outside of politics and if the reason for the request is related to an

activity participated in by the Member, photos of the Member are likely not a Code prohibition.

If the photos are taken of the Member in their official role as an elected official and the Member derives a personal benefit from the posting/distribution of the photos – i.e. advertising for the sale of their car, or promotion of their business, then the photo shoot will trigger section 8 - Gifts and Benefits- of the Code.

Q. A Member of Council advised that they were putting on an event which will be raising money for specific social and community programs. The Member asked if they could share the event promotion poster with City staff. The poster has all the details of the event, including the name of the Member as event organizer.

A. Members, by virtue of their position, have access to a wide variety of property, equipment, services and supplies to assist them in carrying out their City duties as public officials. Members should not use access to staff for any purpose other than for carrying out their official duties.

Code Rule 14 is in place to provide that no Member

shall use for personal purposes any City property, equipment, services, staff members, supplies or services of consequence... other than for purposes connected with the discharge of City duties, which may include activities within the Member’s office of which City Council has been advise.

The intent of this rule is to set out that Members, by virtue of their position, have access to a wide variety of resources, including City staff, to assist them in the conduct of their City duties as public officials. This privilege should not be used for any purpose other than for the fulfillment of their official duties.

It is reasonable and allowable for a Member of Council to lend their support to charitable initiatives and encourage others to do the same. However, holding an event in a Member’s personal/private capacity and accessing City staff to advise of the event will be seen to be gaining an unfair advantage for an organization/event in the Member’s private capacity, by virtue of distribution of the poster to City staff, using direct access to them as

A long-exposure photograph of a starry night sky, showing numerous curved light trails from stars. The trails are most prominent in the upper half of the image and become shorter and more distinct towards the bottom. The background is a dark, deep blue to black gradient.

Closing Remarks

During this reporting period, several formal complaints were lodged with this Office. The complaints were about conduct of Members of Council or Local Boards that was believed to have run afoul of the Code rules regarding decorum and being respectful to Council colleagues, staff and the public. Several Code complaints had as their subject, Members' comments regarding important social issues in the City of Barrie and in Canada. While I have acknowledged that a Member, through social media posts or comments at Committee or Council meetings attempts to clarify or correct their posting or comments by explaining that the words used were merely to express their opinion or exercising their right to free speech, it must be acknowledged that Members' conduct is governed by the rules of the Code.

Social Media:

There is a trend in government generally regarding elected and appointed officials use of social media to communicate with constituents but also, to engage in debate regarding issues that are at the forefront of political events. These discussions often center around controversial matters. Often, Members will explain that their comments on social media or during Council meetings reflect their opinion on an important issue that affects the Barrie community. Members explain to me that their statements on social media or during Council meetings, while strongly worded, are not discourteous, offensive or aggressive, and should not be subject of a Code investigation. In fact, in response to receipt of a request from my Office that a Member of Council or Local Board respond to a formal complaint, Members often suggest that the complaint is frivolous and politically motivated or the complainant is using the Office of the Integrity Commissioner to move forward their own political or personal agenda. It is my position that the Integrity Commissioner for the City of Barrie is the statutory decision-maker vested with the power to refuse to investigate, or to dismiss a complaint where the complaint is frivolous, vexatious or not made in good faith. Generally, in respect of

Code matters, a complaint is frivolous or vexatious when it is a waste of time or when it aims to harass the subject of the complaint. In other words, a complaint is vexatious when it aims to harass, annoy or drain the resources of the person complained against.¹ A complainant, in particular a member of the public, should not be held to such a high standard of proof that they are unable to reasonably bring forward a complaint. This would be a barrier to the effective operation of the Office of the Integrity Commissioner. If the threshold is set too high, the public interest in enforcing municipal government and Council's standards as contained in the Code would be rendered ineffective.

Respecting the process of the Integrity Commissioner:

Recently, in several municipalities, Integrity Commissioners have brought Code complaint investigation reports with recommendations of penalties only to have Council dismiss the Integrity Commissioner's findings as biased and one-sided. While I am pleased that Barrie City Council has always adopted the findings of my Office, there have been instances in which Members have stated that their comments under investigation were made to support an important community initiative, to stand up against discrimination or simply state their opinion. Of importance is the understanding that this Office has gone forward with investigations of a Code complaint after determining that the complaint is properly addressed to matters within the Code. The fact that the matter was in the view of the Member under investigation, without reasonable basis for the Integrity Commissioner to pursue investigating, was not, in my view, reason to deem the Complaint frivolous or made in 'bad faith.' A valid complaint that addresses conduct that on its face, is contrary to the Code will generally not be in bad faith, in the absence of a dishonest purpose.

Through an Equity Lens:

During the review of the myriad of matters and concerns that came to my Office, I have observed that there is a need for a deeper discussion when the policies and decision-making of government institutions are not reflective of an equity context, and when the outcomes of Council decisions impact both the people who work within government institutions and the constituents in the communities they govern.

As determined in several informal and formal complaints filed during this reporting period, discussions about whether public institutions' organizational and policy structure perpetuate institutional bias against underrepresented groups and lead to an enshrined system that promotes or allows biased outcomes adverse to marginalized groups, is to be welcomed at the City of Barrie. However, as aptly pointed out by a Member of Council during a Council debate "it is the how and not the why". "Systemic racism", "institutional bias and or discrimination", "systemic discrimination" should be called out and addressed. However, there must be a safe and respectful space where shared values and the consistent application of fair processes intersect and these discussions should be about issues and not the individual personalities of Members of Council.

A Final Word:

The Council and Committee Code of Conduct is an ethics document containing approved rules upon which Members of Council have agreed that their conduct will be measured. In order for this Office to fairly apply the Code rules to the actions and behaviour of individual Members, the values, vision, processes and rules of the City must be understood and respected by all of Council. If what is in place needs to be changed, meaningful discussions should take place, as is occurring at this time with the updates to the Respectful Workplace and Harassment policies, and the corresponding sections of the Code. It is encouraging to see that the Ontario government is seeking feedback on how to strengthen municipal codes of conduct until July 15, 2021.² While these discussions take place, the Code and procedural rules remain in force and will be applied by this Office. I am proud to serve as Integrity Commissioner for the City of Barrie and to report to a Mayor and Council that has demonstrated a willingness to have difficult discussions. I look forward to continued work on updates to the Code of Conduct and training for Members of Council and Local Boards, including the Committee of Adjustment. As I write today, the future appears to be less uncertain, and though there have been some missteps, I applaud the efforts of Council of the City of Barrie who I have seen endeavour to live out and make relevant, integrity and accountability in the years covered by this report.

Respectfully submitted,



Suzanne Craig
Integrity Commissioner

¹Modi v. Paradise Fine Foods Ltd., 2007 HRTO 30 at para. 18

² [Consultation: Strengthening accountability for municipal council members | Ontario.ca](#)



Office of the Integrity Commissioner, City of Barrie

For information about the Integrity
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