

Annual Report of the Integrity Commissioner: April 1, 2019 – March 31, 2020

EXECUTIVE SUMMARY

This is the annual report of the Integrity Commissioner presented in accordance with section 7 of *Integrity Commissioner Bylaw No. 19/005* (the “Bylaw”). The report contains a summary of the Integrity Commissioner’s activities during the past year since his appointment on April 1, 2019.

This report also provides a recommendation regarding an amendment to the Bylaw in relation the formal complaint procedure set out in section 10 of the Bylaw.

REPORT

During the past year, the Integrity Commissioner received 3 enquiries from the general public and one formal complaint. None of the enquiries required investigation and were addressed by referring to Council Minutes. The formal complaint required an investigation, which was completed within the 90-day timeframe provided for in the Bylaw. As the investigation found that contraventions of the *Council Code of Conduct Bylaw No. 18/009* had occurred and that sanction was warranted, a full copy of the Investigation Report was submitted to Council along with recommendations for sanction.

In September 2019, the Integrity Commissioner made a presentation to Council on the role of the Integrity Commissioner in relation to the investigation of a complaint as provided for in the Bylaw and, specifically, on the role of the Integrity Commissioner when conduct potentially giving rise to a complaint has occurred but a complaint had not yet been made. Council was informed that it was not the role of the Integrity Commissioner to provide advice to a Member in these circumstances and that, in fact, it could lead to a conflict of interest if advice was provided by the Integrity Commissioner.

In October 2019, the Integrity Commissioner responded to a request for information under the *Freedom of Information and Protection of Privacy Act*.

RECOMMENDATIONS OF THE INTEGRITY COMMISSIONER

1. Amendment to Subsection 10(g) of the Bylaw

The formal complaint procedure is set out in section 10 of the Bylaw. It is noted that while subsection (h) of the complaint procedure does provide a Member with the opportunity to comment on the proposed findings of the Integrity Commissioner and any recommended sanction where a finding of a contravention has been made, the complaint procedure does not expressly provide anywhere for a Member to receive a copy of the complaint or to respond to it during the course of a formal investigation before the Integrity Commissioner has made any findings.

In the interests of transparency and fairness, it is important for a Member to be made aware of a formal complaint as soon as the Integrity Commissioner determines that the complaint falls within the



jurisdiction of the Integrity Commissioner or that the complaint is not frivolous or was not made in bad faith. It is also important for a Member to understand that there is an opportunity to respond to the complaint. Accordingly, the complaint procedure should expressly provide that a Member will receive a copy of the formal complaint and have an opportunity to respond to it during the course of the investigation before the Integrity Commissioner determines whether or not there has been a contravention.

This could be accomplished simply by either adding a sentence to the beginning of subsection 10(g) or adding a new subsection 10(g) as follows:

As soon as the Integrity Commissioner determines that a Formal Complaint requires investigation of a Member's conduct, the Member will receive a copy of the complaint and be provided with a reasonable opportunity to respond to it in writing and may provide any further information in support of the response.

If this is added as a new subsection then the subsections following it in section 10 would need to be revised accordingly.

2. Amendment to present Subsection 10(n) of the Bylaw

Subsection 10(m) provides: *Where the Formal Complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner will not report to Council except as part of an annual or periodic report or update.*

Subsection 10(n) provides: *If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct, or any other policies, rules or procedures governing ethical behavior or Members, or that a contravention occurred although the Member took reasonable action or measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence of (sic) an error of judgement made in good faith, the Integrity Commissioner will so state in the report and will recommend that no sanction be imposed.*

As the Integrity Commissioner will generally not report to Council if a complaint is dismissed and, because a complaint will always be dismissed if the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or any other policies, rules or procedures governing the ethical behavior of Members, subsection (n) is confusing in this instance. Specifically, notwithstanding the direction in subsection (m), the latter subsection appears to contemplate that the Integrity Commissioner will nonetheless report to Council. While this makes sense in relation to the other instances described in subsection (n), it does not make sense where the Integrity Commissioner has determined that no contravention occurred.

In order to address discrepancy, the Integrity Commissioner recommends that:

Subsection 10(n) be amended to provide as follows:

If the Integrity Commissioner determines that a contravention of the Code of Conduct, or any other policies, rules or procedures governing ethical behavior or Members has occurred although the Member took reasonable action or measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner will so state in the report and will recommend that no sanction be imposed.



FINANCIAL IMPACT

This report has no financial impact

DECISION HISTORY

Council has not previously considered this matter.

SIGNATURE

Section 17 (1) FOIP



Jim Peacock
March 19, 2020

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