

Office of the Integrity Commissioner's Annual Report July 2020 – July 2021

Commissioner's Remarks

This report covers the period from July 2020 to July 2021.

On July 6th, 2020, Seguin Township Council enacted By-law No. 2020-062 appointing me as Integrity Commissioner for the Township of Seguin. Subsection 223.6(1) of the *Municipal Act* states that the Integrity Commissioner shall provide a periodic report to the municipality on his or her activities. In the Report, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned.

In 2019, the Municipal Act was amended by virtue of Bill 681, to include new rules that expanded the role of integrity commissioners. The amendments enhanced the mandate and powers of the office of municipal integrity commissioners to investigate allegations of conflicts of interest under the Municipal Conflict of Interest Act ("MCIA"). Thus, my appointment includes the duty to receive Code of Conduct (the "Code") and MCIA complaints.

During the period covered by this Annual Report, I resolved 1 formal complaint that had been received by my predecessor. Other than this complaint, there were no other formal inquiries received or investigated in this reporting period. I set out below, the reporting of activities of the Office of the Integrity Commissioner in fulfilment of my statutory role.

Education and Information:

The Integrity Commissioner has prescribed statutory duties, as well as those agreed upon with the Township. As Integrity Commissioner, I am responsible for providing advice in respect of the intersection between Code rules, MCIA obligations and Township policies, complaint resolution and investigation and education to Members of Council, staff and the public on issues of ethics and integrity, with respect to the Code and MCIA rules. Elected officials are required to follow the Code of Conduct for Members of Council and Local Boards as their primary ethics guideline. The Integrity Commissioner's primary role is to ensure the Code is followed. This includes:

- Addressing any violations made against the Code.
- Assessing requests and complaints made by a member of the public, staff or Council.
- Providing education and information to Council Members on the Code.
- Outlining recommendations to deal with any violations.

There were some questions received from the public that were not subject of Code complaints. These public inquiries raised matters not covered by the rules of the Code. In response to these inquiries, I provided information that mirrored the information provided to the Mayor and Members of Council in my introductory meetings with them at the beginning of my appointment term. From Wednesday July 29, 2020 to Thursday August 6, 2020, I conducted individual virtual meetings with the Mayor and each Member of Council. These introductory meetings covered the role of individual Members of Council versus the role of Council, the role of the Integrity Commissioner, Member obligations under the MClA with respect to disqualification rules and whether non-pecuniary disqualification rules apply to a Member of Council who advocates for support of community members and groups. Of assistance in providing responses to these types of questions, were the comments of Justice Marrocco in his recommendations contained in the Report of the Collingwood Judicial Inquiry (“Collingwood Inquiry”)¹. In the Collingwood Inquiry Report, Justice Marrocco recommended that:

The Province of Ontario should amend the *Municipal Conflict of Interest Act* to define disqualifying and non-disqualifying interests. A disqualifying interest prevents Council members from participating in debate, voting on the issue, or attempting to influence other Council proactive disclosure by the Council member, permits the member to vote on the issue, engage in discussions with other members of Council, or participate in debate.

In response to the questions received in this reporting year, I advised residents and Members of Council alike that Section 4 of the MClA contains exceptions to the rules of disqualification of a Member of Council who has a pecuniary interest (that creates a conflict) in a matter before them at a meeting. Section 4(h) of the MClA states that sections 5 and 5.2 do not apply to a pecuniary interest in any matter that a member may have by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board, or if the matter is *a matter in common with electors generally*.

Where a Member has a direct, indirect or deemed pecuniary interest under the MClA, they are required to declare the interest at the Council meeting (or at the next Council meeting, if they were absent), refrain from influencing the vote on the matter in any way, from influencing staff decisions on the matter and refrain from voting on the matter. When a Member does not have a pecuniary interest in a matter before Council or Committee, the determination of whether a Member may have a Code (non-pecuniary) disqualifying interest would be based on what an informed person, viewing the matter realistically and practically — and having thought the matter through — would conclude. In other words, the decision to not participate would take into consideration

¹ Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry, Associate Chief Justice Frank N. Marrocco. November 2, 2020

whether a reasonable and informed person would think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly based on their private interests. Members should avoid participation in activities that grant or appear to grant any special consideration, treatment or advantage to an individual which is not available to every other individual.

At the beginning of this reporting year, there seemed to be a lack of the parameters of the role of staff in implementing Council’s decisions and the establishment of administrative practices and procedures to carry out the decisions of Council.² However, following the appointment of the new Chief Administrative Officer, I did not receive any further queries raising concerns regarding Members of Council and the Code requirement to not insert themselves into the day-to-day business operations of Township business.

Code of Conduct General Inquiries:

From Members of Council	From the Public	From staff	Total Inquiries
4	3	2	9

Code of Conduct Complaints

	July 2020-July 2021
Formal complaints	1 ³
- Disposition	Resolved through informal resolution
Informal complaints	2
- Disposition	1 Negotiated- resolved 1 Dismissed
Total Code of Conduct Complaints	3

² ibid. Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry.

³ Received by previous Integrity Commissioner who decided the appropriate action would be to hold in abeyance and give carriage of the file and investigation to the newly appointed Integrity Commissioner

Code of Conduct Inquires – Non-Code application

Relating to staff from staff	0
Relating to process from staff	3
Relating to staff from public	0
Relating to process from public	2
Total non-Code related	5

Total Inquiries Received – 17

Legislative Updates:

1. Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry:

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 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 final report was published in November 2020.

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 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 in this area of accountability, 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.

In the Collingwood Inquiry, Justice Marrocco set out a concerning picture of circumstances facing the CAO of the Town vis a vis their relationship 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.

2. Minister of Municipal Affairs and Housing Public Consultation:

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.

The Association of Municipalities of Ontario’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 concluded on July 15th, with comments by the Minister in the to be submitted in the Fall 2021.

Election Year Updates:

Elections at all levels of government provide a unique and necessary opportunity for constituents to choose their elected officials. It is important that municipal Members of Council and Local Boards remember to follow Code, Township and Municipal Election Act rules that govern their role as elected officials of the Township of Seguin in respect of election and campaign-related activities.

The Integrity Commissioner is available as a confidential resource for advice. Members are urged to take advantage of this by seeking advice about how to separate their work as Members from their activities as candidates or in support of election campaigns. Failure to adhere to the rules set out in the Code and relevant policies could lead to a finding that a member has contravened the Code of Conduct.

An underlying principle of the Code is that Members will conduct themselves in a manner that promotes public confidence and will bear close public scrutiny. A campaign period is a time of heightened scrutiny upon everyone involved at an election, whether the election is at the municipal, provincial or federal level. Members are advised to transparently and clearly establish a separation between their election-related activities and their private activities and to avoid any use of Township resources (whether actual or apparent) to support election related activities.

For clarity, the following definitions should guide Members in their decisions related to Code compliance:

A **Campaign Period** means the official campaign period of a municipal, provincial or federal election or by-election.

- For a municipal election, beginning May 1 in the year of an election, and ending on voting day.
- For a provincial election, beginning on the date the writ is issued and ending on voting day.
- For a federal election, beginning on the date the writ is issued and ending on voting day.
- For a ballot question, the date on which Council passes the necessary by-law and ending on voting day.

For a by-election, beginning the date.

An Election means an election, by-election or ballot question governed by the Municipal Elections Act, 1996; the Elections Act, R.S.O. 1990; the Canada Elections Act, S.C. 2000, c. 9, as amended, or the Referendum Act, S.C. 1992, c. 30, as amended.

Election Activity refers to activities related to campaigning for school board, municipal council, provincial and federal office, including the seeking of a nomination in an election.

Members are required to observe the terms of all policies and procedures established by the Township that apply to Members, in addition to the Code. Members shall not endorse a specific candidate or campaign on behalf of a specific candidate.

It is recognized that while Members are political representatives, they are also private citizens. Accordingly, Members may, in their capacity as private citizens, choose to endorse political parties and candidates and may exercise their political rights to belong to a political party. However, Members must take care to clarify that they do so as a private individual and must not be seen as using their office to endorse political candidates for election. In order to preserve the public trust and the integrity in the elections process, Members should make every effort to separate their work and activities as Township elected and appointed officials from activities in support of municipal, provincial or federal election candidates.

Statement of Expenditures

\$5,650.00 – Integrity Commissioner Services (including remuneration for advice to Members of Council and Council, Investigation of Code Complaints and Professional Fees, Delivery of Council Education Session, mileage, office supplies).

Closing Remarks

The activities of the Office of the Integrity Commissioner in the period covered by this Annual Report have been focused on strengthening the understanding of Members' roles and responsibilities under the Code, in particular regarding the distinction between the oversight role of Council and the implementation role of Council decisions by the administration.

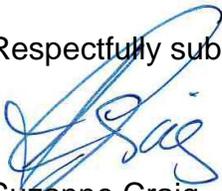
I am pleased to report that Seguin Township Council has not had integrity complaints beyond those few received upon my appointment in 2020. While the lack of formal and informal Code complaints is often a reliable indication of the Members' adherence to Code rules and while I have not received any indication of issues of note in the reporting period covered by this Annual Report, I encourage Members to seek advice on their Code and MCIA obligations in advance of decisions on official Township matters. Of importance is to remember that this Office does not go forward with investigations of a Code complaint after determining that the complaint is not properly addressed to matters within the Code. The fact that a matter may be, in the view of a Member of Council or the public, a matter having a reasonable basis for the Integrity Commissioner to pursue investigating, does not automatically deem the matter a Code complaint. Nor conversely, is a Member's view that a matter is frivolous, a reason for me to cease my review. I have informally advised Members of the public or Members of Council that the matters they were considering

bringing forward for formal review would likely not meet the threshold of a complaint and would be dismissed. My comments were not intended to dissuade individuals from pursuing complaints because I believed them to be frivolous or made in 'bad faith', but rather to explain to individuals that a valid complaint under the Code, is one that addresses conduct that on its face, is contrary to the Code and generally is absent a dishonest purpose.

In my advice to Members, I have underscored that a Member of Council recognizes the importance of cooperation with other Members and respects the professional roles of staff. Members are required under the Code, to strive to create an atmosphere during Committee and Council meetings and through communications to the public, staff and one another that is conducive to solving issues before Council, using respectful language and behavior in relation to fellow members, staff and the public.

In conclusion, I would like to extend my appreciation to the Township Clerk, Mr. Craig Jeffrey, whose professionalism has assisted me in my communications with the Township and navigating the various Town policies and processes in this first year of my appointment.

Respectfully submitted,



Suzanne Craig
Integrity Commissioner