

John Saywell, Avocat
AVOCAT – QUÉBEC
ATTORNEY-AT-LAW – NEW YORK
COMMISSAIRE À L'INTÉGRITÉ MUNICIPALE -
ONTARIO

21, chemin Hawkins
Grenville-sur-la-Rouge, QC
J0V 1B0

514 603-2320
jsaywell@gmail.com

ANNUAL REPORT 2019 MUNICIPAL INTEGRITY COMMISSIONER

United Counties of Prescott and Russell,
East Hawkesbury,
Hawkesbury,
Alfred and Plantagenet,
Casselman,
The Nation,
Russell, and
Clarence-Rockland

To the Warden, mayors, council and committee members and citizens:

I am pleased to present herein the first annual report of the Municipal Integrity Commissioner.

INTRODUCTION

The mandate of the Integrity Commissioner is established in the Municipal Act of 2001, Part V.1, as amended, which requires each municipality in Ontario to appoint an Integrity Commissioner with the powers established under the act.

The office of the Integrity Commissioner was filled by the United Counties of Prescott and Russell and the seven above-mentioned municipalities by the nomination of the undersigned, John Saywell, effective March 1, 2019.¹ While the management of the commissioner service contract is the responsibility of the respective Clerk of each municipality, the Commissioner exercises his duties independently of the municipalities and reports directly to their respective councils.

The Integrity Commissioner is tasked with overseeing the application of the municipal Codes of Conduct and the Municipal Conflict of Interest Act which govern the conduct of the maires and elected officials of each municipality and the members of certain local boards. Each municipality has identified the boards which are subject to their Code and the Act.

December 31, 2019 marks the end of the first year of the existence of the office of Integrity Commissioner in the above-named municipalities.

The functions of the Integrity Commissioner fall into four broad categories:

- a) Investigations and public reports on allegations of violations of municipal Codes of Conduct or of the Municipal Conflict of Interest Act;
- b) Confidential opinions prepared upon formal requests for advice from elected officials or committee members;
- c) Research and reports on questions referred by resolution of a municipal council;
- d) Education of elected officials and the public.

The mandatory establishment of an office of Integrity Commissioner in each Ontario municipality and the definition of his or her powers and duties stem from amendments to the Municipal Act which came into effect on March 1, 2019.

¹ The undersigned does not act as Integrity Commissioner for the Township of Champlain.

These amendments were spawned by the recommendations following the Toronto Computer Leasing and External Contracts Inquiry (Bellamy Report, 2005)². Following this inquiry which lasted three and a half years and cost taxpayers 19 million dollars, the Ontario legislature determined that each municipality should appoint a local resource capable of overseeing potential misconduct which could arise among elected officials.

It is widely recognized that the Commissioner's educational role is the one which offers the most potential for preventing errors in the conduct of elected officials. The Commissioner's role is primarily to shed light on situations and to draw the attention of officials and the community to the issues and appropriate behaviour required to ensure democratic transparency and integrity in local government.

The law also provides for serious consequences for misconduct that may be found intentional or grossly negligent, including punitive sanctions, applications to a court for removal from office, or even transfer of a file to the provincial police for investigation under criminal law. In the opinion of the undersigned, these instances will be rare and will require particularly serious circumstances and highly reliable evidence.

The present report summarized the activity of the Integrity Commissioner during 2019. In the interest of economy, the undersigned has chosen to produce a single common report which covers the whole of his activity for the above-named municipalities on the territory of Prescott and Russell. The common report allows each municipality and its community to benefit from the whole of the experience of the region in this first year of existence of the office of the Integrity Commissioner.

COMMISSIONER ACTIVITIES IN 2019:

A. Investigation requests

During the course of 2019 there were two requests for investigations.³

The first concerned a municipal councillor's participation in debate and vote at council on the taxing of costs and charges relating to extension of municipal sewer and water services and which affected the councillor personally. The investigation established that the councillor did in fact have a personal pecuniary interest in the in the taxing of municipal services and that she did in fact participate in the debate and vote on this issue.

However, an analysis of the exceptions provided in the Municipal Conflict of Interest Act established that her interest was one shared in common with a large number of other ratepayers and that she was expressly exempted from the statutory requirements. As the principles of the Code of Conduct are in line with the requirements of the Act, there was no violation of the Code any more than there was of the Act. Furthermore, by the councillor's declaration of interest at council, she met her general obligations of transparency and honesty. The report thus concluded that there was no misconduct on the part of the councillor.

The second request concerned the representations of a Mayor at council and before media reporters concerning an increase in her remuneration for her position on council. The investigation established that she had indeed made representations to council on the subject before removing herself from the council room and that she had in fact accepted to respond to reporters' questions on the matter.

However, a close reading of the exceptions provided in the Municipal Conflicts of Interest Act showed that remuneration of members of council is also an interest which is expressly exempted from the requirements of the statute. The report noted that she had met her obligations of transparency and honesty by declaring her interest, and her duty of respect for colleagues by leaving them to debate serenely without her presence in the room. The report underscored that communication with reporters could in some instances constitute a means of (indirectly) influencing debate at council, but that in this instance the question was irrelevant as the pecuniary interest at issue was exempt from the conflict rules.

² https://www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/report/pdf/TCLI_TECI_Report_Executive_Summary.pdf

³ Russell-not available , <https://pub-hawkesbury.escribemeetings.com/filestream.ashx?DocumentId=1115>

B. Requests for confidential opinions

Upon a few occasions, the Commissioner received inquiries concerning prospective requests for advisory opinions for specific situations. However, after discussion, the officials in question decided not to request a formal opinion. There was in consequence no opinion file opened during 2019.

This situation merits some caution. The undersigned agrees that these situations did not present any obvious indication that they were problematic. In one case it might have been useful to obtain an opinion and table it with council, thus showing the diligence of council members and encouraging public confidence. In another case, the situation was rather complex but did not suggest any probable misconduct.

It is clear that the costs associated with researching and drafting advisory opinions are not negligible and small Eastern Ontario municipalities do not have the same level of resources as Toronto or Ottawa. Municipalities must be congratulated for carefully managing their resources and are commended for taking the initiative to consult the Commissioner informally without engaging a formal request. However, it must be pointed out that it is ultimately the elected official's duty to ensure he or she is aware of any conduct issue and to verify the compliance of his or her conduct with the Code and the statute. Under the terms of the law, when in doubt, the request of an advisory opinion is the only way to meet this responsibility.

C. Council requests for research and report

No request was made by any council resolution for any research or report by the Integrity Commissioner in 2019. However, two questions were raised by mayors during training and investigation activities which merit attention here. Both questions deal with the issue of confidentiality but approach it from different perspectives.

The first question concerns the anonymity of those who file a request for investigation and report. The Commissioner researched this question in the law and sought the opinions of colleagues in other municipalities on best practices among Ontario municipal integrity commissioners. The tendency has been to divulge the identity of « complainants », primarily in the interest of fairness for the « respondent » and this practice is apparent in the majority of reports which generally name the parties involved.

However, during the course of 2019 there were two incidents which raised significant attention in the media – one at the federal level and the other at the provincial level in Quebec. In both cases « whistle blowers » played an important role in uncovering dubious conduct situations and they subsequently suffered significant consequences in their work and careers. This has revived debate around anonymity for complainants, not from the perspective of fairness for respondents, but regarding the need not to protect those who would have important information to make public.

In light of these incidents and the ensuing public debate, the undersigned is rather in agreement to ensure the confidentiality of the identity of any person who makes a request for investigation in the future. Exceptionally, this identity could be disclosed to the respondent alone and only with an undertaking to protect the confidentiality subject to liability for civil damages.

The question of confidentiality was also raised in terms of the integrity of municipal administration. A mayor expressed the desire to know the identity of any council member which might request a confidential advisory opinion. It is argued that to validly authorize payment for an opinion to which he has no access, a mayor must at least know the identity of the requestor. It is the opinion of the undersigned that the Commissioner is accountable to council for the questions of investigation and report as per the requirements of the statute, but questions of contract administration are the purview of the Chief administrative officer and the Clerk. The opening of each request for an opinion as well as the closing of the file are notified to the Clerk, and the Clerk may confirm the existence of the request with the requestor. There are thus sufficient means to ensure the integrity of the administrative process. With all due respect, the undersigned is of the opinion that the requirements of confidentiality must prevail over the interest of a mayor to know the identity of a requestor of an advisory opinion.

D. Education activities:

During 2019 the undersigned provided an initial training and education session on the regulatory framework governing the office of the Integrity Commissioner.⁴ This training covered the legal framework applicable to conduct of the municipal councils as well as the specific legal sources governing conduct of elected officials.

Preparation was begun during 2019 for a second training session covering the actual conduct requirements found in the Code of Conduct and the Municipal Conflict of Interest Act. This training will be provided early in 2020.

No public education training was provided, apart from simply introducing the Integrity Commissioner to the public during a few open council meetings.⁵

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The preparation of the second training session included among other things the participation of the undersigned at the biannual meeting of the *Municipal Integrity Commissioners of Ontario* (MICO) held at the municipality of Vaughan, north of Toronto, in October 2019. This meeting is a forum open to all integrity commissioners from across Ontario and includes participation of representatives from a variety of provincial institutions, including the Ontario Ombudsman and the Ontario Provincial Police. Participation in the meeting enabled the undersigned to learn from the experience of colleagues across Ontario and to better understand many current issues, including the issue of concurrent criminal investigations.

MICO has obtained the collaboration of the *Canadian Legal Information Institute* (CanLII) in publishing the reports of the Integrity Commissioners once they have been tabled with their respective municipal councils. As of the current date, there are 129 reports published on the CanLII database, of which 19 were published in 2019. The reports constitute a database of precedents from which each Commissioner can learn during the course of his or her own investigations. The database is available free of charge and officials and the public are encouraged to consult it to conduct their own research (<https://www.canlii.org/en/on/onmic/>). Both reports identified above are in the process of being published on CanLII.

Finally, the MICO forum serves as a platform to build bridges between commissioners and provincial government agencies, a significant asset in the local application of the law.

The time of the undersigned participating in the 2019 MICO fall forum was imputed to the preparation of the second training programme. No charge was claimed for travel or accommodation for this first meeting. For the future, a request will be made to each municipality for pre-authorization to cover the fees and costs associated with the next biannual meetings. The next meeting will be held in Ottawa in April 2020 – the fall meeting has not yet been confirmed.

CONCLUSION:

I am pleased to report that the year 2019 was a constructive year with regard to the establishment of this new regime for overseeing the conduct or deontology of municipal elected officials and members of their local boards. The undersigned would like to thank all the members of the councils and local boards who participated actively in the education activities and those who were involved in the opinion or investigation activities. This collaboration is the key to success. The undersigned would also like to thank the municipal clerks for their precious and competent support. It is no doubt an additional responsibility for them which they have taken on with enthusiasm and rigour.

Respectfully submitted,

John Saywell
Integrity Commissioner
February 12 2020

⁴ The Town of Russell did not receive this training.

⁵ Hawkesbury, East Hawkesbury and Casselman