

Councillors are elected by residents, to help represent and protect residents.

City of Mississauga
General Committee of Council
Feb 22, 2023

Role of Integrity Commissioner (“IC”)

Code of Conduct
Complaint Procedure 2(2)(e)
 (“New Rule”)

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Important to Resolve 2022 Precedent

The precedent established in 2022 was the application of “New Rule” CCCP 2(2)(e). Any resident, could use a similar approach to politically target a Council Member, if the Integrity Commissioner considers it politically acceptable.

A resident can weaponize the IC through criminal allegations that are investigated by the police (e.g. property damage) or not investigated by police (e.g. harassment involving property damage).

The resident can then, if the allegations do not result in charges, authorize the IC to: “investigate” evidence. The IC has sufficient latitude to also unilaterally apply personal bias, political considerations, and a presumption of guilt, and the IC can then announce to the media the IC’s own conclusion on the Councillor’s guilt regarding the criminal allegations.

Council is prohibited from disagreeing with IC’s conclusions.

Recommendations to Clarify Code of Conduct Complaint Procedures

1. Change wording of 2022 “New Rule” CCCP 2.2e to avoid contradicting Ontario Municipal Act. Use the words provided in Municipal Act 223.8.
2. Insert a clear statement in Procedures that:
 - a) IC must rely upon the findings from a police investigation of evidence in a criminal matter,
– and –
 - b) the Municipal Act does not allow the IC to “investigate” evidence in order to arrive at different conclusions and in order to unilaterally pronounce guilt on a criminal matter.

George Rust-D'Eye
Mississauga's First Integrity Commissioner
Legal Expert re: Intent of Ontario Municipal Act

"**The (Ontario) legislation is specific** in referring to possible duties of an integrity commissioner in conducting an “inquiry”,
not an “investigation” ...

(most notably not in criminal matters)

... (that specificity) is directed to characterizing the integrity commissioner's role in that regard as more of an administrative nature, rather than **litigious proceedings**
adverse to the interest of the councillor subject to the inquiry.“

[https://www.weirfoulds.com/assets/uploads/
8434_Articles_2011-06-00_MunicipalInformationNetwork_GHR.pdf](https://www.weirfoulds.com/assets/uploads/8434_Articles_2011-06-00_MunicipalInformationNetwork_GHR.pdf)

Development of “New Rule” CCCP 2.2e

- ▶ New Rule established Feb 9, 2022 by Council, as advised by City Legal (Legislative Services).
- ▶ Objective and effect: to authorize IC to carry out investigation of evidence regarding a misdemeanor criminal allegation against Councillor, pursuant to apology by IC for not investigating (no police charges).
- ▶ “New Rule” authored by IC. IC “relied upon” 2022 Aird Berlis legal opinion. IC disagreed with Aird Berlis.
- ▶ Use of “New Rule” **misrepresents** section 223.8 of Municipal Act with regards to criminal matters.

Video– Developing & Using “New Rule”

This 13–minute YouTube video summarizes the development, use and current status of Complaint Procedure 2(2)(e):

<https://youtu.be/Jk1Wvl6IJUQ>

The above video does not include the related compilation of clips which illustrate the various risks with any Integrity Commissioner displacing the role of police, and “investigating” criminal allegations, while also taking on the unilateral roles of prosecutor, judge and media announcer.

Full Videos

Feb 9, 2022 – Council meeting adopting CCP 2(2)(e)

<https://pub-mississauga.escribemeetings.com/Meeting.aspx?Id=818286d8-cd36-41b2-b5f1-04a93cbca3b0&Agenda=Merged&lang=English&Item=27&Tab=attachments>

March 28, 2022 – Governance Committee (not involved)

<https://pub-mississauga.escribemeetings.com/Meeting.aspx?Id=af989b1b-4841-4957-a7e1-12b07e10b6a7&Agenda=PostMinutes&lang=English&Item=25&Tab=attachments>

July 6, 2022 – Council meeting on Integrity Commissioner Report

<https://pub-mississauga.escribemeetings.com/Meeting.aspx?Id=75b9f96d-c506-4629-91a8c9667f6f2280&Agenda=PostMinutes&lang=English&Item=67&Tab=attachments>

'New Rule' vs. Municipality Act

CCCP 2(2)(e) intentionally replaces the term "**inquiry**" from the Ontario Municipal Act 223.8 and instead uses the term "**investigation**" to illegitimately imply IC authority to investigate criminal matters.

With Regards to Criminal Allegations Against Councillor

Ontario Municipal Act – "suspend the **inquiry** (by the IC) until any resulting police investigation and charge have been finally disposed of"

– versus –

Complaint Procedure 2(2)(e) – "suspend any **investigation** (by the IC) under this Code of Conduct until the disposition of the other process"

Significance of “New Rule” CCCP 2.2.3

- ▶ IC ‘investigation’ report & presentation to Council & media. (IC – June 29 and July 6, 2022).
- ▶ Two subsequent 2022 lawsuits against City (and taxpayers) by two former Councillors.
- ▶ One lawsuit based on perceived entitlement to IC investigation of criminal allegations.
- ▶ One lawsuit based on illegitimacy of results from IC investigation of criminal allegation.

Risks with any Integrity Commissioner “investigating” criminal allegations (#1)

- ▶ ICs have wide discretionary latitude
- ▶ ICs hired by and take direction from Council (per City Legal advice), even when ICs recognize objectives contradict Ontario Municipal Act.
- ▶ ICs can implicitly apply their own personal biases, including presumptions of guilt and can take into account the political objectives of some Council members.
- ▶ ICs take on **combined roles of investigator, prosecutor, judge and media announcer.**

Advisory Role of City Legal Services

- ▶ City Legal 'advises' Council Members.
 - e.g. > 'Rely upon Aird Berlis legal opinion;
Councillors not allowed to see opinion.'
 - > 'This is not a criminal matter.'
 - > 'Councillors should not cross-examine IC
or review evidence, but must rely on IC.'
 - > 'A Councillor has no power; just one vote.'
- ▶ City Legal is employed by the City and advocates
on behalf of their perceived client's objectives.
- ▶ City Legal does not have lawyer-client obligations
with respect to individual (elected) Councillors.

As noted above: **Recommendations** to
Clarify Code of Conduct Complaint Procedures

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