

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

City of Mississauga
Council Meeting
March 1, 2023

Role of Integrity Commissioner (“IC”)

Code of Conduct
Complaint Procedure 2(2)(e)

Dan Anderson
Feb 27, 2023

(email via > justresident@bell.net)

Integrity Commissioner and Complaint Procedures

March 1, 2023 **Closed Door** Agenda Item 21.1

City Legal Services Influence on Councillors

- When advising Councillors on legal and legislative matters, Legal Services is able to **advocate for certain political perspectives** on behalf of City staff and a subset of Council members.
- Legal Services acknowledges (Feb 22) they **do not have a client-attorney relationship** with individual Councillors when advocating such positions and the City does not provide for independent legal advice for Council members.
- With no direct client-attorney relationship , Legal Services can intentionally **mislead** individual Councillors on related legislation or points of law or procedures if the lawyer “thinks” the **majority** of Council would not oppose such misrepresentations in the context of shared objectives.
- Legal Services typically advises Councillors only in **closed sessions** where any such misrepresentations are hidden from the public and only reflected indirectly in subsequent votes by Council. Councillors are **muzzled** by confidentiality provisions in the Code of Conduct.

Feb 22 Request for 2 Changes to Mississauga Council Complaint Procedures
Feb 22 Response by City Legal Services (LS) ?

- **No acknowledgement** by LS that the two changes are warranted.
- LS characterizes residents (the public) as being “**confused**”.
- Concerns that Integrity Commissioner illegitimately and publicly declared a Councillor’s **guilt on unsubstantiated criminal allegations**, illegitimately rejected by LS because allegations also related to **Code of Conduct** ??
- Concerns that various 2022 misrepresentations were intentional, rejected by LS on basis that 2022 actions were **not “nefarious”** (i.e. “wicked”).
- Concerns that **wording in Procedure 2(2)(e)** misrepresents Municipal Act, rejected because LS is okay such wording used elsewhere in Procedures ??
- Requests for disclosure of related **Aird Berlis legal opinion**, rejected by LS on basis that Integrity Commissioner controls attorney-client privilege.

Integrity Commissioner and Complaint Procedures

IC Not Qualified to Make Findings on Criminal Matters

To highlight the **importance of making those two corrections** to the Complaint Procedures, the Integrity Commissioner should be asked to address the following misrepresentations etc per IC:

- 1. FALSE** - "There's a section in the Municipal Act which allows me to resume an investigation and I chose to rely on the police" (July 6, 2022 video 24:56) ... the Municipal Act does not authorize such investigations by IC.
- 2. FALSE** – "I viewed the video; the police viewed the video; and we both came to the same conclusion" (20:13)
- 3. FALSE** – The "findings of the (police) report . . ." - as falsely described in the July 6, 2022 video at 12:06.
- 4. BIAS** - Ask the IC whether he confirmed with the police that the police text message was factually correct prior to publicizing it with the intent and effect of establishing a presumption of guilt. (e.g. 21:21/ 41:51 & report)
- 5. MISLEADING ?** "the legal opinion that I got from Aird Berlis" - Ask IC when he first requested and obtained that legal opinion from Aird Berlis, and whether anyone else (e.g. Legal Services or other City staff) also communicated with Aird Berlis prior to the opinion being provided, or had advised IC to contact Aird Berlis, or had advised IC on what sort of legal opinion he should obtain. Also ask IC when he provided a copy of the IC to Legal Services to provide to Councillors, and whether/why Legal Services would not still have a copy.
- 6. DIRECTED BY COUNCIL ?** – MC after naming suspect: "this is flagrant bullying and harassment ... I should have pushed harder for the Integrity Commissioner to investigate ... I am the leader of Council." (Feb 3 2022 to media)

Role of Mississauga Integrity Commissioner

Potential Elements in Coordinated Misrepresentations

***1 to 5 as advised by Legal Services**

June 2021 - Karen Ras' unresolved allegations are '**settled**' by agreement.

Karen Ras lawsuit later identifies a Councillor as her "confidante" re info.

Feb 2, 2022
Council motion directs IC to "investigate". ***2**

June 2021 – **text message by police** that misrepresents facts but later used by Karen and Integrity Commissioner to establish presumption of guilt.

Feb 2, 2022
newspaper article (TS per GL and SC) misrepresents allegations as admitted facts.

Feb 3, 2022
Mayor to media re targeted individual and need to condemn ***3**

Dec 2021 - Karen Ras found to have misled Ward 2 residents.

prior to Feb 9 2022

Aird Berlis legal opinion

(Legal Services provided with copy for Councillors, but not given to them) ***1**

Feb 9, 2022
Procedure 2(2)(e) misrepresents Act ***4**

Jan 17, 2022
Karen Ras quits for new job Jan 30.

July 6, 2022
Councillors advised they must accept findings of Integrity Commissioner re guilt and that "not a criminal matter". ***5**

Nov 29, 2022
Karen Ras \$586,000 lawsuit against taxpayers.

Feb 22, 2023 Recommendations (revised for March 1, 2023)

Two Corrections for Council Complaint Procedures

1. **Change wording** of 2022 “New Rule” CCCP 2.2e for consistency with Ontario Municipal Act section 223.8 (i.e. use the same words).
2. **Insert a clear statement** within the Complaint Procedures that:
 - a) IC must rely upon the findings from a police investigation of evidence in a criminal matter. **Further clarification**: police determine charges and courts make a determination on all of: i) whether or not the alleged act occurred, ii) whether or not the suspect committed the alleged act, and iii) whether or not the alleged action is a crime.
- and -
 - b) The Municipal Act does **not** allow the IC to “investigate” evidence in order to preemptively pronounce guilt on whether the suspect committed the alleged act. **Further clarification**: that understanding applies whether or not the same alleged act contravenes the Council Code of Conduct.

Role of Integrity Commissioner (“IC”)**Code of Conduct
Complaint Procedure 2(2)(e)
 (“New Rule”)****ADDENDUM REFERENCE DOCUMENT
FOR****Mississauga Council Meeting
March 1, 2023**

The attached comments, and the PowerPoint presentation slides identified below, were presented to Council members at the General Committee meeting Feb 22, 2023.

Portions of those comments and slides, may be referenced during comments to Council March 1, 2023.

Feb 22, 2023 powerpoint slides:

A **one-page summary** is displayed next, but the full set of individuals slides can be obtained in a pdf at the following link:

<https://pub-mississauga.escribemeetings.com/filestream.ashx?DocumentId=37058>

Feb 22, 2023 comments (as attached)

The **four pages** of comments follow the one page summary for the slides.

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")

Dan Anderson
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Feb 16, 2023

1 of 12

Contents – Role of IC and "New Rule"

Slide

- 3 – Important to Resolve 2022 Precedent.
- 4 – Recommendations to Clarify Procedures.
- 5 – Intent of Municipal Act (per Rust D-'Eye).
- 6 – Development of "New Rule" CCCP 2(2)(e).
- 7 – Video – Developing and Using "New Rule".
- 8 – "New Rule" versus Ontario Municipal Act.
- 9 – Significance of "New Rule" CCCP 2(2)(e).
- 10 – Risks re ICs Investigating Criminal Matters.
- 11 – Role of Legislative Services (City Legal).
- 12 – Focus: Clarifying Complaint Procedures.

2

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.

3

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.

4

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.welrfoulds.com/assets/uploads/8434_Articles_2011-06-00_MunicipalInformationNetwork_GHR.pdf

5

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.

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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/Jk1W6lJlUQ>

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-councilmeeting.com/Meeting.asp?ID=818286&ccid=56-1102-451-6163&cid=100&agenda=PostMinutes&lang=English&Item=7361&tab=attachments>

March 28, 2022 – Governance Committee (not involved)
<https://pub-mississauga-councilmeeting.com/Meeting.asp?ID=a989b1b-1861-4957-707e1-72607e106a7&agenda=PostMinutes&lang=English&Item=2567&tab=attachments>

July 6, 2022 – Council meeting on Integrity Commissioner Report
<https://pub-mississauga-councilmeeting.com/Meeting.asp?ID=758095&ccid=506-4629-91&cid=9607612280&agenda=PostMinutes&lang=English&Item=67&tab=attachments>

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'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 charges** 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"

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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.

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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**.

10

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.**

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As noted above: **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.

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Comments re Feb 22, 2023 presentation on Role of Integrity Commissioner

Good morning, my name is Dan Anderson . Thank you to the Chair and other Council Members for taking account of these considerations.

Because of the 10-minute time restriction, I will simply read my prepared comments and apologize in advance for speaking quickly.

Slide # 1 refers to a controversial **change last year** in the role of Mississauga's Integrity Commissioner.

That change was reflected both in Complaint **Procedure** 2(2)(e) and in a subsequent controversial **report by the Integrity Commissioner**.

These comments today will address the understanding that Council members were **misinformed by the Integrity Commissioner and others** regarding the **legitimacy and implications** of those changes to his role.

It should also be kept in mind that when **the City's Legal Services** provides you with legal advice on these matters, one of their roles is to advocate on behalf of their client, and you, as Individual Councillors, are **not their client**.

The changes that occurred last year have subsequently resulted in **two serious lawsuits** against Mississauga taxpayers. One of them has apparently been settled, but not the one from Karen Ras.

Accordingly, it seems important that Council **correct the mistakes** that were made last year.

Slide # 3 - If there is time, I will address slide # 3 at the end of my comments.

Slide # 4. Recommendations to Council. Please make **two specific changes** to the Code of Conduct Complaint Procedures.

1. **Number one** --- the Procedures should include an explicit statement that the Integrity Commissioner has **no authority** to **investigate** criminal allegations and publicly declare his own finding of guilt.

The Integrity Commissioner would instead rely upon (i.e. inquire about) any criminal charges by the Police and any determination of guilt by the Courts.

If individual Council members want to advocate for **disciplinary action** against a Councillor on the basis of **unsubstantiated criminal allegations**, most notably prior to an election, those Council members would be politically accountable for justifying their own actions.

The Integrity Commissioner has **no legitimate role in providing those Council members with political cover** by carrying out a biased investigation, and publicly declaring guilt regarding criminal allegations on the basis of his own "balance of probabilities" assessment.

2. **Number two** - The other change to the Complaint Procedures is to **revise Procedure 2(2)(e)** so that it uses the exact same wording as used in the Ontario Municipal Act as identified on slide # 8 herein, and does not illegitimately include a presumption that the Integrity Commissioner can carry out his own investigation of criminal allegations.

Slide # 5. This statement in **2011** by Mississauga's **first Integrity Commissioner**, legal expert **George Rust D'Eye**, is quite clear.

The specific intent of the Ontario Municipal Act is to restrict the role of the Integrity Commissioner to conducting an **inquiry** and it does **not** authorize him or her to **litigiously** carry out an **investigation** of criminal allegations.

But that is exactly what happened last year, and the result has been the two lawsuits against the City.

Slide # 6. As **evidenced** by media reports and the **videos** referenced in slide # 7, particularly the **13-minute** compilation YouTube video, the **development** of Complaint Procedure 2(2)(e) was particularly troubling in at least **three** ways:

First of all, the political pressures.

That new Complaint Procedure was established only because of **political and media pressure** from Karen Ras and her friends who wanted the Integrity Commissioner to investigate Karen's criminal allegations against another Councillor, as a substitute for the Police and the Courts, and to do so with predetermined objectives regarding both timing, relative to the upcoming election, and also the framing of any declaration of guilt.

The Integrity Commissioner had initially resisted such pressures. Such an investigation would have **contravened** both the Ontario Municipal Act and the Criminal Code.

Secondly - the Aird Berlis legal opinion.

The Integrity Commissioner eventually responded to the political pressures by formally **apologizing** to Council. To resolve his understanding of the political objectives, he took the pragmatic approach of obtaining a legal opinion from **Aird Berlis** that apparently stated he could investigate criminal allegations and declare his own conclusions regarding guilt.

The problem here is that the Integrity Commissioner apparently did not in fact agree with that legal opinion, but stated he was going to **rely upon** it anyway to now recommend changes to the Complaint Procedures and **proceed with such an investigation**.

Regarding the Aird Berlis legal opinion, the **City's Legal Services advised Council members that they too should also rely upon** that seemingly illegitimate legal opinion.

Thirdly, - Complaint Procedure 2(2)(e)

The Integrity Commissioner **authored** the wording for the new Complaint Procedure 2(2)(e).

In doing so, he appears to have **intentionally misrepresented** the actual wording in section 223.8 of the Ontario Municipal Act (see slide # 8) in several respects, including inserting the word "investigation" and removing the reference to charges by the police.

Nevertheless, the **City's Legal Services** advised Council Members to accept the Integrity Commissioner's proposed change to the Complaint Procedures, with the understanding that he would now proceed with his own investigation of Karen's criminal allegations.

Slides # 7 to 9 have already been referenced in prior comments.

Slide # 10. There are **fundamental problems with having someone like an Integrity Commissioner** investigate and make assertions of guilt regarding criminal allegations because there are **no appropriate and effective checks and balances** on what he (or she) does.

The Integrity Commissioner unilaterally becomes **the Investigator, the Prosecutor, the Judge, the Jury and the Media Announcer regarding guilt.**

The Integrity Commissioner has a wide range of **latitude** and, as can be seen, is relatively unrestricted from **implicitly** taking into account:

- political directives and objectives,
- his own personal biases,
- presumptions of guilt
- faulty reasoning
- nor is the Integrity Commissioner held accountable for communicating **misrepresentations of the facts** to Council and to the Media, other than via lawsuits against the City.

All of these troubling elements appear to have been reflected in the Integrity Commissioner's own June 29, 2022 report, and his July 6, 2022 presentation of that report to Council and to the Media.

At the same time, **the City's Legal Services** advised Council members that Council Members had **no legislative right** to cross-examine or challenge the findings regarding guilt as communicated by the Integrity Commissioner to Council and to the Media.

Slide # 11 has already been referenced in the prior comments.

Slide # 12. With regards to these two recommended changes to the Complaint procedures, the **importance of supporting these changes** is highlighted by the understanding that if some Council members do not support making these corrections, then they would in effect be supporting the **current \$586,000 lawsuit by Karen Ras** against Mississauga taxpayers. That lawsuit is predicated on the illegitimate presumption that the Mississauga Integrity Commissioner can and should have investigated her criminal allegations. Karen Ras would already know that no Mississauga residents were entitled to such an investigation, and being a Councillor did not make her an exception.

In order to implement the recommended changes, it would be important that **Mayor Crombie**, and through the Mayor, the **City's Legal Services**, endorse and support these changes to the Complaint Procedures.

Similarly, Councillors **McFarland** and **Mahoney**, and all the other Council Members would hopefully unanimously support the changes.

In addition to those two changes to the Complaint Procedures, a further consideration would be to allow Councillors to get a copy of the **Aird Berlis opinion**, and to make it **publicly available**.

I would personally welcome a copy of the **Aird Berlis** opinion and would be interested in seeing how such legal opinions could be used to undermine the intent of Ontario Legislation.

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back to:

Slide # 3 - Implications of 2022 Precedent.

What happens if **other residents with political influence** decide to file a complaint based on criminal allegations against a Councillor prior to an election, and decline to press charges with the Police, and the Police do not proceed with charges based on the evidence and the circumstances.

The Integrity Commissioner would now have a **precedent** whereby he could **secretly** decide to proceed with an investigation himself and then publicly declare his decision on guilt to the Media and to Council in advance of an election. Council members have been told they could not object.

As a resident I do not want our Council to support Complaint Procedures that contradict Ontario Legislation and the Criminal Code, and which can be used selectively in future to **illegitimately intimidate and/or slander** individual Councillors. Those Councillors have been elected by residents to help represent residents, and to **help protect residents** from excesses that can otherwise be imposed on them by City administrators.

Let the Police and the Courts protect legal due process, not the Integrity Commissioner.

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If there any Council Members who express **disagreement** with what I have communicated, I would welcome the opportunity to respond.

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