



J. Paul Dubé, Ombudsman

SENT BY EMAIL: projects@temagami.ca

December 5, 2023

Council for the Municipality of Temagami
c/o Sabrina Pandolfo, Acting Administrator
7 Lakeshore Drive
P.O. Box 220
Temagami, Ontario P0H 2H0

Re: Integrity Commissioner complaint

Dear Members of Council for the Municipality of Temagami:

As members of my team discussed with the Acting Administrator on November 21, my Office has completed a review of a complaint about Expertise for Municipalities, the Integrity Commissioner for the Municipality of Temagami (the “Municipality”).

The complainant who contacted my Office submitted an application under the *Municipal Conflict of Interest Act* (“*MCIA*”) to the Integrity Commissioner in April 2021. The complainant raised a number of concerns to my Office regarding how the Integrity Commissioner handled their application. They told us that the Integrity Commissioner did not complete their review within statutory timelines set out in the *Municipal Act, 2001*, and did not inform the applicant of its decision not to apply to a judge, as is required by law.

I am writing to give council and staff for the Municipality a summary of our review and to share information on best practices related to integrity commissioners, which I strongly encourage the Municipality to consider implementing.

The Ombudsman’s authority and role

The Ombudsman is an independent and impartial Officer of the Ontario Legislature with the authority to review and investigate complaints about the administrative conduct of

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public sector bodies in Ontario, including municipalities such as the Municipality of Temagami.

When reviewing complaints about municipal government administration, the Ombudsman may consider whether relevant law, policies, and procedures were followed. If he identifies concerns, he may share best practices to improve municipal processes, as well as strengthen local governance, transparency and accountability.

The Ombudsman can also review complaints about municipal Integrity Commissioners. The Ombudsman's Office is not an appeal body, and the Ombudsman does not substitute his decision for that of a local integrity commissioner. When we review a complaint about a municipal integrity commissioner, we look at such matters as whether they:

- Acted in accordance with the relevant legislation, terms of reference, and policy;
- Considered the issues before them;
- Followed a fair practice;
- Obtained and considered relevant information; and
- Provided sufficient reasons to support their decision based on the available evidence.

In accordance with the *Ombudsman Act*, the Ombudsman can only consider issues within the jurisdiction of a municipally-appointed integrity commissioner if the integrity commissioner has refused to investigate, the time for bringing a complaint has expired, or the integrity commissioner has conducted and concluded an investigation or inquiry.

Review

During our review, my Office spoke with the Integrity Commissioner and municipal staff. We reviewed documentation related to the complaint and the Integrity Commissioner's inquiry. We also reviewed the Municipality's Code of Conduct and Integrity Commissioner Inquiry Protocol, as well as relevant legislative requirements.

Analysis

Statutory timelines for MCIA applications

Section 223.4.1(14) of the *Municipal Act, 2001* (the "Act") states that an integrity commissioner shall complete an inquiry under the *MCIA* within 180 days after receiving a completed application. This requirement is also reflected in section 6.12 of the Municipality's Integrity Commissioner Complaint Protocol.

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According to the information that we reviewed, the Municipality's Integrity Commissioner received the application on April 7, 2021. In early July, the Integrity Commissioner told the applicant that their *MClA* application was not complete as a required affidavit was missing. The applicant provided the affidavit on July 14, 2021.

The Integrity Commissioner presented their report to council on January 20, 2022, **190 days** after the completed application was received.

The Integrity Commissioner told my Office that they did not believe that the 180 day time period to complete an inquiry applied in this case, because they conducted a "preliminary review" of the application under the Municipality's Integrity Commissioner Complaint Protocol. The Commissioner also told us that since the application was dismissed after its preliminary review, there were insufficient grounds to refer the application to a judge.

The *Municipal Act* is clear that, unless an integrity commissioner's inquiry is terminated by the start of an election period, the integrity commissioner is required to complete the inquiry within 180 days. This is a strict statutory requirement and begins when a complete application is received, regardless of the process the Integrity Commissioner chooses to follow. The legislation does not permit integrity commissioners to extend the time frame or postpone commencing an inquiry.

I encourage the Municipality to ensure that its Integrity Commissioner completes reviews of all *MClA* applications within the timelines set out in legislation.

Requirement to advise the applicant

Section 223.4.1(16) of the *Municipal Act* requires integrity commissioners to advise the applicant if they decide not to apply to a judge under the *MClA*. Section 6.14 of the Municipality's Integrity Commissioner Complaint Protocol reflects this requirement.

The Integrity Commissioner told us that it did not advise the applicant of its decision not to apply to a judge, in part, because the report was presented to council at a public meeting.

The *Municipal Act* and the Municipality's Complaint Protocol are clear that applicants must be advised if the Integrity Commissioner decides not to apply to a judge under the *MClA*. I encourage the Municipality to ensure that its Integrity Commissioner advises applicants when they decide not to make an application to a judge, consistent with legislative requirements and with the Municipality's own policies.

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Conclusion

Integrity commissioners are empowered to conduct inquiries as they consider necessary and have wide discretion to determine how they carry out their functions, they must however do so in accordance with the legislation and the powers and duties assigned by the municipality.

I appreciate the time taken by staff for the Municipality and the Integrity Commissioner to discuss these issues with my Office. I hope that this information will assist council and staff for the Municipality. I strongly urge the Municipality to ensure that its Integrity Commissioner adheres to legislative requirements set out in the *MCI*A and the *Municipal Act, 2001*, including statutory timelines and requirements to inform applicants of the outcome of an inquiry.

My Office has prepared best practices resources for municipalities and integrity commissioners based on our experience reviewing complaints in this area since 2016. The guides include best practices: for creating codes of conduct and complaint and inquiry protocols, and for appointing integrity commissioners, as well as for integrity commissioners themselves. These guides are now available on our Municipal Resources website: www.ombudsman.on.ca/resources/brochures-and-posters/municipal-resources. I encourage you to share them with council members, municipal staff, and your appointed Integrity Commissioner.

We have confirmed with the Acting Administrator that this letter will be added to the next council agenda.

Please contact Richard Francis, Investigator by phone at (416) 586-3329 or by email at rfrancis@ombudsman.on.ca if you require additional information.

Sincerely,



Paul Dubé
Ontario Ombudsman

cc: Expertise for Municipalities

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