



March 5, 2024

SENT BY EMAIL: projects@temagami.ca

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

Dear Members of Council for the Municipality of Temagami:

Re: Best Practice Suggestions

As members of our Office discussed with the Acting Administrator on February 26, our Office has completed a review of complaints about investigations conducted on behalf of the Municipality of Temagami (the “Municipality”) under the *Occupational Health and Safety Act*, as well as complaints about investigations conducted by Expertise for Municipalities (“E4m”), the Integrity Commissioner for the Municipality.

During our review, we identified some fairness concerns with the procedures followed. The purpose of this letter is to give council a summary of our review, and to share some information on best practices, which we encourage the Municipality to consider.

Complaints

The complainants told us that investigations were conducted pursuant to the *Occupational Health and Safety Act* (the “OHS”) by an external investigator on behalf of the Municipality. They raised a number of fairness concerns, including that the investigations did not follow the Municipality’s policies and processes, that the subjects of complaints did not have an opportunity to respond, and that investigators did not communicate the outcomes of the investigations to the parties.

We also received complaints that the Municipality’s appointed Integrity Commissioner, E4m, failed to inform complainants of the outcome of complaints made under the Code of Conduct.



Additionally, we received complaints that the Municipality has placed restrictions on members of the public, limiting their access to municipal services, without following a fair process. The specific concerns are outlined below.

The Ombudsman's authority and role

The Ontario Ombudsman is an independent and impartial Officer of the Ontario Legislature with authority to review and investigate complaints about the administrative conduct of 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, and, if he identifies concerns, he may share best practices to improve municipal processes, as well as to 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 consider 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 only considers 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.

Review

During our review, we spoke with the Municipality's Integrity Commissioner, an external investigator retained on behalf of the Municipality, and municipal staff. We reviewed relevant documentation and policies, including the Municipality's Workplace



Harassment Policy, Frivolous/Vexatious Complaints Policy, Code of Conduct, and Integrity Commissioner Inquiry Protocol.

Analysis

Complaints about investigations conducted under the OHSA

The Municipality's Workplace Harassment Policy has informal procedures for responding to complaints, which include the facilitation of communication between a complainant and respondent. However, the policy is silent on whether or not an investigator can dismiss a formal complaint without undertaking a full investigation; rather, it provides that if a formal harassment complaint is made, then the complaint will be investigated. Further, the policy states that an investigation "shall involve: getting all pertinent information from the complainant, informing the alleged harasser of the details of the complaint and getting her or his response, and interviewing any witnesses".

According to our review, in some cases, formal complaints made under this policy were dismissed without the investigator undertaking all the steps set out above. As a best practice, if the Municipality wishes to provide investigators with the discretion to dismiss formal complaints without undertaking a full investigation, it should ensure its Workplace Harassment Policy reflects this authority, and that such a process complies with the requirements set out in the *Occupational Health and Safety Act*.

Complainants also told us that in some cases, they were never informed of the conclusion or outcome of investigations carried out under this policy on behalf of the Municipality. The *Occupational Health and Safety Act* requires that employees be provided with written results following an investigation, but is silent with respect to members of the public. The Municipality's Workplace Harassment Policy states that it may apply to members of the public, but it is unclear about communicating outcomes if a member of the public is involved.

To reflect the spirit of the Act and in fairness to all parties, the Municipality should amend its policy to ensure that any party to an investigation is informed of the outcome. We encourage the municipality to review recent investigations and ensure that all parties have been informed of the respective outcomes, and to ensure that such communication happens in all cases in future.

Complaints to the Integrity Commissioner

The complaints to our Office indicated that when members of the public made complaints to the Municipality's Integrity Commissioner alleging violations of its Code of Conduct, some were never informed of the outcome of those complaints.



The Municipality's Integrity Commissioner Inquiry Protocol does not require the Integrity Commissioner to inform complainants of the outcomes of their complaints, including when they decline to investigate a complaint. However, in the interest of fairness, the protocol should require that the integrity commissioner communicate their decisions and supporting reasons, including any decision not to investigate a complaint, to the parties involved.

We encourage the Municipality to review all recent complaints to its Integrity Commissioner and ensure that complainants are provided with information about the outcomes of their complaints.

The Ombudsman has prepared best practice guides for municipalities and integrity commissioners. 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 resources are available on our website¹. We encourage you to share these resources with municipal staff and your appointed integrity commissioner.

Service restrictions

Two individuals complained to us that the Municipality did not act fairly when it placed service restrictions on them. The restrictions limited their contact with municipal staff to a single email address, and restricted their attendance at municipal offices, with an exception for council meetings. The service restrictions are indefinite in length and there is no formal way for the complainants to request that they be reviewed.

We encourage the Municipality to ensure that any decision to issue a service restriction to a member of the public, including a restriction on attending municipal property, is done in a fair and transparent manner. Service restrictions should be considered a last resort, and should restrict access as little as possible, based on the circumstances. Further, principles of fairness generally require that service restrictions should be time limited, regularly reviewed, that those affected have an opportunity to have their views on the restrictions heard, and that reasons should be given for their enactment or continuation.

You may wish to review the Ombudsman's report *Counter Encounter*.² In this report, the Ombudsman recommended that the Township of Red Rock develop and publicize a

¹ <https://www.ombudsman.on.ca/resources/brochures,-posters-and-resources/municipal-resources#Resources%20About%20Municipal%20Integrity%20Commissioners>

² <https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2017/counter-encounter>



trespass policy, setting out at a minimum: The circumstances that might justify issuance of a notice, including examples; the procedure for issuing and serving trespass notices, including appropriate delegation to staff; required documentation to support the issuance of a notice, including records of the complaint and any investigation undertaken; time limits for notices; and a right for an affected individual to request a review and/or appeal of the notice. You may also wish to consult our Office's tip card related to trespass notices and service restrictions,³ which provides guidance on the elements that municipal by-laws or policies pertaining to service restrictions should minimally contain.

Conclusion

Thank you for your co-operation throughout the course of our review of these complaints. We have confirmed with the Clerk that this letter will be added to the next council agenda.

We would also appreciate hearing back from the Municipality about how it will address the issues noted above.

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

Sincerely,

A handwritten signature in black ink that reads 'R. Francis' with a long horizontal flourish extending to the right.

Richard Francis
Investigator
Office of the Ombudsman of Ontario

Copy: E4m (Municipal Integrity Commissioner)

³ <https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/resources/Brochures/Trespass-notice-and-service-restrictions-accessible.pdf>