Accountability Officers and Integrity in Canadian Municipal Government

Andrew Sancton
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The Institute on Municipal Finance and Governance (IMFG) is an academic research hub and non-partisan think tank based in the Munk School of Global Affairs at the University of Toronto.

IMFG focuses on the fiscal health and governance challenges facing large cities and city-regions. Its objective is to spark and inform public debate, and to engage the academic and policy communities around important issues of municipal finance and governance.

The Institute conducts original research on issues facing cities in Canada and around the world; promotes high-level discussion among Canada’s government, academic, corporate, and community leaders through conferences and roundtables; and supports graduate and post-graduate students to build Canada’s cadre of municipal finance and governance experts. It is the only institute in Canada that focuses solely on municipal finance issues in large cities and city-regions.

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Executive Summary

In theory, governments in Canada are held to account by elections and, to a lesser extent, by the courts. But these are blunt instruments and they are not of much help in dealing with particular cases of maladministration, individual grievance, or unethical behaviour. In response, many governments have established various independent accountability officer positions. In the past two decades, these positions have become more common in major Canadian municipal governments.

By 2006, municipal legislation in Ontario had established five kinds of accountability officer:

- auditor general,
- ombudsman,
- integrity commissioner,
- lobbyist registrar,
- closed meeting investigator.

The functions of each office are outlined here and examples are presented of how the offices have operated in Ontario and elsewhere. Particular attention is paid to the following non-Ontario cities: Calgary, Vancouver, Winnipeg, and Halifax.

The role of integrity commissioners is examined in special detail, because they must make rulings about sensitive, sometimes controversial, issues relating to the ethical standards we expect of our local elected officials. The examples here illustrate these officers’ authority to impose penalties, the need for them to follow due process and principles of natural justice, and the problems caused if their investigations overlap with other investigations into the same behaviour.

Accountability officers have limited formal authority, but considerable power to influence public opinion. Such power must be used wisely and cautiously because it has the potential to destroy reputations and determine the outcomes of local elections. The most important function of accountability officers is to provide citizens with the kind of information they need in order to make intelligent electoral choices.
Introduction

What can aggrieved citizens do if they believe their elected municipal officials are acting improperly or if they consider themselves victims of administrative malpractice? How can mayors and councillors obtain confidential and impartial advice about ethical dilemmas? How can citizens be assured that council members are behaving ethically? How can municipal residents get comprehensive and unbiased information about what is going on within their municipal bureaucracies?

Until recently, answers to these questions were either non-existent or not very helpful. Within the last 15 years – and much more recently in most places – positions for various municipal “accountability officers” have been established in Canada, mostly in Ontario. The purpose of these officers is to provide easier, simpler answers to the questions posed above. This paper attempts to assess some of the intended and unintended consequences of the actions of accountability officers in Canadian municipal government.

The paper begins by looking at traditional approaches to holding governments accountable. It then briefly examines the emergence of accountability officers within the federal and provincial governments in Canada and the circumstances under which they were initially established in the City of Toronto. By 2006, municipal legislation in Ontario had established five kinds of accountability officer:

- auditor general,
- ombudsman,
- integrity commissioner,
- lobbyist registrar,
- closed meeting investigator.

The functions of each office will be outlined and some examples will be presented of how the offices have operated in Ontario and elsewhere. Particular attention will be paid to the following cities outside Ontario: Calgary, Vancouver, Winnipeg, and Halifax.

In general, these officers have very limited authority other than that required to make declarations and non-binding recommendations. Such limited authority is in one sense a virtue, because it makes possible informal, non-adversarial ways of proceeding. Nevertheless, the capacity of these officers to influence public opinion about the performance of municipal officials is very high; the effect of such influence on individual electoral and bureaucratic careers should not be underestimated.
The paper concludes by focusing on a few Ontario cases involving integrity commissioners. These officials’ mandates are especially broad and demanding. The cases chosen are meant to further a discussion about the extent to which we can realistically expect the existence of integrity commissioners – and other accountability officers – to improve the quality of Canadian municipal government.

Accountability before accountability officers

In the context of representative democracies, elections have traditionally been the designated mechanism whereby citizens hold governments accountable. In parliamentary systems at the federal and provincial levels, ministers of the crown are personally responsible for all the actions of their respective departments. The main function of opposition legislators is to draw public attention to ministerial actions that they consider misguided or improper. Voters eventually get to choose between the government and opposition parties, making their electoral choice (at least in theory) on the basis of their respective judgments about the government’s overall performance.

The obvious difficulty with this system is that government departments routinely perform thousands of tasks each day that directly affect ordinary citizens. The notion that all ministers can be held personally responsible for each action of their respective departments is simply not realistic. Aggrieved citizens can always contact their local member of the legislature for help, but responses and outcomes will vary depending on the industriousness and political affiliations of individual members.

In the Canadian provinces, concerns about responding to citizen complaints about maladministration are at the heart of the establishment of ombudsmen’s offices; however, such an office has never been established within the Canadian federal government.

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Courts are another mechanism for holding legislators to account. If citizens suspect outright corruption, they can make a report to police in the hope that criminal prosecution will eventually result. In the past, it was difficult for citizens to take civil action against the federal and provincial governments, because suing the crown is not an option in the common law. In 1985, however, such suits became possible at the federal level under the Crown Liability and Proceedings Act; similar legislation exists in the provinces.

Suing municipalities has always been much easier than suing the federal or a provincial government, because municipalities are similar in legal status to provincially incorporated businesses. However, legal action is almost invariably risky or expensive. Supplementing the courts as a remedy for bad behaviour by councillors or for municipal maladministration is one of the main reasons that accountability officers have been established. However, as we shall see, these officers generally have little or no authority to assess damages or levy other forms of sanctions, so in many cases taking court action remains the best way for seriously aggrieved citizens or corporations to seek justice.

The Bellamy Inquiry and municipal accountability officers

In Canada, municipal interest in the potential role of accountability officers was sparked by scandals surrounding a series of computer hardware and software acquisitions by the newly amalgamated City of Toronto between 1998 and 2002. These acquisitions were thoroughly examined by the Honourable Denise E. Bellamy, the sole commissioner in the Toronto Computer Leasing Inquiry.

Madam Justice Bellamy uncovered remarkably wide-ranging breaches of ethical behaviour among some City councillors and staff. She recommended new institutions and procedures, including the creation of Canada’s first full-time municipal integrity commissioner and the first compulsory municipal lobbyist register. She suggested these reforms at approximately the same time as the Parliament of Canada...
was establishing the Office of the Conflict of Interest and Ethics Commissioner and the Office of the Commissioner of Lobbying.\textsuperscript{2}

Volume 1 of Bellamy’s 2005 report, \textit{Facts and Findings}, reads like a well-written crime novel. Near the beginning she states: “Those who have read public inquiry reports before will perhaps find mine a little unusual. One difference that will be apparent…is that I have set out the evidence…more like a story than judges, including me, would usually do.”\textsuperscript{3}

Volume 2 is about \textit{Good Government} and contains the detailed justification for her institutional recommendations regarding accountability officers. Notwithstanding the riveting prose in Volume 1, Bellamy’s problem with dividing the subject matter into two volumes is that the volumes are not connected. There is no explicit argument in Volume 2 that the implementation of the institutional reforms she advocates would have prevented any of the improper behaviour she describes in Volume 1. Would those who behaved unethically have consulted an integrity commissioner before acting? Would lobbyists have been reined in by a lobbyist registry? Perhaps. But it would have been enlightening to have read her analysis of exactly how this might have happened.

A peculiarity of the chronology of events relating to the Bellamy report is that many of the reforms she called for were actually implemented before the report was even released. Bellamy included this passage in Volume 1:

In 2004, the office of Integrity Commissioner was established to assist councillors in compliance with the code of conduct and other ethics-related bylaws and legislation. The Integrity Commissioner, who works part-time, is also empowered to receive complaints and investigate instances of possible non-compliance. Toronto is the only municipality in Canada with an Integrity Commissioner.

The City also has a registry for lobbyists. At the moment, because of jurisdictional issues involving the provincial government, participation in the registry is purely voluntary. Councillors may require lobbyists who visit their offices to sign in, and they can pass the information on to the City Clerk. Only one-third of councillors participate in the registry.\textsuperscript{4}

In her formal recommendations, Bellamy urged that the Integrity Commissioner be made a full-time position (which finally happened in 2014) and given additional authority to summon witnesses, and that the office have jurisdiction over municipal staff as well as councillors.\textsuperscript{5} She wanted the office to have considerable enforcement authority, including the ability to recommend to council that a member be removed from office. She also recommended a compulsory lobbyist registry supervised by a lobbyist registrar.\textsuperscript{6}

Bellamy’s report was highly influential with respect to these two accountability officers, but not everything she recommended was implemented.\textsuperscript{7}

\section*{Ontario’s response, 2006}

By the time Madam Justice Bellamy released her report in 2005, the City of Toronto already had a voluntary lobbyist registry and a part-time integrity commissioner. In 2002, the City had appointed its first auditor general, whose role was similar to the post-1977 federal auditor general. Nevertheless, when the \textit{City of Toronto Act} was introduced in the Ontario legislature by the Minister of Municipal Affairs in February 2005, he stated that the new law would give the city a more effective accountability regime by establishing the requirement of an effective lobbyist registry, integrity commissioner, ombudsman and its own Auditor General. This will improve the governance and transparency of the city of Toronto.\textsuperscript{8}

Such a requirement was not controversial. The final report of the joint Ontario–City of Toronto task force charged with preparing the ground for the new law called for just such a requirement, although its preliminary report had suggested under “Good Governance Mechanisms” only that “Toronto would have the option of establishing an integrity commissioner function with the powers necessary to do the job” and “Toronto would have the option of establishing an effective lobbyist registry.”\textsuperscript{9}

What seems to have happened from the time of the preliminary report until the introduction of the proposed law was that the province came to insist on a full array of required accountability officers in return for modest grants of additional functional authority.

Later that year the \textit{Municipal Act}, which covers all municipalities in Ontario other than the City of Toronto, was amended to grant similar functional authority to all Ontario municipalities, but they were given the \textit{option} of appointing any or all of the four accountability officers.\textsuperscript{10} The same law allowed all Ontario municipalities, including Toronto, to appoint “closed meeting investigators” who would be charged with investigating complaints from citizens about council meetings that were illegally closed to the public. For all municipalities that did not make such an appointment, the provincial ombudsman would be the default investigator.\textsuperscript{11}

Toronto decided to appoint its own closed meeting investigator. Although not officially classified as an “accountability officer,” the investigator’s functions and status are very similar to those of an accountability officer. In late 2014, the Ontario \textit{Ombudsman Act} was amended to allow the provincial ombudsman to investigate appeals of decisions made by municipal integrity commissioners and
lobbyist registrars. Except for decisions made by the Toronto ombudsman, the provincial ombudsman can also review decisions made by municipal ombudsmen in other parts of the province.

**Accountability officers outside Toronto**

The 2006 amendments to Ontario’s *Municipal Act* gave Ontario municipalities other than Toronto the option of appointing their own accountability officers, positions defined in the same way as in Toronto. In addition to showing the situation in Toronto, Table 1 reflects decisions about accountability officers made in the three other most populous single-tier Ontario municipalities: Ottawa, Hamilton, and London. The Table also includes information for other major Canadian municipalities outside Ontario: Halifax, Montréal, Winnipeg, Calgary, and Vancouver. Because the relevant legislation is different in each province, the Table requires some commentary.

**Auditors General**

All municipalities have auditors. Some municipal auditors are given more leeway than others and are given different titles. For our purposes, the key factor in determining whether an auditor is an auditor general is the capacity of the office to launch its own independent inquiries into the efficiency and effectiveness of any aspect of the municipal administration.

The City of Winnipeg has had a City Auditor, who reports directly to Council, since 1989. Since 2009, the incumbent’s title has been City Auditor/Chief Performance Officer. The position is similar to that of auditor general, except that the City Auditor also acts as the internal auditor for the municipal corporation. City auditors in Calgary and Edmonton have also been established in a similar fashion.\(^{12}\)

In Hamilton, the internal auditor was simultaneously appointed in 2012 as Auditor General with all the independent statutory authority granted to that office by the Ontario *Municipal Act*. In 2012, British Columbia appointed a provincial official to act as the Auditor General for all of the province’s local governments.\(^{13}\)

**Challenging Organizational Culture**

*Following is an excerpt from the Halifax Auditor General report on financial irregularities concerning Concerts Held on the North Common, 2006–2011 (from the website of the Halifax Auditor General)*\(^{14}\)

**Significant Findings and Recommendations:**

Corporate Culture: During the review, we often heard comments similar to: “I wasn’t asked,” “I wasn’t told or didn’t know,” “I made someone aware,” “I drafted a memo,” “not my responsibility,” “I carried out instructions received,” and “these actions will not affect my organization so if someone else wants to do it, it is their business.” This thinking is fundamentally flawed and reflects the culture of organizations which appear to lack an attitude of questioning, follow-up or accountability at the highest levels. A number of recommendations speak to improvement in this area of soft controls.

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**Table 1: Existence of Accountability Officers for Selected Ontario and Canadian Cities**

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Auditor general provided by province</th>
<th>Local auditor general</th>
<th>Ombudsman provided by province</th>
<th>Local ombudsman</th>
<th>Provincial ombudsman for closed meeting investigator</th>
<th>Local closed meeting investigator</th>
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Source: Municipal websites
Ombudsmen
Municipal ombudsmen are charged with investigating complaints from individuals about faulty or unfair administration. They can launch their own independent investigations into municipal administrative practices, but they generally stay clear of issues with financial implications, because these are more appropriately investigated by auditors general.

Ombudsmen do not have the authority to investigate policy decisions by municipal councils with which particular citizens might disagree. Outside Ontario, the only major city that has an ombudsman is Montréal, which established the office in 2002, six years before the City of Toronto established its ombudsman’s office. In Halifax, Winnipeg, and Vancouver, provincial ombudsmen act as ombudsmen for all municipal administration in their respective provinces.

Closed meeting investigators
In Vancouver, the function of closed meeting investigator is performed by the provincial ombudsman. Toronto and Ottawa have their own closed meeting investigator, while Hamilton and London rely on the provincial ombudsman. Elsewhere in Canada, nobody is designated to investigate closed municipal meetings.

Integrity commissioners
The role of the integrity commissioner will be explained in the next section of this paper.

Lobbyist registrars
Lobbyist registrars are charged with maintaining lists of municipal lobbyists and records of whom in the municipal government they lobbied and for what reason. The only cities in the country with lobbyist registrars are Toronto, Ottawa, and Hamilton. In Ottawa, the positions of integrity commissioner and lobbyist registrar are held by the same person.

The City of Winnipeg decided in late 2015 to establish the office of integrity commissioner and the first incumbent was appointed in February 2017. In December 2016 the mayor of Winnipeg proposed that the integrity commissioner

Highlighting Unacceptable Delays
Following is an excerpt from The Montréal Ombudsman’s investigation of a towed vehicle unaccounted for, 2013 (from the website of the Ombudsman de Montréal)

In the fall of 2012, a citizen parked her vehicle in the street. The next day, her car was no longer there and another vehicle was parked in its place. She called 911 to declare the theft of her vehicle. The 911 employee suggested that she first verify with 311 (Réseau Accès Montréal) if her car had not, rather, been towed. The 311 employee answered that there was no information on her vehicle.

She then called back 911 which sent police officers to take her theft complaint. While waiting for the officers, the citizen called 311 again for additional verification: still no trace of her vehicle.

She declared the theft of her vehicle to her insurer and, later, purchased another one.

One month later, the police found her vehicle in a neighbouring street. The citizen was then told that her vehicle had been towed by Ville de Montréal four weeks earlier.

Usually, the information regarding the towing of a vehicle should quickly be registered in the Info-Remorquage database so as to allow the owner to trace his or her vehicle as soon as possible. In reality, however, there were often delays. In this specific case, we found out the information was entered in the system 26 hours after the towing had taken place which explains why there was no data on her vehicle, when she contacted 311.

In our opinion, such a delay for registering a towed vehicle was unacceptable!

Following our intervention, the procedure was modified. Now, whenever a parking agent requires that a vehicle be towed, he or she must immediately forward the information to his or her office for it to be registered in the database, as soon as possible.

Our investigation also showed that when the theft of a vehicle was reported, the police officers did not systematically consult the Info-Remorquage database. A vehicle towed at the City’s request could, therefore, be treated as a stolen vehicle. After discussions with the SPVM, the latter sent a memo to all police officers reminding them that they must consult the Info-Remorquage database before registering a stolen vehicle.

In conclusion: what happened to this citizen should not have occurred and we sincerely sympathize with her for this mishap that cost her much trouble and time.

This matter has nonetheless highlighted the necessity of improving procedures. We are certain improvements put in place will prevent other people from facing a similar situation.
also act as a lobbyist registrar. In light of experiences in Ontario with the office of integrity commissioner, which will be discussed below, it is important to note that in 2016, the City of Calgary appointed both an integrity commissioner and an ethics advisor, thereby separating the investigatory and advisory functions that are conflated in Ontario.

None of the municipal accountability officers discussed here has any legal authority to issue binding directives or to impose any form of sanction or punishment. This is arguably an important issue for all accountability officers, but it raises particular issues for integrity commissioners whose role is examined in more detail in the next section.

Tracking Lobbyists
Following is an excerpt from the City of Ottawa’s Lobbyist Registry (from its website)

The Lobbyist Registry came into effect on September 1, 2012, and is a component of City Council’s Accountability Framework and the City’s commitment to making municipal government more transparent and accountable.

Lobbying is a legitimate and legal activity that is part of an individual’s, group’s or company’s right to communicate with their elected government officials and municipal staff. The purpose of the Lobbyist Registry is to enhance the transparency and integrity of business conducted at City Hall.

The Registry is an online tool that documents instances of substantive communication, such as telephone calls, meetings, or e-mails, between those who lobby and members of City Council or City staff in a centralized database that is easy to access and search by the public and interested stakeholders.

Lobbyists are required to register with the Lobbyist Registry and disclose lobbying activities within 15 business days of the communication taking place.

Integrity commissioners

Integrity commissioners focus on the ethical behaviour and reputations of individual councillors, a subject about which most citizens are likely to feel qualified to judge, even if the issues involved are many-sided. The most egregious violations of ethical behaviour are likely to be violations of the Criminal Code, a subject for the police and the courts, not for integrity commissioners. Integrity commissioners have the unenviable task of enforcing ethical behaviour without being so strict in their interpretation of codes of conduct that they make it impossible for mere mortals to engage in politics, an activity that for many citizens is likely considered unsavoury almost by definition.

Judging from the annual reports of integrity commissioners, it appears that much of their time and effort is spent advising councillors in confidence about how to respond to perceived ethical dilemmas. Not surprisingly, there are no public records identifying which councillors asked for advice about what issues; nor do we know whether such advice was accepted. However, we do know about the results of formal investigations conducted by integrity commissioners in response to complaints. Four of these reports – and their aftermaths – are discussed below, because they tell us a great deal about many of the major issues that municipal integrity commissioners must face.

Imposing penalties

In 2009 and 2010 the Toronto integrity commissioner received complaints that (then) Councillor Rob Ford had solicited donations to the Rob Ford Football Foundation using Council resources and letterhead. The integrity commissioner ruled that such action violated the City’s Code of Conduct, not only because the Councillor used Council resources for personal business but also because Ford solicited funds from registered City lobbyists and from companies doing business with the City.

The integrity commissioner recommended to City Council that it require Councillor Ford to repay the $3,150 donated by these lobbyists and companies. She justified her position on the grounds that she had the legal authority to recommend the “Repayment or reimbursement of moneys received.” In August 2010, Council approved these recommendations but in February 2012 the integrity commissioner reported that Ford (who had by then been elected mayor) had not provided evidence of reimbursement, in part because some donors refused to accept repayment.

On February 2, 2012, Council voted 27–12 to take no further action on the matter, despite the integrity commissioner’s recommendation that the mayor be given a final deadline for reimbursement. Mayor Ford voted with the majority.
A citizen, Paul Magder, then launched an action under the Municipal Conflict of Interest Act against Mayor Ford, claiming that he had violated the Act by voting on a matter in which he had a direct pecuniary interest, that is, the requirement to reimburse the $3,150 to the donors. In November the Ontario Superior Court of Justice ruled that Mayor Ford had indeed breached the provisions of the Act, thereby risking removal from office. He appealed the decision to the Divisional Court, which ruled in January 2013 that requiring Mayor Ford to “reimburse” the $3,150 was in fact a penalty, because he had never personally possessed these funds. Neither the integrity commissioner nor Council had the legal authority to impose such a penalty. Consequently, the Council vote on the matter in which Mayor Ford participated was a “nullity,” meaning that he could not therefore have violated the Municipal Conflict of Interest Act.\(^\text{23}\)

This episode involves complex legal issues. They are briefly examined here because supporters of integrity commissioners have assumed that their existence would provide an authoritative mechanism for settling ethical disputes. Councillor Ford’s case casts doubt on such an assumption. This convoluted story illustrates these important points:

- Appointing an integrity commissioner does not eliminate litigation.
- The integrity commissioner can do nothing without council approval.
- In some circumstances, a municipal council will take political factors into account, not just the legal and ethical arguments advanced by the integrity commissioner.
- In Ontario, integrity commissioners have no legal authority in relation to the Municipal Conflict of Interest Act, the provisions of which are enforced by courts of law.\(^\text{24}\)
- Sanctions available to municipal councils that accept recommendations from integrity commissioners are tightly circumscribed.

**Due process**

Another case involving an integrity commissioner ended up in the courts. Here, the substance of the accusations against Councillor Michael Di Biase in the City of Vaughan was more serious and the issues that were litigated were much broader than in Mayor Ford’s case, so that, if the decision had been different, we could have concluded that the position of integrity commissioner had been drastically undermined.

The integrity commissioner determined that there were four complaints against Councillor Di Biase. She referred the first to the police because it alleged municipal corruption, as prohibited in the Criminal Code of Canada. She rejected the fourth on the grounds it fell “outside the six months limitation period in the Code of Conduct.” The second and third complaints were as follows:

2. The allegation that the Respondent interfered in various tendering processes of the City in contravention of the procurement rules;

3. The allegation of the inappropriate pressure exerted by the Respondent on various staff of the City of Vaughan with a view to exercising influence or assisting… [Maystar General Contractors] with the business of the municipality.\(^\text{25}\)

The integrity commissioner upheld these complaints and recommended that Council impose the maximum penalty available: three months’ loss of pay. The Council accepted her recommendation. Councillor Di Biase challenged the decision in the Divisional Court.

His main argument was that in her investigation, the integrity commissioner breached the principles of natural justice and procedural fairness. He was particularly concerned that provisions in the Municipal Act relating to the integrity commissioner allowed him or her not to identify the complainants. The court, however, ruled that such provisions were essential to achieving the objectives of having an integrity commissioner in the first place and that Councillor Di Biase had ample opportunity to make his case that the complaints were not justified; however he chose not to fully employ this opportunity. On the issue of identifying the complainants, the court noted that:

> the Integrity Commissioner may take into account specific local concerns associated with such disclosure that require confidentiality or protection of informants’ identities. In the case of the City of Vaughan, a survey tabled at the time of the Integrity Commissioner’s Final Report indicated that approximately one-third of responding City staff strongly disagreed or disagreed with the statement that “staff can raise concerns to management without fear of reprisal.”\(^\text{26}\)

and that:

> the Integrity Commissioner reported that staff were “met with defiance, abusive language and intimidating actions” when they told the applicant that providing the information he requested would be contrary to the City of Vaughan’s procurement policies. And the Integrity Commissioner stated that she could not “stress strongly enough the sentiments of worry and concern voiced by City staff that [she]
London’s newly installed integrity commissioner immediately received complaints, concerns, and questions about whether this behaviour violated the City’s Code of Conduct. He decided almost immediately to report to Council rather than to follow the procedures involved in conducting a formal investigation. He justified this action on the grounds that “the facts, to the extent that they are necessary for me to be able to make the determination that I have to make, are clear and undisputed.” He went on: “I believe that to conduct any further search for details would be to engage in an exercise in seeking out the salacious details of the situation – an exercise which, other than satisfying curiosity, would serve no purpose.”

He determined that the mayor and deputy mayor had breached three provisions of the Code of Conduct. His own explanation of these breaches is the most helpful way of understanding his reasoning:

The conduct disclosed is clearly incompatible or inconsistent with the ethical discharge of their official duties in the public interest and might reasonably have placed either or both of them in a situation where they may reasonably be in obligation to each other or other persons with respect to conduct that might reasonably benefit from or provide special consideration or preferential treatment.

The court’s decision on withholding the identity of the complainants was as follows:

I am satisfied that the Integrity Commissioner exercised her discretion in a manner that properly balanced the applicant’s right to meaningfully respond to allegations in the complaint and the need to protect City staff who had cooperated in her investigation.

The court dismissed Di Biase’s complaint in its entirety.

This case is of great importance to Ontario municipal integrity commissioners, because it affirms the legality of the rules under which they operate. They must show themselves to be proceeding fairly and they must allow councillors to respond fully to complaints made against them, but they need not identify the complainants. The case also shows that:

- Integrity commissioners must refer some cases – alleged acceptance of bribes, for example – directly to the police.
- Integrity commissioners have a legal obligation to be fair in accordance with principles of natural justice but they are allowed to protect the anonymity of complainants.

Investigating versus advising

In June 2016 Mayor Matt Brown and Deputy Mayor Maureen Cassidy in the City of London “each separately disclosed that for a period of time, they together engaged in what they have referred to as an inappropriate relationship.”

Municipal integrity commissioners must show themselves to be proceeding fairly and they must allow councillors to respond fully to complaints made against them, but they need not identify the complainants.
The most significant result was that the integrity of the integrity commissioner’s handling of the case became the contentious issue.\textsuperscript{33} It appears that he was both investigating and advising at the same time. The rules setting out “the process to be followed by the Integrity Commissioner” state that, if he or she receives a complaint, he or she should either investigate it or decide that it is “frivolous, vexatious or not made in good faith” and not investigate.\textsuperscript{34}

In this case, it is quite clear that there was an “investigation,” even if the process was short-circuited by the integrity commissioner’s decision that he was not going to investigate the “salacious details.” In any event, he later invoiced the City of London for his work on “Integrity Commissioner Investigation #1.”\textsuperscript{35} But in his report he states that “I have, as reported in the media, met with the Mayor at his request on a consultative basis with respect to his conduct and the Code of Conduct. I have not met or spoken to the Deputy Mayor nor have I been contacted by her.”\textsuperscript{36} The only “meeting” for which he billed on his invoice was a one-hour session listed as being on the same day that we know he met with the mayor.

When the integrity commissioner met with the mayor, was he investigating or advising? Could he be doing both at the same time? Would that be proper? Would such a practice undermine the integrity of the investigation? This problem is presumably why the City of Calgary has appointed both an ethics advisor and an ethics commissioner. Should Ontario municipalities follow such a practice? Perhaps. But in the Ontario context at least, a simpler solution would be to insist that the integrity commissioner keep the two functions separate by not “consulting” with any of the people being investigated. With his Investigation #1, London’s integrity commissioner got off to a difficult start. The lessons from this case are:

- Attempting to cast judgment and/or recommend punitive action with respect to “inappropriate” personal relationships between council colleagues is fraught with difficulty and is perhaps best left to the electorate.

- The integrity of integrity commissioners can be called into question if they do not clearly separate their advisory and investigative functions.

**Double jeopardy?**

A few days after the report of the London integrity commissioner was made public in June 2016, the integrity commissioner in Sarnia issued a report concerning Mayor Bradley’s maltreatment of staff. City Council accepted the integrity commissioner’s recommendation that Mayor Bradley not be paid his salary for three months. The case is notable in two ways.

First, it provides unusual commentary about both the extent of the mayor’s political support within the Sarnia City Council and about his statutory role in relation to staff:

It is critical, in my view, that a majority of Council, guided by recommendations from professionals, is in charge and not an autocratic Mayor without the support of Council.

The Mayor as head of Council and spokesperson must be guided at all times by the view of the majority. This Mayor has lost the support of the majority of Council and I am of the opinion that he still believes he is in charge. The Mayor is referred to as “Chief Executive Officer” in the Municipal Act and that title is immediately followed by defining words which do not include any suggestion of executive authority over staff of a municipality. In his copious written response to the Complaints, the Mayor referred to himself as the CEO more often than Mayor. When I told him that, with the possible exception of his Executive Assistant, he has no executive authority over any staff, he nodded but he was not convincing that he intended to change his ways.\textsuperscript{37}

There are likely many mayors in Ontario who would not accept that they have “no executive authority over any staff.” Mayor Bradley’s problem was that he was found to have harassed and bullied staff.

Second, although this appears to be a case in which the integrity commissioner’s work was successful, the mayor was also subject to an investigation under Ontario’s Occupational Health and Safety Act. This investigation covered much of the material in the integrity commissioner’s report and arrived at similar conclusions.\textsuperscript{38}

Understandably, Mayor Bradley considered that he was being subjected to a form of “double jeopardy.” But this second investigation effectively required Council to take corrective action. Council did so by moving the mayor’s office away from staff and providing that he could communicate only with a single staff member (not the City Manager, because she had been a victim of his maltreatment). In retrospect, the integrity commissioner’s investigation was largely redundant.

Interestingly, London’s Code of Conduct appears to avoid Sarnia’s problem by providing that, if there is a complaint to the integrity commissioner about a council member’s treatment of staff, the complaint is referred to the Human Resources department, which then begins the processes required under the Occupational Health and Safety Act. Only when that process is complete does the integrity commissioner make a report to council.\textsuperscript{39} All municipalities
with integrity commissioners would be well advised to ensure that their codes of conduct are constructed in a similar manner. The Sarnia case illustrates the point that:

• Procedures to deal with workplace harassment by council members should take precedence over any investigation by an integrity commissioner into the same pattern of behaviour by the same person.

Conclusion

Municipal accountability officers in Canada can and do assist with many problems and dilemmas, but they can also create problems of their own. It is difficult to measure the advantages and disadvantages of the role. For example, although we know the results of investigations by Ontario’s municipal integrity commissioners, we have no idea of the value of the confidential ethical advice they provide to conscientious councillors who have sought their counsel.

Similarly, although we know about the kinds of cost-saving improvements recommended by municipal auditors general, it is much more difficult to evaluate the direct financial results that might have followed from their implementation. Such difficulty, however, has not stopped the Toronto auditor general from claiming that “for every $1 invested in the Auditor General’s Office the return on investment was approximately $11.20.”

Municipal accountability officers cannot be effective unless they have some form of statutory authority. This authority can derive only from decisions made by provincial governments. For each office, each province must confront the following questions:

• Will there be a provincial accountability officer with jurisdiction over all municipalities?

• If not, will municipalities have the option of appointing the officer or will they be required to?

• What degree of security of tenure and independence will the officer have?

• What kinds of reprimands or penalties will the officer be entitled to impose?

• Will officers’ decisions have to be approved by municipal councils to take effect?

• Can councillors appeal such decisions to a provincial accountability officer?

Not all of these issues have been addressed in this short paper. For example, some people believe that Ontario integrity commissioners are generally too forgiving of municipal councillors because these same councillors are responsible for their re-appointments.41

As noted at the beginning of this paper, the simplest and oldest municipal accountability mechanism is an election. Rather than expecting accountability officers to take over accountability functions from electors by imposing harsh penalties such as removal from office, we should see them as people who can help municipal voters make informed decisions. It is well known that, in the absence of negative information, incumbents have huge advantages in non-partisan elections of the kind we have in most parts of Canada.42

The most important function of municipal accountability officers is to provide much-needed information for local media, for potential council candidates, and for conscientious citizens. Reports of accountability officers are rightly taken seriously; they can do much potential damage to reputations of both senior municipal managers and of municipal councillors. This is both their greatest strength and the reason their authors must be scrupulously cautious and fair-minded.

Endnotes


2 For each of these offices, see respectively, Canada, Office of the Conflict of Interest and Ethics Officer, “History of the Office,” and Canada, Office of the Commissioner of Lobbying, “The Lobbying Act.” Retrieved December 16, 2016, from http://ciec-ccie.parl.gc.ca/EN/AboutUs/WhoWeAre/Pages/HistoryOfTheOffice.aspx and https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h_00008.html#key_events


5 City of Toronto Integrity Commissioner, “History of the Office and Key Organizational Milestones.” Retrieved November 16, 2016, from http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=27df46d2bf19410vgnVCM1000071d60f89RCRD&vgnextchannel=e64f40ed8f30410vgnVCM1000071d60f89RCRD


24 The Ontario government intends to fix this problem with the passage of “Bill 68: Modernizing Ontario’s Municipal Legislation Act, 2016.”


27 Ibid, 22.

28 Ibid, 23.

29 Ibid, 28.

31 Ibid.

32 Ibid, 3.


42 For a recent Canadian study addressing this issue, see Aaron A. Moore, R. Michael McGregor, and Laura B. Stephenson, “Paying Attention to the Incumbency Effect: Voting Behavior in the 2014 Toronto Municipal Election,” International Political Science Review, forthcoming.