



Agenda

Special Council Meeting

Tuesday, May 27, 2025
Council Chambers
5:00 p.m.

1. **Land**
2. **Acknowledgement**
3. **Call to Order**
4. **Opening Prayer/Reflection**
5. **Disclosure of Pecuniary Interest & General Nature Thereof**
6. **Delegations and Presentations**
 - Integrity Commissioner Presentation
 - *Mary Ellen Bench, Bench Municipal: Law + Governance*
7. **Confirming By-law**
 - Confirming By-law 2025-49
8. **Adjournment**



Council, Committee and Board Code of Conduct and the Integrity Commissioner

Mary Ellen Bench, BA,JD,CIC.C,CS

City of Pembroke

Integrity Commissioner

Role of the Integrity Commissioner

The Integrity Commissioner is a mandatory accountability officer under the *Municipal Act, 2001*, who acts independent of the Municipality. Two areas of responsibility:

1. Ethics Advisor

- Providing advice in response to requests from Members of Council –Members can rely on advice provided in writing and written opinions are binding in a subsequent investigation
- Participating in Council education sessions
- Advising on related policy development (e.g. Code refresh) when requested to do so

2. Complaints Investigator

- Receiving complaints alleging a breach
- Resolving complaints
- Investigating, reporting and recommending sanctions when it is appropriate to do so
- Reports are submitted to Council

Council Code of Conduct

The Pembroke Code of Conduct operates with additional legislation that governs the conduct of members of Council, being:

- Criminal Code of Canada
- Municipal Act
- Municipal Conflict of Interest Act
- Municipal Elections Act
- Municipal Freedom of Information and Protection of Privacy Act
- Planning Act
- Human Rights Code
- Council approved by-laws and policies

Key Principles identified in the Code

- Members of Council shall uphold a high standard of ethical behaviour to ensure that their decision-making is impartial, transparent and free from undue influence.
- Members shall refrain from engaging in conduct that would bring the City of Pembroke or Council into disrepute or compromise the integrity of the City or Council.
- Members shall comply with general conduct principles and conduct themselves with decorum and professionalism.

Roles and responsibilities of a Member of Council are complicated

Council/Staff Relations Policy

“The Corporation of the City of Pembroke will promote a respectful tolerant, harassment free relationship and workplace between members of Council, and the officers and employees of the corporation. “

- Guiding principles
- Clarifying the role of Council, the CAO, and staff
- Questions submitted through the CAO
- Complaints submitted through the Human Resources department
- Complaints respecting Member conduct are forwarded to the Integrity Commissioner, to be investigated and reported as if a Code of Conduct complaint

Who does the Code apply to?

- Members of Council
 - Members of City Committees (both Council and citizen members)
 - Members of City Boards e.g. BIAs, utility boards
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- Staff are not covered by this Code of Conduct
 - Staff report to the CAO and are governed by other policies established by the City


Code Direction for Members

The Code of Conduct identifies specific requirements for Members of Council to follow respecting the following:

- No disclosure or use of confidential information
- Respect for Council decisions
- Relationship between Council and the CAO/Department heads
- Not intimidate, influence or injure the professional or ethical reputation of staff
- Comments to media and communications can reflect opinions but must accurately reflect Council decisions
- Social media posts must identify views of Member do not represent views of the City
- Only Council can direct staff, not individual members (except Mayor using Strong Mayor Powers)
- Use of City property for municipal purposes only, generally
- Acceptance of gifts, hospitality and applicable limitations
- Role of Integrity Commissioner
- Complaint Protocol

Bill 9, the proposed Municipal Accountability Act, 2025

- New roles for Provincial Integrity Commissioner
- Provides for a standard form Code of Conduct for all 444 municipalities in Ontario
- Requires members of Council, committees and boards to comply with the new Code
- Mandates council training and education session for Integrity Commissioner to provide
- Requires members of Council, committees and boards to attend mandated training
- Mandates training for Integrity Commissioners

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- Regulations may establish municipal investigation procedures for ICs to follow to ensure a consistent approach
 - New provision for Council to remove and disqualify members who commit “serious code of conduct violations” following a recommendation from the Integrity Commissioner of Ontario
 - AMO comments: (i) the threshold of unanimous council support for removal from office is too high and should be adjusted to 2/3 council vote and (ii) recommend a progressive range of discipline be added similar to the Education Act

Why are we talking about Conduct now then?

- Uncertain when the proposed standard Code of Conduct will become law
- When there is a standard Code, the City can use bylaws, policies and other tools to address matters outside of the Code of Conduct, and they will survive after standardization as long as they don't conflict
- "As a general principle, the mere existence of provincial (or federal) legislation in a given field does not oust municipal prerogatives to regulate the subject matter.... In this case, there is no barrier to dual compliance" 114957 *Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*

Complaints to the Integrity Commissioner

Complaints may be made by any person through a formal submission using the complaint form on the City's website

As Integrity Commissioner I must assess complaints and determine:

- Is the subject matter within my jurisdiction?
- Is it frivolous and vexatious or does it appear to be substantive?
- Is an informal investigation appropriate?
- If deemed a concern, is a formal investigation, including potential to use powers under the *Public Inquiries Act* warranted?
- Is an application to court under *Municipal Conflict of Interest Act* justified?

What rights do you have when someone complains?

- Right to be informed of a complaint
- Right to rely on written advice provided by Integrity Commissioner
- Right to object
- Right to participate in investigation and provide an explanation
- Right to be present for presentation of report following a formal investigation
- Right to retain a personal lawyer
- Right to make submissions, but not to vote, when a report is presented to Council

Authority of the Integrity Commissioner

- Municipality is required to provide information requested by the Integrity Commissioner and access to municipal books and records is mandated by legislation
- Integrity Commissioner will independently determine if the powers set out in the Public Inquiries Act respecting power to summon witnesses, determine admission of evidence, hold hearings, and refer matters to a court for determination
- Required to refer ancillary matters discovered when conducting an inquiry to the appropriate authority and suspend investigation if it interferes with a police investigation

Limits that apply to Integrity Commissioner

- Can make recommendations to Council; cannot impose penalties
- Cannot investigate matters or file reports between nomination day and voting day
- Duty of confidentiality
- Responsive to inquiries
- Recommend but cannot initiate changes to the Code of Conduct or related policies

Formal vs. Informal investigations

- Informal investigations do not meet a threshold to lead to a formal investigation and provide an opportunity for the Integrity Commissioner to assume the role of a mediator, and focus on resolving the concern that led to the complaint.
- Results of an informal investigation can be reported to Council, usually in the Integrity Commissioner's Annual Report.
- Formal complaints result in the Integrity Commissioner conducting an independent investigation and taking charge of gathering the available evidence.
- Results of a formal investigation must be reported to Council within 60 days of the investigation.

Refusal to Investigate

Integrity Commissioner discretion extends to not investigating complaints determined to be:

- Not made in good faith
- No grounds or insufficient grounds to proceed with investigation
- Frivolous and vexatious
- Investigations may be terminated and the complaint disposed of after an investigation has started, if this becomes evident through the investigation

Role as a Member of Council vs. Role in community /other career

- The reality of a conflict and the optics of a conflict
- Interpretation of the *Municipal Conflict of Interest Act* and the Council Code of Conduct
- Common law conflicts and private business relationships
- Members of Council should balance duties of office and private affairs in a way that promotes public confidence and also recognizes being a Member of Council is not a full-time office
- **The Integrity Commissioner is a resource to use to avoid conflicts**

For example, in Waterloo Region...

- Regional Councillor Clarke participated in a vote regarding closing five daycare centres at a time when she was also the CEO of the YWCA
- Complaints filed based on potential benefit to YWCA if it took over the child care spaces
- Finding: “The MCIA is not concerned with personal “conflicts of interest,” as that term is understood colloquially, or with perceived bias. The statute is only concerned with a member’s “pecuniary interest,” which is a financial interest related to or involving money. The jurisprudence has interpreted pecuniary interest to include a monetary benefit that will be received or could be received, either in cash or in an increase in the value of an asset.... the Closure Recommendation does not present an immediate, traceable financial benefit to the YW, which would flow through to the Councillor...the Councillor would be entitled to rely on the exemption for remote or insignificant interests as set out in clause 4(k) of the MCIA.” No breach found

In Thunder Bay...

- Councillor is a real estate agent and developer, and was former manager of the property who asked police and by-law enforcement to attend and made “rude gestures” towards current property management
- Councillor email to staff: “I think he should be charged for the damage as he knew after my first warning that he was is in the wrong and he did it anyway.” ... “We cannot let people just do whatever they want to do when they want to do it”
- Finding: “Councillor Agarwal’s behaviour was far from exemplary. It was, in fact, an example of inappropriate interference by an elected official: overbearing, harassing, invoking her status claiming to ‘represent the City’ in order to threaten and intimidate, and unduly influencing the attendance of law enforcement. Her attempt to invoke her status, or threat of public humiliation, to cause the police to pursue some action against the owners constitutes an egregious abuse of authority her conduct in gesturing with her middle finger to be a shocking breach of decorum”
- Recommend pay be suspended for 30 days

How does the Code fit with “Free speech”?

- The Canadian Charter of Rights and Freedoms guarantees certain fundamental rights, subject to reasonable limits. In other words, the rights and freedoms in the Charter are not absolute; they are limited to protect the rights of others (hate speech, discrimination)
- City regulations that typically limit free speech: signage, flag raising, use of municipal property, anti-graffiti, Procedure Bylaw, Council-/Staff Relations Policy, Code of Conduct
- Provincial: Libel and Slander Act (false statements)
- Federal: Criminal Code (hate and child pornography for example)

In Toronto....

- CAO filed complaint respecting Councillor Matlow's criticism of staff member in committee session and social media comments on consideration of her appointment to a deputy role. Not the first time complaints filed about Councillor Matlow's treatment of staff.
- Finding: "Even if he was opposing Ms. Cook's appointment on a principled basis, the vehicle he used to convey his political opposition and the label he assigned Ms. Cook subjected her to trial by social media. Councillor Matlow is adept at using social media and what followed was entirely foreseeable. A member of Council who Tweets critically about a specific City employee subjects that employee to attack in a forum in which they cannot respond. Councillor Matlow's Tweet incited public attack on Ms. Cook, which is contrary to HRAP. (Toronto's Human Rights and Antiharassment/Discrimination Policy)... After being put on notice that his conduct towards staff was a violation of the Code of Conduct through my March 1, 2023 Statement, he continued the behaviour and did so deliberately as a reprisal against the staff who had complained to my Office." Reprimand and suspension of pay recommended.

In Peterborough...

- CAO gave notice of intention to retire but no date. CAO alleged harassment, attempts to influence staff and failure to respect the role of the CAO followed.
- Finding: The Mayor's efforts were directed at speeding up the timing of a report on affordable housing and were not an attempt to influence the contents of the report, so no breach of the Code. **“all of the Respondent's remarks on February 16 were calm, measured, thoughtful, respectful, and professional....There is simply no basis to find that she was disrespectful...the (Mayor's) comments did not constitute harassment of anyone**
- “I now turn to the handling of the retirement issue...The articulation of a position on retirement timing (earlier versus later) was the aspect of the Respondent's comments to the Complainant that did not reflect a Council decision. In my view, however, the communication is closely connected to Council's role as employer. If there was a misunderstanding, uncertainty or disagreement about the closed-meeting mandate that Council, as employer, gave to the Respondent, then it lies within Council's proper authority to resolve the matter.”

In Brampton...

- Two complaints alleging harassment and failure to be impartial filed respecting comments made in motions (relating to a Tamil memorial monument and Tamil genocide in Sri Lanka) and in social media
- Finding: “ the Complaint does not present any evidence or details as to how Mayor Brown’s statement should be understood to be harassment on the grounds specified by the Complaint itself. I do not interpret Rule 14 to refer to statements that are unwelcome to the recipient because they disagree with them. If an individual intends to argue that a memorial to victims should not be erected because no genocide occurred, they cannot reasonably expect a passive or warm response. They can expect that their motivation and conclusions will be questioned by those who have voted for such a monument and vigorously challenged by those who believe that what happened should be described as a genocide ...I do not consider that asserting that there has been a Tamil genocide, whether incorrectly or not, constitutes discreditable conduct.”

In Niagara Region...

- A Nov.15, 2021 article appeared in the St, Catharines newspaper titled “Bylsma (West Lincoln Mayor and Regional Councillor) post calls workers ‘all purebloods’, while job opening promoted”
- Since Councillor Bylsma’s message had no political purpose, there is no public policy purpose to shield such speech from our scrutiny. It was subject to the ordinary rules of the Code of Conduct.
- The Region’s Members of Council are understood to have other jobs and interests however, they never stop being Members of Council...This is the third time that Councillor Bylsma has recently contravened the Code of Conduct – a fact by which Regional Council is entitled to be alarmed.

When to seek advice?

You can rely upon advice in writing from the Integrity Commissioner

Examples of matters to consider:

- Do I have a conflict voting on a matter that will enhance the neighbourhood I live in?
- Do I have a conflict voting to fund a charity I or my spouse is associated with?
- What do I do when an issue about the company I work for is on the Council agenda?
- What can I say publicly about matters important to me that are not City business?

Fulfilling your role within the ethical framework

Running for office demonstrates a commitment to improving your community and councillors do this every day without thinking

- Respect the role of the CAO to direct staff. Council's only employee;
- Challenge staff or other Members at Council/Committee but don't threaten or intimidate staff and don't try to influence their professional advice to Council;
- Leave your professional qualifications at home and rely on staff to provide professional advice;
- Engage in respectful debate at Council /Committees and follow processes;
- Provide constructive feedback respectfully;
- Respect Council's decisions and the outcomes that flow from them

Strong Mayor Powers

- Effective in the City of Pembroke as of May 1, 2025
- Intended to streamline local government and support provincial priorities
- Includes: power to set the budget; hire and fire CAO and other officials; veto with Council override; bring forward reports and bylaws; direct staff research; create council committees and assign chair and vice chair
- It is not the role of the Integrity Commissioner to investigate complaints about the use of these powers unless there is an alleged breach of the Code of Conduct



How to Reach the Integrity Commissioner?

Phone: 416-409-5607

Email: Maryellen@benchmunicipal.com

Complaints are to be submitted through the City Clerk for referral to the Integrity Commissioner