



J. Paul Dubé, Ombudsman

BY EMAIL

Council for Haldimand County
c/o Mayor Shelley Ann Bentley
53 Thorburn Street South
Cayuga, Ontario
Canada, N0A 1E0

September 17, 2024

Dear Council for Haldimand County:

Re: Best practices regarding codes of conduct

I understand that Haldimand County staff members are in the process of reviewing the County's *Policy No. 2008-02: Council Code of Conduct*. Further to my staff's discussion with the Clerk and Chief Administrative Officer on January 25, 2024, I am writing to share best practices related to codes of conduct for the County's consideration during its policy review.

The Ombudsman's authority

The Ontario Ombudsman is appointed under the *Ombudsman Act* as an Officer of the Legislative Assembly of Ontario, and is independent of political parties and government administrators. Our Office has the authority to conduct impartial reviews and investigations into the administrative conduct of municipalities, provincial government organizations, school boards, publicly funded universities, as well as services provided by children's aid societies and residential licensees, and services provided in French under the *French Language Services Act*.

When reviewing issues related to municipal government administration, the Ombudsman may consider whether or not an organization's policies or processes were followed, and if they were fair. If he identifies concerns, he may share best practices to improve municipal processes, as well as strengthen local governance, transparency and accountability.

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Code of conduct and complaint protocol in Haldimand County

Haldimand County has established a code of conduct and complaint protocol for members of council and local boards. *Policy No. 2008-02: Council Code of Conduct* (the “Code of Conduct Policy”)¹ provides for both informal and formal complaint procedures.²

Under the County’s informal complaint procedure, an individual may file a code of conduct complaint with the Clerk for informal resolution,³ and under the formal complaint procedure, an individual may file a complaint for review by the County’s Integrity Commissioner.⁴ Individuals are required to provide a supporting affidavit in order to file a complaint under both the informal and formal complaint procedures. In addition, the County charges a \$200 fee to file a complaint under the formal complaint procedure.⁵ County staff members do not have discretion to waive the \$200 complaint fee, regardless of an individual’s ability to afford this fee. However, this fee is refunded if the Integrity Commissioner chooses to investigate the complaint.⁶

The *Municipal Act, 2001* requires that all municipalities appoint an Integrity Commissioner, or make the services of an Integrity Commission available, to address complaints regarding the ethical conduct of members of council and local boards. This system is premised on a willing public coming forward to assist in ensuring that transparency is maintained at the municipal level.

There should be no fee or other barrier to make a complaint to an Integrity Commissioner. While some municipalities have chosen to implement a complaint fee, my Office has publicly denounced this practice, as it penalizes complainants for exercising their statutory rights, and may prevent legitimate complaints from being brought forward due to concerns about financial cost.⁷ Charging a fee to complain is entirely inconsistent with the primary intent of the Integrity Commissioner scheme, which is to foster democratic legitimacy and public trust at the local level.

I strongly encourage the County to cease its practice of charging fees to members of the public for Integrity Commissioner services. Should the County continue this practice, it should, at a minimum, give certain staff members discretion to waive the fee depending on the circumstances, such as where the complainant does not have the means to pay, or if someone who is unfamiliar with the Integrity

¹ Haldimand County, *Policy No. 2008-02: Council Code of Conduct* (November 29, 2008) [*Code of Conduct*], online: <<https://www.haldimandcounty.ca/wp-content/uploads/2019/10/Council-Code-of-Conduct-Policy-2008-02.pdf>>.

² *Ibid*, Schedule 1.

³ *Ibid*, Schedule 1, s A.

⁴ *Ibid*, Schedule 1, s B.

⁵ *Ibid*, Schedule 1, s B2.

⁶ *Ibid*.

⁷ Letter from the Ontario Ombudsman to the City of Niagara Falls (21 February 2023), online: <<https://niagarafalls.civicweb.net/filepro/documents/54621/?preview=57238&attachmenturl=urlQueryObj.attachmenturl>> and Letter from the Ontario Ombudsman to the City of Hamilton (12 January 2022), online: <<https://pub-hamilton.escribemeetings.com/filestream.ashx?DocumentId=306353>>.

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Commissioner's jurisdiction files a complaint that is outside the Commissioner's authority or that lacks sufficient grounds for an investigation.

I understand that the \$200 fee may have been implemented to offset costs and minimize the number of frivolous or vexatious complaints, or complaints without sufficient grounds to support an investigation. However, the County's formal complaints procedure already provides the Integrity Commissioner with the authority to dismiss complaints that are frivolous, vexatious, or not made in good faith, or if there are no grounds or insufficient grounds for an investigation.⁸ Accordingly, Haldimand County need only remove the fee requirement to ensure that complaints can reach the Integrity Commissioner to be considered on their merits. By removing the fee and empowering the Integrity Commissioner to make a determination on the basis of each specific complaint, the County can ensure that legitimate complaints are not suppressed by an overly blunt barrier to access.

The County's Code of Conduct Policy also requires individuals to provide an affidavit setting out reasonable and probable grounds for a Code of Conduct complaint under the formal and informal complaint procedures. My Office has publicly stated that municipalities should not impose undue barriers, such as swearing an affidavit, to making a complaint under a Code of Conduct process.⁹ The Code of Conduct is an essential tool for members of the public to hold their elected officials accountable for their conduct and to maintain public trust in the democratic process. Members of the public who have a potential complaint should have an avenue to access the Code of Conduct complaints procedures without difficult or onerous requirements. When the burden of filing a complaint becomes too difficult, individuals may be discouraged from raising legitimate concerns, undermining the purpose of the Code of Conduct. The County should eliminate barriers to exercising democratic rights, such as the requirement that individuals provide an affidavit in order to make a formal or informal Code of Conduct complaint.

Conclusion

I strongly urge the County of Haldimand to amend its Code of Conduct policy as soon as possible to remove the reference to a fee and the affidavit requirement for complaints. If the County is unwilling to eliminate the fee, it should ensure that staff have the discretion to waive the fee depending on the circumstances, such as where the complainant does not have the means to pay.

My Office has recently created a *Guide for Municipalities on Codes of Conduct, Complaint & Inquiry Protocols, and Appointing Integrity Commissioners*. Based on our experience in this area, we published this best-practice guide to help municipal councils and staff develop codes of conduct, establish complaint/inquiry protocols, and appoint integrity commissioners. I encourage the County to review the

⁸ *Code of Conduct*, *supra* note 1, Schedule 1, s B4.1.

⁹ Ontario Ombudsman, *2020-2021 Annual Report* (29 June 2021), online:

<<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/annual-reports/2020-2021-annual-report#Councils,%20committees%20and%20conduct>>.

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Guide online: <https://www.ombudsman.on.ca/resources/brochures-and-posters/municipal-resources#TOCResources%20About%20Municipal%20Integrity%20Commissioners>.

Sincerely,



Paul Dubé
Ontario Ombudsman

CC: Cathy Case, Chief Administrative Officer, County of Haldimand
Chad Curtis, Municipal Clerk, County of Haldimand

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