



J. Paul Dubé, Ombudsman

BY EMAIL

Council for the Town of Pelham
c/o David Cribbs, Chief Administrative Officer
Town Hall Pelham
20 Pelham Town Square
Fonthill, Ontario L0S 1E0

August 31, 2023

Dear Members of Council for the Town of Pelham:

RE: Integrity Commissioner complaint fee and affidavit requirement

My Office received a complaint that the Town of Pelham charges a fee to make a complaint under the Code of Conduct to its appointed Integrity Commissioner. Under the Town's User Fees and Charges By-law 2023, there is no charge for an individual's first complaint to the Integrity Commissioner; however, there is a \$100.00 fee for a second complaint and a \$300.00 fee for any further complaints. The fee is refundable if the Integrity Commissioner finds that the Code of Conduct was contravened, and may be waived in certain circumstances.¹ The Town's Advice, Complaint and Investigation Protocol also requires individuals to include an affidavit in order to file a Code of Conduct complaint to the Integrity Commissioner.

The *Municipal Act, 2001* requires that all municipalities appoint an Integrity Commissioner, or make the services of an Integrity Commissioner 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 under a Code of Conduct to the 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

¹ Motion of Council 11.5.1 on September 7, 2021

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concerns about financial cost. 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 understand that the Town's complaint fee structure was implemented to offset costs and minimize the number of frivolous or vexatious complaints received by the Town.² The Town's Advice, Complaint and Investigation Protocol already provides the Integrity Commissioner with the authority to dismiss complaints that are frivolous, vexatious, not made in good faith, lack grounds or where there are insufficient grounds for an investigation or inquiry.³ This discretion should be sufficient to enable the Town's Integrity Commissioner to address concerns about unmeritorious complaints.

The fee may be waived by the Town's Clerk, Chief Administrative Officer, or Solicitor in their sole discretion. The fee may be returned if the Integrity Commissioner finds a contravention of the Code of Conduct but is forfeited if the complaint is not substantiated or is found to be frivolous, vexatious, made in bad faith, contains insufficient grounds to support an investigation, or is outside the jurisdiction of the Integrity Commissioner. Certain types of complaints are exempt from a fee, for example, complaints that relate to alleged physical or sexual harassment and criminal behavior.⁴ While I strongly encourage the Town to cease its practice of charging fees to members of the public for Integrity Commissioner services, should the Town continue this practice, it should at a minimum provide guidelines to assist staff in determining when to exercise the discretion to waive the fee depending on the circumstances, such as where the complainant does not have the means to pay or where those unfamiliar with the complexities of legal jurisdiction file complaints that are outside the Commissioner's authority or lack sufficient grounds.

The Town's complaint protocol also requires individuals to provide the Integrity Commissioner with an affidavit setting out reasonable and probable grounds for a Code of Conduct complaint.⁵ The Chief Administrative Officer told our Office that the affidavit requirement emphasizes the seriousness of the integrity commissioner process and acts as a deterrent against the submission of frivolous or vexatious complaints. The Town's website indicates that

² Town of Pelham, Report #2023-0026 Integrity Commissioner Fee Update Report, January 30, 2023 at page 1.

³ Town of Pelham: Council, Policy No. S201-16, *Advice, Complaint and Investigation Protocol* (19 April 2023), s. 6.9

⁴ Motion of Council

⁵ Town of Pelham: Council, Policy No. S201-16, *Advice, Complaint and Investigation Protocol* (19 April 2023), s. 5.8



the Clerk's Office will not charge a fee to commission this affidavit. However, requiring members of the public who wish to make a Code of Conduct complaint to swear an affidavit creates undue barriers for individuals. 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 Integrity Commissioner 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 Town should eliminate barriers to exercising democratic rights such as the requirement that individuals provide an affidavit in order to make a Code of Conduct complaint to the Integrity Commissioner.

Conclusion

I strongly urge the Town of Pelham to amend its User Fees and Charges By-law and Advice, Complaint, and Investigation Protocol as soon as possible to remove all complaint fees and the affidavit requirement for Code of Conduct complaints. 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 developed 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 Town to review the Guide online: <https://www.ombudsman.on.ca/resources/brochures-and-posters/municipal-resources#TOCResources%20About%20Municipal%20Integrity%20Commissioners>.

Sincerely,



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Ontario Ombudsman

cc: William Tigert, wtigert@pelham.ca

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