EXPANDING THE POWERS OF INTEGRITY COMMISSIONERS IN ONTARIO: SEXUAL VIOLENCE & THE SHORTCOMINGS OF THE MUNICIPAL ETHICS REGIME

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To the survivors whose stories are told in my paper,
and to all survivors whose stories are told or untold.

To the faculty members at Windsor Law who know my story
and have provided me with a tremendous amount of support.

To Dr. Claire Mummé, who said her hope for me is
to not only be able to reclaim my space in the world
but to take up as much space as possible.

To Dr. Anneke Smit, for helping me rediscover
my love for cities in a safe environment.

To my supervisor, Dr. Bruce Elman,
whose patience and support
on the days when it was too hard to write
allowed me to see this process through.

Expanding the Powers of Integrity Commissioners in Ontario: Sexual Violence & the Shortcomings of the Municipal Ethics Regime

Shereen Arcis

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Trigger warning: This Paper discusses sexual violence, including sexual assault and sexual harassment, within the context of unequal power relationships.

PART 1: INTRODUCTION

In 2020, two City Councillors in Ontario were found to have committed separate acts of sexual violence in the course of their duties by their respective Municipal Integrity Commissioners. These Councillors' egregious behaviour constituted a breach of the Code of Conduct, and each City Council was quick to call on these Members to resign from their positions. Despite their reprehensible actions, the Integrity Commissioners could only recommend two penalties in accordance with the *Municipal Act*: (1) a reprimand; and/or (2) suspension of pay for a period of up to 90 days. In both cases, the Integrity Commissioners imposed the most severe sanction available to them, but they also implicitly or explicitly expressed their disappointment with the lack of penalty options under the *Municipal Act*. It became obvious that more should be done to rectify each situation, but the Integrity Commissioners' hands were tied. They had no other choice but to impose disproportionately weak sanctions relative to the seriousness of the two Councillors' disgraceful sexual misconduct.

As the shortcomings of Ontario's municipal ethics regime increasingly came to light, the Province was forced to accept the reality that something needed to be done. Subsequently, in March 2021, the Government of Ontario announced that it would be gathering input on ways to increase accountability for Members of Council through a Province-wide Consultation. The Provincial Government's heightened interest in strengthening the measures to address serious Code of Conduct contraventions is believed to have been influenced by the two aforementioned cases, in which both Councillors were inadequately disciplined because of the lack of penalty options. In this regard, the Province came to a very public realization that something is seriously wrong with the existing legal framework.

Accordingly, this Paper examines the powers of Integrity Commissioners in Ontario and the ways that they can be improved under the *Municipal Act* to allow for more appropriate sanctions. The Paper begins with a case study of Councillor Rick Chiarelli in Part 2, followed by a case study of Councillor Gurpreet Dhillon in Part 3. Based on the two case studies, a discussion of the theory is provided in Part 4. Part 5 then reviews the history of Integrity Commissioners in Ontario, while Part 6 explores the Province's Consultation on Municipal Codes of Conduct. Lastly, the Paper concludes with an analysis of the proposed amendments to the *Municipal Act* in Part 7, in regard

to the penalties that should be available to Integrity Commissioners for recommendation to Council for Code of Conduct violations.

PART 2: CASE STUDY — COUNCILLOR RICK CHIARELLI

It is generally accepted that the Province's review of the powers of Integrity Commissioners was prompted by two high-profile cases—those of Councillor Rick Chiarelli of the City of Ottawa and Councillor Gurpreet Dhillon of the City of Brampton. Public sentiment seemed to indicate that these were instances in which the Integrity Commissioners did not have sufficient powers to adequately respond to the egregious nature of these Councillors' behaviour.

Turning to the first of these two cases, between September and October 2019, the Integrity Commissioner for the City of Ottawa, Robert Marleau ("Marleau"), received a total of five formal Complaints against Councillor Rick Chiarelli ("Chiarelli").[1] Three of the Complaints were filed individually by members of the public who were interviewed by Chiarelli for positions in his Office.[2] Two of the Complaints were submitted individually by former staff members who had worked at Chiarelli's Office.[3] Consequently, Marleau addressed the Complaints filed by members of the public and those filed by former staff members in two separate Integrity Commissioner Reports ("Reports").[4] Furthermore, each Complaint was treated individually, and Marleau made specific findings and recommendations for each Complaint he received.[5] However, because the allegations set forth by the Complainants were analogous in nature, they formed a single inquiry ("Inquiry").[6] All five Complaints asserted that Chiarelli breached sections 4 and 7 of the *Code of Conduct for Members of Council (By-law No 2018-400)* ("Code of Conduct"), which concern General Integrity and Discrimination and Harassment respectively.[7] In addition to these

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[1] Robert Marleau, "Integrity Commissioner: Report to Council on an Inquiry Respecting the Conduct of Councillor Chiarelli" (July 9, 2020) at para 1, online: *City of Ottawa* <app05.ottawa.ca/sirepub/cache/2/1ov1ny0docnd3vewi5tps0c4/653270042320221152469 79.PDF>; Robert Marleau, "Integrity Commissioner: Report to Council on an Inquiry Respecting the Conduct of Councillor Chiarelli" (November 3, 2020) at para 1, online: *City of Ottawa* <app05.ottawa.ca/sirepub/cache/2/1ov1ny0docnd3vewi5tps0c4/673117042320221153372 3.PDF>.

[2] *Ibid* (July 9, 2020) at para 2.

[3] Marleau (November 3, 2020), *supra* note 1 at para 2.

[4] Marleau (July 9, 2020), *supra* note 1 at para 3; Marleau (November 3, 2020), *supra* note 1 at para 3.

[5] *Ibid*.

[6] *Ibid*.

[7] *Ibid* at para 1; *Ibid* at para 1.

provisions, the Complaints submitted by former staff members alleged that Chiarelli had contravened section 10 of the Code of Conduct, which deals with Conduct Respecting Staff.[8]

Before the Inquiry was officially underway, Marleau met personally with each Complainant to review the Complaint Protocol pursuant to the Code of Conduct.[9] After determining that none of the Complaints were frivolous or vexatious and that he had jurisdiction over them, Marleau concluded that there were sufficient grounds for a formal investigation.[10] Subsequently, Marleau appointed an external investigator.[11] The Investigator was tasked with conducting interviews under oath, gathering evidence, and providing a detailed analysis of the relevant facts as part of an Investigation Report.[12] The Investigator submitted her Final Investigation Report to Marleau in June 2020.[13] After reviewing the Investigation Report, as well as other evidence collected by the Investigator, Marleau filed his First Final Report to City Council with his own findings and recommendations in July 2020.[14] The Second Final Report was submitted to the City Clerk in November 2020.[15]

As previously mentioned, the First Report addressed the three Complaints filed by members of the public who were interviewed by Chiarelli, whereas the Second Report dealt with the two Complaints filed by his former staff members.[16] Complainant 1 in the First Report alleged that Chiarelli had asked her during an interview if she would be willing to "go braless" and show her arms and legs on the job.[17] The Investigator found that these allegations were established.[18] The Investigator was also able to substantiate that Chiarelli displayed inappropriate photographs of former staff members to Complainant 1 during her interview while explaining how hiring attractive women helped him draw volunteers and gather information "by getting men to hit on them."[19]

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[8] Marleau (November 3, 2020), *supra* note 1 at para 1.
[9] Marleau (July 9, 2020), *supra* note 1 at para 5; Marleau (November 3, 2020), *supra* note 1 at para 5.
[10] *Ibid* at para 7; *Ibid* at para 7.
[11] *Ibid* at para 37; *Ibid* at para 43. The Investigator's responsibility for the Investigation was delegated in accordance with section 223.3(3) of the *Municipal Act*.
[12] *Ibid* at para 38; *Ibid* at para 44.
[13] *Ibid* at para 44; *Ibid* at para 50.
[14] Marleau (July 9, 2020), *supra* note 1 at paras 45–46.
[15] Marleau (November 3, 2020), *supra* note 1 at para 57.
[16] Marleau (July 9, 2020), *supra* note 1 at para 3; Marleau (November 3, 2020), *supra* note 1 at para 3.
[17] *Ibid* (July 9, 2020) at para 68.
[18] *Ibid*.
[19] *Ibid*.

Likewise, for Complainant 2, the Investigator found that in her interview, Chiarelli discussed the idea that the recruitment of men as volunteers was most effective if the staff member was not wearing a bra, and he asked her if she would be open to going braless in an effort to attract men.[20] With respect to the final Complaint submitted by a member of the public, the Investigator was able to establish Complainant 3's allegations that, during her interview, Chiarelli made inappropriate comments about her body, inquired if she would "ever consider being a stripper," and asked her if she had participated in "World Orgasm Day."[21]

In considering the Complaints filed by former staff members who worked at Chiarelli's Office, the Investigator substantiated seven allegations that he had engaged in similar behaviour with Complainant 1 in the Second Report.[22] Most notable in this regard are the Investigator's findings that Chiarelli instructed her to convince men that she would have sex with them so they would volunteer for his Office or share information with her, but said he would fire her if she actually did.[23] Moreover, Chiarelli recounted to Complainant 1 that others believed he had sexual relationships with staff members, including her.[24] The Investigator also established that Chiarelli created a fearful environment in his Office by exhibiting abusive, manipulative, and threatening behaviour towards Complainant 1 and her colleagues.[25] Lastly, with respect to Complainant 2's allegations in the second Report, the Investigator found that Chiarelli displayed a pattern of conduct that was consistent with the other Complaints.[26] Specifically, the Investigator was able to establish, among other findings, that Chiarelli pressured her into sharing intimate details about her personal life with him, that he made inappropriate comments about her body directly to her and others, and that he advised his staff members that any incidents of harassment or inappropriate behaviour should be dealt with "internally."[27] Accordingly, Marleau concluded that in all five Complaints, Chiarelli violated the General Integrity and Discrimination and Harassment provisions set out in sections 4 and 7 of the Code of Conduct.[28] However, in regard to the

[20] *Ibid* at para 69.
[21] *Ibid* at para 70.
[22] Marleau (November 3, 2020), *supra* note 1 at para 94.
[23] *Ibid*.
[24] *Ibid*.
[25] *Ibid*.
[26] *Ibid* at para 99.
[27] *Ibid*.
[28] Marleau (July 9, 2020), *supra* note 1 at para 4; Marleau (November 3, 2020), *supra* note 1 at para 4.

Complaints submitted by former staff members, Marleau determined that the Councillor did not breach section 10 of the Code of Conduct governing Conduct Respecting Staff.[29] It is possible that Marleau was unable to find that Chiarelli contravened section 10 of the Code of Conduct because the provision was not broad enough to encompass Chiarelli's behaviour.

In accordance with section 223.4(5) of the *Municipal Act*, as well as section 15 of the Code of Conduct for the City of Ottawa, the Integrity Commissioner has the authority to make recommendations to Council concerning the penalties that should be imposed on Members who violate the Code of Conduct.[30] In determining the appropriate sanctions, Marleau carefully considered several applicable principles while also taking into account the degree of Chiarelli's behaviour and the fact that, as a Councillor, he held the senior-most elected position in the City besides the Mayor.[31] Consequently, Marleau recommended that Chiarelli's remuneration in respect of his service as a Member of Council be suspended for a period of 90 days, and that this penalty be imposed consecutively regarding each of the five Complaints—thus maximizing Chiarelli's suspension of pay to the greatest extent possible.[32] Indeed, Marleau concluded that the most severe sanctions available under the *Municipal Act* and the Code of Conduct were warranted in this case.[33]

After submitting his two Reports to City Council in July and November 2020 respectively, Council passed Motion No 37/3 and Motion No 44/3, which confirmed Marleau's recommendations that

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[29] *Ibid* (November 3, 2020) at para 4. Section 10(5) of the Code of Conduct states, "Members of Council shall be respectful of the role of the municipal administration to provide advice based on political neutrality and objectivity and without undue influence from an individual Member or group of Members of Council." Section 10(6) of the Code of Conduct states, "Members of Council should not: (a) Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of municipal staff; (b) Compel municipal staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or (c) Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any municipal staff member with the intent of interfering in staff's duties."

[30] Marleau (July 9, 2020), *supra* note 1 at para 127; Marleau (November 3, 2020), *supra* note 1 at para 214.

[31] *Ibid* at para 132; *Ibid* at para 220.

[32] *Ibid* at para 133; *Ibid* at para 221.

[33] *Ibid* at para 132; *Ibid* at para 220. The most severe sanction available under the *Municipal Act* is a suspension of the remuneration paid to the Member of Council in respect of their services for a period of up to 90 days. The Code of Conduct also allows the Integrity Commissioner to recommend that Council impose one additional sanction at their discretion, and Marleau recommended that Chiarelli be removed from the membership of all Committees of Council. The legality of this latter recommendation as a punitive measure remains debatable. See *Magder v Ford*, 2013 ONSC 263 (Div Ct).

Chiarelli be suspended without pay for a total period of 450 days.[34] Furthermore, Motion No 44/3 called on him to tender his resignation as a Member of Council in the interest of preserving public confidence in the City of Ottawa and to ensure the effective representation of residents in his Ward.[35] Likewise, Council carried Motion No 44/2 in November 2020, which explicitly acknowledged its narrow ability to pursue penalties in addition to those recommended by Marleau due to the limited sanction options available under the *Municipal Act*.[36] Nevertheless, Council also expressed its desire to communicate, in the strongest possible terms, that no one should ever be subjected to the conduct described in the Reports.[37] Subsequently, in recognition of the courage of the survivors who came forward, and in an attempt to show them that they had been heard by Members of Council, Motion No 44/2 directed the Mayor to issue a formal apology on behalf of City Council to all of Chiarelli's victims, regardless of whether they filed a formal complaint with the Integrity Commissioner.[38] It is crucial to bear in mind that aside from the suspension of remuneration, none of the other penalties that Council imposed are provided for in the *Municipal Act*.

PART 3: CASE STUDY — COUNCILLOR GURPREET DHILLON

Similarly, in November 2019, the Integrity Commissioner for the City of Brampton, Muneeza Sheikh ("Sheikh"), received a phone call from Mayor Patrick Brown ("Brown") regarding alleged misconduct by Councillor Gurpreet Dhillon ("Dhillon").[39] The Complainant, a resident of the City of Brampton, met with Brown in November 2019 and asserted that Dhillon had sexually assaulted and sexually harassed her earlier that month.[40] Although Brown did not file a formal complaint against Dhillon during his discussion with Sheikh, she exercised her discretion in deciding to treat

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[34] City of Ottawa, "Special Ottawa City Council Meeting" (July 15, 2020) at 8, online: *City of Ottawa* <app05.ottawa.ca/sirepub/cache/2/s4faabjly0r25w5atwofsjcr/811904242022034408460.pdf>; City of Ottawa, "Ottawa City Council Meeting" (November 25, 2020) at 8–9, online: *City of Ottawa* <app05.ottawa.ca/sirepub/cache/2/s4faabjly0r25w5atwofsjcr/786704242022034629313.pdf>.
[35] *Ibid* (November 25, 2020) at 8–9.
[36] *Ibid* at 7–8.
[37] *Ibid*.
[38] *Ibid*. In August 2022, Chiarelli was found by the City of Ottawa's current Integrity Commissioner, Karen Shepherd, to have engaged in additional breaches of sections 4 and 7 of the Code of Conduct for further instances of sexual harassment after another victim came forward in January 2022. See Karen Shepherd, "Report to Council on an Inquiry Respecting the Conduct of Councillor Chiarelli" (August 2022) at 5, online: *City of Ottawa* <pub-ottawa.escribemeetings.com/filestream.ashx?DocumentId=100828>.
[39] Muneeza Sheikh, "Report: City Council" (July 2020) at 1, online: *City of Brampton* <www.brampton.ca/EN/City-Hall/IntegrityCommissionerReports/2020-03%20-%20IC%20Report%20including%20Appendicies_FINAL.pdf>.
[40] *Ibid*.

the Complainant's disclosure as a Complaint, which necessitated at least a preliminary investigation into the alleged misconduct, given that it involved extremely concerning behaviour.[41] Sheikh's authority to launch the Investigation in response to Brown's request about whether Dhillon had breached the *Code of Conduct for Members of Council* ("Code of Conduct") was provided for by section 223.4(1)(a) of the *Municipal Act*.[42]

Between December 2019 and January 2020, Sheikh interviewed the Complainant and other individuals whom she deemed relevant to the Investigation, collecting evidence and requesting documents and materials where appropriate.[43] Sheikh found that while the Complainant was in Turkey with the Canadian Turkish Business Council in November 2019, she met Dhillon for the very first time at the hotel where she was staying.[44] After the Complainant and Dhillon had a conversation in the hotel lobby, Dhillon entered the elevator with the Complainant and also exited the elevator onto her floor.[45] The Complainant assumed that Dhillon's hotel room was on the same floor as hers, but he proceeded to follow her into her hotel room.[46] Sheikh was able to substantiate that, while in her hotel room, Dhillon sexually assaulted the Complainant and forcibly kissed and touched her without her consent.[47] Dhillon continued sexually assaulting the Complainant despite her repeatedly pleading with him to stop.[48] After Dhillon left the Complainant's hotel room, he returned to her door and knocked at it for approximately 10 to 15 minutes, but she did not let him in.[49] Additionally, the Complainant placed a chair behind her hotel room door as an extra safety precaution.[50] The Complainant managed to record part of the incident with Dhillon on her phone, and the audio recording was reviewed by Sheikh during the Investigation.[51] Sheikh was also able

[41] *Ibid* at 2.
[42] *Ibid* at 1.
[43] *Ibid* at 3. Sheikh's requests to interview Dhillon were rejected, and his Counsel raised a number of concerns related to the Investigation. In particular, Dhillon argued that Sheikh did not have the jurisdiction to investigate the matter pursuant to the *Municipal Act*, that she was required to disclose specific evidence and materials to him, and that she did not have the authority to "compel" him to participate in the Investigation. Sheikh responded to each of these concerns in the Report and proceeded with the Investigation.
[44] *Ibid* at 9.
[45] *Ibid* at 10.
[46] *Ibid* at 11.
[47] *Ibid* at 11–12.
[48] *Ibid*.
[49] *Ibid* at 13.
[50] *Ibid*.
[51] *Ibid* at 12.

to establish the Complainant's allegations based on her interviews with several other individuals, whose evidence supported the events that occurred between the Complainant and Dhillon.[52]

Pursuant to section 223.3(1) of the *Municipal Act*, Sheikh had a role to determine whether Dhillon's sexual misconduct contravened the Code of Conduct and any other applicable policies that govern the ethical behaviour of Members of Council—namely the *Respectful Workplace Policy* ("Policy").[53] Accordingly, Sheikh found that Dhillon violated sections 14, 15, 18, and 19 of the Code of Conduct, which govern Harassment, Discreditable Conduct, the Failure to Adhere to Council Policies and Procedures, and Reprisals and Obstruction respectively.[54] She also concluded that he breached the Harassment and Sexual Harassment requirements of the Policy, which are referred to in section 14 of the Code of Conduct.[55]

With respect to Sheikh's recommendations to City Council concerning the penalties that should be imposed on Dhillon, her Report referred to the fact that the Policy explicitly states that employees who are found to have engaged in harassing behaviour "will be subject to discipline up to and including dismissal."[56] However, irrespective of the City's Policy, Sheikh acknowledged in her Report that, although her recommendation would have been for Dhillon to be dismissed from his role as Councillor, neither she nor Council had the authority to make such a recommendation as a result of the sanction limitations in the *Municipal Act*.[57] Sheikh described the *Municipal Act*'s deficiencies in this regard as "unfortunate."[58] Subsequently, she recommended that Dhillon's remuneration in respect of his service as a Member of Council be suspended for 90 days.[59] Sheikh underscored in her Report that this was the most severe penalty available to her under the *Municipal Act*, and she reiterated how disappointed she was that she did not have the capacity to recommend Dhillon's immediate removal from City Council.[60] Furthermore, Sheikh recommended that Council issue an official reprimand for Dhillon's misconduct, that he formally

[52] *Ibid* at 15.
[53] *Ibid* at 17.
[54] *Ibid* at 44–47.
[55] *Ibid* at 43.
[56] *Ibid* at 44.
[57] *Ibid*.
[58] *Ibid*.
[59] *Ibid* at 47.
[60] *Ibid*.

apologize to the Complainant, and that Council take any other remedial action it deemed appropriate.[61]

In August 2020, Council considered the Report and passed Motion C302-2020, confirming all of Sheikh's recommendations with respect to the sanctions that should be imposed on Dhillon.[62] In addition to being suspended without pay for a period of 90 days, he was given an official reprimand and was ordered to issue a formal apology to the Complainant.[63] Moreover, he was removed as Chair of any applicable Committees, and his membership in all Committees was revoked.[64] Council also restricted his ability to travel outside of Ontario for any matters related to the City, directed him to communicate with members of the public exclusively via his City email address, and prevented him from having access to the City's offices, other than to attend Council meetings, make bill payments, and retrieve Council mail.[65] Lastly, in recognition of the City's belief that it has a responsibility to provide a safe space for survivors who come forward, to support them when they speak up, and to stand behind them when they have shared their traumatic experiences of sexual violence, Council passed Motion C305-2020, which called on Dhillon to resign as Councillor.[66] Besides the suspension of remuneration and the official reprimand, none of the other penalties are provided for in the *Municipal Act*.

Dissatisfied with the decision, Dhillon brought a judicial review application to the Divisional Court, seeking to set aside the actions of Sheikh and City Council.[67] The Application was heard in December 2020.[68] Justice Freya Kristjanson ("Justice Kristjanson") held that the remedial measures taken by the City were reasonable, with one exception.[69] Specifically, Justice Kristjanson found that the requirement that Dhillon could only communicate with members of the public using

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[61] *Ibid*.
[62] City of Brampton, "City Council Meeting" (August 5, 2020) at 24, online: *City of Brampton* <www.brampton.ca/EN/City-Hall/meetings-agendas/City%20Council%202010/20200805ccmn.pdf>.
[63] *Ibid*.
[64] *Ibid*.
[65] *Ibid*.
[66] *Ibid* at 27–28.
[67] *Dhillon v The Corporation of the City of Brampton*, 2021 ONSC 4165 at 1 [*Dhillon*].
[68] *Ibid*.
[69] *Ibid* at para 95.

his City email address was overly broad, and she ordered that this issue alone be remitted to the City for further consideration.[70]

As described above, the cases of Chiarelli and Dhillon are generally assumed to have prompted the Province's review of the powers of Integrity Commissioners in Ontario. The next section discusses why analyzing the powers of Integrity Commissioners with reference to sexual violence is valuable in understanding why the existing legal framework should be reformed.

PART 4: THEORY

It is self-evident from these two cases that Chiarelli and Dhillon did not simply contravened the Code of Conduct—they also committed acts of sexual violence against their victims. Specifically, Chairelli sexually harassed former staff members and members of the public, and Dhillon sexually assaulted and sexually harassed a member of the public.

The term "sexual violence" encompasses both physical and psychological harm, and it can take many forms, including sexual assault and sexual harassment.[71] It is useful to analyze the powers of Integrity Commissioners within the context of sexual violence because doing so effectively demonstrates the degree to which the existing powers of Integrity Commissioners are inadequate. As evidenced by the two cases, when Chiarelli and Dhillon's egregious behaviour is measured against the penalties that were imposed against them, the sanctions were entirely deficient because the Integrity Commissioners had very few options. Indeed, the penalties did not sufficiently reflect the undeniable harm these Councillors caused their victims.

It is apparent from Chiarelli's repeated violations of the Code of Conduct—and the fact that five formal Complaints by five different women were made against him—that his reprehensible behaviour was not an isolated incident or a momentary lapse of judgment. On the contrary, his conduct was consistent with a pattern of inappropriate behaviour that he deliberately engaged in over a prolonged period to advance his career at his victims' expense. While it is clear that

[70] *Ibid* at paras 97 & 100.
[71] Ministry of Children, Community, and Social Services, "Sexual Violence" (April 30, 2020), online: *Government of Ontario* <www.ontario.ca/page/sexual-violence>. This definition of "sexual violence" is consistent with the Ontario Ministry of Children and Women's Issues' definition of the term.

Chiarelli's conduct towards his former staff members was an abuse of his position of authority and trust, this was arguably also the case with the members of the public who Chiarelli interviewed for positions in his Office. The moment Chiarelli began his interviews with the candidates, the power imbalance was immediately present when they were forced to remain professional—even though their potential employer was exhibiting objectively inappropriate behaviour towards them—to avoid jeopardizing their future job prospects. This was confirmed by the findings in the Report that, despite the discomfort, embarrassment, and shock felt by all three Complainants during their interviews, they had no choice but to remain calm and professional because to do otherwise would cause them to lose an opportunity to work in Chiarelli's Office.[72]

Sexual violence is completely unacceptable under any circumstances, but when there is an unequal power dynamic between the perpetrator and the victim, such as in an employer-applicant or a supervisor-employee relationship, a *quid pro quo* element emerges, given the monetary losses that are associated with the victim confronting the perpetrator. Victims of sexual violence often feel discouraged from speaking up regardless of whether a *quid pro quo* element exists.[73] However, the overwhelming presence of a power imbalance between the parties makes victims even more inclined to stay silent out of fear that they will face negative repercussions for addressing the perpetrator's behaviour.

Victims' reasonable inclination not to say anything about the sexual violence they have been forced to endure becomes even more prominent when the perpetrator, like Chiarelli and Dhillon, is a public figure who enjoys significantly more power, prestige, and resources than the victim. The Complainants' reluctance to come forward about their experiences with a Member of Council was evident in both cases, but particularly with Chiarelli's victims who were members of the public. As articulated by one of the Complainants when she filed her Complaint, "Women are coming forward with similar experiences and [Chiarelli] is denying the allegations. Denying these allegations is unacceptable. He did this. And I am now compelled to file a formal [C]omplaint that

[72] Marleau (July 9, 2020), *supra* note 1 at paras 52, 60 & 63.
[73] New Brunswick Human Rights Commission, "Guideline on Sexual Harassment" (September 2018) at 8, online: *Government of New Brunswick* <www2.gnb.ca/content/dam/gnb/Departments/hrc-cdp/PDF/GuidelinesOnSexualHarassment.pdf>.

[Chiarelli] did this to me too."[74] Likewise, as explained by another Complainant, "I will never support this behavio[u]r. I felt awful. I knew if [Chiarelli] did this to me, he probably did this to others. And I'm sorry. I will stand by others who have been violated by Chiarelli as well."[75]

These statements capture the idea that there is strength in numbers when survivors of sexual violence speak up about what they have gone through, especially when the perpetrator is a public figure. Support from other victims makes the thought of coming forward slightly less daunting when they know others have shared their experiences. Nevertheless, Chiarelli's victims' statements also depict the shame these survivors felt about what they went through, and how they were morally obligated to file their Complaints in support of others, namely because of Chiarelli's blanket denials and absolute refusal to accept responsibility for his actions.

Indeed, after the Complaints were submitted to Marleau, Chiarelli issued a public statement in October 2019 in which he "wholly denied the allegations" against him, he described the victims as having adopted a "mob mentality approach to the inaccurate characterization of past events," and he referred to the Complaints as "copycat scandalous allegations."[76]

Similarly, Dhillon's refusal to take responsibility for his behaviour was apparent in his complete denial of the Complainant's allegations, despite the audio recording evidence of the incident, in which the victim said "no" to Dhillon 74 times in the span of less than three minutes.[77] Furthermore, Dhillon's unwillingness to take responsibility for his actions was clear in his decision to file a judicial review application to the Divisional Court seeking to set aside the penalties that were imposed on him by Sheikh and Brampton City Council.[78] It is reasonable to infer from Dhillon's conduct that he did not believe he should face any sanctions for sexually assaulting a member of the public.

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[74] Marleau (July 9, 2020), *supra* note 1 at para 59.
[75] *Ibid* at para 62.
[76] *Ibid* at 5, 40 & 42.
[77] Sheikh, *supra* note 39 at 29 & 267.
[78] *Dhillon, supra* note 67 at para 2.

The fact that these two Councillors were perpetrators of sexual violence in the first place is concerning, but the reality that they engaged in sexual violence in their capacities as Members of Council is even more disturbing. Chiarelli and Dhillon abused their roles as elected officials and public figures for their own personal gain and, in doing so, they caused their victims a great deal of pain and suffering. The Complainants who were interviewed for a position in Chiarelli's Office were initially excited at the prospect of working directly with a Member of Council.[79] Likewise, as acknowledged by the Complainant in Dhillon's case, she saw him "as a respected public official and did not assume anything negative" about him when they first met, before Dhillon sexually assaulted her.[80] In other words, Chiarelli and Dhillon's victims viewed them as highly esteemed individuals, but they ended up causing these women a considerable amount of harm—harm that has been proven to have long-lasting and significant effects on survivors of sexual violence.[81]

Thus, examining the powers of Integrity Commissioners within the context of sexual violence—which prompted the Province to assess how the current laws might need to be changed—is valuable for many reasons. First, evaluating the options for penalties through a sexual violence lens effectively highlights the gaps in the system that allow Members of Council to be inadequately disciplined for their Code of Conduct breaches. Secondly, the egregious behaviour exhibited by the two Councillors draws attention to the inherent difficulty that comes with trying to balance the need to send a message to Members of Council that their conduct was intolerable with individual Members' political interests. Lastly, the two cases successfully demonstrate the extent to which the existing municipal ethics regime should be amended to be consistent with societal beliefs.

Following the #MeToo Movement's inception in October 2017, society has slowly undergone a shift in values that aims to more meaningfully address the prevalence of sexual violence.[82] Sexual violence in all forms is becoming increasingly less acceptable in Canadian society, and citizens are calling for greater measures to prevent sexual violence and increase support for survivors.[83]

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[79] Marleau (July 9, 2020), *supra* note 1 at 5, 40 & 42.
[80] *Ibid* at 21 & 63.
[81] Department of Justice, "The Impact of Trauma on Adult Sexual Assault Victims" (26 March 2019), online: *Government of Canada* <www.justice.gc.ca/eng/rp-pr/jr/trauma/p2.html>.
[82] Department for Women and Gender Equality, "It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence" (2019) at 4, online: *Government of Canada* <women-gender-equality.canada.ca/en/gender-based-violence-knowledge-centre/report-rapport2019-en.pdf>.
[83] *Ibid* at 14–18 & 26–27.

Consequently, given that the law is often an embodiment of society's values, as the legislation continues to adapt to remain current with evolving societal beliefs, the powers of Integrity Commissioners as provided for in the *Municipal Act* should be no exception. When Members of Council are sanctioned for violating the Code of Conduct, it is important that the penalty reflects the seriousness of the contravention. With reference to sexual violence specifically, it is absolutely crucial that when a survivor finds the courage to come forward and tell their story, the perpetrator is held accountable for their actions to minimize the victim's level of retraumatization and to show the perpetrator that this type of reprehensible behaviour will never be tolerated.

With this in mind, it is necessary to analyze the history of Integrity Commissioners in Ontario and how the misconduct that led to the introduction of mandatory full-time Integrity Commissioners is entirely distinct from sexual violence. While the next section may at times seem removed from the rest of this Paper, the disconnect between sexual violence on the one hand and computer leasing and external contracts on the other hand is precisely the point. The system was never built for the severe Code of Conduct breaches that Chiarelli and Dhillon have engaged in, and without much-needed reform, the current framework will remain ill-equipped to handle these types of violations.

PART 5: THE HISTORY OF INTEGRITY COMMISSIONERS IN ONTARIO

In March 2002, Justice Denise Bellamy ("Justice Bellamy") of the Ontario Superior Court of Justice was appointed Commissioner for the Toronto Computer Leasing Inquiry and, later in October 2002, for the Toronto External Contracts Inquiry ("Inquiry").[84] The Inquiry was called by the City of Toronto's Mayor and Council in accordance with the *Municipal Act*.[85] Serious questions had arisen about a series of transactions entered into by the City between 1998 and 2002, and Justice Bellamy's role was to examine each of the following six transactions.[86] The first was related to new computers that were leased for the Members of the amalgamated City's first

[84] Denise E Bellamy, "Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report Volume 3: Inquiry Process" (2005) at 12, online: *City of Toronto* <www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/report/pdf/TCLI_TECI_Report_Inquiry_Process.pdf>.
[85] *Ibid* at 13. At the time, the *Municipal Act* gave the City the authority to request a judge of the Superior Court of Justice to conduct a public inquiry into any matter connected with the good government of a municipality.
[86] Denise E Bellamy, "Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report Volume 1: Facts and Findings" (2005) at 24, online: *City of Toronto* <www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/report/pdf/TCLI_TECI_Report_Facts_Findings.pdf>.

Council, which came into existence in January 1998.[87] Second, the City had leased several tens of millions of dollars' worth of computer equipment through MFP Financial Services Limited from 1999 to 2001.[88] Third, the City had purchased 10,000 licences for Oracle Software in 1999, which were used for financial planning and human resources purposes.[89] Fourth, an integrated tax billing system, known as the Tax Management and Collection System, was developed for the City ahead of amalgamation.[90] Fifth, as the turn of the century quickly approached, the City acquired computer hardware from Dell Computer Corporation to meet its Year 2000-compliance needs.[91] Lastly, the sixth transaction was the City's extensive use of Ball Hsu and Associates Limited's information technology consulting services between 1998 and 2002.[92]

Over the course of three years, from 2002 to 2005, Justice Bellamy held a total of 214 days of public hearings.[93] In general, the leasing of computers and the external contracts concerned the same individuals and organizations affiliated with the City.[94] Based on the evidence, she found that the transactions involved millions of dollars that had been spent in questionable ways.[95] In some cases, there was a noticeable conflict of interest, while in others, the proper purchasing procedures were not followed.[96] Moreover, there were instances where Members of Council had improperly inserted themselves in matters that were outside of their jurisdiction.[97] Overall, the findings of the Inquiry made it extremely apparent, as Justice Bellamy described in her Report, that the implicated parties had "disgraced themselves" by failing to discharge their duties to the City and by lying, making mistakes, prioritizing their own self-interest, or by simply not doing their jobs.[98] On numerous occasions, these individuals did not meet the standards of leadership that the City of Toronto's residents reasonably expected of them.[99] Perhaps most importantly, for

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[87] *Ibid*.
[88] *Ibid*.
[89] *Ibid*.
[90] *Ibid*.
[91] *Ibid*.
[92] *Ibid*. Note that none of the six transactions is even remotely related to sexual violence.
[93] Denise E Bellamy, "Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report Volume 2: Good Government" (2005) at 8, online: *City of Toronto* <www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/report/pdf/TCLI_TECI_Report_Good_Government.pdf>.
[94] *Ibid*.
[95] *Ibid*.
[96] *Ibid*.
[97] *Ibid*.
[98] Bellamy, *supra* note 84 at 24.
[99] *Ibid* at 24–25.

the purposes of this analysis, Justice Bellamy found that the lines of accountability and responsibility at the City were either unclear or nonexistent.[100] Indeed, as articulated in the Report, "there were many times when more vigilant oversight could have made a difference," underscoring the degree to which a lack of oversight at the City was one of the fundamental problems that led to the wrongdoing, which led to the Inquiry, in the first place.[101]

Subsequently, in an attempt to learn from past mistakes and to prevent them from being repeated, Justice Bellamy provided recommendations in the Report to help improve accountability at the City.[102] She dedicated a tremendous amount of time and effort to understanding how municipal governance needs to be changed.[103] This included the Good Government Phase of the Inquiry, which consisted of research on municipal laws across Canada, as well as discussion papers, hearings, interviews, and panels with a broad range of experts and stakeholders.[104] An entire section of the Report was dedicated to recommendations related to ethics in municipal governance, such as the recommendation that the City expand its Code of Conduct to reflect wider ethical considerations.[105] Above all, Justice Bellamy recommended the appointment of a full-time Integrity Commissioner for the City—a recommendation that would ultimately be imposed by the Province on all municipalities.[106] Justice Bellamy explained that an Integrity Commissioner would "help ensure consistency in applying the City's [C]ode of [C]onduct."[107]

The Report also recommended that individuals who do not comply with these requirements should face real consequences for their breaches, and that the Integrity Commissioner should have the authority to recommend to Council—as opposed to directly impose—an appropriate range of penalties.[108] Most notable in this regard were public apologies, public reprimands, expulsions from Committee meetings, removals from Committee positions, expulsions from Council meetings, fines, and declarations that a Member's seat is vacant.[109] Indeed, official sanctions serve as a

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[100] *Ibid* at 25.
[101] *Ibid* at 295.
[102] *Ibid* at 23.
[103] Bellamy, *supra* note 93 at 9.
[104] *Ibid*.
[105] *Ibid* at 25–43.
[106] *Ibid* at 43.
[107] *Ibid* at 44.
[108] *Ibid* at 44 & 49–50.
[109] *Ibid* at 49.

deterrent for unethical behaviour and send a message to residents that a municipality is committed to ethical governance.[110] This idea is emphasized by Justice Bellamy's recommendation that penalties for ethical misconduct should involve the most severe sanctions available.[111] Furthermore, Integrity Commissioners can provide guidance on ethical matters where, even with a thorough Code of Conduct, the preferred course of action is unclear and authoritative advice is necessary.[112] In sum, a full-time Integrity Commissioner would function, first, as an advisory service for councillors and staff members seeking counsel before they act and, second, as an investigative and adjudicative service, examining conduct that is alleged to be a violation of the ethical rules set out in the Code of Conduct.[113]

Accordingly, in September 2006, the City of Toronto released the Bellamy Inquiry Progress Report ("Progress Report"), which summarized its advances in implementing the recommendations of the Inquiry.[114] The City appointed its first full-time Integrity Commissioner in September 2004, and the Progress Report reiterated the Integrity Commissioner's advisory function to Members of Council on their obligations under the *Members' Code of Conduct* ("Code of Conduct").[115] At the time of the Integrity Commissioner's appointment, the City did not have the legislative authority to grant him the recommended investigative powers for complaints regarding Code of Conduct contraventions.[116] However, the enactment of the *City of Toronto Act* in 2006 allowed the City to confer these broader powers of investigation on the Integrity Commissioner, as recommended by Justice Bellamy.[117] Nevertheless, the *City of Toronto Act* fell short of authorizing the wide range of penalties recommended by the Inquiry.[118] Similar to the *Municipal Act*, the only two sanctions permitted under the *City of Toronto Act* are a reprimand and suspension of a Member of Council's pay for up to 90 days, which remains the case to this day—nearly 20 years later—under both statutes.[119]

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[110] *Ibid* at 44.
[111] *Ibid* at 49–50.
[112] *Ibid* at 44.
[113] *Ibid* at 46.
[114] City of Toronto, "Bellamy Inquiry Progress Report" (12 September 2006) at 2, online: *City of Toronto* <www.toronto.ca/wp-content/uploads/2017/11/915e-bellamy-progress.pdf>.
[115] *Ibid* at 7.
[116] *Ibid.*
[117] *Ibid.*
[118] *Ibid.*
[119] *Municipal Act*, SO 2001, c 25, s 223.4(5); *City of Toronto Act*, SO 2006, c 11, s 160(5).

The severity of the penalties included in the *City of Toronto Act* and the *Municipal Act* stand in stark contrast to those provided for in the *Municipal Conflict of Interest Act*. In addition to the two aforementioned sanctions in the *City of Toronto Act* and the *Municipal Act*, the *Municipal Conflict of Interest Act* also empowers a judge to declare a Member's seat vacant, disqualify a Member from Council for up to seven years, and require a Member to make restitution where needed.[120] Under recent amendments to the *Municipal Conflict of Interest Act*, prior to a judge making an order, the Integrity Commissioner of a municipality may submit an application to a judge so they can determine whether there has been a breach of the *Municipal Conflict of Interest Act*.[121] If the judge concludes that there has been a contravention, they may impose any of the five applicable penalties provided for under section 9(1).[122]

The fact that the legislation contains a broader range of sanctions for conflicts of interest than it does for unethical behaviour, including sexual violence, is inconsistent with Justice Bellamy's recommendation that ethical misconduct should be penalized using the most severe sanctions available to reflect the seriousness of this behaviour.[123] Moreover, the failure of the *Municipal Act* to adopt a wide range of penalties for ethical misconduct has led to a significant gap between the statute and the *Municipal Conflict of Interest Act* in terms of Integrity Commissioners powers' and the available sanctions. It is evident that the penalty options available to Integrity Commissioners need to be expanded under the *Municipal Act* to prevent the disproportionately light sanctions that were imposed on Chiarelli and Dhillon. The questions become how the powers are to be expanded, what procedural modifications should be made to facilitate these new powers, and what safeguards need to be in place to avoid politically-motivated punishment by other Members of Council.

PART 6: PROVINCIAL CONSULTATION ON MUNICIPAL CODES OF CONDUCT

In February 2021, against the backdrop of Chiarelli and Dhillon's sexual misconduct, the President of the Association of Municipalities of Ontario ("AMO"), Graydon Smith ("Smith"), sent a Letter

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[120] *Municipal Conflict of Interest Act*, RSO 1990, c M.50, s 9(1). It is important to note the key distinction between independent members of the judiciary versus politically-motivated Members of Council.
[121] *Ibid* at s 8(1).
[122] Ibid at s 9(1).
[123] Bellamy, *supra* note 93 at 49–50.

to Ontario's Minister of Municipal Affairs and Housing, Steve Clark ("Clark").[124] The Letter was written in response to an inquiry Clark made at the December 2020 Memorandum of Understanding Meeting between AMO and the Government of Ontario about whether AMO could provide the Province with input into a potential recall mechanism for Members of Council who violate a municipality's Code of Conduct.[125] The Province had now become acutely aware of the fact that a recall mechanism might be necessary. Following Clark's inquiry, AMO set out to examine different options to improve accountability and promote ethical behaviour among Members.[126] AMO consulted with municipal legal experts, staff at the Ministry of Municipal Affairs and Housing, and its own Executive Committee and Board of Directors to discuss the issue and potential recommendations.[127] Consequently, the feedback Smith submitted in his Letter reflected the development and refinement of the detailed discussions that took place.[128] While the general consensus among the Board of Directors was that Municipal Codes of Conduct and the system for implementing them were "strong governance tools," Integrity Commissioners required more powers to ensure that Members of Council complied with the Codes.[129] The recommendations outlined in Smith's Letter culminated in a Motion approved by AMO's Board of Directors that endorsed the need to provide additional options for Integrity Commissioners in enforcing Municipal Codes of Conduct, including the ability to remove Members for the most egregious breaches.[130]

Subsequently, in March 2021, the Government of Ontario announced that it would be launching a Consultation "to strengthen accountability" for Members of Council, led by the Associate Minister of Children and Women's Issues, Jill Dunlop ("Dunlop").[131] The Province cited its desire to ensure

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[124] Graydon Smith, "Options for Enforcing Compliance by Council Members with Municipal Codes of Conduct" (3 February 2021) at 1, online: *Association of Municipalities of Ontario* <www.amo.on.ca/sites/default/files/assets/DOCUMENTS/Letters/2021/OptionsforEnforcingCompliancebyCouncilMemberswithMunicipalCodesofConductAMOLtr20210203.pdf>.

[125] *Ibid*. In December 2001, AMO signed the Memorandum of Understanding with the Government of Ontario, under which the Province formally committed to consult with Ontario's municipal governments on matters that have a direct impact on municipalities. The Memorandum of Understanding was enshrined in section 3(1) of the *Municipal Act* in 2005, with meetings occurring regularly.

[126] *Ibid*.

[127] *Ibid*.

[128] *Ibid*.

[129] *Ibid*.

[130] *Ibid*.

[131] Ministry of Municipal Affairs and Housing, "Ontario Launches Consultation to Strengthen Municipal Codes of Conduct" (5 March 2021), online: *Government of Ontario* <news.ontario.ca/en/release/60589/ontario-launches-

that Members carry out their duties ethically and responsibly and that they maintain a safe and respectful work environment as the main objectives.[132] The Consultation lasted for a total of 90 days and it consisted of roundtables with a variety of municipal stakeholders, where more appropriate ways to respond to Members of Council who contravene a municipality's Code of Conduct were considered.[133] The Consultation also gathered specific input on AMO's Board of Directors' recommendations, as presented in Smith's Letter.[134] In addition to the roundtables, the Province opened an online survey in April 2021, which gave both municipalities and members of the public an opportunity to offer official feedback on effective accountability measures for Members who violate the Code of Conduct.[135]

Correspondingly, in June 2021, the Municipal Integrity Commissioners of Ontario ("MICO") submitted a Letter to Dunlop regarding the Consultation, signed by Jeffrey Abrams of Principles Integrity.[136] The Letter contained a detailed response to all of AMO's recommendations and raised some important arguments and concerns with reference to each option.[137] Furthermore, MICO also included some additional considerations at the end of the Letter, which were not addressed by AMO, that highlighted general issues that should be taken into account in implementing any changes to strengthen Municipal Codes of Conduct.[138] Most notable in this regard was MICO's emphasis on the reality that Members of Council are elected officials, and this is a significant factor that cannot be overlooked with respect to any of the options.[139] Overall, the feedback in MICO's submission to the Province should be seen as extremely beneficial, in the sense that it was made by the very individuals who are tasked with enforcing Municipal Codes of Conduct. As

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consultation-to-strengthen-municipal-codes-of-conduct>. Although the Consultation was prompted by an inquiry made by the Minister of Municipal Affairs and Housing, it was led by the Associate Minister of Children and Women's Issues. Given the particularly egregious nature of Chiarelli and Dhillon's behaviour, and how they both engaged in sexual violence against women, it is understandable why Dunlop—and not Clark—was responsible for leading the Consultation. Indeed, Chiarelli and Dhillon's sexual misconduct is assumed to have led to the Consultation in the first place.

[132] *Ibid*.

[133] *Ibid*.

[134] *Ibid*.

[135] *Ibid*.

[136] Jeffrey Abrams, "Municipal Councillor Code of Conduct Consultations," (18 June 2021): *Municipal Integrity Commissioners of Ontario*. MICO is a voluntary group of Integrity Commissioners in Ontario who meet periodically to discuss issues of importance to the profession. At present, it is an informal organization with no permanent staff, and administrative duties are undertaken primarily by its Members.

[137] *Ibid* at 2–8.

[138] *Ibid* 8–11.

[139] *Ibid* at 8.

evidenced by the cases of Chiarelli and Dhillon, the Integrity Commissioners were constrained in their ability to adequately respond to these Councillors' serious breaches of the Code of Conduct due to their limited powers. Both Marleau and Sheikh sent a clear message that the existing powers of Integrity Commissioners were insufficient. Marleau did so more subtly by recommending that the most severe sanction available—a suspension of pay for 90 days—be imposed separately for each of the five Complaints, while Sheikh expressly stated her disappointment with the limited penalties available under the *Municipal Act*.[140] Consequently, MICO's Letter was a valuable opportunity for the Province to understand some of the nuanced perspectives of Integrity Commissioners while illuminating the noteworthy concerns that were not mentioned by AMO. As follows, it is necessary to review each of the recommendations on how to expand the powers of Integrity Commissioners under the *Municipal Act*.

PART 7 — ANALYSIS AND CONCLUSION

In considering the different recommendations made by AMO and MICO to achieve greater compliance with Municipal Codes of Conduct, it is useful to frame these recommendations in terms of four key issues: (1) enhancing the powers of Integrity Commissioners; (2) expanding the available sanctions for Members of Council who breach the Code of Conduct; (3) ensuring that the necessary procedural safeguards are in place; and (4) maintaining accountability and public confidence in municipal governance.

(1) Enhancing the Powers of Integrity Commissioners

Turning to the first key issue, AMO's position was that the introduction of Municipal Integrity Commissioners in the Province has been "largely successful," but there are certain measures that need to be taken to enhance Integrity Commissioners' powers and improve their effectiveness across Ontario.[141] AMO argued that one of the fundamental problems that has partially contributed to Members of Council's violations of Municipal Codes of Conduct is the ambiguity regarding Integrity Commissioners' roles.[142]

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[140] Marleau (July 9, 2020), *supra* note 1 at para 133; Marleau (November 3, 2020), *supra* note 1 at para 221; Sheikh, *supra* note 39 at 47.
[141] Smith, *supra* note 124 at 3.
[142] *Ibid*.

Subsequently, AMO recommended that the authority of Integrity Commissioners could be strengthened through greater education on, and standardization of, Integrity Commissioners' duties across the Province.[143] Specifically, AMO proposed that the qualifications and skills of Integrity Commissioners should be better clarified with guidance from the Ministry of Municipal Affairs and Housing.[144] Ideally, the Ministry would be responsible for "develop[ing] resources for current and prospective Integrity Commissioners" in an effort to provide Members of Council with accessible, high-quality information that is consistent across Ontario.[145] AMO also suggested that an important first step that could be taken by the Ministry of Municipal Affairs and Housing is to institute a more comprehensive regime that clearly defines the roles of Integrity Commissioners uniformly throughout the Province.[146] Overall, AMO's recommendation was that the powers of Integrity Commissioners could be enhanced by means of improved education on, and standardization of, their duties, as doing so would help Members of Council better understand Integrity Commissioners' roles, particularly in relation to the Code of Conduct.

Similar to AMO, MICO agreed that an underlying problem that has partially contributed to Code of Conduct contraventions by Members of Council is the uncertainty surrounding Integrity Commissioners duties.[147] Moreover, MICO also asserted that greater education on, and standardization of, Integrity Commissioners' roles was a central priority that would strengthen the powers of Integrity Commissioners in the Province.[148] However, MICO disagreed with AMO's proposal that this endeavour should be led by the Ministry of Municipal Affairs and Housing.[149] A separate issue addressed by MICO was the significance of who is responsible for training on Integrity Commissioners' duties. As an alternative to the Ministry, MICO preferred education and standardization to take place under the leadership of an established ethics-based or municipal organization that would identify best practices and common standards for Integrity Commissioners throughout Ontario.[150] In essence, MICO suggested that this recommendation should be implemented by an entity that is more closely aligned with Integrity Commissioners and their roles.

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[143] *Ibid.*
[144] Smith, *supra* note 124 at 4.
[145] *Ibid.*
[146] *Ibid.*
[147] Abrams, *supra* note 136 at 7–8.
[148] *Ibid* at 7.
[149] *Ibid.*
[150] *Ibid.*

In MICO's view, the Ministry of Municipal Affairs and Housing would not be able to adequately undertake this task. Although MICO would still welcome support from the Ministry with respect to funding and resources, it also advocated for the involvement of Integrity Commissioners in the development and administration of training programs.[151]

In sum, at the core of the first key issue is the lack of awareness about what Integrity Commissioners do. To help fill this gap in knowledge, education on, and standardization of, Integrity Commissioners' duties would likely bring about improved compliance with Municipal Codes of Conduct among Members of Council, as advanced by AMO and MICO. By virtue of better training and increased education on their functions, the authority of Integrity Commissioners would be enhanced, thus enabling them to better support Members in an attempt to reduce the frequency of Code of Conduct violations.

(2) Expanding the Available Sanctions for Code of Conduct Breaches

In regard to the second key issue, AMO submitted that there was a need to expand the number and nature of available sanctions for breaches of the Code of Conduct in order to enforce better compliance.[152] AMO "strongly endorsed" three additional options. The first was administrative monetary penalties, the second was suspension from Office, and the third was removal from Office.[153]

With respect to the first proposed sanction, AMO recommended that section 223.2(3) of the *Municipal Act* should be amended to allow for administrative monetary penalties to apply to Members of Council when an Integrity Commissioner has concluded that the Member has contravened the Code of Conduct.[154] Furthermore, AMO supported the enactment of regulations under the *Municipal Act* that would indicate a range of financial penalties from which Integrity Commissioners could choose.[155] AMO suggested that this range should be determined by the Ministry of Municipal Affairs and Housing, and it discussed how specifying a range of monetary

[151] *Ibid* at 8.
[152] Smith, *supra* note 124 at 1.
[153] *Ibid* at 3–4.
[154] *Ibid* at 6. Section 223.2(3) of the *Municipal Act* states, "A by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence or is required to pay an administrative penalty."
[155] *Ibid*.

penalties in the legislation would lead to an established framework that could be uniformly imposed across the Province—a concept that directly relates to the recommendation of standardization.[156] However, AMO acknowledged the reality that every municipal government in Ontario is unique.[157] Consequently, in order to reflect these differences, AMO also advised each Council to implement their own policies on administrative monetary penalties that could account for variances between municipalities, including Members of Council's remuneration, institutional culture, and local economic factors.[158]

Likewise, AMO emphasized the need to authorize the suspension of Members of Council in more limited and specified situations, specifically when the Member's participation in decision-making could adversely affect the public interest, such as in emergency situations.[159]

Lastly, and perhaps most notably, AMO proposed that Integrity Commissioners should have the authority to remove a Member of Council from Office when the Member has engaged in the most significant violations of the Code of Conduct.[160] The removal of a Member of Council from Office would be justified in circumstances where the Integrity Commissioner has found that a Member has "serious[ly], wilful[ly], or repeated[ly]" breached the Code of Conduct.[161]

MICO seemed to be in agreement with AMO that the options for sanctions need to be expanded when Members of Council contravene the Code of Conduct. While MICO endorsed the possibility of suspensions and removals from Office, it did not recommend the addition of administrative monetary penalties, as it had numerous reservations about the appropriateness of this sanction.[162] At the outset, MICO contended that this proposal was not grounded in a sufficient understanding of the implications of applying administrative monetary penalties to Members of Council for Code of Conduct violations.[163] MICO recognized that administrative monetary penalties are often used

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[156] *Ibid* at 3.
[157] *Ibid*.
[158] *Ibid*.
[159] *Ibid*. An example of one such emergency situation that is referred to by AMO is the use of public health measures in response to COVID-19 and the disagreement that may arise among Members of Council in deciding whether or not to impose these measures.
[160] *Ibid* at 4.
[161] *Ibid*.
[162] Abrams, *supra* note 136 at 5–7.
[163] *Ibid* at 5.

to enforce compliance with regulations, but breaches of Municipal Codes of Conduct are distinct from regulatory contraventions.[164] Moreover, MICO explained that the fundamental basis for administrative monetary penalties "is that they are treated essentially as strict or absolute liability offences."[165] This means that unless a factual matter has been determined to be in error or there has been an identification issue, the party against whom an administrative monetary penalty is imposed is deemed to be guilty without the need for any legal proceeding.[166] Therefore, although context is quite unimportant in the application of administrative monetary penalties, context cannot be overlooked when Members of Council violate the Code of Conduct.[167]

Given these limitations, MICO did not support the adoption of administrative monetary penalties as a sanction for Members who breach the Code of Conduct. According to MICO, where penalties are necessary, "the focus should be on a solutions-oriented system," and sanctions should be "reserved to prevent and moderate future offending behaviour."[168] Subsequently, MICO claimed that administrative monetary penalties would be unsuitable for this context.

MICO did, however, embrace the idea of suspensions from Office as a sanction. Nevertheless, MICO asserted that AMO's recommendation that Members of Council should only be suspended from Office when their participation in decision-making would have an adverse impact on the health or safety of the public, such as in emergency situations, was too narrow.[169] Accordingly, MICO suggested that suspensions from Office should also encompass the ability to remove Members of Council from applicable Council and Committee meetings.[170] Furthermore, MICO proposed that the authority to deny Members any privileges and reverse their appointments to Boards and Committees when they have contravened the Code of Conduct should be examined.[171] In particular, MICO recommended that there should be a direct correlation between what a Member of Council is suspended from doing and the offending behaviour they are being penalized for, namely to deter them from repeating similar conduct and to protect potential victims from such

[164] *Ibid.*
[165] *Ibid.*
[166] *Ibid.*
[167] *Ibid.*
[168] *Ibid.*
[169] *Ibid* at 6.
[170] *Ibid.*
[171] *Ibid.*

conduct.[172] Some examples include assigning the hiring of a Member of Council's staff to another party when they have exhibited inappropriate behaviour during interviews or preventing unsupervised access to staff members where a Member of Council has been found to violate a Code of Conduct's harassment requirements.[173]

Correspondingly, while MICO did not outright dismiss AMO's recommendation that removal from Office should be an additional sanction option for Code of Conduct breaches, it did suggest that the decision to remove a Member of Council should be made through a separate application to a judge.[174] However, MICO acknowledged that judicial applications "involve lengthy processes," with final decisions typically being made close to Municipal elections.[175] Consequently, MICO's advice was that suspensions and removals from Office should be pursued with the aforementioned considerations in mind. Ultimately, regardless of the available penalties, the main takeaway is that the current options are not enough to adequately respond to the seriousness of the most egregious contraventions of the Code of Conduct, such as acts of sexual violence.

(3) Procedural Safeguards

Although achieving greater compliance with Municipal Codes of Conduct is generally beneficial, there must be necessary safeguards built into the procedures, which is the third key issue that was addressed by the recommendations. This issue is especially pertinent to the discussion of sanctions. In applying administrative monetary penalties, AMO was firm in its argument that this sanction should only be imposed when the Integrity Commissioner has concluded that a Member of Council has violated the Code of Conduct in a publicly-available Report that documents the breaches and specifically recommends administrative monetary penalties to Council.[176] In other words, AMO underscored that there must be proper procedures in place before an administrative monetary penalty can be applied.

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[172] *Ibid*.
[173] *Ibid*.
[174] *Ibid* at 7.
[175] *Ibid*.
[176] Smith, *supra* note 124 at 3.

Similarly, for suspensions from Office, AMO contended that this sanction should be imposed for "specified and time-limited purposes," where the inclusion of a Member of Council in decision-making would "immediately or imminently" pose a challenge to decision-making on matters that directly affect the health or safety of the public.[177] Thus, if this requirement was not met, suspending a Member from Office would be unwarranted based on AMO's position.

In regard to the safeguards for the most severe recommended penalty—removal from Office—both AMO and MICO qualified this recommendation by supporting "intervention by a member of the judiciary" or an application to a judge to remove a Member of Council.[178] AMO also added that there should be "a legal appeal mechanism" for a Member who is removed and that the removal of a Member of Council from Office should not necessarily prohibit them from running in a subsequent election, as far as options for sanctions go.[179] Overall, it is evident that the system must have the necessary safeguards in place to prevent the unfair exercise of authority.

(4) Accountability & Public Confidence

The fourth and final key issue that can be identified in the recommendations is the maintenance of accountability and public confidence in municipal governance. At a basic level, this was reflected in AMO and MICO's promotion of education on the duties of Integrity Commissioners. In particular, AMO suggested that Members of Council should be educated on the roles of Integrity Commissioners both prior to running for Office and after they are elected.[180] The rationale behind this proposal was AMO's assertion that Municipal Codes of Conduct are "mutually agreed upon covenants" that all Members promise to honour after their election.[181] Therefore, it is only fair to hold Members "accountable to each other and the public" for their compliance with the Code of Conduct.[182]

Indeed, the extent to which Members of Council adhere to the Code of Conduct has a substantial effect on public confidence, so better education among Members on Integrity Commissioners'

[177] *Ibid* at 4.
[178] *Ibid* at 7.
[179] *Ibid* at 4.
[180] *Ibid*.
[181] *Ibid* at 3.
[182] *Ibid*.

roles would presumably result in improved accountability. Likewise, a noteworthy recommendation with respect to accountability and public confidence is AMO's suggestion that Integrity Commissioner Reports on Members of Council should be "disseminated" to electors in the Member's Ward "through publication or other means."[183] This can be distinguished from simply publishing the Reports online in that the aim is to directly reach voters whose electoral district is being represented by the Member. While AMO's description of this specific recommendation is brief, it might be reasonable to conclude that publicly disseminating these Reports to constituents increases transparency by making it widely known that a Member of Council has contravened the Code of Conduct. More notably, because Integrity Commissioner Reports detail the particular incidents that comprise the Code of Conduct violation, publishing the Reports also makes the public aware of the Integrity Commissioner's recommended penalties in response to the breach, which helps them appreciate why the sanctions are justified. Ultimately, irrespective of the procedures that are in place, the maintenance of accountability and public confidence in municipal governance should always be a top priority.

Recommendations

Having examined the four key issues that need to be addressed in regard to Members of Council's Code of Conduct contraventions, it is important to weigh the different arguments presented by AMO and MICO and consider what changes can be realistically implemented to enforce better compliance with Municipal Codes of Conduct. Although it was useful to review AMO and MICO's positions on each of the issues separately, the objective of the following analysis is to provide a holistic discussion of the most practical recommendations as they relate to all four key issues.

Perhaps the biggest problem that must take precedence over the other issues is expanding the available sanctions when Members of Council violate the Code of Conduct under the *Municipal Act*. After all, the concern about the lack of adequate penalties is what led to the Province's Consultation in the first place.

[183] *Ibid* at 6.

Recall that the specific proposals for additional sanctions that have been suggested thus far are administrative monetary penalties, suspension from Office, and removal from Office, as well as the existing sanctions under section 223.4(5) of the *Municipal Act*—a reprimand and suspension of a Member of Council's remuneration for up to 90 days. In total, five possible sanctions have been described that could be available to Integrity Commissioners for recommendation to Council when a Member has breached the Code of Conduct. As will be explained, administrative monetary penalties should not be added as a sanction under section 223.4(5) of the *Municipal Act*. However, further to the current penalties, which should unquestionably remain in place, the number of days a Member of Council's remuneration can be suspended for should be increased. Moreover, the two sanctions of suspension from Office and removal from Office should also be added to section 223.4(5) of the *Municipal Act*.[184]

Beginning with administrative monetary penalties, this was the most controversial sanction that was proposed by AMO, given that MICO did not support this penalty option. It is thus essential to analyze both the advantages and disadvantages of administrative monetary penalties in illustrating why they should ultimately not be added as a sanction under the *Municipal Act*.

As previously mentioned, MICO submitted that one of the main reasons why administrative monetary penalties are unsuitable for Code of Conduct contraventions is because they are generally applied to regulatory breaches, which are distinct from Code of Conduct violations.[185] As highlighted by MICO, administrative monetary penalties are strict or absolute liability offences, so unless there are any factual or identification issues, the party against whom an administrative monetary penalty is imposed is deemed to be guilty without the need for a legal proceeding.[186] However, the procedures for applying administrative monetary penalties to Code of Conduct contraventions could be distinguished from their imposition on regulatory breaches by ensuring that due process would still occur.

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[184] In addition to the two penalties provided for in section 223.4(5) of the *Municipal Act*, Municipal Codes of Conduct often include options for remedial actions that can be recommended by Council. The remedial actions provided for in the City of Ottawa and the City of Brampton's Codes of Conduct are: a written or verbal apology; the repayment or reimbursement of money spent or received; the return of property or reimbursement of its value; removal from membership of a Committee; and removal as Chair of a Committee.
[185] Abrams, *supra* note 136 at 5.
[186] *Ibid*.

Indeed, before an administrative monetary penalty could even be considered for a Member of Council, the Integrity Commissioner would first have to establish that the Member has engaged in a violation of the Code of Conduct through an Inquiry in accordance with section 223.4(1)(a) of the *Municipal Act.*[187] During the Inquiry, the Member of Council would be entitled to put forth any defences or explanations for their behaviour. Furthermore, the Member would have the opportunity to be represented by legal counsel. As demonstrated by the cases of Chiarelli and Dhillon, the Councillors' lawyers had the ability to directly communicate and meet with the Integrity Commissioners, who were responsive to any concerns raised by Counsel.[188] The Integrity Commissioners also ensured that the issues submitted by Chiarelli and Dhillon's lawyers were included and addressed in their Reports.[189] This underscores how, contrary to MICO's argument, context is not virtually erased or overlooked in the application of administrative monetary penalties. Accordingly, the existing procedures, under which Integrity Commissioners typically conduct an Inquiry into whether a Member of Council has breached the Code of Conduct before imposing any sanctions, would presumably continue to apply to administrative monetary penalties. The Inquiry would therefore act as a necessary procedural safeguard to ensure that Members would not face administrative monetary penalties without due process preceding the imposition of this sanction.

Nevertheless, MICO's main argument seems to be that administrative monetary penalties are simply not an appropriate sanction for Code of Conduct contraventions. This contention is supported by the fact that section 223.2(3) of the *Municipal Act* states that a by-law cannot provide that a Member of Council who violates the Code of Conduct "is required to pay an administrative [monetary] penalty."[190] While AMO's proposal is that section 223.2(3) of the *Municipal Act* should be amended to allow for administrative monetary penalties, it is useful to consider the existing circumstances under which administrative monetary penalties can be applied.[191]

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[187] *Municipal Act*, *supra* note 119 at s 223.4(1)(a).
[188] Marleau (July 9, 2020), *supra* note 1 at paras 8–32, 47 & 72–80; Marleau (November 3, 2020), *supra* note 1 at paras 3–6, 19–20, 43 & 46–47.
[189] Marleau (July 9, 2020), *supra* note 1 at paras 8–32, 47 & 72–80; Marleau (November 3, 2020), *supra* note 1 at paras 8–37, 54 & 100–105; Sheikh, *supra* note 39 at 3–6, 19–20, 43 & 46–47.
[190] *Municipal Act*, *supra* note 119 at s 223.2(3).
[191] Smith, *supra* note 124 at 6. Section 223.2(3) of the *Municipal Act* states, "A by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence or is required to pay an administrative penalty."

Pursuant to section 102.1(1) of the *Municipal Act*, administrative monetary penalties can be imposed for the failure "to comply with any by-laws respecting the parking, standing, or stopping of vehicles."[192] Moreover, the purpose of administrative monetary penalties, in accordance with section 434.1(2) of the *Municipal Act*, is to promote compliance with municipal by-laws.[193] The same rationale could technically be applied to administrative monetary penalties, in that this sanction could be used to encourage compliance with Municipal Codes of Conduct. However, the crux of MICO's argument is that the current situations in which administrative monetary penalties are imposed, and their use as an efficient method to enforce compliance with regulations and by-laws, are inherently different from Code of Conduct breaches. Consequently, administrative monetary penalties do not adequately address what MICO claims should be the objective of any sanctions that are applied for Code of Conduct contraventions—to help "prevent and moderate future offending behaviour."[194]

With MICO's arguments in mind, it appears that administrative monetary penalties are unsuitable for this context, but, as AMO asserts, some form of monetary sanction is nonetheless required for Code of Conduct violations. Although a monetary penalty is already in place under section 223.4(5) of the *Municipal Act* through the suspension of remuneration, the reality is that this sanction might not serve as a strong enough deterrent for Members of Council to avoid Code of Conduct breaches, especially when many Members are part-time in their roles.[195] Subsequently, an effective solution is to increase the number of days that remuneration to a Member of Council can be suspended for from 90 days, under section 223.4(5)(2) of the *Municipal Act*, to 180 days. This sanction would avoid the numerous issues identified by MICO with respect to administrative monetary penalties, and it would also address the insufficiency of suspending a Member's pay for 90 days, as advanced by AMO. Additionally, this proposal is more closely related to the remuneration that the Member of Council is receiving as an elected official.

More notably, suspension of remuneration for up to 180 days would allow for more standardization in the procedures in comparison to administrative monetary penalties, while taking into account

[192] *Municipal Act*, *supra* note 119 at s 102.1(1).
[193] *Ibid* at s 434.1(2).
[194] Abrams, *supra* note 136 at 5.
[195] *Ibid*.

the variances between municipalities in regard to Members' pay.[196] As previously mentioned, AMO's suggestion was that, in order to achieve standardization in the imposition of administrative monetary penalties, regulations should be enacted under the *Municipal Act* that indicate a range of financial penalties, which would result in an established framework that could be uniformly applied across Ontario.[197] At the same time, AMO also recommended that each Council should implement their own policies on administrative monetary penalties that reflect local conditions.[198] These inconsistent recommendations capture the difficulty that comes with trying to achieve standardization when there are vast differences that exist between each municipality in the Province.

Accordingly, by increasing the number of days a Member of Council's remuneration can be suspended for, there is standardization in the maximum suspension period of 180 days, which avoids the many problems that come with setting a fixed range of monetary penalties. Overall, regardless of the amount, the loss of remuneration for 180 days is quite significant, and this sanction would be a stronger deterrent for Members of Council to refrain from Code of Conduct contraventions more than the current period of up to 90 days.

Similarly, with respect to suspensions from Office, this penalty should be implemented pursuant to most of MICO's recommendations. Specifically, suspensions from Office should include the ability to revoke any privileges and appointments to Boards and Committees as they relate to the particular Code of Conduct violation.[199] Identifying a direct correlation between the offending actions of a Member of Council and what they are suspended from doing would, as previously discussed, deter them from repeating comparable behaviour.[200] Furthermore, Members would be purposefully removed from the circumstances in which the initial Code of Conduct breach occurred, which would reduce any opportunities for them to engage in additional contraventions of a similar nature. The City of Brampton's decision to revoke Dhillon's ability to travel outside

[196] Smith, *supra* note 124 at 3.
[197] *Ibid* at 6.
[198] *Ibid* at 3.
[199] Abrams, *supra* note 136 at 6.
[200] *Ibid*.

of Ontario because he violated the Code of Conduct while on a City-related business trip is consistent with this proposal.[201]

Lastly, in regard to the most significant recommended penalty of removal from Office, this sanction should only be imposed after a separate application has been made to a judge of the Superior Court of Justice, as suggested by AMO and MICO.[202] The primary reasons for this can be explained with reference to two of the four key issues. The first issue is ensuring that the necessary procedural safeguards are in place. The second issue is maintaining accountability and public confidence in municipal governance, given that an independent judge would conceivably have more authority and legitimacy to remove a Member of Council from Office than an Integrity Commissioner who was appointed by a municipality. Indeed, there is an inherent difficulty with figuring out how to adequately respond to the seriousness of a Member's Code of Conduct breach, specifically when their behaviour is especially egregious. Nevertheless, as evidenced by Chiarelli and Dhillon's acts of sexual violence, making this penalty option available under the *Municipal Act* is absolutely essential.

To help safeguard the process for removal from Office, the decision to apply this sanction should begin with the Integrity Commissioner's recommendation to Council that a Member be removed after the Integrity Commissioner has confirmed a violation of the Code of Conduct. Council should then have the opportunity to review the Integrity Commissioner's recommendation for removal and, most importantly, the ability to authorize the Integrity Commissioner's application to a judge. Ultimately, the judge would have the final jurisdiction to remove the Member of Council from Office based on the Integrity Commissioner's recommendation that this penalty is appropriate and Council's decision to approve the Integrity Commissioner's recommendation.

The decision to remove a Member of Council from Office should not be made by Council, as this increases the likelihood that Members who breach the Code of Conduct might face politically-motivated punishment by their colleagues. Likewise, if accountability and public confidence in municipal governance are to be maintained, an appointed Integrity Commissioner should not be

[201] City of Brampton, *supra* note 62 at 24.
[202] Abrams, *supra* note 136 at 7.

able to go directly to an appointed judge with a request to remove a Member. Procedural safeguards need to be in place to ensure, first, that an Integrity Commissioner's recommendation that a Member of Council should be removed from Office is reviewed and, second, that an Integrity Commissioner can only make a judicial application after being authorized to do so by a democratically-elected Council. Moreover, this process also gives Members of Council who are concerned about any political consequences of voting in favour of a judicial application the opportunity to defer to the Integrity Commissioner's recommendation for removal. This would help mitigate the potential effects of political interests influencing the decision to approve an application to a judge, which might make Members more inclined to vote in accordance with their genuine preferences and beliefs.

One of the concerns MICO raised was that applications to a judge "involve lengthy processes," and final decisions are usually rendered close to municipal elections.[203] While this is certainly a noteworthy consideration, this should not discourage the adoption of removal from Office as a sanction. Instead, the necessary safeguards need to be in place to ensure that Councils do not have the ability to authorize a judicial application close to or during a municipal election, in an effort to avoid any bad faith or deliberate attempts to influence the election results. Consequently, the *Municipal Act* should include a provision that states that an application to a judge in regard to a Member of Council's removal from Office cannot be made within 180 days of a municipal election. This procedural safeguard helps preserve accountability and public confidence in municipal governance by ensuring that judicial applications cannot be used maliciously as a political strategy by Members against their colleagues.

In considering the extent to which removal from Office is needed as a penalty, the argument can be made that adding it as a sanction is unnecessary because severe Code of Conduct violations would presumably lead to a loss of public confidence, which would reduce an offending Member of Council's prospects for re-election. In other words, the decision to remove a Member from Office could be made by voters during a municipal election. Although this could definitely be true, it is not enough to entrust constituents with the task of holding Members of Council accountable for their actions. Indeed, the literature on voting behaviour has shown that voters do not always

[203] *Ibid.*

punish elected officials when they have engaged in, or been accused of, sexual misconduct or immoral behaviour.[204] Similarly, when Members of Council face public pressure to resign from Office as a result of their egregious Code of Conduct contraventions, it is also not enough to trust that they will make the morally right decision by stepping down. Subsequently, removal from Office must be an official penalty option under the *Municipal Act*. The possibility of removal alone serves as a strong deterrent for Members of Council to avoid Code of Conduct violations, and it gives Council the opportunity to collectively condemn the most serious breaches of the Code of Conduct, such as those committed by Chiarelli and Dhillon.

Accordingly, with these sanction recommendations in mind, it is crucial to examine what the legislation on the powers of Integrity Commissioners should look like. Section 223.4(5) of the *Municipal Act* should grant Integrity Commissioners the legislative authority to recommend a reprimand, suspension of remuneration for up to 180 days, suspension from Office, and removal from Office to Council when a Member has contravened the Code of Conduct. Furthermore, the provision should state that the penalties are to be applied pursuant to the principle of progressive discipline, with the requirement that the discipline imposed must be proportionate to the seriousness of the Code of Conduct violation. This means that for the most egregious breaches of the Code of Conduct, such as those involving sexual violence, an Integrity Commissioner could immediately recommend removal from Office to Council. Lastly, section 223.4(5) of the *Municipal Act* should also authorize that Integrity Commissioners can recommend as many sanctions as needed, subject to the condition that some of the penalties are mutually exclusive. For instance, an Integrity Commissioner could recommend both the suspension of a Member of Council's remuneration and the suspension of a Member of Council from Office. Thus, section 223.4(5) of the *Municipal Act* should be amended as follows:

> **223.4 (5) Penalties** — The municipality may impose the following penalties on a Member of Council, in accordance with the principle of progressive discipline, if the Integrity Commissioner reports to the municipality that, in their opinion, the Member has contravened the Code of Conduct. The discipline must be proportionate to the gravity of the contravention, and the Integrity

[204] See e.g. Mia Costa et al, "How Partisanship and Sexism Influence Voters' Reactions to Political #MeToo Scandals" (2020) 7:3 Research & Politics; Stephen C Craig, Paulina S Cossette & Angela Farizo McCarthy, "Two Sides of the Coin: Women, Men, and the Politics of Sexual Harassment" (2022) 43:2 Journal of Women, Politics & Policy; Miguel M Pereira & Nicholas W Waterbury, "Do Voters Discount Political Scandals Over Time?" (2019) 72:3 Political Research Quarterly.

Commissioner may impose multiple penalties where appropriate and possible:

1. A reprimand.

2. Suspension of the remuneration paid to the Member in respect of their services as a Member of Council for a period of up to 180 days.

3. Suspension of the Member from Office, including suspension from any Boards and Committees.

4. Removal of the Member from Office, subject to approval by a judge of the Superior Court of Justice.

    i. An application to a judge cannot be made within 180 days of a municipal election.

5. Any other remedial actions where appropriate and necessary, including, but not limited to, remedial actions such as:

    i. A written or verbal apology.

    ii. The repayment or reimbursement of money spent or received.

    iii. The return of property or reimbursement of its value.

    iv. Removal of a Member from membership of any Boards and Committees.

    v. Removal of a Member as Chair of any Boards and Committees.

Conclusion

In summary, returning to the four key issues—(1) enhancing the powers of Integrity Commissioners; (2) expanding the available sanctions for Members of Council who breach the Code of Conduct; (3) ensuring that the necessary procedural safeguards are in place; and (4) maintaining accountability and public confidence in municipal governance—although this analysis has seemingly focused more on the second issue, solutions to the three remaining issues flow directly from the expansion of available penalties.

To begin with, the powers of Integrity Commissioners will naturally be enhanced when they are given greater legislative authority under the *Municipal Act*. More notably, if the powers of Integrity Commissioners are increased in terms of the sanctions they can recommend for Code of Conduct contraventions, Members of Council may become more inclined to proactively seek the advice and guidance of Integrity Commissioners. Essentially, stricter penalties will serve as stronger deterrents, thereby encouraging better compliance with Municipal Codes of Conduct. This would

inevitably lead to improved education on Integrity Commissioners' roles throughout the Province, which goes hand in hand with standardization, as greater knowledge leads to more consistency.

The key issues of procedural safeguards and public confidence in municipal governance have already been explained in relation to expanding the options for penalties. However, it may be worthwhile to add that accountability and public confidence cannot be upheld if egregious behaviour is insufficiently addressed because the law does not provide enough alternatives for sanctions.

As demonstrated by the history of Integrity Commissioners in Ontario, the system was never built for the severe Code of Conduct violations that Chiarelli and Dhillon have engaged in. The result is a municipal ethics regime that has remained static over time, while Councillors like Chiarelli and Dhillon get a slap on the wrist for committing acts of sexual violence in the course of their duties as Members of Council. As this Paper has illustrated, the Province has a range of options to strengthen the existing legal framework. Nevertheless, no changes have been implemented to date, despite the Government of Ontario concluding its Consultation on Municipal Codes of Conduct nearly two years ago. This begs the question of how many more Members of Council need to engage in disgraceful conduct before the Province finally decides to act. If accountability and public confidence in municipal governance are to be maintained, the law must change and evolve alongside society's values to assure the public that sexual violence will be properly penalized—a change that the two cases underscore is long overdue.