

Ensuring Procedurally Fair Processes in Municipal Code of Ethics Investigations

Strategies for municipalities



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1 INTRODUCTION

All municipalities are required to have a Code of Ethics (COE) Bylaw in place. The purpose of the Code of Ethics Bylaw is to outline standards and values for members of Council to follow in their dealings with each other, employees of the municipality and the public, which include the following areas:

- Honesty
- Objectivity
- Respect
- Transparency and Accountability
- Confidentiality
- Leadership and the Public Interest
- Responsibility

In 2024, the Ombudsman's office received 78 inquiries regarding Code of Ethics issues within municipalities, representing 13.2 percent of the total complaints about municipalities. This is a challenging area for municipalities as they have to investigate fellow members of Council and attempt to find a resolution which will ensure good governance in the municipality. These investigations can be particularly tricky when the complaint arises from an employee of the municipality or other members of Council.

2 CASE EXAMPLE

Example of a Complaint About Procedural Fairness in a Code of Ethics Investigation

A Mayor filed a complaint against a Councillor, alleging violation of two areas of the town's Code of Ethics Bylaw, specifically Respect and Leadership, and Public Interest. A consultant was retained to conduct an investigation into the allegations.

During a Council meeting, the Mayor brought forward a Code of Ethics complaint, and in keeping with conflict of interest provisions, passed the chair to the Deputy Mayor and exited the meeting. The Deputy Mayor continued by reading the allegations aloud to the remaining members, including the member whose behaviour was in question. Later, the respondent requested a written copy of the allegations; on the advice of the consultant, Administration denied the request. The rationale provided was that because the COE Bylaw did not specifically require the complaint be provided to the respondent in writing, it would not be given.

The Councillor complained to our office that he was not given adequate information in order to respond to the allegations and that the report of the consultant was not specific about the allegations which he allegedly violated within the Code.

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Why Notice of the Allegations is Important

As a matter of procedural fairness to people facing allegations, they must receive notice of the allegations so they can provide a meaningful response to them. The individual needs to know the case they must meet so they can provide any information which they believe is relevant to those facts.

In this case, it was a question of degree – the manner in which notice was provided, as opposed to no notice at all. Similarly, in relation to the reasons given for the decision that there had been a violation of the Code of Ethics, the concern raised by the Councillor related to the degree of detail provided in the reasons rather than that there were no reasons provided at all.

Outcomes of the Investigation

After investigating the situation, our office concluded that it was a reasonable request to have the allegations provided in writing to the Councillor. We determined that the Council had acted in good faith in proceeding with the Code of Ethics complaint, including hiring a third party to complete the investigation in order to mitigate any real or perceived bias. However, the process undertaken by the Consultant lacked some elements of procedural fairness.

“ ... Council is ultimately responsible for ensuring fair process...”

This file highlighted the need for further understanding and rigor in the use of consultants or external parties in completing COE investigations. While Council may rely on external expertise or experience, it should not be forgotten that Council is ultimately responsible for ensuring fair process and decision making, and that appropriate bylaws are not only in place, but that they are clear, thorough and followed.

As a result of our investigation, we recommended that Council update the Code of Ethics Bylaw to clearly identify the roles and responsibilities of each party involved. Further, it should include direction on the process and expectations of hiring a third party to conduct investigations, set out the process for when and how allegations are provided to the member in question, and a commitment to ensuring meaningful reasons for the outcomes of the investigation or complaint process are provided to the parties involved.

Council accepted our findings and took steps to update and pass its new COE Bylaw. The updated Bylaw further clarified the expected values for its members and expanded on the requirements under Leadership, Public Interest, and Responsibility. The update added timelines for accepting and addressing complaints, the provision of written notice, and a dispute resolution clause. Further, the Bylaw added separate sections to address procedural conditions for pursuing an investigation when Council will act as the investigator and those for when a third party will be hired.



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