

**The Corporation of the Town of South Bruce Peninsula**

**By-Law Number 10-2019**

**Being a By-Law to Establish the Office of the  
Integrity Commissioner and a Process for  
Hearing Complaints Regarding Elected Officials  
and Members of Local Boards**

**Whereas** Section 8, 9 and 11 of the Municipal Act, 2001 as amended authorizes the municipality to pass by-laws necessary or desirable for municipal purposes and in particular Subsection 11(2)2 authorizes by-laws respecting the accountability and transparency of the municipality and its operations;

**And whereas** Section 223.3 of the Municipal Act, 2001, as amended authorizes the Town to appoint an Integrity Commissioner who performs functions with respect to the application of the Code of Conduct, Sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act and other procedures, rules or policies governing their ethical behavior for members of Council and members of Local Boards;

**And whereas** Section 223.4 to 223.8 of the Municipal Act, 2001 as amended provides that an Integrity Commissioner appointed under Section 223.3 has certain powers, duties and protections, including the exercise of powers under Section 33 and 34 of the Public Inquiries Act, 2009, Schedule 6 the duty to preserve secrecy with respect to all matters that come to their knowledge in the course of performing their functions and the protection of not being a competent or compellable witness in a civil proceeding in connection with anything done under Part V.1 of the Municipal Act, 2001;

**And whereas** the Town of South Bruce Peninsula is providing for an Integrity Commissioner to ensure that members of Council and Local Boards conform to ethical standards of behavior in carrying out their duties and are held to account for the adherence to the Code of Conduct, Municipal Conflict of Interest Act and any other applicable procedures, rules or policies.

**Now therefore the Council of the Corporation of the Town of South Bruce Peninsula enacts as follows:**

**1. Short Title**

This by-law may be referred to as the "Integrity Commissioner By-Law".

**2. Definitions**

**2.1 "Censure"** means an official expression of disapproval or condemnation.

- 2.2 "Clerk" shall mean that person performing the duties of Clerk as set forth in legislation and as appointed by the Town of South Bruce Peninsula.
- 2.3 "Code of Conduct" means the Council Code of Conduct as it applies to members of Town Council and Local Boards as approved by Council or the Local Board, as the case may be and as the Council Code of Conduct existed on the date of the event or events giving rise to a complaint.
- 2.4 "Complaint" means a request by a legal person that the Integrity Commissioner conduct an inquiry into an event or series of events alleged to contravene the Code of Conduct or any other procedures, rules or policies governing the ethical behavior of members of Council or Local Boards. Except as provided, must include a sworn/affirmed affidavit.
- 2.5 "Complainant" means a person who makes a complaint.
- 2.6 "Council" shall mean the elected officials who constitute the Town of South Bruce Peninsula's municipal council.
- 2.7 "Employee" shall mean a person employed by the Town of South Bruce Peninsula including those employed on personal service contracts and volunteers, but does not include members of Council or Local Boards.
- 2.8 "Good Faith" shall mean accordance with standards of honesty, trust and sincerity.
- 2.9 "Integrity Commissioner" shall mean the person appointed by Council to provide independent and consistent complaint, investigation and resolution services respecting the application of the Code of Conduct.
- 2.10 "Member" means any member of Council or Local Board and includes the Mayor and Chair.
- 2.11 "Municipal Act" means the Municipal Act, 2001, S.O. 2001, Chapter 25 as may be amended from time to time.
- 2.12 "Municipal Elections Act" means the Municipal Elections Act, 1996, S.O. 1996, c.32, as may be amended from time to time.
- 2.13 "Municipal Freedom of Information and Protection of Privacy Act" means the Municipal Freedom of Information and Protection of Privacy Act RSO 1990, c.M56 as may be amended from time to time.
- 2.14 "Public Inquiries Act" means the Public Inquiries Act, 2009, S.O. 2009, c.33 Schedule 6, as may be amended from time to time.

2.15 "Town" means the Corporation of the Town of South Bruce Peninsula or the geographic area of the Town, as the context requires.

### **3. Appointment, Removal and Term of Integrity Commissioner**

3.1 Council shall appoint an Integrity Commissioner to investigate alleged breaches of the Code of Conduct, Municipal Conflict of Interest Act (Section 5, 5.1 or 5.2) or any other procedures, rules or policies governing the ethical behavior of members of Council and of Local Boards.

3.2 Without limiting Council's authority to appoint an individual as Integrity Commissioner, the Integrity Commissioner may be:

3.2.1 Retained by Council on a term contract consisting of "fee for service" or a "retainer plus fee for service" basis; or

3.2.2 Cross-appointed by Council together with one or more other municipal councils as the Integrity Commissioner for all of the municipalities.

3.3 The Integrity Commissioner shall complete any inquiry begun during his or her term notwithstanding the expiry of the term and this by-law shall continue to apply with all the necessary modifications.

3.4 If the Integrity Commissioner is unable to complete an inquiry in accordance with Subsection 3.3 above, the Integrity Commissioner next appointed shall complete the inquiry.

3.5 The Integrity Commissioner may be removed before the expiry of his or her term of office, only for cause. In order to determine if cause exists, Council shall first receive legal advice from external legal counsel regarding same.

### **4. Role of Integrity Commissioner**

4.1 The role of the Integrity Commissioner is to help ensure that members perform their functions in accordance with the Code of Conduct, Sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act and any other procedures, rules or policies governing their ethical behavior.

4.2 In addition, the Integrity Commissioner may, upon written request of a member of Council or of a Local Board provide advice and rulings on ethical challenges, issues and dilemmas and respecting obligations under the Municipal Conflict of Interest Act.

### **5. Duties of Integrity Commissioner**

5.1 The Integrity Commissioner shall have the following responsibilities:

- 5.1.1 At least once per term of Council, deliver an oral presentation to members of Council and of Local Boards regarding the role of the Integrity Commissioner and ethical obligations and responsibilities of members under the Code of Conduct, the Municipal Conflict of Interest Act and any other procedures, rules or policies governing their ethical behavior.
- 5.1.2 Upon request, provide advice in writing, to individual members regarding their ethical obligations and responsibilities under the Code of Conduct, Sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act and any other procedures or policies governing their ethical behavior.
- 5.1.3 Upon request, provide advice and recommendations to Council regarding amendments to the Code of Conduct and any other procedures, rules or policies governing their ethical behavior.
- 5.1.4 Prepare and deliver an annual report to Council containing a summary of activities, if any during the previous calendar year.
- 5.1.5 Serve as a proactive educator to Council members and members of Local Boards, the Town and the public about the Code of Conduct.
- 5.1.6 In an independent manner, apply the Code of Conduct, Sections 5. 5.1 and 5.2 of the Municipal Conflict of Interest Act and any procedures, rules and policies of the municipality or Local Board governing the ethical behavior of Council and Local Board members.

## **6. Making a Complaint**

- 6.1.1 Any legal person may act as a Complainant in a matter applicable to a contravention of the Code of Conduct, procedures, rules or policies governing the ethical behavior of members.
- 6.1.2 An elector as defined in Section 1 of the Municipal Conflict of Interest Act or a person demonstrably acting in the public interest may act as a Complainant in a matter applicable to a contravention of Sections 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act.
- 6.2 Complaints can be made by filing a sworn/affirmed affidavit, in the form provided, directly with the Integrity Commissioner or the Clerk.
- 6.3 Where a complaint is filed with the Clerk, that individual is to forward the complaint to the attention of the Integrity Commissioner without added comment on a forthwith basis.

6.4 Where a complaint is filed by an employee, member of Council or by Council, the affidavit as mentioned in Section 6.2 above is not required however the provision of equivalent written information and particulars is required.

6.5 An application under Sections 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act shall contain a statutory declaration attesting to the time in which the applicant became aware of the alleged contravention.

## **7. Limitation Period-Code of Conduct, Procedures, Rules or Policies Governing Ethical Behavior**

7.1 Except as provided for in this section, the Integrity Commissioner shall not proceed with an inquiry in regard to a complaint which is filed more than 180 days after the date when the event or last event of a series of events which are the subject matter of the complaint occurred.

7.2 Notwithstanding Section 7.1 above, the Integrity Commissioner may proceed with an inquiry in regard to a complaint which is filed after the expiry of the time limit if the Integrity Commissioner is satisfied that:

7.2.1 The delay was incurred in good faith;

7.2.2 It is in the public interest to proceed with an inquiry; and

7.2.3 No substantial prejudice will result to any person because of the delay.

7.4 A Complainant is deemed to have known the matters referred to in Section 7.1 above on the date the event or series of events occurred unless the contrary is proven, the onus of proof lies upon the Complainant.

## **8. Limitation Period-Municipal Conflict of Interest**

8.1 No application for inquiry shall be made to the Integrity Commissioner during the period of time starting on nomination day for a regular election and ending on voting day in a regular election.

8.2.1 An application may only be made within six (6) weeks after the applicant became aware of the alleged contravention.

8.2.2 Despite Section 8.2.1 above, an application may be made more than six (6) weeks after the applicant became aware of the alleged contravention if the applicant became aware of the alleged contravention within the time starting six weeks before nomination day for a regular election and ending on voting day in a regular election and the applicant applies to the Integrity Commissioner within six (6) weeks after the day after voting day in a regular election.

**9. Conduct of Inquiry-Code of Conduct, Procedures, Rules or Policies Governing Ethical Behaviour**

- 9.1 When a complaint is received by the Integrity Commissioner, he or she shall conduct an inquiry promptly, thoroughly and in a manner that ensures the member who is the subject of the complaint is given an opportunity to know the nature of the complaint against him or her and to make representation respecting the complaint to the Integrity Commissioner.
- 9.2 Information concerning the nature of a complaint disclosed to a member shall be used by the member only for the purpose of making representations respecting the complaint to the Integrity Commissioner and not for any other purpose.
- 9.3 In conducting an inquiry into a complaint regarding a member, the Integrity Commissioner may exercise any power given to him or her under this by-law or under the Municipal Act including the power to conduct or not conduct an inquiry under the Public Inquiries Act, 2009 as may be amended.
- 9.4 If the Integrity Commissioner is satisfied that a complaint regarding a member does not contain sufficient information to set out a prima facie contravention of the Code of Conduct or other procedures, rules or policies governing a members ethical behavior, the Integrity Commissioner shall stay the inquiry into the complaint.
- 9.5 Before staying an inquiry, the Integrity Commissioner shall give the Complainant an opportunity to provide additional information respecting the complaint and in doing so shall explain to the Complainant what type of additional information would be required to set out a prima facie contravention.
- 9.6 Where the Complainant provides additional information, the Integrity Commissioner shall consider all of the information provided and shall reassess whether there is sufficient information to set out a prima facie contravention of the Code of Conduct or other procedures, rules or policies governing a member's ethical behavior.
- 9.7 The Integrity Commissioner shall lift the stay and conduct the inquiry where there is sufficient information to set out a prima facie contravention of the Code of Conduct or other procedures, rules or policies governing a member's ethical behavior.
- 9.8.1 If the Integrity Commissioner is satisfied, after considering the information contained in the complaint and where requested, any additional information provided that a complaint regarding a member is frivolous, vexatious or not made in good faith, the Integrity Commissioner shall not conduct an inquiry.

9.8.2 Where it becomes apparent in the course of an inquiry that a complaint regarding a member is frivolous, vexatious or not made in good faith, the Integrity Commissioner shall terminate the inquiry.

## **10. Conduct of Inquiry-Municipal Conflict of Interest Act**

10.1 The Integrity Commissioner shall conduct such inquiry as he or she considers necessary.

10.2 If the Integrity Commissioner decides to conduct an inquiry, the Commissioner may have a public meeting to discuss the inquiry.

10.3 The Integrity Commissioner may elect to exercise the powers under Section 33 and 34 of the Public Inquiries Act, 2009 in which case those sections will apply to the inquiry.

10.4 The Town and its Local Boards shall give the Integrity Commissioner such information as the Integrity Commissioner believes to be necessary for an inquiry.

10.5.1 If the Integrity Commissioner has not completed an inquiry before nomination day for a regular election, the Integrity Commissioner shall terminate the inquiry on that day.

10.5.2 If the inquiry is terminated, the Integrity Commissioner shall not commence another inquiry in respect of the matter unless within six weeks after voting day in a regular election the person who made the application or the member or former member whose conduct is concerned applies in writing to the Integrity Commissioner for the inquiry to be carried out.

10.5 The Integrity Commissioner shall complete an inquiry within one-hundred eighty (180) days after receiving a completed application unless the application is terminated.

10.6 Upon completion of the inquiry, the Integrity Commissioner may if he or she considers it appropriate, apply for a judge under Section 8 of the Municipal Conflict of Interest Act for a determination as to whether the member has contravened Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act.

## **11. Filing of Reports-Code of Conduct, Procedures, Rules or Policies Governing Ethical Behaviour**

11.1.1 Where the Integrity Commissioner has received a complaint regarding a member, the Integrity Commissioner shall on the earliest date after her or she has made a decision and no later than 60 days after receiving the complaint,

prepare and file with the Clerk a report to Council regarding the inquiry into the complaint.

- 11.1.2 Where the Integrity Commissioner decides not to proceed with an inquiry, the Integrity Commissioner shall prepare and file a report which applies with necessary modifications, setting out that decision.
- 11.3 The Integrity Commissioner may make interim reports to Council where necessary and as required to address any issues of interference, obstruction, delay or retaliation encountered during the investigation.
- 11.4 Where in the opinion of the Integrity Commissioner it is not possible to prepare and file a report with Council within the time set out in this section, the Integrity Commissioner shall advise Council of this together with:
  - 11.4.1 The reasons for the inability to prepare and file the report; and
  - 11.4.2 The date on or before which the report will be prepared and filed.
- 11.5 The Integrity Commissioner shall provide a copy of the report filed to the Complainant, to the member who is the subject of the complaint and to all other members at the same time as filing the report with the Clerk.
- 11.6 The report shall include:
  - 11.6.1 The nature of the complaint.
  - 11.6.2 If the complaint was filed after the expiry of the time limit, the Integrity Commissioner's findings regarding the Complainant's knowledge of the date of the event or series of events.
  - 11.6.3 The evidence gathered from the complainant and from the inquiry.
  - 11.6.4 The Commissioner's findings of fact regarding the complaint which findings shall be made in accordance with the civil standards of the balance of probabilities.
  - 11.6.5 The Commissioner's decision, based on the findings of fact that the member contravened or did not contravene the Code of Conduct or other procedures, rules or policies governing a member's ethical behavior.
  - 11.6.6 The penalty, if any to be imposed including a copy of a letter of reprimand, if imposed or a copy of the notice of suspension of remuneration, if imposed.
- 11.7 Where the Integrity Commissioner's delegate decides that a member has contravened the Code of Conduct or other procedures, rules or policies governing the member's ethical behavior, but that the member was acting in



accordance with the Integrity Commissioner's advice given and the member had, before receiving the advice, given the Integrity Commissioner all of the relevant facts that were known to the member, the delegate shall so state in the report.

11.8 Where the Integrity Commissioner has filed a report with the Clerk in respect of an inquiry, the Clerk shall place the report on the next available Council agenda.

## **12. Filing of Reports-Municipal Conflict of Interest**

12.1 The Integrity Commissioner, upon completion of the inquiry notify the applicant if the Integrity Commissioner will not be making an application to a judge.

12.2 After deciding whether or not to apply to a judge, the Integrity Commissioner shall publish a written reason for the decision.

12.3 For the purposes of this by-law, "publishing" a written reason for the decision shall mean a report which will be posted on the Town's publicly viewable website and shall not necessarily mean a report to Council unless deemed to be in the best interest by the Integrity Commissioner.

## **13. Penalties**

13.1 The penalties for a member who contravenes the Code of Conduct or other procedures, rules or policies governing the member's ethical behavior shall be those authorized under the Municipal Act including:

13.1.1 A reprimand; or

13.1.2 Suspension of the remuneration paid to the member in respect of his or her services as a member of the Council or Local Board, as the case may be for a period of up to 90 days.

13.2 Where the Integrity Commissioner recommends a penalty suspending the remuneration paid to a member and Council approves the recommendation, the Clerk shall notify the Treasurer of the suspension and the time period of the suspension.

13.3 The Treasurer shall ensure the remuneration of the member is suspended in accordance with the notice from the Clerk.

13.4 Where the Integrity Commissioner's delegate decides that a member has contravened the Code of Conduct or other procedures, rules or policies governing the member's ethical behavior, but that the member was acting in accordance with the Integrity Commissioner's advice given and the member had, before receiving the advice, given the Integrity Commissioner all of the relevant facts that were known to the member, no penalty shall be imposed.

#### **14. Confidentiality and Access to Records**

- 14.1 The Integrity Commissioner and any person acting under his or her authority shall preserve the confidentiality of all documents, material or other information, whether belonging to the Town or not, that comes into his or her possession or knowledge during the course of duties or the investigation as required by the Municipal Act.
- 14.2 The confidentiality of the complaints process prevails over the Municipal Freedom of Information and Protection of Privacy Act.
- 14.3 Information obtained by the Integrity Commissioner may be disclosed in a criminal proceeding as required by law.
- 14.4 Advice provided by the Integrity Commissioner to a member may be released with the member's written consent.
- 14.5 Notwithstanding any other provision herein, the Integrity Commissioner may disclose such information as is considered necessary for the purpose of a public meeting, in an application to a judge or in written reasons given by the Integrity Commissioner not to proceed with an application to a judge.
- 14.6 The Integrity Commissioner is entitled to have access to such information belonging to or used by the Town including legal advice that has been given to Council or Town employees, as the Integrity Commissioner deems necessary to conduct an inquiry.
- 14.7 A disclosure to the Integrity Commissioner of legal advice:
  - 14.7.1 Shall be deemed not to constitute a waiver of solicitor-client or litigation privilege;
  - 14.7.2 Shall be used only for the purposes of conducting an inquiry and not for any other purpose; and
  - 17.7.3 The contents or substance of such legal advice shall not be disclosed in any public report prepared by the Integrity Commissioner or any person acting under the instructions of the Integrity Commissioner, including his or her delegate.
- 17.8 The Integrity Commissioner and every person acting under the instruction of the Integrity Commissioner including his or her delegate:
  - 17.8.1 Shall preserve the secrecy of all confidential documents, material or information, whether belonging to the Town or not, that comes into their possession or to their knowledge in the course of their duties; and

17.8.2 Without limiting the obligation to preserve secrecy, shall ensure that by his or her actions and in particular any reports prepared comply at all times with the Municipal Freedom of Information and Protection of Privacy Act and the Town Procedural By-Law regarding personal and/or privileged information.

## **18. Integrity Commissioner Conflict and Delegation**

18.1 The Integrity Commissioner shall, in writing, delegate his or her duties to conduct an inquiry, including the exercise of powers under the Public Inquiries Act, and the duty to report on an inquiry where the Integrity Commissioner has an actual or apparent conflict of interest.

18.2 In making a delegation of duties, the Integrity Commissioner shall first satisfy himself or herself that the person to whom the duties are to be delegated is fully capable of carrying out these duties.

18.3 The Integrity Commissioner may delegate in writing to any person, except to a member of Council, his or her powers and duties under the Municipal Act.

18.4 Despite any delegation of power and duties, the Integrity Commissioner may continue to exercise the power and duties.

## **19. Referral and Suspension of Inquiry**

19.1 If the Integrity Commissioner, when conducting an inquiry determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the Criminal Code of Canada, the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of and shall report the suspension of the inquiry to Council.


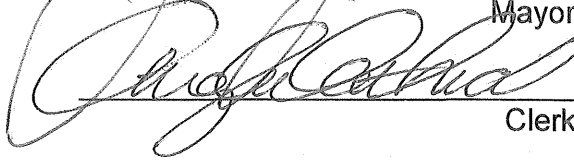
## **20. Indemnification and Costs**

20.1 The Town will indemnify and hold harmless the Integrity Commissioner or any person acting under the instruction of the Integrity Commissioner for costs reasonably incurred by either of them in connection with the defence of a proceeding if the proceeding relates to an act done in good faith in the performance or intended performance of a duty or authority under the Municipal Act or this by-law or an alleged neglect or default in the performance in good faith of the duty or authority.


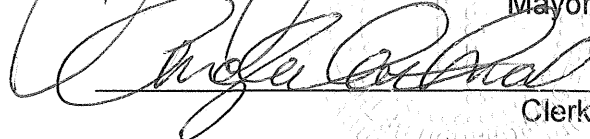
20.2 The Integrity Commissioner's costs of applying to a judge under an alleged breach of Sections 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act will be borne by the Town or the Local Board, as the case may be.

20.3 The Town will pay such costs to the Integrity Commissioner in performance of his or her duties in accordance with agreement executed between the parties.

Read a first and second time this 19<sup>th</sup> day of February, 2019.

  
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Mayor  
  
\_\_\_\_\_  
Clerk

Read a third time and finally passed this 19<sup>th</sup> day of February, 2019.

  
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Mayor  
  
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Clerk

