

The Corporation of the Town of South Bruce Peninsula

By-Law Number 66-2019

**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**
 - 1.1 This by-law may be referred to as the "Integrity Commissioner By-Law".
2. **Definitions**
 - 2.1 "Applicant" means a person who has applied for an investigation by the Integrity Commissioner of an alleged contravention of the *Municipal Conflict of Interest Act*.

- 2.2 "Application" means a written request for an investigation with respect to an alleged contravention of the *Municipal Conflict of Interest Act*.
- 2.3 "Censure" means an official expression of disapproval or condemnation.
- 2.4 "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.
- 2.5 "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.
- 2.6 "Complaint" means a written objection filed with the Integrity Commissioner pursuant to this Code respecting a Member;
- 2.7 "Complainant" means a person who files a complaint in accordance with this by-law.
- 2.8 "Council" shall mean the elected officials who constitute the Town of South Bruce Peninsula's municipal council.
- 2.9 "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.
- 2.10 "Good Faith" shall mean accordance with standards of honesty, trust and sincerity.
- 2.11 "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.
- 2.12 "Local Board" is hereby defined as in Section 1(1) and Section 223.1 of the *Municipal Act*, as amended.
- 2.13 "Member" means any member of Council or Local Board and includes the Mayor and Chair.
- 2.14 "Municipal Act" means the Municipal Act, 2001, S.O. 2001, Chapter 25 as may be amended from time to time and any successor Act.
- 2.15 "Municipal Conflict of Interest Act" means the Municipal Conflict of Interest Act, RSO 1990, cM. 50 as may be amended from time to time and any successor Act.

- 2.16 "Municipal Elections Act" means the Municipal Elections Act, 1996, S.O. 1996, c.32, as may be amended from time to time and any successor Act.
- 2.17 "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 and any successor Act.
- 2.18 "Officer" means a person employed or appointed by Council as determined by any legislation or Act
- 2.19 "Public Inquiries Act" means the Public Inquiries Act, 2009, S.O. 2009, c.33 Schedule 6, as may be amended from time to time and any successor Act.
- 2.20 "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 provide the following services:
- 5.1.1 The application of the code of conduct for members of Council and the code of conduct for members of local boards or of either of them.
- 5.1.2 The application of any procedures, rules and policies of the Town and local boards governing the ethical behaviour of members of Council and of local boards or of either of them.
- 5.1.3 The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of Council or of local boards.
- 5.1.4 Response to requests from members of Council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
- 5.1.5 Response to requests from members of Council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
- 5.1.6 Response to requests from members of Council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
- 5.1.7 The provision of educational information to members of Council, members of local boards, the municipality and the public about the municipality's code of conduct for members of Council and members of local boards and about the *Municipal Conflict of Interest Act*.
- 5.1.8 Provide an annual report to Council regarding the activities undertaken during the calendar year.

6. Making a Complaint and Making an Application

- 6.1 A complaint that a member has contravened the Code of Conduct may be initiated by any person, any member of Council, or by Council.
- 6.2 A complaint shall be made in writing and shall be sent directly to the Integrity Commissioner by mail, e-mail, fax or courier.
- 6.3 A complaint must be signed and dated by the complainant who shall be an identifiable individual (complaints may not be submitted by any group, organization or corporation).
- 6.4 A complaint shall include:
 - 6.4.1 An explanation, with specific reference to sections of the Code of Conduct, as to why the issue raised is alleged to be a contravention of the Code of Conduct;
 - 6.4.2 Any evidence in support of the allegation; and
 - 6.4.3 Any witnesses in support of the allegation must be identified.
- 6.5 An application to the Integrity Commissioner to inquire into an alleged contravention of Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* may be made by an elector as defined in Section 1 of the *Municipal Conflict of Interest Act* or by a person demonstrably acting in the public interest.
- 6.6 An application shall be made in writing and shall be sent directly to the Integrity Commissioner by mail, e-mail, fax or courier.
- 6.7 An application must be signed and dated by the complainant who shall be an identifiable individual (complaints may not be submitted by any group, organization or corporation).
- 6.8 An application shall include:
 - 6.8.1 An explanation with specific reference to sections of the *Municipal Conflict of Interest Act*, as to why the issue raised is alleged to be a contravention of the Act;
 - 6.8.2 Any evidence in support of the allegation;
 - 6.8.3 Any witnesses in support of the allegation must be identified; and
 - 6.8.4 A statutory declaration attesting to the fact that the applicant became aware of the alleged contravention not more than six weeks before the date of application in accordance with Section 223.4.1 (5) and (6) of the *Municipal Act*.

- 6.9 An application may only be made within six weeks after the applicant became aware of the alleged contravention and otherwise in compliance with Section 223.4.1(5) and (6) of the *Municipal Act*.
- 6.10 The Integrity Commissioner shall undertake an initial review of a complaint that has been filed and shall determine whether the matter relates to non-compliance with the Code of Conduct or other Town policy applying to members.
- 6.11 The Integrity Commissioner shall have no power or jurisdiction to investigate or otherwise deal with the complaint if the complaint is not alleging a contravention of the Code of Conduct or other Town policy applying to members or if the complaint relates to the following matters:
- 6.11.1 **Criminal Matter** – if the complaint relates to an allegation of a criminal nature consistent with the Criminal Code, the complainant shall be advised that pursuit of such an allegation must be made through the appropriate police service.
- 6.11.2 ***Municipal Freedom of Information and Protection of Privacy Act*** – if the complaint relates to a matter under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be referred to the Clerk.
- 6.11.3 ***Municipal Elections Act*** – if the complaint relates to the enforcement of the *Municipal Elections Act*, the complainant shall be referred to the Compliance Audit Process if the matter relates to campaign finances or to such other avenues of investigation as dictated by that Act.
- 6.12 If the Integrity Commissioner determines they do not have jurisdiction as described in Section 16.3 the Integrity Commissioner shall advise the complainant in writing accordingly.
- 6.13 The Integrity Commissioner may dispose of a complaint on the basis that it is not within the jurisdiction of the Integrity Commissioner in a summary manner and may do so confidentially or report same to Council. The Integrity Commissioner may also seek further information or clarification from the complainant and shall endeavour to apprise the complainant of subsequent steps and the processing of the complaint and any ensuing investigation.
- 6.14 If the Integrity Commissioner is of the opinion that a complaint is frivolous or vexatious or is not made in good faith, or that there are no grounds or insufficient grounds for conducting an investigation, the Integrity Commissioner may choose not to investigate or, if already commenced, may terminate any investigation, or may dispose of the complaint in a summary manner. The Integrity Commissioner shall advise the complainant in writing of his or her decision and reasons for not undertaking an investigation or terminating it.

- 6.15 If the Integrity Commissioner has decided to commence an investigation of a complaint (except where otherwise required by the *Public Inquiries Act, 2009*, if applicable), or of an application, the Integrity Commissioner shall provide a copy of the complaint or application and supporting evidence to the member whose conduct is in question with a request for a written response to be provided within ten (10) days. The Integrity Commissioner may provide the response from the member to the complainant or applicant with a request for a written reply also within ten (10) days.
- 6.16 The Integrity Commissioner shall review the written responses and may if necessary, discuss the matter with anyone that the Integrity Commissioner considers is relevant to the complaint. The Integrity Commissioner may access and examine any of the information described in subsections 223.4(3) and (4) of the *Municipal Act, 2001* and may access any Town workplace relevant to the complaint, including any documents or records under the custody or control of the Town.
- 6.17 Before finalizing a report to Council which recommends sanctions, the Integrity Commissioner shall provide the member with the basis for the findings and any sanctions that may be recommended. The member shall have the opportunity to comment further, either in writing, verbally or in person to the Integrity Commissioner on the proposed findings and sanctions.
- 6.18 Upon conclusion of a complaint investigation, the Integrity Commissioner shall:
- 6.18.1 Issue a report to Council on the findings of the investigation and, where there is a finding of contravention of the Code of Conduct, the report shall contain the detailed findings, any recommended sanctions, or any settlement; and
- 6.18.2 Provide a copy of the final report to the member at the same time as the final report is made available to the Clerk and to the complainant at the same time as the report becomes public.
- 6.19 Upon conclusion of an application investigation, the Integrity Commissioner may, if he/she considers it appropriate, apply to 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 Act.
- 6.20 The Integrity Commissioner shall:
- 6.20.1 Advise the applicant if he or she will not be making an application to a Judge; and
- 6.20.2 After deciding whether or not to apply to a Judge, provide a written report providing reasons for the decision.

- 6.21 The Integrity Commissioner's report on a complaint shall be placed on an agenda for consideration at a public meeting of Council or of the Local Board, in accordance with the Procedural By-Law, as determined by the Clerk in consultation with the Integrity Commissioner.

7. Penalties

- 7.1 Upon receipt of a final report and the recommendations of the Integrity Commissioner, Council may, where the Integrity Commissioner has determined there was a violation of the Code of Conduct, impose either of the following two (2) penalties:

7.1.1 A reprimand; or

7.1.2 Suspension of remuneration paid to the member in respect of his or her services as a member for up to ninety (90) days.

7.2 Council may also take the following actions:

7.2.1 Removal from membership of a Local Board;

7.2.2 Removal as chair of a Local Board;

7.2.3 Request the repayment of reimbursement of monies received;

7.2.4 Request the return of property or reimbursement of its value;

7.2.5 Request an apology.

8. Integrity Commissioner Conflict and Delegation

8.1 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.

8.2 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.

8.3 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.

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

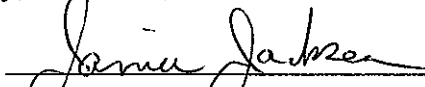
9. Indemnification and Costs

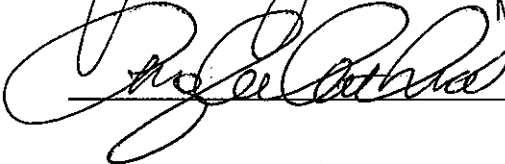
- 9.1 The Town will indemnify and hold harmless the Integrity Commissioner or any person acting under the instruction of the Integrity Commissioner for costs reasonably incurred by either of them in connection with the defense of a proceeding if the proceeding relates to an act done in good faith in 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.
- 9.2 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.
- 9.3 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.

10. Application and Interpretation

- 10.1 This by-law applies to every member. This by-law shall be applied to members of Local Boards, who are not members of Council, with necessary modifications applied in the discretion of the Integrity Commissioner.
- 10.2 The headings in this by-law form no part of the by-law but shall be deemed to be inserted for convenience of reference only.
- 10.3 All changes in number and gender shall be construed as may be required by the context.
- 10.4 The reference to a by-law, resolution, policy or guideline made, enacted, established or adopted by the Town, except as may be otherwise provided, shall be deemed to include such by-law, resolution, policy or guideline as may be amended or re-enacted from time to time or its successor by-law resolution policy or guideline made, enact, established or adopted from time to time.
- 10.5 If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this by-law and it is hereby declared that the remainder of this by-law shall be valid and remain in full force and effect.

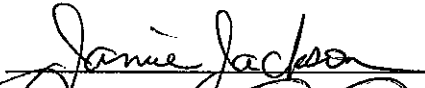
Read a first and second time this 2nd day of July, 2019.

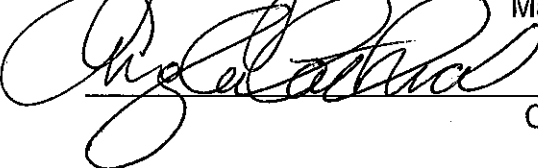


Mayor


Clerk

Read a third time and finally passed this 2nd day of July, 2019.



Mayor


Clerk