



REPORT ON ACTIVITIES: 1 JANUARY 2023 TO DECEMBER 31ST, 2023

Bruce P. Elman LL.D.
Integrity Commissioner
20 March 2024

PART I – INTRODUCTION

History of The Office of Municipal Integrity Commissioner:

The Office of Municipal Integrity Commissioner came into existence in the Province of Ontario with amendments to the *Municipal Act 2001*, effective January 1st, 2007. Pursuant to the amendments to the *Act*, the Town of Essex created the Office of the Integrity Commissioner and established a **Code of Conduct** for Members of Council. On February 19, 2019, Town Council approved a new and comprehensive **Code of Conduct for Members of Council and Local Boards/Committees** [hereinafter the **Code of Conduct**]. The **Code of Conduct** applies to all Members of Council, including the Mayor and Deputy Mayor, and members of Local Boards and Committees of Council. On May 16, 2022, Town Council passed a new *Procedural By-law 2159* for Town Council and its Committees and the Conduct of its Members.

In January of 2023, I was retained by the Town to serve as the Integrity Commissioner for a period of one year from January 1st, 2023 to December 31st, 2023. Prior to the expiration of my term, my contract was extended to December 31st, 2025.

Primary Functions of The Integrity Commissioner:

Section 3.0 of the **Code of Conduct** provides; “This policy applies to all Members of the Town of Essex in their capacity as members of Council and/or members on committees and local boards of the Town.” Section 2.0 further elaborates on the application of the **Code of Conduct**: “This

Code shall apply to every Member. For further certainty this Code shall apply to Members who are members of a Local Board/Committee but who are not Members of Council with necessary modifications applied at the discretion of the Integrity Commissioner.”

Furthermore, section 1.0 notes: “The Code of Conduct supplements statutes, legislation and policies that also govern Council and Local Board/Committee conduct including, but not limited to the Municipal Act 2001, the Municipal Conflict of Interest Act, the Municipal Elections Act, 1996, and [among others] the Town of Essex Policies and By-laws.”

The mandate of the Integrity Commissioner is very broad and extends to virtually all aspects of the integrity and ethics of Members of Council, Local Boards, and Committees of the Town of Essex in the exercise of their public duties. Section 16.0 of the **Code of Conduct** provides an extensive delineation of the duties of the Integrity Commissioner Generally, however, the Integrity Commissioner has four primary functions:

- (1) Education;
- (2) Advice for Council and Individual Council Members;
- (3) Complaint Investigation; and
- (4) Complaint Adjudication and Resolution.

In addition, the Integrity Commissioner, in some instances, has a role to play in the development of Town policies or when the Town responds to legislative or policy initiatives from the Province of Ontario.

PART II –THE CODE OF CONDUCT FOR MEMBERS OF COUNCIL AND LOCAL BOARDS/COMMITTEES

The Code of Conduct:

Section 2.0 of the **Code of Conduct states:** “The purpose of this Policy is to establish standards of conduct that ensures Members carry out their duties in a manner that reflects the following six key principles:

- 2.01. Integrity;
- 2.02. Accountability;
- 2.03. Responsibility;
- 2.04. Leadership;
- 2.05. Respect; and
- 2.06. Openness.

The **Code of Conduct** is clear and comprehensive. It supplements the Provincial legislative regime and the Town’s *Procedural By-law*. The **Code of Conduct** begins with sections on “Objective”, “Application and Purpose”, and “Scope” followed by a “Definitions” section. Substantive provisions – the “Code of Conduct Rules” -- include provisions regarding “Conflicts of Interest”, “Gifts and Benefits”, “Confidential Information”, “Use of Town Property, Services and Other Resources”, “Conduct of Members” including “Conduct at Meetings”, Conduct “Respecting Staff”, and “Discreditable Conduct” more generally. The Code of Conduct, also, has some relatively unique provisions including the “Obligation to be Informed” and the duty to “Safeguard Equipment and Information”. Other provisions deal with “Corporate Emails and Correspondence”, “Smart Phone Usage in Meetings”, and “Environmental Responsibility”. Finally, there are provisions dealing with the Complaint Protocol and Sanctions for Non-Compliance with the **Code of Conduct**.

PART III – THE EDUCATION FUNCTION

Education and Training:

The last Municipal Election was held on October 24th, 2022. In advance of the Election, I was contacted by the Director of Legal and Legislative Services/Municipal Clerk to provide Education and Training for the new Council, once elected. I had not, as yet, been appointed as the Town’s Integrity Commissioner but I agreed to provide the Education and Training requested. To the credit of the, then, Municipal Clerk and the CAO, the Education and Training seminar for Members of Council took place in November of 2022, shortly after the Municipal Elections. The purpose of the seminar was to educate Members of Council regarding the main provisions of the Town’s **Code of Conduct** and to answer any questions raised by Members in this context. Senior staff were also in attendance. Prior to this session, I prepared materials in conjunction with the Municipal Clerk’s Office to orient Members of Council to the Office of the Integrity Commissioner, to the provisions of the **Code of Conduct**, and the procedures outlined in the **Complaints Protocol**. Included were three “Primers” on important and timely issues: (1) *Confidentiality*; (2) *Conflict of Interest*; and (3) *Pecuniary Interest in Land*. Some information was provided on the *Municipal Conflict of Interest Act (MCIA)* through the Primers and during the in-person seminar. The Council session lasted approximately two hours. In my view, it was a very productive meeting.

Ideally, Council’s Educational and Training seminar would be replicated -- in a slightly condensed fashion -- in other sessions for Members of Local Boards, Agencies, and Committees, all of whom are subject to the provisions of the **Code of Conduct**. Materials could be developed for these training sessions with some adaptations, recognizing the nature of the group attending any particular session. Attendance should be mandatory and those in attendance should be asked to sign a **Statement of Commitment** to the effect that they had read the **Code of Conduct**, that they understand it, and that they will be committed to abiding by its terms.

These sessions would be particularly useful to bring home to Members of Boards and Committees the centrality of integrity in the exercise of their duties as public office holders.

As a general comment, I would say that the Educational role of the Integrity Commissioner is extremely important, especially in the period following a Municipal Election. Not only might there be newly elected Members of Council who are unfamiliar with the Integrity regime, but this, traditionally, is also the time when we replenish the membership of our Agencies, Boards, Commissions, and Committees. Education and Training is, effectively, the first line of prevention against potential violations of the **Code of Conduct** and the *Municipal Conflict of Interest Act*.

The next Municipal Election will be held in October of 2026. I believe that the Town should re-commit to a vibrant and enhanced program of Education and Training, for both elected Members of Council and those who volunteer their time on behalf of the community by serving on Agencies, Boards, and Committees. Further, Integrity Commissioners now have an important role to play in providing advice on, and investigating Complaints regarding, conflicts of interest under both the *Municipal Conflict of Interest Act (MCIA)* and the **Code of Conduct**. Education and Training on both the *MCIA* and the **Code of Conduct** should be provided to Members of Council, Local Boards, and Committees as soon as feasible after the Municipal Election and the appointment of Members to Committees and Local Boards.

PART IV -- ADVISORY FUNCTION

If Education and Training represent the first line of defence against unethical conduct, the Advisory function provides a second layer of protection against violations of the **Code of Conduct**. Providing advice, on both the **Code of Conduct** and the *Municipal Conflict of Interest Act (MCIA)*, is a key function of the Integrity Commissioner and can often head-off **Code** violations. Indeed, in many municipalities, the **Code of Conduct** recognizes the importance of

the Advice function and incentivizes its use. For example, the **Code of Conduct** of the City of Windsor, explicitly protects a Member who has sought out, and followed, the advice of the Integrity Commissioner. The Member is protected from any potential Complaints regarding the same matter on which the Integrity Commissioner’s advice has been sought out in advance and, subsequently, followed. This is a very rational and productive policy.

Our **Code of Conduct** is not so explicit. However, section 18.09 of the **Code of Conduct** offers an avenue for the incentivizing Members to seek advice from the Integrity Commissioner. The section provides: “If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct, that a contravention occurred which a Member **took reasonable measures to prevent**, or that the contravention that occurred was trivial or **committed through inadvertence or an error of judgement made in good faith**, the Integrity Commissioner shall so state in any report and **shall recommend that no penalty** shall be imposed.” (Emphasis added.) If a Member sought out the advice of the Integrity Commissioner, this would be an important element in any attempt by the Member to demonstrate that s/he had taken “reasonable steps” to prevent a contravention of the **Code of Conduct** and would, also, provide evidence that s/he may have committed the contravention “through inadvertence or an error in judgement made in good faith”. To be clear, in my view, following the Formal Advice of the Integrity Commissioner, would satisfy the stipulation in section 18.09 that “the member took all reasonable measures to prevent it” as well as the specification that it was “committed through inadvertence or an error of judgement made in good faith” and would, consequently, allow the Integrity Commissioner to decide that no penalty should be imposed on the Member. Seeking advice from the Integrity Commissioner is always the preferred course of action.

Formal Letters of Advice:

A “Request for a Formal Letter of Advice” occurs when a Member requests a formal letter confirming the advice from the Integrity Commissioner. As noted above, where a Member

follows the advice in a Formal Letter, in all likelihood, there will be a finding that the Member was not blameworthy, and no penalty will be recommended or imposed.

During the current Reporting period (January 1st, 2023 to December 31st, 2023), I issued four (4) Formal Letters of Advice. Of these, two (2) were issued to Members of Council and two (2) were issued to Members of Local Boards or Committees. All of the letters concerned issues involving Conflicts of Pecuniary Interests.

Requests for Formal Letters of Advice reveal the importance that Members of Council and Members of Local Boards and Committees place on matters of integrity generally and their desire, individually and collectively, to adhere to the Rules found in the **Code of Conduct**. Although the four requests do not indicate a strong inclination on the part of Members to seek my advice, I am pleased that in my first year as Integrity Commissioner – when we are still establishing a relationship of trust -- at least this number of individuals sought out this avenue. It is always preferable to provide Advice rather than investigate Complaints.

Primers:

As I indicated above, three “Primers” were prepared for the Educational and Training seminar for Council Members. The purpose of the Primers is, in part, educative but also preventative. The Primers are intended to provide guidance to Members of Council and others to whom the **Code of Conduct** applies so that they can avoid violations of the **Code**. Primers, generally, concern matters of importance that Members of Council or Senior Members of Administration have identified or matters that members of the public have raised with me. In some instances, they concern issues that have been identified by other Municipal Integrity Commissioners.

The Primers issued were:

- (1) *Confidentiality: A Primer;*
- (2) *Conflict of Interest: A Primer;* and

(3) Pecuniary Interest in Law: A Primer.

No additional Primers were suggested by Council or Senior Staff. Similarly, no other Primers were suggested either by the nature of the Complaints being filed with the Integrity Commissioner nor the inquiries made of me.

Brief Advice:

During this Reporting period (2023), there were three (3) instances of Brief Advice. These represent occasions where, in my opinion, advice could be provided immediately or in a very short period of time, and where no File needed to be opened. These are instances where neither extensive research nor lengthy consideration is necessary. Formal Letters of Advice are generally not provided except where the Member requests one. Brief Advice is prompt, efficient, and less expensive than instances where a Request for a Formal Letter of Advice is made.

PART V – INQUIRIES AND COMPLAINTS

Complaint Files:

There were no Complaints remaining from 2022 and there were no Complaints filed in 2023.

Brief Service:

Aside from instances of “Brief Advice” provided to Members of Council, Members of Committees, and Senior Staff, there only two (2) instances of “Brief Service”. “Brief Service” constitutes instances where an individual has contacted the Integrity Commissioner, but no Formal or Informal Complaint has been initiated and no File has been opened. This may occur because the concern is plainly outside the jurisdiction of the Integrity Commissioner or because the alleged complaint is clearly not a violation of the **Code of Conduct** or because the individual is simply seeking information. In some instances, the answer provided ends the matter; in other

instances, a referral may be made to a more appropriate entity or individual. In some instances, the individual is advised on the procedure for making a formal Complaint although, ultimately, no formal Complaint is received. The phrase “Brief Service” does not denote the amount of time expended in providing the service; rather it simply indicates that the Integrity Commissioner was contacted but that no File was opened as a result of my response.

Part VI – Policy Developments

During this Reporting period, no Policy issues were brought to my attention.

PART VII – CONCLUSION

The year 2023 has been a very quiet year. No Complaints were filed and there were very few inquiries, more generally. There were four requests for formal Letters of Advice and handful of instances of Brief Advice/Brief Service. This should be seen as a very positive development.

It is an honour to serve as the Integrity Commissioner for the Town of Essex.

Respectfully submitted,



Bruce P. Elman LL.D.
Integrity Commissioner

FURTHER INFORMATION

If you have any questions or wish to seek written advice on this matter, please contact:

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