



INTEGRITY COMMISSIONER UPDATE ON ACTIVITIES TO 31 OCTOBER 2020

Bruce P. Elman LL.D.
Integrity Commissioner

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. The Municipality of Lakeshore created the Office of the Integrity Commissioner pursuant to *By-law 22-2019* on the 19th of February 2019 (Effective December 1st, 2018). The **Code of Conduct** for Members of Council, including the Mayor, and the Members of certain Local Boards and Committees was established as Schedule “B” to the *Procedural By-law 94-2017* (Effective December 12th, 2017). The **Complaint Management Protocol** – Schedule “A” to *By-law 106-2019* – was passed by Council on the 10th of September 2019.

In July of 2019, I was asked to serve as the Acting Integrity Commissioner for the Municipality of Lakeshore. On the 10th of December 2019, Council appointed me as Integrity Commissioner pursuant to *By-law 137-2019* (Effective January 1st, 2019). I entered into a contractual agreement with the City of Windsor, the Town of Amherstburg and the Municipality of Lakeshore to share Integrity services. I am pleased and honoured to be the first individual to serve as the Integrity Commissioner for all three Municipalities in this unique, shared arrangement. This contract took effect on the 1st of January 2020 and will continue until the 31st of December 2021.

The **Code of Conduct** notes that: “A written Code of Conduct helps to ensure that the members of Council share a common basis for acceptable conduct. These standards are designed to

provide a reference guide and a supplement to the legislative parameters within which the members must operate. These standards should serve to enhance public confidence that the Town of Lakeshore's elected representatives operate from a basis of integrity, justice and courtesy.”

Primary Functions of the Integrity Commissioner:

The Integrity Commissioner has four primary functions:

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

In addition, the Integrity Commissioner, in some instances, has a role to play as the Municipality develops its policies, including the **Code of Conduct**, or as it responds to legislative initiatives or policy developments from the Province of Ontario.

PART II – THE EDUCATION FUNCTION

Education and Training:

I consider Education and Training to be one of the primary functions of an Integrity Commissioner. Consequently, the first Education and Training session for Members of Council was held on the 19th of November 2019, approximately 3 weeks prior to my appointment as the Integrity Commissioner for Lakeshore. The purpose of this session was to educate the Members of Council regarding the central principles and values underlying the Municipal Integrity regime, to examine the main provisions of the Municipality's **Code of Conduct**, and to answer any questions raised by Members in this context. Prior to this session, I prepared materials 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**. Some information

was provided on the *Municipal Conflict of Interest Act (MCIA)* as well. Senior staff were also in attendance. I felt this was a productive session.

Once Council adopts a **Revised Code of Conduct**, however, a more robust Education and Training Program should be instituted. This will involve an in-depth discussion of the **Code** using examples drawn from other Municipalities. Materials and a Power Point Presentation will be developed for this session. The Council training will be replicated, in a slightly condensed fashion, with Members of Local Boards, Agencies, and Committees all of whom are subject to the provisions of the **Code of Conduct**. In my view, these sessions should be mandatory for all Members. Materials will be developed for these training sessions as well. A strong Education and Training program will be very important after the 2022 Municipal Election, not just for new and continuing Councillors, but also for those members of the Community who are appointed by Council to Local Boards, Agencies, and Committees.

I have often said – perhaps too often – if we get to the point where I am compelled to issue a Report to Council concerning a breach of the **Code of Conduct**, then we have failed. The first line of prevention is Education and Training.

Presentations:

There have been no community educational or informational sessions during this reporting period. It has become a regular occurrence, however, to make a presentation in the Municipal Law class at the Faculty of Law, University of Windsor. The class is held in the Fall term. I made presentations in 2018, 2019, and 2020. These presentations are somewhat lengthier than the Training sessions noted above as they provide a thorough (academic) examination of the Municipal integrity regime for students.

PART III -- 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 is a key function of the Integrity Commissioner and can often head-off **Code of Conduct** violations. Indeed, in many municipalities, the **Code of Conduct** recognizes the importance of the Advice function and incentivizes its use. For example, in the **Code of Conduct** of the City of Windsor, Rule 19.0 provides: “Any written advice given by the Integrity Commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner.” In this way, the Member is protected from any future Complaints regarding the same matter on which the Integrity Commissioner’s advice has been sought out in advance and, subsequently, followed. This is a reasonable policy and we will be suggesting a similar provision in Lakeshore’s proposed **Revised Code of Conduct**.

Requests for a Formal Letter of Advice:

During the Reporting period, there was one request for a Formal Letter 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. Under the current **Code**, 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 sanction will be handed out.

Advisory Bulletins:

During the Reporting period, I issued one Advisory Bulletin. The purpose of Advisory Bulletins is, in part, educative but also preventative. Advisory Bulletins 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**. Advisory Bulletins, generally, concern matters of importance that Members of Council have identified or matters that members of the public have raised with me

or they concern issues that have been recognized by other Municipal Integrity Commissioners. Advisory Bulletins are placed on the Integrity Commissioner’s webpage and are, therefore, available to Members of Council, Local Boards, Agencies, and Committees and the public at large.

The Advisory Bulletin issued during the Reporting period was entitled *Advisory Bulletin Regarding Member Conduct and Statements on Council Decisions*. This Bulletin may be found at this link: <https://www.lakeshore.ca/en/municipal-services/resources/Documents/Legislative-Service/Advisory-Bulletin---Member-Conduct-and-Statements-Regarding-Council-Decisions---Lakeshore---FINAL.pdf>.

Brief Advice:

From January 1st, to October 31st, 2020, there were four (4) 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 there was no Request for a Formal Letter of Advice and no File was opened. These are instances where, once again in my opinion, neither extensive research nor lengthy consideration is necessary. (Formal Letters of Advice are generally not provided except where a Member requests one.) So far, this seems to have worked well. It is prompt, efficient, and less expensive than where a Formal Letter of Advice is requested and issued.

PART IV – INQUIRIES AND COMPLAINTS

New Files:

Two (2) new Complaint files were opened between January 1st, 2020 and October 31st, 2020. Preliminary advice was provided regarding the possibility of filing a Formal Complaint. The procedure was discussed, and alternative courses of action outlined. However, no Formal Complaint was filed on either matter and the Files were closed.

Brief Service:

Aside from instances of “Brief Advice” provided to Members of Council and Senior Staff, there were three (3) 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 V – Policy Developments

Revised Code of Conduct:

As Integrity Commissioner, I am working with Kristen Newman, the Director of Legislative and Legal Services, to develop a Revised Code of Conduct for the Municipality. This revision is prompted by recent amendments to the *Municipal Act 2001*, the *Municipal Conflict of Interest Act (MCIA)*, and the *Municipal Election Act*.

The proposed **Revised Code of Conduct** applies to all Members of Council, including the Mayor, and to Council appointments to Local Boards, agencies, and committees. The proposed **Revised Code of Conduct** is based upon these Key Principles:

Integrity;
Accountability;
Responsibility;
Leadership;
Respect; and
Openness.

The **Revised Code of Conduct** is comprehensive. It supplements the provincial legislative regime and the Municipality's *Procedural By-law*. Substantive provisions include: Confidentiality, Gifts and Benefits, Improper Use of Influence, Conflict of Interest, Member Conduct in Council, with Staff, and with the general public, Transparency and Openness, Failure to Adhere to Council Policy, Use of Town Property and Services, Remuneration, Business Relations, and Conduct concerning Current and Prospective Employment.

Three Procedural provisions conclude the **Code of Conduct**: Reprisals and Obstruction, Acting on the Advice of the Integrity Commissioner, and Compliance and Sanctions. I am hopeful that we will be able to finalize the Revised Code of Conduct in the first quarter of 2021.

PART VI – CONCLUSION

FIRST, in the new year, greater emphasis should be placed on an enhanced program of Education and Training for Members of Council as well as members of Local Boards, Agencies, and Committees appointed by Council.

SECOND, regarding the Integrity Commissioner's Advisory function, I am expecting an increase in the number of Requests for Formal Letters of Advice and Brief Advice, particularly because Integrity Commissioners are now empowered to provide advice on the *Municipal Conflict of Interest Act (MCIA)*.

THIRD, I intend to issue another two or three Advisory Bulletins in the next year.

Fourth, regarding the Integrity Commission's Complaint Investigation and Adjudication function, I am expecting that the mere appointment of an Integrity Commissioner could prompt inquiries and, an ultimately, Complaints.

FIFTH, my conclusion is that Members of Council have, generally, conducted themselves in a highly professional manner and have lived up to their commitments under the **Code of Conduct**.

It is an honour to serve as the Integrity Commissioner for the Municipality of Lakeshore.

Respectfully submitted,



Bruce P. Elman LL.D.
Integrity Commissioner

FURTHER INFORMATION

This Advisory Bulletin is intended to provide general information. Members of Council who seek clarification of any part of the **Code of Conduct** should consult with the Integrity Commissioner.

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