

THE CORPORATION OF THE COUNTY OF LAMBTON

BY-LAW NO. 8 OF 2019

**"A By-Law to Establish The Office Of Integrity Commissioner
and a Process for Hearing Complaints Regarding
Elected Officials of The County of Lambton"**

WHEREAS The Corporation of the County of Lambton adopted By-Law No. 21 of 2015 on May 6, 2015 ("Original By-Law") establishing pursuant to section 223.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25 the office of its Integrity Commissioner and a process for hearing complaints regarding, and/or requesting inquiries into, the actions or inactions of elected officials, *inter alia*;

AND WHEREAS the *Modernizing Ontario's Municipal Legislation Act, 2001* amended the provisions of the *Municipal Act, 2001*, S.O. 2001, c. 25 regulating integrity commissioners and their authority ("Bill 68 Amendments");

AND WHEREAS this Council of The Corporation of the County of Lambton wishes to amend its Original By-Law to incorporate the Bill 68 Amendments and, consequently, restate its Original By-Law;

NOW THEREFORE the Council of The Corporation of the County of Lambton 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 "Censure" means an official expression of disapproval or condemnation;

2.2 "Clerk" shall mean the Clerk of the County;

2.3 "Code of Conduct" means County of Lambton By-Law No. 7 of 2019 ("Councillor Code of Conduct") as approved by Council, and as it existed on the date of the event or events giving rise to a Complaint;

- 2.4 “County” means The Corporation of the County of Lambton or the geographic area of the County of Lambton, as the context requires;
- 2.5 “Complaint” means, as applicable:
- (a) 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 behaviour of members of Council (hereinafter, a “Code/Ethics Complaint”); and/or
 - (b) a request by an elector (as that term is defined in section 1 of the *Municipal Conflict of Interest Act*), or by a person demonstrably acting in the public interest, for the Integrity Commissioner to conduct an inquiry about a member of Council's alleged contravention of sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* (hereinafter, an “MCIA Complaint”) except as provided otherwise, a Complaint must include both a sworn/affirmed affidavit, any declaration required under the *Municipal Act, 2001* (if any), and the payment of the refundable fee;
- 2.6 “Complainant” means a person who makes a Complaint;
- 2.7 “Council” shall mean the elected officials who constitute the County's municipal council;
- 2.8 “Employee” shall mean a person employed by the County, including those employed on personal service contracts and volunteers, but does not include members of Council;
- 2.9 “Good Faith” shall mean accordance with standards of honesty, trust and sincerity;
- 2.10 “Integrity Commissioner” shall mean the person appointed by Council to provide independent and consistent complaint investigation and resolution respecting the application of the Code of Conduct, being By-Law No. 07 of 2019 (“County Code of Conduct By-Law”);
- 2.11 “Member” means any Member of Council, and includes the Warden;
- 2.12 “*Municipal Act*” means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

- 2.13 “MFIPPA” means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended; and
- 2.14 “*Public Inquiries Act*”, means the *Public Inquiries Act*, R.S.O. 1990, c. P.41, as amended.

3. APPOINTMENT OF INTEGRITY COMMISSIONER

- 3.1 Council shall appoint an Integrity Commissioner to investigate a Complaint (that, for greater certainty, includes a Code/Ethics Complaint and/or an MCI Complaint). Appointments shall be for a period of 5 years. The candidate search, screening and hiring process shall be overseen by a panel consisting of the Warden, Deputy-Warden, Chief Administrative Officer and County Clerk. The recommended candidate for Integrity Commissioner will be referred to Council for its approval.
- 3.2 Without limiting Council's authority to appoint an individual as Integrity Commissioner, the Integrity Commissioner may be:
- a) retained by Council on a term contract constituting “fee for service”; or a "retainer plus fee for service" basis;
 - b) 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 necessary modifications.
- 3.4 If the Integrity Commissioner is unable to complete an inquiry in accordance with subsection 3.3, 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 perform all of the responsibilities set out in paragraphs 1 to 7 (inclusive) of section 223.3(1) of the *Municipal Act, 2001* and to help ensure that Members perform their functions in accordance with the Code of Conduct and other procedures, rules or policies governing their ethical behaviour. For greater certainty, the Integrity Commissioner may, upon request of Council or a Member, provide advice and rulings on ethical challenges, issues and dilemmas, as detailed by section 5.1(c) or 5.1(d).

5. DUTIES OF INTEGRITY COMMISSIONER

5.1 The Integrity Commissioner shall:

- (a) At least once per term of Council, deliver an oral presentation to Members 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 behaviour.
- (b) Once per term of Council, prepare written materials for distribution to and use by Members regarding the role of the Integrity Commissioner and ethical obligations and responsibilities of Members under the Code of Conduct and any other procedures, rules or policies governing their ethical behaviour.
- (c) Upon request, provide advice to individual Members regarding their ethical obligations and responsibilities under their Code of Conduct, the *Municipal Conflict of Interest Act*, and any other procedures, rules or policies governing their ethical behaviour. This advice can include opinions on the appropriate course of action where Members seek guidance based on specific factual circumstances.

(d) 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 behaviour.

(e) Prepare and deliver an annual report to Council containing a summary of activities, if any, during the previous calendar year.

6. MAKING A COMPLAINT

6.1 Any legal person may act as a Complainant.

6.2 On and subject to the time limitations set out in the *Municipal Act, 2001*, including without limitation ss. 223.4(7), (8) and (9) and ss. 223.4.1 (3), (4) and (5) thereof, Complaints can be made by filing a sworn/affirmed affidavit, as provided in Appendix A to this By-Law, together with the refundable fee prescribed in Section 7.1 directly with the Integrity Commissioner, Chief Administrative Officer, Deputy Chief Administrative Officer or County Clerk.

6.3 Where a Complaint is filed with the Chief Administrative Officer, Deputy Chief Administrative Officer or County 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, a Member or by Council, Section 7 does not apply.

6.5 Where a Complaint is filed by an Employee, a Member or by Council, the affidavit contained in Appendix A is not required; however, the provision of equivalent information and particulars is required.

6.6 A Complaint shall not be made available to the public except as may be required under MFIPPA or as compelled by a Court Order.

7. REFUNDABLE FEE

- 7.1 A Complainant shall pay to the County Clerk a refundable fee in the amount of \$100.00 upon the filing of a Complaint.
- 7.2 The fee payable under section 7.1 shall be refunded to the Complainant when the Integrity Commissioner files his or her report under section 10.1, except as may otherwise be required under this By-Law.
- 7.3 Where a Complaint is found to be frivolous, vexatious, or not made in good faith under section 9.8, the fee shall not be refunded.
- 7.4 Where a Complaint has been stayed under section 15.1, a Complainant may withdraw their Complaint and receive a refund of the fee.

8. LIMITATION PERIOD

- 8.1 Except as provided for in this section, the Integrity Commissioner shall not proceed with an inquiry in regard to:
- (a) a Code/Ethics Complaint, if it is filed more than 30 days after the date when the event or the last event of a series of events which are the subject matter of the Code/Ethics Complaint occurred;
 - (b) an MCIA Complaint, if filed outside of the applicable timelines prescribed in ss. 223.4.1(4), (5) and (13) of the *Municipal Act, 2001*.
- 8.2 Notwithstanding section 8.1, the Integrity Commissioner may proceed with an inquiry in regard to a Code/Ethics Complaint which is filed after the expiry of the time limit under section 8.1 if the Integrity Commissioner is satisfied that:
- (a) the delay was incurred in good faith;
 - (b) it is in the public interest to proceed with an inquiry; and
 - (c) no substantial prejudice will result to any person because of the delay.
- 8.3 A Complainant is deemed to have known the matters referred to in section 8.1 on the date the event, or series of events, occurred, unless the contrary is proven, the onus of which proof lies upon the Complainant.

8.4 Where, pursuant to this section, the Integrity Commissioner decides not to proceed with an inquiry he or she shall prepare and file a report under section 10.1 which applies with necessary modifications, setting out that decision.

9. CONDUCT OF INQUIRY

9.1 On and subject to the terms and conditions hereof and those of the *Municipal Act, 2001*, when a Complaint is received by the Integrity Commissioner, he or she shall (a) unless the Integrity Commissioner has dismissed the Complaint in accordance with paragraph 9.8 below and/or decided not to proceed with an inquiry pursuant to paragraph 9.4, first attempt to mediation between the Complainant and the subject of the Complaint in an attempt to resolve the Complaint without the need for an inquiry and (b) if mediation fails for any reason, 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 representations 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 Part V.1 of the *Municipal Act, 2001* including the power to conduct or not to conduct an inquiry under the *Public Inquiries Act*.

9.4 If the Integrity Commissioner is satisfied that a Complaint regarding a Member does not contain a statutory declaration required under the *Municipal Act, 2001* (if any) and/or 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 behaviour, he or she shall stay the inquiry into the Complaint.

- 9.5 Before staying an inquiry under subsection 9.4, 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 additional information would be required to set out a *prima facie* contravention of the Code of Conduct or other procedures, rules or policies governing a Member's ethical behaviour.
- 9.6 Where the Complainant provides additional information under section 9.5, 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 behaviour.
- 9.7 Where the Integrity Commissioner has stayed an inquiry into a Complaint and, after the stay, additional information is provided which, on its own or together with the information provided before the stay, sets out a *prima facie* contravention of the Code of Conduct or other procedures, rules or policies governing a Member's ethical behaviour, the Integrity Commissioner shall lift the stay and conduct the inquiry.
- 9.8 If the Integrity Commissioner is satisfied, after considering the information contained in a Complaint and any other relevant information, that a Complaint regarding a Member is frivolous, vexatious or not made in good faith, he or she shall not conduct an inquiry or, where that becomes apparent in the course of an inquiry, shall terminate the inquiry.
- 9.9 Where, pursuant to section 9.4, the Integrity Commissioner decides not to proceed with an inquiry he or she shall prepare and file a report under section 10.1, which applies with necessary modifications, setting out that decision.
- 9.10 Despite anything to the contrary herein, the Integrity Commissioner shall terminate any incomplete inquiry into a Complaint where such termination

is required pursuant to ss. 223.4(7) and/or ss. 223.4.1(12) of the *Municipal Act, 2001*.

10. MEMBER RESPONSIBILITIES DURING INVESTIGATIONS

- 10.1 Where the Integrity Commissioner has received a Complaint regarding a Member, he or she shall, on the earliest date after he or she has made a decision and no later than:
- (a) 60 days after receiving a Code/Ethics Complaint; and
 - (b) 180 days after receiving an MCIA Complaint;
- prepare and file with the County Clerk a report to Council regarding his or her efforts to mediate the Complaint and the results of such mediation or, if mediation has failed, file a report to Council on his or her inquiry into the Complaint.
- 10.2 The Integrity Commissioner may make interim report(s) to Council where necessary and as required to address any issues of interference, obstruction, delay or retaliation encountered during the investigation.
- 10.3 Where, in the opinion of the Integrity Commissioner, it is not possible to prepare and file a report to Council within the time set out in section 10.1, shall advise Council of this together with:
- (a) the reasons for their inability to prepare and file the report; and
 - (b) the date on or before which the report will be prepared and filed.
- 10.4 The Integrity Commissioner shall provide a copy of their report filed under section 10.1 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 County Clerk.
- 10.5 The report filed under section 10.1 shall include:
- (a) the nature of the Complaint;
 - (b) if the Complaint was filed after the expiry of the time limit under section 8.1, the Integrity Commissioner's findings regarding sections 8.3 and 8.4, which findings shall be made in accordance with the civil standard of the balance of probabilities;

- (c) efforts to mediate the Complaint that were undertaken and the results thereof;
- (d) the evidence gathered from the Complaint and from the inquiry;
- (d) if mediation has failed and the Complaint became the subject matter of an inquiry, the Commissioner's findings of fact regarding the Complaint, which findings shall be made in accordance with the civil standard of the balance of probabilities;
- (e) if mediation has failed and the Complaint became the subject matter of an inquiry, 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 behaviour;
- (f) where the Commissioner decides that the Member has contravened the Code of Conduct or other procedures, rules or policies governing the member's ethical behaviour, the penalty under section 11.1, if any, that the Integrity Commissioner recommends that Council impose on the Member, including a copy of a letter of reprimand, if recommended, or a copy of the notice of suspension of remuneration, if recommended.

10.6 Where the Integrity Commissioner's delegate under section 14.1 decides that a Member has contravened the Code of Conduct or other procedures, rules or policies governing the Member's ethical behaviour, but that the Member was acting in accordance with the Commissioner's advice given under section 5.1 and had, before receiving this advice, disclosed to the Commissioner all the relevant facts that were known to the Member, the delegate shall so state in the report under section 10.1 and no penalty shall be imposed.

10.7 Where the Integrity Commissioner recommends to Council a penalty suspending the remuneration paid to a Member, the Integrity Commissioner shall state so in his or her report to Council.

10.8 Where the Integrity Commissioner has filed a report in respect of a mediation and/or an inquiry with the County Clerk under Section 10.1, the County Clerk shall place the report on the next available Council Agenda for Council's consideration and action.

11. PENALTIES

11.1 The penalties that Council may impose on a Member who contravenes the Code of Conduct or other procedures, rules or policies governing the Member's ethical behaviour shall be those authorized under subsection 223.4(5) of the *Municipal Act, 2001*, namely:

(i) a reprimand;

(ii) suspension of remuneration paid to the Member in respect of the Member's services for a period of up to 90 days.

The potential recourse available to the Integrity Commissioner against a Member who is the subject of a substantiated MCIA Complaint is only that prescribed in section 223.4.1(15) of the *Municipal Act, 2001* if the Integrity Commissioner has opted to file such application with a judge of the Superior Court.

11.2 A penalty imposed by Council on the Member takes effect immediately upon Council issuing the penalty unless otherwise directed by Council.

12. COMPLAINANT AND LEGAL CONFIDENTIALITY

12.1 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 County or not, that come into his or her possession or knowledge during the course of duties or the investigation as required by section 223.5 of the *Municipal Act, 2001*.

12.2 Pursuant to section 223.5(3) of the *Municipal Act, 2001*, the confidentiality of this complaints process prevails over the MFIPPA.

12.3 The Integrity Commissioner is entitled to have access to such information belonging to or used by the County, including legal advice that has been

given to Council or County Employees, as the Integrity Commissioner deems necessary to conduct an inquiry.

- 12.4 A disclosure to the Integrity Commissioner of legal advice:
- (a) shall be deemed not to constitute a waiver of solicitor-client privilege;
 - (b) shall be used only for the purpose of conducting an inquiry and not for any other purpose; and
 - (c) 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 Commissioner, including his or her delegate under section 14.1.
- 12.5 The Integrity Commissioner and every person acting under the instructions of the Commissioner, including his or her delegate under section 14.1:
- (a) shall preserve the secrecy of all confidential documents, material or information, whether belonging to the County or not, that come into their possession or to their knowledge in the course of their duties; and
 - (b) without limiting the obligation to preserve secrecy under section 12.4(a), shall ensure that by his or her actions and, in particular, any reports prepared comply at all times with the MFIPPA and with the Council Procedural By-Law No. 33 of 2014, regarding personal and/or privileged information.

13. COMPLAINT AND REPORTING EXCLUSION PERIOD

- 13.1 Despite any other provision of this bylaw,
- (a) no Code/Ethics Complaint may be referred to the Integrity Commissioner during that period prescribed in s. 223.4(8) and (9) of the *Municipal Act, 2001*; and
 - (b) no MCIA Complaint may be submitted or referred to the Integrity Commissioner during that period prescribed in s. 223.4.1(3) of the *Municipal Act, 2001*.

- 13.2 If the Integrity Commissioner receives a Complaint as described within section 13.1, the Integrity Commissioner shall not commence to investigate said Complaint unless the person or entity who filed the Complaint requests in writing, within the timelines prescribed in s. 223.4(8) and s. 223.4.1(5) of the *Municipal Act, 2001*, that the Integrity Commissioner investigate the Complaint.
- 13.3 The Integrity Commissioner shall not make any reports to Council regarding an inquiry in the 150 calendar days prior to a regular municipal election.

14. INTEGRITY COMMISSIONER CONFLICT

- 14.1 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.
- 14.2 In making a delegation under section 14.1, 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.

15. GENERAL PROVISIONS

- 15.1 If the Integrity Commissioner, when conducting a mediation or inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act, other than the *Municipal Conflict of Interest Act*, or of the *Criminal Code of Canada*, R.S.C. 1985, c. C-46, the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the mediation and/or inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension of the inquiry to Council.
- 15.2 If the Integrity Commissioner, when conducting an inquiry, determines that the Complaint is more appropriately addressed under the MFIPPA, the Complainant shall be referred to the County Solicitor or the County's FOI Coordinator to have the matter reviewed under said Act.

15.2 Appendix A, being the Complaint Form, which is attached to this By-Law, forms a part of it.

16. Coming Into Force and Repeal of By-Law No. 21 of 2015

16.1 This By-Law comes into force on May 1st, 2019. By-Law No. 21 of 2015 is repealed upon the coming into force of this By-Law.

THIS BY-LAW read a first, second and third time and finally passed this 1st day of May, 2019.

Bill Weber
Warden

Stéphane Thiffeault
Clerk