

The Corporation of the Township of Huron-Kinloss



BY-LAW

2020-109

Being a By-Law to Establish the Office of Integrity Commissioner and a Process for Hearing Complaints Regarding Elected Officials of the Township of Huron-Kinloss

WHEREAS Section 223.3 of the *Municipal Act, 2001*, S.O. 2001, c.25 (the "*Municipal Act*"), authorizes municipalities to appoint an Integrity Commissioner who performs functions with respect to the application of the Code of Conduct for Members of Council and Local Boards, the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (the "*Municipal Conflict of Interest Act*"), and other procedures, rules or policies governing their ethical behavior;

AND WHEREAS Sections 223.4 to 223.8 of the *Municipal Act* provide that an Integrity Commissioner appointed under section 223.3 has certain powers, duties and protections, including the powers of a commission under Sections 33 and 34 of the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6 (the "*Public Inquiries Act*"), 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*;

AND WHEREAS Sections 8, 9 and 11 of the *Municipal Act* authorize municipalities 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 Sections 23.1 and 23.2 of the *Municipal Act, 2001* authorize municipalities to delegate its powers and duties, including legislative and quasi-judicial powers under the *Municipal Act* to an individual who is an officer, employee or agent of the County;

AND WHEREAS The Township of Huron-Kinloss desires to provide for an Integrity Commissioner to help 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, the *Municipal Conflict of Interest Act*, and any other applicable procedures, rules or policies;

NOW THEREFORE the Council of The Corporation of the Township of Huron-Kinloss 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 the Clerk of the Township of Huron-Kinloss;

- 2.3 “Code of Conduct” means Council Code of Conduct as it applies to Members of Huron-Kinloss Council and Local Boards as approved by Council and as it existed on the date of the event or events giving rise to a complaint;
- 2.4 “Complaint” means a request by a person that the Integrity Commissioner conduct an inquiry into an event or series of events alleged to contravene the Code of Conduct, the *Municipal Conflict of Interest Act*, or any other procedures, rules or policies governing the ethical behavior of Members of Council. Except as provided, a Complaint 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 Township of Huron-Kinloss’ Council;
- 2.7 “Employee” shall mean a person employed by the Township, including those employed on personal service contracts and volunteers, but does not include members of Council;
- 2.8 “Integrity Commissioner” shall mean the person appointed by Council to provide independent and consistent advice, complaint investigation and resolution services respecting the application of the Code of Conduct, the *Municipal Conflict of Interest Act*, and any other procedures, rules or policies governing the ethical behaviour of Members of Council and Local Boards;
- 2.9 “Local Board” means a local board other than,
- a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*;
 - b) a board of health as defined in subsection 1 (1) of the *Health Protection and Promotion Act*;
 - c) a committee of management established under the *Long-Term Care Homes Act, 2007*;
 - d) a police services board established under the *Police Services Act*;
 - e) a board as defined in section 1 of the *Public Libraries Act*;
 - f) a corporation established in accordance with section 203 of the *Municipal Act*;
 - g) such other local boards as may be prescribed;
- 2.10 “Member” means any Member of Council, and includes the Mayor, and any Member of a Local Board.

3. Appointment of Integrity Commissioner

- 3.1 Council shall appoint an Integrity Commissioner to investigate alleged breaches of the Code of Conduct, the *Municipal Conflict of Interest Act*, or any other procedures, rules or policies governing the ethical behavior of Members of Council and Local Boards;
- 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 consisting of “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 their 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, the Integrity Commissioner next appointed shall complete the inquiry;
- 3.5 The Integrity Commissioner may be removed before the expiry of their 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

The role of the Integrity Commissioner is to help ensure that Members perform their functions in accordance with the Code of Conduct, the *Municipal Conflict of Interest Act*, and other procedures, rules or policies governing their ethical behavior. In addition, the Integrity Commissioner may, upon request of Council or a Member, provide advice and rulings on ethical challenges, issues and dilemmas, as detailed in section 5.

- 5. Duties of Integrity Commissioner
 - 5.1 The Integrity Commissioner reports to Council and is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:
 - a) The application of the Code of Conduct for Members of Council and Local Boards;
 - b) The application of any procedures, rules and policies of Council and Local Boards governing the ethical behaviour of Members of Council and of Local Boards;
 - c) The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to Members of Council and of Local Boards;
 - d) Requests from Members of Council and of Local Boards for advice respecting their obligations under the Code of Conduct applicable to the Member;
 - e) 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;
 - f) Requests from Members of Council and of Local Boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*;
 - g) The provision of educational information to Members of Council, Members of Local Boards, the municipality and the public about the County's Code of Conduct for Members and about the *Municipal Conflict of Interest Act*;
 - 5.2 In addition to the duties listed in section 5.1, the Integrity Commissioner shall have the following responsibilities:
 - a) At least once per term of Council, deliver an oral presentation to Members of Council 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 behavior;

- b) 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;
- c) Prepare and deliver an annual report to Council containing a summary of activities, if any, during the previous calendar year;
- d) Serve as a proactive educator for Council, Members of local boards, the County and the public about the County's Code of Conduct for Members of Council and Members of local boards.

6. Making a Complaint

- 6.1 Any legal person may act as a Complainant;
- 6.2 Complaints can be made by filing a sworn/affirmed affidavit, as provided in Appendix B to the Code of Conduct, directly with the Integrity Commissioner, Chief Administrative Officer or Clerk;
- 6.3 Where a complaint is filed with the Chief Administrative Officer or Clerk, that individual is to forward the complaint to the attention of the Integrity Commissioner, without added comment, on a forthwith basis;
- 6.4 A complaint shall not be made available to the public except as may be required under the MFIPPA or as completed by Order of a court of competent jurisdiction.

7. Limitation Period

- 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 the last event of a series of events in which the subject matter of the complaint occurred;
- 7.2 Notwithstanding Section 7.1 the Integrity Commissioner may proceed with an inquiry in regard to a complaint which is filed after the expiry of the time limit under Section 7.1 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;
- 7.3 A complainant is deemed to have known the matters referred to in Section 7.1 on the date the event, or series of events, occurred, unless the contrary is proven, the onus of proof lies upon the complainant.

8. Conduct of Inquiry

- 8.1 When a complaint is received by the Integrity Commissioner, they shall conduct an inquiry promptly, thoroughly and in a manner that ensures the Member(s) who is the subject of the complaint is given an opportunity to know the nature of the complaint against them and to make representation respecting the complaint to the Integrity Commissioner;
- 8.2 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;
- 8.3 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* including the power to conduct or not conduct an inquiry under the *Public Inquiries Act*;

- 8.4 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 Member's ethical behavior, they shall stay the inquiry into the complaint;
- 8.5 Before staying an inquiry under Subsection 8.4 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 behavior;
- 8.6 Where the complainant provides additional information under Section 8.5 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 behavior;
- 8.7 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 behavior, the Integrity Commissioner shall lift the stay and conduct the inquiry;
- 8.8 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, they shall not conduct an inquiry, or where that becomes apparent in the course of an inquiry, shall terminate the inquiry;
- 8.9 Where, pursuant to Section 8.4 the Integrity Commissioner decides not to proceed with an inquiry they shall prepare and file a report under Section 8.1 which applies with necessary modifications, setting out that decision.

9. Conduct of Inquiry – *Municipal Conflict of Interest Act*

- 9.1 This section applies if the Commissioner conducts an inquiry under the *Municipal Conflict of Interest Act*;
- 9.2 An elector, as defined in section 1 of the *Municipal Conflict of Interest Act*, or a person demonstrably acting in the public interest may apply in writing to the Commissioner for an inquiry to be carried out concerning an alleged contravention of section 5, 5.1 or 5.2 of that Act by a member of council or a member of a local board;
- 9.3 No application for an inquiry under this section shall be made to the Commissioner during the period of time starting on nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act, 1996*, and ending on voting day in a regular election, as set out in section 5 of that Act;
- 9.4 An application may only be made within six weeks after the applicant became aware of the alleged contravention;
- 9.5 Despite subsection 9.4, an application may be made more than six weeks after the applicant became aware of the alleged contravention if both of the following are satisfied:
 - a) The applicant became aware of the alleged contravention within the period of time starting six weeks before nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act*,

1996, SO 1996, C.32 (the "*Municipal Elections Act, 1996*") and ending on voting day in a regular election, as set out in section 5 of that Act;

- b) The applicant applies to the Commissioner under subsection (2) within six weeks after the day after voting day in a regular election, as set out in section 5 of the *Municipal Elections Act, 1996*;

- 9.6 An application shall set out the reasons for believing that the member has contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* and include a statutory declaration attesting to the fact that the applicant became aware of the contravention not more than six weeks before the date of the application or, in the case where an applicant became aware of the alleged contravention during the period of time described in paragraph 1 of subsection 9.5, a statutory declaration attesting to the fact that the applicant became aware of the alleged contravention during that period of time;
- 9.7 The Commissioner may conduct such inquiry as they consider necessary;
- 9.8 If the Commissioner decides to conduct an inquiry, the Commissioner may have a public meeting to discuss the inquiry;
- 9.9 The Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, in which case those sections apply to the inquiry;
- 9.10 The municipality and its local boards shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry;
- 9.11 The Commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality or a local board that the Commissioner believes to be necessary for an inquiry;
- 9.12 If the Commissioner has not completed an inquiry before nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act, 1996*, the Commissioner shall terminate the inquiry on that day;
- 9.13 If an inquiry is terminated under subsection 9.12, the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election, as set out in section 5 of the *Municipal Elections Act, 1996*, the person who made the application or the member or former member whose conduct is concerned applies in writing to the Commissioner for the inquiry to be carried out;
- 9.14 The Commissioner shall complete the inquiry within 180 days after receiving the completed application, unless the inquiry is terminated under subsection 9.12;
- 9.15 Upon completion of the inquiry, the Commissioner may, if they consider 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 that Act;
- 9.16 The Commissioner shall advise the applicant if the Commissioner will not be making an application to a judge;
- 9.17 After deciding whether or not to apply to a judge, the Commissioner shall publish written reasons for the decision;
- 9.18 The Commissioner's costs of applying to a judge shall be paid by the following:

- a) If the member is alleged to have contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* as a member of council of a municipality, the municipality;
- b) If the member is alleged to have contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* as a member of a local board, the local board.

10. Member Responsibilities During Investigations

- 10.1 Where the Integrity Commissioner has received a complaint regarding a Member, they shall, on the earliest date after they have made a decision and no later than 60 days after receiving the complaint, prepare and file with the Clerk a report to Council regarding their 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 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 7.1, the Integrity Commissioner's findings regarding Sections 7.3 and 7.4, which findings shall be in accordance with the civil standard of the balance of probabilities;
 - c) The evidence gathered from the complaint and from the inquiry;
 - d) 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) 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;
 - 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 behavior, the penalty under Section 11.1, 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;
- 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 behavior, 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 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;
 - 10.8 The Treasurer shall ensure the remuneration of the Member is suspended in accordance with the notice of the Clerk under Section 10.5 f);
 - 10.9 Where the Integrity Commissioner has filed a report in respect of an inquiry with the Clerk under Section 10.1 the Clerk shall place the report on the next available Council Agenda as an information item.

11. Penalties

- 11.1 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 Subsection 223.4(5) of the *Municipal Act, 2001*, including:
 - a) A reprimand;
 - b) Suspension of the remuneration paid to the Member in the respect of his or her services as a Member of Council or of the local board, as the case may be, for a period of up to 90 days.

12. Complaint and Legal Confidentiality

- 12.1 The Integrity Commissioner and any person acting under their authority shall preserve the confidentiality of all documents, material or other information, whether belonging to the Township or not, that come into their possession or knowledge during the course of duties or the investigation as required by Section 223.5 of the *Municipal Act*;
- 12.2 Pursuant to Section 223.5(3) of the *Municipal Act*, 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 Township, including legal advice that has been given to Council or Township 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 purposes 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 the Township of Huron-Kinloss Procedure By-law, regarding personal and or privileged information.

13. Complaint and Reporting Exclusion Period

- 13.1 If the Commissioner has not completed an inquiry before nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act, 1996*, the Commissioner shall terminate the inquiry on that day;
- 13.2 If an inquiry is terminated under subsection 13.1, the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election, as set out in section 5 of the *Municipal Elections Act, 1996*, the person or entity who made the request or the member or former member whose conduct is concerned makes a written request to the Commissioner that the inquiry be commenced;
- 13.3 The following rules apply during the period of time starting on nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act, 1996*, and ending on voting day in a regular election, as set out in section 5 of that Act:
 - a) There shall be no requests for an inquiry about whether a member of council or of a local board has contravened the code of conduct applicable to the member;
 - b) The Commissioner shall not report to the municipality or local board about whether, in his or her opinion, a member of council or of a local board has contravened the code of conduct applicable to the member;
 - c) The municipality or local board shall not consider whether to impose the penalties referred to in subsection (5) on a member of council or of a local board.

14. Integrity Commissioner Conflict

- 14.1 The Integrity Commissioner shall, in writing, delegate their duties to conduct an inquiry, including the exercise of powers under the Public Inquiries Act, 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 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*, R.S.C., 1985, c. C-46, the 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;
- 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 Clerk to have the matter reviewed under that Act;

16. That By-Law No. 2017-121 is hereby repealed.
17. This by-law shall come into full force and effect upon final passage.
18. This By-law may be cited as the "Integrity Commissioner By-law".

READ a FIRST and SECOND TIME this 19th day of October, 2020.

READ a THIRD TIME and FINALLY PASSED this 19th day of October, 2020.



Mitch Twolan, Mayor



Emily Dance, Clerk