
REPORT ON ACTIVITIES: 1 JANUARY 2022 TO 31 DECEMBER 2023

Bruce P. Elman LL.D.
Integrity Commissioner
20 May 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. The Town of Amherstburg created the Office of the Integrity Commissioner on March 29th, 2016 and established a **Code of Conduct** (hereinafter referred to as the **Code of Conduct (2016)**), for Members of Council, including the Mayor and Deputy Mayor, and Members of certain Local Boards. On January 21st, 2015, Town Council passed a new *Procedural By-law 2014-91* for Town Council and its Committees and the Conduct of its Members.

In July of 2017, I was retained by the Town to serve as the Acting Integrity Commissioner on an emergency basis. Effective January 1st, 2018, under a unique arrangement between the City of Windsor and the Town of Amherstburg, I was jointly appointed to serve as the Integrity Commissioner for both the Town and the City. In January of 2020, the Municipality of Lakeshore joined Windsor and Amherstburg in this arrangement. This Agreement lasted until December 31st, 2021.

An amended **Code of Conduct**, entitled **Code of Conduct -- Council, Committees and Local Boards** (hereinafter referred to as **Code of Conduct (2020)**), was passed by Council on November 9th, 2020. Further amendments were made to the **Code of Conduct (2020)** in 2022. These amendments added a section (section 8.2) to the **Code** to protect Members when “Acting on the Advice of the Integrity Commissioner” and a section (section 9) prohibiting

“Reprisals or Obstruction in the Application or Enforcement” of the **Code of Conduct**. I will have more to say regarding these amendments further on in this Report.

Primary Functions of The Integrity Commissioner:

Section 1.2 of the **Code of Conduct (2020)**, under the heading “Policy Statement” notes: “The Town has appointed an Integrity Commissioner to investigate complaints against Members of Council pursuant to the **Code of Conduct – Council, Committees and Local Boards** and any procedures, rules and policies of the Town and local boards governing the ethical behaviour of Members of Council, Committees or Local Boards. In addition, it is expected that the Integrity Commissioner will provide advice on ethical issues to individual Members and Council as a whole and will engage in education and training with all of those subject to the Code of Conduct policy.” (The role of the Integrity Commissioner is, further, delineated in section 6.2 of the **Code of Conduct (2020)**).

Generally, 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. Indeed, the newly enacted **Code of Conduct – Council, Committees and Local Boards** represents an example of the Integrity Commissioner’s involvement in the Town’s response to Provincial legislative initiatives.

PART II – AMENDMENTS TO NEW CODE OF CONDUCT -- COUNCIL, COMMITTEES AND LOCAL BOARDS

Amendments to the Code of Conduct:

On November 9th, 2020, a new Code of Conduct titled **Code of Conduct -- Council, Committees and Local Boards** was passed by Council. As Integrity Commissioner, I had worked closely with Paula Parker, then Municipal Clerk, and Kevin Fox, then Policy and Committee Co-ordinator, to develop the revised **Code of Conduct (2020)** for the Municipality. Shortly after the new **Code** was passed, however, it became apparent that we needed to add two further provisions to the **Code**: first, a provision that would protect Members who sought out, and subsequently followed, the advice of the Integrity Commissioner; and, second, a provision that would safeguard the application and enforcement of the **Code of Conduct (2020)** from interference from Reprisals, the threat of Reprisals, and Obstruction. It should be noted that in my last Report, I suggested that we would need to make these amendments.

Council passed these amendments at the Regular Council Meeting on June 27, 2022. Section 8.2.1 provides the following:

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, as long as:

8.2.1.1. All of the relevant facts known to the Member were disclosed to the Integrity Commissioner; and,

8.2.1.2. The Member has acted in accordance with the written advice provided, as determined through the sole discretion of the Integrity Commissioner.

The purpose of this amendment is clear: on matters involving the **Code of Conduct (2020)** and the *Municipal Conflict of Interest Act (MCIA)*, we want to encourage Members to seek out the Advice of the Integrity Commissioner. This provision incentivizes the Member to do so.

Section 9 of the **Code of Conduct (2020)** states that “Every Member must respect the integrity of the Code of Conduct . . . and shall cooperate in every way possible in securing compliance with its application and enforcement.” It goes on to **provide the following:**

9.2. Any reprisal or threat of reprisal against a complainant or any other person for providing relevant information to the Integrity Commissioner, or any other person, is prohibited.

9.3. It is also a violation of this policy to obstruct the Integrity Commissioner, or any other municipal official involved in applying or furthering the objectives or requirements of this policy, in the carrying out of such responsibilities, or pursuing any such objective.

The purpose behind this provision is equally clear: we want protect the integrity of the **Code of Conduct** process – its application and enforcement – and, to do so, reprisals, the threat of reprisals, and obstruction must be strictly prohibited.

These are important amendments that will make the **Code of Conduct (2020)** even stronger and more effective.

PART III – THE EDUCATION FUNCTION

Education and Training:

Following the Municipal Elections held in October of 2018, the Town instituted a robust Program of Education and Training. Knowing that the next Municipal Election would be held in October of 2022, I recommended in my 2021 Report 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, following the 2022 Elections. I further recommended that Education and Training on both the *Municipal Conflict of Interest Act (MCIA)* and the **Code of Conduct (2020)** 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.

I am pleased to note that a Education and Training was provided to the newly-elected Council on November 29th, 2022 and to Members of Local Boards and Committees on February 28th, 2023 and April 19th, 2023.

As a general comment, I would say that the Educational role of the Integrity Commissioner is essential, 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 (2020)** and, now, the *Municipal Conflict of Interest Act*.

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 (2020)**. Providing advice, on both the **Code of Conduct (2020)** and the *Municipal Conflict of Interest Act (MCIA)*, is a key function of the Integrity Commissioner and can often head-off **Code** violations. This is the reason, noted earlier, underlying Council's decision to add section 8.2 (Acting on the Advice of the Integrity Commissioner) to the **Code of Conduct (2020)** -- to recognize the importance of the Advice function and incentivize its use.

Formal Letters of Advice:

During the previous Reporting period (January 1st, 2020 to December 31st, 2021), I issued fourteen (14) Formal Letters of Advice. Of these, thirteen (13) were issued to Members of Council and one was issued to a member of the Senior Administration. Half of the letters (7) concerned issues involving Conflict of Pecuniary Interests. In the current Reporting period

(January 1st, 2022 to December 31st, 2023), I issued eleven (11) Formal Letters of Advice. All were issued to Members of Council. Nine (9) involved Pecuniary Interests.

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, pursuant to section 8.2, the Member will be protected from any Complaint that may be brought under the **Code of Conduct (2020)**.

The dramatic increase in requests for Formal Letters of Advice that occurred in 2020 – 2021 has continued in the period of 2022 – 2023. This indicates the importance that Members of Council place on matters of integrity generally and their desire, individually and collectively, to adhere to the Rules found in the **Code of Conduct (2020)**. It is always preferable to provide Advice rather than investigate Complaints. Further, as I noted in my last Report, the high number of requests for Letters of Advice, demonstrates that the relationship between Members of Council and the Integrity Commissioner has developed into one based upon mutual respect and trust.

Advisory Bulletins:

During the previous Reporting period, I issued three Advisory Bulletins. The purpose of the Advisory Bulletins is, in part, educative but also preventative. The Advisory Bulletins are intended to provide guidance to Members of Council and others to whom the **Code** applies so that they can avoid violations of the **Code**.

During the current Reporting period, three new Advisory Bulletins were created. The new Advisory Bulletins are as follows:

1. *Advisory Bulletin Regarding Pecuniary Interest in Land* (April 15th, 2022);
2. *Advisory Bulletin Regarding 2022 Election-Related Activities* (August 19th, 2022); and
3. *Advisory Bulletin Regarding Member Conduct and Statements Concerning Council Decisions* (November 25th, 2022).

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 link to the Advisory Reports is found at: <https://www.amherstburg.ca/en/town-hall/advisory-bulletins.aspx>.

Brief Advice:

In the previous Reporting period, there were twenty-one (21) 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. Formal Letters of Advice are generally not provided except where the Member requests one.

In this Reporting Period, there were thirty-four (34) instances of Brief Advice. The issues raised in these instances of Brief Advice include: Conflict of Pecuniary Interest, Confidentiality, Undue Influence, Bias, Conduct of Members, and so forth.

PART V – INQUIRIES AND COMPLAINTS

Complaint Files:

There were six (6) Complaints filed during this Reporting period – the same as for the last Reporting period. (One Complaint included a number of, what I will call, “sub-Complaints”, all against the same Member. For the purpose of reporting, this File has been treated as one Complaint.) Five (5) of the Complaints were in regard to Members of Council; one was in regard to a Member of a Committee. Of the six Complaints, one was abandoned, one was upheld, and four (4) were denied.

Brief Service:

There were fourteen (14) 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

The only Policy initiative during the Reporting period involved the Amendments of the **Code of Conduct (2020)**, which were noted earlier. These Amendments were designed to deal with situations where (1) Members were acting on the Advice of the Integrity Commissioner; (2) Reprisals or the Threat of Reprisals was present; and (3) instances of Obstruction occurred.

PART VII – CONCLUSION

It has been my great pleasure to serve as the Integrity Commissioner for the Town of Amherstburg for more than five years. Members of Council and Members of Local Boards, Agencies and Committees appointed by Council have conducted themselves in a highly professional manner and have lived up to their commitments under the **Code of Conduct (2020)** to “protect and maintain the Town of Amherstburg’s reputation and integrity”. I have appreciated the respect accorded me by Members of Council and the support and friendship I have received from Senior Staff especially the CAO, Valerie Critchley, and the Clerk, Kevin Fox. Thank you.

It has been an honour to serve as the Integrity Commissioner for the Town of Amherstburg.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce P. Elman". The signature is fluid and cursive.

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:

Office of the Integrity Commissioner
271 Sandwich Street South
Amherstburg, Ontario N9V 2A5
Tel: (519)-736-0012
Email: integrity@amherstburg.ca