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# INTEGRITY COMMISSIONER REPORT TO COUNCIL ON ACTIVITIES FROM 1 NOVEMBER 2020 TO 31 DECEMBER 2021

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Integrity Commissioner  
31 March 2022

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## 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 1<sup>st</sup>, 2007. The Municipality of Lakeshore created the Office of the Integrity Commissioner pursuant to *By-law 22-2019* on the 19<sup>th</sup> of February 2019 (Effective December 1<sup>st</sup>, 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 12<sup>th</sup>, 2017). The **Complaint Management Protocol** – Schedule “A” to *By-law 106-2019* – was passed by Council on the 10<sup>th</sup> of September 2019. As I will discuss further on in this Report, a revised Code of Conduct, entitled **Code of Conduct for Members of Council, Local Boards and Committees**, was passed by Council on April 20<sup>th</sup>, 2021 [*By-law 35-2021*].

In July of 2019, I was asked to serve as the Acting Integrity Commissioner for the Municipality of Lakeshore. On the 10<sup>th</sup> of December 2019, Council appointed me as Integrity Commissioner pursuant to *By-law 137-2019* (Effective January 1<sup>st</sup>, 2020). 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 was pleased to have been the first individual to serve as the Integrity Commissioner for all three Municipalities under this unique, shared services

arrangement. This contract took effect on the 1<sup>st</sup> of January 2020 and continued until the 31<sup>st</sup> of December 2021.

My first Report to Lakeshore Council – entitled an “Update on Activities” – covered the period from my appointment to October 31<sup>st</sup>, 2020. This Report may be found at this link:

<https://www.lakeshore.ca/en/municipal-services/resources/Integrity-Commissioner---Update-on-Activities.pdf>. The current Report covers the period from November 1<sup>st</sup>, 2020 to December 31<sup>st</sup>, 2021.

### **Primary Functions of the Integrity Commissioner:**

The *raison d’être* for the Office of Integrity Commissioner can be found in the Preamble to the **Code of Conduct for Members of Council, Local Boards and Committees (“Code of Conduct”)** which states, in part: “The public is entitled to expect the highest standards of conduct from the Members it elects to local government and from those appointed by the elected Members to Local Boards and Committees. Encouraging high standards of conduct on the part of all government officials will assist in improving the quality of public administration and governance. Adherence to these standards will, furthermore, protect and maintain the Municipality of Lakeshore’s reputation for integrity and stability.”

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** itself, or as the Municipality responds to legislative initiatives or policy developments from the Province of Ontario.

On the importance of a Code of Conduct, the Preamble continues: “A written Code of Conduct helps to ensure that all Members of Council, Local Boards, and Committees share a common understanding of acceptable conduct. **The Code of Conduct for Members of Council, Local Boards, and Committees** provides the principles of good conduct and ethics that Members are expected to demonstrate in the performance of their duties. These standards are based on the principles of integrity and respect, objectivity and justice, responsibility and accountability, and openness and transparency.”

## PART II – DEVELOPMENT OF THE CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND COMMITTEE

### **Revision of the Code of Conduct:**

As Integrity Commissioner, I worked closely with Ms. Kristen Newman, the Director of Legislative and Legal Services, to develop a revised Code of Conduct for the Municipality. This revision was prompted, in part, by recent amendments to the *Municipal Act 2001*, the *Municipal Conflict of Interest Act (MCIA)*, and the *Municipal Election Act*.

The new Code, entitled the **Code of Conduct for Members of Council, Local Boards, and Committees**, applies to all Members of Council, including the Mayor and Deputy Mayor, and to Council appointees to Local Boards, Agencies, and Committees. This new **Code of Conduct** is based upon the following Key Principles: Honesty and Integrity; Accountability; Responsibility; Leadership; Respect and Civility; and Openness.

The **Code of Conduct for Members of Council, Local Boards, and Committees** is comprehensive. It supplements the provincial legislative regime and the Municipality’s *Procedural By-law*. In addition to a fairly lengthy Preamble and Statement of Key Principles, the **Code of Conduct** begins with sections on “Application” and “Interpretation”. Substantive provisions – the “Standards of Conduct” -- 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 for Members of Council, Local Boards, and Committees**. Section 18.0 prohibits a Member from engaging in “Reprisals” and “Obstruction”; Section 19.0 provides a defence to a **Code of Conduct** Complaint if the Member has been “Acting on the Advice of the Integrity Commissioner”; and Section 20.0 deals with “Compliance and Sanctions”. Section 20.2 sets out the Penalties that may be imposed for a breach of the **Code of Conduct** and Section 20.3 provides other actions that may be taken for remedial purposes.

Finally, the **Code of Conduct for Members of Council, Local Boards, and Committees** is clear and accessible. One key feature of this **Code** is the inclusion of “Commentaries” which provide further information and examples to ensure a better understanding of the **Code’s** provisions.

## PART III – 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 19<sup>th</sup> of November 2019, approximately 3 weeks prior to my official 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.

Adoption of the new **Code of Conduct for Members of Council, Local Boards, and Committees** presented two other educational opportunities for the Integrity Commissioner and Members of Council – one occurred when the development of the **Code**, its concept and structure, was discussed at Council on December 6<sup>th</sup>, 2020 and the other when the draft provisions were placed before Council for adoption on April 20<sup>th</sup>, 2021.

In October, 2022, a Municipal Election will be held. Once the new Council has been sworn-in and appointments have been made to Local Boards and Council Committees, a more robust Education and Training Program should be instituted. This should involve an in-depth discussion with Members of Council regarding the new **Code of Conduct** using examples drawn from other Municipalities. Materials and a Power Point Presentation should be developed for this session. The Council training should 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 should 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.

The first line of prevention against violations of **Code of Conduct** is Education and Training. It should be given a high priority following the next Municipal Election.

### **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 2019, 2020, and 2021. These presentations are somewhat lengthier than the Training sessions noted above as they provide the students with a thorough (academic) examination of the Municipal integrity regime.

## 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 is a key function of the Integrity Commissioner and can often head-off **Code of Conduct** violations. Indeed, in many municipalities including Lakeshore, the **Code of Conduct** recognizes the importance of the Advice function and incentivizes its use. The **Code of Conduct** of Lakeshore, 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, as long as all of the relevant facts known to the Member were disclosed in writing to the Integrity Commissioner prior to the written advice being requested.” 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.

### **Requests for a Formal Letter of Advice:**

During the previous 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.

During this Reporting period, November 1<sup>st</sup>, 2020 to December 31<sup>st</sup>, 2021, there were four (4) Requests for Formal Letters of Advice. Three of these involved Members of Council and one involved a senior member of Administration. Two letters concerned the interpretation of

certain provisions in the *Municipal Conflict of Interest Act (MCIA)*, one concerned conduct at a Meeting of Council, and one concerned section 8.2 of the **Code of Conduct for Members of Council, Local Boards, and Committees**.

### **Advisory Bulletins:**

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 member of the public have raised with me or represent issues that have been recognized by other Municipal Integrity Commissioners as being of public importance. 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.

During the previous Reporting period, I issued one Advisory Bulletin. 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>.

During the current Reporting period, I issued an *Advisory Bulletin on Conflict of Interest*. This Advisory Bulletin may be found at this link: <https://www.lakeshore.ca/en/municipal-services/resources/Documents/Advisory-Bulletin---Conflict-of-Interest.pdf>.

**Brief Advice:**

Instances of Brief Advice 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.

During the 10-month period from January 1<sup>st</sup>, to October 31<sup>st</sup>, 2020, there were four (4) instances of Brief Advice. During the current Reporting period, there were five (5) requests for Brief Advice.

## PART V – INQUIRIES AND COMPLAINTS

**New Files:**

During the previous Reporting period, between January 1<sup>st</sup>, 2020 and October 31<sup>st</sup>, 2020, two (2) new Complaint files were opened. 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.

During the current Reporting period, November 1<sup>st</sup>, 2020 to December 31<sup>st</sup>, 2021, there were no new Complaint files opened.

**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” denotes neither the amount of total time expended in providing the service nor the number of exchanges between the individual and the Integrity Commissioner during the course of providing the service; rather it simply indicates that the Integrity Commissioner was contacted but that no File was opened as a result of my responses.

During the previous Reporting period, aside from instances of “Brief Advice” provided to Members of Council and Senior Staff, there were three (3) instances of Brief Service. During the current Reporting period, there were five (5) instances of Brief Service.

## PART VI – CONCLUSION

**FIRST**, I am pleased that Council adopted the new **Code of Conduct for Members of Council, Local Boards, and Committees** in April of 2021. I believe the new **Code** is comprehensive, understandable, and accessible.

**SECOND**, regarding the Integrity Commissioner’s Advisory function, I am pleased that Members of Council have sought out the Integrity Commissioner’s counsel when they have some questions or concerns about the appropriate course of action in a difficult ethical situation. There was a slight increase in the number of Requests for Formal Letters of Advice as well as instances of Brief Advice. In my view, this aspect of the Integrity Commissioner’s work will continue to grow, particularly because Integrity Commissioners are now empowered to provide advice on the *Municipal Conflict of Interest Act (MCIA)*.

**THIRD**, I continue to believe that Advisory Bulletins are a useful and effective means of conveying advice to Members of Council, Local Boards, and Committees. Furthermore, because the Advisory Bulletins are posted on the Integrity Commissioner's webpage, they are available to the public. In this way, members of the public have the same information as Members of Council and can assess their Council's conduct accordingly. I recommend the continued use of this vehicle for dispensing advice to Members of Council, Local Boards, and Committees.

**FOURTH**, it should be noted that, apart from providing advice to Members, the work of the Integrity Commissioner is, essentially "Complaint driven". I would have expected that following the appointment of an Integrity Commissioner and the passing of a new **Code of Conduct**, there would have been an increase in the number of Complaints or, at least, inquiries about filing a Complaint. This has not turned out to be the case. The fact that there have been no Complaints and not even many inquiries over the past two and a half years is both satisfying and concerning. On the one hand, it could mean that Members of Council, Boards and Committees are conducting themselves in a professional and ethical manner. On the other hand, however, it could mean that residents of the Municipality either have not been made sufficiently aware of the Municipal Integrity Regime or they do not have confidence in it. I prefer to believe that Members of Council have, generally, been conducting themselves in a professional and ethical manner but I do believe that greater efforts should be made to bring the existence of the Municipal Integrity Regime to the attention of the residents of Lakeshore.

**FIFTH**, Municipal Elections will be held in October of 2022. Following the installation of the new Council and their appointment of individuals to Local Boards, Agencies, and Committees, greater emphasis should be placed on an enhanced and vigorous program of Education and Training for all Members of Council as well as members of Local Boards, Agencies, and Committees appointed by Council. Education and Training for elected Members of Council and Appointees should be mandatory.

**FINALLY**, it has been an honour to serve as the Integrity Commissioner for the Municipality of Lakeshore for the past two and a half years.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce P. Elman". The signature is fluid and cursive, with the first name "Bruce" being the most prominent.

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