

The Corporation of the Municipality of Brockton

By Law 2017-101

Being a By-Law to Establish the Office of Integrity Commissioner and a Process for Hearing Complaints Regarding Elected Officials of the Municipality of Brockton.

Whereas Section 223.3 of the Municipal Act, 2001, S.O. 2001, c.25, authorizes the Municipality of Brockton (the “Municipality”) to appoint an Integrity Commissioner who performs functions with respect to the application of the Code of Conduct for Members of Council and other procedures, rules or policies governing their ethical behavior;

And Whereas Section 223.4 to 223.8 of the Municipal Act, 2001, S.O. 2001, c.25 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 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, 2001;

And Whereas Sections 8, 9 and 11 of the Municipal Act, 2001, S.O. 2001, c.25, authorize the Municipality 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, S.O. 2001, c.25, authorize the Municipality to delegate its powers and duties, including legislative and quasi-judicial powers under the Municipal Act, 2001, S.O. 2001, c.25 to an individual who is an officer, employee or agent of the Municipality;

And Whereas The Municipality of Brockton desires to provide for an Integrity Commissioner to help ensure that Members of Council conform to ethical standards of behavior in carrying out their duties and are held to account for the adherence to the Code of Conduct and any other applicable procedures, rules or policies;

Now Therefore the Council of The Corporation of the Municipality of Brockton enacts as follows:

1. Definitions

- 1.1 “Censure” means an official expression of disapproval or condemnation;
- 1.2 “CAO/Clerk” shall mean the CAO/Clerk of the Municipality of Brockton;
- 1.3 “Code of Conduct” means Council Code of Conduct as it applies to Members of Brockton Municipal Council as approved by Council and as it existed on the date of the event or events giving rise to a complaint;
- 1.4 “Complaint” means 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 behavior of Members of Council. Except as provided, must include a sworn/affirmed affidavit;
- 1.5 “Complainant” means a person who makes a complaint;
- 1.6 “Council” shall mean the elected officials who constitute the Municipality of Brockton Council;
- 1.7 “Employee” shall mean a person employed by the Municipality, including those employed on personal service contracts and volunteers, but does not include members of Council;

- 1.8 “Good Faith” shall mean accordance with standards of honesty, trust and sincerity;
- 1.9 “Integrity Commissioner” shall mean the person appointed by Council to provide independent and consistent complaint investigation and resolution services respecting the application of the Code of Conduct;
- 1.10 “Member” means any Member of Council, and includes the Mayor;
- 1.11 “Municipality” means the Corporation of the Municipality of Brockton
- 1.12 “Municipal Act” means the Municipal Act, 2001, S.O. 2001, Chapter 25;
- 1.13 “Municipal Elections Act” means the Municipal Elections Act, 1996, S.O. 1996, c. 32, Schedule.
- 1.14 “MFIPPA” means the Municipal Freedom of Information and Protection of Privacy Act R.S.O. 1990, c. M56, as amended; and,
- 1.15 “Public Inquiries Act” means the Public Inquiries Act, 2009, S.O. 2009, c. 33, Sched. 6

2. Appointment of Integrity Commissioner

- 2.1 Council shall appoint an Integrity Commissioner to investigate alleged breaches of the Code of Conduct or any other procedures, rules or policies governing the ethical behavior of Members of Council. The candidate search, screening and hiring process shall be led by the Clerk of Bruce County in conjunction with certain lower tier Clerks. The recommended candidate for Integrity Commissioner will be reviewed by the Municipal CAO/Clerk and will be referred to Council for its approval.
- 2.2 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.
- 2.3 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 the necessary modifications.
- 2.4 If the Integrity Commissioner is unable to complete an inquiry in accordance with subsection 2.3, the Integrity Commissioner next appointed shall complete the inquiry.
- 2.5 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.

3. 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 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 by section 5.1 c) or 5.1 d).

4. Duties of Integrity Commissioner

4.1 The Integrity Commissioner shall have the following responsibilities:

- a) At least once per term of Council, deliver an oral presentation to Members of Council and local boards 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, in writing, to individual Members regarding their ethical obligations and responsibilities under their Code of Conduct and any other procedures, rules or policies governing their ethical behavior.
- c) 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.
- d) Prepare and deliver an annual report to Council containing a summary of activities, if any, during the previous calendar year.
- e) Serve as a proactive educator for Council, Members of local boards, the Municipality and the public about the Municipality's Code of Conduct for Members of Council and Members of local boards and about the Municipal Conflict of Interest Act.

5. Making a Complaint

5.1 Any legal person may act as a Complainant.

5.2 Complaints can be made by filing a sworn/affirmed affidavit, in accordance with the current Council Code of Conduct, directly with the Integrity Commissioner, or Chief Administrative Officer/Clerk.

5.3 Where a complaint is filed with the Chief Administrative Officer/Clerk, that individual is to forward the complaint to the attention of the Integrity Commissioner, without added comment, on a forthwith basis.

5.4 Where a complaint is filed by an Employee, Member of Council, or by Council, the affidavit contained in Appendix B to the Code of Conduct is not required, however the provision of equivalent information and particulars is required.

5.5 A complaint shall not be made available to the public except as may be required under the MFIPPA or as completed by Order of Court.

6. Limitation Period

6.1 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 are the subject matter of the complaint occurred.

6.2 Notwithstanding Section 6.1 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 6.1 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.

6.3 A complainant is deemed to have known the matters referred to in Section 6.1 on the date the event, or series of events, occurred, unless the contrary is proven, the onus of proof lies upon the complainant.

7. Conduct of Inquiry

- 7.1 When a complaint is received by the Integrity Commissioner, he or she 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 him or her and to make representation respecting the complaint to the Integrity Commissioner.
- 7.2 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.
- 7.3 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 conduct an inquiry under the Public Inquiries Act, 2009.
- 7.4 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, he or she shall stay the inquiry into the complaint.
- 7.5 Before staying an inquiry under Subsection 7.4 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.
- 7.6 Where the complainant provides additional information under Section 7.5 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.
- 7.7 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.
- 7.8 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.
- 7.9 Where, pursuant to Section 7.4 the Integrity Commissioner decides not to proceed with an inquiry he or she shall prepare and file a report under Section 8.1 which applies with necessary modifications, setting out that decision.

8. Member Responsibilities During Investigations

- 8.1 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 60 days after receiving the complaint, prepare and file with the Municipal CAO/Clerk a report to Council regarding their inquiry into the complaint.
- 8.2 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.

- 8.3 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 8.1 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.
- 8.4 The Integrity Commissioner shall provide a copy of their report filed under Section 8.1 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 Municipal CAO/Clerk.
- 8.5 The report filed under Section 8.1 shall include:
- a) The nature of the complaint;
 - b) If the complaint was filed after the expiry of the time limit under Section 6.1, the Integrity Commissioner's findings regarding Sections 6.3 and 6.4, 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 9.1, 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.
- 8.6 Where the Integrity Commissioner's delegate under Section 12.1 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 4.1 c) 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 8.1 and no penalty shall be imposed.
- 8.7 Where the Integrity Commissioner recommends a penalty suspending the remuneration paid to a Member, and Council approves the recommendation, the Municipal CAO/Clerk shall notify the Treasurer of the suspension and the time period of the suspension.
- 8.8 The Treasurer shall ensure the remuneration of the Member is suspended in accordance with the notice of the Municipality Clerk under Section 8.5 f).
- 8.9 Where the Integrity Commissioner has filed a report in respect of an inquiry with the Municipal CAO/Clerk under Section 8.1 the Municipal CAO/Clerk shall place the report on the next available Council Agenda as an information item.
- 9. Penalties**
- 9.1 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.

10. Complaint and Legal Confidentiality

- 10.1 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 Municipality 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.
- 10.2 Pursuant to Section 223.5(3) of the Municipal Act, 2001, the confidentiality of this complaints process prevails over the MFIPPA.
- 10.3 The Integrity Commissioner is entitled to have access to such information belonging to or used by the Municipality of Brockton, including legal advice that has been given to Council or Municipal Employees, as the Integrity Commissioner deems necessary to conduct an inquiry.
- 10.4 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 12.1.
- 10.5 The Integrity Commissioner and every person acting under the instructions of the Commissioner, including his or her delegate under Section 12.1:
 - a) Shall preserve the secrecy of all confidential documents, material or information, whether belonging to the Municipality 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 10.4 a) shall ensure that by his or her actions and, in particular, any reports prepared comply at all times with the MFIPPA and the Municipality of Brockton Procedural By-law, regarding personal and or privileged information.

11. Complaint and Reporting Exclusion Period

- 11.1 Despite any other provision of this By-law, no complaint may be referred to the Integrity Commissioner 150 calendar days immediately prior to the date of a regular election held pursuant to the Municipal Elections Act, 1996, S.O. 1996, c. 32, Schedule.
- 11.2 If the Integrity Commissioner receives a complaint as described within Section 11.1, the Integrity Commissioner shall not commence to investigate said complaint until the day after the next municipal election.
- 11.3 The Integrity Commissioner shall not make any reports to Council regarding an inquiry in the 150 calendar days prior to a regular municipal election.

12. Integrity Commissioner Conflict

- 12.1 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, the duty to report on an inquiry, where the Integrity Commissioner has an actual or apparent conflict of interest.
- 12.2 In making a delegation under Section 12.1 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.

13. General Provisions

- 13.1 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.
- 13.2 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 Municipal CAO/Clerk to have the matter reviewed under that Act.

14. Coming into Force

- 14.1 This by-law shall come into full force and effect upon final passage.

15. Short Title

- 15.1 This by-law may be cited as the "Integrity Commissioner By-Law"

Read, Enacted, Signed and Sealed this day of 27th day of November, 2017.

David Inglis, Mayor

Debra B. Roth, CAO/Clerk