

Municipality Of Chatham-Kent

Corporate Services

Municipal Governance

To: Mayor and Members of Council
From: Judy Smith, Director, Municipal Governance/Clerk
Date: January 21, 2022
Subject: 2021 Integrity Commissioner Report

Recommendation

It is recommended that:

1. The Integrity Commissioner 2021 Annual Report be received for information.

Background

The purpose of this report is to fulfill a requirement within the Code of Conduct for Members of Council. "The Integrity Commissioner shall provide an annual report to Council which shall include:

- the number of instances in which the Integrity Commissioner provided written advice to a member with respect to interpretation of this *Code of Conduct*,
- complaints received but determined to be not within the jurisdiction of the Integrity Commissioner,
- complaints deemed to be frivolous, vexatious, *de minimus*, not made in good faith, or where there were insufficient grounds to investigate,
- complaints investigated and number of reports written, and
- total costs of investigations annually, including all fees and disbursements by the Integrity Commissioner,

but shall not disclose information that could identify a person concerned."

Comments

Mary Ellen Bench was appointed as the Integrity Commissioner/Closed Meeting Investigator for the Municipality of Chatham-Kent for a two-year period beginning November 27, 2019 and extended for one additional year to November 25, 2022.

The 2021 annual report (Appendix A) is for the period of January 1, 2021 to December 31, 2021.

Areas of Strategic Focus and Critical Success Factors

The recommendation in this report supports the following areas of strategic focus:

- Economic Prosperity:
Chatham-Kent is an innovative and thriving community with a diversified economy
- A Healthy and Safe Community:
Chatham-Kent is a healthy and safe community with sustainable population growth
- People and Culture:
Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community
- Environmental Sustainability:
Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendation in this report supports the following critical success factors:

- Financial Sustainability:
The Corporation of the Municipality of Chatham-Kent is financially sustainable
- Open, Transparent and Effective Governance:

The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership
- Has the potential to support all areas of strategic focus & critical success factors
- Neutral issues (does not support negatively or positively)

Consultation

No other department was consulted.

Financial Implications

There are no financial implications at this time.

Prepared by:

Reviewed by:

Judy Smith, CMO
Director, Municipal Governance/Clerk

Cathy Hoffman, MPA, CHRL
General Manager, Corporate Services/
Chief Human Resource Officer

Attachment (1)

1. Appendix A – 2021 Integrity Commissioner Annual Report

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Municipality of Chatham-Kent
Integrity Commissioner
Annual Report, for the year 2021

I was appointed Integrity Commissioner and closed meeting investigator for the Municipality of Chatham-Kent effective November 27, 2019. The purpose of this report is to advise Council of my activities as Integrity Commissioner, during 2021. My appointment covers Council as well as the agencies, boards and committees (collectively referred to as "Council") that report through Council. It has been a distinct pleasure to serve as Integrity Commissioner for the Municipality of Chatham-Kent. 2021 continued to be challenging as a result of the impact of Covid-19 and the need to conduct a significant amount of core municipal business, including council and committee meetings, on-line. Despite the challenges this environment has continued to place on municipalities, I have received full support and access to corporate records and information from staff whenever I have asked for it. Staff and members of Council that I have interacted with have all been very professional and helpful.

The *Code of Conduct* is a living ethics document that members of Council have considered and have endorsed and is intended to supplement the provisions of the *Municipal Conflict of Interest Act* in a way that makes sense locally, to be used to guide Councillor conduct. The *Code of Conduct* is also intended to uphold values that support the principles of open, accountable and transparent government reflected in the *Municipal Act, 2001*. As a living document, the Code of Conduct is intended to reflect the values that members of Council believe are core to how they conduct themselves in office, knowing that Council will be measured against these values.

The duties assigned to me as Integrity Commissioner are set out in Section 223.3 of the *Municipal Act, 2001* and Section 18 of the *Municipality of Chatham-Kent Code of Conduct for Members of Council* as follows:

- Providing advice to members of Council, individually or collectively, respecting the application of the *Code of Conduct* and the *Municipal Conflict of Interest Act*, or other policies that govern the ethical behaviour of members of Council;
- Providing educational information to members of Council about the *Code of Conduct*, the *Municipal Conflict of Interest Act* and other matters related to the ethical conduct of members of council;
- Assessing and investigating where appropriate, formal written complaints respecting alleged contraventions of the *Code of Conduct* to determine whether the complaint is within the jurisdiction of the Integrity Commissioner, whether it is substantive or if it is something that could be characterized as frivolous and vexatious, and whether it is within the public interest to pursue either formally or informally;
- Determining whether a member of Council or local board has in fact violated a protocol, by-law or policy governing their ethical behaviour, including this *Code of Conduct*, with the final decision-making authority resting with Council as to whether the recommendation(s) of the Integrity Commissioner are imposed;
- Providing Council, through the Municipal Clerk, with written reports following investigations and otherwise annually, which the Clerk shall include on the next public meeting agenda of Council.

The *Municipal Act, 2001* is clear that I perform my duties independently. Most of the work of an Integrity Commissioner is done in a way that protects the confidentiality of councillors, complainants and others who use the services of this office. There are legislative requirements respecting confidentiality and when confidential information can be released, meaning disclosure is rare. The assurance of confidentiality encourages full disclosure from those who engage in any way with an Integrity Commissioner.

Over the course of the year, I have responded to the following matters:

Requests for advice from members of Council: 7

Requests from advice from members of the public: 0

Complaints received and determined not within my jurisdiction: 2

Complaints dismissed without investigation: 2

Complaints investigated: 1 (agency, board, committee complaint)

Complaint about an agency, board, committee member: 2

Council attendance and staff meeting: 1

Council educational session: 0

Total costs, including all fees by the Integrity Commissioner: \$ 7000.

As set out above, I continued to receive requests for advice from members of Council prior to a matter that could be considered a conflict, being discussed at a Council meeting. I consider this my most important role, assisting to prevent breaches of the *Code of Conduct* or the *Municipal Conflict of Interest Act*. When asked to provide advice to individual members of Council, it is on a confidential basis, however the member of Council may choose to disclose the advice given, and I have no concerns with sharing the advice provided but would add that before others rely on it, please consider that it is fact-specific advice. It is my practice to confirm in writing the facts explained to me and the advice given, so that members of Council can rely on my advice as a defence if their actions are challenged, as provided for in section 223.3(2.2) of the *Municipal Act, 2001*. Proactive advice can assist elected officials and those appointed to boards and committees, and I look forward to responding to more requests going forward.

In regard to complaints received from the public, two matters raised related to policy decisions of Council that the complainants did not agree with. It is not the role of the Integrity Commissioner to question policy decisions made by Council. I had a similar complaint raised last year and perhaps it would assist the public if there was more information on the webpage to guide the public as to what the role of Council is, and why policy decisions are not reviewable by the Integrity Commissioner.

The one investigation conducted raised questions about the interpretation of certain provisions of the *Code of Conduct* as it applies to committee members. This also raised questions about the relationship between the committee and Council related to the meaning of conflict as defined by the *Municipal Conflict of Interest Act*. Staff were very cooperative in providing access to the documents needed to complete the investigation and the parties were raised excellent questions related to their role and Council's in decision-making. A formal investigation was not required, and the matter was resolved through communications with the parties and without a written report.

Last year, I had one recommendation for Council asking that consideration be given to moving forward with a social media policy and guidelines for members of Council, and in this regard I expressed the need for care in responding to staff advice, comment and debate with each other, as well as sharing information with the public using social media. I was pleased to see that these guidelines are now in place. I can report that only one complaint was received respecting comments made in social media this year and when the background material was received from the complainant, no investigation was required.

2022 is an election year and section 223.4 (7) to (9) the *Municipal Act, 2001* contains very strict rules that prohibit investigations and reporting by the Integrity Commissioner or consideration of a penalty by Council after nomination day (May 2, 2022) until after voting day (October 24, 2022). I will not be investigating complaints or providing any reports to Council during that time as a result. If complaints are partially investigated before nomination day, the investigation will be put on hold, and I will reach out to the complainant after election day to determine if the matter should be pursued. The legislation continues to allow for education and policy assistance to be provided and for members of Council to make inquiries of the Integrity Commissioner during that time, however.

I would recommend that following the municipal election consideration be given to providing training to the new Council and also to those appointed to the agencies, boards and commissions of Chatham-Kent respecting their obligations under the Code of Conduct and the *Municipal Conflict of Interest Act*.

In conclusion, as it is an election year, I strongly encourage members of Council to continue to seek advice if they have a doubt respecting how to apply the Code of Conduct to any given situation.

I would like to thank the Clerk for her professionalism and for her assistance where required to access municipal records and staff.

Respectfully submitted,



Mary Ellen Bench, BA, JD, CS, CIC.C

Municipality of Chatham-Kent

Integrity Commissioner

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