

Department:	Council	Policy Number:	C08-01687
Subject:	Code of Conduct	Effective Date:	22/03/16
Bylaw No:	2921/19	Revision Date:	25/06/19
		Version #:	3



## **PREAMBLE**

Members of Council have the privilege of attaining elected office. That privilege carries significant responsibilities and obligations with respect to the public trust. In order to strengthen the role of Council and to enhance public trust with respect to the obligations of its Members, this Code is established to govern and regulate the ethical conduct of all Members. This Code also supplements other existing Federal and Provincial legislation and Town by-laws and policies that govern Members' conduct which include but are not limited to the following:

- Criminal Code of Canada
- Municipal Act
- Municipal Conflict of Interest Act
- Municipal Freedom of Information and Protection of Privacy Act
- Occupational Health and Safety Act (Violence and Harassment in the workplace)
- Ontario Human Rights Code
- Planning Act
- All bylaws and policies approved by Council of the Town of Espanola

## **1. PURPOSE AND PRINCIPLES**

- 1.1 The Code sets out and identifies the Town's expectations for its Members and establishes rules for appropriate conduct.
- 1.2 The public expects the highest moral and ethical standards of conduct from Members that it elects. The behaviour and actions of Members is expected to reflect the principles of accountability, transparency, and public trust. Adherence to these standards will protect and maintain the Town's reputation and integrity.
- 1.3 The key statements of principle that underline this Code are as follows:
  - (a) the decision-making process of Council is open, accessible and equitable and respects the Town's governance structure;
  - (b) public office is not to be used for the personal financial benefit of any Member;
  - (c) Town residents should have confidence in the integrity of their local government and of their Members; and

- (d) the conduct of each Member demonstrates fairness, respect for differences and a duty to work with other Members together for the common good.

## 2. DEFINITIONS

### 2.1 In this Code:

- (a) "**Applicant**" means a person who has applied for an investigation by the Integrity Commissioner of an alleged contravention of the *Municipal Conflict of Interest Act*;
- (b) "**Application**" means a written request for an investigation with respect to an alleged contravention of the *Municipal Conflict of Interest Act*;
- (c) "**Clerk**" means the Clerk of the Town or his/her designate;
- (d) "**Code**" means the "Code of Conduct for Council Members" as established by Council pursuant to Section 223.2 of the *Municipal Act, 2001*;
- (e) "**Complainant**" means a person who has filed a complaint in accordance with this Code;
- (f) "**Complaint**" means a written objection filed with the Integrity Commissioner pursuant to this Code respecting a Member;
- (g) "**confidential information**" means any information in the possession of or received in confidence by the Town that the Town is prohibited from disclosing or has decided to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act* or other legislation, which includes but is not limited to:
  - (i) information that is disclosed or discussed at a meeting that is closed to the public pursuant to subsection 239(2) of the *Municipal Act, 2001*;
  - (ii) information that is given verbally in confidence in preparation for or following a meeting that is closed to the public pursuant to subsection 239(2) of the *Municipal Act, 2001*;
  - (iii) personal information as defined in subsection 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act*;
  - (iv) advice that is subject to solicitor-client privilege or information that concerns litigation or potential litigation, including matters before administrative tribunals, affecting the Town;
  - (v) information that concerns any confidential matters pertaining to personnel, labour relations, or items under negotiation;
  - (vi) price schedules in contract tenders and information about suppliers provided in contract tender or requests for information, quotation or proposal submissions, if such information is given in confidence, implicitly or explicitly;
  - (vii) sources of Complaints or Applications where the identity of the Complainant or Applicant is given in confidence; or
  - (viii) any information lawfully determined by the Council to be confidential or required to remain or be kept confidential by legislation or order.
- (h) "**Council**" means the Council of the Corporation of the Town of Espanola.
- (i) "**gift**" means cash, fees, admission fees, advances, vouchers, invitations, objects of value, services, offers, personal benefits, travel and

- accommodation or entertainment that are provided to and retained by a Member, that could be seen to be connected directly or indirectly to the performance of the Member's duties;
- (j) "**harassment**" or "**harass**" involves engaging in a course of behaviour, comment or conduct, whether it occurs inside or outside the work environment, that is or ought reasonably to be known to be unwelcome. It includes but is not limited to any behaviour, conduct or comment by a Member that is directed at or is offensive to another person:
    - (i) on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status, as well as any other grounds under the provisions of the Human Rights Code; or
    - (ii) which is reasonably perceived by the recipient as an intention to bully, embarrass, intimidate or ridicule the recipient.
  - (k) "**Integrity Commissioner**" means the Integrity Commissioner appointed by Council pursuant to Section 223.3 of the *Municipal Act, 2001*;
  - (l) "**Local Board**" is hereby defined as in Section 1(1) and Section 223.1 of the *Municipal Act*, as amended.
  - (m) "**meeting**" means any legally-constituted meeting of Council or a Local Board;
  - (n) "**Member**" means a member of Council including the Mayor, or a member of a local Board;
  - (o) "**social media**" means web-based applications and on-line forums that allow users to interact, share and publish content such as text, links, photos, audio and video;
  - (p) "**staff**" means direct employees of the Town whether full-time, part-time, contract (including employees of staffing agencies) or casual (including students and volunteers);
  - (q) "**Town**" means the Corporation of the Town of Espanola; and
  - (r) "**Town property**" includes, but is not limited to, all real and personal property, facilities, vehicles, equipment, supplies, services, staff, documents, intellectual property, computer programs or technological innovations belonging to the Town.

### 3. CONDUCT OF MEMBERS

A Member shall at all times conduct themselves with propriety, decency and respect and with the understanding that all members of the public, other Members and staff are to be treated with dignity, courtesy and respect, recognizing that a Member is always a representative of the Town and of their elected office. A Member shall at all times conduct themselves with decorum and in accordance with the Town's Procedure By-law during any meetings and in a manner that demonstrates fairness, respect for individual differences, and an intention to work together for the common good and in furtherance of the public interest.

#### **4. COMPLIANCE WITH THE CODE OF CONDUCT**

4.1 This Code applies to every Member. This Code shall be applied to members of Local Boards, who are not members of Council, with necessary modifications applied in the discretion of the Integrity Commissioner.

4.2 A Member shall:

- (a) observe and comply with every provision of this Code, as well as all other policies and procedures adopted or established by Council affecting the Member, acting in his or her capacity as a Member;
- (b) respect the integrity of the Code and inquiries and investigations conducted under it; and
- (c) co-operate in every way possible in securing compliance with and enforcement of the Code.

4.3 No Member shall:

- (a) undertake any act of reprisal or threaten reprisal against a Complainant, Applicant or any other person for providing relevant information to the Integrity Commissioner or any other person; or
- (b) obstruct the Integrity Commissioner, or any other municipal official involved in applying or furthering the objectives or requirements of this Code, in the carrying out of such responsibilities, or pursuing any such objective.

#### **5. TRANSPARENCY AND OPENNESS IN DECISION MAKING**

Members shall:

- (a) conduct Council business and their duties in an open and transparent manner so that stakeholders can understand the process and rationale which has been used to reach decisions;
- (b) ensure the public has input and receives notice regarding Council's decision making processes in accordance with the Procedure By-law;
- (c) ensure compliance with the *Municipal Act*, *Municipal Conflict of Interest Act*, *Municipal Freedom of Information and Protection of Privacy Act*, and other applicable legislation regarding open meetings, accountability and transparency.

#### **6. ACCESS TO INFORMATION AND CONFIDENTIALITY**

A Member shall:

- (a) only be entitled to have access to information in the possession of the Town that is relevant to matters before Council or a Committee or that is relevant to their role as Members of Council. Otherwise, they have the same access rights to information as any member of the public.  
and
- (b) have a continuing obligation to keep information confidential, even if the Member ceases to be a Member.

No Member shall:

- (a) obtain access, or attempt to gain access, to confidential information in the custody or control of the Town except in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*;
- (b) disclose, release or publish by any means, including social media any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so;
- (c) provide to any other person to disclose, release, publish any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so;
- (d) use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body;  
or
- (e) disclose or discuss, through written, electronic or verbal communication, to any individual or corporate third party, any information that has been or will be discussed at a closed session meeting of Council or a Committee until such time that Council or a Committee has determined or has been advised by staff that the matter, or any part of the matter, can be made public subject to review by the head or designate under the *Municipal Freedom of Information and Protection of Privacy Act* or if directed to do so by a court.

## **7. UNDUE USE OF INFLUENCE**

No Member shall use their status as a Member of Council to improperly influence the actions or decisions of staff or others to the private advantage of the Member or his or her family, employees or business associates.

## **8. STAFF RELATIONS**

8.1 Only Council as a whole and no single Member including the Mayor, has the authority to direct employees, approve budgets, policy, and other such matters, unless specifically authorized by Council.

8.2 A Member shall:

- (a) respect staff and acknowledge that staff is required to provide objective advice while remaining neutral, carry out directions of council as a whole, and administer the policies of the Town without undue influence from any Member.
- (b) Respect the administrative structure and direct any staff performance concerns through the appropriate supervisory staff.

- 8.3 No Member Shall:
- (a) maliciously or falsely impugn the professional or ethical reputation of any staff;
  - (b) compel staff to engage in partisan political activities, or subject staff to threat or discrimination for refusing to engage in such activities; or
  - (c) use their authority or influence to threaten, intimidate, or coerce staff or improperly interfere the lawful exercise of the duties of staff.
- 8.4 A Member shall act in accordance with Policy C08-01871 Council Staff Relations.

## **9. GIFTS**

- 9.1 No Member shall accept a gift or personal benefit that is connected directly or indirectly with the performance of their duties unless authorized by one of the exceptions below.
- 9.2 Notwithstanding Section 9.1 the following exceptions are applicable:
- (a) gifts received as an incident of protocol or social obligation that normally accompany the responsibilities of elected office;
  - (b) gifts that are not connected directly or indirectly with the performance or duties of office;
  - (c) compensation authorized by law;
  - (d) a reimbursement of reasonable expenses incurred in the performance of activities connected with a legitimate municipal purpose;
  - (e) political contributions that are otherwise offered, accepted and reported in accordance with applicable law;
  - (f) services provided without compensation by persons volunteering their time;
  - (g) a suitable memento of a function with nominal value, honouring the Member or the Town;
  - (h) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political sub-divisions of them, and by the federal government or the government of a foreign country;
  - (i) food, beverages and/or admission fees provided by banquets, receptions or similar events if attendance is the result of protocol or social obligation consistent with the responsibilities of office, and the person extending the invitation has done so infrequently and that person or a representative of the organization is in attendance.

## **10. USE OF TOWN PROPERTY**

- 10.1 A Member shall:
- (a) only use Town property for activities relevant to their role as Members of Council; and
  - (b) not obtain any personal financial gain or advantage from the use of Town property.

## **11. POLITICAL ACTIVITY**

11.1 Members may not use Town resources for any type of political activity during a municipal election and at any other time, including promoting or opposing the candidacy of any person to elected office in any municipal, provincial and federal campaign.

## **12. HARASSMENT**

No Member shall harass any other member, any staff, or any member of the public.

## **13. ENCOURAGEMENT OF RESPECT FOR THE TOWN AND ITS BY- LAWS**

13.1 A Member shall:

- (a) encourage the public, prospective contractors and members of the public, and their colleagues to abide by the Town's by-laws and policies, including this Code; and
- (b) accurately communicate the decisions of Council even if they disagree with the majority decision of Council, and by so doing affirm the respect and integrity in the decision-making processes of Council.

## **14. SOCIAL MEDIA**

14.1 A Member shall:

- (a) adhere to any and all Town policies and guidelines, regarding social media use; and
- (b) always identify themselves without any attempt to cover, disguise or mislead as to their identity or status as an elected representative of the Town when using social media.

14.2 No Member shall:

- (a) use social media to publish anything that is dishonest, untrue, offensive, disrespectful, constitutes harassment, is defamatory or misleading in any way.

## **15. ROLE OF THE INTEGRITY COMMISSIONER**

15.1 The Town shall appoint an Integrity Commissioner under Section 223.3 of the Municipal Act, 2001 who is an independent officer and who will report directly to Council and be responsible for carrying out his or her functions in accordance with the Municipal Act, 2001 and any other functions assigned by Council, in an independent manner.

15.2 The Integrity Commissioner shall provide the following services:

- (a) The application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them.

- (b) The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them.
- (c) The application of sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act to members of council or 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 municipality's code of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

## **16. COMPLAINT/APPLICATION PROCESS**

- 16.1 A complaint that a member has contravened the Code may be initiated by any person, any Member of Council, or by Council as follows:
- (a) a complaint shall be made in writing and shall be sent directly to the Integrity Commissioner by mail, e-mail, fax or courier;
  - (b) a complaint must be signed and dated by the complainant who shall be an identifiable individual (complaints may not be submitted by any group, organization or corporation);
  - (c) a complaint shall include:
    - (i) an explanation, with specific reference to sections of the Code, as to why the issue raised is alleged to be a contravention of the Code;
    - (ii) any evidence in support of the allegation; and
    - (iii) any witnesses in support of the allegation must be identified.
- 16.2 If filed with the Integrity Commissioner after March 1, 2019, an Application to the Integrity Commissioner to inquire into an alleged contravention of Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* ("MCIA") may be made by an elector as defined in Section 1 of the MCIA or by a person demonstrably acting in the public interest, as follows:
- (a) An application shall be made in writing and shall be sent directly to the Integrity Commissioner by mail, e-mail, fax or courier;
  - (b) An Application must be signed and dated by the complainant who shall be an identifiable individual (complaints may not be submitted by any group, organization or corporation);
  - (c) An Application shall include:



- (i) An explanation with specific reference to sections of the MCIA, as to why the issue raised is alleged to be a contravention of the Act;
  - (ii) any evidence in support of the allegation;
  - (iii) any witnesses in support of the allegation must be identified; and
  - (iv) a statutory declaration attesting to the fact that the Applicant became aware of the alleged contravention not more than six weeks before the date of application in accordance with Section 223.4.1 (5) & (6) of the *Municipal Act*, as amended.
- (d) An Application may only be made within six weeks after the Applicant became aware of the alleged contravention and otherwise in compliance with Section 223.4.1(5) & (6) of the *Municipal Act*, as amended.

16.3 The Integrity Commissioner shall undertake an initial review of a complaint that has been filed and shall determine whether the matter relates to non-compliance with the Code or other corporate policy applying to Members. The Integrity Commissioner shall have no power or jurisdiction to investigate or otherwise deal with the complaint, if the complaint is not alleging a contravention of the Code or other corporate policy applying to Members or if the complaint relates to the following matters:

- (a) **Criminal Matter** – if the complaint relates to an allegation of a criminal nature consistent with the Criminal Code, the complainant shall be advised that pursuit of such an allegation must be made through the appropriate police service;
- (b) **Municipal Freedom of Information and Protection of Privacy** – if the complaint relates to a matter under the Municipal Freedom of Information and Protection of Privacy Act, the complainant shall be referred to the Clerk.
- (c) **Municipal Elections Act** – if the complaint relates to the enforcement of the Municipal Elections Act, the complainant shall be referred to the Compliance Audit Process if the matter relates to campaign finances or to such other avenues of investigation as dictated by that Act.

16.4 If the Integrity Commissioner determines they do not have jurisdiction as described in Section 16.3 the Integrity Commissioner shall advise the complainant in writing accordingly.

16.5 The Integrity Commissioner may dispose of a complaint on the basis that it is not within the jurisdiction of the Integrity Commissioner in a summary manner and may do so confidentially or report same to Council. The Integrity Commissioner may also seek further information or clarification from the complainant and shall endeavour to apprise the complainant of subsequent steps and the processing of the complaint and any ensuing investigation.

- 16.6 If the Integrity Commissioner is of the opinion that a complaint is frivolous or vexatious or is not made in good faith, or that there are no grounds or insufficient grounds for conducting an investigation, the Integrity Commissioner may choose not to investigate or, if already commenced, may terminate any investigation, or may dispose of the complaint in a summary manner. The Integrity Commissioner shall advise the complainant in writing of his or her decision and reasons for not undertaking an investigation or terminating it.
- 16.7 If the Integrity Commissioner has decided to commence an investigation of a Complaint (except where otherwise required by the *Public Inquiries Act, 2009*, if applicable), or of an Application, the Integrity Commissioner shall provide a copy of the Complaint or Application and supporting evidence to the Member whose conduct is in question with a request for a written response to be provided within ten (10) days. The Integrity Commissioner may provide the response from the Member to the Complainant or Applicant with a request for a written reply also within ten (10) days.
- 16.8 The Integrity Commissioner shall review the written responses and may, if necessary discuss the matter with anyone that the Integrity Commissioner considers is relevant to the complaint. The Integrity Commissioner may access and examine any of the information described in subsections 223.4(3) and (4) of the *Municipal Act, 2001* and may access any Town workplace relevant to the complaint, including any documents or records under the custody or control of the Town.
- 16.9 Before finalizing a report to Council which recommends sanctions, the Integrity Commissioner shall provide the Member with the basis for their findings and any sanctions that may be recommended. The Member shall have the opportunity to comment further, either in writing, verbally or in person to the Integrity Commissioner on the proposed findings and sanctions.
- 16.10 Upon conclusion of a complaint investigation, the Integrity Commissioner shall:
- (a) issue a report to Council on the findings of the investigation and, where there is a finding of contravention of the Code, the report shall contain the detailed findings, any recommended sanctions, or any settlement; and
  - (b) provide a copy of the final report to the Member at the same time as the final report is made available to the Clerk and to the complainant at the same time as the report becomes public.
- 16.11 Upon conclusion of an Application investigation, the Integrity Commissioner may, if he/she considers 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 the Act.

16.12 The Integrity Commissioner shall:

- (a) advise the Applicant if he or she will not be making an application to a judge; and
- (b) after deciding whether or not to apply to a judge, provide a written report providing reasons for the decision.

16.13 The Integrity Commissioner's report on a complaint shall be placed on an agenda for consideration at a public meeting of the Committee of the Whole or Council, in accordance with the Procedure By-law, as determined by the Clerk in consultation with the Integrity Commissioner.

## **17. PENALTIES**

17.1 Upon receipt of a final report and the recommendations of the Integrity Commissioner, Council may, where the Integrity Commissioner has determined there was a violation of the Code, impose either of the following two (2) penalties:

- (a) a reprimand; or
- (b) suspension of remuneration paid to the Member in respect of his or her services as a Member for up to ninety (90) days.

17.2 Council may also take the following actions:

- (a) removal from membership of a Local Board;
- (b) removal as chair of a Local Board;
- (c) request the repayment of reimbursement of monies received;
- (d) request the return of property or reimbursement of its value;
- (e) request an apology.

## **18. INTERPRETATION**

18.1 This code shall be interpreted as follows:

- (a) the headings in the Code form no part of the Code but shall be deemed to be inserted for convenience of reference only;
  - (i) all changes in number and gender shall be construed as may be required by the context;
  - (ii) the reference to any Town official shall be deemed to include the Town official who performs the duties of such referenced person from time to time, including their delegates;
  - (iii) the reference to Integrity Commissioner shall be deemed to include any person who has been delegated powers and duties by the Integrity Commissioner in accordance with subsection 223.3(3) of the Municipal Act, 2001;
  - (iv) the reference to a statute or regulation, except as may be otherwise provided, shall be deemed to include such statute or regulation as may be amended or re-enacted from time to time

or its successor legislation, and, in each case, the regulations made from time to time pursuant thereto;

- (v) the reference to a by-law, resolution, policy or guideline made, enacted, established or adopted by the Town, including the Code, except as may be otherwise provided, shall be deemed to include such by-law, resolution, policy or guideline as may be amended or re-enacted from time to time or its successor by-law resolution policy or guideline made, enact, established or adopted from time to time; and
- (vi) if a court of competent jurisdiction should declare any section or part of a section of this Code to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this Code and it is hereby declared that the remainder of this Code shall be valid and remain in force.