



Administrative Report

Office of the Manager, Records and Accessibility/Deputy Clerk

To: Warden MacDonald and Members of Essex County Council

From: Katherine Hebert
Manager, Records and Accessibility/Deputy Clerk

Date: Wednesday, May 03, 2023

Subject: County Council Code of Conduct Review and Proposed Ontario Bill 5: Stopping Harassment and Abuse by Local Leaders Act, 2022

Report #: 2023-0503-LCS-R07-KH

Purpose

To provide Council with information regarding the County's Code of Conduct for Members of Council, Local Boards and Committee Members, as well as the Proposed Ontario Bill 5: Stopping Harassment and Abuse by Local Leaders Act, 2022.

Background

On March 15, 2023 Essex County Council received [communication, dated March 6, 2023, from the Municipality of Chatham-Kent](#) outlining a motion by their Council, supporting [Ontario Private Member's Bill 5: Stopping Harassment and Abuse by Local Leaders Act, 2022](#).

At the March 15, 2023 meeting, Council requested more information regarding the proposed Bill 5, and the County's [Council Code of Conduct](#).

Discussion

Code of Conduct

The County of Essex established a Council Code of Conduct under By-law 16-2008 that was repealed with the passing of [By-law 49-2016, A By-law to](#)

[Establish a Code of Conduct for Members of Council, Local Boards and Committee Members](#), which is the current by-law on the subject.

The [Municipal Act, 2001](#) Part V.1 Section 223.2 requires municipalities to adopt a Code of Conduct.

During the most recent review of the County of Essex Council Code of Conduct, a number of sample Codes of Conduct from other municipalities were reviewed.

The Council Code of Conduct is an added mechanism to provide additional accountability and transparency to the public.

Integrity Commissioner

Section 223.3 of the revised Municipal Act enables municipalities to appoint an Integrity Commissioner to oversee Code of Conduct as it relates to elected officials and members of local boards.

An integrity Commissioner has the power to investigate alleged contraventions of the Code and has the right of free access to all records of a municipality, a local board, or that of a member, in pursuit of that investigation.

An Integrity Commissioner can recommend a reprimand or suspension of pay for up to 90 days but Council must vote on whether to accept that recommendation.

The Integrity Commissioner is an independent and impartial council appointee who investigates complaints and alleged breaches of Council's Code of Conduct and who advises and educates Council members on its provisions. Robert Swayze is the Integrity Commissioner for the County of Essex. He was appointed in 2016.

Essex County Council has never had the need to utilize the services of an Integrity Commissioner for any complaints or investigations since the legislation was enacted.

Integrity Commissioner's Main Functions

- **Advisory:** Provide written and oral advice to members of Council about the Code of Conduct and other by-laws or policies governing ethical behaviour, including general interpretations of the Municipal Conflict of Interest Act and provide Council with general opinions and advice as ethical issues arise.
- **Investigative:** Assess and investigate Code of Conduct complaints made by an individual or by Council

- Adjudicative: Determine whether an infraction has occurred and recommend sanctions.
- Education: Publish an annual report on findings of typical advice and complaint cases. Provide outreach programs to council and members of staff. Promote public awareness of the office.

Upon last review of the County's Code of Conduct, Robert Swayze provided recommendations regarding content and formal/information complaint processes which have been incorporated. The content of this Code is reflective of the language and provisions included in many of the Codes of Conduct for the local municipal Councils within Essex County.

Under the Municipal Act, penalties of:

- 1) a reprimand
- 2) suspension of the remuneration paid to the member in respect of services as a member of council or of the local board, as the case may be, for a period of up to 90 days

may be imposed if an investigation of a purported incident by the County's Integrity Commissioner concludes that a violation of the Code of Conduct has taken place.

Other Related County of Essex Documents

Employee Code of Conduct

1993-001 the Employee Code of Conduct addresses as follows:

This Code clarifies the Corporation's expectations of its employees, and re-affirms our commitment to caring for our community's needs and maintaining fiscal responsibility on behalf of the public and our employees. It provides a guide for consistent behaviour in delivering services. In short, this Code is simply a formal statement of the policies and principles of conduct the Corporation has always embraced. Contravention of this Code is a serious matter to the Corporation and the public, and will be treated as such.

Council/Staff Relations Policy

2019-001 the Council/Staff Relations Policy addresses as follows:

The Corporation of the County of Essex will promote a respectful, tolerant and harassment-free relationship and workplace between Members of Council and the officers and employees of the Corporation, guided by the Code of Conduct for Members of Council, the Employee

Code of Conduct, the employee Harassment in the Workplace Policy, the Workplace Violence Policy, and the Procedure By-law.

Statements of Commitment

On an annual basis, the Warden and Chief Administrative Officer reiterate the statements of commitment regarding Violence, Harassment and Health and Safety for the County of Essex and sign the following documents:

1. Statement of Commitment – Workplace Violence Policy
2. Statement of Commitment – Harassment Policy
3. Statement of Commitment – Health and Safety Policy

Ontario Private Member's Bill 5: Stopping Harassment and Abuse by Local Leaders Act, 2022

[Stephen Blais \(Orléans\) – Ontario Liberal Party](#)

An Act to amend various statutes with respect to workplace violence and harassment policies in codes of conduct for councillors and members of local boards. This bill had [First Reading](#) on August 10, 2022.

The bill amends the [Municipal Act, 2001](#), and the [City of Toronto Act, 2006](#). It requires that codes of conduct for municipal councillors and members of local boards include requirements for those councillors and members to comply with workplace violence and harassment policies, and creates an integrity commissioner and judicial process to remove them from office for egregious acts of sexual, emotional and psychological misconduct.

No further information is available at this time.

Association of Municipalities of Ontario

AMO Calls for Legislation to Strengthen Municipal Codes of Conduct and Enforcement (Excerpt from March 27, 2023 Policy Update)

At its meeting on March 24th, 2023, the AMO Board reaffirmed its recommendations to the Minister of Municipal Affairs and Housing to strengthen municipal Codes of Conduct and compliance. AMO has written to the [Minister](#) and to the [Premier](#) to request new legislation to enact the recommendations.

In 2021, AMO was asked to provide recommendations to the Minister to strengthen the application of municipal Codes of Conduct for elected officials. AMO supplied a number of strong recommendations to the Minister including:

- Updating municipal Codes of Conduct to account for workplace safety and harassment
- Creating a flexible administrative penalty regime that could be adapted to the local economic and financial circumstances of municipalities across Ontario
- Increasing training of municipal Integrity Commissioners to enhance consistency of investigations and recommendations across the province
- Allowing municipalities to apply to a member of the judiciary to remove a sitting member if recommended through the report of a municipal Integrity Commissioner

On March 24th, 2023, the Board also approved a further recommendation to prohibit a member removed through application to a judge from running for election in the term in which removed and the subsequent term of office.

AMO's Board believes that ethical behaviour and respectful civil discourse are fundamental to continued public faith in democracy. The Board further believes that the current tools available to municipal councils to ensure such ethical behaviour and respectful discourse are inadequate and do not meet public expectations. The Board has called on the government to release the results of its 2021 consultations and to work in partnership with AMO and municipal governments to legislate the recommended changes.

AMO has provided sample resolution text for councils that wish to lend their support to this call.

Sample Wording from AMO:

Whereas, all Ontarians deserve and expect a safe and respectful workplace;

Whereas, municipal governments, as the democratic institutions most directly engaged with Ontarians need respectful discourse;

Whereas, several incidents in recent years of disrespectful behaviour and workplace harassment have occurred amongst members of municipal councils;

Whereas, these incidents seriously and negatively affect the people involved and lower public perceptions of local governments;

Whereas, municipal Codes of Conduct are helpful tools to set expectations of council member behaviour;

Whereas, municipal governments do not have the necessary tools to adequately enforce compliance with municipal Codes of Conduct;

*Now, therefore be it resolved that **(MUNICIPALITY NAME)** supports the call of the Association of Municipalities of Ontario for the Government of Ontario to introduce legislation to strengthen municipal Codes of Conduct and compliance with them in consultation with municipal governments;*

Also be it resolved that the legislation encompass the Association of Municipalities of Ontario's recommendations for:

- Updating municipal Codes of Conduct to account for workplace safety and harassment*
- Creating a flexible administrative penalty regime, adapted to the local economic and financial circumstances of municipalities across Ontario*
- Increasing training of municipal Integrity Commissioners to enhance consistency of investigations and recommendations across the province*
- Allowing municipalities to apply to a member of the judiciary to remove a sitting member if recommended through the report of a municipal Integrity Commissioner*
- Prohibit a member so removed from sitting for election in the term of removal and the subsequent term of office.*

Other

The County of Essex is in receipt of a number of pieces of correspondence from other Ontario municipalities, which address this matter. Those correspondence pieces are listed as item 12.3.1 on the May 3, 2023 County Council Meeting Agenda.

Financial Implications

There are no financial implications as a result of this report.

Consultations

The following people were consulted in the drafting of this report:

- David Sundin, County Solicitor
- Brady Boghean, Manager, Corporate Health and Safety

Recommendation

That Essex County Council receive report number 2023-0503-LCS-R07-MB, County Council Code of Conduct Review and Proposed Ontario Bill 5: Stopping Harassment and Abuse by Local Leaders Act, 2022, as information and further that, Essex County give consideration of support for Ontario Private Member's Bill 5: Stopping Harassment and Abuse by Local Leaders Act, 2022, or support the proposed resolution from AMO seeking the Province to enact legislation to strengthen municipal Codes of Conduct and compliance with them, in consultation with municipal governments.

Approvals

Respectfully Submitted,

Katherine Hebert

Katherine Hebert, Manager, Records and Accessibility/Deputy Clerk

Concurred With,

Mary Birch

Mary Birch, BA, CMO, Interim Chief Administrative Officer

Appendix	Title
I	Resolutions from Ontario Municipalities (See Item 12.3.1 on May 3, 2023 Agenda)