



Administrative Report

Office of the Director, Legislative and Community Services/Clerk

To: Warden MacDonald and Members of Essex County Council

From: Mary Birch
Director, Legislative and Community Services/Clerk

Date: Wednesday, November 15, 2023

Subject: Proposed New Essex County Council Code of Conduct – Question Responses

Report #: 2023-1115-LCS-R030-MB

Purpose

To provide Essex County Council with responses from the Integrity Commissioner to the questions/comments received from members of Council on the proposed new Essex County Code of Conduct and to recommend adoption of the new Code.

Background

At a special meeting of County Council held on October 18th, 2023, John Mascarin, from the law firm of Aird & Berlis, being the appointed Integrity Commissioner for the County of Essex, provided an introduction and education on a proposed new Code of Conduct for Essex County Council (Appendix B). At the regular meeting of County Council on October 18, 2023, following review of [Report 2023-1018-LCS-R24-KH](#), County Council indicated that they had some questions/comments on the proposed new Code of Conduct which required further responses from the Integrity Commissioner (IC) and County Administration. Council was provided with a two-week window to supply the Clerk's department with questions, which were subsequently sent to the IC for responses.

The questions/comments received are attached as Appendix A.

Discussion

Aird & Berlis provide IC Services for over 75 public sector organizations in Ontario. The proposed new Code of Conduct is provided by Aird & Berlis, as the County of Essex appointed IC and is adopted by the vast majority of their clients. This Code was drafted to reflect not only legislative requirements, but also to recognize recommendations which have resulted from multiple judicial inquiries.

Question 1 - The only question received from Members of County Council which proposed a change to the proposed Code, related to the definition of "Family". As indicated in Appendix A, the definition proposed in this Code of Conduct has expanded the deemed pecuniary interest provisions as it relates to 'family', from what is included in the Municipal Conflict of Interest Act. The proposed definition is based on the recommendation of the former Associate Chief Justice Fran Marrocco, from his *Transparency and the Public Trust – Report of the Collingwood Judicial Inquiry*.

Mr. Mascarin acknowledges that, in the experience of Aird & Berlis, most municipal codes of conduct throughout the province include a definition which is narrower and aligns with the definition in the Municipal Conflict of Interest Act, which is as follows:

"Interest of certain persons deemed that of member

*3 For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, **if known to the member**, be deemed to be also the pecuniary interest of the member. R.S.O. 1990, c. M.50, s. 3; 1999, c. 6, s. 41 (2); 2005, c. 5, s. 45 (3); 2021, c. 4, Sched. 11, s. 23 (4)."*

The emphasis on the "if known to the member", has been added for the purpose of this report to remind Council that, regardless of the definition of family, if the pecuniary interest is not known to the member, it is not then considered a pecuniary interest of that member.

The definition found in the current Essex County Code of Conduct (By-law 20-2019) for "Immediate Relative" is:

"4.10 "Immediate Relative" shall mean a parent, spouse, child, sister, brother, sister-in-law, brother-in-law, daughter-in-law, son-in-law, father-in-law, mother-in-law as well as step-relationships and half-relationships; spouse shall mean the person to whom a person is married or with whom the person is living in a conjugal relationship outside of marriage; this definition shall also include any other person(s) that are living with the employee on a full-time basis whom the member/employee (appropriate to the document) has

demonstrated a settled intention to treat as an Immediate Relative (and all others)."

Question 2 – Parts (a) through (e) and (g) requested clarification, which has been provided in the attached Appendix A.

Part (f) was a question posed for Administration. The County of Essex does not have a specific Council indemnification by-law or policy; however, Council is indemnified under the umbrella of the Corporate Insurance. Additional information regarding the extent of that coverage has been requested from the Insurance Broker and will be provided to County Council.

Part (g) was also a question which required some Administrative clarification. "The IC report to council each year - when does that come? Are they uploaded to our website after?" The requirement for an annual report from the IC is not mandatory and it is not something that County Council has requested in the past. In speaking with Mr. Mascarin, he advised that roughly 6 or 7 of his 75 IC clients request annual reports. For Essex County Council, because the contract for IC services with Aird & Berlis just began in September of 2023, he is recommending that if County Council does wish to have an annual report, that the first report would cover September 2023 to December 2024 and be provided in early 2025. County Council has an opportunity to determine at some point in 2024 if there is a desire to request an annual report, based on the amount of usage of IC Services. Any report of the IC would be available to the public on the County website.

Financial Implications

There are no financial implications to adopting the new Essex County Council Code of Conduct.

Consultations

The following individuals were consulted on this report:

- John Mascarin, Lead of the Municipal Accountability Team, Aird & Berlis (County of Essex Integrity Commissioner);
- Katherine Hebert, Manager Records and Accessibility/Deputy Clerk

Recommendation

That Essex County Council receive report number 2023-1115-LCS-R30-MB, Proposed New Essex County Code of Conduct – Question Responses; and,

That Essex County Council adopt By-law 2023-48, being a By-law to adopt a new Code of Conduct for Council Members, and Members of Local Boards attached hereto as Appendix B.

Approvals

Respectfully Submitted,

Mary Birch

Mary Birch, Director, Legislative and Community Services/Clerk

Concurred With,

Sandra Zwiers

Sandra Zwiers, MAcc, CPA, CA, Chief Administrative Officer

Appendix	Title
Appendix A	Council Code of Conduct Questions and Integrity Commissioner Responses.
Appendix B	Proposed new Essex County Council Code of Conduct

Appendix A

Council Questions/Comments Re: New Proposed Essex County Code of Conduct

Question 1: From Amherstburg Mayor Michael Prue:

“My only question refers to the definition of Family. The Province of Ontario always held this to two degrees of ‘consanguinity’ i.e. up to your parents and spouses’ parents and down to your children or step children. It also included the member and his/her spouse. Has the Province changed this definition? If not, I believe we should follow the definition imposed on MPP’s. If it has been changed we should follow the rules of the legislature. Expanding it to relatives one might never see is fraught with peril.”

• Integrity Commissioner Response to Question 1:

Section 3 of the *Municipal Conflict of Interest Act* (“MCIA”) contains a narrow familial circle which includes only a member’s (i) spouse, (ii) parents; and (iii) children.

In his report, *Transparency and the Public Trust – Report of the Collingwood Judicial Inquiry*, former Associate Chief Justice Fran Marrocco recommended an expansion of the deemed pecuniary interest provisions in the MCIA as follows:

13 The Province of Ontario should amend the Municipal Conflict of Interest Act to include an expanded group of family members. At a minimum, this should include:

- a. spouse, common-law partner, or any person with whom the person is living with as a spouse outside marriage;
- b. parent, including stepparent, and legal guardian;
- c. child, including stepchild;
- d. grandchild;
- e. siblings;
- f. aunt, uncle, nephew, niece, first cousins; and
- g. in-laws, including mother- and father-in-law, sister- and brother-in-law, and daughter- and son-in-law.

The definition of “family” in the *Members’ Integrity Act, 1994* is even more narrow than the MCIA:

“family”, when used with reference to a person, means,

- (a) his or her spouse and minor children, and
- (b) any other adult who is related to the person or his or her spouse, shares a residence with the person and is primarily dependent on the person or spouse for financial support;

The proposed definition of “family” in the draft Code of Conduct seeks to expand the definition as recommended in the Collingwood Judicial Inquiry Report which is simply a recommendation and not law.

In our experience, most municipal codes of conduct throughout the province include a narrower definition, primarily to align the codes of conduct with the MCIA.

Question 2: From Essex Mayor Sherry Bondy:

- a) “2.3 - Perform duties of office and arrange their private affairs in a manner that promotes public confidence and that will bear close public scrutiny. Can we please get an explanation or an example of this?”

- **Integrity Commissioner Response to Question 2) a):**

We can likely provide no better explanation of this key principle than to refer to the first three principles as set out in more detail in s. 1.1 of the MCIA:

Principles

1.1 The Province of Ontario endorses the following principles in relation to the duties of members of councils and of local boards under this Act:

1. The importance of integrity, independence and accountability in local government decision-making.
2. The importance of certainty in reconciling the public duties and pecuniary interests of members.
3. Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.

Members should always remember that they owe fiduciary obligations to the municipal corporation which requires them to always act in the best interests of the municipality and its electors. Members are entitled to have personal and private lives and businesses/undertakings but those should never interfere or impact the discharge of their public duties.

b) “5.2 - An individual member neither directs nor oversees the functions of the staff of the county. Does this include the Warden?”

• **Integrity Commissioner Response to Question 2) b):**

Primarily yes, except that the Warden – as head of Council for the County – does have certain unilateral executive powers (such as the chairing of Council meetings where she may direct County staff).

c) “8.2 - Members are only entitled to information in the possession of the County that is relevant to matters before Council. Does this tie Council’s hands when asking for information?”

• **Integrity Commissioner Response to Question 2) c):**

The above-quoted sentence follows the opening sentence of the provision:

“A Member shall not disclose, use or release confidential information in contravention of applicable privacy laws.”

Members should only be seeking information that is germane to their role as a member of the decision-making body of the municipality and should not be attempting to ascertain any information that is protected from disclosure (especially related to matters such as the administration of justice).

d) 14.1 “Glad to see this as this has been an issue this term.”

• **Integrity Commissioner Response to Question 2) d):**

No Comment

e) 15.1 “What is an example of third-party content?”

• **Integrity Commissioner Response to Question 2) e):**

Third party content is content developed by an external party such as an article, video, slide presentation, media post, correspondence. Examples of third-party content would be records such as:

- An article from the Toronto Star or New York Times
- A video from Rebel News
- A letter or email from a resident

f) “Do we have an Indemnity policy or by-law?”

- **Integrity Commissioner Response to Question 2) f):**

No Comment – Question for Administration.

g) “The IC report to council each year - when does that come? Are they uploaded to our website after?”

- **Integrity Commissioner Response to Question 2) g):**

Subsection 223.6(3) of the Municipal Act, 2001 requires that a municipality “shall ensure that reports received from its Integrity Commissioner are made available to the public.” How that is accomplished is a question for Administration.