



ADR
CHAMBERS

Integrity Commissioner Office
for the City of Port Colborne

EDWARD T. MCDERMOTT
Integrity Commissioner
City of Port Colborne
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April 3, 2023

SENT BY EMAIL TO:
Charlotte Madden Acting City Clerk
City of Port Colborne
66 Charlotte Street
Port Colborne, ON, L3K 3C8

Charlotte.Madden@portcolborne.ca

**Re: City of Port Colborne Integrity Commissioner Annual Report February 25,
2022 – February 24, 2023**

Dear Ms. Madden:

Thank you for the opportunity to act as the Integrity Commissioner (the “IC”) for the City of Port Colborne (the “City”) over the past year.

In accordance with the terms of the Agreement between the City and ADR Chambers Inc. and pursuant to s. 223.3 (1) of the *Municipal Act 2001*, I am providing my Annual Report for the fourth operating period of the Agreement covering the period of February 25, 2022 - February 24, 2023.

As you know, the IC’s role is to help Members of Council (“Members”) ensure that they are performing their functions in accordance with the City’s Code of Conduct (the “Code”) and the Municipal Conflict of Interest Act (“MCIA”). The IC is available to

educate and provide advice to Members on matters governing their ethical behavior and compliance with the Code and the MCIA. The IC is also responsible for receiving, assessing and investigating appropriate Complaints made by Council, Members and members of the public respecting alleged breaches of the Code by Members.

In addition, and independently from an IC's duties under the Code, under the March 1, 2019 amendments to the Municipal Act, the IC was empowered (upon application by an "elector" of the municipality or "a person demonstrably acting in the public interest") to inquire into an alleged contravention of the MCIA and make application to a judge for a judicial determination as to whether a Member of Council has contravened section 5, 5.1, or 5.2 of the MCIA. If the Court determines such a contravention has occurred it can impose a wide range of penalties on the offending Councillor including declaring the Member's seat vacant and prohibiting the Member from serving on Council for up to seven years.

Activities During the Fourth Year

The fourth year of our service to the City was indeed a relatively calm one as we were requested to and undertook a relatively small number of matters within my jurisdiction and mandate as established by Council, the Municipal Act and the MCIA.

As required by the Municipal Act and the Code, we provided full written responses to Requests for Advice from Members of Council seeking advice with respect to their involvement in certain fact scenarios which they presented to us. For the second year in a row during our period of service there were no Complaints against Members of Council for contravening the Code of Conduct. All Councillors are to be congratulated on this result as it reflects a positive environment in relationships between Councillors and with members of the public who you have the responsibility to serve. It also helps to conserve the resources of the City for other issues of concern to Council and the residents of Port Colborne.

Costs

The total cost incurred by the City during the year for the services performed amounted to \$2,187.50 (plus HST) as compared to the charges of \$27,355.00 (plus HST) during our first year of service; \$47,512.50 (plus HST) for the second year and \$10,392.50 (plus HST) for the third year. This amount does not include any billings for work performed with respect to matters before me which were initiated or in progress but not completed prior to the end of review period (February 24, 2023). I am however, happy to report that no Complaints under the Code or the MCIA are currently before me. I would

however caution Council that notwithstanding this decline in costs over the last year, it would be prudent to budget a reasonable amount for this portfolio on an annual basis to deal with these unknown but ever present potential costs.

Issues to be Considered Going Forward

As a result of our experience during the past year, it is respectfully suggested that Council consider the following issues on a going forward basis:

- The provisions of Bill 68 came into force on March 1, 2019 and contain some significant amendments to the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act* which affect the role and powers of the Integrity Commissioner and the obligation of Members under the City's Code. We have now been working with these new requirements for two years and have gained a considerable amount of knowledge and experience in contending with the various issues that have arisen under the amendments. We accordingly suggest that an *in camera* (preferably in person) education seminar with the IC might be scheduled in the near future in order to review our experience with these changes and familiarize all Councillors with the effect of these new amendments as well as emphasizing our experience with evolving issues such as the importance of not disclosing confidential information in accordance with the requirements of the Code.
- It also might also be of some value if Councillors could have at least some personal interaction with the Integrity Commissioner (in the form of an education seminar) so that Requests for Advice and subsequent complaints are not dealt with in a vacuum.
- The content of the City's Code of Conduct is also a living document which should be periodically reviewed to ensure it meets the needs and requirements of the law, the City, its Councillors and its citizens. There are a number of provisions which should, in my view, be re-considered (e.g. the City's protocol for investigating Complaints of a violation of the Code).

It has also recently come to light that a significant number of municipalities have not properly dealt with the requirements of the Municipal Act to have a Code of Conduct and Integrity Commissioner in place for Members of "Local Boards" of the municipality.

These and other issues should be addressed at the first reasonable opportunity. I would be pleased to assist in such a review if Council so requests.

- On March 5, 2021, The Ontario Government launched a Consultation process to “Strengthen Municipal Codes of Conduct” with the objective of eliminating “workplace harassment or discrimination of any kind”. The Consultation process was led by Ms. Jill Dunlop the Associate Minister of Children’s and Women’s Issues. We are still awaiting the results of this process.

The issue of imposing requirements on the filing of Complaints under the Code has become the subject of debate and disagreement between the Ombudsman of Ontario and several Municipal Councils. This includes matters such as filing fees; time limitation periods and residency requirements. These are becoming issues which Council may wish to consider at this time.

Summary

It has been a pleasure to assist the City and its Members with the issues that have arisen in connection with the administration of its Code of Conduct in the past year.

Yours very truly,



Edward T. McDermott
Integrity Commissioner, City of Port Colborne