

THE CORPORATION OF THE NATION MUNICIPALITY

BY-LAW NUMBER 19-2019

A BY-LAW TO ESTABLISH THE OFFICE OF THE INTEGRITY COMMISSIONER AND A COMPLAINT PROTOCOL FOR THE COUNCIL CODE OF CONDUCT OF THE CORPORATION OF THE NATION MUNICIPALITY

WHEREAS a municipality shall establish codes of conduct for Members of the Council of the municipality pursuant to section 223.2 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "*Municipal Act*");

AND WHEREAS section 223.3 of the *Municipal Act* authorizes a municipality to appoint an Integrity Commissioner who reports to Council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the responsibilities set out in section 223.3 of the *Municipal Act*;

AND WHEREAS the Code of Conduct for Members of Council of the Corporation of The Nation Municipality was adopted on May 30th, 2016, through resolution 331-2016;

AND WHEREAS The Nation Municipality desires to provide for an Integrity Commissioner to help ensure that Members of Council conform to ethical standards of behaviour in carrying out their duties and are held to account for the adherence to their Code of Conduct and any other applicable procedures, rules or policies governing the ethical behaviour of Members of Council.

NOW THEREFORE the Council of The Nation Municipality enacts as follows:

1. SHORT TITLE

1.1. This By-law may be referred to as the "Integrity Commissioner By-law".

2. DEFINITIONS

- 2.1. "Clerk" means the Clerk of The Nation Municipality
- 2.2. "Code of Conduct" means policy AD -2016-02 (Code of Conduct for Council policy ") as approved by Council, and as it existed on the date of the event or events giving rise to a complaint;
- 2.3. "The Nation Municipality" means the Corporation of The Nation Municipality
- 2.4. "Complaint" means a request that the Integrity Commissioner conduct an inquiry into an event or series of events alleged to have contravened the Code of Conduct, or any other procedures, rules or policies governing the ethical behaviour of Members of Council;
- 2.5. "Complainant" means a legal person who makes a complaint;
- 2.6. "Council" means the elected officials who constitute The Nation's Municipal Council;
- 2.7. "Employee" means a person employed by The Nation Municipality , including those employed on personal service contracts and volunteers, but does not include Members of Council;
- 2.8. "Good Faith" means accordance with standards of honesty, trust and sincerity;
- 2.9. "Integrity Commissioner" means the person appointed by Council to provide independent and consistent complaint investigation and resolution services with respect to the application of the Code of Conduct, being policy AD-2016-02 and accepted by resolution 331-2016, and any other applicable procedures, rules or policies governing the ethical behaviour of Members of Council;
- 2.10. "Member of Council" means any Member of Council and includes the Warden;
- 2.11. "*Municipal Act*" means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

- 2.12. "*Municipal Conflict of Interest Act*" means *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended;
- 2.13. "*MFIPPA*" means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M56, as amended; and
- 2.14. "*Public Inquiries Act*" means the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6, as amended.

3. APPOINTMENT OF AN INTEGRITY COMMISSIONER

- 3.1. Council shall appoint an Integrity Commissioner to investigate alleged breaches of the Code of Conduct, and any other procedures, rules or policies governing the ethical behaviour of Members of Council. The appointment shall be for a period of two (2) years with an option to renew for two (2) additional years. The candidate search, screening and hiring process may be overseen by a panel consisting of the Mayor, the Clerk and the Director of Human Resources. The recommended candidate for the Integrity Commissioner position will be referred to Council for its approval.
- 3.2. The Integrity Commissioner may be:
- a) retained by Council on a term contract consisting of "fee for service"; or
 - b) cross-appointed by Council together with one or other municipal councils as the Integrity Commissioner for all of the municipalities.
- 3.3. The Integrity Commissioner shall complete any inquiries begun during his or her term notwithstanding the expiry of the term and this By-law shall continue to apply with all the necessary modifications.
- 3.4. If the Integrity Commissioner is unable to complete an inquiry in accordance with section 3.3 of this By-law, the Integrity Commissioner next appointed shall complete the inquiry.
- 3.5. The Integrity Commissioner may be removed before the expiry of his or her term of office only for cause. Council shall first receive legal advice from external legal counsel to determine if cause exists.

4. ROLE OF THE INTEGRITY COMMISSIONER

- 4.1. The role of the Integrity Commissioner is to help ensure that Members of Council perform their functions in accordance with the Code of Conduct, or any other procedures, rules or policies governing their ethical behaviour, and the *Municipal Conflict of Interest Act*. In addition, the Integrity Commissioner may, upon request of Council or a Member of Council, provide advice and rulings on ethical challenges, issues and dilemmas, as detailed by subsections 5.1(c) and 5.1(d) of this By-law.

5. DUTIES OF THE INTEGRITY COMMISSIONER

- 5.1. The Integrity Commissioner shall:
- a) conduct inquiries in response to complaints regarding whether a Member of Council has contravened the Code of Conduct, or any other procedures, rules and policies of The Nation Municipality governing the ethical behaviour of Members of Council;
 - b) conduct inquiries in response to complaints regarding whether a Member of Council has contravened sections 5, 5.1. and 5.2 of the *Municipal Conflict of Interest Act*;
 - c) upon request from a Member of Council, provide written advice regarding his or her obligations under the Code of Conduct, and any other procedures, rules or policies governing his or her ethical behaviour. This advice can include recommendations on the appropriate course of action where a Member of Council seeks guidance based on specific factual circumstances. Requests must be made by completing the *Request for Advice Form* (see Appendix "C")

to this By-law) and submitting it directly to the Integrity Commissioner, Chief Administrative Officer or Clerk;

- d) upon request from a Member of Council, provide written advice and recommendations to Council regarding amendments to the Code of Conduct and any other procedures, rules or policies governing the ethical behaviour of Members of Council. Requests must be made by completing the *Request for Advice Form* (see Appendix "C" to this By-law) and submitting it directly to the Integrity Commissioner, Chief Administrative Officer or Clerk;
- e) at least once per term of Council, prepare and provide educational information for Members of Council, The Nation Municipality and the public about the Code of Conduct, any other procedures, rules or policies governing their ethical behaviour, and the *Municipal Conflict of Interest Act*; and
- f) prepare and deliver an annual report to Council containing a summary of activities, if any, during the previous calendar year.

6. COMPLAINTS FILED UNDER THE *MUNICIPAL CONFLICT OF INTEREST ACT*

- 6.1. Notwithstanding the provisions of this By-law, any complaints filed under section 223.4.1 of the *Municipal Act* concerning an alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* by a Member of Council, and any inquiries conducted by the Integrity Commissioner in response to these complaints shall comply with section 223.4.1 of the *Municipal Act* and the provisions of the *Municipal Conflict of Interest Act*.

7. MAKING A COMPLAINT

- 7.1. Any legal person may act as a complainant.
- 7.2. Complaints must be made by completing the *Formal Complaint Form / Affidavit* (see Appendix "B" to this By-law) and submitting it directly to the Clerk.
- 7.3. Complaints filed with the Clerk will be forwarded to the Integrity Commissioner without delay and without added comments.

8. FEE

- 8.1. A complainant shall pay to the Clerk a refundable fee in the amount of \$300 upon the filing of a complaint.
- 8.2. The fee payable under section 8.1 of this By-law shall be refunded to the complainant when the Integrity Commissioner files his or her report under section 11.1 of this By-law.
- 8.3. Where a complaint is found to be frivolous, vexatious, or not made in good faith under subsection 10.1(b) of this By-law, the fee shall not be refunded.

9. LIMITATION PERIOD

- 9.1. The Integrity Commissioner shall only proceed with an inquiry about a complaint filed less than 180 days after the date when the event or the last event of a series of events which are the subject matter of the complaint occurred.
- 9.2. Notwithstanding section 9.1 of this By-law, the Integrity Commissioner may proceed with an inquiry in regard to a complaint that is filed after the expiry of the time limit under section 9.1 of this By-law if the Integrity Commissioner is satisfied that:
 - a) the delay was incurred in good faith;
 - b) it is in the public interest to proceed with an inquiry; and
 - c) no substantial prejudice will result to any person because of the delay.
- 9.3. A complainant is deemed to have known the matters referred to in section 9.1 of this By-law at the time the event or the last event of a series of events have

occurred, unless the contrary is proven. The onus of proof lies upon the complainant.

10. CONDUCT OF INQUIRY

- 10.1. The Integrity Commissioner may refuse to investigate if he or she determines that:
- a) the complaint is outside of the jurisdiction of the Integrity Commissioner;
 - b) the complaint is frivolous or vexatious in nature;
 - c) the complainant fails to demonstrate that the complaint is meaningful; or
 - d) the complainant fails to provide requested additional information or clarifications.
- 10.2. Where, pursuant to section 10.1 of this By-law, the Integrity Commissioner decides not to proceed with an inquiry, he or she shall prepare and file a report under section 11.1 of this By-law setting out that decision.
- 10.3. If the complainant provides new information after an inquiry is stayed under section 10.1 of this By-law and there is sufficient information to set out an apparent contravention of the Code of Conduct, or any other procedures, rules or policies governing the ethical behaviour of Members of Council, the Integrity Commissioner shall reopen the inquiry.
- 10.4. Where the Integrity Commissioner has determined that it is appropriate to investigate, the Integrity Commissioner shall conduct an inquiry promptly and thoroughly. The Member of Council who is the subject of the complaint shall be given the opportunity to know the nature of the complaint against him or her and to provide input about the complaint to the Integrity Commissioner. Notice of the investigation shall be given to the Member of Council outlining the complaint and including an initial opportunity to respond before the investigation commences formally.
- 10.5. Information given to the Member of Council about the nature of the complaint will be used by the Member of Council only to make representations about the complaint to the Integrity Commissioner.
- 10.6. In conducting an inquiry into a complaint regarding a Member of Council, the Integrity Commissioner may exercise any power given under this By-law or under Part V.1 of the *Municipal Act*, including the power to compel witnesses to testify and to compel the production of documents under the *Public Inquiries Act*.
- 10.7. If the Integrity Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code of Canada*, R.S.C., 1985, c. C-46, the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension of the inquiry to Council.

11. MEMBERS' RESPONSIBILITIES DURING INVESTIGATIONS

- 11.1. Where the Integrity Commissioner has received a complaint regarding a Member of Council, he or she shall, on the earliest date after he or she has made a decision and no later than 60 days after receiving the complaint, prepare and file with the Clerk a report to Council regarding his or her inquiry into the complaint.
- 11.2. Where, in the opinion of the Integrity Commissioner, it is not possible to prepare and file a report with Council within the time set out in section 11.1 of this By-law, the Integrity Commissioner shall advise Council of this, together with:
- a) the reasons for his or her inability to prepare and file the report; and
 - b) the date on or before which the report will be prepared and filed.
- 11.3. The report filed under section 11.1 of this By-law shall include:
- a) the nature of the complaint;
 - b) if the complaint was filed after the expiry of the time limit under section 9.1 of this By-law, the Integrity Commissioner's findings regarding sections 9.2 and

- 9.3 of this By-law, which findings shall be in accordance with the civil standard of the balance of probabilities;
- c) the evidence gathered from the complaint and from the inquiry;
 - d) the Integrity Commissioner's findings of fact regarding the complaint, which findings shall be made in accordance with the civil standard of the balance of probabilities;
 - e) the Integrity Commissioner's decision, based on the findings of fact that the Member of Council contravened or did not contravene his or her obligations under the Code of Conduct, or under any other procedures, rules or policies governing his or her ethical behaviour; and
 - f) where the Integrity Commissioner decides that the Member of Council has contravened the Code of Conduct, or any other procedures, rules or policies governing the ethical behaviour of Members of Council, the penalty to be imposed under section 12.1 of this By-law, if any, including a copy of a letter of reprimand and a copy of the notice of suspension of remuneration, if any.
- 11.4. The Integrity Commissioner may make interim reports to Council, where necessary, to address any issues of interference, obstruction, delay or retaliation encountered during the investigation.
- 11.5. The Integrity Commissioner shall provide a copy of his or her report filed under section 11.1 of this By-law to the complainant, to the Member of Council who is the subject of the complaint and to all other Members of Council at the same time as filing the report with the Clerk.
- 11.6. Where the Integrity Commissioner's delegate under section 15.1 of this By-law decides that a Member of Council has contravened the Code of Conduct, or any other procedures, rules or policies governing the ethical behaviour of Members of Council, but that the Member of Council was acting in accordance with the Integrity Commissioner's advice given under subsection 5.1(c) of this By-law and had, before receiving this advice, disclosed to the Integrity Commissioner all the relevant facts, the delegate shall so state in the report under section 11.1 of this By-law and no penalty shall be imposed.
- 11.7. The Treasurer shall ensure the remuneration of the Member of Council is suspended in accordance with the notice of the Integrity Commissioner under subsection 11.3(g) of this By-law.
- 11.8. Where the Integrity Commissioner has filed a report in respect of an inquiry with the Clerk under section 11.1 of this By-law, the Clerk shall add the report on the next available Council Agenda for information purposes.

12. PENALTIES

- 12.1. The penalties for a Member of Council who contravenes the Code of Conduct, or any other procedures, rules or policies governing the ethical behaviour of Members of Council shall be those authorized under subsection 223.4(5) of the *Municipal Act*, including:
- a) a reprimand; or
 - b) suspension of remuneration paid to the Member of Council in respect of his or her services as a Member of Council for a period of up to 90 days.

13. COMPLAINT AND LEGAL CONFIDENTIALITY

- 13.1. Pursuant to subsection 223.4(4) of the *Municipal Act*, the Integrity Commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by The Nation Municipality the Integrity Commissioner believes to be necessary for an inquiry.
- 13.2. The Integrity Commissioner and any delegates under section 15.1 of this By-law shall preserve secrecy with respect to all matters that come to their knowledge in the course of carrying out any of the duties of the Integrity Commissioner, except as required by law in a criminal proceeding or in accordance with section 223.5 of the *Municipal Act*.

- 13.3. The Integrity Commissioner and any delegates under section 15.1 of this By-law acknowledge that The Nation Municipality is an institution for the purposes of the *MFIPPA*. Accordingly, the Integrity Commissioner and any delegates under section 15.1 of this By-law undertake not to disclose information subject to the *MFIPPA* except as may be necessary in the proper discharge of their functions and duties pursuant to the terms of this By-law and in accordance with the *MFIPPA* and the *Municipal Act*.
- 13.4. Pursuant to subsection 223.5(3) of the *Municipal Act*, section 223.5 of the *Municipal Act* prevails over the *MFIPPA*.
- 13.5. The Integrity Commissioner and any delegates under section 15.1 of this By-law shall comply with the Council's Procedure By-law in terms of personal or privileged information.

14. COMPLAINT AND REPORTING EXCLUSION PERIOD

- 14.1. Despite any other provisions of this By-law, no complaints nor requests for advice shall be submitted to the Integrity Commissioner during the period of time starting on nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act*, 1996, S.O. 1996, c. 32, Sched. 1, as amended, and ending on voting day in a regular election, as set out in section 5 of the *Municipal Act*.
- 14.2. During the exclusion period, the Integrity Commissioner shall not make any reports to Council about whether, in his or her opinion, a Member of Council has contravened the Code of Conduct, or any other procedures, rules or policies governing the ethical behaviour of Members of Council.

15. CONFLICT OF INTEREST

- 15.1. If the Integrity Commissioner becomes aware of a situation where a conflict of interest could arise, the Integrity Commissioner shall advise the Clerk and Members of Council in writing and delegate in writing his functions and duties to conduct an inquiry, including the exercise of powers under the *Public Inquiries Act* and the duty to report on an inquiry.
- 15.2. In making a delegation under section 15.1 of this By-law, the Integrity Commissioner shall first satisfy himself or herself that the person to whom the duties are to be delegated is fully capable of carrying out these duties.
- 15.3. The Integrity Commissioner and any delegates under section 15.1 of this By-law shall be impartial and neutral and shall perform all duties skillfully, competently, independently and in accordance with all applicable law.

16. GENERAL PROVISIONS

- 16.1. If the Integrity Commissioner, when conducting an inquiry, determines that the complaint is more appropriately addressed under the *MFIPPA*, the complainant shall be referred to the Clerk to have the matter reviewed under that Act.
- 16.2. This English version of this By-law prevails over the French version with respect to its interpretation.

17. FORMS

- 17.1. The following Appendices are attached to this By-law and form part of it:

Appendix "A" - Disclosure Statement Form

Appendix "B" - Formal Complaint Form / Affidavit and its Schedule "A",
Additional Information Form

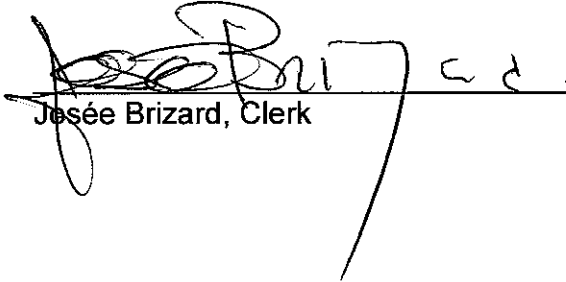
Appendix "C" - Council Code of Conduct - Request for Advice Form

Appendix "D" Council code of Conduct

DONE AND PASSED in open Council this 18th day of March , 2019.



François St-Amour, Mayor



Josée Brizard, Clerk