

THE CORPORATION OF THE TOWNSHIP OF MADOC

BY-LAW NO. 1461-2018

**Being a By-law to Establish a Code of Conduct
For the Township of Madoc Members of Council, Committees and Boards**

WHEREAS Section 11 of the Municipal Act 2001, S.O. 2001, c.25, as amended, authorizes to pass by-laws regarding Accountability and Transparency of the municipality and its operations and of its local boards and their operations; and

WHEREAS Section 223.2(1) of the Municipal Act 2001, S.O. 2001, c.25, as amended, authorizes municipalities to establish codes of conduct for members of the council of the municipality and of local boards of the municipality; and

WHEREAS Council of the Corporation of the Township of Madoc deems it expedient to establish a Code of Conduct for Council;

NOW THEREFORE Council of the Corporation of the Township of Madoc hereby enacts as follows:

1. THAT this Council does hereby adopt the Code of Conduct, attached hereto as Schedule "A".
2. THAT Schedule "A" forms part of this by-law.
3. THAT this By-law shall come into force and take effect upon receiving the final passing thereof.

READ a FIRST and SECOND time this 3rd day of October, 2018.

READ a THIRD time and finally passed this 3rd day of October, 2018.

REEVE

ACTING CLERK

SCHEDULE "A" TO BY-LAW 1197-2007

Code of Conduct for Members of the Council, Local Boards and Committees of the Township of Madoc

1.0 Policy Statement

Attaining an elected position within one's community is a privilege which carries significant responsibilities and obligations. Members of Council (comprising the Reeve, Deputy Reeve and Councillors) are held to a high standard as leaders of the community and they are expected to become well informed on all aspects of municipal governance, administration, planning and operations. They are also expected to carry out their duties in a fair, impartial, transparent and professional manner.

2.0 Purpose of the Code of Conduct

The Code of Conduct sets minimum standards for the behaviour of members of Council, Local Boards and Committees in carrying out their functions. It has been developed to assist those members to:

1. Understand the standards of the conduct that are expected of them and the law that applies in relation to these standards;
2. Fulfill their duty to act honestly and exercise reasonable care and diligence;
3. Act in a way that enhances public confidence in local government; and
4. Identify and resolve situations which might involve a conflict of interest or a potential misuse of position and authority.

3.0 Application

This Code of Conduct applies to all members of the Township of Madoc Council, Local Boards and Committees.

4.0 Statutory Provisions Regulating Conduct

This Code of Conduct is a complement to existing legislation governing the conduct of members of the Township of Madoc Council, Local Boards, and Committees. The following federal and provincial legislation also governs conduct of members:

- The Municipal Act
- The Municipal Conflict of Interest Act
- The Municipal Elections Act
- The Municipal Freedom of Information and Protection of Privacy Act
- The Ontario Human Rights Code
- The Criminal Code of Canada
- Bylaws and policies of the Township of Madoc

5.0 Definitions

For the purposes of this Code:

"Act" means the Municipal Act, 2001 S.O. 2001 c.25

"Code" means this Code of Conduct as it applies to members of Council, Local Boards and Committees.

"Complaint" means an alleged contravention of this Code.

"Confidential Information" means information in the possession of the Township of Madoc that is either prohibited from disclosing, or is required to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) or other legislation.

"Council" means the elected Council of The Corporation of the Township of Madoc.

"Family member" means as defined in the Municipal Conflict of Interest Act.

"Gift and benefits" means any cash or monetary equivalent, fee, object of value, service, travel, accommodation or entertainment.

"Integrity Commissioner" means the Integrity Commissioner appointed by Council pursuant to section 223.3 of the Municipal Act, 2001.

"Meeting" means any legally-constituted meeting of Council, a Local Board or a Committee.

“Member” means a member of Council, Local Board or Committee of the Township of Madoc.

“Official duties” means the public duties of a Member and includes functions performed by Members necessary to demonstrate responsible and accountable government with respect to matters within the Municipal or Local Board’s jurisdiction, and which are done for the purpose of providing good government with respect to those matters.

“Pecuniary interest” means an interest as set out in the Municipal Conflict of Interest Act.

“Property” means but is not limited to, all real and personal property, facilities, vehicles, equipment, supplies, services, staff, documents, intellectual property, and computer programs belonging to the Township of Madoc.

“Township” means the Corporation of the Township of Madoc

6.0 Standards of Conduct

Members of Council, Local Boards and Committees shall at all times shall:

- 6.1 Be committed to performing their functions with integrity, accountability and transparency.
- 6.2 Recognize that the public has a right to open government and transparent decision making.
- 6.3 Seek to advance the common good of the community which they serve.
- 6.4 Truly, faithfully and impartially exercise the office to the best of their knowledge and ability.
- 6.5 Refrain from behaviour that could constitute an act of disorder or misbehaviour. Specifically, members shall refrain from conduct that:
 - Contravenes Federal or Provincial statutes or legislation, the Municipal Act, Municipal by-laws, associated regulations, and the Municipality’s Code of Conduct.
 - Is an abuse of power or otherwise amounts to discrimination, intimidation, harassment, verbal abuse, or the adverse treatment of others.
 - Prejudices the provision of a service or services to the community.

7.0 Conduct to Be Observed

7.1 Accountability and Transparency in Decision Making

Members shall conduct business and their duties in an open and transparent manner so that the public and staff can understand the process and rationale which has been used to reach decisions. Such conduct requires compliance with the Act, MFIPPA, the Procedural By-Law and other applicable legislation regarding open meetings, accountability and transparency.

7.2 Release of Confidential Information

Members have a duty to hold in strict confidence all information concerning matters dealt with at *closed session* meetings or that is determined to be confidential by the Clerk or as specifically declared by Council for as long as the confidence applies. A member shall not, either directly or indirectly, release, make public or in any way divulge any such information or any aspect of the *closed session* deliberations to anyone, unless expressly authorized by Council or required by law to do so.

- a. Members shall not release information in contravention of the provisions of the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter M. 56*.
- b. Members shall not release information subject to solicitor-client privilege, unless expressly authorized by Council or required by law to do so.
- c. Members shall not misuse confidential information (information that they have knowledge of by virtue of their position that is not in the public domain, including e-mails and correspondence) such that it may cause detriment to the Corporation, Council or others, or benefit or detriment to themselves or others.
- d. All Closed Session materials shall be collected at the end of each session by the Clerk.

7.3 Foster Respect for Decision-making Process

All Members shall accurately and adequately communicate the attitudes and decisions of the Council, even if they disagree with Council's decision, such that respect for the decision-making processes of Council is fostered.

7.4 Release of Information to Public and Media

Members acknowledge that official information related to decisions and resolutions made by Council will normally be communicated to the community and the media by the Council as a whole or the Reeve as Head of Council or by those so designated.

7.5 Acceptance of Gifts and Benefits

Members shall not accept gifts and benefits that would, to a reasonable member of the public, appear to be in gratitude for influence, to induce influence, or otherwise go beyond the necessary and appropriate public function involve. The acceptance of gifts, hospitality and benefits of a nominal value (up to \$200.00) is considered part of the Member's role and responsibilities and are to be received by the Member only in good faith, as an incident of protocol or social obligation. For these purposes, a gift, benefit or hospitality provided with the members knowledge to a members spouse, child, or parent that is connected directly or indirectly to the performance of the members duties is deemed to be a gift to the member.

7.6 Engaging in Incompatible Activity

Members shall not engage in any activity, financial or otherwise, which is incompatible or inconsistent with the ethical discharge or official duties in the public interest.

Without limiting the generality of the foregoing, Members shall not:

- a. use any influence of office for any purpose other than official duties;
- b. act as an agent before Council or any committee, or board of Council;
- c. solicit, demand or accept the services of any corporation, employee, or individual providing services to the municipality at a time in which said person or corporation is being paid by the municipality;
- d. use any information gained in the execution of office that is not available to the general public for any purpose other than for official duties;
- e. place themselves in a position of obligation to any person or organization which might benefit from special consideration or may seek preferential treatment;
- f. give preferential treatment to any person or organization in which a Member may have a financial interest;
- g. influence any administrative or Council decision or decision-making process involving or affecting any person or organization in which a Member has a financial interest; and
- h. use Corporate property, materials, equipment, facilities or employees for personal gain or for any private purpose.

7.7 Conflict of Interest

It is the responsibility of individual Members to ensure that they are aware and trained in the application of the Municipal Conflict of Interest Act. The onus is on the Member to identify a conflict of interest, and shall take the appropriate action to identify the existence of a conflict in favour of his/her public duty.

- a. A conflict exists when an individual is, or could be, influenced, or appear to be influenced by a personal interest, financial (pecuniary) or otherwise, when carrying out their public duty. Personal interest can include direct or indirect pecuniary interest, bias, pre-judgement, close mindedness or undue influence.
- b. Members must appropriately resolve any conflict or incompatibility between their personal interests and the impartial performance of their public or professional duties in accordance with statutory requirements. When considering whether or not a conflict exists, it is important to consider whether there are any grounds for a reasonable person to think that a conflict exists.

Recognizing that it is impossible to anticipate all possible conflicts that may arise during a Member's term of office and, those conflicts may not be only pecuniary in nature, it is generally advisable to be as open as possible. It is not enough that a conflict not exist, it must also be seen by taxpayers not to exist.

The following principles should be used as a guide (refer to *Municipal Conflict of Interest*):

- i. In making decisions, always place the interests of the taxpayers first and, in particular, place them before the interest of colleagues on Council, Boards, Committees, staff, friends, or family.
- ii. Always interpret the phrase “Conflict of Interest” in the broadest possible terms.
- iii. A factor which could be considered a conflict by taxpayers should be treated as a conflict and be disclosed by the Member.
- iv. If in doubt, it is better to disclose a situation.
- v. It is the responsibility of individual Members to obtain independent legal advice with respect to any situation that might arise whereby there is a potential for a conflict of interest.
- vi. It is considered a breach of this policy to require or to attempt to burden staff members to assist in the determination of a conflict of interest for individual Members.

7.8 Avoidance of Waste

Members shall avoid waste, abuse and extravagance in the provision or use of public resources, and shall expose fraud and corruption of which the Member is aware.

8.0 Interpersonal Behaviour of Members

8.1 Treat Every Person with Dignity, Understanding and Respect

Members shall abide by the provisions of the *Human Rights Code* and, in doing so, shall treat every person, including other Members, corporate employees, individuals providing services on a contract for service, students on placements, and the public, with dignity, decorum, courtesy, understanding and respect for the right of equality and the right to an environment that is safe and free from harassment and discrimination.

8.2 Not to Discriminate

In accordance with the *Human Rights Code*, Members shall not discriminate against anyone on the basis of their race, ancestry, place of origin, colour, ethnic origin, citizenship, religious affiliation or faith, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, or disability. “Age”, “disability”, “family status”, “record of offences”, “same sex partnership status” shall be defined in the *Human Rights Code*.

8.3 Not to Engage in Harassment or Bullying (Psychological Harassment)

In accordance with the *Human Rights Code*, harassment shall mean engaging in a course of vexatious comment or conduct that is known, or ought to be known, to be unwelcome. Bullying is the ongoing health-or career-endangering mistreatment of an employee, by one or more of their peers or higher-ups. Unlikely to involve physical violence, it usually takes the form of psychological abuse. Often, verbal and strategic insults are intended to prevent targets from being successful in their job.

The exercise of performance management tools with respect to corporate employees for legitimate purposes by Council is not harassment or bullying.

8.4 Protection of Privacy

Public comments, discussions and disclosures to the media regarding employees or individuals that breach a person's privacy is deemed to be a contravention of this Code of Conduct.

9.0 Allegations, Breached, and Disciplinary Actions

All Members shall abide by the requirements of this Code of Conduct.

9.1 Informal Complaints

Any individual who identifies or witnesses behavior or activity by a sitting Member that appears to be in contravention of the Code of Conduct for Members may address the prohibited behavior or activity themselves in the following manner:

1. Advise the member that the behavior or activity appears to contravene the Code of Conduct.
2. Encourage the member to acknowledge and agree to stop the prohibited behavior or activity to avoid future occurrences of the prohibited behavior or activity.
3. Document the incidents including dates, times, locations, other persons present, and any other relevant information.
4. Advise someone else (for example an other member or a senior staff member) about their concern, their comments to the Member and the response of the Member.
5. If applicable, confirm to the Member their satisfaction or dissatisfaction with the response from the Member.
6. Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in the Code of Conduct or in accordance with any other judicial or quasi-judicial process.

Individuals are encouraged to initially pursue this informal complaint procedure as a means of stopping or remedying a behavior or activity that they believe to be prohibited by the Code of Conduct. However, it is not a precondition or a prerequisite that they pursue the informal complaint procedure prior to pursuing the formal complaint procedure.

9.2 Formal Complaint Procedure – Integrity Commissioner

An Integrity Commissioner shall be appointed by bylaw, report to Council, and shall be responsible for performing in an independent manner in accordance with the Municipal Act 2001. The Commissioner will investigate allegations and may at his/her discretion conduct investigations. The Integrity Commissioner may refuse to investigate allegations that the Integrity Commission deems to be frivolous or vexatious.

1. Any individual who identifies or witnesses behavior or activity by a sitting member of Council, Local Board or Committee that they believe to be in contravention of the Code of Conduct for Members may file a formal complaint with the following conditions :
 - All complaints shall be in writing and shall be dated and signed by an identifiable individual.
 - The complaint must set out reasonable and probable grounds for the allegation that the member has contravened the Code of Conduct.
 - A supporting sworn affidavit (Schedule A) setting out the evidence in support of the allegation must be included.
2. The complaint shall be filed with the Township of Madoc Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or complaint procedure under another municipal policy.
3. If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until the affidavit is received.
4. If the complaint, including the supporting affidavit, is not on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another municipal policy, the Integrity Commissioner shall advise the complainant in writing as follows:
 - a. If the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the Ontario Provincial Police or other appropriate law enforcement agency.
 - b. If the complaint on its face is with respect to non-compliance with the Municipal Conflict of Interest Act, the complainant shall be advised to review the matter with the complainant's own legal counsel.
 - c. If the complaint on its face is with respect to non-compliance with the Municipal Freedom of Information or Protection of Privacy Act, the complainant shall be advised that the matter will be referred to the Privacy Commissioner for review.

- d. If the complaint on its fact is with respect to non-compliance with a more specific municipal policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure.
- e. In other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

5. Refusal to Conduct an Investigation

If the Integrity Commissioner is of the opinion that the referral of a matter to them is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation and, where this becomes apparent in the course of an investigation, shall terminate the investigation, without provide a formal report to Council.

6. Opportunities for Resolution

Following receipt and review of the formal complaint, or at any time during the investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the member agree, efforts may be pursued to achieve an informal resolution. Complaints resolved without a formal investigation will be reported to the municipal Council byway of the Integrity Commissioners annual report.

7. Integrity Commissioners Investigation

If the complaint has been classified as being within the Integrity Commissioner's jurisdiction, the Commissioner will proceed as follows:

- a. Provide the complaint and supporting material to the member whose conduct is in question with a request that a written response to the allegations be provided within 10 business days.
- b. Provide a copy of the response received from the member to the complainant with a request for a written reply within 10 business days.
- c. If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, examine any documents or electronic material and may enter any municipal worksite relevant to the complaint for the purpose of investigation and potential resolution.
- d. The Integrity Commissioner may make interim reports to Council as required to address any instances of interference, obstruction, or retaliation encountered during the investigation.

8. Integrity Commissioners Report

- a. The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the official receipt of the complaint and affidavit. If the investigation takes more than 90 days, the Integrity Commissioner shall provide an interim report and advise the parties of the date the report will be available.
- b. Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement and/or any recommended corrective action.
- c. Where the complaint is not sustained, except for in exceptional circumstances, the Integrity Commissioner shall not report to Council the results of the investigation except as part of an annual or other periodic report.
- d. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the Municipal Act.

9. Report to Council

- a. The Integrity Commissioner shall file a copy of the final investigation report with the municipal Clerk, who will then provide a copy of the report to the complainant and the Member whose conduct it concerns.

- b. Upon receipt of the report the Clerk shall place the report on the next regular agenda for the next regular meeting of Council.
- c. The Integrity Commissioner shall report annually to Council on complaints filed with the Integrity Commissioner concerning members of Council or Local Boards.

10. Duty of Council

Council shall consider and respond to the report within 90 days after the report is laid before it.

11. Public Disclosure

- a. The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this complaint protocol.
- b. The Integrity Commissioner shall retain all records related to the complaint and investigation.
- c. At the time of the Integrity Commissioner's report to Council, the identity of the person who is subject to the complaint shall not be treated as confidential information if the Integrity Commissioner finds that a breach has occurred.
- d. All reports of the Integrity Commissioner to Council will be made available to the public through the Clerk's office.

Township of Madoc
Clerks Department

Code of Conduct – Formal Complaint Form/Affidavit

Affidavit of:

I _____ of the _____
(full name) (City/Town)

in the Province of Ontario. Make Oath and Say (or Affirm)

1. I have personal knowledge of the facts as set out in this affidavit, because:
(insert reasons e.g. I work for.....I attended a meeting at whichetc)

2. I have reasonable and probable grounds to believe that _____
(name of member)

member of Council for the Township of Madoc, has contravened section _____ of the
Code of Conduct of the Township of Madoc.

The particulars of which are as follows:

(Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space please use the attached form and check the appropriate box below. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this affidavit.)

Please see the Attached Schedule "A"

This affidavit is made for the purpose of requesting that this matter be reviewed and/or investigated by the Township of Madoc's appointed Integrity Commissioner and for no other purpose.

Sworn before me at the

(City/Town)

In the Province of Ontario on

(date)

(Signature of Commissioner)

(Signature)

A Commissioner for taking affidavits etc.

Please Note – Signing a false affidavit may expose you to prosecution under ss. 131 and 132 or 134 of the Criminal Code, R.S.C. 1985, c. C-46 and also to civil liability for defamation.

