

## COMPLAINT PROTOCOL

### PART A - INFORMAL COMPLAINT PROCEDURE

1. Any individual who identifies or witnesses behaviour or activity by a Member that they believe contravenes the Code of Conduct may seek to address the prohibited behaviour or activity themselves in the following manner by following the Informal Complaint Procedure:
  - (a) document the incident(s) where the Member may have contravened the Code of Conduct including dates, times, locations, other persons present, and any other relevant information;
  - (b) advise a third party about the concerns regarding the Member's actions;
  - (c) advise the Member that the behaviour or activity appears to contravene the Code of Conduct;
  - (d) identify to the Member the specific provision(s) of the Code of Conduct that may have been contravened;
  - (e) encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to undertake to refrain from future occurrences of the prohibited behaviour or activity;
  - (f) request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the Member in an attempt to settle or resolve the issue;
  - (g) if applicable:
    - (i) confirm to the Member that his or her response is satisfactory, or
    - (ii) advise the Member that his or her response is unsatisfactory;
  - (h) consider the need to pursue the matter in accordance with the Formal Complaint Procedure set out in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
2. Individuals, including Members of Council and Local Boards are strongly encouraged to pursue the informal complaint procedure as the first means of remedying behaviour or activity of a Member that they believe violates the Code of Conduct.
3. With the consent of both the complainant and the Member, the Integrity Commissioner may participate in any informal process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a complaint.
4. The Informal Complaint Procedure is not a precondition or a prerequisite to pursuing the Formal Complaint Procedure related to the Code of Conduct set out in Part B.

## PART B - FORMAL COMPLAINT PROCEDURE

### Formal Complaints

- 1.(1) Any individual who identifies or witnesses behaviour or activity by a Member that they reasonably believe contravenes the Code of Conduct may file a formal complaint to request an inquiry by the Integrity Commissioner as to whether a Member has contravened the Code of Conduct in accordance with the following requirements:
  - (a) all complaints shall be in writing on the prescribed form (Formal Complaint Form #1) and shall be dated and signed by an identifiable individual;
  - (b) the complaint must set out reasonable and probable grounds for the allegation that the Member has contravened the Code of Conduct and must be accompanied by a supporting sworn affidavit setting out the evidence in full in support of the allegation; and
  - (c) Council may also file a complaint against any of its Members of an alleged contravention of the Code of Conduct by passing a resolution requesting the Integrity Commissioner to undertake an inquiry.
- (2) An elector, as defined in section 1 of the *Municipal Conflict of Interest Act*, or a person demonstrably acting in the public interest (collectively, a “complainant”) may file a formal request that the Integrity Commissioner carry out an inquiry concerning an alleged contravention of section 5, 5.1 or 5.2 of that Act by a Member in accordance with the following requirements:
  - (a) all requests (also referred to as “complaints”) shall be in writing on the prescribed form (Formal Complaint Form # 2) dated and signed by an identifiable individual;
  - (b) the request shall include a statutory declaration attesting to the fact that:
    - (i) the complainant became aware of the contravention not more than six (6) weeks before the date of the complaint, or
    - (ii) in the case where the complainant became aware of the alleged contravention during the period of time described in paragraph 1 of subsection 223.4.1(5) of the *Municipal Act, 2001*, that the complainant became aware of the alleged contravention during that period of time;
  - (c) Council may also pass a resolution requesting the Integrity Commissioner to undertake an inquiry respecting an alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* by a Member and provide a statutory declaration as required by Section 1(2).
- (3) Individuals, electors or persons demonstrably acting in the public interest who file a formal complaint under Sections 1(1) or 1(2) must provide a full and complete record of evidence to the Integrity Commissioner who is under no obligation whatsoever to, but may, seek additional information to supplement or complete the evidentiary record to substantiate or support the allegations set out in the complaint or request.

## **Filing of Complaint and Classification by Integrity Commissioner**

2. (1) The complaint may be filed with the Clerk or directly with the Integrity Commissioner by a sealed hard copy or by e-mail to the email address(es) set out on the Town's website.
- (2) The Integrity Commissioner shall initially classify the complaint to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council procedures, policies or rules as set out in Section 3 or whether it is a request under section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.

## **Complaints Outside Integrity Commissioner's Jurisdiction or Otherwise Dealt With**

3. 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 relates to matters addressed by other legislation under another Town procedure, policy or rule or request in relation to section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, the Integrity Commissioner shall advise the complainant in writing as follows:

### ***Criminal Matter***

- (a) if the complaint is, on its face, an allegation of a criminal nature consistent with the *Criminal Code*, the complainant shall be advised that:
  - (i) the Integrity Commissioner will refer it to the appropriate police service, or
  - (ii) the complainant may pursue it with the appropriate police service if the complainant wishes to pursue any such allegation;

### ***Municipal Freedom of Information and Protection of Privacy Act***

- (b) if the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter must be referred to the Clerk to deal with under its access and privacy policies under that statute;

### ***Other Procedure, Policy or Rule Applies***

- (c) if the complaint appears to fall within the scope of another procedure, policy or rule of the Town, the complainant shall be advised to pursue the matter under such procedure, policy or rule with the appropriate Town official or staff member;

### ***Lack of Jurisdiction***

- (d) if the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner (for example, it relates to a decision of Council or a local board as a whole and not one or more individual Members), the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate;

### ***Matter Already Pending***

- (e) if the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding, a human rights or workplace harassment complaint or similar process, or to a civil matter that is pending before the courts, the Integrity Commissioner may, in his/her sole discretion, suspend any investigation, in whole or in part, pending the result of the other process;

### ***Similar Matter Already Pending***

- (f) if the complaint is in relation to a similar matter which is subject to an outstanding complaint before the Integrity Commissioner, the Integrity Commissioner may, in his/her sole discretion, consider the matter in conjunction with the similar matter or deal with it separately, including not undertaking an inquiry if the matter can be adequately addressed in any report and/or recommendations made with respect to the complaint in the similar matter; and

### ***Other Ethical Code or Policy Applies***

- (g) if the complaint is in relation to a matter which is governed by a code of conduct, ethical code or similar procedure or policy of another body or entity which also governs the Members (for example, another board, body or committee to which the Member has been appointed), the Integrity Commissioner shall consider the most appropriate forum for the complaint and may, in his/her sole discretion, defer consideration of the matter pending any determination made by the other body or entity and shall so advise the complainant and, if necessary, the Member.

### **Limitation Period**

- 4.(1) The Integrity Commissioner shall not accept a complaint under the Code of Conduct for which the event giving rise to the complaint occurred or came to the attention of the complainant more than six (6) months prior to the date of the filing of the complaint. The complainant must establish that the event giving rise to the complaint occurred and/or came to the complainant's attention within six (6) months of the complaint being filed in accordance with Section 2.
- (2) The Integrity Commissioner shall not accept a request relating to section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* except in accordance with the requirements of subsections 8(2)-(6) of that statute and section 223.4.1 of the *Municipal Act, 2001*.

### **Refusal to Conduct Investigation**

- 5. The Integrity Commissioner has discretion as to whether to carry out an investigation. If the Integrity Commissioner is satisfied, after considering the information contained in the complaint, that a complaint:
  - (a) is frivolous or vexatious,
  - (b) is not made in good faith,
  - (c) constitutes an abuse of process,

- (d) discloses no grounds or insufficient grounds for an investigation, or
- (e) does not warrant a full investigation,

the Integrity Commissioner shall not be required to conduct an investigation and may summarily dismiss the complaint, and, where this becomes apparent during the course of an investigation, the Integrity Commissioner shall terminate the inquiry and provide notice to the complainant and, if necessary, to the Member.

### **Opportunities for Resolution**

- 6. Following receipt and review of a formal complaint or at any time during the investigation where the Integrity Commissioner, in his or her discretion, 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.

### **Investigation**

- 7.(1) The Integrity Commissioner may proceed as follows, except where the Integrity Commissioner has a full factual record and believes, in his or her sole discretion, that no additional information is required, or where otherwise required by the *Public Inquiries Act, 2009*, or where the Integrity Commissioner has not otherwise terminated the inquiry:
  - (a) provide the Member with a copy of the complaint as redacted so as to not disclose:
    - (i) the identity of the complainant, or
    - (ii) the identity of any witnesses set out in the complaint or persons that are questioned/interviewed by the Integrity Commissioner,unless it is essential for the Member to adequately respond to the complaint, which determination shall be made by the Integrity Commissioner's in its sole and absolute discretion;
  - (b) request that the Member provide a written response to the allegations in the complaint to the Integrity Commissioner within ten (10) calendar days;
  - (c) provide a copy of the Member's response to the complainant with a request that any written reply be provided by the complainant to the Integrity Commissioner within ten (10) calendar days; and
  - (d) extend the timelines set out above if the Integrity Commissioner deems it necessary to do so in his or her sole and absolute discretion.
- (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may contact and speak to or correspond with any other persons, access and examine any other documents or electronic materials, including any materials on the Town's computers and servers, and may enter any Town work location relevant to the complaint for the purpose of investigation and potential resolution.

- (3) The Integrity Commissioner may, but is under no obligation, to provide the Member and the complainant with a draft of the proposed report on the complaint.
- (4) The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any Member unless the Member has had an opportunity either in person or in writing to comment to the Integrity Commissioner on any preliminary or proposed finding(s).
- (5) The Integrity Commissioner may make interim reports to Council, where necessary, and as required to address any instances of interference, obstruction, intimidation, delay, reprisal or retaliation by the Member or by any other person encountered during the formal complaint investigation.
- (6) The Integrity Commissioner is entitled to make such additional inquiries and provide such additional reports to Council where necessary and as required to address any instances of non-compliance with any decision of Council including the failure to comply with any penalties or corrective measure or actions imposed by Council.
- (7) The Integrity Commissioner shall retain all records related to the complaint and investigation but may provide copies of certain records, in confidence, to Town administrative staff who are required to ensure that any such records are securely and confidentially retained.

#### **No Complaint Prior to Municipal Election**

- 8.(1) Notwithstanding any other provision of this Complaint Protocol, no complaint may be filed with the Integrity Commissioner and no report shall be made by the Integrity Commissioner to Council, during the period of time starting on nomination day for a regular municipal election year, as set out in section 31 of the *Municipal Elections Act, 1996* and ending on the voting day in a regular election as set out in section 5 of the *Municipal Elections Act, 1996*.
- (2) If the Integrity Commissioner has received a complaint and has commenced an inquiry but has not completed the inquiry before nomination day in a regular municipal election year, the Integrity Commissioner shall terminate the inquiry on nomination day but may commence an inquiry in respect of the same complaint if within six (6) weeks after the voting day in a regular municipal election the individual who made the request makes a written request to the Integrity Commissioner in accordance with subsection 223.4(8) of the *Municipal Act, 2001*.

#### **Advice Provided to Member by Integrity Commissioner**

- 9.(1) Subject to Section 9(2), a Member is entitled to rely upon any written advice given by the Integrity Commissioner to the Member respecting the Code of Conduct in any subsequent consideration of the conduct of the Member in the same matter provided that the Member fully disclosed in writing all relevant facts known to him or her to the Integrity Commissioner and acted in accordance with the written advice provided by the Integrity Commissioner.

- (2) If the Integrity Commissioner applies to a judge under section 8 of the Municipal Conflict of Interest Act for a determination as to whether the Member contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, the Member is entitled to advise the judge of any written advice given by the Integrity Commissioner provided that the Member fully disclosed in writing all relevant facts known to him or her to the Integrity Commissioner and acted in accordance with the written advice provided by the Integrity Commissioner.
- (3) A Member under investigation by the Integrity Commissioner shall not request advice from the Integrity Commissioner as to the Member's rights under the Code of Conduct, the *Municipal Conflict of Interest Act* or generally at law with respect to any matter that the Integrity Commissioner is investigating or reviewing with respect to the Member, nor is the Member entitled to rely upon any statement(s) made by the Integrity Commissioner during the course of any investigation or review that may impact the Member's rights under the Code of Conduct, the *Municipal Conflict of Interest Act* or generally at law.

### **Authority to Abridge or Extend**

- 10.(1) Notwithstanding any requirement, obligation or timeline, set out in the Code of Conduct or this Complaint Protocol, the Integrity Commissioner shall retain the right to abridge or extend any provision therein in the public interest.

### **Investigation Report**

- 11.(1) The Integrity Commissioner shall report to the complainant and the Member no later than ninety (90) calendar days after the official receipt of any complaint under the Code of Conduct. If the investigation process is anticipated to or takes more than ninety (90) calendar days, the Integrity Commissioner shall provide an interim report to Council and must advise the parties of the approximate date the report will be available. The Integrity Commissioner may also, at his or her discretion, advise any witnesses or other persons of the approximate date the report will be available.
  - (2) 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 remedial or corrective measure or action.
  - (3) If the Integrity Commissioner provides notice under Section 11(1) that the investigation is anticipated or will take more than ninety (90) calendar days to complete, the Integrity Commissioner shall provide notice to Council if the investigation is terminated.
  - (4) The Integrity Commissioner may provide a copy of the report to the complainant and the Member whose conduct has been investigated in advance of the public release of the report, in strict confidence until the report is publicly released. The Member shall have the right to address the report if it is considered by Council.
  - (5) Where the complaint is not sustained, the Integrity Commissioner is not obligated to report to Council on the result of the investigation or any findings but may do so at his/her discretion and may also include such information as he/she deems necessary in a report or as part of an annual or other periodic report by the Integrity Commissioner.

- (6) The Integrity Commissioner shall complete the investigation under the *Municipal Conflict of Interest Act* no later than one hundred eighty (180) calendar days after the official receipt of any complaint validly made under Section 1(2) of this Part.

## Findings

12.(1) If the Integrity Commissioner determines that:

- (a) there has been no contravention of the Code of Conduct or section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, or
- (b) a contravention occurred but:
  - (i) the Member took all reasonable measures to prevent it, including having sought and followed the advice of the Integrity Commissioner;
  - (ii) it was trivial,
  - (iii) it was committed through inadvertence, or
  - (iv) it resulted from an error in judgment made in good faith,

the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act, 2001*, including but not limited to, a recommendation of no penalty.

- (2) If the Integrity Commissioner considers it appropriate, once he or she has concluded the investigation under Section 1(2) of this Part, he or she may apply to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the Member has contravened section 5, 5.1 or 5.2 of that statute. If the Integrity Commissioner does not proceed with an application to the judge, he or she shall so advise the complainant.

## Report to Council

13. Upon receipt of a report from the Integrity Commissioner with respect to the Code of Conduct, the Clerk shall place the report on the next regular agenda of Council for consideration by Council and Council must consider the report at that meeting and may accept or refuse the recommendations set out in the report and accept, refuse or vary any penalties or sanctions contained in the report. A report from the Integrity Commissioner may also be considered by Council in advance of its next regular meeting should Council agree to hold a special or other meeting before its next regular meeting to consider the report.

## Duty of Council

14. Council shall consider and make a determination on the Integrity Commissioner's report at the same meeting at which the report is tabled.



## **Public Disclosure**

- 15.(1) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where it does not interfere with the course of any investigation, except as required by law and as required by this Complaint Protocol.
- (2) The Integrity Commissioner shall retain all records related to the complaint and investigation although copies may be provided to the Town's administrative staff, subject to the duty of confidentiality under subsection 223.5 of the *Municipal Act, 2001*.
- (3) The identity of the Member who is the subject of the complaint shall not be treated as confidential information in the Integrity Commissioner's report to Council. The identity of the complainant and of any other person, including witnesses, may be disclosed if deemed appropriate and necessary by the Integrity Commissioner or if consented to by the complainant.
- (4) All reports from the Integrity Commissioner to go to Council shall be made available to the public by the Clerk as posted on the Council agenda.

## **Delegation by Integrity Commissioner**

16. The Integrity Commissioner may delegate in writing to any person, other than a Member of Council, any of the Integrity Commissioner's powers and duties under Part V.1 of the *Municipal Act, 2001*.