



Corporate Procedure

Subject: Complaint Protocol under the Code of Conduct for Council, Local Boards and Committees

Division: Clerks

1. Purpose

The Town has appointed an Integrity Commissioner as required by Section 223.3 of the *Municipal Act, 2001* to assist the Town in continuing to provide good governance in an accountable and transparent manner.

The purpose of this protocol is to outline the procedures for dealing with a complaint made under the Code of Conduct for Council, Local Boards and Committees.

2. Scope

This procedure applies to Council, Local Boards and Committees.

Statement

The Town's Integrity Commissioner, in accordance with Part V.1 of the *Municipal Act, 2001*, Sections 223.1 and 223.2 and services established by Council will be responsible for the provision of the following:

1. To conduct inquiries in response to a complaint regarding whether a member has contravened the Code, Town policies, procedures, protocols and rules relating to the ethical conduct of members, or sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.
2. To provide advice to members respecting their obligations under the Code, Municipal Conflict of Interest Act, or any Town procedure, rule or policy of the Town as the case may be, governing the ethical behaviour of members.
3. To provide opinions on policy matters and make other reports to Council as requested on issues of ethics and integrity.
4. To provide educational information and training to Council, to members and to the public on matters related to the Code and issues of ethics and integrity and to the Municipal Conflict of Interest Act.

5. To provide general information to members of the public, on request, about the Code and any related complaint protocol and the availability of complaint resolution services or referrals as contemplated by the complaint protocol.
6. To maintain custody and control of the Integrity Commissioner's complaint and inquiry files and, on completion of his or her term of appointment, to transfer open files relating to ongoing matters to the incoming Integrity Commissioner appointed by Council.
7. To provide such other services respecting ethical and integrity matters as assigned by Council or as may be required by the Municipal Act.
8. To provide an annual report to Council respecting advice, education and investigations carried out in the previous year, and developments or recommendations of significance related to the role of the Town's Integrity Commissioner.

3. Procedure

A. DEFINITIONS

1. In this Protocol:
 - 1.1 "Code" means the Code of Conduct for Council, Local Boards and Committees.
 - 1.2 "Complainant" means the individual who makes a complaint.
 - 1.3 "Respondent" means a Member who is the subject of the complaint.

B. REQUEST FOR ADVICE

2. Any member of Council can request advice respecting their obligations under the code of conduct, *Municipal Conflict of Interest Act*, or any Town procedure, rule or policy of the Town, as the case may be, governing the ethical behaviour of members.
3. All requests for advice shall be in writing (as per Subsection 223.3 (2.1) of the *Municipal Act, 2001*).
 - 3.1 Once a written request has been received, the Commissioner will inform the Clerk that they will be providing Integrity Commissioner services to a Council Member and confirm it is for a Town issue, without breaching confidentiality, by briefly describing the nature of services including the Member's name.

- 3.2 The Clerk will provide the Commissioner with a list of current Town Council members and their contact information.
4. All advice provided by the Integrity Commissioner to a Member of Council shall be in writing (as per Subsection 223.3 (2.2) of the *Municipal Act, 2001*).
5. Advice provided by the Integrity Commissioner to a Member of Council may be released by the Integrity Commissioner:
 - 5.1 With the Members written consent;
 - 5.2 Without Members written consent if the Member releases part of the advice;
 - 5.3 As permitted by the *Municipal Act*.

C. INFORMAL COMPLAINT PROCEDURE

6. Any individual who believes behaviour or activity by a member contravenes the Code may address the behaviour or activity by doing one or more of the following:
 - 6.1 Inform the Member that the behaviour or activity appears to contravene the Code.
 - 6.2 Encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of it.
 - 6.3 Document the incidents including dates, times, locations, other individuals present, and any other relevant information.
 - 6.4 Request the Integrity Commissioner to assist in informal discussion with the Member about the alleged behaviour or activity in an attempt to resolve the issue.
 - 6.5 If applicable, confirm to the Member the individual's satisfaction with the response of the Member, or, if applicable, inform the Member of the individual's dissatisfaction with the response.
 - 6.6 Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part D, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
7. Individuals are encouraged to pursue the informal complaint procedure as the first means of remedying behaviour or an activity believed to violate the Code.

8. With the consent of both the complaining individual 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 of issues relating to an informal complaint. However, the informal process is not a precondition to pursuing the formal complaint procedure outlined in Part D.

D. FORMAL COMPLAINT PROCEDURE

9. Any individual who identifies or witnesses behaviour or an activity by a Member and believes it to be in contravention of the Code or the Municipal Conflict of Interest Act may file a formal complaint as follows:
 - 9.1 The complaint shall be made in writing and be dated and signed by an identifiable individual.
 - 9.2 Where possible, the complaint shall be made using the Complaint Form which is posted on the Town's website. If the Complaint Form is not used then the complaint must contain all of the information required by the Complaint Form, in the same order.
 - 9.3 The complaint must state the section(s) of the Code that the Complainant believes has (have) been breached.
 - 9.4 The complaint must include background (including date(s), time(s) and location(s) of conduct, supporting documentation, details and names of all persons involved, and name(s) of any witness(es)) that contains reasonable grounds for the allegation that a Member has contravened the Code.
 - 9.5 The Complainant is encouraged to include relevant documents.
 - 9.6 The complaint shall be submitted directly to the Integrity Commissioner by email, fax, mail or delivery.
 - 9.7 In the event that a complaint is sent to or left at the Town office, the Clerk shall ensure that it is delivered unopened (or, if left unsealed, is placed in an envelope without being read and then sealed and delivered) to the Integrity Commissioner.
 - 9.8 In the event that a complaint is sent electronically to the Town office, the Clerk shall ensure that it is delivered to the Integrity Commissioner, without breaching confidentiality.

Integrity Commissioner's Classification and Decision to Investigate

10. The Integrity Commissioner may not help anyone to draft the content of a complaint, but the Commissioner may for any reason:

- (a) invite a Complainant to clarify, or
- (b) permit a Complainant to amend or resubmit

any complaint, including a complaint that does not meet the requirements of this Complaint Protocol. The complaint is deemed to be received by the Commissioner when it is clarified, amended or resubmitted and henceforth the complaint consists of the amended complaint, the resubmitted complaint, or the original complaint plus amendments or plus clarifications, as the case may be.

11. Upon receiving the complaint, the Integrity Commissioner will conduct an initial classification to determine whether the complaint is within the Commissioner's jurisdiction and whether the Commissioner should commence an investigation.

11.1 The complaint, or part of it, lies outside the Commissioner's jurisdiction if the subject matter of the complaint, or part, relates more properly to another law or to other complaint process or dispute resolution procedure.

11.2 The Commissioner shall only commence an investigation of a complaint, or part of it, that on its face contains allegations that if substantiated would constitute a breach of one or more provisions of the Code or the Municipal Conflict of Interest Act, and then only in relation to such provision(s).

11.3 The Commissioner has the discretion to decline to commence an investigation if on its face the complaint appears to be frivolous, vexatious or not made in good faith, and subsequently the Commissioner may terminate an investigation if at any time the Commissioner forms the opinion that the complaint is frivolous or vexatious or that the Complainant is not acting in good faith.

11.4 If the Complainant is a Member, where the Integrity Commissioner declines to commence or terminates an investigation on the grounds that the complaint is frivolous or vexatious or that the Complainant is not acting in good faith, the Integrity Commissioner may report that fact to Council and name the Member.

12. If on its face the complaint, or part, relates more properly to another law or to other complaint process or dispute resolution procedure then the Integrity Commissioner shall respond to the Complainant in writing as follows:

12.1 If the allegation might relate to an offence under the Criminal Code or

another criminal statute then the Complainant shall be informed that such allegation, if the Complainant wishes to pursue it, should be brought to the attention of the police.

- 12.2 If a complaint or part is more appropriately handled under the Municipal Freedom of Information and Protection of Privacy Act then the Complainant shall be informed that the matter falls under the responsibility of the Clerk, and shall be given the Clerk's phone number and email address.
- 12.3 If the complaint or part seems to fall under another Town policy then the complainant shall be informed how to pursue the matter under the other policy.
- 12.4 If for any other reason the complaint or part is not within the jurisdiction of the Integrity Commissioner then the Complainant shall be so informed and given such additional reasons and/or referred to such agencies or authorities as the Integrity Commissioner considers appropriate.
- 12.5 If the complaint or part relates to a matter that is already subject to another process, including but not limited to a court proceeding under the Municipal Conflict of Interest Act, a human rights complaint, an arbitration hearing, or another court or tribunal proceeding, then the Integrity Commissioner may, in the Integrity Commissioner's sole discretion, suspend any investigation pending the result of the other process.

Settlement, Withdrawal and Other Opportunities for Resolution

13. Following receipt of a formal complaint, or at any time during an investigation:

- 13.1 Where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without starting or continuing an investigation, and both the Complainant and the Respondent agree, the Commissioner may pause or delay the investigation and make efforts to achieve an informal resolution.
- 13.2 If a complaint is withdrawn, settled or informally resolved, the Commissioner shall not report to Council except as part of the annual report described in section 28.

Investigation

14. Within three business days after receiving the complaint, the Integrity Commissioner shall decide whether to investigate the complaint or part of it.
15. Except where the Integrity Commissioner exercises powers under sections 33

and 34 of the *Public Inquiries Act*, the investigation process shall be as follows:

- 15.1 Without identifying the Complainant, the Respondent or the circumstances, the Integrity Commissioner shall give notice to the Clerk that an investigation is being commenced.
- 15.2 The Integrity Commissioner shall, the same day, give the Respondent notice of the complaint (including a copy of the complaint and all supporting documentation) and invite the Respondent to provide a written response within seven business days.
 - (a) To protect the right of a full and fair opportunity to respond, the Respondent shall be given the entire complaint, including the Complainant's name but not the contact information of a Complainant who is not a Member.
 - (b) In exceptional circumstances and only where the Integrity Commissioner is satisfied that a fear of intimidation or reprisal is well-founded, the Integrity Commissioner may redact information that would identify the Complainant or a witness, provided that the Respondent receives sufficient disclosure to understand the allegation(s) and to receive a full and fair opportunity to respond.
 - (c) Despite paragraph (b), where the Complainant is a Member of Council the Complainant's identifying information will not be redacted.
- 15.3 The Integrity Commissioner shall, the same day, give the Complainant notice that an investigation has commenced.
- 15.4 Within three business days after receiving the Respondent's response, if any, the Integrity Commissioner shall send it to the Complainant with an invitation to reply within seven business days.
- 15.5 Within three business days after receiving the Complainant's reply, if any, the Integrity Commissioner shall send it to the Respondent.
- 15.6 After reviewing the complaint, the response and the reply, the Commissioner may speak to anyone, access and examine any other documents or electronic materials, and may enter any Town work location relevant to the complaint for the purpose of investigation and potential resolution.
- 15.7 Within 45 calendar days after the complaint is received, or such longer period as the Commissioner deems necessary, the Commissioner shall draft a report containing the findings of the investigation, including draft conclusions about whether the Respondent contravened the Code and,

where applicable, a draft recommended penalty, and submit it to the Respondent for representations and comments within seven business days.

15.8 Within five business days after receiving the representations and comments of the Respondent, and taking them into account, the Integrity Commissioner shall finalize the report and deliver it to the:

(a) Clerk, for delivery to Council.

(b) Complainant.

(c) Respondent.

16. The Commissioner has the discretion to extend any of the time frames and deadlines in this Protocol. If, however, a report will not be completed within 90 days of the receipt of a complaint, the Integrity Commissioner shall provide an interim report to Council (and the Respondent and Complainant). The interim report shall describe the complaint without identifying the Respondent and the Complainant, explain the delay and state when the final report is expected to be ready.

Report to Council and Recommendation

17. Upon receipt of a report, the Clerk shall place it on the next regular agenda of Council.

18. Where a report states the Integrity Commissioner's opinion that a Respondent has contravened the Code:

18.1 The Integrity Commissioner may include in the report a recommended penalty.

18.2 If the Integrity Commissioner is of the opinion that the contravention was trivial or committed through inadvertence or an error of judgment made in good faith, or occurred despite the Respondent taking reasonable measures to prevent it, then the report shall so state.

18.3 The Respondent shall have the right of reply when the report is considered by Council.

18.4 As provided by the *Municipal Conflict of Interest Act*, where the matter under consideration is whether to suspend the remuneration paid to a member, the member may take part in the discussion of the matter, including making submissions to Council, and may attempt to influence the voting on any question in respect of the matter, whether before, during or

after the meeting. However, the member is not permitted to vote on any question in respect of the matter. In the case of a meeting that is not open to the public, the member may attend the meeting or part of the meeting during which the matter is under consideration.

19. If the Integrity Commissioner is of the opinion that a Respondent did not contravene the Code but the Respondent's conduct was blameworthy or otherwise deserving to be brought to Council's attention then the report shall so state.
20. If the Integrity Commissioner is of the opinion that the investigation has revealed the need for an amendment to the Code, this Protocol or Town policy then the report shall so state.
21. The Integrity Commissioner may make interim reports to Council where necessary and as required, including to address any instances of interference, obstruction, delay, reprisal retaliation associated with the investigation.

Confidentiality to Ensure a Fair Process

22. To ensure that a complaint is investigated (or settled or informally resolved) in a fair manner that respects the rights of the Complainant, the Respondent and witnesses, until the final report is delivered to Council the parties shall maintain the confidentiality of the complaint process, including but not limited to the confidentiality of the complaint, responses, replies and other communications from the Complainant, the Respondent and the Integrity Commissioner.
23. If a Complainant (whether or not the Complainant is a Member) discloses information about a complaint or investigation then the Integrity Commissioner may take that fact into account in exercising discretion before declining to commence or terminating an investigation on the grounds that the complaint is frivolous or vexatious or the Complainant is not acting in good faith.
24. The following paragraphs apply where a Member (whether or not the Member is a Complainant, a Respondent, a witness or uninvolved) discloses information about a complaint or an investigation:
 - 24.1 Section 16.1 of the Code prohibits any reprisal or threat of reprisal against a Complainant or anyone for providing relevant information to the Integrity Commissioner. Where the Integrity Commissioner is of the opinion that the disclosure constituted a reprisal or a threatened reprisal, the Commissioner, after giving a Member a fair opportunity to respond, may report to Council that the Member contravened the Code and may recommend a penalty.
 - 24.2 Section 16.2 of the Code prohibits obstruction of the Integrity

Commissioner in the carrying out of the Commissioner's responsibilities. Where the Integrity Commissioner is of the opinion that obstruction has occurred, the Commissioner, after giving the Member a fair opportunity to respond, may report to Council that the Member contravened the Code and may recommend a penalty.

24.3 Sections 8, 12, 13 and 14 of the Code provide that a Member shall not disclose or release confidential information and shall conduct themselves in a respectful manner. Where the Integrity Commissioner is of the opinion that confidential information was disclosed or that a Member has not conducted themselves in a respectful matter, the Commissioner, after giving the Member a fair opportunity to respond, may report to Council that the Member contravened the Code and may recommend a penalty.

25. If the disclosure of information about a complaint or investigation makes it impossible, in the Integrity Commissioner's opinion, to conclude a fair and proper investigation that respects the rights of the parties then the Integrity Commissioner shall report that opinion to Council.

26. For greater certainty, a report under this section shall name the individual who disclosed or caused the disclosure of information about a complaint or investigation, and may name any Member who is involved as a Complainant, Respondent, witness or other involved individual.

No Complaint Processing and No Report Prior to Municipal Election

27. The following rules apply during the period of time starting on nomination day for a regular election, as set out in the *Municipal Elections Act, 1996*, and ending on voting day in a regular election, as set out in the *Municipal Elections Act, 1996*:

27.1 There shall be no requests for an inquiry about whether a member of Council or of a local board has contravened the Code applicable to the member.

27.2 The Commissioner shall not report to the Town or local board about whether, in his or her opinion, a member of Council or of a local board has contravened the Code applicable to the member.

27.3 The Town or the local board shall not consider whether to impose the penalties referred to in the *Municipal Act* on a member of Council or of a local board.

27.4 If the Commissioner has not completed an inquiry before nomination day for a regular election, as set out in the *Municipal Elections Act, 1996*, the Commissioner shall terminate the inquiry on that day.

27.5 If an inquiry is terminated, the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election, as set out in the *Municipal Elections Act, 1996*, the person or entity who made the request of the member or former member whose conduct is concerned makes a written request to the Commissioner that the inquiry be commenced.

Annual Reports to Council

28. The Integrity Commissioner shall report to Council annually. In the annual report, the Commissioner shall report on all complaints received and on their disposition (including complaints not falling within the jurisdiction of the Integrity Commissioner and other complaints that were not investigated). Unless otherwise provided in this Protocol, a complaint that has not been the subject of a public report to Council will be described in the annual report without identifying the Complainant or the Respondent.

Confidentiality, Record Keeping and Public Disclosure

29. The Integrity Commissioner and every person acting under the instructions of the Integrity Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under Part V.I of the *Municipal Act*, the Code and this Protocol. Nevertheless, information may be disclosed as required by law or otherwise in accordance with Part V.I of the Act, the Code and this Protocol. In a report on whether a Member has contravened the Code, the Integrity Commissioner may disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.

30. The Integrity Commissioner shall retain all records related to the complaint and investigation.

31. For greater certainty, if the Integrity Commissioner is of the opinion that a Member has contravened the Code then the Member's identity is not confidential information and the Member shall be named in the Integrity Commissioner's report to Council.

32. All reports from the Integrity Commissioner to Council will be made available to the public on the Town Website on a single Web page that is easily accessible.