

Complaint Protocol

Council Code of Conduct

Part A - Informal Complaint Procedure

Any individual who identifies or witnesses behaviour or activity by a Member that they believe contravenes the Code of Conduct or the *Municipal Conflict of Interest Act* may seek to address the prohibited behaviour or activity themselves in the following manner by following the Informal Complaint Procedure:

- (a) document the incidents 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, for example, a friend 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 their response is satisfactory, or
 - (ii) advise the Member that their 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.

Individuals are 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.

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/conciliator of issues relating to a complaint.

The Informal Complaint Process is not a precondition or a prerequisite to pursuing the Formal Complaint Procedure set out in Part B.

Part B - Formal Complaint Procedure

Formal Complaints

1. Any individual who identifies or witnesses behaviour or activity by a Member that they believe contravenes the Code of Conduct or the *Municipal Conflict of Interest Act* including may file a formal complaint to request an inquiry by the Integrity Commissioner in accordance with the following requirements:
 - (a) all complaints shall be in writing on the prescribed form 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 or the *Municipal Conflict of Interest Act*
 - (c) Council or a Committee may also file a complaint against any of its Members by passing a resolution requesting the Integrity Commissioner to undertake an inquiry.

Filing of Complaint and Classification by Integrity Commissioner

2. The complaint shall be filed directly by the complainant with 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 *Municipal Conflict of Interest Act* and not covered by other legislation or other Council procedures, policies or rules as set out in Section 3.

Complaints Outside Integrity Commissioner Jurisdiction

3. If the complaint, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the *Municipal Conflict of Interest Act* or the complaint relates to matters addressed by other legislation or complaint procedure under another City procedure, policy or rule, the Integrity Commissioner shall advise the complainant in writing as follows:

Criminal Matter

- (a) if the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police service;

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 the 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 City, the complainant shall be advised to pursue the matter under such procedure, policy or rule;

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 or a Committee 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; and

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 related to the *Municipal Conflict of Interest Act*, a Human Rights complaint or similar process, or to a civil matter that is pending before the courts, the Integrity Commissioner may, in his/her sole discretion and in accordance with legislation, suspend any investigation pending the result of the other process.

Periodic Reports to Council

4. The Integrity Commissioner shall report annually to Council on all complaints received and on their disposition (including complaints deemed not to be within the jurisdiction of the Integrity Commissioner).

Refusal to Conduct Investigation

5. If the Integrity Commissioner is of the opinion that:

- (a) a complaint is frivolous or vexatious,
- (b) a complaint is not made in good faith, or
- (c) there are no grounds or insufficient grounds for an investigation,

the Integrity Commissioner shall not be required to conduct an investigation and, where this becomes apparent in the course of an investigation, shall terminate the investigation.

Opportunities for Resolution

6. Following receipt and review of a 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.

Investigation

7. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act, 2009*:
 - (a) provide the Member with an outline of the complaint with sufficient particularity to allow the Member to understand the complaint against them;
 - (b) request that the Member provide a written response to the allegations to the Integrity Commissioner within ten (10) days; and
 - (c) provide a copy of the Member's response to the complainant with a request that any written reply be provided within ten (10) days.
- (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to any person, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.
- (3) 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 reasonable notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment to the Integrity Commissioner on the proposed finding and any recommended sanction.
- (4) The Integrity Commissioner may make interim reports to Council or a Committee where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the formal complaint investigation.

- (5) The Integrity Commissioner shall retain all records related to the complaint and investigation.

No Complaint Prior to Municipal Election

8. Notwithstanding any other provision of this Complaint Protocol, no complaint may be referred to the Integrity Commissioner, or forwarded by the Clerk for review and/or investigation after the last meeting of Council or the Committee in September, in any year in which a regular municipal election will be held.

Reliance Upon Advice Provided to Member by Integrity Commissioner

9. A Member is entitled to rely upon any written advice given by the Integrity Commissioner to the Member in any subsequent consideration of the conduct of the Member in the same matter provided that the Member fully disclosed all relevant facts known to them to the Integrity Commissioner and acted in accordance with the written advice provided by the Integrity Commissioner.

Recommendation Report

10. (1) The Integrity Commissioner shall report to the complainant and the Member generally no later than ninety (90) days after the official receipt of the complaint. If the investigation process takes more than ninety (90) days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date the report will be available.
- (2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council or the Committee outlining the findings, the terms of any settlement and/or any recommended corrective action.
- (3) The Member shall, subject to Subsection 10(5), have the right to address the report when it is considered by Council or the Committee.
- (4) Where the complaint is not sustained, the Integrity Commissioner is not obligated to report to Council or to the Committee the result of the investigation although it may be included as part of an annual or other periodic report.
- (5) If the report of the Integrity Commissioner recommends sanctions of a pecuniary nature, such as the suspension of the remuneration paid to the Member, then the Member shall have a right to address the report and recommendation when the matter is considered by Council or the Committee.

Findings

11. If the Integrity Commissioner determines that:
- (a) there has been no contravention of the Code of Conduct, or

- (b) a contravention occurred but:
 - (i) the Member took all reasonable measures to prevent it,
 - (ii) it was trivial,
 - (iii) it was committed through inadvertence, or
 - (iv) it resulted from an error of 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*.

Member's Costs

- 12. Members are eligible to be reimbursed for up to a total of \$1,500.00 per year for legal expenses incurred to obtain one or more legal opinions regarding any issues relating to obligations pertaining to potential conflicts of interests upon submission of receipt of invoice(s) to the Clerk.

Report to Council

- 13. Upon receipt of a report from the Integrity Commissioner, the Clerk shall place the report on the next regular agenda of Council or the Committee for consideration by Council or the Committee. Council or the Committee must consider the report and may accept or refuse the recommendations set out in the report and accept, refuse or vary any sanctions contained in the report.

No Reports Prior to Municipal Election

- 14. Notwithstanding any other provision of this Complaint Protocol, the Integrity Commissioner shall not make any report to Council or to any other person after the last meeting of Council in September in any year in which a regular municipal election is to be held, until the first official meeting of Council following the election.

Duty of Council

- 15. Council or the Committee shall consider the Integrity Commissioner's report at the meeting at which it is tabled.

Public Disclosure

- 16.(1) The Integrity Commissioner and every person acting under their 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.

- (2) At the time of the Integrity Commissioner's report to Council or the Committee, the identity of the Member who is the subject of the complaint shall not be treated as confidential information.
- (3) All reports from the Integrity Commissioner to Council or the Committee will be made available to the public by the Clerk.

Delegation

- 17. The Integrity Commissioner may delegate in writing to any person, other than a Member of Council or the Committee, any of the Integrity Commissioner's powers and duties.