

COUNCIL CODE OF CONDUCT

COMPLAINT PROCEDURE

APPENDIX “A”
REGION OF DURHAM – CODE OF CONDUCT
COMPLAINT PROCEDURE
(the “Complaint Procedure”)

1. Procedure — Informal Complaint

1.1 Any person who believes that a member is in contravention of the Region of Durham’s Code of Conduct may address their concerns in the following manner:

- A) advise the member that their behaviour or activity contravenes the Code of Conduct;
- B) encourage the member to stop the prohibited behaviour or activity;
- C) if applicable, confirm to the member their satisfaction or dissatisfaction with the member’s response to the concern identified; and
- D) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information, including steps taken to resolve the matter.

1.2 If any person is not satisfied with the response received through the aforementioned informal process, the person may proceed with a formal complaint through the Integrity Commissioner as outlined in Section 2 of the Complaint Procedure.

2. Procedure — Formal Complaint

2.1 Any person who has reasonable grounds to believe that a member has contravened the Code of Conduct may address their concerns through the formal complaint process set out below:

- A) all formal complaints (“Complaints”) must be made using the Region’s Complaints Form/Affidavit (see Schedule “A”) and shall be dated and signed by the person making the Complaint (the “Complainant”);
- B) the Complaint must include an explanation as to why the issue raised may be a contravention of the Code of Conduct and any evidence in support of the allegation must be included with the Complaints Form/Affidavit;
- C) any witnesses in support of the allegation must be identified on the Complaint Form/Affidavit;

- D) the Complaint Form/Affidavit must include the name of the member alleged to have breached the Code of Conduct, the specific provision(s) of the Code of Conduct allegedly contravened, the date, time and location of the alleged contravention(s) and any other information as required on the Complaint Form/Affidavit;
- E) the Complaint shall be filed with the Clerk who shall confirm that the information is complete as to Sections 2.1 (a), (b) and (d) and then forward the Complaint Form/Affidavit to the Integrity Commissioner who will determine whether 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 policies; and
- F) the Complaint must be submitted to the Clerk no later than six (6) months from the date in which the alleged violation occurred and no action will be taken on a Complaint received after this deadline.

2.2 The Integrity Commissioner may request additional information from the Complainant in order to properly assess the Complaint.

2.3 A Complainant may at any time abandon a Complaint.

3. Response of Integrity Commissioner of Complaint Outside Jurisdiction

- 3.1 If the Complaint received by the Integrity Commissioner does not relate to a non-compliance with the Code of Conduct, it will be deemed not to be a Complaint and the Integrity Commissioner shall advise the Complainant in writing as follows:
- A) Criminal Matter — if the Complaint is an allegation of a criminal nature consistent with the *Criminal Code*, R.S.C. 1985, c. C-46, the Complainant shall be advised that pursuit of such an allegation must be made through the appropriate police service;
 - B) Municipal Conflict of Interest — if the Complaint is an allegation with respect to matters under the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, the Complainant shall be advised to review the matter with their own legal counsel;
 - C) Municipal Freedom of Information and Protection of Privacy — if the Complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, the Complainant shall be referred to the Clerk to have the matter reviewed under that statute; or
 - D) Other Matters – if the matter is covered by other policies or legislation, the Complainant will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner.

4. Refusal to Conduct an Investigation

- 4.1 If upon review of a Complaint, the Integrity Commissioner is of the opinion that the Complaint is frivolous, vexatious or not made in good faith, or that there are no or insufficient grounds for an investigation, the Integrity Commissioner will not conduct an investigation and shall communicate this position in writing to the Complainant and the member identified in the Complaint Form/Affidavit. The Integrity Commissioner is under no obligation to prepare a report for any matters that he or she summarily dismisses or determines not to investigate.

5. Opportunity for Resolution

- 5.1 If at any time, following the receipt of a Complaint or during the investigation process, 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 made to achieve an informal resolution. The formal Complaint will be held in abeyance during such time.

6. Investigation

- 6.1 If the Integrity Commissioner determines that a formal investigation is required, he or she shall:
- A) provide a copy of the Complaint and any supporting materials to the member whose conduct is in question with a request that a written response to the allegation be provided to the Integrity Commissioner within ten (10) days;
 - B) provide a copy of the response provided by the member to the Complainant with a request for a written reply within ten (10) days;
 - C) 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 municipality that the Integrity Commissioner believes to be necessary for an investigation; and
 - D) make interim reports to Council where necessary and as required to address any issues of interference, obstruction, delay or retaliation, if any, encountered during the investigation.
- 6.2 The Integrity Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6, in which case those sections apply to the investigation.

7. Co-Operation

- 7.1 A Member shall co-operate in every way possible with the Integrity Commissioner in any investigation of a Complaint and the enforcement of the Code of Conduct.

8. Suspension of Investigation

8.1 The Integrity Commissioner will cease the investigation if:

- A) a Complainant abandons the request for an investigation, in which case the Integrity Commissioner shall report to Council as set out in Section 9; or
- B) the Integrity Commissioner determines that there are reasonable grounds to believe that there has been a contravention of any other statute or of the *Criminal Code*, in which case the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the investigation until any resulting police investigation and charge(s) have been finally disposed of, and shall report the suspension to Council.

9. Report Re Recommendation

9.1 The Integrity Commissioner shall report to the Complainant and the member on the results of his or her review within sixty (60) days of receiving a complete Complaint Form/Affidavit upon completion of an investigation. If the investigation process requires more than sixty (60) days, the Integrity Commissioner shall provide an interim report to the Complainant and member indicating when the complete report may be available.

9.2 If during the investigation process, the Complaint is withdrawn, sustained or resolved, the Integrity Commissioner shall report to Council outlining the findings, the terms of any resolution and any recommended action within thirty (30) days.

9.3 If upon completion of the investigation, the Integrity Commissioner finds that there has been no contravention of the Code, or that a contravention occurred but the member took all reasonable measures to prevent it, or the contravention committed was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall set this out in its report to Council.

9.4 If upon completion of the investigation, the Integrity Commissioner finds that a breach of the Code of Conduct has occurred, the Integrity Commissioner shall report his or her findings to Council including a recommendation as to the imposition of a penalty as set out in subsection 223.4(5) of the *Municipal Act, 2001* S.O. 2001, c. 25, namely either:

- A) a reprimand; or
- B) a suspension of remuneration paid to the member for a period of up to ninety (90) days.

9.5 The report shall only disclose such information that in the Integrity Commissioner's opinion is required for the purposes of the report.

10. No Appeal of Integrity Commissioner's Decision

10.1 There is no appeal from the decision of the Integrity Commissioner.

11. No Complaints or Reports Prior to Election

11.1 No Complaint may be referred to the Integrity Commissioner or forwarded by the Clerk for review and/or investigation after July 1 in any year in which a regular municipal election will be held. The Clerk shall forward any Complaint received after July 1 to the Integrity Commissioner on December 1 in a regular election year and advise the Complainant of this process.

11.2 Notwithstanding Section 9 of this Complaint Procedure, the Integrity Commissioner shall not make any report to Council or any other person after the last Council meeting in July in any year in which a regular municipal election is to be held. Any reports will be made to the first Council meeting held after the inaugural meeting of the new Council.

12. Confidentiality

12.1 The Integrity Commissioner and every person acting under his or her instructions shall preserve the confidentiality of all documents, material or other information, whether belonging to the Region or not, that come into their possession or to their knowledge during the course of their duties as required by section 223.5 of the *Municipal Act, 2001*. Pursuant to subsection 223.5(3) of the *Municipal Act, 2001*, Section 9 of the Complaint Procedure prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

13. Delegation

13.1 The Integrity Commissioner may delegate in writing to any person, other than a member, any of the Integrity Commissioner's powers and duties.