

By-law Number 09-2019
of The Regional Municipality of Durham

Being a by-law to adopt a Code of Conduct for Members of the Council of The Regional Municipality of Durham and its local boards.

Whereas section 223.2(1) of the Municipal Act requires a municipality to establish codes of conduct for members of the council and of its local boards.

Now therefore, the Council of The Regional Municipality of Durham hereby enacts as follows:

1. Purpose

1.1 The purpose of this code is to establish clear conduct rules for members of council and local boards.

2. Principles

2.1 Improving the equality of Regional administration and governance can best be achieved by encouraging high standards of conduct on the part of all municipal officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government and members appointed to the Region's local boards. In turn, adherence to these standards will protect and maintain the Region's reputation and integrity.

2.2 Key statements of principles that underline this Code of Conduct are as follows, members shall:

- A) Serve and be seen to serve their constituents in a conscientious and diligent manner;
- B) be committed to performing their functions with integrity, avoiding the improper use of the influence of their office, and conflicts of interest;
- C) perform their duties in office in a manner that promotes public confidence and will bear close public scrutiny;
- D) recognize and act upon the principle that democracy is best achieved when the operation of government is made as transparent and accountable to members of the public as possible; and
- E) seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the by-laws and policies adopted by the Council.

3. Definitions

3.1 In this Code of Conduct:

- A) "child" means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;
- B) "Code of Conduct" means the rules which govern the conduct of members established pursuant to the authority of section 223.2 of the Municipal Act, 2001, S.O. 2001, c. 25;
- C) "complaint" means a written request to investigate the conduct of any member for a possible violation of the Code of Conduct filed in accordance with the Complaint Procedure;

- D) "confidential information" means any information in the possession of, or received in confidence by, the Region that the Region is prohibited from disclosing, or has decided to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, or any other law, which includes, but is not limited to:
- (1) information of a corporate, commercial, scientific or technical nature received in confidence from third parties;
 - (2) personal information as defined in subsection 2(1) of the Municipal Freedom of Information and Protection of Privacy Act;
 - (3) information that is subject to solicitor-client privilege;
 - (4) information that concerns any confidential matters pertaining to matters related to an identifiable individual, personal, labour relations, litigation, property acquisition, the security of the property of the municipality or a local board;
 - ~~(5) any other information lawfully determined by the Council to be confidential, or required to remain or be kept confidential by legislation or order; and (not adopted – referred to staff for report at the February 27, 2019 Council meeting)~~
 - (6) any information considered by or made available to Council during a closed meeting pursuant to subsection 239(2) of the Municipal Act, 2001.
- E) "Council" means the council of The Regional Municipality of Durham;
- F) "Gift or Benefit" means anything of value including but not limited to cash or monetary equivalent, fee, object of value, service, meal, travel, accommodation or entertainment;
- G) "Harassment" includes
- any comment, conduct, action or gesture that is unwelcome or that ought reasonably be known to be unwelcome that could affect a person's dignity or a person's psychological or physical health; and
 - Sexual Harassment.
- H) "information" means any record, document, data, material, correspondence or evidence however recorded, whether oral or in printed form, on film, by electronic means or otherwise;
- I) "Integrity Commissioner" means the Integrity Commissioner appointed by the Council pursuant to section 223.3 of the Municipal Act, 2001;
- J) "local board" means any local board established by the Region of Durham which meets the criteria outlined in the Municipal Act including but not limited to: the 9-1-1 Management Board, Development Charges Complaint Committee, Land Division Committee, and Durham Regional Transit Commission;
- K) "member" means a member of the Council or local board, unless the context otherwise requires;
- L) "parent" means a person who has demonstrated a settled intention to treat a child as a part of his or her family;
- M) "person" includes a corporation, partnership, association and any other entity, as the context allows, and expressly includes a member as well as Council;
- N) "Region" means The Regional Municipality of Durham;

- O) "sexual harassment" includes any comment, conduct, action or gesture of a sexual nature or respecting sexual orientation, gender identity or gender expression that is unwelcome or that ought reasonably to be known to be unwelcome;
- P) "spouse" means a person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage; and
- Q) "staff" means the municipal administrative staff of the Region and of its municipal corporations and local boards.

4. Application of this Code

4.1 This Code of Conduct applies to every member.

5. Compliance with Declaration of Office

5.1 Every member shall act in accordance with his or her declaration of office sworn or terms of appointment, as applicable.

6. Adherence to Council Policies and Procedures

6.1 Every member shall observe and comply strictly with every provision of this Code of Conduct, as well as all other policies and procedures adopted or established by Council affecting the member, whether or not acting in his or her capacity as a member.

7. Conduct at Meetings

7.1 Every member shall conduct himself or herself properly and in a civil manner at Council, committee and other meetings, and in accordance with the provisions of the Region's Council Rules of Procedure By-law, this Code of Conduct, and any other applicable law.

8. Conduct Respecting Others

8.1 Every member has the duty and responsibility to treat all members of the public, other members and all staff appropriately and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment.

8.2 A member shall not:

- A) use indecent, abusive or insulting-words or expressions toward any other member, any member of staff or any member of the public;
- B) speak in a manner that is discriminatory to any individual, based on that person's race, ancestry, place of origin, creed, gender, sexual orientation or gender identification, age, colour, marital status, or disability; and
- C) engage in any Harassment of any other member, any member of staff or any member of the public.

9. Conduct Respecting Staff

9.1 Every member acknowledges that staff operate under the direction of the senior municipal administration, and in accordance with the decisions of Council, and are required to serve the Region as a whole and not the needs or desires of any individual member.

9.2 Every member shall:

- A) be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any member or faction of the Council; and

- B) show respect for staff, and for their professional capacities and responsibilities.

9.3 A member shall not:

- A) maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff;
- B) compel any member of staff to engage in partisan political activities, or subject any member of staff to threat or discrimination for refusing to engage in any such activity; and
- C) use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or influencing improperly any staff member or interfering with that staff person's duties, including the duty to disclose improper activity.

10. Gifts, Benefits, Services and Hospitality

10.1 A Gift or Benefit to a Member's Spouse, Child or Parent that is connected directly or indirectly to the performance of the Member's duties is deemed to be a Gift or Benefit to the Member if provided with the Member's knowledge or solicited by the Member.

10.2 In order to preserve the image and integrity of the Region, business gifts to Members are discouraged. The Region recognizes that moderate hospitality is an accepted courtesy of a business relationship. However, Members should not solicit or accept any gift or benefit that:

- A) is intended to influence, might influence, or could reasonably be perceived that it might influence or is intended to influence, the Member in the performance of the Member's duties as an elected official; or
- B) is intended, or could reasonably be perceived that it is intended, as a reward for any action or impending action by the Member.

10.3 If the refusal of any gift or act of hospitality will strain the Region's business relationship, the Regional Chair or Chief Administrative Officer may accept it on behalf of the municipality with the appropriate acknowledgment.

10.4 Generally, the Regional Chair or Chief Administrative Officer will be the official recipient of those gifts afforded to the Region for ceremonial, symbolic, protocol or official business purposes. Members will turn over such a gift to the Regional Chair or Chief Administrative Officer. Wherever possible, ceremonial, symbolic, protocol or official business gifts should be presented at a meeting of Council.

10.5 Despite section 10.2, a Member may accept the following:

- A) a political contribution offered, accepted and reported in accordance with applicable law;
- B) food or beverage, of reasonable value, at a banquet, reception, ceremony or similar event that the Member attends for a legitimate municipal purpose;
- C) a Gift or Benefit that is received as an incident of protocol or social obligation that normally and reasonably accompanies the responsibilities of office;
- D) a token gift such as a souvenir, memento or commemorative gift that is given in recognition of service on a committee, for speaking at an event, or for representing the Municipality at an event;
- E) a communication to the office of a Member, including a subscription to a newspaper or periodical;

- F) a service provided by a person volunteering time without compensation;
- G) food, lodging, transportation or entertainment lawfully provided by a government (federal, provincial, local or foreign) or government agency or by a not-for-profit organization whose members are governments or government agencies (examples of such a not-for-profit organization include the Canadian Association of Nuclear Host Communities and the Federation of Canadian Municipalities);
- H) food, lodging, transportation or entertainment lawfully provided by the organizer of a conference, seminar, charity fundraiser, reception, ceremony, cultural event, sporting event, business, or political event where the Member is speaking or attending in an official capacity;
- I) an invitation from and at the expense of a private third party to attend a conference, seminar, charity fundraiser, reception, ceremony, cultural event or other similar event within the Municipality where the proceeds raised are to support a not-for-profit or charity organization.;
- J) reimbursement of a reasonable expense incurred, or an honorarium received, in the performance of activities connected with a public authority, or a municipal association, agency, board or corporation, including a corporation of which the Municipality is a shareholder or member; and
- K) compensation authorized by Council or law.

10.6 This section does not preclude a Member from soliciting funds or donations in support of a charitable or philanthropic cause, organization, or charity provided that all funds or donations are provided directly by the donor(s) to the recipient organization or charity.

10.7 Members will be required to exercise their personal judgment of the provisions within this section.

11. Recommendations of Integrity Commissioner and Authority of Council

In a report on a Complaint that relates to a Gift or Benefit, in addition to the range of recommendations otherwise provided under this Code, the Integrity Commissioner may recommend, and upon consideration of the Integrity Commissioner's report the Council, in addition to its other powers under this Code, may impose, one or more of the following remedies:

- A) that the Member be directed to return the Gift or Benefit;
- B) that the Member be directed to reimburse the donor for the value of a Gift or Benefit already consumed;
- C) that the Member forfeit the Gift or Benefit to the Municipality; and
- D) that the Member be directed to remit to the Municipality the value of a Gift or Benefit already consumed.

12. Confidential Information

12.1 No member shall:

- A) disclose, release or publish by any means to any person or to the public any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or the board or otherwise by law to do so;
- B) use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body;
- C) disclose a matter, the substance of the matter, and information pertaining

to a matter, that has been debated or discussed at a meeting closed to the public, and shall be maintained as confidential, unless authorized by the Council, local board or legislation to be released, generally or subject to conditions, and such are complied with;

- D) disclose the content of any matter referred to in the preceding paragraph or the subject-matter of deliberations, at a meeting closed to the public meeting, only after the Council or committee lawfully and knowingly discusses the information at a meeting that is open to the public or releases the information to the public;
- E) without lawful authority, disclose, or make personal use of, any of the following types of confidential information:
 - (1) information concerning litigation, negotiation or personnel matters;
 - (2) information the publication of which may infringe on the rights of any person (e.g. source of a complaint where the identity of a complainant is given in confidence);
 - (3) price schedules in any contract, tender or proposal document while such remains a confidential document;
 - (4) information deemed to be "personal information" under the Municipal Freedom of Information and Protection of Privacy Act; and
 - (5) any other information or statistical data required by law not to be released; and
- F) obtain access, or attempt to gain access, to confidential information in the custody of the municipality except to the extent that such access is necessary for the performance of his or her duties and such access is not prohibited by Council, the local board or otherwise by law.

13. Use of Regional Property, Services and Other Resources

13.1 Subject to 13.2 below, no member shall:

- A) use, or permit the use of, Regional land, facilities, equipment, supplies, services, staff or other resource, including any municipally-owned information, website, transportation delivery service or funds allocated for the member expenses of his or her office, for any purpose or activity other than the lawful business of the Region; or
- B) seek or acquire any personal financial gain from the use or sale of confidential information, or of any Regionally-owned intellectual property including any invention, creative writing or drawing, computer program, technical innovation, or any other information or item capable of being patented or copy righted, of which property remains exclusively that of the Region.

13.2 Incidental and occasional personal, non-commercial use of email/internet and a personal communication device (i.e. blackberry) is permitted.

14. No Improper use of Influence

14.1 No member shall:

- A) use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes;
- B) use his or her office or position to influence or attempt to influence the decision of any other person, for the member's private advantage or that of the member's parent, child, spouse, staff, friend, or associates, business or otherwise;

- C) attempt to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties; or
- D) hold out the prospect or promise of future advantage through the member's supposed influence within Council or the local board, in return for any action or inaction.

14.2 For the purposes of this provision, "private advantage" does not include a matter that:

- A) is of general application;
- B) affects a member, his or her parents/children or spouse, staff, friends or associates, business or otherwise, as one of a broad class of persons; or
- C) concerns the remuneration or benefits of a member.

14.3 Section 14.1 does not prevent a member from requesting that Council or the local board, as applicable grant a lawful exemption.

15. No Reprisal or Obstruction in the Application or Enforcement of this Code

15.1 Every member must respect the integrity of the Code of Conduct and inquiries and investigations conducted under it, and shall cooperate in every way possible in securing compliance with its application and enforcement.

15.2 No member shall obstruct the Integrity Commissioner, his or her designate, or any other Regional official involved in applying or furthering the objectives or requirements of the Code of Conduct, in the carrying out of such responsibilities, or pursuing any such objective. No member shall undertake any act of reprisal or threaten reprisal against a complainant or any other person for providing relevant information to the Integrity Commissioner or any other person under the Code of Conduct.

16. Legislative Environment

16.1 Members acknowledge that in addition to this Code of Conduct, the following legislation also governs the conduct of members:

- A) Municipal Act, 2001;
- B) Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50;
- C) Municipal Elections Act;
- D) Municipal Freedom of Information and Protection of Privacy Act;
- E) Occupational Health and Safety Act, R.S.O. 1990, c. 0.1;
- F) Human Rights Code, R.S.O. 1990, c. H.19;
- G) Criminal Code, R.S.C. 1985, c. C-46; and
- H) The Region's Procedural By-law.

16.2 A member may become disqualified and lose his or her seat by operation of law, including being convicted of an offence under the Criminal Code or the Municipal Elections Act, 1996, or being found to have failed to comply with the Municipal Conflict of Interest Act, whether or not the conduct in question involves a contravention of this Code of Conduct.

16.3 In the case of any inconsistency between this Code of Conduct and a federal or provincial statute or regulation, the statute or regulation shall prevail.

16.4 All references to any statute, regulation, by-law or legislation shall be deemed

to be a reference to the statute, regulation, by-law or legislation as amended, consolidated, replaced or superseded.

- 16.5 Regional Councillors also serve as Members of Council for the Townships of Brock, Scugog and Uxbridge, the Cities of Pickering and Oshawa, and the Towns of Ajax, Whitby and Clarington. Each of these municipalities have their own codes of conduct.
- 16.6 This Code applies to the activities of the Regional Chair and Members of Council and local boards while executing their responsibilities as Regional Chair, Councillors and local board members respectively. Area municipal codes of conduct apply to the activities of the Members of Council in accordance with their role as area municipal councillors.
- 16.7 Should the Region's Integrity Commissioner receive a complaint or inquiry which he/she believes is an area municipal matter, the Region's Integrity Commissioner will forward the request to the appropriate municipality's Integrity Commissioner.
- 16.8 Should an issue arise that is of joint responsibility for the Region and the area municipality, both the Integrity Commissioner for the Region and the municipality, and the Clerk of the municipality will work together to develop a process to resolve the matter and report the findings to both Regional and City/Town Council.

17. Integrity Commissioner

- 17.1 The Integrity Commissioner shall be responsible for performing in an independent manner the following functions as assigned by the Region with respect to:
- A) the application of the Code of Conduct;
 - B) the application of any procedures, rules and policies of the Region governing the ethical behaviour of members; and
 - C) to maintain custody and control of the integrity commissioner's complaint and inquiry files and, on completion of their term of appointment, to transfer open files relating to ongoing matters to the incoming Integrity Commissioner appointed by Council.
- 17.2 In addition, to the responsibilities set out in Section 17.1, the Integrity Commissioner shall also provide:
- A) information to Council as to members' obligations under the Code of Conduct and the Complaint Procedure;
 - B) information to Council with respect to compliance with the requirements of the Municipal Conflict of Interest Act including with respect to declaring a conflict of interest, and not using any influence where a matter is being considered by an officer or employee of the Region;
 - C) advice to individual members regarding specific situations as they relate to the application of the Code of Conduct;
 - D) advice to individual members regarding their obligations under the Municipal Conflict of Interest Act;
 - E) advice to Council on other policies and procedures that relate to the ethical behavior of members;
 - F) information to the public regarding the Code of Conduct and the obligations of members under the Code of Conduct and the Municipal Conflict of Interest Act; and
 - G) an annual report to Council on the activities of the Integrity Commissioner.

- 17.3 Without limiting the generality of Section 17.1, the Integrity Commissioner may determine, on a case-by-case basis, whether to undertake an investigation or not to undertake an investigation on whether a member has contravened the Code of Conduct or sections 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act. The Integrity Commissioner shall be entitled to summarily dismiss a complaint filed in accordance with the Complaint Procedure on the basis that it constitutes in his or her opinion, an abuse of process or is frivolous or vexatious.
- 17.4 Without limiting the generality of Article 17, all determinations of the Integrity Commissioner under the Code of Conduct shall be made in his or her own absolute discretion and shall be final and binding.
- 17.5 Any written advice given by the Integrity Commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner.

18. Complaints

- 18.1 All complaints pursuant to the Code of Conduct shall be filed in accordance with the Complaints Procedure in Appendix "A" attached hereto.

19. Inquiries

- 19.1 An elector or a person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of sections 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act.
- 19.2 The application must set out the reasons for believing that a member has contravened the aforementioned sections of the MCI Act and include a statutory declaration attesting to the fact that the applicant became aware of the contravention not more than six weeks before the date of the application (Or within the period of time starting six weeks before nomination day for a regular election and ending on voting day).
- 19.3 The Integrity Commissioner must complete the inquiry within 180 days after receiving the completed application, unless the inquiry is terminated.
- 19.4 Upon completion of the inquiry, the Commissioner may apply to a judge for a determination as to whether the member has contravened the aforementioned sections of the Act.
- 19.5 All requests for inquiry shall be filed in accordance with the Complaints Procedure in Appendix "A" attached hereto.

20. Advice

- 20.1 All requests for advice pursuant to the Code of Conduct shall be filed in accordance with the Advice Procedure in Appendix "B" attached hereto.
- 20.2 Requests by a member of Council or a local board for advice must be in writing.
- 20.3 Advice given by the Integrity Commissioner to a member of Council or local board shall be provided in writing.

21. Penalties

- 21.1 Council may, where it has received a report from its Integrity Commissioner that there has been a violation of the Code of Conduct, impose one of the following penalties on a member who has been found to be in contravention of the Code of Conduct:
- A) a reprimand; or
 - B) suspension of the remuneration paid to the member in respect of his or

her services as a member for a period of up to ninety (90) days.

22. Annual Reports

- 22.1 The Integrity Commissioner shall submit an annual report to Council which will include information on the nature and volume of activity for the past year and provide examples, while maintaining the anonymity of the persons involved, in respect of advice provided and the nature of complaints received and responded to.
- 22.2 The annual report of the Integrity Commissioner shall be provided to Council for information purposes. The report is a public document.

23. Commencement and Administration

- 23.1 This By-Law shall be administered by the Clerk.
- 23.2 This By-Law comes into force and effect on March 1, 2019.
- 23.3 The short title of this By-Law is the "Code of Conduct".

This By-law Read and Passed on the 27th day of February, 2019.

J. Henry, Regional Chair and CEO

R. Walton, Regional Clerk

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

1. Procedure — Informal Complaint related to the Code of Conduct

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 related to the Code of Conduct

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 in writing using the Region’s Complaints Form (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;
- C) any witnesses in support of the allegation must be identified on the Complaint Form;

- D) the Complaint Form 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;
 - E) the Complaint shall be filed with 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 Integrity Commissioner no later than six (6) months from the date on which the Complainant became aware of the alleged contravention, and no action will be taken on a Complaint received after this deadline.
- 2.2 The Integrity Commissioner will advise the Regional Clerk when a Complaint is received, assign a file number to the Complaint and provide updates to the Clerk on the status of the Complaint.
- 2.3 The Integrity Commissioner may request additional information from the Complainant in order to properly assess the Complaint.
- 2.4 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 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
 - C) 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/Discontinuance of Investigation

- 4.1 If upon review of a Complaint, or at any time during an investigation, 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 shall not conduct an investigation or shall discontinue the investigation and shall communicate this position in writing to the Complainant and the member identified in the Complaint Form. 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 or after an investigation is discontinued.

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 Complaints or Reports Prior to Election

10.1 If the Integrity Commissioner has not completed an inquiry before nomination day for a regular election, as set out in Section 31 of the Municipal Elections Act, 1996, the Integrity Commissioner shall terminate the inquiry on that day.

10.2 If an inquiry is terminated the Integrity Commissioner shall not commence another inquiry in respect of the matter unless, within six (6) weeks after voting day in a regular election, as set out in Section 5 of the Municipal Elections Act, 1996, the person or entity who made the request or the Member whose conduct is the subject matter of the request, makes a written request to the Integrity Commissioner that the inquiry be commenced. No inquiry respecting a former Member may be commenced.

10.3 Between Nomination Day and Voting Day in a regular election:

- A) There shall be no requests for an inquiry, and the Integrity Commissioner shall not accept any requests for an inquiry, respecting whether a Member has contravened the Code of Conduct.
- B) The Integrity Commissioner shall not report to Council on whether a Member has contravened the Code of Conduct or the Municipal Conflict of Interest Act; and
- C) Council shall not consider whether to impose penalties on a Member.

11. No Appeal of Integrity Commissioner's Decision

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

12. Request for Inquiry under the Municipal Conflict of Interest Act

12.1 An elector, or any person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of sections 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act using the process set out below:

- A) all requests for an inquiry must be made in writing using the Region's Application for Inquiry Form (see Schedule "B") and shall be dated and signed by the person making the inquiry (the "Applicant");
- B) the Inquiry must include an explanation as to why the issue raised may be a contravention of the applicable sections of the Municipal Conflict of Interest Act and any evidence in support of the allegation must be included with the Inquiry Form;

- C) the Inquiry Form must include the name of the member alleged to have breached the Municipal Conflict of Interest Act, and any other information as required on the Complaint Form;
- D) the Request for Inquiry shall be filed with the Integrity Commissioner who will conduct any such inquiries he/she considers necessary; and
- E) the Inquiry must be submitted to the Integrity Commissioner no later than six (6) weeks from the date in which the applicant became aware of the alleged contravention, unless both of the following are satisfied.
 - The applicant became aware of the alleged contravention within the period of time starting six weeks before nomination day for a regular election, as set out in section 31 of the Municipal Elections Act, and ending on voting day in a regular election, as set out in section 5 of that Act.
 - The applicant applies to the Commissioner within six weeks after the day after voting day in a regular election.

12.2 The Integrity Commissioner will advise the Regional Clerk when a Request for Inquiry is received, assign a file number to the Request and provide updates to the Clerk on the status of the Request.

12.3 The Integrity Commissioner may request additional information from the applicant, the municipality, or may conduct a public meeting as he/she believes necessary to investigate the inquiry.

12.4 The Integrity Commissioner shall complete the inquiry within 180 days after receiving the completed application.

12.5 A Complainant may at any time abandon a Complaint, provided in the judgement of the Integrity Commissioner, the matter does not warrant an application to the courts.

13. Confidentiality

13.1 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.

14. Delegation

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



Schedule "A" - Council Code of Conduct

Formal Complaint Form

About the Applicant

Full Name _____

Address _____

Phone _____

Email _____

I, _____ (insert full name), of _____
(insert City, Town, etc. of residence) in the Province of Ontario, have personal knowledge
of the facts as set out in this Complaint Form, because:

(insert reasons – e.g. I work for /I attended a meeting at which, etc.) and have reasonable
and probable grounds to believe that a member of the Region of Durham Council,
namely:

_____ (insert name of member) has contravened section(s)

_____ (specify section(s) of the Council Code of Conduct
of the Region of Durham.) The particulars of which are as follows:

(If more room is required, please use Schedule "A" to set out the statement of facts in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact. 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 Complaint Form).

PLEASE READ BEFORE SIGNING: If the Integrity Commissioner launches an inquiry into a complaint then the content of this form, including the complainant's identity, will typically be shared with the Member who is the subject of the complaint. Also, at the end of the inquiry the Integrity Commissioner may issue a public report that includes information about the complaint, including possibly the identities of the parties involved. Only sign this complaint form if you understand and accept the potential for disclosure of your identity and the information you provide.

I request that this matter be reviewed by the Region of Durham's Integrity Commissioner.

(Signature of Complainant)

(Date)

Personal Information on this form is collected pursuant to the Municipal Freedom of Information and Protection of Privacy Act and The Regional Municipality of Durham's Council Code of Conduct and will be used to conduct an investigation on the details of the complaint. Questions about the collection of this information should be directed to the Regional Clerk, The Regional Municipality of Durham, 605 Rossland Road East, Whitby, ON L1N 6A3, 905- 668-7711.



Schedule “B” - Application for Inquiry into Alleged Contravention of Municipal Conflict of Interest Act

About the Applicant

Full Name _____

Address _____

Phone _____

Email _____

Applicant is (check one):

- an elector in the Regional Municipality of Durham
- an individual demonstrably acting in the public interest
- a corporation (including a municipality) demonstrably acting in the public interest

Where the Applicant is a corporation please identify its authorized representative for purposes of this application:

About the Allegation

Name of the Member of Council who is the subject of the allegation (complete a separate form for each Member who is the subject of an allegation):

The Applicant alleges that the Member contravened the following sections of the *Municipal Conflict of Interest Act* (check all that apply):

section 5

section 5.1

section 5.2

The following are the Applicant's reasons for believing that the Member has contravened the above section(s) of the *Municipal Conflict of Interest Act*:

(If more room is required then please attach additional sheets that set out the reasons in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact. If you wish to include exhibits to support this application then please refer to the exhibits as Exhibit A, B, etc., and attach them to this form.)

PLEASE READ BEFORE SIGNING: If the Integrity Commissioner launches an inquiry into an allegation then the content of this form, including the Applicant's identity, will typically be shared with the Member who is the subject of the allegation. Also, information on this form and information obtained during the inquiry, including possibly the identities of the parties involved, might be disclosed in the Integrity Commissioner's published reasons at the end of the inquiry and might be disclosed in an application to the Superior Court. Only sign this application form if you understand and accept the potential for disclosure of your identity and the information you provide.

The Applicant applies to the Integrity Commissioner for an inquiry to be carried out concerning the alleged contravention:

Signature of Applicant
(or of representative if Applicant is a corporation)

Date

Personal Information on this form is collected pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* and Part V.1 of the *Municipal Act* and will be used by the Integrity Commissioner to consider this application and to conduct an inquiry into it. Questions about the collection of this information should be directed to the Regional Clerk, The Regional Municipality of Durham, 605 Rossland Road East, Whitby, ON L1N 6A3, 905-668-7711.

Note: The statutory declaration on the next page is a mandatory part of the application (required by the *Municipal Act*). It must be declared before a person authorized to take declarations in Ontario (including any Ontario lawyer).

DECLARATION

Required by subsection 223.4.1(6) of the *Municipal Act*

I, _____ (insert full name), of _____ (city, town, etc.) of _____ (specify municipality), _____ (add province/country if outside Ontario/Canada) solemnly declare that:

- 1. I am the Applicant.
- 1. The Applicant is a corporation and I am its authorized representative.

(strike out the line above that does not apply and initial the striking out)

2. I attest to the fact that the Applicant became aware of the Member's alleged contravention of the *Municipal Conflict of Interest Act* not more than six weeks before today.

2. [In a municipal election year:] I attest to the fact that the Applicant became aware of the Member's alleged contravention of the *Municipal Conflict of Interest Act* within the period of time starting six weeks before the fourth Friday of July, and ending on voting day.

(strike out the paragraph above that does not apply and initial the striking out)

3. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the)
of this)
day of)
, 20)
) _____)
) Applicant or Representative)
A Commissioner, etc.)
)

APPENDIX “B”
REGION OF DURHAM – CODE OF CONDUCT
ADVICE PROCEDURE
(the “Advice Procedure”)

1. Procedure — Request for Advice

- 1.1 Any Council or local board member who wishes to obtain advice from the Region’s Integrity Commissioner must request the advice in writing by emailing the Integrity Commissioner at: integritycommissioner@fasken.com .
- 1.2 Requests for Advice must specify the date, if any, by which the member requires the advice. The Integrity Commissioner will endeavor to respond to all Requests for Advice by the date requested.
- 1.3 The Integrity Commissioner will provide advice to members of Council and local boards as it pertains to:
 - A) Their obligations under the code of conduct
 - B) Their obligations under a procedure, rule or policy of the municipality or of the local board as the case may be, governing the ethical behavior of members
 - C) Their obligations under the Municipal Conflict of Interest Act.
- 1.4 The Integrity Commissioner will advise the Regional Clerk when a Request for Advice is received, assign a file number to the Request and provide updates to the Clerk on the status of the Request.

2. Response of Integrity Commissioner to Request for Advice Outside Jurisdiction

- 2.1 If the request for advice received by the Integrity Commissioner does not relate to the Code of Conduct, the Municipal Conflict of Interest Act sections 5, 5(1) or 5(2), or a procedure, rule or policy governing the ethical behavior of members; it will be deemed not to be within the Integrity Commissioner’s mandate and the Integrity Commissioner shall advise the Complainant of such in writing as follows:
 - A) Criminal Matter — if the request for advice is with respect to a matter that is of a criminal nature consistent with the Criminal Code, R.S.C. 1985, c. C-46, the Council member shall be advised that the request for advice must be made through the appropriate police service or through independent legal counsel;
 - B) Municipal Freedom of Information and Protection of Privacy — if the request for advice falls under the Municipal Freedom of Information and Protection of

Privacy Act, R.S.O. 1990, c. M.56, the Council member shall be referred to the Clerk; or

- C) Other Matters – if the matter is covered by other policies or legislation, the Council member will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner.

3. Response in Writing

- 3.1 The Integrity Commissioner will respond to all requests for advice in writing, to the Council member who made the request for advice.

4. Release of Advice

- 4.1 Advice provided by the Integrity Commissioner may be released with the member's written consent.
- 4.2 If a member releases part of the advice provided by the Commissioner, then the Commissioner may release part or all of the advice without requiring consent from the member.

5. Advice is Binding

- 5.1 Any written advice given by the Integrity Commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner.

6. Confidentiality

- 6.1 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.

7. Delegation

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