

Town of Aurora

Council Code of Conduct Complaint Protocol

Part A: Informal Complaint Procedure

Any person or representative of an organization who has identified or witnessed behaviour or an activity by a member of Council that they believe is in contravention of the Council Code of Conduct (the “Code”) may wish to address the prohibited behaviour or activity themselves as follows:

1. advise the member that the behaviour or activity contravenes the Code;
2. encourage the member to stop the prohibited behaviour or activity;
3. keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
4. if applicable, confirm to the member your satisfaction with the response of the member; or, if applicable, advise the member of your dissatisfaction with the response; and
5. consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.

All persons and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code. With the consent of the complaining individual or organization and the member, the Integrity Commissioner may be part of any informal process. However, it is not a precondition or a prerequisite that those complaining must pursue the informal complaint procedure before pursuing the Formal Complaint Procedure in Part B.

Part B: Formal Complaint Procedure

Initial Complaint

- 1.1. A request for an investigation of a complaint that a member has contravened the Code of Conduct (the “complaint”) shall be sent directly to the Integrity Commissioner by E-mail substantially in the form attached to this Protocol as Schedule “A”.
- 1.2. All complaints shall be submitted by an identifiable individual (which includes the authorized signing officer of an organization).
- 1.3. A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code. The complaint should include the name of

the member, the provision of the Code allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information for the complainant during normal business hours.

1.4. Election Blackout Period:

No investigation shall be commenced or continued, nor shall the Integrity Commissioner report to Council respecting an investigation, within the election period described within s.223.4 and 223.4.1 of the Municipal Act, except as described in those sections.

1.5. Transitional Provision:

For the purposes of the October 2018 regular municipal election, this provision of the Protocol shall be interpreted as if the provisions of s.223.4 and 223.4.1 as amended were already in force.

Classification by Integrity Commissioner

2.1. Upon receipt of the request, the Integrity Commissioner shall make an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code and not covered by other legislation, a complaint with respect to the *Municipal Conflict of Interest Act* or other relevant Council policies.

2.2. If the complaint, on its face, is not a complaint with respect to non-compliance with the Code or another Council policy governing ethical behaviour or the *Municipal Conflict of Interest Act*, or if the complaint is covered by other legislation, the Integrity Commissioner shall advise the complainant in writing as follows:

- a) if the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police force;
- b) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred for review to the Town Clerk; and
- c) the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate. The Integrity Commissioner may proceed with that part of the complaint that is within jurisdiction.

2.3. The Integrity Commissioner may assist the complainant in restating, narrowing

or clarifying the complaint so that the public interest will be best served were the complaint to be pursued.

- 2.4. The Integrity Commissioner may report to Council that a specific complaint is not within the jurisdiction of the Integrity Commissioner.
- 2.5. The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but, where possible, shall not disclose information that could identify a person concerned.

Investigation

- 3.1. The Integrity Commissioner is responsible for performing the duties set out in this Protocol independently and shall report directly to Council in respect of all such matters. In applying this Protocol, the Integrity Commissioner shall retain the discretion to conduct investigations applying the principles of procedural fairness, and any deviation from the provisions of this Protocol for that purpose shall not invalidate the investigation or result in the Integrity Commissioner losing jurisdiction.
- 3.2. If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, or that the pursuit of the investigation would not, in the opinion of the Integrity Commissioner be in the public interest, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.
- 3.3. The Integrity Commissioner shall file an annual report to Town Council respecting the advice, education and investigations carried out in the previous year, and developments or recommendations of significance related to the role of the Integrity Commissioner. Other than in exceptional circumstances, the Integrity Commissioner will not report to Council on any complaint described in subsection (2) except as part of an annual or other periodic report.
- 3.4. Where the Integrity Commissioner rejects or terminates an investigation pursuant to this section, reasons shall be provided.
- 4.1. If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under section 3, the Commissioner shall investigate and may attempt to settle the complaint.
- 4.2. The Integrity Commissioner may in exceptional circumstances elect to exercise the powers of a Commission under Parts I and II of the *Public Inquiries Act*, as contemplated by Subsection 223.4(2) of the Act.
- 4.3. If the Integrity Commissioner elects to conduct an inquiry under the Public Inquiries Act, he/she shall report to Council before proceeding, setting out the reasons for the investigation, and providing an estimate of the expected cost and

time that the investigation will require, and providing an opportunity for Council to respond to the reasonableness of the expenditure of public funds for the purpose of such Commission.

- 4.4. When the Public Inquiries Act applies to an investigation of a complaint, the Integrity Commissioner shall comply with the procedures specified in that Act and this Complaint Protocol, but, if there is a conflict between a provision of the Complaint Protocol and a provision of the Public Inquiries Act, the provision of the Public Inquiries Act prevails.
- 5.1. The Integrity Commissioner will proceed as follows, except where otherwise required by the Public Inquiries Act and/or in the context of a particular situation, the principles of procedural fairness:
 - a. provide the complaint and supporting material to the member whose conduct is in question and provide the member with a reasonable opportunity to respond.
- 5.2. Except where the Integrity Commissioner determines that it is not in the public interest to do so, the name of the complainant shall be provided as part of the complaint documents.
- 5.3. If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, access and examine any of the information described in subsections 223.4(3) and (4) of the *Municipal Act*, and may enter any Town work location relevant to the complaint for the purposes of investigation and settlement.
- 5.4. The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any member unless the member has had reasonable notice of the basis for and an opportunity to comment on the proposed findings.
- 5.5. The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.
- 6.1. The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the making of the complaint.
- 6.2. Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining the findings, the terms of any settlement, or recommended corrective action.
- 6.3. Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Council except as part of an annual or other periodic report.

- 6.4. Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.
7. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.
8. The Town Clerk shall process the report for the next meeting of Council.

Council Review

- 9.1. (1) Council shall consider and respond to the report within 90 days after the day the report is laid before it.
- 9.2. In responding to the report, Council may vary a recommendation that imposes a penalty, subject to Section 223.4, subsection (5) of the *Municipal Act*, but shall not refer the recommendation other than back to the Integrity Commissioner.
- 9.3. Council can terminate the Integrity Commissioner only by a two-thirds vote of all members.
- 9.4. Upon receipt of recommendations from the Integrity Commissioner, Council may, in circumstances where the Integrity Commissioner has determined there has been a violation of the Code of Conduct, impose either of two penalties:
 - (a) a reprimand; or
 - (b) suspension of the remuneration paid to the Member in respect of his/her services as a Member of Council or a local board, as the case may be, for a period of up to 90 days, and may also take the following actions:
 - (c) removal from membership of a committee;
 - (d) removal as chair of a committee;
 - (e) repayment or reimbursement of monies received;
 - (f) return of property or reimbursement of its value;

Confidentiality

- 10.1. A complaint will be processed in compliance with the confidentiality requirements in sections 223.5 and 223.6 of the *Municipal Act*, which are summarized in the following subsections.
- 10.2. The Integrity Commissioner and every person acting under her or his instructions shall preserve secrecy with respect to all matters that come

to his or her knowledge in the course of any investigation except as required by law in a criminal proceeding.

- 10.3. All reports from the Integrity Commissioner to Council will be made available to the public.
- 10.4. Any references by the Integrity Commissioner in an annual or other periodic report to a complaint or an investigation shall not disclose confidential information that could identify a person concerned.
- 10.5. The Integrity Commissioner in a report to Council on whether a member has violated the Code of Conduct shall only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.