

Appendix 1

Complaint and Investigation Protocol

Code of Conduct

*Subject to amendment in accordance with the policies of Council from time to time.

COMPLAINT and INVESTIGATION PROTOCOL

Council Code of Conduct - Appendix 1

PART A - INFORMAL COMPLAINT PROCEDURE

1. Any individual who identifies or witnesses behaviour or activity by a Member that they believe contravenes the Code of Conduct may seek to address the prohibited behaviour or activity themselves in the following manner by following the Informal Complaint Procedure:
 - (a) document the incident(s) 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 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 his or her response is satisfactory, or
 - (ii) advise the Member that his or her 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.
2. Individuals are strongly 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.
3. 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.
4. The Informal Complaint Procedure 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.(1) Any individual who identifies or witnesses behaviour or activity by a Member that they reasonably believe contravenes the Code of Conduct may file a formal complaint to request an inquiry by the Integrity Commissioner as to whether a Member has contravened the Code of Conduct 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 and must be accompanied by a supporting sworn affidavit setting out the evidence in full in support of the allegation; and
 - (c) Council may also file a complaint against any of its Members by passing a resolution requesting the Integrity Commissioner to undertake an inquiry.
- (2) Individuals filing a formal complaint must provide a full and complete record of evidence to the Integrity Commissioner who is under no obligation whatsoever to, but may, seek additional information to supplement or complete the evidentiary record to substantiate or support the allegation set out in the complaint.

Filing of Complaint and Classification by Integrity Commissioner

- 2.(1) The complaint shall be filed with the [Town](#) Clerk, who shall forward the matter forthwith to the Integrity Commissioner.
- (2) The Integrity Commissioner shall initially classify the complaint to determine if 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 other Council procedures, policies or rules as set out in Section 3.

Complaints Outside Integrity Commissioner's Jurisdiction

3. If the complaint, including the supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint relates to matters addressed by other legislation or complaint procedure under another Town procedure, policy or rule, the Integrity Commissioner shall advise the complainant in writing [that he/she does not have jurisdiction to deal with the complaint, as follows:](#)

~~Criminal Matter~~

- ~~(a) if the complaint is, on its face, an allegation of a criminal nature consistent with the Criminal Code, the complainant shall be advised that:~~

- (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, a human rights or workplace harassment 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, in whole or in part, pending the result of the other process;

Similar Matter Already Pending

- (f) If the complaint is in relation to a similar matter which is subject to an outstanding complaint before the Integrity Commissioner, the Integrity Commissioner may, in his/her sole discretion, consider the matter in conjunction with the similar matter or deal with it separately, including not undertaking an inquiry if the matter can be adequately addressed in any report and/or recommendations made with respect to the complaint in the similar matter; and

Other Ethical Code Applies

~~(g)~~ —if the complaint is in relation to a matter which is governed by a code of ethical code or similar procedure or policy of another body or entity which also governs the Members (for example, another board to which the Member has been appointed), the Integrity Commissioner shall consider the most appropriate forum for the complaint and may, in his/her sole discretion, defer consideration of the matter pending any determination made by the other body or entity and shall so advise the complainant and, if necessary, the Member.

Municipal Conflict of Interest Act

If the complaint is in relation to a contravention of the *Municipal Conflict of Interest Act*, an elector, as defined in section 1 of that statute, or a person demonstrably acting in the public interest may pursue an alleged contravention of such statute by a Member in accordance with the provisions set forth in the *Municipal Conflict of Interest Act*, or as otherwise provided by law. The Integrity Commissioner will only receive a complaint relative to the *Municipal Conflict of Interest Act* when the subject matter of the complaint is not being processed under the Statute and the Integrity Commissioner is otherwise enabled and mandated to deal with it in accordance with the law.

Limitation Period

4. The Integrity Commissioner shall not accept a complaint for which the event giving rise to the complaint occurred ~~or came to the attention of the complainant~~ more than six (6) months prior to the date of the filing of the complaint. The complainant must establish that the event giving rise to the complaint occurred ~~and/or came to the complainant's attention~~ within six (6) months of the complaint being filed in accordance with Section 2 ~~unless the complainant establishes exceptional circumstances that justify the delay to the satisfaction of the Integrity Commissioner.~~

Periodic Reports to Council

- 5.(1) The Integrity Commissioner shall provide an annual report to Council summarizing his or her activities, including a report on all complaints received and on their disposition (including complaints deemed and ruled not to be within the jurisdiction of the Integrity Commissioner).
- (2) Notwithstanding Section 5(1), Council may by resolution request that the Integrity Commissioner provide a periodic report more frequently than once a year.

Refusal to Conduct Investigation

6. If the Integrity Commissioner is satisfied, after considering the information contained in the complaint, that a complaint:
 - (a) is frivolous or vexatious,
 - (b) is not made in good faith,
 - (c) constitutes an abuse of process, or
 - (d) discloses 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, the Integrity Commissioner shall terminate the inquiry and, if deemed advisable, provide notice to the complainant and ~~if necessary~~ to the Member.

Opportunities for Resolution

7. Following receipt and review of a formal complaint, the Integrity Commissioner may first attempt to resolve the matter informally, or at any time during the investigation where the Integrity Commissioner, in his or her discretion, 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

8. (1) The Integrity Commissioner may proceed as follows, except where the Integrity Commissioner has a full factual record and believes, in his or her discretion, that no additional information is required, or where otherwise required by the *Public Inquiries Act, 2009*, or where the Integrity Commissioner has not otherwise terminated the inquiry:
 - (a) provide the Member with the submitted prescribed form and supporting sworn affidavit ~~an outline of the complaint with sufficient particularity~~ to allow the Member to understand the complaint against him or her ~~but shall not have any obligation to disclose~~:
 - (i) ~~the identity of the complainant, or~~

~~(ii) the identity of any witnesses set out in the complaint or that are~~
complaint to the Integrity Commissioner within ~~ten-seven (107)~~ business days; and

(c) provide a copy of the Member's response to the complainant with a request that any written reply be provided by the complainant to the Integrity Commissioner within ~~ten-seven (107)~~ business days.

- (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may contact and speak to or correspond with any other persons, access and examine any other documents or electronic materials, including any materials on the Town's computers and servers, and may enter any Town work location relevant to the complaint for the purpose of investigation and potential resolution.
- (3) The Integrity Commissioner may, but is under no obligation, to provide the Member with a draft of the proposed draft report on the complaint.
- (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 an opportunity either in person or in writing to comment to the Integrity Commissioner on the proposed finding(s).
- (5) The Integrity Commissioner may, but is under no obligation, to advise either the Member or the complainant of any proposed sanction or recommendation the Integrity Commissioner may include in the report to Council.
- (6) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, intimidation, delay, reprisal or retaliation by the Member or by any other person encountered during the formal complaint investigation.
- (7) The Integrity Commissioner shall retain all records related to the complaint and investigation for a period of one (1) year. The Integrity Commissioner but may provide copies of certain records, in confidence, to Town administrative staff who are required to ensure that any such records are securely and confidentially retained.

No Complaint Prior to Municipal Election

9. Notwithstanding any other provision of this Complaint Protocol, no complaint may be referred to the Integrity Commissioner on or after the fourth Friday in July up to voting day in a regular municipal election year.

Advice Provided to Member by Integrity Commissioner

10. (1) Subject to Section 10(2), a Member is entitled to rely upon any written advice given by the Integrity Commissioner to the Member respecting the Code of Conduct in any subsequent consideration of the conduct of the Member in the same matter by the Integrity Commissioner provided that the Member fully disclosed in writing all relevant facts known to him or her to the Integrity Commissioner and acted in accordance with the written advice provided by the Integrity Commissioner.

- (2) A Member under investigation by the Integrity Commissioner shall not request advice from the Integrity Commissioner as to the Member's rights under the Code of Conduct or generally at law, nor is the Member entitled to rely upon any statement(s) made by the Integrity Commissioner during the course of the investigation that may impact the Member's rights under the Code of Conduct or at law.

Investigation Report

11. (1) The Integrity Commissioner shall report to the complainant and the Member no later than ninety (90) days after the official receipt of any complaints, where feasible. The Integrity Commissioner may, at his/her discretion, extend this period if the investigation cannot be concluded within ninety (90) days. If the investigation process is anticipated to or takes more than ninety (90) days, the Integrity Commissioner ~~shall provide an interim report to Council and must~~ may advise the parties of the date the report will be available, if known. The Integrity Commissioner may also, at his or her discretion, advise any witnesses or other persons 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 outlining the findings, the terms of any settlement and/or any recommended remedial or corrective action.
- (3) The Integrity Commissioner may provide a copy of the report to the complainant and the Member whose conduct has been investigated in advance of the public release of the report, in strict confidence until the report is publicly released. The Member shall have the right to address the report when it is considered by Council but cannot vote on the matter.
- (4) Where the complaint is not sustained, the Integrity Commissioner is not obligated to report to Council on the result of the investigation or any findings although such anonymized information may be included in a report or as part of an annual or other periodic report by the Integrity Commissioner.
12. If the Integrity Commissioner determines that a contravention occurred but:
- ~~(a) — there has been no contravention of the Code of Conduct, or~~
- (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*, including but not limited to, a recommendation of no penalty.

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 for consideration by Council and Council must consider the report at that meeting and may accept or refuse the recommendations set out in the report and accept, refuse or vary any penalties or sanctions contained in the report. A report from the Integrity Commissioner may also be considered by Council in advance of its next regular meeting should Council agree to hold a special or other meeting before its next regular meeting to consider the report.

No Inquiries or Reports Prior to Municipal Election

14. (1) If the Integrity Commissioner has not completed an inquiry before the fourth Friday of July in a municipal election year, the Commissioner shall terminate the inquiry on that day.
- (2) If an inquiry is terminated under s. 14(1), the Integrity Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election, the person or entity who made the request or the Member or former Member whose conduct is concerned makes a written request to the Commissioner that the inquiry be commenced.
- (3) Notwithstanding any other provision of this Complaint Protocol, the Integrity Commissioner shall not make any report to Council or to any other person on or after the fourth Friday in July in a municipal election year, until the first official meeting of the newly-elected Council following the election.

Duty of Council

15. Council shall consider and make a determination on the Integrity Commissioner's report at the same meeting at which the report is tabled.

Public Disclosure

- 16.(1) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where it does not interfere with the course of any investigation, except as required by law and as required by this Complaint Protocol.
- (2) The Integrity Commissioner shall retain all records related to the complaint and investigation although copies may be provided to the Town's administrative staff, subject to the duty of confidentiality under subsection 223.5 of the *Municipal Act, 2001*.
- (3) The identity of the Member who is the subject of the complaint shall not be treated as confidential information in the Integrity Commissioner's report to Council. The identity of the complainant may be disclosed if deemed appropriate and necessary by the Integrity Commissioner or if consented to by the complainant.
- (4) All reports from the Integrity Commissioner to Council shall be made available to the public by the Town Clerk.

Delegation

17. The Integrity Commissioner may delegate in writing to any person, other than a Member of Council, any of the Integrity Commissioner's powers and duties under Part V.1 of the *Municipal Act, 2001*.

Code of Conduct — Formal Complaint Form

AFFIDAVIT

I, _____ (first and last name), of the
municipality of _____ in the Province of Ontario.

MAKE OATH AND SAY (or AFFIRM):

1. I have reasonable and probable grounds to believe that:

_____ (specify name of Member),
a member of the Council of the Town of ~~Niagara-on-the-Lake~~Pelham, has contravened section(s)
_____ of the Code of Conduct of the Town of ~~Niagara-on-the-Lake~~Pelham. The
particulars of which are attached hereto.

2. Facts constituting the alleged contravention (use separate page if required)

This affidavit is made for the purpose of requesting that this matter be reviewed and/or
investigated by the Town of ~~Niagara-on-the-Lake~~Pelham's appointed Integrity Commissioner and
for no other improper purpose.

SWORN (or AFFIRMED) before me at the)
the Town of ~~Niagara-on-the-Lake~~Pelham on)
_____ (date))
_____)

(Signature)

A Commissioner for taking affidavits etc.

Please note that signing a false affidavit may expose you to prosecution under ss. 131 and 132 or 134 of the *Criminal Code*, R.S.C. 1985, c. C-46 and also to civil liability for defamation.