

Township of Guelph/Eramosa

Complaint Protocol under the Code of Conduct for Council Members and Members of Local Boards

A. DEFINITIONS AND APPLICATION

1. In this Complaint Protocol, words and phrases have the same meanings as in the Code.
2. This Complaint Protocol applies to complaints under the Code. It does not apply to a request for, or the conduct of, an inquiry concerning an alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*. In an inquiry concerning an alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* the Integrity Commissioner shall proceed in such a matter and follow such process as the Commissioner considers appropriate having regard to the requirements of the *Municipal Act*.

B. INFORMAL COMPLAINT PROCEDURE

3. Any individual who believes behaviour or activity by a Member contravenes the Code may address the behaviour or activity by doing one or more of the following:
 - 3.1 Inform the Member that the behaviour or activity appears to contravene the Code.
 - 3.2 Encourage the Member to acknowledge and to agree to stop the prohibited behaviour or activity and to avoid future occurrences of it.
 - 3.3 Document the incidents including dates, times, locations, other individuals present, and any other relevant information.
 - 3.4 Request the Integrity Commissioner to assist in informal discussion with the Member about the alleged behaviour or activity in an attempt to resolve the issue.
 - 3.5 If applicable, confirm to the Member the individual's satisfaction with the response of the Member, or, if applicable, inform the Member of the individual's dissatisfaction with the response.
 - 3.6 Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part C, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
4. Individuals are encouraged to pursue the informal complaint procedure as the first means of remedying behaviour or an activity believed to violate the Code.

5. 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 of issues relating to an informal complaint. However, the informal process is not a precondition to pursuing the formal complaint procedure outlined in Part C.

C. FORMAL COMPLAINT PROCEDURE

6. Any individual who identifies or witnesses behaviour or an activity by a Member and believes it to be in contravention of the Code may file a formal complaint as follows:
 - 6.1 The complaint shall be made in writing and be dated and signed by an identifiable individual.
 - 6.2 Where possible, the complaint shall be made using the Complaint Form (Appendix A) which will be posted on the Municipality's Website. If the Complaint Form is not used then the complaint must contain all of the information required by the Complaint Form, in the same order.
 - 6.3 The complaint must state the section(s) of the Code that the Complainant believes has (have) been breached.
 - 6.4 The complaint must include background (including date(s), time(s) and location(s) of conduct, supporting documentation, details and names of all persons involved, and name(s) of any witness(es)) that contains reasonable grounds for the allegation that a Member has contravened the Code.
 - 6.5 The Complainant is encouraged to include relevant documents.
 - 6.6 The complaint shall be submitted directly to the Integrity Commissioner by email, fax, mail or delivery.
 - 6.7 In the event that a complaint is sent to or left at the Municipality's office, the Clerk shall ensure that it is delivered unopened (or, if left unsealed, is placed in an envelope without being read and then sealed and delivered) to the Integrity Commissioner.

Integrity Commissioner's Classification and Decision to Investigate

7. The Integrity Commissioner may not help anyone to draft the content of a complaint but the Commissioner may for any reason
 - (a) invite a Complainant to clarify, or
 - (b) permit a Complainant to amend or resubmit

any complaint, including a complaint that does not meet the requirements of this Complaint Protocol. The complaint is deemed to be received by the Commissioner

when it is clarified, amended or resubmitted and henceforth the complaint consists of the amended complaint, the resubmitted complaint, or the original complaint plus amendments or plus clarifications, as the case may be.

8. Upon receiving the complaint, the Integrity Commissioner will conduct an initial classification to determine whether the complaint is within the Commissioner's jurisdiction and whether the Commissioner should commence an investigation.
 - 8.1 The complaint, or part of it, lies outside the Commissioner's jurisdiction if the subject matter of the complaint, or part, relates more properly to another law or to other complaint process or dispute resolution procedure.
 - 8.2 The Commissioner shall only commence an investigation of a complaint, or part of it, that on its face contains allegations that if substantiated would constitute a breach of one or more provisions of the Code, and then only in relation to such provision(s).
 - 8.3 The Commissioner has the discretion to decline to commence an investigation if on its face the complaint appears to be frivolous, vexatious or not made in good faith, and subsequently the Commissioner may terminate an investigation if at any time the Commissioner forms the opinion that the complaint is frivolous or vexatious or that the Complainant is not acting in good faith.
 - 8.4 If the Complainant is a Member, where the Integrity Commissioner declines to commence or terminates an investigation on the ground that the complaint is frivolous or vexatious or that the Complainant is not acting in good faith, the Integrity Commissioner may report that fact to Council or the local board and name the Member.
9. If on its face the complaint, or part, relates more properly to another law or to other complaint process or dispute resolution procedure then the Integrity Commissioner shall respond to the Complainant in writing as follows:
 - 9.1 If the allegation might relate to an offence under the *Criminal Code* or another criminal statute then the Complainant shall be informed that such allegation, if the Complainant wishes to pursue it, should be brought to the attention of the police.
 - 9.2 If the allegation relates to compliance with the *Municipal Conflict of Interest Act* as opposed to compliance the Code then the Commissioner shall follow such process as the Commissioner considers appropriate having regard to the requirements of the *Municipal Act*.
 - 9.3 If a complaint or part is more appropriately handled under the *Municipal Freedom of Information and Protection of Privacy Act* then the Complainant shall be informed that the matter falls under the responsibility of the Clerk, and shall be given the Clerk's phone number and email address.

- 9.4 If the complaint or part seems to fall under another policy of the Municipality or the local board then the complainant shall be informed how to pursue the matter under the other policy.
- 9.5 If for any other reason the complaint or part is not within the jurisdiction of the Integrity Commissioner then the Complainant shall be so informed and given such additional reasons and/or referred to such agencies or authorities as the Integrity Commissioner considers appropriate.
- 9.6 If the complaint or part relates to a matter that is already subject to another process, including but not limited to a court proceeding under the *Municipal Conflict of Interest Act*, a human rights complaint, an arbitration hearing, or another court or tribunal proceeding, then the Integrity Commissioner may, in the Integrity Commissioner's sole discretion, suspend any investigation pending the result of the other process.

Settlement, Withdrawal and Other Opportunities for Resolution

10. Following receipt of a formal complaint, or at any time during an investigation:

- 10.1 Where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without starting or continuing an investigation, and both the Complainant and the Respondent agree, the Commissioner may pause or delay the investigation and make efforts to achieve an informal resolution.
- 10.2 If a complaint is withdrawn, settled or informally resolved, the Commissioner shall not report to Council or the local board except as part of the annual report described in section 24.

Investigation

11. Within three business days after receiving the complaint, the Integrity Commissioner shall decide whether to investigate the complaint or part of it.

12. Except where the Integrity Commissioner exercises powers under sections 33 and 34 of the *Public Inquiries Act*, the investigation process shall be as follows:

- 12.1 Without identifying the Complainant, the Respondent or the circumstances, the Integrity Commissioner shall give notice to the Clerk that an investigation is being commenced.
- 12.2 The Integrity Commissioner shall, the same day, give the Respondent notice of the complaint (including a copy of the complaint and all supporting documentation) and invite the Respondent to provide a written response within seven business days.

- (a) To protect the right of a full and fair opportunity to respond, the Respondent shall be given the entire complaint, including the Complainant's name but not the contact information of a Complainant who is not a Member.
 - (b) In exceptional circumstances and only where the Integrity Commissioner is satisfied that a fear of intimidation or reprisal is well-founded, the Integrity Commissioner may redact information that would identify the Complainant or a witness, provided that the Respondent receives sufficient disclosure to understand the allegation(s) and to receive a full and fair opportunity to respond.
 - (c) Despite paragraph (b), where the Complainant is a Member of Council or a local board the Complainant's identifying information will not be redacted.
- 12.3 The Integrity Commissioner shall, the same day, give the Complainant notice that an investigation has commenced.
- 12.4 Within three business days after receiving the Respondent's response, if any, the Integrity Commissioner shall send it to the Complainant with an invitation to reply within seven business days.
- 12.5 Within three business days after receiving the Complainant's reply, if any, the Integrity Commissioner shall send it to the Respondent.
- 12.6 After reviewing the complaint, the response and the reply, the Commissioner may speak to anyone, access and examine any other documents or electronic materials, and may enter any work location of the Municipality or local board that is relevant to the complaint for the purpose of investigation and potential resolution.
- 12.7 Within 45 calendar days after the complaint is received, or such longer period as the Commissioner deems necessary, the Commissioner shall draft a report containing the findings of the investigation, including draft conclusions about whether the Respondent contravened the Code and, where applicable, a draft recommended penalty, and submit it to the Respondent for representations and comments within seven business days.
- 12.8 Within five business days after receiving the representations and comments of the Respondent, and taking them into account, the Integrity Commissioner shall finalize the report and deliver it to the:
- (a) Clerk, for delivery to Council or the local board.
 - (b) Complainant.
 - (c) Respondent.
13. The Commissioner has the discretion to extend any of the time frames and deadlines in this Protocol. If, however, a report will not be completed within 90 days of the receipt

of a complaint, the Integrity Commissioner shall provide an interim report to Council or the local board (and the Respondent and Complainant). The interim report shall describe the complaint without identifying the Respondent and the Complainant, explain the delay and state when the final report is expected to be ready.

Report to Council (or Local Board) and Recommendation

14. Upon receipt of a report, the Clerk shall place it on the next regular agenda of Council. A report to a local board shall be placed on the next regular agenda of the local board.
15. Where a report states the Integrity Commissioner's opinion that a Respondent has contravened the Code:
 - 15.1 The Integrity Commissioner may include in the report a recommended penalty.
 - 15.2 If the Integrity Commissioner is of the opinion that the contravention was trivial or committed through inadvertence or an error of judgment made in good faith, or occurred despite the Respondent taking reasonable measures to prevent it, then the report shall so state.
 - 15.3 The Respondent shall have the right of reply when the report is considered by Council or the local board.
 - 15.4 As provided by the *Municipal Conflict of Interest Act*, if the recommendation is to suspend the remuneration paid to the Member then the Member may take part in the discussion of the matter, including making submissions to Council or the local board, as the case may be, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting, but the Member is not permitted to vote on any question in respect of the matter.
16. If the Integrity Commissioner is of the opinion that a Respondent did not contravene the Code but the Respondent's conduct was blameworthy or otherwise deserving to be brought to Council's (or the local board's) attention then the report shall so state.
17. If the Integrity Commissioner is of the opinion that the investigation has revealed the need for an amendment to the Code, this Protocol or a policy of the Municipality or local board then the report shall so state.
18. The Integrity Commissioner may make interim reports to Council or the local board where necessary and as required, including to address any instances of interference, obstruction, delay, reprisal retaliation associated with the investigation.

Confidentiality to Ensure a Fair Process

19. To ensure that a complaint is investigated (or settled or informally resolved) in a fair manner that respects the rights of the Complainant, the Respondent and witnesses, until the final report is delivered to Council or the local board the parties shall maintain the confidentiality of the complaint process, including but not limited to the

confidentiality of the complaint, responses, replies and other communications from the Complainant, the Respondent and the Integrity Commissioner.

20. If a Complainant (whether or not the Complainant is a Member) discloses information about a complaint or investigation then the Integrity Commissioner may take that fact into account in exercising discretion before declining to commence or terminating an investigation on the ground that the complaint is frivolous or vexatious or the Complainant is not acting in good faith.
21. The following paragraphs apply where a Member (whether or not the Member is a Complainant, a Respondent, a witness or uninvolved) discloses information about a complaint or an investigation:
 - 21.1 Section 5.4 of the Code provides that a Member shall not disclose by any means to anyone, except to a Member or to an employee of the Municipality or local board who requires the information in the course of duties, any confidential information acquired by virtue of office, in either oral or written form, except as required by law or authorized by Council or the local board to do so. If the Integrity Commissioner is of the opinion that the disclosure breached confidentiality then the Commissioner, after giving a Member who disclosed a fair opportunity to respond, may report to Council or the local board that the Member contravened section 5.4 of the Code and may recommend a penalty.
 - 21.2 Harassment contravenes section 8.1 of the Code. If the Integrity Commissioner is of the opinion that the disclosure constituted harassment then the Commissioner, after giving the Member who disclosed a fair opportunity to respond, may report to Council or the local board that the Member contravened section 8.1 of the Code and may recommend a penalty.
 - 21.3 Bullying contravenes section 8.2 of the Code. If the Integrity Commissioner is of the opinion that the disclosure constituted bullying then the Commissioner, after giving the Member who disclosed a fair opportunity to respond, may report to Council or the local board that the Member contravened section 8.2 of the Code and may recommend a penalty.
22. If the disclosure of information about a complaint or investigation makes it impossible, in the Integrity Commissioner's opinion, to conclude a fair and proper investigation that respects the rights of the parties then the Integrity Commissioner shall report that opinion to Council or the local board.
23. For greater certainty, a report under this section shall name the individual who disclosed or caused the disclosure of information about a complaint or investigation, and may name any Member who is involved as a Complainant, Respondent, witness or other involved individual.

Annual Reports to Council

24. The Integrity Commissioner shall report to Council annually. In the annual report, the Commissioner shall report on all complaints received and on their disposition (including complaints not falling within the jurisdiction of the Integrity Commissioner and other complaints that were not investigated). Unless otherwise provided in this Protocol, a complaint that has not been the subject of a public report to Council will be described in the annual report without identifying the Complainant or the Respondent.

Confidentiality, Record Keeping and Public Disclosure

25. The Integrity Commissioner and every person acting under the instructions of the Integrity Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under Part V.1 of the *Municipal Act*, the Code and this Protocol. Nevertheless, information may be disclosed as required by law or otherwise in accordance with Part V.1 of the Act, the Code and this Protocol. In a report on whether a Member has contravened the Code, the Integrity Commissioner may disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.

26. The Integrity Commissioner shall retain all records related to the complaint and investigation.

27. For greater certainty, if the Integrity Commissioner is of the opinion that a Member has contravened the Code then the Member's identity is not confidential information and the Member shall be named in the Integrity Commissioner's report to Council.

28. All reports from the Integrity Commissioner to Council will be made available to the public on the Township of Guelph/Eramosa Website on a single Web page that is easily accessible.

APPENDIX A
Council Code of Conduct Complaint Form

Name:

Address:

Telephone:

E-mail:

I, _____, hereby request the Integrity Commissioner of the Township of Guelph/Eramosa to conduct an inquiry pursuant to Part V.1 of the *Municipal Act, 2001* and section 10 of the Code of Conduct for Council Members and Members of Local Boards, about the following Council Member(s) or Local Board Member(s):

Background: (including date(s), time(s) and location(s) of conduct, supporting documentation, details and names of all persons involved, and name(s) of any witness(es); attach extra pages if necessary):

Code of Conduct

The *Code of Conduct for Council Members and Members of Local Boards* is available here. You may also request a copy by phone, e-mail, fax or in person.

Please state which section(s) of the Code of Conduct you believe have been breached:

I hereby request the Integrity Commissioner to conduct an inquiry pursuant to the provisions of section 223.4 of the *Municipal Act, 2001* with respect to the above conduct. This complaint is being filed under section 10 of the Code of Conduct for Council Members and Members of Local Boards.

Please mail, fax, e-mail, or otherwise deliver this request to:

Guy Giorno, Fasken law firm
Integrity Commissioner
333 Bay Street
Suite 2400
P.O Box 20
Toronto, Ontario
M5H 2T6
Tel: 416-366-8381
Fax: 416- 364-7813
E-mail: ggiorno@fasken.com

Your name, address, comments, and any other personal information, is collected and maintained for the purpose of conducting an investigation under Section 223.4 of the *Municipal Act, 2001*.

This complaint is being filed under section 10 of the Code of Conduct. Questions about this collection should be directed to the Township Clerk at 519-856-9596.

Supporting Documentation

It is recommended that you provide supporting documentation that will help verify your complaint. Please attach any supporting documentation either in your e-mail (as an attachment), or attach physical copies in mailed and faxed forms.

Use of Your Information / What Happens Next

The Integrity Commissioner will use the contact information you have provided to communicate with you about this complaint.

If the complaint falls under the Code of Conduct, a copy will be provided to the Member(s) you named. Your name but not your contact information will be included.

If the Commissioner conducts an investigation, you, the Member(s) and other persons may be asked for more information.

At the end of an investigation, the Commissioner will report to Council or the local board about whether the Member(s) contravened the Code of Conduct. The Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report. Reports to Council and local boards become public documents.