



POLICY No. 2008-02 Council Code of Conduct

Originating Department CS-CL-20-2008

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1. PURPOSE

To establish a Code of Conduct and Complaint Protocol for members of Council and local boards.

2. POLICY

Part 1 Background

Section 223.2 of the *Municipal Act, 2001* (Act), requires that a municipality shall establish a code of conduct for members of the council of a municipality and of its local boards.

The key principles which form the basis of this Code of Conduct are the following:

1. Council is responsible to its constituents to provide good government in respect of all matters within its jurisdiction.
2. All members shall serve and shall be seen to serve their community in a conscientious, ethical and diligent manner.
3. All members shall be committed to performing their duties with integrity.
4. All members shall truly, faithfully and impartially exercise the office of councillor to the best of their knowledge and ability.
5. All members shall uphold the letter and spirit of this Code of Conduct and shall discharge their duties in a manner that will inspire public confidence in the abilities and integrity of Council and its local boards.
6. All members shall discharge their duties in a manner that respects the dignity of individuals and in accordance with the Ontario Human Rights Code and the Charter of Rights and Freedoms (Canada).

The Integrity Commissioner (IC) will be appointed by Council in accordance with Section 223.3 of the Act and will be responsible for performing in an independent manner the functions assigned by Haldimand County with respect to the application of the Code of Conduct and the Municipal Conflict of Interest Act (MCIA) for all members.

Part 2 Statutory Provisions Relating to Conduct

This Code of Conduct operates pursuant to and supplemental to other legislation governing the conduct of Council members, which include the following:

1. The *Municipal Act, 2001*, as amended.
2. The *Municipal Conflict of Interest Act*.
3. The *Municipal Elections Act, 1996*.
4. The *Municipal Freedom of Information and Protection of Privacy Act*.
5. The Criminal Code.
6. Ontario Human Rights Code.
7. Charter of Rights and Freedoms (Canada).

Part 3 Application

“Member” means the Mayor, members of Council, and members of all local boards as defined in Section 223.1 of the Act.

This Code of Conduct applies to every member. The Code shall be applied to members of local boards, who are not members of Council, with necessary modifications applied at the discretion of the IC.

Part 4 Release of Confidential Information

1. Members have an obligation to hold in the strictest confidence any and all information concerning matters dealt with at a session closed to the public. Members shall not, either directly or indirectly, release, make public, or in any way divulge any such information in respect of a closed session deliberation to anyone, unless expressly authorized by Council or the local board or as required by law to do so.
2. Members shall familiarize themselves with, and shall abide by, the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, ensuring that they do not release information in contravention of the provisions of this Act. In the event that any member is uncertain about whether or not it is appropriate to release information, the member shall consult with the Clerk prior to releasing any such information publicly.
3. Members shall not release any information that is subject to solicitor/client privilege between Council and the County solicitor, unless expressly authorized by Council or required by law to do so.
4. Members shall not use confidential information for any personal or private gain or for the gain of any relatives or any person or corporation.
5. Members shall not misuse confidential information such that it may cause detriment to the County, Council, board or others.

For the purposes of interpreting the above, examples of confidential information include, but are not limited, to the following:

- information defined as personal information under the *Municipal Freedom of Information and Protection of Privacy Act*,

- human resource/personal letters;
- legal matters such as advice or recommendations on litigation or potential litigation before the Courts or tribunals;
- items under negotiation (labour relations or employment, acquisition of municipal assets), information regarding contract tenders.

Part 5 Incompatible Activity

Members shall not engage in any activity, financial or otherwise, which is incompatible or inconsistent with the ethical discharge of duties in the public interest. Without limiting the above, members shall not:

- use influence of office for any purpose other than official duties;
- act as an agent before Council or any committee or local board;
- use or rely on any information gained or acquired through the execution of official duties that is not readily available to the general public;
- influence any administrative, board or Council decision, or decision-making process, involving or affecting persons or organizations in which the member has a financial interest;
- use board or County materials, equipment, facilities or employees for personal gain or private purpose;
- use their office to advance their interests or the interests of any person or organization with whom or with which they are associated;
- use their office to obtain employment with the municipality for themselves, their family member or their same-sex partner.

Part 6 Gifts and Benefits

Members shall not accept, offer or agree to accept a commission, reward, gift, advantage or benefit of any kind, personally or through a family member or friend, which is connected directly or indirectly with the performance of duties of office.

Members are not precluded from accepting:

- personal gifts, benefits or rewards from any person or organization who is not directly or indirectly connected with the performance or duties of office;
- political contributions offered, accepted and reported in accordance with applicable law;
- food and beverages at banquets, receptions, ceremonies or similar events;
- food, lodging, transportation and entertainment provided by provincial, and local governments, or boards or commissions thereof;
- token gifts such as souvenirs or mementos of a function honoring the member;

- (f) gifts that are received as an incident of protocol or social obligation that normally and reasonably accompany the responsibility of office.

Members shall return any gifts or benefits that do not fall within the above-noted parameters.

Part 7 Personal Behaviour

1. Members shall familiarize themselves with and abide by the provisions of the Ontario Human Rights Code. In doing so, members shall treat every person, including other members, staff, contract providers and the public with dignity, understanding and respect for the right to equality and the right to an environment that is safe and free from harassment and discrimination.
2. Members shall not discriminate against anyone on the basis of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same sex partnership status, family status or disability. These terms are defined in accordance with the definitions provided in the Ontario Human Rights Code.
3. In accordance with the Ontario Human Rights Code, harassment constitutes engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.
4. Without limiting the generality of the foregoing, members shall not:
 - (a) make racial, homophobic, sexist or ethnic slurs;
 - (b) display pornographic, homophobic, sexist, racist or other offensive or derogatory material;
 - (c) make leering (suggestive staring) or other offensive gestures;
 - (d) make written or verbal abuse or threats;
 - (e) vandalize the personal property of others;
 - (f) commit physical or sexual assault;
 - (g) make unwelcome remarks, jokes, innuendos or taunting statements about a person's physical appearance, racial background, colour, ethnic origin, place of origin, citizenship, ancestry, creed (religion or belief), sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, disability (physical or mental);
 - (h) make unwelcome remarks, insulting gestures or jokes which cause embarrassment or awkwardness;
 - (i) refuse to converse or interact with anyone because of their racial or ethnic background, colour, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, or disability;
 - (j) make unnecessary or unwanted physical contact, including touching, patting, or pinching; and
 - (k) harass any person or persons when such harassment occurs in the course of or in any way related to the performance of duties by a member.

Part 8 Conduct

Members shall conduct themselves at board and Council meetings in accordance with the provisions of the County's Procedural By-law.

1. No member shall purport to speak on behalf of the board or Council unless he or she is authorized by the board or Council to do so.

2. A member who expresses disagreement with a decision of the board or Council shall make it clear that he or she is expressing a personal opinion.

Part 9 Haldimand County Policies

1. The provisions of this Code of Conduct are in addition and supplemental to the obligations pursuant to the following Haldimand County policies:
 - (i) Council/Staff Protocol;
 - (ii) Respect in the Workplace;
 - (iii) Information Technology Acceptable Usage;
 - (iv) Expectations of Council Appointees to Corporate Bodies;
 - (v) Expense Reimbursement;
 - (vi) Election Protocol.
2. Any alleged action or inaction by a member which results in a breach of any of the above-noted policies shall be deemed to be in breach of this Code of Conduct.

Part 10 Integrity of the Code of Conduct

All members shall respect and uphold the letter, the spirit and the integrity of the Code of Conduct, and of any investigations conducted in respect of the Code of Conduct.

Members shall not:

- (a) undertake any act of reprisal or threaten reprisal against a complainant or any other person for providing relevant information to the IC or any other person; and
- (b) obstruct the IC, or any other municipal official involved in applying or furthering the objectives or requirements of this code, in the carrying out of such responsibilities, or pursuing any such objective.

Part 11 Contravention of the Code of Conduct

1. The IC shall report to the board or Council and is responsible for performing, in an independent manner, an inquiry regarding the alleged contravention of the Code of Conduct by a member.
2. Council or the local board may impose either of the following penalties on a member if the IC reports that, in his or her opinion, the member has contravened the Code of Conduct:
 - (i) a reprimand;
 - (ii) suspension of the remuneration paid to the member in respect of his or her services as a member of Council or of the local board, as the case maybe, for a period of up to 90 days.

Part 12 Complaint Protocol

A written request with respect to possible contravention of the Code of Conduct shall be processed in accordance with the Complaint Protocol shown as Schedule 1 to the Code of Conduct.

Part 13 Conflict of Interest Protocol

A written request with respect to possible contravention of sections 5, 5.1 and 5.2 of the MCI, as authorized through Section 223.3 of the Act, shall be processed in accordance with the Conflict of Interest Investigation Protocol shown as Schedule 2 to the Code of Conduct.

Schedule 1 to the Code of Conduct

Complaint Protocol

A Informal Complaint Procedure

Council, a member of Council or a member of the public who has identified or witnessed behavior or an activity by a member of Council that they believe is in contravention of the Code of Conduct who wishes to address this behavior or activity through the informal complaint procedure shall:

1. File a written request and supporting affidavit with the Clerk, noting grounds for belief of an alleged contravention including, dates, times, locations, other persons present, and any other relevant information;
2. The Clerk shall provide to the subject member of Council a copy of the allegation without disclosing the identity of the complainant;
3. The member of Council will be provided ten working days in which to provide the Clerk with a written response to the allegation;
4. The complainant will be provided with a copy of the member's response and be given ten working days in which to:
 - (i) provide a written response to the Clerk stating satisfaction with the response; or,
 - (ii) provide a written response to the Clerk stating dissatisfaction with the response and the need to pursue the matter in accordance with the Formal Complaint Procedure of this protocol.
5. The Clerk shall advise the member of the complainant's position.

Anyone wishing to file a request for an investigation is encouraged to initially pursue the Informal Complaint Procedure as a means of stopping and remedying the behavior or activity that is inconsistent with the Code of Conduct. However, it is not a precondition or prerequisite that the complainant pursue the Informal Complaint Procedure prior to pursuing the Formal Complaint Procedure.

B FORMAL COMPLAINT PROCEDURE: Integrity Commissioner

1. Request for Inquiry

Where a Council, member of Council, or a member of the public have reasonable and probable grounds to believe that a member of Council has contravened the Code of Conduct may request that the matter be reviewed by the Integrity Commissioner (IC).

2. Complaint

The filing fee to initiate a formal request is \$200.00, payable in cash, or by debit card to Haldimand County. This filing fee will be refunded if it is determined by the IC that the complaint warrants proceeding to the investigation stage.

The request shall be in writing and shall set out the grounds for the belief of the alleged contravention and including a supporting affidavit that states evidence in support of the complaint.

For example, facts should include the name of the alleged violator, the provision allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information respecting the complainant during normal business hours.

The Clerk or Deputy Clerk is authorized to take the supporting affidavit.

The request shall be submitted within six weeks of the complainant becoming aware of the alleged contravention.

3. Initial Classification by Integrity Commissioner

3.1 The request shall be filed with the Clerk who shall forward the matter to the IC for initial classification with respect to non-compliance with the Code of Conduct.

3.2 Incomplete Request

If the complaint does not include a supporting affidavit, the request will be deemed incomplete and returned to the complainant by the Clerk.

3.3 Requests not Applicable to the Code of Conduct

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 constitutes a complaint that should be pursued under other legislation, the IC shall instruct the Clerk to 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 the proper recourse is to pursue the matter with the appropriate Police Force;
- b) if the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to pursue the matter with the IC in accordance with the protocol outlined in Schedule 2, if applicable, or with their own legal counsel;
- c) if the complaint on its face is with respect to non-compliance with a more specific Council policy, other than those policies listed in Part 9, which has a separate complaint procedure, the complainant shall be advised that the matter will be processed under that policy; or
- d) if the complaint, on its face, is not with respect to non-compliance with matters described in (a) (b) or (c) above, but is not within the jurisdiction of the IC, the complainant shall be so advised.

3.4 Reports

The IC shall report to Council when a specific complaint is not within the jurisdiction of the IC, but shall not disclose confidential information that could identify a person concerned.

4. Integrity Commissioner's Investigation

4.1 Refusal to Conduct Investigation

The IC shall terminate the investigation if in his or her opinion the matter is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation. The IC shall report to Council that a specific complaint has been terminated, but shall not disclose confidential information that could identify a person concerned.

4.2 Investigation

If a complaint has been classified as being within the IC's jurisdiction and not rejected under the previous section, the IC shall conduct an investigation.

The IC will proceed as follows:

- a) bearing in mind the confidentiality requirements of the *Municipal Act*, it will be at the discretion of the IC whether to disclose the identity of the complainant to relevant parties in order to facilitate the investigation. Any party to this investigation who is made aware of the identity of the complainant is bound to maintain the secrecy of the complainant and to not use this information for any purpose other than to provide a full answer or defense to the complaint.
- b) file a copy of the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation by way of affidavit be filed within ten working days; and
- c) serve a copy of the response provided upon the complainant with a request for a written reply within ten working days.

If necessary, after reviewing the written materials, the IC may speak to anyone relevant to the complaint, examine any other documents relevant to the complaint and may enter any County work location relevant to the complaint for the purposes of investigation.

The IC may make interim reports to Council as required to address any instances of interference, obstruction or retaliation encountered during the investigation.

- d) Section 223.4 (2) of the *Municipal Act* authorizes the IC to elect to exercise the powers of a commission under the *Public Inquiries Act*. When the Public Inquiries Act applies to an investigation of a complaint, the IC 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 act prevails.

4.3 Termination of Inquiry During Election

If the IC 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 IC shall terminate the inquiry on that day. Any incomplete inquiry shall not recommence unless within six weeks after Voting Day of the regular election, the person who made the request or the member or former member whose conduct is concerned, makes a written request to the IC that they inquiry be commenced.

Also, during the period of time starting on Nomination Day and ending on Voting Day of a regular election:

- No request for an inquiry will be allowed.
- The IC shall not report to Council on any contravention of the code of conduct.
- Council shall not consider whether to impose any penalties on a Member.

4.4 Final Report

- a) The IC shall report to the complainant and the member no later than 90 days after the filing of the complaint with the Clerk.
- b) Where the complaint is sustained in whole or in part, the IC shall also report to Council outlining the findings and when applicable, recommend corrective action, while maintaining the confidentiality of the complainant.
- c) Where the complaint is dismissed, the IC shall report to Council, maintaining the confidentiality of any information which could identify a person concerned.

4.5 Lawful Recommendations

Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behavior or activity does not continue.

4.6 Member not Blameworthy

If the IC 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 though inadvertence or an error of judgment made in good faith, the IC shall provide a report to Council and shall make recommendation with respect to any corrective action, having regard for the findings.

4.7 Copies

The Clerk shall give a copy of the report to the complainant and the member whose conduct is the subject of investigation.

4.8 Report to Council

The Clerk shall process all reports of the IC to the next available meeting of Council.

4.9 Publication of Reports

The Clerk shall ensure that reports received from the IC by the municipality are made available to the public.

5. Council Review

5.1 Duty of Council

Council shall consider and respond to the report within 90 days after the day the report is presented at a meeting of Council.

5.2 Penalties

Council may impose one of the following penalties on a member of Council if the IC reports that in his or her opinion, the member has contravened the Code of Conduct:

- 1) a reprimand; or,
- 2) suspension of the remuneration paid to the member in respect of his or her services as a member of Council, for a period of up to 90 days.

6. Request for Reimbursement of Members Costs

A member of Council who is party to a complaint under this procedure where the findings of the IC do not substantiate a contravention of the Code of Conduct or that the member was not blameworthy as set out in Section 4.6 of this protocol, may apply for reimbursement of relevant expenses under the County's Indemnification By-law. Such application shall be referred to the County Solicitor for a ruling on whether reimbursement under the by-law is applicable.

Schedule 2 to the Code of Conduct

Conflict of Interest Investigation Protocol

Under Section 223.4.1 (2) of the *Municipal Act, 2001*, an elector as defined in the *Municipal Conflict of Interest Act* (MCIA), or a member of the public demonstrably acting in the public interest, may request the Integrity Commissioner (IC) to conduct an inquiry about whether a Member has contravened Section 5, 5.1 or 5.2 of the MCIA.

1. Request for Inquiry

- a) A request for an inquiry into a potential contravention of Section 5, 5.1 or 5.2 of the MCIA shall be in writing and may only be made within six weeks of the complainant becoming aware of the alleged contravention.

NOTE: If both of the following are satisfied, the six-week limitation period does not apply:

- 1) The complainant became aware of the alleged contravention within the period starting six weeks before Nomination Day for a regular election and ending on Voting Day; and,
 - 2) The complainant makes the request for an inquiry within six weeks after Voting Day in a regular election.
- b) A request shall set out all reasonable and probable grounds for the allegation that the Member has contravened Section 5, 5.1 or 5.2 of the MCIA and shall include a supporting affidavit that sets out the evidence in support of the complaint.
 - c) The Clerk or Deputy Clerk is authorized to take the supporting affidavit.
 - d) In a municipal election year, starting on Nomination Day and ending on Voting Day, no requests for an inquiry shall be submitted and the IC shall not report to the Municipality about whether or not a Member of Council contravened the MCIA.

2. Initial Review by Integrity Commissioner

- a) The request shall be filed with the Clerk who shall forward the matter to the IC for initial review to determine if the matter is, on its face, a complaint with respect to non-compliance with Section 5, 5.1 or 5.2 of the MCIA.
- b) If the request does not include the required affidavit, the request shall not be forwarded to the IC until one is provided.
- c) If the complaint, including any supporting affidavit, is not on its face, a complaint with respect to non-compliance with Section 5, 5.1 or 5.2 of the MCIA or the complaint is covered by other legislation or a complaint procedure under another Council policy, the IC shall instruct the Clerk to advise the Complainant in writing as follows:
 - a. If the complaint is, on its face, an allegation of a contravention of the Council Code of Conduct, the IC will investigate it as outlined in Schedule 1.
 - b. If the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the IC shall refer it to the appropriate authorities and

advise the complainant that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police service;

- c. If the complaint on its face relates 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 to the Clerk for review.
 - d. If the complaint on its face is with respect to non-compliance with a different Council policy, with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
 - e. In other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the IC to process, with any additional reasons and referrals as the IC considers appropriate.
- d) The IC shall report annually to Council on complaints made that were determined not to be within the jurisdiction of the IC, but shall not disclose information that could identify a person concerned.

3. Integrity Commissioner Investigations

- a) If the IC is of the opinion that the referral of a matter to them is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the IC shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, shall terminate the investigation.
- b) Other than in exceptional circumstances, the IC shall not report to Council on any complaint described in subsection (a) except as part of an annual or other periodic report.

4. Investigation & Settlement

- a) If a complaint has been classified as being within the IC's jurisdiction and not rejected under Section 2 or 3, the IC shall investigate and may attempt to settle the complaint.
- b) The IC shall complete their investigation within 180 days after the date of submission of the complaint.
- c) Section 223.4.1 (9) of the *Municipal Act, 2001*, authorizes the IC to elect to exercise the powers of a commission under the *Public Inquiries Act, 2009*.
- d) When the IC elects to exercise the powers of a commission under the *Public Inquiries Act*, the IC may exercise all powers and 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.
- e) The IC will proceed as follows, except where otherwise required by the Public Inquiries Act:
 - a. Serve the complaint and supporting material upon the Member whose conduct is in question with a request that a written response to the allegation by way of affidavit be filed within ten days or such longer period as the IC may authorize in writing; and,

- b. Serve a copy of the response provided by the Member upon the complainant with a request for a written reply within ten days or such longer period as the IC may authorize in writing.
- f) Upon completion of the inquiry, the IC may, if they deem it appropriate, apply to a judge under Section 8 of the MCIA, for a determination as to whether the Member has contravened Section 5, 5.1, or 5.2 of the Act.
- g) After making their decision as to whether or not to apply to a judge as set out above, the IC will provide the Municipality's Clerk, the complainant and the Member with written reasons for the decision. Upon request, the Municipality's Clerk will also provide a copy of the written reasons to a member of the public.
- h) The County shall pay any costs incurred by the IC in making its application to a judge as set out above.
- i) The IC may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during their investigation.

5. Final Report

- a) The IC's written submission to the Municipality's Clerk outlining their decision to not apply to a judge under Section 8 of the MCIA, for a determination as to whether the Member has contravened Section 5, 5.1, or 5.2 of the Act shall constitute the final report on the matter.
- b) Where the IC has applied to a judge under Section 8 of the MCIA, for a determination as to whether the Member has contravened Section 5, 5.1, or 5.2 of the Act, the resulting court decision shall constitute the final report on the matter. The Municipality's Clerk shall post this court decision on the Municipality's website.

6. Confidentiality

- a) Section 223.5 (1) of the *Municipal Act, 2001*, provides that the IC shall preserve secrecy with respect to all matters that come to their knowledge in the course of their duties.
- b) If the IC provides a periodic report to the municipality on their activities, the IC may summarize advice they have given but shall not disclose confidential information that could identify a person concerned.
- c) The IC may disclose any information that is, in their opinion necessary for:
 - a. the purposes of a public meeting into an inquiry as to whether a Member has contravened Section 5, 5.1 or 5.2 of the MCIA;
 - b. in an application to a judge for a determination as to whether a Member has contravened Section 5, 5.1 or 5.2 of the MCIA; and,
 - c. in the written reasons provided by the IC as to why they did/did not apply to a judge as to whether a Member has contravened Section 5, 5.1 or 5.2 of the MCIA.

REVISION HISTORY					
REPORT	CIC		COUNCIL		DETAILS
CS-CL-04-2013	15-Jan-13	Rec# 35	21-Jan-13	Res# 25-13	Amended Part 11(1)
CLS-08-2019	17-Sep-19	Rec# 6	23-Sep-19	Res# 170-19	Updated legislative references, expanded role of Integrity Commissioner and addition of Conflict of Interest Protocol
	Date	Rec#	Date	Res#	
	Date	Rec#	Date	Res#	
	Date	Rec#	Date	Res#	
	Date	Rec#	Date	Res#	