



**CODE OF CONDUCT COMPLAINT PROTOCOL  
FOR  
MEMBERS OF COUNCIL**

**AUTHORITY:**

*Historic*

- (1) Clause No.4 of Report No.2 of the Policy and Finance Committee, March 1, 2 and 3, 2004 as amended by:
  - (a) Clause No.1 of Report No.3 of the Policy and Finance Committee, held on April 25, 26 and 27, 2006; Item CC2.5 as adopted and amended by Council at its meeting held on February 5, 6, 7 and 8, 2007; Item CC11.8 as adopted by Council at its meeting held on July 16, 17, 18 and 19, 2007; and
  - (b) Notice of Motion M148, as adopted by Council at its meeting held on October 22 and 23, 2007.
  
- (2) This Complaint Protocol for Members of Local Boards (Restricted Definition), Including Adjudicative Boards, was amended and adopted by City Council on July 15, 16 and 17, 2008 (2008 EX22.6, as amended by Council), as amended by.
  - (a) Item EX40.2, as adopted by Council at its meeting held on February 22 and 23, 2010.

*Current*

- (3) This Code of Conduct Complaint Protocol for Members of Council, was amended and adopted by City Council on October 2, 3 and 4, 2012:

Item CC26.4 as adopted by Council to reflect amendments to the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sch. 6 and to reflect Council Amendments to the Constituency Services and Office Budget Policy (formerly the “Councillor Expense Policy”) made on July 11, 12 and 13, 2012 (Item EX21.9).

**PART A: INFORMAL COMPLAINT PROCEDURE**

Individuals [for example, City employees, members of the public, members of Council or local boards (restricted definition)], or organizations [including local boards (restricted definition)] who have identified or witnessed behaviour or an activity by a member of Council that they believe is in contravention of the *Code of Conduct for Members of*

*Council* (the “Code of Conduct”) may wish to address the prohibited behaviour or activity themselves as follows:

- (1) advise the member that the behaviour or activity contravenes the Code of Conduct;
- (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) tell someone else (for example, a senior staff member or an officer of the organization) about your concerns, your comments to the member and the response of the member;
- (5) 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
- (6) 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.

Individuals 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 of Conduct. 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 pursue the informal complaint procedure before pursuing the Formal Complaint Procedure in Part B.

#### *Municipal pre-election period limitation*

If an informal complaint is brought to the attention of the Integrity Commissioner during the pre-election period described in subsection 1(6) of Part B, the Integrity Commissioner may only participate in the informal process after the pre-election period has ended.

### **PART B: FORMAL COMPLAINT PROCEDURE: Integrity Commissioner**

Statutory Authority:

Under section 160 of the *City of Toronto Act, 2006*, City Council (“Council”), a member of council or a member of the public may request the Integrity Commissioner to conduct an inquiry about whether a member of council or of a local board (restricted definition) has contravened the *Code of Conduct for Members of Council and Local Boards (Restricted Definition)* (the “Code of Conduct”).

#### **Requests for Inquiries s.1**

- Complaint
1. (1) A request for an investigation of a complaint that a member has contravened the Code of Conduct (the “complaint”) shall be in writing.

- (2) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization).
- (3) A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code of Conduct and include a supporting affidavit that sets out the evidence in support of the complaint.

For example, the complaint and supporting affidavit 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 for the complainant during normal business hours.

- (4) Staff of the City Clerk’s division, who are commissioners for taking affidavits, are authorized to take the supporting affidavit.
- (5) Despite subsection (3), the Integrity Commissioner may waive the requirement for an affidavit when the request for an inquiry is from Council or a local board (restricted definition).
- (6) In a municipal election year, a code of conduct complaint respecting a member who is seeking re-election may not be filed with the City Clerk during the period starting on Civic Monday (August 1 in 2010) and ending when a new City Council is deemed organized under section 185 of the City of Toronto Act 2006.

Municipal  
Pre-election Period  
Limitation

**[Note: Deemed organization**

**185.** A new city council is deemed to be organized after a regular election or after a by-election under section 211 when the declarations of office under section 186 have been made by a sufficient number of members to form a quorum.]

**Initial Classification by Integrity Commissioner s. 2**

File with Clerk

- 2. (1) The request shall be filed with the City Clerk who shall forward the matter to the Integrity Commissioner for initial classification 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 policies as described in subsection (3).

Deferral

- (2) If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until an affidavit is received.

No Jurisdiction

- (3) If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner shall instruct the City 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 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 Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
  - (c) 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 City's Director of the Corporate Access and Privacy office;
  - (d) if the complaint on its face is with respect to non-compliance with a more specific 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 Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

Reports

- (4) The Integrity Commissioner may report to Council that a

specific complaint is not within the jurisdiction of the Integrity Commissioner.

- (5) The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.

### **Integrity Commissioner Investigation ss. 3 – 9**

Refusal to Conduct Investigation 3. (1) If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.

- (2) Other than in exceptional circumstances, the Integrity Commissioner will not report to Council on any complaint described in subsection (1) except as part of an annual or other periodic report.

Investigation & Settlement 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.

*Public Inquiries Act* (2) Under subsection 160(2) of the *City of Toronto Act, 2006*, the Integrity Commissioner may elect to investigate a complaint by exercise of the powers of a commission under sections 33 and 34 of the *Public Inquiries Act*.

- (3) 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*:

- (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 or otherwise be filed within ten days; and

- (b) serve a copy of the response provided upon the complainant with a request for a written reply within ten days.

- Access
  - (2) 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 160(3) and (4) of the *City of Toronto Act, 2006*, and may enter any City work location relevant to the complaint for the purposes of investigation and settlement.
- Opportunity to Comment
  - (3) 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 the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment on the proposed finding and any recommended sanction.
- Interim Reports
  - (4) 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.
- Final Report
  - 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.
  - (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.
  - (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.
- Lawful Recommendations
  - (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.

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| Member not Blameworthy | 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. |
| Copies                 | 8. The City Clerk shall give a copy of the report to the complainant and the member whose conduct is concerned.   |
| Report to Council      | 9. The City Clerk shall process the report for the next meeting of Council  |

**Council Review; Costs ss. 10 – 12**

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| Duty of Council  | 10. (1) Council shall consider and respond to the report within 90 days after the day the report is laid before it.<br><br>(2) In responding to the report, Council may vary a recommendation that it impose a penalty, subject to subsection 160(5) of the <i>City of Toronto Act, 2006</i> , but shall not refer the recommendation other than back to the Integrity Commissioner.   |
| Payment of Costs | 11. (1) Subject to this section and Council’s policy on office expense budget use, claims for reimbursement by a member of Council for costs under this section shall be processed under the <i>Indemnification Policy for Members of Council</i> .<br><br>(2) A complainant and a member who are parties to a complaint under this procedure shall each be reimbursed for actual and reasonable legal and related expenses up to a maximum of:<br><br>(a) \$5,000; or<br><br>(b) \$20,000, if the Integrity Commissioner has elected to investigate the complaint by exercise of the powers of a commission under Parts I and II of the <i>Public Inquiries Act</i> . |

- (3) In the case of an application under the *Judicial Review Procedure Act* for judicial review of actions taken on a complaint against a member of council by the Integrity Commissioner, Council :
- (a) where a member made the judicial review application, the member is eligible for reimbursement of legal costs, including additional legal costs in a successful application, that are not covered by the costs awarded by the court, up to a maximum of \$20,000.
  - (b) a member may apply for reimbursement of the legal costs of intervention in a judicial review application where the member's interests are at stake, up to a maximum of \$20,000.
- (4) Council may consider the reimbursement of costs above the limit in subsections (2) and (3) on a case by case basis.
- (5) Costs may be provided in advance in an investigation, if the Integrity Commissioner is of the opinion that the use of a lawyer by one or more of the parties would facilitate the carrying out of the investigation, and subsections (6) and (7) do not apply to the advance costs paid under this subsection.
- (6) Costs shall only be reimbursed under this section to the complainant, if the Integrity Commissioner concludes that the complaint is not frivolous, vexatious or made in bad faith and the Integrity Commissioner's conclusion is not overturned on judicial review.
- (7) Costs shall only be reimbursed under this section to the member:
- (a) if the Integrity Commissioner concludes that there has been no contravention of the Code of Conduct by the member or that the member is not blameworthy as described in section 7, and the Integrity Commissioner's conclusion is not overturned on judicial review; or
  - (b) where Council receives the Integrity Commissioner's report on a violation and



determines that it should not take any action.

- (8) Any award of costs under subsection (7) shall be contingent on a report from the City Solicitor in consultation with the Integrity Commissioner.

Confidentiality

- 12. (1) A complaint will be processed in compliance with the confidentiality requirements in sections 161 and 162 of the *City of Toronto Act, 2006*, which are summarized in the following subsections.
  - (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 or in accordance with the provisions of Part V of the *City of Toronto Act, 2006*.
  - (3) All reports from the Integrity Commissioner to Council will be made available to the public.
  - (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.
  - (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.