



**CODE OF CONDUCT COMPLAINT PROTOCOL
FOR
MEMBERS OF LOCAL BOARDS (RESTRICTED DEFINITION)
INCLUDING ADJUDICATIVE BOARDS**

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 EX 40.2, as adopted by Council at its meeting held on February 22 and 23, 2010.

Current

- (3) This Complaint Protocol for Members of Local Boards (Restricted Definition), including Adjudicative Boards, was amended and adopted by City Council on October 2, 3 and 4, 2012:
 - (a) Item CC26.4 as adopted by Council to reflect amendments to the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sch. 6.

APPLICATION:

This Code of Conduct Complaint Protocol applies to local boards (restricted definition), including adjudicative boards that are local boards (restricted definition).

The Informal Complaint Procedure in Part A does not apply to members of adjudicative boards. Complaints regarding members of adjudicative boards must be processed under the Formal Complaint Procedure in Part B.

PART A: INFORMAL COMPLAINT PROCEDURE

Individuals [for example, City employees, members of the public, members of Council or local boards (restricted definition) (the “Board”)], or organizations (including Boards) who have identified or witnessed behaviour or an activity by a member of a Board, other than an adjudicative board, that they believe is in contravention of the *Code of Conduct for Members of Local Boards (Restricted Definition)*, (the “Code of Conduct”), may wish to address the prohibited behaviour or activity themselves by taking the following actions through the Chair of the Board. If the complaint is about the Chair’s behaviour or activity, the complainant shall consult with the Integrity Commissioner on the appropriate contact.

- (1) request the Chair to advise the member that the behaviour or activity contravenes the Code of Conduct;
- (2) request the Chair to 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, through the Chair confirm to the member your satisfaction with the response of the member; or, if applicable, through the Chair 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 (except for complaints regarding members of adjudicative boards) 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.

PART B: FORMAL COMPLAINT PROCEDURE: Integrity Commissioner

Statutory Authority:

Under section 160 of the *City of Toronto Act, 2006*:

- [a] 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 a local board (restricted definition) has contravened the *Code of Conduct for Members of Local Boards (Restricted Definition)*, or, where applicable, the *Code of Conduct for Members of Adjudicative Boards*; and
- [b] a local board (restricted definition) or a member of a local board (restricted definition) may request the Integrity Commissioner to conduct an inquiry about whether a member of the local board (restricted definition) has contravened the Code of Conduct.

Application

The Formal Complaint Procedure in this Part applies to complaints regarding members of local boards (restricted definition) including members of adjudicative boards.

In this Part, the applicable Code of Conduct as noted above is referred to as the “Code of Conduct” and a local board (restricted definition) is referred to as a “Board”.

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).

Initial Classification by Integrity Commissioner s. 2

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| 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 or Board 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 | <p>(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 or Board policy, the Integrity Commissioner shall instruct the City Clerk to advise the complainant in writing as follows:</p> <ul style="list-style-type: none"> (a) if the complaint on its face is an allegation of a criminal nature consistent with the <i>Criminal Code of Canada</i>, 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 <i>Municipal Conflict of Interest Act</i>, 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 <i>Municipal Freedom of Information and</i> |

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 or, if these complaints are processed by the Board, the head of the Board's access and privacy office;

- (d) if the complaint on its face is with respect to non-compliance with a more specific Council or Board 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 or the Board that a specific complaint is not within the jurisdiction of the Integrity Commissioner.
- (5) The Integrity Commissioner shall report annually to Council or a Board 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 or a Board 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 or Board 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 or the Board 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 or the Board, or both if appropriate, 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 or the Board except as part of an annual or other periodic report.
 - (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.
- Lawful Recommendations
- Member not Blameworthy
- Copies
- Report to Council or Board
- Duty of Council or Board
- Payment of Costs
- 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 City Clerk shall give a copy of the report to the complainant and the member whose conduct is concerned.
 - 9. The City Clerk shall process the report for the next meeting of Council or of a Board where appropriate, or both if required.
- Council or Board Review; Costs ss. 10 – 12**
- 10. (1) Council or the Board shall consider and respond to the report within 90 days after the day the report is laid before it.
 - (2) In responding to the report, Council or the Board may vary a recommendation that it impose a penalty, subject to subsection 160(5) of the *City of Toronto Act, 2006*, but shall not refer the recommendation other than back to the Integrity Commissioner.
 - 11.(1) 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:
 - (a) \$5,000; or

- (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 *Public Inquiries Act*.
- (2) 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 a Board by the Integrity Commissioner, Council or a Board:
- (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.
- (3) Council or a Board may consider the reimbursement of costs above the limit in subsections (1) and (2) on a case by case basis.
- (4) 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 (5) and (6) do not apply to the advance costs paid under this subsection.
- (5) 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.
- (6) 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 or the Board receives the Integrity Commissioner's report on a violation and determines that it

should not take any action.

- (7) Any award of costs under subsection (6) 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 or a Board 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 or a Board on whether a member of the Board 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.