

The Municipality of Chatham-Kent

Integrity Commissioner Complaint Process

1. Preamble

The *Municipal Act, 2001*, S.O. 2001, c. 25, at section 223.2, requires a municipality to establish a code of conduct for members of the Council of the municipality and of local boards of the municipality. Further, section 223.3 authorizes a municipality to appoint an Integrity Commissioner who reports to Council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the application of the code of conduct.

2. Integrity Commissioner

The Municipality of Chatham-Kent shall appoint an Integrity Commissioner who reports directly to Council and who is responsible for performing the duties outlined in this *Code of Conduct* and the *Municipal Act, 2001*, in an independent manner. The Integrity Commissioner shall not be an employee of the Municipality and shall not report to any staff member including the Chief Administrative Officer.

3. Complaint Protocol

a. Informal Complaint Procedure

Individuals or organizations who have identified or witnessed behaviour or an activity by a member that they believe is in contravention of the *Code of Conduct* could address the prohibited behaviour or activity themselves as follows:

- advise the member that their behaviour or activity appears to contravene the *Code of Conduct*;
- encourage the member to stop the prohibited behaviour or activity;
- keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information; and
- if desired, ask the Municipal Clerk to contact the Integrity Commissioner who may choose to mediate or assist the parties.

A complainant is not required to undertake the informal complaint procedure prior to pursuing the formal complaint procedure.

b. Filing a Formal Complaint

A request for an investigation that a member has contravened the *Code of Conduct* shall be:

- made in writing on a prescribed **Complaint Form** provided by the Municipal Clerk setting out reasonable and probable grounds for the allegation that a member has contravened the *Code of Conduct*;
- signed by an identifiable individual (or the authorized signing officer of an organization);
- filed with the Municipal Clerk who shall forward the matter to the Integrity Commissioner.

c. Investigation Process for a Formal Complaint

(i) Jurisdiction

The Integrity Commissioner shall review the complaint and determine if the complaint appears, *prima facie*, to be a complaint within the jurisdiction of the Integrity Commissioner.

If the Integrity Commissioner determines that the complaint is not a matter within the jurisdiction of the Integrity Commissioner, the Integrity Commissioner shall advise the complainant and the Municipal Clerk in writing. The Integrity Commissioner may, at her or his sole discretion, refer the matter to another agency or person who has jurisdiction (or who might have jurisdiction) over the matter. The Municipal Clerk shall post the written decision of the Integrity Commissioner on the Municipal website within ten days of receiving the decision.

If the Integrity Commissioner determines that the complaint is within the jurisdiction of the Integrity Commissioner, the Integrity Commissioner shall proceed to sub-step (ii) under this "Investigation Process for a Formal Complaint".

(ii) Frivolous, vexatious, not made in good faith, *de minimus*, or if there are insufficient grounds for an investigation

The Integrity Commissioner shall review the complaint and determine if the complaint is frivolous, vexatious, not made in good faith, *de minimus*, or if there are insufficient grounds for an investigation.

If the Integrity Commissioner determines that the complaint is frivolous, vexatious, not made in good faith, *de minimus*, or that there are insufficient grounds for an investigation, the Integrity Commissioner shall advise the complainant and the Municipal Clerk in writing. The Municipal Clerk shall post the written decision of the Integrity Commissioner on the Municipal website within ten days of receiving the decision.

If the Integrity Commissioner determines that the complaint is not frivolous, not vexatious, is made in good faith, is not *de minimus*, and that there sufficient grounds for an investigation, the Integrity Commissioner shall proceed to sub-step (iii) under this "Investigation Process for a Formal Complaint".

(iii) Investigation

If the Integrity Commissioner has decided to commence an investigation, the Integrity Commissioner shall first interview the complainant (in person or by telephone). The Integrity Commissioner shall then interview the member and other parties, as he/she deems relevant (in person or by telephone). The member who is the subject of the complaint will be advised of the complaint and provided with a fair opportunity to respond. The member shall be entitled to be represented by legal counsel at the member's own expense.

The Integrity Commissioner shall be entitled to any documents in the possession of the Municipality, except where prohibited by law. Members and staff shall cooperate by providing any requested documents and otherwise shall cooperate with the investigation.

The Integrity Commissioner shall be entitled to amend or end the investigative process when, in her or his sole discretion, it is necessary to do so for the purposes of achieving a just and fair result. If the Integrity Commissioner ends the investigation during this stage of the investigation process, the Integrity Commissioner shall provide a final investigation report as outlined in sub-step (iv) under this "Investigation Process for a Formal Complaint".

(iv) Investigation Reports and Recommendations

The Integrity Commissioner shall provide a final investigation report in writing, with reasons, to the Clerk, the member, and the complainant within 90 days of the Integrity Commissioner receiving the complaint. The investigation report shall include findings of fact based on the balance of probabilities and with consideration given to the credibility of all concerned persons and witnesses. The investigation report may contain a recommendation to Council.

The Clerk shall make the investigation report available to the public on the municipal website within ten days of receiving the decision. Within 30 days the Clerk shall also put the investigation report on a Council agenda.

The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of delay, interference, obstruction or retaliation encountered during an investigation, or as otherwise deemed necessary by the Integrity Commissioner.

(v) Confidentiality

Names and facts identifying members, complainants and witnesses will be made public through any reports or decisions issued by the Integrity Commissioner, which will then be posted to the municipal website and/or included in any public and open Council agenda package. However, the Integrity Commissioner shall have the authority to keep confidential any names or facts that would identify members, complainants and/or witnesses where it is in the interest of a just and fair result to do so. Relevant criteria for determining whether the identity of members, complainants and/or witnesses will include, but is not limited to, the nature of the complaint and the power imbalance between the parties (including for example municipal employees who can be subject to reprisals from members of Council). In such an instance, the Integrity Commissioner may use initials, code or other means of protecting the identity of complainants and witnesses and may also black out any identifying information on relevant documents.

d. Council Decision

Within 60 days of receipt of a final investigation report from the Integrity Commissioner, the report shall be considered by Council in a regularly scheduled open and public meeting of Council. Council shall decide, and the Municipal Clerk shall record the vote of each member of Council, with respect to each recommendation made by the Integrity Commissioner.

Council may ask the Integrity Commissioner to appear before Council, in an open and public meeting of Council, to answer questions or provide information to Council about the investigation or investigation report.

Neither the person who filed the complaint, nor the Council member who is the subject of the report, shall be present during that portion of the Council meeting when the report is considered and responded to by Council.

No person shall be entitled to make a deputation to Council with respect to any investigation report or any matter related thereto.

Council is entitled to receive *in camera* advice as permitted under the *Municipal Act, 2001* from relevant staff.

4. No Appeal

Any decision of the Integrity Commissioner, Municipal Clerk, or any other official acting under the authority of this Code of Conduct, shall be final and without right of appeal to Council or any other person.