



Town of Ajax

Appendix “B” Integrity Commissioner Complaints & Inquiries Procedures

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1. Introduction

- 1.1. Any individual, including members of the public, Town employees, and Members of Council or a Local Board, who has reasonable grounds to believe that a Member has breached a provision of the applicable Code of Conduct or sections 5, 5.1, or 5.2 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, (hereafter referred to as the *MCIA*) may proceed with a complaint or application for an inquiry in accordance with the procedures defined herein.
- 1.2. Defined terms used herein, unless the context otherwise requires, have the meanings ascribed to such terms in the *Municipal Act, 2001*, and the Code of Conduct. In the event of a discrepancy or inconsistency between the provisions contained in the *Municipal Act, 2001*, the Code of Conduct, and this Procedure, the *Municipal Act* shall prevail.
- 1.3. The provisions of this Procedure shall apply, with modifications as necessary, to all Local Boards of the Town and their members.

2. Informal Complaint Procedure

- 2.1. Any individual who identifies or witnesses behaviour or activity by a Member that they believe contravenes the Code of Conduct may seek to address the prohibited behaviour or activity themselves in the following manner by following the Informal Complaint Procedure:
 - 2.1.1. document the incident(s) where the Member may have contravened the Code of Conduct including dates, times, locations, other persons present, and any other relevant information;
 - 2.1.2. advise another person about the concerns regarding the Member's actions, to corroborate the incident;
 - 2.1.3. advise the Member that the behaviour or activity appears to contravene the Code of Conduct;
 - 2.1.4. identify to the Member the specific provision(s) of the Code of Conduct that may have been contravened;
 - 2.1.5. encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to undertake to refrain from future occurrences of the prohibited behaviour or activity;
 - 2.1.6. if applicable:
 - (a) confirm to the Member that his or her response is satisfactory, or
 - (b) advise the Member that his or her response is unsatisfactory;
 - 2.1.7. consider the need to pursue the matter in accordance with the Formal Complaint Procedure, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
- 2.2. Individuals are encouraged to pursue the Informal Complaint Procedure as the first means of remedying behaviour or activity of a Member that they believe contravenes the Code of Conduct. If the Integrity Commissioner is contacted by a potential complainant before a formal complaint is filed, the Integrity Commissioner may encourage them to engage in the informal complaint resolution process or mediation before filing a formal complaint, if the complainant has not done so already.
- 2.3. The Integrity Commissioner may be requested to assist in an attempt to settle or resolve issues between the Member and the individual, but will participate only if both parties have consented, and if the Integrity Commissioner believes its participation may be beneficial to a settlement or resolution of the issues.
- 2.4. The Informal Complaint Procedure is not a precondition or a prerequisite to pursuing the Formal Complaint Procedure.

3. Formal Complaint Procedure

3.1. Filing Complaints

- 3.1.1. Any individual who identifies or witnesses behaviour or activity by a Member that they reasonably believe contravenes the Code of Conduct may file a formal complaint (“Complaint”) to request an inquiry by the Integrity Commissioner as to whether a Member has contravened their Code of Conduct.
- 3.1.2. Complaints shall be in writing on the prescribed form (Formal Complaint Form #1 attached hereto), dated and signed by an identifiable individual (the “Complainant”), and must set out reasonable and probable grounds for the allegation that the Member has contravened the Code of Conduct.
- 3.1.3. Council may also pass a resolution requesting the Integrity Commissioner to undertake an inquiry into any of its Members for an alleged contravention of the Code of Conduct.
- 3.1.4. An elector, as defined in section 1 of the *Municipal Conflict of Interest Act*, or a person demonstrably acting in the public interest (collectively, a “Complainant”) may file a formal application requesting that the Integrity Commissioner carry out an inquiry concerning an alleged contravention of section 5, 5.1 or 5.2 of that statute by a Member in accordance with the following requirements:
 - (a) an application (also referred to as a “Complaint” herein) shall be in writing on the prescribed form (Formal Complaint Form #2 attached hereto), dated and signed by an identifiable individual;
 - (b) the application shall include a statutory declaration attesting to the fact that:
 - i. the Complainant became aware of the contravention not more than six (6) weeks before the date of the application, in accordance with subsection 223.4.1(4) of the *Municipal Act, 2001*; or
 - ii. in the case where the Complainant became aware of the alleged contravention during the period of time starting six weeks before nomination day for a regular election and ending on voting day in a regular election, as described in paragraph 1 of subsection 223.4.1(5) of the *Municipal Act, 2001*, that the Complainant became aware of the alleged contravention during that period of time;
- 3.1.5. Council may also pass a resolution requesting the Integrity Commissioner to undertake an inquiry respecting an alleged contravention of sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* by a Member and provide a statutory declaration as required by Section 5(2) to be sworn by a Member of Council.
- 3.1.6. Complainants who file a formal Complaint under Sections 3.1.1 or 3.1.4 must provide a full and complete record of evidence to substantiate or support the allegations set out in the Complaint to the Integrity Commissioner who is under no

obligation whatsoever to, but may, seek additional information.

- 3.1.7. The Complaint may be filed with the Integrity Commissioner by hard copy or by e-mail, and the Integrity Commissioner's contact information shall be posted on the Town's website in an accessible format and location.
- 3.1.8. The Integrity Commissioner shall initially classify the Complaint to determine if the matter is, on its face, a Complaint with respect to a contravention of the Code of Conduct and not covered by other legislation or other Council procedures, policies or rules as set out in Section 3.3, or whether it is a Complaint with respect to an alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.
- 3.1.9. After the initial classification of the Complaint, the Integrity Commissioner shall provide the Member identified in the Complaint with a copy of the Complaint on a confidential basis, and prior to doing so shall redact any personal and other information from the Complaint where, in the opinion of the Integrity Commissioner, the disclosure of such information would contravene the Integrity Commissioner's duty of confidentiality. The Member shall be obligated to maintain all information related to the Complaint in strict confidence.

3.2. Timelines & Limitation Periods

- 3.2.1. The Integrity Commissioner shall not accept a Complaint under the Code of Conduct for which the Complainant became aware of the event(s) giving rise to the Complaint more than six (6) months prior to the date of the filing of the Complaint. The Complainant must establish that they became aware of the event giving rise to their Complaint within six (6) months of the Complaint being filed in accordance with Section 3.1.1.
- 3.2.2. In accordance with the requirements of subsections 8(2)-(7) of the *Municipal Conflict of Interest Act* and section 223.4.1 of the *Municipal Act, 2001*, the Integrity Commissioner shall not accept an application with respect to an alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* if the application is made more than six (6) weeks after the Complainant became aware of the alleged contravention, except in accordance with those sections of the *Municipal Conflict of Interest Act* and the *Municipal Act, 2001*.
- 3.2.3. Notwithstanding any other provision of this Procedure, no Complaint may be filed with the Integrity Commissioner and no report shall be made by the Integrity Commissioner to Council during the period of time starting on nomination day for a regular municipal election year, as set out in section 31 of the *Municipal Elections Act, 1996* and ending on the voting day in a regular election as set out in section 5 of the *Municipal Elections Act, 1996*.
- 3.2.4. If the Integrity Commissioner has received a Complaint and has commenced an inquiry but has not completed the inquiry before nomination day in a regular municipal election year, the Integrity Commissioner shall terminate the inquiry on nomination day but may commence an inquiry in respect of the same Complaint

if, within six (6) weeks after the voting day in a regular municipal election, the individual who made the Complaint makes a written request to the Integrity Commissioner in accordance with subsections 223.4(8) and 223.4.1(13) of the *Municipal Act, 2001*, to commence an inquiry again.

3.2.5. Notwithstanding any timeline or time limit set out in the relevant Code of Conduct or this Procedure, the Integrity Commissioner shall retain the right to abridge or extend any timeline or time limit therein if the Integrity Commissioner considers in their sole and absolute discretion that abridging or extending a timeline or time limit is:

(a) in the public interest to do so; or

(b) necessary to accommodate or address extenuating circumstances affecting a Complainant, a Member of Council or a Local Board, or any other individual that is involved in a Complaint or inquiry being conducted by the Integrity Commissioner,

provided that doing so shall not violate or override any time limits established by provincial law.

3.3. Complaints outside Integrity Commissioner's Jurisdiction or Not for Investigation

3.3.1. If the Complaint, including any supporting affidavit or statutory declaration, is not, on its face, a Complaint with respect to a contravention of the Code of Conduct or an alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, the Integrity Commissioner shall advise the Complainant in writing as follows:

Criminal Matter

3.3.1.1. if the Complaint is, on its face, an allegation of a criminal nature consistent with the *Criminal Code*, the Complainant shall be advised that:

- a) the Integrity Commissioner shall refer it to the appropriate police service, or
- b) the Complainant may pursue it with the appropriate police service if the Complainant wishes to pursue any such allegation;

Municipal Freedom of Information and Protection of Privacy Act

3.3.1.2. if the Complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the Complainant shall be advised that the matter must be referred to the Clerk to deal with under any access and privacy policies of the Town under that statute;

Other Procedure, Policy or Rule Applies

3.3.1.3. if the Complaint appears to fall within the scope of another procedure,

policy or rule of the Town, the complainant shall be advised to pursue the matter under such procedure, policy or rule with the appropriate municipal official or staff member; and

Lack of Jurisdiction

3.3.1.4. if the Complaint is, for any other reason, not within the jurisdiction of the Integrity Commissioner (for example, it relates to a decision of Council or a local board as a whole and not one or more individual Members), the complainant shall be so advised and provided with any additional reasons and referrals, if any, as the Integrity Commissioner considers appropriate.

3.3.2. If it becomes apparent to the Integrity Commissioner at any time that the Complaint with respect to a contravention of the Code of Conduct or with respect to an alleged

contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, relates to any of the following matters, the Integrity Commissioner shall advise the complainant in writing as follows:

Other Processes Pending

3.3.2.1. if the Complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding, a human rights or workplace harassment complaint or similar process, or to a civil matter that is pending before the courts, the Integrity Commissioner may, in their sole discretion, suspend any inquiry, in whole or in part, pending the result of the other process;

Similar Matter Already Pending

3.3.2.2. if the Complaint is in relation to a similar matter which is subject to an outstanding Complaint before the Integrity Commissioner, the Integrity Commissioner may, in his/her sole discretion, consider the matter in conjunction with the similar matter or deal with it separately, including not undertaking an inquiry if the matter can be adequately addressed in any report and/or recommendations made with respect to the Complaint in the similar matter; and

Other Ethical Code or Policy Applies

3.3.2.3. if the Complaint is in relation to a matter which is governed by a code of conduct, ethical code or similar procedure or policy of another body or entity which also governs the Members (for example, another board, body or committee to which the Member has been appointed), the Integrity Commissioner shall consider the most appropriate forum for the Complaint and may, in his/her sole discretion, defer consideration of the matter pending any determination made by the other body or entity and shall so advise the complainant and, if necessary, the Member.

3.4. Refusal to Conduct Inquiry, Alternative Resolution

3.4.1. The Integrity Commissioner has discretion as to whether to carry out an inquiry. After considering the information contained in the Complaint, if the Integrity Commissioner is satisfied at any time that the Complaint:

- (a) is frivolous or vexatious;
- (b) is not made in good faith;
- (c) constitutes an abuse of process;
- (d) does not adhere to the timelines established in Section 3.2 of these Procedures;
- (e) does not fall within the jurisdiction of the Integrity Commissioner or is otherwise not for investigation in accordance with Section 3.3 of these Procedures;
- (f) discloses no grounds or insufficient grounds for an inquiry;

the Integrity Commissioner shall not be required to conduct an inquiry and may summarily dismiss the Complaint, and, where this becomes apparent during the course of an inquiry, the Integrity Commissioner shall terminate the inquiry.

3.4.2. Following receipt and review of a formal Complaint or at any time during an inquiry where the Integrity Commissioner, in its discretion, believes that an opportunity to resolve the matter may be successfully pursued without completion of a formal inquiry, and both the Complainant and the Member agree, efforts may be pursued to achieve an informal resolution.

3.4.3. Where the Integrity Commissioner summarily dismisses a Complaint or terminates an inquiry in accordance with section 3.4.1, the Integrity Commissioner shall provide notice to the Complainant and to the Member identified in the Complaint.

3.4.4. The Integrity Commissioner shall, report to Council on activity and decisions made under Section 3.4, including a summary of matters that have been suspended, summarily dismissed, terminated, informally resolved following a formal complaint, or not otherwise investigated, and may do so as part of a periodic or annual report.

3.5. Inquiry

3.5.1. Where the Integrity Commissioner determines that an inquiry shall be conducted, the Integrity Commissioner shall:

- (a) provide the Member with a copy of the Complaint, but not disclose:
 - i. the identity of the Complainant, or
 - ii. the identity of any witnesses set out in the Complaint or persons

that are to be questioned/interviewed by the Integrity Commissioner,

unless it is essential for the Member to adequately respond to the Complaint, which determination shall be made by the Integrity Commissioner, in its sole and absolute discretion;

- (b) request that the Member provide a written response to the allegations in the Complaint to the Integrity Commissioner within seven (7) days;
- (c) provide a copy of the Member's response to the Complainant, with a request that any written reply be provided by the Complainant to the Integrity Commissioner within seven (7) days.

- 3.5.2. After reviewing the submitted materials, the Integrity Commissioner may if necessary contact and speak to or correspond with any other persons, access and examine any other documents or electronic materials, including any materials on the Town's computers and servers, and may enter any municipal work location relevant to the Complaint for the purpose of investigation and potential resolution.
- 3.5.3. The Integrity Commissioner may elect to exercise the powers described in sections 33 and 34 of the *Public Inquiries Act, 2009*, in the conduct of their inquiry, in which case those sections apply to the inquiry.
- 3.5.4. Preliminary or proposed finding(s) may be provided to a Member if the Integrity Commissioner considers that the Member may have contravened the Code of Conduct.
- 3.5.5. The Integrity Commissioner may make interim reports to Council where the Integrity Commissioner considers it necessary or required to address any instances of interference, obstruction, intimidation, delay, reprisal or retaliation by the Member or by any other person encountered during the formal inquiry, and may also disclose such information as is necessary in the Integrity Commissioner's opinion for the purposes of the interim report(s).
- 3.5.6. The Integrity Commissioner is entitled to make such additional inquiries and provide such additional reports to Council where necessary and as required to address any instances of non-compliance with any decision of Council, including the failure to comply with any penalties or corrective measures or actions imposed by Council or any matters that the Integrity Commissioner considers necessary.
- 3.5.7. If the Integrity Commissioner determines that a Member has contravened the Code of Conduct, any procedures, rules or policies governing the ethical behaviour of Members or these Procedures and proposes to impose a penalty upon the Member, the Member shall be entitled to notice of same and an opportunity to provide a written response to the Integrity Commissioner within seven (7) days.

3.6. Advice Provided to Member by Integrity Commissioner

- 3.6.1. A Member is entitled to rely upon any written advice given by the Integrity Commissioner to the Member respecting the Code of Conduct in any subsequent consideration of the conduct of the Member in the same matter, provided that the Member fully disclosed in writing all relevant facts known to them to the Integrity Commissioner and acted in accordance with the written advice provided by the Integrity Commissioner.
- 3.6.2. Advice provided by the Integrity Commissioner may be publicly released by the Member, or by the Integrity Commissioner with the Member's written consent. If a Member releases only part of the advice provided to them by the Integrity Commissioner, the Integrity Commissioner may release part or all the advice provided without the Member's consent.
- 3.6.3. If the Integrity Commissioner provides educational information to the public or Members, the Integrity Commissioner may summarize and reference advice they have given to Members, but shall not disclose confidential information that could identify a person concerned.
- 3.6.4. If the Integrity Commissioner applies to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the Member contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, the Member is entitled to advise the judge of any written advice given by the Integrity Commissioner, provided that the Member fully disclosed in writing all relevant facts known to him or her to the Integrity Commissioner and acted in accordance with the written advice provided by the Integrity Commissioner.
- 3.6.5. A Member under investigation by the Integrity Commissioner shall not request advice from the Integrity Commissioner as to the Member's rights under the Code of Conduct, the *Municipal Conflict of Interest Act* or generally at law with respect to any specific matter that the Integrity Commissioner is investigating or reviewing with respect to the Member, nor is the Member entitled to rely upon any statement(s) made by the Integrity Commissioner during the course of any inquiry or review that may impact the Member's rights under the Code of Conduct, the *Municipal Conflict of Interest Act* or generally at law.
- 3.6.6. If a Member under investigation by the Integrity Commissioner requests advice, such request shall be delegated in writing to any person other than a Member that the Integrity Commissioner considers capable of providing informed advice to the Member.

3.7. Findings & Reports to Council

- 3.7.1. The Integrity Commissioner shall report to the Complainant and the Member no later than ninety (90) days after the official receipt of any Complaint under the Code of Conduct. If the inquiry process is anticipated to or takes more than ninety (90) days, the Integrity Commissioner shall provide a brief interim report to Council and advise the parties of the approximate date the report will be available. The Integrity Commissioner may also, at its discretion, advise any witnesses or other persons of the approximate date the report will be available.

3.7.2. The Integrity Commissioner may, but is under no duty to, provide a copy of the report to the Complainant and the Member whose conduct has been investigated in advance of the public release of the report, in strict confidence until the report is publicly released.

3.7.3. Upon receipt of a report from the Integrity Commissioner with respect to the Code of Conduct, the Clerk shall place the report on the next regular agenda of Council for consideration by Council. A report from the Integrity Commissioner may also be considered by Council in advance of its next regular meeting should Council agree to hold a special or other meeting before its next regular meeting to consider the report. The Member shall have the right to address the report.

3.7.4. Where the Complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, application of any penalties by the Integrity Commissioner, the terms of any settlement, and/or any recommended remedial or corrective measure or action.

3.7.5. If the Integrity Commissioner determines that:

(a) there has been no contravention of the Code of Conduct, or section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, or

(b) a contravention occurred but:

i. the Member took all reasonable measures to prevent it, including having sought and followed the advice of the Integrity Commissioner;

ii. it was trivial,

iii. it was committed through inadvertence, or

iv. it resulted from an error in judgment made in good faith,

the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act, 2001*, including but not limited to, the application of no penalties by the Integrity Commissioner and recommendation of no imposition of remedial measures or corrective actions. For greater certainty, where the Integrity Commissioner makes a finding of contravention that meets one or more of the criteria specified in 3.7.5 (b), the Integrity Commissioner is still obligated to report the finding to Council in writing in the same manner as is described in Sec. 3.7.4.

3.7.6. Where the Complaint is not sustained, the Integrity Commissioner is obligated to report to Council on the result of the inquiry or any findings, but may, at their option, do so as part of a periodic or annual report.

3.7.7. The Integrity Commissioner shall complete an inquiry under the *Municipal Conflict of Interest Act* no later than one hundred and eighty (180) days after the official receipt of any application validly made under Section 3.1.4.

3.7.8. If the Integrity Commissioner:

(a) considers it appropriate, once the inquiry has concluded, to apply to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the Member has contravened section 5, 5.1 or 5.2 of that statute; or

(b) does not proceed with an application to the judge,

the Integrity Commissioner shall advise Complainant and the Member in writing and provide a written report to Council providing the reasons for their decision.

3.8. Public Disclosure

3.8.1. The Integrity Commissioner and every person acting under their instructions shall preserve confidentiality where appropriate and where it does not interfere with the course of any inquiry, except as required by law and as required by these Procedures.

3.8.2. The Integrity Commissioner shall retain all records related to the Complaint and inquiry, although copies may be provided to the Town Clerk subject to the duty of confidentiality under subsection 223.5 of the *Municipal Act, 2001*.

3.8.3. The identity of the Member who is the subject of the Complaint shall not be treated as confidential information in the Integrity Commissioner's report to Council. The identity of the Complainant and of any other person, including any witnesses, may be disclosed if deemed appropriate and necessary by the Integrity Commissioner, if consented to by the Complainant or any other person, or if such information has already been publicly disclosed.

3.8.4. All reports from the Integrity Commissioner to Council shall be made available to the public by the Town.

3.8.5. Council or the Local Board may only enter into a closed meeting to discuss an interim or final report from the Integrity Commissioner if the subject matter of their discussion falls within one or more of the open meeting exceptions described in subsection 239(2) of the *Municipal Act*. All other deliberations of an Integrity Commissioner's report shall be in open session and subject to public scrutiny.

3.9. Delegation by Integrity Commissioner

3.9.1. The Integrity Commissioner, in consultation with the Town, may delegate in writing to any person, other than a Member, any of the Integrity Commissioner's powers and duties under Part V.1 of the *Municipal Act, 2001*.