

TOWNSHIP OF MULMUR

CODE OF CONDUCT COMPLAINT PROTOCOL

Revised Motion #33-2013

February 6, 2013

1. **AUTHORITY**

Sections 223.3 to 223.8 of the Municipal Act, 2001, as amended, and as adopted by The Council of the Township of Mulmur at its meeting held on December 13, 2011.

- 1.1 From the date of Council's adoption of the Code of Conduct for Council Members ("Code of Conduct"), only complaints relating to behaviour or activity occurring subsequent to the date of adoption will be addressed by this Code of Conduct Complaint Protocol.
- 1.2 After December 13, 2011, all complaints of alleged violations must be addressed in accordance with the timelines outlined in Article 2.4 below or no action will be taken on the complaint.

2. **COMPLAINTS OF NON-COMPLIANCE WITH THE CODE OF CONDUCT**

- 2.1 Individuals including members of the public, Township employees and Members of Council who identify or witness behaviour of a Member of Council that they believe is in contravention of the Code of Conduct may proceed with an informal or formal complaint as outlined in Option A or B below.
- 2.2 Individuals are encouraged to pursue the Informal Complaint Procedure (Option A) as their first option in stopping and remedying a prohibited behaviour or activity under the Code of Conduct. It is not required, however, that complainants participate in the informal complaint procedure before pursuing the Formal Complaint Procedure (Option B).
- 2.3 A Member of Council or a member of the public may request the Integrity Commissioner to conduct an inquiry to determine whether a Member of Council has contravened the Code of Conduct.
- 2.4 The complainant must submit the alleged violation within 30 days of the matter becoming known to the individual and no more than 6 months after the alleged violation occurred. No action will be taken on a complaint received beyond these deadlines.

3. OPTION A – INFORMAL COMPLAINT PROCEDURE

3.1 Individuals (including Township employees, members of the public, Members of Council or local committees) who identify or witness behaviour or activity by a Member of Council that appears to be in contravention of the Code of Conduct may address the prohibited behaviour or activity themselves as follows:

1. Advise the Member of Council that his or her behaviour or activity contravenes the Code of Conduct;
2. Encourage the Member of Council to stop the prohibited behaviour or activity;
3. Document the incident(s) including dates, times, locations, other persons present, and any other relevant information;
4. If applicable, advise the Member of Council of his or her satisfaction with the response; or conversely, advise the Member of Council of his or her dissatisfaction with the response.
5. Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Option B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
6. Individuals are encouraged initially to 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 complainant and the Member of Council, 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 Section 4. Subject to the agreement of both the complainant and the Member of Council, the Integrity Commissioner may participate in the informal complaint resolution process.

4. OPTION B – FORMAL COMPLAINT PROCEDURE

Requests for Inquiries

4.1 All complaints must be submitted on the Code of Conduct for Council Members – Formal Complaint Form/Affidavit (Appendix A), and shall be dated and signed by the complainant.

- 4.2 The complaint must include an explanation as to why the issue raised may be a contravention of the Code of Conduct and the Affidavit must set out the evidence in support of the complaint. The Affidavit must include the name of the Member of Council alleged to have breached the Code of Conduct, the section of the Code allegedly contravened, the date, time, location and other facts relevant to the alleged contravention, the names and contact information of witnesses and contact information for the complainant.
- 4.3 No Code of Conduct complaint may be filed after August 1 in any year in which a regular municipal election will be held. The time elapsed between August 1 in a regular election year and the inaugural meeting of the newly elected Council shall not be included in the time calculation referred to in section 2.4.
- 4.4 The complainant may abandon the request for an inquiry at any time and seek informal resolution to the complaint.
- 4.5 If a complaint is abandoned, the Integrity Commissioner may, in her or his sole discretion, continue the inquiry if it is in the public interest to do so.

5. Filing of Complaint and Classification by Integrity Commissioner

- 5.1 The complaint shall be filed with the Chief Administrative Officer/Clerk or designate who shall confirm that the information as noted in sections 4.1 and 4.2 is complete. The Chief Administrative Officer/Clerk or designate shall then forward the Formal Complaint Form/Affidavit 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.
- 5.2 If the complaint is not in the prescribed form, the Integrity Commissioner may defer the classification until a Formal Complaint Form/Affidavit is received.
- 5.3 The Integrity Commissioner may request additional information from the complainant.

6. Response of Integrity Commissioner, if No Code of Conduct Violation

- 6.1 If the Integrity Commissioner finds that the complaint is not, on its face, a complaint with respect to non-compliance with the Code of Conduct, or that it is covered by other legislation, complaint procedure, or another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:
1. Criminal Matter - If the complaint 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 Service.

2. Municipal Conflict of Interest Act - If the complaint is an allegation with respect to non-compliance with the *Municipal Conflict of Interest Act, 1990*, the complainant shall be advised to review the matter with the complainant's own legal counsel.
3. Municipal Freedom of Information and Protection of Privacy - If the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act, 1990* the complainant shall be advised that the matter must be referred to the Chief Administrative Officer/Clerk or designate for access and privacy review.
4. Other Legislation or Policies - If the matter is covered by other legislation or policies, the complainant will be advised to proceed in accordance with the requirements of the legislation or policy.

7. Integrity Commissioner Inquiries

7.1 Suspension of Inquiry

If the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding, Human Rights complaint or similar process, the Integrity Commissioner may, in her or his sole discretion, suspend any inquiry pending the result of the other process.

7.2 Refusal to Conduct Inquiry

If the Integrity Commissioner is of the opinion that the referral of a matter to her or him is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an inquiry, the Integrity Commissioner shall not conduct an inquiry, and where this becomes apparent in the course of an inquiry, terminate the inquiry.

7.3 Opportunity for Resolution

If at any time following the receipt of a formal complaint or during the inquiry the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal inquiry, and both the complainant and the Member agree, efforts may be pursued to achieve an informal resolution.

7.4 Inquiry

If the Integrity Commissioner determines that a formal inquiry is required, the Integrity Commissioner will proceed as follows:

1. Provide a copy of the complaint and any supporting materials to the Member of Council whose conduct is in question with a request that a written response to the allegation be provided within 10 days. The inquiry commences at the time the Integrity Commissioner provides notice to the Member of Council.
2. Give a copy of the response provided by the Member of Council to the complainant with a request for a written reply within 10 days.
3. If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any Township work location relevant to the complaint for the purpose of inquiry and potential resolution.
4. The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the inquiry.

8. Report of Findings and Recommendation to Council

- 8.1 Upon completion of an inquiry, the Integrity Commissioner shall report to the complainant and the Member of Council generally no later than 90 days after the receipt of the Complaint Form/Affidavit. If the inquiry process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties the date the report will be available.
- 8.2 If the Integrity Commissioner finds that a breach of the Code of Conduct has occurred, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement, and recommended action, including a recommendation as to the imposition of a penalty as set out in the *Municipal Act, 2001*, as amended.
 1. a reprimand;
 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.
- 8.3 If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member of Council took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall present these findings in the report to Council.
- 8.4 The Chief Administrative Officer/Clerk or designate shall give a copy of the report to the complainant and the Member of Council concerned.
- 8.5 The Chief Administrative Officer/Clerk or designate shall process the report for the next meeting of Council.

9. Duty of Council

9.1 Council shall consider and respond to the report within 60 days after the day the report is presented to it.

10. Confidentiality During Inquiry and Public Disclosure of Report

10.1 The Integrity Commissioner and every person acting under her or his jurisdiction shall preserve the confidentiality of all information that comes to her or his knowledge in the course of any inquiry except as required by law in a criminal proceeding and as required by this Code of Conduct Complaint Protocol.

10.2 At the time of the Integrity Commissioner's report to Council, and as between the parties, the identity of a complainant and the identity of the person who is the subject of the complaint shall not be treated as confidential information.

10.3 All reports from the Integrity Commissioner to Council will be made available to the public.

11. Reimbursement of Legal Expenses for Consultation

11.1 A Member of Council who is subject of one or more complaints under Option B (Formal Complaint Procedure) is entitled to reimbursement of expenses for consultation with a lawyer of up to a maximum of \$500.00 yearly.

TOWNSHIP OF MULMUR

**Council Code of Conduct – Formal Complaint Form (Appendix A)
Affidavit, Required at Section 4.1, Code of Conduct Complaint Protocol**

AFFIDAVIT OF _____ (full name)

I, _____ (full name), of the (Township, City, etc.) _____
_____ (Municipality of residence) in the Province of Ontario.

MAKE OATH AND SAY (or AFFIRM):

1. I have personal knowledge of the facts as set out in this affidavit, because _____

(insert reasons e.g., I work for... I attended a meeting at which... etc.)

2. I have reasonable and probable grounds to believe that a Member of the Township of Mulmur Council
(specify name) _____

has contravened section (s) _____ of the Council Code of Conduct of the

Township of Mulmur, the particulars of which are as follows:

If you require more space, please use the attached Schedule A and check the appropriate box below. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this affidavit. Please see the attached Schedule A .

1. This affidavit is made for the purpose of requesting that this matter be reviewed by the Township of Mulmur appointed Integrity Commissioner and for no other purpose.

SWORN (or AFFIRMED) before me at the _____)

_____ (Township, City, etc. of))

in the Province of Ontario on _____)

_____ (date))

_____)

Signature of Commissioner
A Commissioner for taking affidavits, etc.

Signature

A copy of this affidavit will be provided to the Member of Council named in the affidavit.

Please note that signing a false affidavit may expose you to prosecution under Sections 131 and 132 or 134 of the Criminal Code, R.S.C. 1985, c. C-46 and also to civil liability for defamation.

SCHEDULE A
(Additional Information)

To the affidavit required under subsection 4.1 of the Formal Complaint Procedure of the Code of Conduct Complaint Protocol for Members of Council.

If more than one page is required, please photocopy this blank page and mark each additional page as 2 of 2, 2 of 3, etc. at the top right corner.

This Schedule A referred to in the affidavit of
_____ (full name)
Sworn (or Affirmed) before me on this _____ day
of _____,

A Commissioner for taking affidavits, etc.

Appendix B

Council Code of Conduct – Request for Advice Form

Name of Member: _____

Telephone: _____ E-mail: _____

Advice Requested: (Provide as much detail as possible relating to the issue. Attach additional pages if required).

Signature of Requestor

Date Received by Integrity Commissioner

Date

Date Reply Issued