

## **“Appendix “A” - Council Code of Conduct - Investigation Protocol**

Under Section 223.4(1) of the *Municipal Act*, Council, a Member, or a member of the public may request the IC to conduct an inquiry about whether a Member has contravened the *Council Code of Conduct*.

### **1. Request for Inquiry**

- I. A request for an inquiry shall be in writing.
- II. All requests for an inquiry shall be signed by an identifiable individual (which includes the signing officer of an organization).
- III. A request for an inquiry shall set out all reasonable and probable grounds for the allegation that the Member has contravened the *Council Code of Conduct* and shall include a supporting affidavit that sets out the evidence in support of the complaint.
- IV. Staff in the City Clerk’s office, who are commissioners for taking affidavits, are authorized to swear the supporting affidavit.
- V. In a municipal election year, starting on Nomination Day and ending on Voting Day, no requests for an inquiry shall be submitted to the IC and the IC shall not report to the City about whether or not a Member contravened the *Council Code of Conduct*.
- VI. If the IC has not completed an inquiry into a potential *Council Code of Conduct* violation before Nomination Day for a regular election, the IC shall terminate the inquiry on that day. If the IC terminates an investigation, the IC shall not start another investigation into the matter unless, within 6 weeks after Voting Day in a regular election, the person who made the request or the Member or former Member whose conduct is concerned makes a written request to the IC that the inquiry be commenced.

### **2. Initial Review by the Integrity Commissioner**

- I. The request shall be filed with the City Clerk who shall forward the matter to the IC for initial review to determine if the matter is, on its face, a complaint with respect to non-compliance with the *Council Code of Conduct* and not covered by other legislation or other Council policies.
- II. If the request does not include the required affidavit, the City Clerk shall not forward the request to the IC until one is provided.
- III. If the complaint, including any supporting affidavit, is not on its face, a complaint with respect to non-compliance with the *Council Code of Conduct* or the complaint is covered by other legislation or a complaint procedure under another Council policy, the IC shall instruct the City Clerk to advise the complainant in writing as follows:
  - a. If the complaint is, on its face, an allegation of a contravention of the *Municipal Conflict of Interest Act*, the IC will investigate it as outlined in **Appendix “B”**.
  - b. If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the IC shall refer it

to the appropriate authorities and advise the complainant that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police service.

- c. If the complaint on its face relates 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 to the City Clerk for review.
- d. If the complaint on its face is with respect to non-compliance with a different Council policy, with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure.
- e. In other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the IC to process, with any additional reasons and referrals as the IC considers appropriate.

- IV. The IC shall report annually to Council on complaints made that were determined not to be within the jurisdiction of the IC, but shall not disclose information that could identify a person concerned.

### **3. Integrity Commissioner Investigations**

- I. If the IC is of the opinion that the referral of a matter to them is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the IC shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, shall terminate the investigation.
- II. Other than in exceptional circumstances, the IC shall not report to Council on any complaint described in subsection (i) except as part of an annual or other periodic report.

### **4. Investigation & Settlement**

- I. If a complaint has been classified as being within the IC's jurisdiction and not rejected under Section 2 or 3, the IC shall investigate and may attempt to settle the complaint.
- II. Section 223.4(2) of the *Municipal Act* authorizes the IC to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*.
- III. When the *Public Inquiries Act* applies to an investigation of a complaint, the IC 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.
- IV. The IC 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 be filed within ten days or such longer period as the IC may authorize in writing; and
  - b. Serve a copy of the response provided by the Member upon the complainant with a request for a written reply within ten days or such longer period as the IC may authorize in writing.
- V. Section 33 of the *Public Inquiries Act* allows the IC to require anyone relevant to the complaint to give evidence and to access and examine any information relevant to the complaint and to enter any City work location relevant to the complaint for the purpose of investigation and settlement. The IC is to be provided free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality.
- VI. The IC shall not issue a report finding a violation of the *Council 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.
- VII. The IC may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.

## **5. Final Report**

- I. The IC shall report to the complainant and the Member, generally no later than 90 days after the making of the complaint.
- II. Where the complaint is sustained in whole or in part, the IC shall also report to Council outlining their findings and/or recommended penalty and the terms of any settlement.
- III. Where the complaint is dismissed, other than in exceptional circumstances, the IC shall not report to Council except as part of an annual or other periodic report.
- IV. Any recommended corrective action or penalty must be permitted by the *Municipal Act* and shall be designed to ensure that the inappropriate behaviour or activity does not continue and is not repeated.

## **6. Member Not Blameworthy**

- I. If the IC 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 IC shall so state in the report and shall recommend that no penalty be imposed.

## **7. Copies**

- I. The City Clerk shall give a copy of the report to the complainant and the Member that was involved.

## **8. Report to Council**

- I. The City Clerk shall process the report for the next meeting of General Committee, followed by Council. The report shall remain confidential until the matter has received complete and final disposition by the IC and has been reported out to Council.

## **9. Council Review**

- I. Council shall consider and respond to the report within 90 days after the day the report is laid before it.
- II. Section 223.4(5) of the *Municipal Act* allows the municipality to impose either of the following penalties on a Member if the Commissioner reports to the municipality that, in their opinion, the Member has contravened the *Council Code of Conduct*:
  - a. A reprimand.
  - b. Suspension of the remuneration paid to the Member in respect of their service as a Member, for a period of up to 90 days.

## **10. Confidentiality**

- I. Section 223.5(1) of the *Municipal Act* provides that the IC shall preserve secrecy with respect to all matters that come to their knowledge in the course of their duties.
- II. If the IC provides a periodic report to the municipality on their activities, the IC may summarize advice they have given but shall not disclose confidential information that could identify a person concerned.
- III. If the IC reports to the City their opinion about whether a Member has contravened the *Council Code of Conduct*, the IC may disclose in the report such matters as in the IC's opinion are necessary for the purpose of the report (including the name of the Member whose conduct was investigated)