

COMMITTEE OF THE WHOLE - JUNE 16, 2008

COMPLAINT PROTOCOL AND IMPLEMENTATION BY INTEGRITY COMMISSIONER

Recommendation

The Accountability and Transparency Committee, in consultation with the Integrity Commissioner, recommends:

1. That the attached Complaint Protocol be approved by Council.

Economic Impact

Not applicable.

Communications Plan

The Complaint Protocol will be posted to the City's Website on the 'page' developed regarding the Integrity Commissioner, once this has been developed

Purpose

The purpose of this report is to provide a Complaint Protocol for dealing with complaints to the Integrity Commissioner about alleged violations of Council's Code of Conduct.

Background - Analysis and Options

The City appointed an Integrity Commissioner to investigate alleged violations of the Council Code of Conduct.

Following the appointment of the Integrity Commissioner, the Accountability and Transparency Committee worked with the Integrity Commissioner to develop the attached Complaint Protocol. The Complaint Protocol should be considered interim, and should be reviewed after the Integrity Commissioner has worked with it for a period of several months to determine if any amendments are necessary.

The attached Complaint Protocol is modeled on existing protocols. Some of the key highlights of the Complaint Protocol are set out below.

Only complaints relating to occurrences subsequent to April 23, 2007 will be addressed. This is the date Council resolved to have an Integrity Commissioner. Complaints must be brought within six (6) months of the matter complained of, except that during the initial phase - until December 31, 2008 - this restriction will not be in effect.

The Complaint Protocol emphasizes and encourages informal resolution of complaints, with or without assistance from the Integrity Commissioner. Formal complaints must be made on the prescribed Complaints Form/Affidavit attached to the Complaint Protocol. Complaints must reference a specific provision of the Council Code of Conduct.

Where a matter falls outside the scope of the Council Code of Conduct, the Integrity Commissioner will advise the complainant and, where applicable, re-direct the complainant to the appropriate venue or remedy.

The Integrity Commissioner will provide periodic reports: semi-annually during the first year, and annually thereafter. Following investigation, the Integrity Commissioner shall report findings, and recommended corrective action, or penalties no later than 90 days following receipt of the complaint. Council must consider and respond to the report within 45 days.

Pursuant to the Municipal Act, the powers of the Integrity Commissioner are limited to making recommendations for a reprimand or a suspension of remuneration up to 90 days.

Reports of the Integrity Commissioner are public. The identity of complainants and of members complained of is not confidential at the point of the Integrity Commissioner's report to Council.

In a regular municipal election year, no complaint will be referred to the Integrity Commissioner after June 30, until following the date of the election. (This elapsed time will not be included in the calculation of the six (6) month time limit for making complaints). In a regular municipal election year, the Integrity Commissioner shall not make any reports following the last Committee of the Whole meeting in June, until following the date of the election.

Council Code of Conduct:

Complaints must reference a specific provision of the Code of Conduct. Until such time as a revised Code of Conduct is adopted by Council, complaints will be reviewed with reference to the existing Code of Conduct.

Immediately following approval of the Complaint Protocol, the Integrity Commissioner, in consultation with the Accountability and Transparency Committee, will undertake a review of the Code of Conduct.

Any inquiries received to date by the City have been forwarded to the attention of the Integrity Commissioner who is holding them in abeyance pending approval of the Complaint Protocol. As soon as the Complaint Protocol is approved by Council, these individuals will be invited to complete the appropriate Complaint Form/Affidavit to commence the process.

It is recommended that this report be received.

Relationship to Vaughan Vision 2020

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Regional Implications

None

Conclusion

Once the attached Complaint Protocol is approved by Council, the Integrity Commissioner will be able to commence the process of reviewing and/or investigating complaints.

Attachments

1. Complaint Protocol

Report prepared by:

Janice Atwood-Petkovski
Commissioner of Legal and Administrative Services and City Solicitor

Respectfully submitted,

Alan Shefman, Chair
Accountability and Transparency Committee

**COMPLAINT PROTOCOL
FOR COUNCIL CODE OF CONDUCT**

Authority: *Municipal Act*, 2001 S.O. 2001, (as amended) CHAPTER 25 Ss. 223.3 to 223.8 and as adopted by Council at its meeting held on _____, 2008.

1. Until such time as a new/revised Council Code of Conduct is adopted, only complaints relating to behaviour or activity occurring subsequent to April 23, 2007 will be addressed by this procedure. From the date of adoption of a new/revised Code of Conduct forward, only complaints relating to behaviour or activity occurring subsequent to that date of adoption will be addressed by this procedure.
2. After December 31, 2008 all complaints must be addressed in accordance with the below captioned procedure within six (6) months of the alleged violation or no action will be taken on the complaint.

PART A: INFORMAL COMPLAINT PROCEDURE

3. Individuals (including City employees, members of the public, members of Council or local boards) who identify or witness behaviour or activity by a member of Council that appears to be in contravention of the Code of Conduct for Members of Council - (the "Code of Conduct") may address the prohibited behaviour or activity themselves as follows:
 - (1) Advise the member that the behaviour or activity appears to contravene the Code of Conduct;
 - (2) Encourage the member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behavior or activity.
 - (3) Document the incidents including dates, times, locations, other persons present, and any other relevant information;
 - (4) Request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the member in an attempt to resolve the issue. If applicable, confirm to the member your satisfaction with the response of the member; or, if applicable, advise the member of your dissatisfaction with the response; and

At the earliest possible juncture, the member whose behaviour is complained of will be advised of an inquiry to the Integrity Commissioner under the Informal Complaint Procedure, and any complainant will be so advised;
 - (5) Pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
4. Individuals are encouraged to pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that they believe violates the Code of Conduct. With the consent of both the complaining individual and the member, the Integrity Commissioner may participate in any informal

process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a complaint. However, it is not a precondition or a prerequisite that those complaining to pursue the informal complaint procedure prior to pursuing the formal complaint procedure in Part B.

PART B: FORMAL COMPLAINT PROCEDURE

Formal Complaints

5. Individuals (including City employees, members of public or members of Council or local boards) who identify or witness behaviour or an activity by a member of Council that they believe is in contravention of the Code of Conduct for members of Council, may file a formal complaint with the required information on the proscribed affidavit (see page 6 of this procedure):
 - (1) All complaints must be made on the Complaints Form/Affidavit and shall be dated and signed by an identifiable individual.
 - (2) The complaint must include an explanation for why the issue raised may be a contravention of Code of Conduct. Evidence in support of the allegation must also be included.
 - (3) Witnesses in support of the allegation must be named on the complaint form.
 - (4) The complaint form will be disclosed to the respondent and to others who may be involved in carrying out this procedure.
 - (5) The complaint form/affidavit must include the name of the alleged violator, the provision of the Code of Conduct allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information for the complainant during normal business hours.
 - (6) Receipt of formal complaints will be acknowledged in writing.

Filing of Complaint and Classification by Integrity Commissioner

6.
 - (1) The complaint 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 policies as described in subsection 3.
 - (2) If the complaint is not in the prescribed form, the Integrity Commissioner may defer the classification until a Complaint Form/Affidavit is received.

NOT A CODE OF CONDUCT VIOLATION

- (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 complaint procedure under another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:

CRIMINAL MATTER

- (a) If the complaint on its face 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.

MUNICIPAL CONFLICT OF INTEREST ACT

- (b) If the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel.

MFIPPA

- (c) 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 City Clerk for Access and Privacy review.

OTHER POLICY APPLIES

- (d) If the complaint seems to fall under another policy, the complainant shall be advised to pursue the matter under such policy.

LACK OF JURISDICTION

- (e) If the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner, the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

MATTER ALREADY PENDING

- (f) 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 his/her sole discretion suspend any investigation pending the result of the other process.

Periodic Reports to Council

- 7. The Integrity Commissioner shall report to Council semi-annually during the first year, and annually thereafter. In his/her report to Council, he/she shall report on all complaints received and on their disposition.

Refusal to Conduct Investigation

- 8. 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, and where this becomes apparent in the course of an investigation, terminate the investigation.

Opportunities for Resolution

9. Following receipt and review of a formal complaint, or at any time during the investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the member agree, efforts may be pursued to achieve an informal resolution.

Investigation

10. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:
 - (a) give the complaint and supporting material to the member whose conduct is in question with a request that a written response to the allegation be provided within ten days; and
 - (b) give a copy of the response provided to the complainant with a request for a written reply within ten days.
- (2) 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 City work location relevant to the complaint for the purpose of investigation and potential resolution.
- (3) 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 investigation.

No Complaint Prior to Election

11. Notwithstanding any other provision of this Protocol, no complaint may be referred to the Integrity Commissioner, or forwarded by the Clerk for review and/or investigation after June 30 in any year in which a regular municipal election will be held. The time elapsed between June 30 in a regular municipal election year and the election date shall not be included in calculation of the six (6) months referred to in section 2.

Recommendation Report

12. (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the receipt of the Complaint Form/Affidavit of the complaint. If the investigation 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.
- (2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement, or recommended corrective action. Where the complaint is not sustained, the Integrity Commissioner shall report to Council the result of the investigation.

(3) Pursuant to the *Municipal Act* the municipality may impose either of the following penalties on a member of council if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

(a) A reprimand;

(b) 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.

13. 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 judgment made in good faith, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act*.

14. The City Clerk shall give a copy of the report to the complainant and the member whose conduct is concerned.

Report to Council

15. Upon receipt of a report, the Clerk shall process the report for the next meeting of Councils' Committee of the Whole.

No Reports Prior to Election

16. Notwithstanding section 12 or any other provision of this Protocol, the Integrity Commissioner shall not make any report to Council or to any other person after the last Committee of the Whole meeting of June in any year in which a regular municipal election is to be held, until following the date of the election.

Duty of Council

17. Council shall consider and respond to the report within 45 days after the day the report is presented to it {except longer in summer hiatus}.

Public Disclosure

18. (1) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this complaint protocol.

(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.

(3) All reports from the Integrity Commissioner to Council will be made available to the public.

Please see Complaint Form/Affidavit below.

Integrity Commissioner's statutory powers pursuant to s. 223.4 *Municipal Act* may recommend:

- (1) a reprimand;
- (2) a 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.

Complaint Form/Affidavit

AFFIDAVIT OF

 I, _____ [full name], of the [City, Town, etc.] of _____ [full name]
 _____ [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 the meeting
 at which . . . etc].

2. I have reasonable and probable grounds to believe that a member of Vaughan City Council,

_____ [specify
 name of member], has contravened section(s) _____ [specify section(s)] of the
 Code of Conduct for Members of Council (the "Code of Conduct"). The particulars of which are as follows:

[Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, please use the attached Schedule A form 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 and for no other purpose.

SWORN [or AFFIRMED] before me at
 the [City, Town, etc of] _____)
 _____)
 _____ in the Province of Ontario on _____)
 _____ [date])
 _____)

[Signature of commissioner]) [Signature]
 A Commissioner for taking affidavits, etc.)

Code of Conduct Complaint Protocol s. 2(3) Formal Complaint Procedure. 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.

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