



Staff Report

Administration

Report To: Council
Meeting Date: November 19, 2018
Report Number: FAF.18.158
Subject: Integrity Commissioner Report, Complaint dated July 4, 2018
Prepared by: Corrina Giles, Town Clerk

A. Recommendations

THAT Council receive Staff Report FAF.18.158, entitled "Integrity Commissioner Report, Complaint dated July 4, 2018";

AND THAT Council consider the findings and recommendations to Council included in the Integrity Commissioner's Report dated November 14, 2018 as it relates to the breach of Rule 2 (Confidentiality) of the Code of Conduct for Members of Council Policy, POL.COR.07.07 by Councillor Michael Martin.

B. Overview

The purpose of this report is to attach the Integrity Commissioner's Report in response to the July 4, 2018 complaint received under the Code of Conduct for Members of Council Policy, POL.COR.07.07.

C. Background

In accordance with the "Code of Conduct for Members of Council" Policy No. POL.COR.07.07, as revised, and the "Protocol Policy for Complaints Related to Council Members and Local Boards", Policy No. POL.COR.18.04, formal complaints under the Code of Conduct shall be submitted to the Clerks Department in written form. Within 48 hours of receipt of the complaint, the Clerk will forward the complaint to the Integrity Commissioner who will process the complaint in accordance with Section 223.3 of the *Municipal Act, 2001*. The complaint to which this Report applies was forwarded to the Integrity Commissioner, and processed by the Integrity Commissioner in accordance with the Code of Conduct.

The Code of Conduct requires that the Integrity Commissioner shall report the results of the investigation in an open meeting of Council.

D. Analysis

Not applicable

The Blue Mountains Strategic Plan

Goal #4: Promote a Culture of Organizational & Operational Excellence

E. Environmental Impacts

None

F. Financial Impact

1. Integrity Commissioner fees

G. In consultation with

Integrity Commissioner, Suzanne Craig

H. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required.

I. Attached

1. Report of the Integrity Commissioner on a Complaint that Councillor Martin violated the Code of Conduct for Members of Council by revealing confidential deliberations from an *In Camera* Meeting of the Town of The Blue Mountains dated November 14, 2018
2. Code of Conduct for Members of Council, Policy POL.COR.07.07
3. Protocol Policy for Complaints Related to Council Members and Local Boards, Policy POL.COR.18.04

Respectfully Submitted,

Corrina Giles
Town Clerk

Shawn Everitt
Interim Chief Administrative Officer

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I therefore set out the conduct that I found concerning and I referenced this conduct in the Draft Final Report, my preliminary findings. Pursuant to my obligations under the Code Complaint Protocol, made the Respondent aware of the original complaint and I asked him to provide me with his response to the allegations contained in the complaint.

Although I am not required to do so under the Complaint Protocol rules, to ensure procedural fairness, I provided both parties to the Complaint with my preliminary findings in the Draft Final Report and invited each of them to provide comments, prior to finalizing my report and submitting my recommendations to Council for consideration. The parties received my preliminary findings on July 26, 2018. As I had anticipated, after receiving my report, the Respondent wrote me and advised that he required a reasonable time to prepare a response and consult with legal counsel.

It has been my practice over the past 10 years that I have provided Integrity Commissioner services at the municipal level in Ontario, that at the conclusion of a Code investigation, I make preliminary findings, forward the same to the Respondent and allow the Respondent to provide his or her comments prior to finalizing my report and submitting any recommendations to Council for consideration.

Given that July 27th was Nomination Day as set out in section 31 of the *Municipal Elections Act*, 1996, pursuant to the Town of The Blue Mountains Code Complaint Protocol, I was required to terminate the inquiry on that day. I made no report to the municipality about whether, in my opinion, the Respondent has contravened the Code of Conduct and I so advised the Town Clerk.

In accordance with section 13(2) of the Code Complaint Protocol, I advised the parties that I would not commence another inquiry in respect of the matter subject of this Complaint unless, within six weeks after voting day on October 22, 2018, the Respondent or the Complainant, made a written request to me or the Town's acting Integrity Commissioner at that time, that the inquiry be commenced.

Context within which the Complaint was Received

It is important to note that prior to receipt of this complaint, the Town had received a complaint by a member of Town staff that alleged that a member of Council had violated the Town's Code of Conduct for Members of Council and the Town's Workplace Harassment Program. The complaint was investigated by a workplace harassment lawyer with experience in these types of investigations.

Following the the approval of amendments to the Code of Conduct, the Town also approved the process that would be followed for the investigation of complaints by an integrity commissioner. In September 2016, the Town Council met to consider a staff report regarding the employment lawyer's investigation and recommended sanctions. Under the Occupational Health and Safety Act (the "OHSA") and the Workplace Violence and Harassment Program, the Discrimination and Harassment-free Workplace and Respectful Workplace policies.

In October 2016, the Council Member who was subject of the Workplace Harassment investigation, filed an application for a judicial review of the sanctions imposed upon him by Town Council in September following an investigation into alleged workplace harassment.

Council. During a Council debate, a Member of Council will and may state their opinions and perspectives, including their disagreement with another Member's opinion or the reasons why they may not be in favour of a particular Notice of Motion. However, to willfully ignore a rule of the Town which requires the non-disclosure of "[a]ll information, documentation or deliberation received, reviewed or taken in closed session of Council", duly voted upon and passed by Council as confidential, is a violation of the Code.

Integrity Commissioner's Jurisdiction

Section 223.3 of the *Municipal Act*, 2001 states that:

- (1) Without limiting sections 9, 10 and 11, those sections authorize the 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,
 - (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;
 - (b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or
 - (c) both of clauses (a) and (b). 2006, c. 32, Sched. A, and
- (2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.

The Integrity Commissioner has no power to determine whether council considered a matter at a closed meeting that should have been considered at a public meeting.

Reasons for the Requirement of Confidentiality in Municipal Business

In his reply to my preliminary findings, the Respondent commented that:

- (1) This Council had an extraordinary number of closed sessions well over 120 and by far most concerned the [named former councillor] matter. In this context and due to prohibition of taking notes or materials either in or out of closed session it becomes almost impossible to separate closed information from open information.

Generally speaking, a municipality should conduct its business in an open and transparent way. However, there are occasions when the business of the municipality is required to be conducted in a confidential manner. The Town Council, as a whole, determines whether a matter should be discussed in closed session.

There are certain statutory and therefore, mandatory requirements for confidential consideration of matters under Provincial statutes, such as the *Municipal Freedom of Information and*

Where a Member of Council has serious difficulty with the decision of Council to consider a matter in closed session, and they are not able to convince the majority of Council to consider the matter publicly, then the remedy for that Member of Council is to withdraw from consideration of that agenda item on the basis that they cannot, in good conscience, consider the matter confidentially. It is important for that Member of Council to realize that an abstention from voting to convene in closed session is considered a negative vote.

Interpretation of the Members' Code of Conduct Confidentiality Rule

Many municipal codes of conduct contain the duty of a Member of Council to hold in strict confidence all information concerning matters discussed in closed or *in camera* meetings of Committee or Council. The prohibition of elected officials from disclosing information that was discussed *in camera* flows from the obligation of the municipality to adhere to various Provincial statutes that govern the disclosure of information deemed confidential. While there is no overarching general definition of what “confidential information” includes, Provincial statutes like the *Municipal Act* and MFIPPA contain exemptions that form the exception to the default position of disclosure of public information and open meeting discussions, the existence of which provide the reasonable assumption that Provincial statute exceptions to disclosure of public information are common-held examples of what the Legislature deems to be confidential information.

Rule 2 of the Code of Conduct contains an imperative directed to all Members of Council. It states that:

Members shall not disclose or release by any means to any Member of the public, either in verbal or written form, any confidential information acquired by virtue of their office, except when required *by law* to do so (emphasis added); and

All information, documentation or deliberation *received, reviewed or taken in closed session of Council and its Committees and Local Boards are confidential*. (emphasis added).

Under the Town's Procedure By-Law, Council must resolve to convene into closed session by way of a motion and it is the responsibility of Council members to raise a concern if they believe that an issue that is being considered for closed meeting discussion, should be more properly discussed in open session.

Whether a Member of Council agrees or disagrees with the decision to convene the meeting into closed session, and whether or not another individual has chosen to disclose a portion or all of the content of a matter discussed by Council in closed session, a decision by a prescribed majority of members to move a matter into closed session for discussion, deems the matter to be *confidential* for the purposes of the Procedure By-Law and the Code and creates an obligation for all Members of Council to refrain from disclosing in any form, all information, until such time as determined by Council.

In this investigation, the Complaint invoked Rule 2 of the Code. This rule refers to the obligation of each Member of Council to not “...disclose confidential information acquired by

camera, (ii) knew that the discussion had not been made public by Council, and (iii) then discussed a matter that was subject of *in camera* and negotiation discussions during an open session of Council. Accordingly, the Respondent knowingly disclosed the substance of what was discussed *in camera* to the public without the approval of Council.

Conclusions

The Code is a document that was adopted by the Blue Mountains Town Council as an agreement to a common understanding of rules regarding behaviour of individual Members of Council.

When evaluating the integrity and ethical conduct of a Member of Council, my role is to apply the rules of the *common basis for acceptable conduct* to the facts gathered throughout the investigation. When making decisions on acceptable conduct, Members of Council are to follow the rules of the Code, the policies and procedures of the municipality and the statutes in force and applicable to them.

In explaining his actions subject of this investigation, the Respondent has stated that he took caution not to speak of the substance of the March 28th letter from a law firm. I am satisfied that the Respondent believed he was not disclosing the substance of *in camera* discussions, however the reference to the letter and the mention of a particular matter, clearly referenced and therefore, disclosed matters received and reviewed in closed session.

I have carefully reviewed the response of the Respondent in July 2018 and find he was aware of his confidentiality responsibilities contained under Rule 2 of the Code and aware that his comments made during the June 18th Council meeting were made with respect to matters subject of a discussion at a closed meeting of Council. However, I believe that his decision to bring forward the Notice of Motion which contained some content of a closed meeting discussion, demonstrated an error in judgement. In reaching my conclusions, I also took into consideration the Respondent's public support of certain matters and the comments made in our telephone conversation and his correspondence to me.

Any disagreement with prior decisions of Council in respect of prior breaches of the rules of the Code or a desire to inform constituents of what he perceived to be a denial of the procedural fairness during a prior investigation would not serve as a justification for the Respondent to have breached a rule of the Code in the complaint at hand.

Through my informal inquires to both the Office of the Ombudsman of Ontario and the Local Authority Services Limited (LAS), a subsidiary of the Association of Municipalities of Ontario, I have confirmed that any member of the public, which includes a Member of Council, may initiate a request for a closed meeting investigation if they believe that a meeting of a municipal council was unlawfully closed to the public.

Finally, I recognize that the history of the matter that was discussed *in camera* and plagued this Council, has no doubt taken its toll on former and current Members of Council, staff and members of the public. I regret what all concerned have had to endure, however, I have before

Code of Conduct for Members of Council and Local Boards

1. Statement of Principle

A written Code of Conduct helps to ensure that the Members of Council, Committees and Local Boards of the municipality share a common basis of acceptable conduct. These standards are designed to provide a reference guide and a supplement to the legislative parameters within which the Members must operate. These standards for Members exist to enhance public confidence that The Blue Mountain's elected and appointed representatives will serve the public with integrity, justice and courtesy.

Members are responsible for making honest statements. No Member shall make a statement when they know that statement is false. No Member shall make a statement with the intent to mislead Council Members and the public.

The Town of The Blue Mountain's Code of Conduct is a general standard that augments Provincial laws and municipal policies and by-laws that govern conduct. It is not intended to replace personal ethics.

This Code of Conduct is consistent with the existing statutes governing the conduct of Members. (i.e. the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act* and the *Municipal Freedom of Information and Protection of Privacy Act*) The *Criminal Code of Canada* also governs the conduct of Members of Council. Members are expected to uphold the letter and spirit of the laws of Canada, Ontario and the laws and policies adopted by Council.

All Members to whom this Code of Conduct applies shall serve their constituents in a conscientious and diligent manner. No Member shall use the influence of office for any purpose other than the exercise of his or her official duties. Members shall seek to avoid conflicts of interest, both apparent and real. Members shall perform their duties and arrange their private affairs in a manner that promotes public confidence and will bear public scrutiny.

1. Gifts and Benefits

No Member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly to the performance of his or her duties of Office, unless permitted by law. Members shall make decisions based on impartial and objective assessment, free from the influence of gifts, favours, hospitality and entertainment.

Members shall decline any personal gift where the acceptance of such gift would imply a contractual agreement with or obligation to the donor. In particular, Members shall decline any gift, payment, hospitality or entertainment paid for by a person or persons seeking to do business with the Town or of anyone known to the Member to be lobbying a Member on behalf of such a person.

This section does not apply to tokens, mementoes, souvenirs, or such gifts or benefits up to

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and including a value of \$300.00 that are received as an incident of protocol or social obligation that normally accompanies the responsibilities of office. Tokens, mementoes, souvenirs or gifts with a value of greater than \$300.00 shall be the property of the municipality.

This section does not apply to compensation authorized by law, services provided without compensation by persons volunteering their time, a political contribution otherwise reported by law, in the case of Members running for office or food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity

No Member shall seek or obtain by reason of his or her office any personal privilege or advantage with respect to Town services not otherwise available to the general public and not consequent to his or her official duties.

2. Confidentiality

All information, documentation or deliberation received, reviewed or taken in closed session of Council and its Committees and Local Boards are confidential.

Members shall not disclose or release by any means to any Member of the public either in verbal or written form any confidential information acquired by virtue of their office, except when required by law to do so. Where a matter has been discussed at a closed session meeting and the information remains confidential, no Member shall disclose the content of the matter or the substance of deliberations of the closed session meeting.

Members shall not permit any persons other than those who are entitled thereto to have access to information that is confidential.

Particular care should be exercised in ensuring confidentiality of the following types of information:

- Labour relations and personnel matters;
- Information about suppliers provided for evaluation which might be useful to other suppliers;
- Matters relating to the legal affairs of the Town of The Blue Mountains;
- Information that infringes on the rights of others (i.e. sources of complaints where the identity of the complainant was given in confidence);
- Items under litigation or negotiation;
- Price schedules in contract tender or Request for Proposal submissions if so specified;
- Information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*; and
- Statistical data required by law not to be released (e.g. certain census or

assessment data).

This list is provided as an example and is not exclusive. It is recommended that requests for information be referred to the Office of the Clerk to be addressed as either an informal request for access to municipal records or as a formal request under the *Municipal Freedom of Information and Protection of Privacy Act*.

3. Use of Town Property

Subject to Section 5, no Member shall use for personal purposes any Town property, equipment, services, supplies or services of consequence other than for purposes connected with the discharge of Town duties or associated community activities of which Town Council has been advised.

No Member shall obtain financial gain from the use of Town developed intellectual property, computer programs, technological innovations or other patentable items, while an elected official or thereafter. All such property remains the exclusive property of the Town of The Blue Mountains.

No Member shall use information gained in the execution of his or her duties that is not available to the general public for any purposes other than his or her official duties.

4. Use of Town Technology Resources

The Town of The Blue Mountains licenses the use of computer software from a variety of vendors. The Town does not own the software or its documentation. Software is normally copyrighted, and no individual may copy or distribute the software unless expressly permitted to do so under the applicable licence.

5. Work of a Political/Personal Nature

Members shall comply with Town Policy POL.COR.18.01, Use of Corporate Resources for Election purposes and no Member shall use Town facilities, services or property for his or her re- election campaign. Further, no Member shall use the services of Town employees for his or her re- election campaign, during hours in which the employees are in the paid employment of the Town.

No Member shall use Town facilities, services or property for his or personal business gain. No Member shall use the services of Town employees for his or her personal business during the hours in which the employees are in the paid employment of the Town.

6. Conduct at Meetings

Members shall conduct themselves with decorum at Council, Committee and Local

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Board meetings in accordance with the provisions of the Town's Procedural By-law.

Respect for deputations and for fellow Members and staff requires that all Members show courtesy and not distract from the business of Council, Committees and Local Boards during presentations and when other Members have the floor.

7. Representing the Town

Members shall make every effort to participate diligently in the activities of the Agencies, Committees and Local Boards to which they are appointed.

8. Respect for the Role of Staff

Members shall be respectful of the fact that staff work for the Town as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate perspective. Members must not falsely or maliciously injure the professional reputation of staff. Members shall be respectful of the fact that staff carry out the directions of Council and administer the policies of the municipality, and are required to do so without any undue influence from any individual Member or group of Members of Council.

Where a Member has a concern about personnel matters, he or she should speak with the Mayor and/or Chief Administrative Officer about the concern or alternatively raise the issue with Council during an *in camera* session.

Members must not invite or pressure any Member of staff to engage in partisan political activity nor subject staff to discrimination or reprisal for refusing to engage in such activities.

9. Business Relations

No Member shall borrow money from any person who regularly does business with the Town unless such person represents an institution or company whose shares are publicly traded and who is regularly in the business of lending money.

No Member shall act as a paid agent before Council or any Committee or Local Board of Council or any Agency at which the Town is represented.

10. Expenses

Members shall comply with the provisions of the Town's applicable policies relative to per diem payments and expenses governing reimbursement for attendance at conferences, seminars, training courses and workshops.

Members shall be reimbursed for their out-of-pocket expenses incurred in accordance

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with approved Town policies while attending official functions and representing the Town in their official capacity.

11. Encouragement of Respect for the Town and its By-Laws and Policies

Members shall encourage public respect for the Town and its by-laws and policies. Members shall abide by the provisions of any policies adopted by Council, committees or local Boards which apply to the conduct of Members.

13 Discrimination and Harassment

Members have a duty to treat members of the public and one another with respect and without abuse, bullying or intimidation.

All persons shall be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment. Members are not to engage in any course of conduct or make comments that would constitute workplace harassment.

Harassment may be defined as any behaviour by any person that is directed at or is offensive to another person on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status and any other grounds under the provisions of the Ontario Human Rights Code.

Members are responsible for communications that may constitute harassment, whether in person, in writing, by public comment and on-line, including via social media.

14 Advice

Members seeking information about their responsibilities under this Code of Conduct are encouraged to request advice from the Integrity Commissioner appointed by Town Council.

A request by a Member for advice from the Integrity Commissioner under the Code of Conduct, any procedure, rule or policy of the municipality or of the local board, as the case may be, or for advice respecting their obligations under the *Municipal Conflict of Interest Act* shall be made in writing. If the Integrity Commissioner provides such advice, that advice shall be in writing.

Advice provided by the Integrity Commissioner to a Member may be released with the member's written consent. If a member releases only a part of the advice provided to the member by the Commissioner, the Commissioner may release part or all of the advice provided to the Member without obtaining the Member's consent.

15. Respect for Code of Conduct

Members should respect the process for complaints made under the Code of Conduct.

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Members shall not act in reprisal or threaten reprisal against a person who makes a complaint or against a person who provides information to the Integrity Commissioner during an investigation.

Consequences of Non-Compliance

Where Council or a Local Board (as applicable) receives a report from the Integrity Commissioner that there has been a violation of the Code of Conduct by a Member of Council or Local Board, Council or the Local Board may impose either of the following penalties on the Member as permitted by the *Municipal Act, 2001*:

- (a) a reprimand;
- (b) a suspension of the remuneration paid to the Member in respect of his or her services as a Member of Council for a period up to 90 days.

Council or the Local Board as the case may be, may, on the basis of a recommendation from the Integrity Commissioner take any or all of the following actions and require that the Member:

- (i) provide a written or verbal apology;
- (ii) return property or make reimbursement of its value of money spent;
- (iii) be removed from the Membership of a Committee; or
- (iv) be removed as chair of a Committee.

References and Related Policies

The *Municipal Act, 2001*, the *Municipal Conflict of Interest Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, Procedural By-law No. 2018-20, Town Policies:

- POL.COR.07.01 Accountability & Transparency;
- POL.COR.07.02 Sales & Other Disposition of Land;
- POL.COR.07.03 Provision of Notice & Manner of Giving Notice;
- POL.COR.07.04 Delegation by Council of Powers & Duties;
- POL.COR.07.05 Purchase of Goods & Services;
- POL.COR.07.06 Hiring of Employees;
- POL.COR.18.04 Protocol Policy for Complaints Related to Members of Council and Local Boards;
- Town of The Blue Mountains Strategic Plan.

Review Cycle

This policy will be reviewed in each term of Council by Council in conjunction with the Integrity Commissioner.



Policy

Protocol Policy for Complaints Related to Council Members and Local Boards

POL.COR.18.04

Policy Type:	Corporate Policy (Approved by Council)
Date Approved:	May 28, 2018
Department:	Administration
Staff Report:	FAF.18.75
By-Law No.:	2018-33

Protocol

PART A - INFORMAL COMPLAINT PROCEDURE

Individuals are encouraged to use the Informal Complaint Procedure first to address behaviour or activity of a Member of Council, Local Committee or a Local Board (a “Member”) that they believe violates the Code of Conduct. With the consent of the complaining individual and the Member, the Integrity Commissioner may participate in this process. The parties are encouraged to take advantage of the Integrity Commissioner’s potential role as a mediator/conciliator of issues relating to a complaint.

Any individual who identifies or witnesses conduct by a Member that appears to contravene the Code of Conduct may address the conduct in the following manner:

- a. advise the Member that the conduct appears to contravene the Code of Conduct;
- b. Ask the Member to acknowledge and agree to stop the conduct;
- c. document the incidents where the Member may have contravened the Code of Conduct including dates, times, locations, other persons present, and any other relevant information;
- d. tell a relevant third party about the concerns regarding the Member’s actions;
- e. tell the Member which parts of the Code of Conduct may have been contravened;
- f. ask the Integrity Commissioner to help with an informal discussion of the complaint with the Member to resolve the issue;

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- g. if applicable:
 - (i) confirm to the Member that his or her response is satisfactory, or
 - (ii) advise the Member that his or her response is unsatisfactory;
- h. consider the need to make a Formal Complaint Procedure as set out in Part B, or any other applicable legal process or complaint procedure.

The Informal Complaint Process is not a precondition to making a formal complaint as described in Part B.

PART B - FORMAL COMPLAINT PROCEDURE

Formal Complaints: Requests for Inquiry

1. Any individual may request an inquiry by the Integrity Commissioner into whether a Member has contravened the Code of Conduct by filing a formal complaint as follows:
 - (a) all complaints shall be in writing on the prescribed form and shall be dated and signed by an identifiable individual;
 - (b) the complaint must set out reasonable and probable grounds for the allegation that the Member has contravened the Code of Conduct and must be accompanied by a description of the evidence and/or documents that support of the allegation;
2. Council or a Local Board may request an inquiry by the Integrity Commissioner about whether a Member of Council or the Local Board as the case may be has contravened the Code of Conduct.

Filing of Complaint and Classification by Integrity Commissioner

3. The complaint shall be filed with the Clerk who shall forward the matter to the Integrity Commissioner 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 procedures, policies or rules as set out in Section 3.

Complaints Outside of the Integrity Commissioner Jurisdiction Under the Code of Conduct

4. If the complaint, including the supporting material, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint relates to matters addressed by other legislation or complaint procedure under another Town policy or rule, the Integrity Commissioner shall advise the complainant in writing to follow the

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alternative procedure. In particular, and in the following circumstances the Integrity Commissioner is to advise as follows:

Criminal Code

- (a) if the complaint alleges a criminal offence under the *Criminal Code*, the complainant shall be advised to take the complaint to the appropriate police service;

Municipal Conflict of Interest Act

- (b) Where an elector or person demonstrably acting in the public interest applies in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act, the Integrity Commissioner shall proceed in accordance with section 223.4.1 of the Municipal Act (Effective March 1, 2019).

Municipal Freedom of Information and Protection of Privacy Act

- (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 Clerk to deal with under access to information and privacy policies;

Parallel Proceedings for the Same Complaint

- (d) if the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding related to the Municipal Conflict of Interest Act, a Human Rights complaint or similar process, or civil proceedings, the Integrity Commissioner may, in his/her discretion and in accordance with legislation, suspend any investigation pending the result of the other process; and

Outside Jurisdiction: Referrals and Reasons

- (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.

Periodic Reports to Council

- 5. The Integrity Commissioner shall report annually to Council on the activities of the office. In that report, the Integrity Commissioner shall report on all complaints received and their

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disposition, including complaints deemed not to be within the jurisdiction of the Integrity Commissioner.

Refusal to Conduct Investigation

6. Where the Integrity Commissioner concludes at the outset, or during an investigation that:
 - (a) a complaint is frivolous or vexatious,
 - (b) a complaint is not made in good faith, or
 - (c) there are no grounds or insufficient grounds for an investigation,the Integrity Commissioner shall not be required to conduct an investigation and in the case of an ongoing investigation, shall terminate the investigation.

Opportunities for Resolution of Formal Complaints

7. 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, an informal resolution of the complaint may be attempted with the assistance of the Integrity Commissioner.

Investigation

8. (1) The Integrity Commissioner will proceed as follows in conducting an inquiry pursuant to section 223.4 of the *Municipal Act*, and, where applicable, the *Public Inquiries Act, 2009*:
 - (a) provide the Member with an outline of the complaint with sufficient detail to allow the Member to understand the complaint against him or her;
 - (b) request that the Member provide a written response to the allegations to the Integrity Commissioner within ten (10) days;
 - (c) provide a copy of the Member's response to the complainant with a request that any written reply be provided within ten (10) days; and
 - (d) provide the Member with advance notice of the findings and any sanctions or remedial actions to be recommended to Council.
- (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to any person, access and examine any other documents or electronic materials

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and may enter any municipal or Local Board work location relevant to the complaint for the purpose of investigation and potential resolution.

- (3) The Integrity Commissioner may make interim reports to Council or the Local Board where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the formal complaint investigation.
- (4) It is intended that all reports will be presented before Council within ninety (90) days of the filing date. Where due to relevant circumstances the report is not presented to Council within 90 days the Integrity Commissioner shall address the reasons for the delay within the report.
- (5) The Integrity Commissioner shall retain all records related to the complaint and investigation.

Reporting and Recommendations

9. (1) The Integrity Commissioner shall generally report to the complainant and the Member no later than ninety (90) days after the official receipt of the complaint. If the investigation process takes more than ninety (90) days, the Integrity Commissioner shall advise the parties of the date, if possible, that the report will be available.
- (2) Where a Member has been found to have contravened the Code of Conduct, the Integrity Commissioner shall report to Council or the Local Board outlining the findings, the terms of any settlement and/or any recommended remedial action or sanction.
- (3) Where the Integrity Commissioner finds that there are no grounds or jurisdiction to investigate a complaint, except in exceptional circumstances, the Integrity Commissioner shall not report to Council the result except as part of an annual or periodic report.
- (4) The Integrity Commissioner may disclose such information as in the Commissioner's opinion is necessary in the written reasons given by the Commissioner in relation to an inquiry into whether a Member has contravened the Code of Conduct.
- (5) The Clerk shall provide a copy of the report to the complainant and the Member whose conduct has been investigated. The Member shall, subject to Subsection 9(5), have the right to address the report when it is considered by Council or the Local Board.
- (6) If the report of the Integrity Commissioner recommends or Council considers whether to suspend the remuneration paid to the Member, the Member may take part in the discussion of the matter, including making submissions to council or the local board, as the case may be, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting, however the Member is not permitted to vote on any question in respect of the matter. (Effective March 1, 2019)

Findings

10. If the Integrity Commissioner determines that:

- (a) there has been no contravention of the Code of Conduct, or
- (b) a contravention occurred but:
 - (i) the Member took all reasonable measures to prevent it,
 - (ii) it was trivial,
 - (iii) it was committed through inadvertence, or
 - (iv) it resulted from 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, 2001*.

Report to Council

11. Upon receipt of a report from the Integrity Commissioner, the Clerk shall place the report on the next regular agenda of Council or the Local Board for consideration by Council or the Local Board.

Duty of Council

12. Council or the Local Board shall consider the Integrity Commissioner's report at the meeting at which it is tabled.

Termination of Inquiry When Regular Election Begins

13.(1) If an inquiry has not been completed before nomination day for a regular election as set out in section 31 of the Municipal Elections Act, 1996, the Commissioner shall terminate the inquiry on that day.

(2) If an inquiry is terminated under subsection (1), the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election, as set out in section 5 of the Municipal Elections Act, 1996, the person or entity who made the request or the member or former member whose conduct is concerned makes a written request to the Commissioner that the inquiry be commenced.

(3) The following rules apply during the period of time starting on nomination day for a regular election, as set out in section 31 of the Municipal Elections Act, 1996, and ending on voting day in a regular election, as set out in section 5 of that Act:

Protocol Policy for Complaints Related to Council Members and Local Boards

1. There shall be no requests for an inquiry about whether a Member has contravened the Code of Conduct.
2. The Commissioner shall not report to the municipality or local board about whether, in his or her opinion, a Member has contravened the Code of Conduct.
3. The municipality or local board shall not consider whether to impose the penalties referred to in the Code of Conduct.

Public Disclosure

- 14.(1) The Integrity Commissioner and every person acting under his or her instructions shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.
 - (2) The Commissioner may disclose such information as in the Commissioner's opinion is necessary and provided for in section 223.5 of the *Municipal Act*
 - (2) The Integrity Commissioner shall retain all records related to the complaint and investigation.
 - (3) At the time of the Integrity Commissioner's report to Council or the Local Board, the identity of the Member who is the subject of the complaint shall not be treated as confidential information.
 - (4) All reports from the Integrity Commissioner to Council or the Local Board will be made available to the public by the Clerk and on www.thebluemountains.ca.

Delegation

15. The Integrity Commissioner may delegate in writing to any person, other than a Member of Council or Local Board, any of the Integrity Commissioner's powers and duties.

Code of Conduct — Formal Complaint Form

COMPLAINT OF _____

I, _____ (full name), of the (City, Town etc.)

_____ (municipality of residence) in the Province of Ontario.

STATE:

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

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

2. I have reasonable and probable grounds to believe that:

_____ (specify name of Member)

a member of the Council/Town Committee/ Local Board (circle applicable body) of the Town of Blue Mountains, has

contravened section(s) _____ (specify section(s)) of the Code of Conduct of the Town of Blue Mountains.

3. The particulars of this complaint are:

(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 attach to this form. 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 complaint form.

This complaint is made for the purpose of requesting that this matter be reviewed and/or investigated by the Town of Blue Mountains appointed Integrity Commissioner and for no other purpose.

Protocol Policy for Complaints Related to Council Members and Local Boards

DATED this ____ of _____, 2____
(day) (month) (year)

Signature

Printed Name