

REPORT ADM-2018-012

TO: Mayor and Members of Council

FROM: Nina Lecic, Deputy Clerk

DATE: March 7, 2018

SUBJECT: Code of Conduct for Members of Council and Committees

FILE No.: A09-COD

RECOMMENDATIONS

That Report ADM-2018-012 regarding the Code of Conduct for Members of Council and Committees be received for information;

And that Council adopts the Code of Conduct for Members of Council and Committees;

And that By-law 009-2018 be amended to outline the scope of duties of the Integrity Commissioner.

BACKGROUND

On January 10, 2018, Council approved the appointment of Guy Giorno, Partner, Fasken Martineau as the Township's Integrity Commissioner (IC) through a joint agreement with Wellington County and its member municipalities. As part of that report, staff advised Council that *Bill 68, Modernizing Ontario's Municipal Legislation Act, 2017* (the Act) had made it mandatory for municipalities to have a Code of Conduct for Members of Council and local boards in place effective March 2019. Staff also advised that they would be attending a training session with the IC in February and that the Township's Code of Conduct would be updated based on the information received in that training session. Staff attended the training session on February 9, 2018 and received a recommended Code of Conduct from the IC, along with recommended investigation protocol. Staff have made some minor amendments to the recommended code, and have enclosed it here for Council's approval.

PURPOSE

The purpose of this report is to approve the Code of Conduct for Members of Council and Committees.

As previously mentioned, the following is an overview of the duties of the Integrity Commissioner, as identified by the Act. Council Members had previously noted that they

wanted to discuss the scope of the IC's duties and responsibilities. Staff welcome comments from Council on the scope of the IC's duties. The duties of the IC, as identified in the Act are:

Perform in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. 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.
3. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards.
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.

** It is important to note that, with respect to Items # 4, 5 and 6, any requests for advice shall be made in writing to the IC. Similarly, any advice from the IC will be provided in writing. In addition, any advice provided by the IC under the above sections may be released with the member's written consent.

7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

Also previously mentioned was that ICs will have new powers to conduct inquiries as to whether members have contravened the *Municipal Conflict of Interest Act* (MCIA). These provisions will be in effect as of March 2019:

- An elector or a person demonstrably acting in the public interest could apply to the Commissioner for an inquiry
- Upon completion of an inquiry, a Commissioner may bring the matter to court
- Costs of applying to a judge are to be paid by the respective municipality

As part of previous discussions with Council about the updates to the Code of Conduct, direction was given that staff incorporate prohibitions on the use of social media, blogs, etc as a Council/Committee member. Section 10 has been added to the Code to address that. In addition, staff have spoken to the IC who has confirmed that Municipalities may not prohibit a Member's right to free speech. As such, there is no ability to prohibit a Council/Committee Member from using social media, blogs, or other forums to express

their opinions. However, Municipalities may screen that content for contraventions to the Code. Section 10 of the Code aims to reflect that premise and notes that, while members have the right to express their opinions, they are responsible for accurately communicating the decisions of Council, whether they supported the decision or not.

FINANCIAL IMPLICATIONS

There are no financial implications with the Code of Conduct. For any investigations into the contraventions of the Code, the appointment of the Integrity Commissioner was approved for a four-year term at an hourly rate of \$300 plus mileage and expenses, without a retainer.

APPLICABLE LEGISLATION AND REQUIREMENTS

Municipal Act, S.O. 2001, C. 25

Modernizing Ontario's Municipal Legislation Act, 2017

Municipal Conflict of Interest Act

ATTACHMENTS

Code of Conduct for Members of Council and Committees

Complaint Protocol under the Code of Conduct for Council Members and Members of Committees



Department: Administration
Date: March 2018
Subject: Code of Conduct for Members of Council and its Committee Members

1. DEFINITIONS

- 1.1 “Code” means the Code of Conduct for Members of Council and Township Committees.
- 1.2 “Complaint” means a request about whether a Member has contravened the **Code**.
- 1.3 “Complainant” means the individual who makes a **Complaint**.
- 1.4 “Family member” includes a child, parent and spouse, as outlined by the Municipal Conflict of Interest Act.
- 1.5 “Friend” is any individual who shares with a Member a close bond of friendship, a feeling of affection, or a special kinship sufficient that a reasonable person would perceive that the relationship has the potential to affect the Member’s conduct on a matter affecting the individual, whether or not the conduct or decision-making is actually affected.
- 1.6 “Investigation” means an inquiry in respect of whether a Member has contravened the **Code**. “**Investigation**” and “inquiry” may be used interchangeably.
- 1.7 “Member” means a **Member** of the Township of Puslinch Council, and of a Township of Puslinch Committee.
- 1.8 “*Municipal Act*” means the *Municipal Act, 2001*, as amended.
- 1.9 “Municipality” means the Township of Puslinch.
- 1.10 “Respondent” means a **Member** who is the subject of a **Complaint**.

RULES

2. Appropriate Use of Office

- 2.1. In this section and in section 5, “private interest” includes both a pecuniary (financial) and a non-pecuniary (non-financial) interest. It does not, however, include an interest



in a decision or matter (a) that is of general application, (b) that affects a **Member**, **Family Member** or **Friend** as one of a broad class of persons, or (c) that concerns the compensation of a **Member**.

- 2.2. A **Member** must not use the Office nor use the influence of the position to advance one's own private interest, or that of a **Family Member** or a **Friend**, or to advance improperly a private interest of any other individual or entity.
- 2.3. A **Member** must not attempt to influence the decision of another individual or entity (whether that individual or entity is part of the **Municipality** or is a third party) to advance the **Member's** private interest, that of a **Family Member** or a **Friend**, or to advance improperly a private interest of any other individual or entity.
- 2.4. No **Member** shall make a decision or exercise an official power, duty or function if the **Member** knows or reasonably should know that the action would create an opportunity to advance a private interest of the **Member**, a **Family Member** or a **Friend**, or to advance improperly a private interest of any other individual or entity, whether or not the private interest is actually advanced.
- 2.5. A **Member** shall not give preferential treatment to any individual or entity if a reasonable person would perceive (a) that the preferential treatment was for the purpose of advancing a private interest or (b) that the preferential treatment was based on the identity of the individual or their representative.
- 2.6. This section does not prohibit a **Member** from properly using influence on behalf of a constituent.

3. Interference

- 3.1. Township Council as a whole has the authority to approve budget, policy, governance and other such matters. Under the direction of the Chief Administrative Officer, Township staff serves the Municipal Corporation as a whole and the combined interests of all **Members** as evidenced through the decisions of Council. The role of Township staff is to implement the decisions of Council and to establish administrative procedures, systems and structures, processes and internal controls to carry out Township operations as provided for in the Act.
- 3.2. **Members** shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from an individual **Member** or group of **Members**.



- 3.3. A **Member** shall not attempt to influence or to interfere, either directly or indirectly, with an employee, officer or other individual exercising functions under the Provincial Offences Act.
- 3.4. A **Member** shall not use or attempt to use the office or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering in the staff member's duties.

4. Property and Resources of the Municipality

- 4.1. In this section, an asset or resource of the **Municipality** includes land, buildings, facilities, budgets, equipment, vehicles, supplies, services, employee time, Internet usage, cell phone usage, data usage, Websites, materials owned by the **Municipality** and any other asset or resource.
- 4.2. No **Member** shall use or permit the use of an asset or resource of the **Municipality** for any purpose other than the discharge of the duties of office or a proper purpose of the **Municipality**.
- 4.3. No **Member** shall use any asset or resource of the **Municipality** for any election-related activity or purpose, as outlined in the Corporate Use of Resources During an Election Policy.

5. Confidential Information

- 5.1. By virtue of office, **Members** acquire confidential information, including confidential personal information, from a variety of sources.
- 5.2. Confidential information includes information in the possession of, or received in confidence by the **Municipality**, that under the *Municipal Freedom of Information and Protection of Privacy Act* the **Municipality** is prohibited from disclosing or releasing.
- 5.3. A **Member** shall not use information obtained in the capacity of a **Member** and that is not available to the general public to further or seek to further a private interest of the **Member**, a **Family Member**, or a **Friend**, or improperly to advance private interest of another individual or entity.
- 5.4. A **Member** shall not disclose by any means to anyone, except to a **Member** or to an employee of the **Municipality** who requires the information in the course of duties,



any confidential information acquired by virtue of office, in either oral or written form, except as required by law or authorized by Council to do so.

- 5.5. If a matter has been discussed in a meeting or part of a meeting closed to the public in accordance with the **Municipal Act**, and the matter remains confidential, then a **Member** shall not disclose the content of the matter or the substance of the deliberations of the closed meeting.

6. Gifts, Hospitality and Benefits

- 6.1. In this section, “gift, hospitality or benefit” includes any benefit or thing of value offered or provided to a **Member**, including but not limited to food, beverage, entertainment, ticket, event admission, travel, clothing, good, service and memento. It includes an item that is offered or given for free, as well as one offered or given at a discounted price. The definition also encompasses a situation where another individual or entity pays for or “picks up the tab,” entirely or partly, for a good, service, food, beverage or other item used or consumed by the **Member**.
- 6.2. “Gift, hospitality or benefit” also includes a gift, hospitality or benefit offered or given to a child, parent, or spouse of the **Member** or to any other individual, for the benefit of the **Member**.
- 6.3. No **Member** shall receive or accept a gift, hospitality or benefit that may reasonably be seen to have been given to influence the **Member** in a decision or in the exercise of a power, duty or function of office.
- 6.4. No **Member** shall receive or accept a gift, hospitality or benefit provided indirectly or directly by an individual or entity that (a) has dealings with the **Municipality** or (b) has the potential to be affected by a decision or the exercise of a power, duty or function of the **Member** or of the **Municipality**.
- 6.5. No **Member** shall receive or accept any gift, hospitality or benefit from an individual or entity that is lobbying or has recently lobbied the **Member**. For greater certainty, the exceptions in section 6.6 do not apply to gifts, hospitality and benefits from lobbyists.
- 6.6. Despite sections 6.2 and 6.3, a **Member** may accept a gift, hospitality or other benefit that is,
 - (a) provided by a **Family Member** or **Friend**;



- (b) a trinket or memento of less than \$10 in value;
- (c) compensation authorized by law;
- (d) lawful political contributions;
- (e) modest food or refreshment provided by a charity, not-for-profit organization or community group that is organizing or hosting a banquet, reception or similar event in which the **Member** is speaking or otherwise actively participating, or where the **Member** is an official representative of the **Municipality** (for greater certainty this does not include an event for which tickets are sold or an admission fee is charged and the **Member's** admission or ticket is paid entirely or partly by a third party);
- (f) a modest or token gift or hospitality that normally accompanies the responsibilities of office and is received as an incident of protocol or social obligation;
- (g) a service provided without compensation by an individual volunteering time;
- (h) food, lodging, transportation or entertainment provided by a provincial, regional or local governments (or a political subdivision of it), by the federal government or by a foreign government within a foreign country, where the **Member** is speaking or attending in an official capacity;
- (i) a communication to the office of a **Member**, including a subscription to a newspaper or periodical.

7. Employment and Business

- 7.1. No **Member** shall allow himself or herself to be influenced in the making of a decision or in the exercise of an official power, duty or function by plans for, or offers of, future or outside employment, including an appointment or a contract.
- 7.2. No **Member** shall act as a paid agent before the **Municipality**.
- 7.3. No **Member** shall refer a third party to an individual or entity in exchange for payment or other personal benefit.

8. Discrimination and Harassment



- 8.1. No **Member** shall engage in discrimination or harassment against another **Member**, an employee of the **Municipality**, in accordance with the Township's Harassment and Violence in the Workplace Policy.
- 8.2. No **Member** shall engage in discrimination or harassment against a member of the public. Furthermore, no **Member** shall abuse, bully or intimidate a member of the public.
- 8.3. In investigating a **Complaint** under this section, the Integrity Commissioner shall have the authority to recommend to Council such interim measures as are necessary to protect the **Complainant**, to respect the rights of both **Complainant** and **Respondent**, and to ensure the integrity of the **Investigation**.

9. Respectful Conduct

- 9.1. No Member shall maliciously or falsely injure the professional or ethical reputation or the prospects or practice of an employee of the Municipality.
- 9.2. A **Member** shall act with decorum and engage in respectful conduct during all meetings of Council and Committee.
- 9.3. The presiding officer of a meeting is primarily responsible for ensuring that meeting participants conduct themselves respectfully and with decorum. The Integrity Commissioner shall not entertain a **Complaint** alleging a violation of this section unless,
 - (a) the **Complaint** is made by Council in relation to conduct that allegedly occurred at a meeting of Council;
 - (b) the **Complaint** is made by Council in relation to conduct that allegedly occurred at a committee meeting following a report to Council by the Committee or its presiding officer;
 - (c) the **Complaint** is made by an individual who (i) is not a **Member**, (ii) was present at the meeting where the conduct allegedly occurred and (iii) following the meeting formally communicated the concern to Council or the Committee or satisfies the Integrity Commissioner that there was good reason not to raise the concern first with Council or the Committee.



- 9.4. At any time following the receipt of a **Complaint** alleging that conduct during a meeting contravened this section, the Integrity Commissioner may refer the matter back to Council or a Committee.

10. Communications and Media Relations

- 10.1. When a **Member** communicates with the public and/or media (which includes social media), they will accurately communicate the decisions of Council, even if the **Member** did not support the decision. Individual **Members** have the right to express their opinions; however, any discussion must be done in a manner that shows respect for and integrity in the decision making process of Council.

11. Enforcement

- 11.1. A **Complaint** alleging a breach of this **Code** shall be filed with the Integrity Commissioner in accordance with the **Complaint** Protocol that forms part of this **Code**.

12. Timing of Complaint

- 12.1. No **Complaint** shall be filed more than three months after the **Complainant** became aware of the act or omission giving rise to the **Complaint**.
- 12.2. No **Complaint** shall be filed for an act or omission giving rise to the **Complaint** that occurred prior to the adoption of this policy.
- 12.3. In the year of a regular election (2018, 2022, 2026, 2030, 2034, *etc.*), or when there is a by-election that involves a **Member**, no **Complaint** shall be filed between Nomination day and Voting Day, inclusive.

13. Timing of Investigation, Report and Consideration

- 13.1. In the year of a regular election, or by-election as applicable:
- (a) An **Investigation** by the Integrity Commissioner that has not been completed by Nomination Day shall be terminated on that day.
 - (b) There shall be no requests for an inquiry about whether a **Member** of council or of a local board has contravened the **Code** between Nomination Day and Voting Day.



- (c) The Integrity Commissioner shall not report to the **Municipality** about whether a **Member** has contravened the **Code** between Nomination Day and Voting Day.
 - (d) Council shall not consider whether to impose a penalty on a **Member** for contravention of the **Code** between Nomination Day and Voting Day.
- 13.2. If an **Investigation** has been terminated under paragraph (a) then the Integrity Commissioner shall not commence another **Investigation** in respect of the matter unless, within six weeks after voting day, either the **Complainant** or the **Respondent** makes a written request to the Integrity Commissioner that the **Investigation** be commenced.

14. Penalty

- 14.1. Upon receipt of a report that a **Member** has contravened the **Code**, Council may impose either of the following penalties on a **Member**:
- (a) A reprimand.
 - (b) Suspension of the remuneration paid to the **Member** in respect of his or her services as a **Member** for a period of up to 90 days.

15. Reprisals and Obstruction

- 15.1. Each **Member** shall respect the integrity of the **Code** of Conduct and **Investigations** conducted under it.
- 15.2. No **Member** shall engage in any reprisal or make a threat of reprisal against a **Complainant** or anyone for providing relevant information to the Integrity Commissioner.
- 15.3. No **Member** shall obstruct the Integrity Commissioner in the carrying out of the Integrity Commissioner's responsibilities.

16. Written Advice

- 16.1. Any written advice given by the Integrity Commissioner to a **Member** binds the Integrity Commissioner in any subsequent consideration of the conduct of the **Member** in the same matter as long as all the relevant facts known to the **Member** were disclosed to the Integrity Commissioner.

Complaint Protocol under the Code of Conduct for Council Members and Members of Committees

A. DEFINITIONS AND APPLICATION

1. In this Complaint Protocol, words and phrases have the same meanings as in the Code.
2. This Complaint Protocol applies to complaints under the Code. It does not apply to a request for, or the conduct of, an inquiry concerning an alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*. In an inquiry 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 such a matter and follow such process as the Commissioner considers appropriate having regard to the requirements of the *Municipal Act*.

B. INFORMAL COMPLAINT PROCEDURE

3. Any individual who believes behaviour or activity by a Member contravenes the Code may address the behaviour or activity by doing one or more of the following:
 - 3.1 Inform the Member that the behaviour or activity appears to contravene the Code.
 - 3.2 Encourage the Member to acknowledge and to agree to stop the prohibited behaviour or activity and to avoid future occurrences of it.
 - 3.3 Document the incidents including dates, times, locations, other individuals present, and any other relevant information.
 - 3.4 Request the Integrity Commissioner to assist in informal discussion with the Member about the alleged behaviour or activity in an attempt to resolve the issue.
 - 3.5 If applicable, confirm to the Member the individual's satisfaction with the response of the Member, or, if applicable, inform the Member of the individual's dissatisfaction with the response.
 - 3.6 Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part C, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
4. Individuals are encouraged to pursue the informal complaint procedure as the first means of remedying behaviour or an activity believed to violate the Code.

C. FORMAL COMPLAINT PROCEDURE

5. Any individual who identifies or witnesses behaviour or an activity by a Member and believes it to be in contravention of the Code may file a formal complaint as follows:

- 5.1 The complaint shall be made in writing and be dated and signed by an identifiable individual.
- 5.2 Where possible, the complaint shall be made using the Complaint Form (Appendix A) which will be posted on the Municipality's Website. If the Complaint Form is not used then the complaint must contain all of the information required by the Complaint Form, in the same order.
- 5.3 The complaint must state the section(s) of the Code that the Complainant believes has (have) been breached.
- 5.4 The complaint must include background (including date(s), time(s) and location(s) of conduct, supporting documentation, details and names of all persons involved, and name(s) of any witness(es) that contains reasonable grounds for the allegation that a Member has contravened the Code.
- 5.5 The Complainant is encouraged to include relevant documents.
- 5.6 The complaint shall be submitted directly to the Integrity Commissioner by email, fax, mail or delivery.
- 5.7 In the event that a complaint is sent to or left at the Township's office, the Clerk shall ensure that it is delivered unopened (or, if left unsealed, is placed in an envelope without being read and then sealed and delivered) to the Integrity Commissioner.

Integrity Commissioner's Classification and Decision to Investigate

6. The Integrity Commissioner may not help anyone to draft the content of a complaint but the Commissioner may for any reason:
 - (a) invite a Complainant to clarify, or
 - (b) permit a Complainant to amend or resubmit any complaint, including a complaint that does not meet the requirements of this Complaint Protocol. The complaint is deemed to be received by the Commissioner when it is clarified, amended or resubmitted and henceforth the complaint consists of the amended complaint, the resubmitted complaint, or the original complaint plus amendments or plus clarifications, as the case may be.
7. Upon receiving the complaint, the Integrity Commissioner will conduct an initial classification to determine whether the complaint is within the Commissioner's jurisdiction and whether the Commissioner should commence an investigation.
 - 7.1 The complaint, or part of it, lies outside the Commissioner's jurisdiction if the subject matter of the complaint, or part, relates more properly to another law or to other complaint process or dispute resolution procedure.

- 7.2 The Commissioner shall only commence an investigation of a complaint, or part of it, that on its face contains allegations that if substantiated would constitute a breach of one or more provisions of the Code, and then only in relation to such provision(s).
 - 7.3 The Commissioner has the discretion to decline to commence an investigation if on its face the complaint appears to be frivolous, vexatious or not made in good faith, and subsequently the Commissioner may terminate an investigation if at any time the Commissioner forms the opinion that the complaint is frivolous or vexatious or that the Complainant is not acting in good faith.
 - 7.4 If the Complainant is a Member, where the Integrity Commissioner declines to commence or terminates an investigation on the ground that the complaint is frivolous or vexatious or that the Complainant is not acting in good faith, the Integrity Commissioner may report that fact to Council and name the Member.
8. If on its face the complaint, or part, relates more properly to another law or to other complaint process or dispute resolution procedure then the Integrity Commissioner shall respond to the Complainant in writing as follows:
- 8.1 If the allegation might relate to an offence under the *Criminal Code* or another criminal statute then the Complainant shall be informed that such allegation, if the Complainant wishes to pursue it, should be brought to the attention of the police.
 - 8.2 If the allegation relates to compliance with the *Municipal Conflict of Interest Act* as opposed to compliance the Code then the Commissioner shall follow such process as the Commissioner considers appropriate having regard to the requirements of the *Municipal Act*.
 - 8.3 If a complaint or part is more appropriately handled under the *Municipal Freedom of Information and Protection of Privacy Act* then the Complainant shall be informed that the matter falls under the responsibility of the Clerk, and shall be given the Clerk's phone number and email address.
 - 8.4 If the complaint or part seems to fall under another policy of the Municipality then the complainant shall be informed how to pursue the matter under the other policy.
 - 8.5 If for any other reason the complaint or part is not within the jurisdiction of the Integrity Commissioner then the Complainant shall be so informed and given such additional reasons and/or referred to such agencies or authorities as the Integrity Commissioner considers appropriate.
 - 8.6 If the complaint or part relates to a matter that is already subject to another process, including but not limited to a court proceeding under the *Municipal Conflict of Interest Act*, a human rights complaint, an arbitration hearing, or another court or tribunal proceeding, then the Integrity Commissioner may, in the Integrity Commissioner's sole discretion, suspend any investigation pending the result of the other process.

Settlement, Withdrawal and Other Opportunities for Resolution

9. Following receipt of a formal complaint, or at any time during an investigation:
 - 9.1 Where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without starting or continuing an investigation, and both the Complainant and the Respondent agree, the Commissioner may pause or delay the investigation and make efforts to achieve an informal resolution.
 - 9.2 If a complaint is withdrawn, settled or informally resolved, the Commissioner shall not report to Council except as part of the annual report described in section 24.

Investigation

10. Within three business days after receiving the complaint, the Integrity Commissioner shall decide whether to investigate the complaint or part of it.
11. Except where the Integrity Commissioner exercises powers under sections 33 and 34 of the *Public Inquiries Act*, the investigation process shall be as follows:
 - 11.1 Without identifying the Complainant, the Respondent or the circumstances, the Integrity Commissioner shall give notice to the Clerk that an investigation is being commenced.
 - 11.2 The Integrity Commissioner shall, the same day, give the Respondent notice of the complaint (including a copy of the complaint and all supporting documentation) and invite the Respondent to provide a written response within seven business days.
 - (a) To protect the right of a full and fair opportunity to respond, the Respondent shall be given the entire complaint, including the Complainant's name but not the contact information of a Complainant who is not a Member.
 - (b) In exceptional circumstances and only where the Integrity Commissioner is satisfied that a fear of intimidation or reprisal is well-founded, the Integrity Commissioner may redact information that would identify the Complainant or a witness, provided that the Respondent receives sufficient disclosure to understand the allegation(s) and to receive a full and fair opportunity to respond.
 - (c) Despite paragraph (b), where the Complainant is a Member the Complainant's identifying information will not be redacted.
 - 11.3 The Integrity Commissioner shall, the same day, give the Complainant notice that an investigation has commenced.
 - 11.4 Within three business days after receiving the Respondent's response, if any, the Integrity Commissioner shall send it to the Complainant with an invitation to reply within seven business days.

- 11.5 Within three business days after receiving the Complainant's reply, if any, the Integrity Commissioner shall send it to the Respondent.
 - 11.6 After reviewing the complaint, the response and the reply, the Commissioner may speak to anyone, access and examine any other documents or electronic materials, and may enter any work location of the Municipality that is relevant to the complaint for the purpose of investigation and potential resolution.
 - 11.7 Within 45 calendar days after the complaint is received, or such longer period as the Commissioner deems necessary, the Commissioner shall draft a report containing the findings of the investigation, including draft conclusions about whether the Respondent contravened the Code and, where applicable, a draft recommended penalty, and submit it to the Respondent for representations and comments within seven business days.
 - 11.8 Within five business days after receiving the representations and comments of the Respondent, and taking them into account, the Integrity Commissioner shall finalize the report and deliver it to the:
 - (a) Clerk, for delivery to Council.
 - (b) Complainant.
 - (c) Respondent.
12. The Commissioner has the discretion to extend any of the time frames and deadlines in this Protocol. If, however, a report will not be completed within 90 days of the receipt of a complaint, the Integrity Commissioner shall provide an interim report to Council (and the Respondent and Complainant). The interim report shall describe the complaint without identifying the Respondent and the Complainant, explain the delay and state when the final report is expected to be ready.

Report to Council and Recommendation

13. Upon receipt of a report, the Clerk shall place it on the next regular agenda of Council.
14. Where a report states the Integrity Commissioner's opinion that a Respondent has contravened the Code:
 - 14.1 The Integrity Commissioner may include in the report a recommended penalty.
 - 14.2 If the Integrity Commissioner is of the opinion that the contravention was trivial or committed through inadvertence or an error of judgment made in good faith, or occurred despite the Respondent taking reasonable measures to prevent it, then the report shall so state.
 - 14.3 The Respondent shall have the right of reply when the report is considered by Council.

- 14.4 As provided by the *Municipal Conflict of Interest Act*, if the recommendation is to suspend the remuneration paid to the Member then the Member may take part in the discussion of the matter, including making submissions to Council and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting, but the Member is not permitted to vote on any question in respect of the matter.
15. If the Integrity Commissioner is of the opinion that a Respondent did not contravene the Code but the Respondent's conduct was blameworthy or otherwise deserving to be brought to Council's attention then the report shall so state.
16. If the Integrity Commissioner is of the opinion that the investigation has revealed the need for an amendment to the Code, this Protocol or a policy of the Municipality then the report shall so state.
17. The Integrity Commissioner may make interim reports to Council where necessary and as required, including to address any instances of interference, obstruction, delay, reprisal retaliation associated with the investigation.
18. The Integrity Commissioner's report to Council shall outline the cost of each investigation.

Confidentiality to Ensure a Fair Process

19. To ensure that a complaint is investigated (or settled or informally resolved) in a fair manner that respects the rights of the Complainant, the Respondent and witnesses, until the final report is delivered to Council the parties shall maintain the confidentiality of the complaint process, including but not limited to the confidentiality of the complaint, responses, replies, report and other communications from the Complainant, the Respondent and the Integrity Commissioner.
20. If a Complainant (whether or not the Complainant is a Member) discloses information about a complaint or investigation then the Integrity Commissioner may take that fact into account in exercising discretion before declining to commence or terminating an investigation on the ground that the complaint is frivolous or vexatious or the Complainant is not acting in good faith.
21. The following paragraphs apply where a Member (whether or not the Member is a Complainant, a Respondent, a witness or uninvolved) discloses information about a complaint or an investigation:
 - 21.1 Section 5.4 of the Code provides that a Member shall not disclose by any means to anyone, except to a Member or to an employee of the Municipality who requires the information in the course of duties, any confidential information acquired by virtue of office, in either oral or written form, except as required by law or authorized by Council to do so. If the Integrity Commissioner is of the opinion that the disclosure breached confidentiality then the Commissioner, after giving a Member who

disclosed a fair opportunity to respond, may report to Council that the Member contravened section 5.4 of the Code and may recommend a penalty.

- 21.2 Harassment and bullying contravenes sections 8.1 and 8.2 of the Code. If the Integrity Commissioner is of the opinion that the disclosure constituted harassment then the Commissioner, after giving the Member who disclosed a fair opportunity to respond, may report to Council that the Member contravened section 8.1 or 8.2 of the Code and may recommend a penalty.
22. If the disclosure of information about a complaint or investigation makes it impossible, in the Integrity Commissioner's opinion, to conclude a fair and proper investigation that respects the rights of the parties then the Integrity Commissioner shall report that opinion to Council.
23. For greater certainty, a report under this section shall name the individual who disclosed or caused the disclosure of information about a complaint or investigation, and may name any Member who is involved as a Complainant, Respondent, witness or other involved individual.

Annual Reports to Council

24. The Integrity Commissioner shall report to Council annually. In the annual report, the Commissioner shall report on all complaints received and on their disposition (including complaints not falling within the jurisdiction of the Integrity Commissioner and other complaints that were not investigated). Unless otherwise provided in this Protocol, a complaint that has not been the subject of a public report to Council will be described in the annual report without identifying the Complainant or the Respondent.

Confidentiality, Record Keeping and Public Disclosure

25. The Integrity Commissioner and every person acting under the instructions of the Integrity Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under Part V.I of the *Municipal Act*, the Code and this Protocol. Nevertheless, information may be disclosed as required by law or otherwise in accordance with Part V.I of the Act, the Code and this Protocol. In a report on whether a Member has contravened the Code, the Integrity Commissioner may disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.
26. The Integrity Commissioner shall retain all records related to the complaint and investigation.
27. For greater certainty, if the Integrity Commissioner is of the opinion that a Member has contravened the Code then the Member's identity is not confidential information and the Member shall be named in the Integrity Commissioner's report to Council.
28. All reports from the Integrity Commissioner to Council will be made available to the public on the Township of Puslinch Website on a single Web page that is easily accessible.

APPENDIX A
Council Code of Conduct Complaint Form

Name:

Address:

Telephone:

E-mail:

I, _____, hereby request the Integrity Commissioner of the Township of Puslinch to conduct an inquiry pursuant to Part V.1 of the *Municipal Act, 2001* and section 11 of the Code of Conduct for Council Members and Members of Committees:

Background: (including date(s), time(s) and location(s) of conduct, supporting documentation, details and names of all persons involved, and name(s) of any witness(es); attach extra pages if necessary):

Code of Conduct

The *Code of Conduct for Council Members and Members of Committees* is available here. You may also request a copy by phone, e-mail, or in person.

Please state which section(s) of the Code of Conduct you believe have been breached:

I hereby request the Integrity Commissioner to conduct an inquiry pursuant to the provisions of section 223.4 of the *Municipal Act, 2001* with respect to the above conduct. This complaint is being filed under section 11 of the Code of Conduct for Council Members and Members of Committees.

Please mail, fax, e-mail, or otherwise deliver this request to:

Guy Giorno, Fasken law firm
Integrity Commissioner
333 Bay Street
Suite 2400
P.O Box 20
Toronto, Ontario
M5H 2T6
Tel: 416-366-8381
Fax: 416- 364-7813
E-mail: ggiorno@fasken.com

Note: You may print this form and mail it to the above address. You may also press the "Submit by E-mail" button below, but you must be signed into your e-mail client.

Your name, address, comments, and any other personal information, is collected and maintained for the purpose of conducting an investigation under Section 223.4 of the *Municipal Act, 2001*.

This complaint is being filed under section 11 of the Code of Conduct. Questions about this collection should be directed to the Clerk at 519-763-1226.

Supporting Documentation

It is recommended that you provide supporting documentation that will help verify your complaint. Please attach any supporting documentation either in your e-mail (as an attachment), or attach physical copies in mailed and faxed forms.

Use of Your Information / What Happens Next

The Integrity Commissioner will use the contact information you have provided to communicate with you about this complaint.

If the complaint falls under the Code of Conduct, a copy will be provided to the Member(s) you named. Your name but not your contact information will be included.

If the Commissioner conducts an investigation, you, the Member(s) and other persons may be asked for more information.

At the end of an investigation, the Commissioner will report to Council about whether the Member(s) contravened the Code of Conduct. The Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report. Reports to Council become public documents. Complainants names are being disclosed as per the discretion of the Integrity Commissioner.