



Policy Name: Advice, Complaint and Investigation Protocol	Policy No: S201-16
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Department/Division:	Council

1. Purpose

1.1. The purpose of this policy is to establish a protocol:

- i. for Members of Council and Local Boards to request and receive advice from the Integrity Commissioner appointed by the Town; and
- ii. for the submission, investigation and disposition of allegations that a Member of Council or a Local Board has contravened any applicable Code of Conduct, legislation, procedure, rule or policy described herein.

2. Policy Statement

2.1. The Town of Pelham has appointed an Integrity Commissioner to carry out the functions described in section 223.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (*"Municipal Act, 2001"*). This Advice, Complaint and Investigation Protocol sets clear and consistent standards for all submissions to the Integrity Commissioner.

3. Definitions

3.1. In this policy:

"Applicant" means a person who submits an Application.

"Application" means a written request submitted to the Integrity Commissioner for an inquiry into an alleged contravention of section 5, 5.1, 5.2 or 5.3 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (*"MCIA"*).

"Chief Administrative Officer" or "CAO" means the Chief Administrative Officer of the Corporation of the Town of Pelham.

"Code of Conduct" means Town Policy No. S201-15, Code of Conduct for Members of Council and Local Boards, as amended and approved by Council from time to time.

"Complaint" means a written request received by the Town for an investigation of an alleged contravention of the Code of Conduct.

"Complainant" means a person who submits a Complaint.



“Council” means the council of the Town of Pelham and includes Committees of Council.

“Election Period” means the period that begins on nomination day for a regular election and ends on voting day for a regular election as set out in the *Municipal Elections Act, 1996*, S.O. 1996, c. 32 (“MEA”).

“Frivolous” or “Vexatious” means a Complaint or Application that is initiated with malicious intent, is without merit or is part of a pattern of conduct by a Complainant or Applicant that amounts to an abuse of the Complaint or Application process, as the case may be.

“Integrity Commissioner” means the person appointed by Council as the Town’s Integrity Commissioner and responsible to perform the functions of an integrity commissioner under Part V.1 of the *Municipal Act, 2001*.

“Local Board” means the Committee of Adjustment of the Town, Humberstone Landfill Site Public Committee, Lincoln-Pelham Union Public Library Board, Niagara Central Dorothy Rungeling Airport Commission, Niagara Transit Commission, Niagara Peninsula Energy Inc., Peninsula West Power Inc. and any other local board that may be established or that exercises any statutory power with respect to the purposes or affairs of the Town.

“Member” means a member of Council, including the Mayor and Deputy Mayor, or a member of a Local Board.

“Town” means the Corporation of the Town of Pelham.

4. Requests for Advice

- 4.1. Pursuant to subsection 233.3(1) of the *Municipal Act, 2001*, the Town has appointed an Integrity Commissioner who is responsible for receiving and responding, in an independent manner, to the following requests:
- i. requests from Members for advice respecting their obligations under the Code of Conduct;
 - ii. requests from Members for advice respecting their obligations under a procedure, rule or policy of the Town, of Council or of the Local Board, as the case may be, governing the ethical behaviour of Members; and
 - iii. requests from Members for advice respecting their obligations under the *MCIA*.
- 4.2. Requests by Members for advice from the Integrity Commissioner shall be made in writing.



- 4.3. Requests by Members of Council for advice from the Integrity Commissioner may be drafted by the Chief Administrative Officer, the Town Solicitor or the Town Clerk, according to the preference of the Member.
- 4.4. If the Integrity Commissioner provides advice to a Member in response to a request under section 4.1, the advice shall be in writing.
- 4.5. The Integrity Commissioner shall provide an annual report to Council on activities ("Annual Activity Report"), which shall include a summary of advice given by the Integrity Commissioner but shall not include information that could identify the receiving Member or any other person concerned.
- 4.6. The Annual Activity Report shall be a matter of public record and shall be made available to the public in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("MFIPPA") and all applicable Town policies and procedures.

5. Request(s) for Investigation or Inquiry

- 5.1. Pursuant to subsection 223.3(1) of the *Municipal Act, 2001*, the Town has appointed an Integrity Commissioner who is responsible for performing, in an independent manner, the following functions:
 - i. the application of the Code of Conduct to Members;
 - ii. the application of any procedures, rules or policies of the Town or a Local Board governing the ethical behaviour of Members;
 - iii. the application of sections 5, 5.1, 5.2 and 5.3 of the *MCIA* to Members.
- 5.2. A request to investigate an allegation that a Member has contravened the Code of Conduct or any applicable procedure, rule or policy governing the ethical behaviour of Members may be initiated by any person, including a Member, and shall be made within sixty (60) days after the Complainant became aware of the alleged contravention.
- 5.3. A Complaint that a Member has contravened the Code of Conduct may be initiated by Council by way of a public motion made within sixty (60) days after Council became aware of the alleged contravention.
- 5.4. Complaints shall be made in writing and, other than a complaint initiated by Council under section 5.3 of this protocol, shall be signed by an identifiable individual.



- 5.5. Where the person who initiates a Complaint is an employee of the Town, the Chief Administrative Officer may be identified as the Complainant and may sign and submit the complaint on behalf of the employee, if that is the preference of the employee.
- 5.6. Where the Complainant is an organization or entity other than an individual, the Complaint shall be signed by an identifiable individual duly authorized to act on behalf of the Complainant.
- 5.7. Complaints shall be sent directly to the office of the Town Clerk and may be submitted by regular or registered mail, personal delivery, courier or e-mail. Where applicable, a Complaint shall be accompanied by the requisite filing fee prescribed by the Town's Fees and Charges By-law as adopted, amended or replaced from time to time.
- 5.8. Complaints shall include one or more affidavits setting out reasonable and probable grounds for the allegation that a Member has contravened the Code of Conduct. Affidavits must be in the prescribed form, which is attached as Appendix "A" hereto and forms part of this policy and, upon request and payment of any applicable fee by the Complainant, may be sworn or affirmed before a Commissioner of Oaths in the office of the Town Clerk.
- 5.9. Without limiting the generality of section 5.8, complaints shall include:
 - i. the facts constituting the alleged contravention of the Code of Conduct;
 - ii. the provision(s) of the Code of Conduct allegedly contravened;
 - iii. an explanation as to why the facts set out in the complaint are alleged to be a contravention of the Code of Conduct;
 - iv. the names of any witnesses who can support the allegation; and
 - v. any documentary or other evidence in support of the complaint.
- 5.10. Upon receipt of a Complaint and any applicable filing fee, the Town Clerk shall refer the matter to the Integrity Commissioner and shall provide the Integrity Commissioner with all materials submitted by the Complainant.
- 5.11. An Application to inquire into an allegation that a Member has contravened section 5, 5.1, 5.2 or 5.3 of the *MCIA* may be made by an elector as defined in the *MCIA* or by a person demonstrably acting in the public interest and, subject to section 223.4.1 of the *Municipal Act, 2001*, shall be made within six (6) weeks after the Applicant became aware of the alleged contravention.



- 5.12. Applications shall be made in writing and signed by an identifiable individual. Where the Applicant is an organization or entity other than an individual, the Application shall be signed by an individual duly authorized to act on behalf of the Applicant.
- 5.13. Applications shall be sent by the Applicant directly to the office of the Integrity Commissioner and may be submitted by regular or registered mail, courier or e-mail.
- 5.14. Applications shall include:
- i. the facts constituting the alleged contravention of the *MCIA*;
 - ii. the provision(s) of the *MCIA* allegedly contravened;
 - iii. an explanation as to why the facts set out in the Application are alleged to be a contravention of the *MCIA*;
 - iv. the names of any witnesses who can support the allegation; and
 - v. a statutory declaration attesting that the Applicant became aware of the alleged contravention not more than six (6) weeks prior to the date of the Application in accordance with section 223.4.1 of the *Municipal Act, 2001*.

6. Initial Review by Integrity Commissioner

- 6.1. Upon receipt of a Complaint, the Integrity Commissioner shall undertake an initial review to determine if the Complaint relates to an alleged contravention of the Code of Conduct by a Member and to confirm that it includes one or more sworn or affirmed affidavits in support of the Complaint.
- 6.2. Upon receipt of an Application, the Integrity Commissioner shall undertake an initial review to determine if the Application relates to an alleged contravention of section 5, 5.1, 5.2 or 5.3 of the *MCIA* by a Member.
- 6.3. The Integrity Commissioner shall have no power or jurisdiction to investigate or otherwise deal with a Complaint or Application if it does not allege a contravention of the Code of Conduct or section 5, 5.1, 5.2 or 5.3 of the *MCIA*, as the case may be.
- 6.4. If a Complaint does not include one or more supporting affidavits, the Integrity Commissioner shall defer any further review of the Complaint and shall not commence an investigation until one or more such affidavits are received.
- 6.5. Where section 6.3 applies, the Integrity Commissioner shall proceed as follows:



- i. if the Complaint or Application relates to an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the Integrity Commissioner shall advise the Complainant in writing that any pursuit of the allegation must be through the appropriate police service;
 - ii. if the Complaint or Application relates to non-compliance with *MFIPPA*, the Integrity Commissioner shall advise the Complainant in writing that the matter will be referred to the Town Clerk for review; and
 - iii. if the Complaint or Application relates to non-compliance with a policy of Council that is more specific than the Code of Conduct and prescribes a complaint procedure for alleged contraventions, the Integrity Commissioner shall advise the Complainant in writing that the matter will be processed under that procedure.
- 6.6. If a Complaint relates to a matter that is subject to an outstanding complaint under another process, such as a complaint under the *Human Rights Code*, R.S.O. 1990, c. H.19 or similar process, the Integrity Commissioner may, in his or her sole discretion and in accordance with the applicable legislation, defer or suspend any investigation pending the result of the other process and shall advise the parties in writing accordingly.
- 6.7. Without limiting the generality of section 6.3, if the Integrity Commissioner determines that all or any part of a Complaint or Application is not within the jurisdiction of the Integrity Commissioner for any reason, the Integrity Commissioner shall advise the Complainant or Applicant in writing that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process and shall provide any additional reasons and/or referrals as he or she considers appropriate.
- 6.8. The Integrity Commissioner may, but is not required to, report to Council that a Complaint is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons that he or she considers appropriate, but the Integrity Commissioner shall not disclose any information that could identify the Complainant or any other person referenced in or related to the Complaint.
- 6.9. If, upon completion of the initial review, the Integrity Commissioner is of the opinion that a Complaint or Application is Frivolous, Vexatious or not made in good faith or that there are no grounds or insufficient grounds for an investigation or inquiry, the Integrity Commissioner shall not commence an investigation or inquiry.



6.10. Where section 6.9 applies, the Integrity Commissioner shall advise the Complainant or Applicant in writing that an investigation or inquiry will not be commenced.

6.11. Notwithstanding any other provision of this protocol, the Annual Activity Report shall set out the number of Complaints and Applications that were disposed of pursuant to sections 6.3, 6.5, 6.6, 6.7 and/or 6.9 of this protocol.

7. Integrity Commissioner Investigations and Inquiries

7.1. Where the Integrity Commissioner determines that a Complaint is within the Integrity Commissioner's jurisdiction and is not subject to section 6.9, the Integrity Commissioner shall conduct an investigation.

7.2. Where the Integrity Commissioner determines that an Application is within the Integrity Commissioner's jurisdiction and is not subject to section 6.9, the Integrity Commissioner may conduct such inquiry as he or she considers necessary and may exercise all powers prescribed by section 223.4.1 of the *Municipal Act, 2001*. The Integrity Commissioner shall complete the inquiry within one hundred and eighty (180) days after receiving the Application unless the inquiry is terminated in accordance with this protocol or pursuant to subsection 233.4.1(12) of the *Municipal Act, 2001*.

7.3. Pursuant to subsections 223.4(2) and 223.4.1(9) of the *Municipal Act, 2001*, the Integrity Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6 ("*Public Inquiries Act, 2009*"), in which case those sections apply to the investigation or inquiry, as the case may be.

7.4. Where sections 33 and 34 the *Public Inquiries Act, 2009* apply, the Integrity Commissioner shall follow the procedures prescribed by the statute and this protocol; however, in the event that there is a conflict between a provision of this protocol and a provision of the *Public Inquiries Act, 2009*, the statutory provision shall prevail.

7.5. If at any point during a Complaint investigation or an Application inquiry, the Integrity Commissioner comes to the opinion that the Complaint or Application is Frivolous, Vexatious or not made in good faith or that there are no grounds or insufficient grounds to continue the investigation or inquiry, the Integrity Commissioner shall terminate the investigation or inquiry, as the case may be.

7.6. Where section 7.5 applies, the Integrity Commissioner shall:

- i. notify the Complainant or Applicant in writing that the investigation or inquiry is terminated;



- ii. notify the Member(s) whose conduct is in question that the investigation or inquiry is terminated; and
 - iii. notify the Town that the investigation or inquiry is terminated.
- 7.7. The Integrity Commissioner may, but is not required to, advise Council that the investigation of a specific Complaint or the inquiry into a specific Application has been terminated on the basis that it is Frivolous, Vexatious or not made in good faith or that there are no grounds or insufficient grounds to continue the investigation or inquiry, but the Integrity Commissioner shall not disclose any information that could identify the Complainant, the Applicant or any other person referenced in or related to the Complaint or Application.
- 7.8. Notwithstanding any other provision of this protocol, the Annual Activity Report shall set out the number of Complaints and Applications that were disposed of pursuant to section 7.5 of this protocol.
- 7.9. To investigate a Complaint, unless otherwise required by the *Public Inquiries Act, 2009*, the Integrity Commissioner shall proceed as follows:
- i. provide a copy of the Complaint and all supporting evidence supplied by the Complainant to the Member(s) whose conduct is in question;
 - ii. require the Member(s) to provide a written response to the Complaint within seven (7) days or such other period as the Integrity Commissioner may specify in writing;
 - iii. provide a copy of the response supplied by the Member(s) to the Complainant; and
 - iv. require the Complainant to provide a written reply to the response within seven (7) days or such other period as the Integrity Commissioner may specify in writing.
- 7.10. The Integrity Commissioner shall review the written materials submitted in accordance with section 7.9 and, if the Integrity Commissioner is of the opinion that further information is necessary for the purposes of investigation, the Integrity Commissioner may speak to anyone relevant to the Complaint, access and examine any documents, information or records described in subsections 223.4(3) and (4) of the *Municipal Act, 2001*, and/or enter any Town workplace relevant to the Complaint.
- 7.11. If, upon completion of a Complaint investigation, the Integrity Commissioner is of the opinion that there has been a contravention of the Code of Conduct by the Member(s) whose conduct is in question, the Integrity Commissioner shall proceed as follows:



- i. provide the Member(s) with reasonable notice of the basis for the proposed finding and any recommended sanction(s);
- ii. provide the Member(s) with an opportunity to comment, in person or in writing at the option of the Member(s), on the proposed finding and/or recommended sanction(s); and
- iii. consider the comments of the Member(s), if any, prior to issuing a final report in accordance with section 8 of this protocol.

7.12. For greater certainty, the Integrity Commissioner shall not issue a final report with a finding that there has been a contravention of the Code of Conduct unless and until the procedure in section 7.11 has been completed.

7.13. Upon conclusion of an Application inquiry the Integrity Commissioner may, if he or she considers it appropriate, apply to a judge for a determination as to whether a Member has contravened section 5, 5.1, 5.2 or 5.3 of the *MCIA*. The Integrity Commissioner shall notify in writing the Applicant, the Member(s) whose conduct is in question and the Town of the decision made in this regard.

7.14. At any point during a Complaint investigation or an Application inquiry, the Integrity Commissioner may make such interim reports to Council as the Integrity Commissioner considers appropriate, including in response to a request from Council for an interim report, and as required to address any instances of interference, obstruction or retaliation encountered during an investigation or inquiry. The Integrity Commissioner has sole discretion to determine if an interim report will be provided and whether it is presented verbally or in writing.

7.15. The Integrity Commissioner shall retain all records related to a Complaint and any resulting investigation. The Integrity Commissioner shall further retain all records related to an Application and any resulting inquiry.

8. Final Report

8.1. Subject to section 8.2 of this protocol, the Integrity Commissioner shall complete the investigation of a Complaint and prepare a final report within ninety (90) days of the date on which the Complaint was submitted to the Integrity Commissioner.

8.2. Notwithstanding section 8.2, if the Integrity Commissioner requires more than ninety (90) days to complete an investigation, the Integrity Commissioner shall proceed as follows:



- i. notify the Complainant and the Member(s) whose conduct is in question of the date(s) on which the Integrity Commissioner will complete the investigation and issue the final report; and
 - ii. provide an interim report to Council that sets out why the Integrity Commissioner requires more than ninety (90) days to complete the investigation and provides the date(s) on which the Integrity Commissioner will complete the investigation and issue the final report.
- 8.3. Where the Integrity Commissioner sustains a Complaint, in whole or in part, the Integrity Commissioner shall issue a final report that sets out the findings of the Integrity Commissioner and any recommended sanction(s).
- 8.4. Any recommended corrective action or sanction must be permitted in law and shall be designed to ensure that the behaviour or activity that resulted in the Integrity Commissioner sustaining all or part of the Complaint does not continue and is not repeated.
- 8.5. Where the Integrity Commissioner determines that there has been no contravention of the Code of Conduct, or that a contravention occurred but that the Member(s) took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error in judgment made in good faith, the Integrity Commissioner shall issue a final report that sets out the findings of the Integrity Commissioner and may recommend that no sanction(s) be imposed.
- 8.6. The Integrity Commissioner shall prepare no more than one (1) final report in relation to a Complaint.
- 8.7. The Integrity Commissioner shall provide a copy of the final report to the Town Clerk and the Member(s) whose conduct is in question when the report is issued.
- 8.8. The Town Clerk shall place the final report on the public agenda for a regular meeting of Council that is held no more than thirty (30) days after receipt of the final report by the Town Clerk.
- 8.9. Where Council receives a final report from the Integrity Commissioner that confirms a contravention of the Code of Conduct and recommends that one or more sanctions be imposed, Council may impose the recommended sanction(s) or, in accordance with subsection 223.4(5) of the *Municipal Act, 2001* may impose either:
 - i. a reprimand; or
 - ii. a suspension of remuneration paid to the Member(s) for a period of up to ninety (90) days.



8.10. The Integrity Commissioner may also recommend that Council impose one or more of the following sanctions:

- i. provide a written or verbal apology;
- ii. return property or make reimbursement of its value or of monies spent;
- iii. removal from membership of a Committee of Council; and/or
- iv. removal as Chair of a Committee of Council.

8.11. Council may not impose any of the sanctions set out in section 8.10 in the absence of a recommendation from the Integrity Commissioner; however, Council is not required to impose any or all such sanctions recommended by the Integrity Commissioner.

8.12. Where Council imposes a sanction under subsection 223.4(5) of the *Municipal Act, 2001* or section 8.10 of this protocol that differs from the recommendation(s) made by the Integrity Commissioner, Council shall provide verbal or written reasons for its decision. Where Council provides verbal reasons, they shall be documented in writing by the Town Clerk and approved by Council at its next meeting.

9. Election Blackout Period

9.1. During the Election Period and for six (6) weeks after voting day:

- i. no Complaints or Applications shall be filed;
- ii. no Complaint investigation or Application inquiry shall be commenced or continued by the Integrity Commissioner;
- iii. any pending investigations or inquiries by the Integrity Commissioner shall be terminated;
- iv. the Integrity Commissioner shall not report to Council respecting any investigation or inquiry; and
- v. Council shall not consider imposing sanctions regarding a Complaint.

9.2. Where a Complaint investigation is terminated on nomination day, the Integrity Commissioner shall not commence another investigation in respect of the matter unless, within six (6) weeks after voting day, the Complainant or the Member(s) alleged to have contravened the Code of Conduct submits a written request to the Town Clerk to resume the investigation.



- 9.3. Where an Application inquiry is terminated on nomination day, the Integrity Commissioner shall not commence another inquiry in respect of the matter unless, within six (6) weeks after voting day, the Applicant or the Member(s) alleged to have contravened section 5, 5.1, 5.2 or 5.3 of the *MCIA* submits a written request to the Integrity Commissioner that the inquiry be commenced.

10. Confidentiality

- 10.1. Pursuant to sections 223.5 and 223.6 of the *Municipal Act, 2001*, 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.
- 10.2. Notwithstanding the foregoing, the Integrity Commissioner and every person acting under the instructions of the Integrity Commissioner:
- i. may disclose information in a criminal proceeding as required by law or in accordance with Part V.1 of the *Municipal Act, 2001*;
 - ii. may release advice provided to a Member under section 4 of this protocol with the written consent of the Member;
 - iii. if a Member releases only part of the advice provided by the Integrity Commissioner under section 4 of this protocol, may release part or all of the advice without the consent of the Member; and
 - iv. if the Integrity Commissioner reports his or her opinion as to whether a Member has contravened the Code of Conduct, may disclose such matters as in the opinion of the Integrity Commissioner are necessary for the purposes of the report.

11. Amendments to Protocol

- 11.1. This protocol is subject to amendment in accordance with the policies of Council from time to time.



APPENDIX "A"

AFFIDAVIT

I, _____ (first and last name), of the Municipality of _____ in the Province of Ontario, **MAKE OATH AND SAY:**

1. I have reasonable and probable grounds to believe that _____ (name of Member), a Member of the Council of the Town of Pelham or a Local Board, has contravened section(s) _____ of the Code of Conduct of the Town of Pelham.

2. The facts constituting the contravention are as follows (use separate page if required):

3. I am aware of the following witnesses who can support the contravention:

4. Attached as Exhibit "A" are all supporting documents and other evidence in my possession at the time of making this affidavit.

5. This affidavit is made for the purpose of requesting that the contravention described herein be investigated by the Integrity Commissioner for the Town of Pelham and for no other or improper purpose.

SWORN (or AFFIRMED) before me at the
the Town of Pelham, Region of Niagara on
_____ (date)

)
)
)
) _____

(Signature)