

THE CORPORATION OF THE TOWNSHIP OF WILMOT

COMPLAINT PROTOCOL FOR COUNCIL CODE OF CONDUCT

Please note that there is no fee associated with an inquiry or formal complaint.

PART A: INFORMAL COMPLAINT PROCEDURE

Any individual who identifies or witnesses behavior or activity by a sitting member of Council that appears to be in contravention of the Code of Conduct for Members of Council and who does not wish to address the prohibited behavior/activity on their own accord, may request the Integrity Commissioner to:

- provide information about the Code and its applicability to their concern,
- request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the Member in an attempt to resolve the issue,
- consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.

Individuals are encouraged to pursue this informal complaint procedure as the first means of remedying behavior or an activity that they believe violates the Code of Conduct. With the consent of both the individual considering a complaint and the Member, the Integrity Commissioner may participate in any informal process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a complaint, recognizing that anything shared in such activity does not bias or prejudice any subsequent formal investigation by the Integrity Commissioner. However, the informal process is not a precondition or a prerequisite to pursuing the formal complaint procedure outlined in Part B.

PART B: FORMAL COMPLAINT PROCEDURE

1. Any individual who identifies or witnesses behaviour or an activity by a sitting member of Council that they believe is in contravention of the Code of Conduct may file a formal complaint, requesting an inquiry by the Township of Wilmot Integrity Commissioner, in accordance with the following conditions:
 - a) The request for an inquiry shall be in writing on the Request for an Inquiry form provided by the Township (refer to (e) for a link to all forms), dated, signed by an identifiable individual and submitted in a sealed envelope to the Clerk or Deputy Clerk.
 - b) The complaint shall set out the reasonable and probable grounds in support of an alleged contravention of the Code of Conduct. For example, facts should include the name of the alleged violator, the provision allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information respecting the complainant during normal business hours.
 - c) A supporting affidavit (using a standardized format provided by the Township: refer to (e) for a link to all forms) that affirms the truthfulness of the evidence in the support

of the complaint must be included. Staff in the Clerk's Services Department are Commissioners of Oath and as such, are authorized to swear the supporting affidavit. Commissioning fees are waived for the supporting affidavit.

- d) A Code of Conduct request may not be filed after August 19 in the year of a regular election. The Integrity Commissioner may not file any reports on complaints within 90 days of the next general election.
- e) Link to all forms here.

Filing of Complaint and Classification by Integrity Commissioner

- 2. The Clerk or Deputy Clerk shall accept the complaint with any supporting evidence and shall forward the matter immediately to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct. Complaints that fall under other Council policies, by-laws or other legislation will be directed by the Integrity Commissioner to the appropriate authority for the investigation of such matters (see Section 3 below).

If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until an affidavit is received.

Complaints Outside Integrity Commissioner's Jurisdiction

- 3. If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or complaint procedure under another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:

Criminal Matter

- a) If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate Police Service.

Municipal Conflict of Interest Act

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

Municipal Freedom of Information and Protection of Privacy Act

- c) If the complaint on its face is with respect to non-compliance with the Municipal Freedom of Information and Protection of Privacy Act, the complainant shall be advised that the matter must be referred to the Clerk for Access and Privacy Review.

Other Policy Applies

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

Lack of Jurisdiction

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

Reports To Council

- 4. The Integrity Commissioner shall report annually to Council which lists investigations completed and underway, but shall not disclose information that could identify a person concerned.

Refusal to Conduct Investigation

- 5. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation and shall state the reasons for not doing so to the complainant.

Opportunities for Resolution

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

The Integrity Commissioner may also decide during his or her investigation that complaints relating to the following matters may not be Code of Conduct issues and may more appropriately be dealt with through other channels. With the consent of the complainant, the Integrity Commissioner may refer complaints as follows:

- a) The Chief Administrative Officer (CAO) and/or the appropriate Department Head may handle formal complaints pertaining to the working relationship between staff and Members of Council.

Investigation

- 7. (1) The Integrity Commissioner will proceed as follows:
 - a) Provide the complaint and supporting material to the member whose conduct is in question with a request that a written response to the allegation be provided within ten business days; and
 - b) Provide a copy of said response to the complainant with a request for a written reply within ten business days if the complainant is not satisfied with the response.

- (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any Township work location relative to the complaint for the purpose of investigation and settlement. The Integrity Commissioner may also request additional information directly from the complainant and/or the member whose conduct is in question.
- (3) The member who is the subject of the investigation may consult with a lawyer and charge the expenses to the Township budget. If the complaint is determined to have merit, the Integrity Commissioner may require the Member to reimburse these expenses to the Township.
- (4) All complaints shall be handled in a confidential manner and involve only those persons necessary to investigate and resolve the complaint.
- (5) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.
- (6) The Integrity Commissioner shall retain all records related to the complaint and investigation.

No Complaint Prior to Municipal Election (see end of document)

8. Notwithstanding any other provision of this Protocol, no complaint may be referred to the Integrity Commissioner, or forwarded by the Clerk for review and/or investigation, after August 19 in any year in which a regular municipal election will be held.

Recommendation Report

9.
 - (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the official receipt of the complaint. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date the report will be available.
 - (2) The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any member unless the member has had 10 days notice of the basis for the proposed finding and any recommended sanction and an opportunity to respond in writing, within the same said 10 days, to the Integrity Commissioner on his / her findings and any recommended sanctions.
 - (3) Where the complaint is sustained, in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement and/or any recommended penalty (as prescribed in the Municipal Act, 2001) and the terms of a settlement.
 - (4) The Clerk shall give a copy of the report to the complainant and the Member whose conduct is concerned.

- (5) Where the complaint is not sustained, the Integrity Commissioner shall not report to Council the result of the investigation other than in exceptional circumstances or as part of an annual or periodic report.

Lawful Recommendations

10. Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour / activity does not continue.

Member Not Blameworthy

11. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.
 - a) The Integrity Commissioner shall give a copy of the report to the complainant and the member whose conduct is concerned.
 - b) The Integrity Commissioner shall not be required to make a report to Council on such complaints, but shall make reference to the number of refusal to conduct inquiry complaints in the annual report to Council.

Report to Council (See end of document)

12. Upon receipt of a report, the Clerk shall indicate, on the next regular agenda of Township Council, Notice of Intent from the Integrity Commissioner to submit a report for consideration at the following regular meeting of Council.

No Reports Prior to Municipal Election

13. No complaint may be referred to the Integrity Commissioner or forwarded by the Clerk for review and /or investigation after August 19 in any year in which a regular municipal election will be held. The Clerk shall forward any complaint received after August 19 to the Integrity Commissioner on December 1 in a regular election and advise the complainant of this process.

Duty of Council

14. Council shall consider and respond to the report at the next meeting of Council after the day the report is laid before it. The decision of Council is final.

Public Disclosure

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

- (2) At the time of the Integrity Commissioner's report to Council, the identity of the person who is the subject of the complaint shall not be treated as confidential information if the Integrity Commissioner finds that a breach has occurred.
- (3) All reports from the Integrity Commissioner to Council will be made available to the public on www.wilmot.ca.