



Staff Report

Administration – Town Clerk

Report To: Council
Meeting Date: August 18, 2022
Report Number: FAF.22.134
Title: Integrity Commissioner Report dated August 15, 2022 in response to a Council Code of Conduct Complaint dated June 30, 2022 against Mayor Soever
Prepared by: Corrina Giles, Town Clerk

A. Recommendations

THAT Council receive Staff Report FAF.22.134, entitled “Integrity Commissioner Report dated August 15, 2022 in response to a Council Code of Conduct Complaint dated June 30, 2022 against Mayor Soever”.

B. Overview

The purpose of this report is to attach the Integrity Commissioner’s Report dated August 15, 2022, in response to a Complaint dated June 30, 2022 received under the Code of Conduct for Members of Council Policy, POL.COR.21.06.

C. Background

In accordance with the Code of Conduct for Members of Council, Policy POL.COR.21.06, the Integrity Commissioner is providing her report to Council in response to a complaint received.

D. Analysis

The Integrity Commissioner’s Report dated August 15, 2022 is attached as Attachment #1 to this staff report. The Code of Conduct for Members of Council Policy, POL.COR.21.06 is attached as Attachment #2 for reference.

E. Strategic Priorities

1. Communication and Engagement

We will enhance communications and engagement between Town Staff, Town residents and stakeholders

F. Environmental Impacts

None

G. Financial Impacts

1. Integrity Commissioner fees

H. In Consultation With

Suzanne Craig, Integrity Commissioner

I. Public Engagement

The topic of this Staff Report has not been the subject of a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. However, any comments regarding this report should be submitted to Corrina Giles, Town Clerk townclerk@thebluemountains.ca.

J. Attached

1. Suzanne Craig, Integrity Commissioner, Report dated August 15, 2022
2. Code of Conduct for Members of Council Policy, POL.COR.21.06

Respectfully submitted,

Corrina Giles
Town Clerk

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Report Approval Details

Document Title:	FAF.22.134 Integrity Commissioner Report dated August 15, 2022, Code of Conduct Complaint dated June 30, 2022 .docx
Attachments:	<ul style="list-style-type: none">- Att 1 Suzanne Craig, Integrity Commissioner, Complaint Investigation Final Report dated August 15 2022.pdf- Att 2 POL-COR-21-06-Code-of-Conduct-for-Members-of-Council-Local-Boards-and-Advisory-Committees.pdf
Final Approval Date:	Aug 15, 2022

This report and all of its attachments were approved and signed as outlined below:

Shawn Everitt - Aug 15, 2022 - 12:18 PM

I. Summary

This report presents the findings of my investigation under Town of the Blue Mountains Code of Conduct (the “**Code**”) relating to the conduct of the Mayor (the “Respondent”) in connection with a complaint received June 30, 2022 (the “Complaint”) about disparaging comments about another Member of Council (the “Councillor”).

The Complaint sets out the following:

At the Town of The Blue Mountains Committee of the Whole meeting of Tuesday, June 28, 2022 (the “Meeting”), the Respondent:

... made disparaging remarks about Councillor Hope’s contribution to the attainable housing file. When given an opportunity by Councillor Hope through a point of privilege to re-think his words, [the Respondent] insisted that his remarks, which suggest that Councillor Hope acted with malicious intent, stood as presented.

The particulars of the conduct is as follows:

1. [The Respondent] said that [the Councillor] “had been working hard to get this project deferred for a long time’ and that [the Councillor’s] actions were “an example of politics getting in the way of practicality”.
2. As a point of privilege, [the Councillor] stated that “I have been accused of working to defer (this project)...” and requested that he back up his statement with evidence.
3. [The Respondent] then stated that there had been a “lot of correspondence, that [the Councillor] was working with citizens to challenge everything -its height, look and feel...all of those issues have been answered...the last straw for me...I’m not going to apologize for what is on the public record.”
4. [The Councillor] replied that she was representing the concerns of citizens, specifically about the 3-storey height limit as outlined in the Official Plan and that the community remains deeply divided on this matter, as demonstrated by the survey of 600 residents for the Official Plan Review. [The Councillor] suggested to [the Respondent] that there had been difference of opinion on this matter and that she thought that sharing these various opinions is “what Council is all about”.

I find that the Respondent's statements at the June 28, 2022 meeting was a contravention of the Code. The Respondent's comments were not statements of fact or responsible communication about public matters regarding Town business. The Gateway development project had been delayed and the Councillor's comments at different Committee and Council meetings in bringing forward concerns of some in the community, was not, on its face, with a view to disrupt and prevent a positive and practical outcome for the Town. The project was delayed for several reasons, including concerns raised by some members of the public (whether that is a large or small segment of the public is not within the scope of this investigation to determine). The Councillor did not single-handedly cause the delay of the project, nor do I have evidence that she worked in a subversive way to let "politics get in the way of practicality". Unless part of the public record, working (with a group of citizens) to intentionally delay a Town initiative is not an example of transparency. Approval of a matter at Council requires a majority or unanimity, depending on the rules of the Procedural By-law. A Councillor's voting record of having consistently voted "nay" on an item is not evidence of working on the "behest" of a small group.

The Respondent made the following comments starting at 44.41 on June 28, 2022:

"I know she's been working hard to get this project deferred for a long time, and unfortunately it has taken this long, we did engage with the community, she was very involved in the engagement with the community, and so I think this is again an example of politics getting in the way of practicality."

If one were to take this statement and read it alone, on its face and without context, it does not appear to be a disparaging statement. However, given the length of the discussion at the Meeting, the history of the item and the totality of the discussion leading up to the Respondent's comments, the statement carries a negative connotation (i.e., "an example of politics getting in the way of practicality" can in no way be taken as lauding or approving of the actions of a colleague Member of Council). Simply put, the Respondent was not simply making a statement of fact. The Respondent was neither congratulating the Councillor for vigorously representing constituents, he was not saying that he disagreed with the Councillor's position but respected her actions, nor was he saying her voting record showed that when at Council when the Gateway project was being discussed, she voted in the negative. The Respondent linked "working hard to get this project deferred for a long time" to the project being deferred for a long time and this being unfortunate (for the Town), and despite Council/the Town having engaged the community "she was very involved in the engagement with the community" (which suggested a different kind of engagement from Council/the Town having engaged the community). Engaging with the community, in and of itself, forms part of the role of a Member of Council, but in the Respondent's statement, the Councillor's being "very involved in the engagement with the community" has a pejorative connotation and appears to suggest an engagement different from and not aligned with the Town. The Respondent concludes by making an indictment of the Councillor's conduct saying that it "is again an example of politics getting in the way of practicality" (which is a pejorative

statement).

After being asked to retract his previous statement, the Respondent then starting at 57.32 stated:

“Yes, so it’s well known than there is a lot of correspondence to that effect that Councillor Hope was working with citizens to challenge every aspect of this,but now the last straw for me was now that its taken so long to get there addressing all these issues, now we want to defer it yet again for another year, and I don’t think we (um) I understand the strategy and so I am not going to apologize for what is in the public record. Thank you.”

The Respondent refers to “a lot of correspondence” that demonstrates that the Councillor has been “working with citizens to challenge every aspect of this [Gateway Project approval]. Taken together with the previous statement of “working hard to get this project deferred for a long time”, the second statement suggests that the Councillor has been working with citizens to challenge every aspect of the Gateway Project, so the Project is deferred, with the outcome of a protracted delay, and this [working with citizens to challenge every aspect of the project] has been going on for a long time.

After a careful review of this Complaint, the Respondent’s detailed reply and supporting documentation and other information, I concluded that the Respondent’s actions were not in compliance with the Code.

II. Relevant Code Rule

13. Discreditable Conduct

All Members

have a duty to treat Members of the public, one another, and Employees appropriately and without Abuse, Bullying, Violence, or Intimidation.

In the Complaint, the Complainant alleges that the Respondent’s comments constituted a form of intimidation and abuse through uttering inaccurate statements and accusations that damaged Councillor Hope’s reputation.

Rule 18 of the Code is entitled Respect for the Role of Employee. Included in this rule is the provision that Members must not falsely or maliciously injure the professional reputation of an Employee. Rule 13 of the Code does not include the words “a Member shall not falsely or maliciously injure the professional or other reputation of another Member of Council”, however, it is a reasonable interpretation of Rule 13 and has been so interpreted generally by municipal integrity commissioner, to include in the general prohibition against abusive conduct, conduct that falsely or maliciously injures the reputation of a fellow Member of Council.

III. Process

June 30, 2022 - I received a Formal Complaint under the POL.COR.21.06 Code of Conduct for Members of Council, Local Boards and Advisory Committee (the "Code"). The Complainant contacted me and advised that they did not want to put the municipality through the time and expense of a Code complaint investigation. As a result, the Complainant told me that if the Respondent would agree to retract his statement made at the June 28th meeting, in a timely manner, the Complainant would be amenable to withdrawing the Complaint.

July 3, 2022 - I provided the Respondent with Notice of Receipt of a Formal Complaint and communicated that in accordance with section 10 of the Complaint Procedure, I believed that there was an opportunity to informally dispose of the Complaint. Section 10 of the Complaint Procedure states that:

If 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.

July 5, 2022 - The Respondent replied that:

I stand by my remarks and consider them "fair comment" given Councillor Hope's record of public comments and interactions with the public with regards to the Gateway Project that I have been made aware of. There is no implication that she acted outside of her role of Councillor. Councillor Hope has constantly raised issues with the Gateway Project, both publicly, and I am told privately, at the behest of a small group of constituents who have been vocal opponents of the project. I don't have a problem with this. I believe that me bringing this to the attention of the public during the debate of her wanting to defer the decision of the transfer of the land to the next council, is appropriate and relevant and fair comment.

While I don't relish taking the time from more important matters to prepare documentation of Councillor Hope's actions with regards to the Gateway Project over the past few years, which support my making the above remarks, I believe that an investigation and report may be the best way forward to resolve this matter in an open and transparent manner. ...

I stand by my remarks but reiterate that there was nothing in my remarks to imply that Councillor Hope was doing anything outside of her role as Councillor. She is free to raise as many issues as she wants to drag things out to cater to a relatively small part of the community, (i.e., politics getting in the way of practicality). Similarly, I should have the right to point that out to the community at large. Ultimately it is the community who will decide what kind of representation they want.

July 5, 2022 – The Complaint wrote:

I have offered the [Respondent] an opportunity to put forward a retraction statement about his false allegations about [the Councillor] trying to delay the Gateway project, an affordable housing project which is badly needed in our community. It would appear that the [Respondent] is confused by a Councillor “doing their job” by representing disparate points of view from the community and the wilful delaying of an important initiative. It is an unacceptable outcome that a Councillor’s reputation is maligned by the leader of council for simply executing on the sacred mandate that has been assigned to them by the electors.

July 22, 2022 – Within the prescribed timeframe, and in accordance with section 11 of the Complaint Procedure, the Respondent submitted to me his reply to the Complaint. The reply comprised of the following:

- 2 pages of a summary overview
- 4 pages of a summary of public comments and questions asked by Councillor Hope over the past 2 years with respect to the BMAHC and the Gateway Project
- 1 page Motion passed June 7, 2022, at the Town of The Blue Mountains Committee of the Whole (“Exhibit A”)
- 87-page Business Model developed for The Blue Mountains Attainable Housing Corporation by Strategy Corp in June 2019 (“Exhibit B”)
- 6 pages of emails- (Exhibit C, D, E) 1 from a member of the public to the Respondent (with copy to 3 members of the public and Councillor Hope’s personal email address); 1 email from Councillor Hope to the Executive Director of the Blue Mountains Attainable Housing Corporation (“BMAHC”) (with copy to a member of the public); 1 email from a member of the public to a member of the public (with copy to a member of the public and the Executive Director BMAHC)
- 3 pages (Exhibit F) BMRA Position Paper on the BMAHC 2021 -2023 Budget Document
- 8-page (Exhibit G) Summary of Meetings of the Town of The Blue Mountains at which the Gateway Project was discussed and Voting Record

July 25, 2022 – In accordance with subsection 11(c) of the Complaint Procedure, I forwarded the Respondent’s reply to the Complaint to the Complainant.

August 12, 2022 – I forwarded the Final Code Complaint Investigation Report to the parties. In accordance with subsection 11(d) of the Complaint Procedure, the Integrity Commissioner is required to provide the Member being investigated with advance notice of the findings and any sanctions or remedial actions to be recommended to Council. Generally speaking, advance notice means giving the Respondent a copy of the findings prior to the matter being considered by Council.

Of importance to this matter is the provision in subsection 223.4.(7) of the Municipal Act, 2001 which provides that if an Integrity Commissioner has not completed an inquiry

before nomination day for a regular election, the inquiry is automatically terminated on that day. Nomination day is August 19, 2022. To assist in my understanding of the alleged improprieties and the actions of the two Members of Council subject of this Complaint, I have reviewed several pages of emails, newspaper articles, reports to Council, and other documents and I have reviewed videos of meetings of Council. Given the need to complete this investigation prior to the August 19th election blackout deadline, I focussed my review and did not seek out all information available (i.e. personal emails, etc.).

IV. The Respondent's Reply to the Complaint

The Respondent replied that:

I stand by my remarks, but reiterate that there was nothing in my remarks, which refer only to what is in the public record, to imply that Councillor Hope was doing anything outside of her role as Councillor. ***There is evidence, as detailed below, that she might have been working against Council decisions with members of the public.*** In my response to her point of privilege, I however, made it clear I was referring only to what is in the public record. She is free to raise as many issues as she wants to drag things out to cater to a relatively small part of the community, (i.e., politics getting in the way of practicality). Just as she is free to speak against the Gateway project, I have the right and indeed the obligation to point out her record on the Gateway Project. I maintain that all my statements are honest and accurate.

I was prompted to make my remarks after her comments made starting at 27.45, which I found, when taken in their entirety, to be misleading and obfuscating. In her remarks she started by stating her personal commitment to attainable housing (28.55-29.35). She then went on to overstate the amounts which have already been committed to the Attainable Housing Corporation for operational funding stating "already we've committed \$2.0 M for operating costs, part of it being loan and part of it being forgivable loan, \$1.2M of the \$2.0M." She knew well or ought to have known that the amount approved on June 7, 2022 was a repayable loan up to a maximum \$1.2 M. (Exhibit A). Overstating the loan and suggesting part of it was forgivable has the effect of making the project look more expensive to the taxpayer than it is.

She went on to ask the decision on the transfer of land be deferred to the next council (30.01-30.55) and suggests that the \$4.0 M could be used in other ways. She then goes on to ask for a Housing Needs Assessment (31.50-33.05) , stating "without shaking her finger at anyone we needed it a long time ago" and then suggesting that Council did not know what we were doing by stating "we need to know what we were doing and why we're doing it" (33.00-33.05). She knows full well, or ought to know that there are many reports including the Business Model developed for The Blue Mountains Attainable Housing Corporation by Strategy Corp in June 2019, (Exhibit B) after the benefit of public consultation and receiving public feedback collected from a very successful community engagement process that utilized a two session Attainable Housing Visioning Workshop process in the

spring of 2019. This document reconfirmed the Town's need for attainable housing identified by previous studies due to both increasing rental and ownership prices, as well as economic productivity issues because of housing affordability challenges.

She suggested that "there be no more operational funding support requested by the BMAHC, that this is the end". (33.15-33.50).

Significantly, she showed her true sentiments with regard to attainable housing when at (38.15-38.25) she stated "the \$1.6 M to \$1.8 M has been paid out in hard cash so we're kissing that good-bye, - we're investing it in attainable housing ..."

While her comments were interspersed with professions of support for attainable housing, her proposals to defer the decision on the transfer of land, and cutting-off further operational funding support (after overstating the amount of funding provided to date) would have a negative effect on funding applications and have the BMAHC run out of funds before the project can be completed, essentially resulting in the demise of the BMAHC.

Councillor Hope's voting record and particularly her public comments with respect to the Gateway Project support my statements. Councillor Hope is well known in the community, and to Town Staff and BMAHC Staff as an opponent of the project. As evidence of this community recognition, I attach as Exhibit C, an e-mail to me from [a named member of the public #1], a vociferous opponent of the project, dated April 25, 2021. I note that it is copied only to perhaps the most strident opponents of the project: [a named member of the public #2, a named member of the public #3, and a named member of the public #4], as well as Councillor Hope, but not to other members of Council, and that it was sent to Councillor Hope's personal e-mail Paula Hope[...]. The [named member of the public] are known associates of [named member of the public]. [Named member of the public] is Councillor Hope's "friend [...]" who she introduced to [named staff person] the then Executive Director of the BMAHC via an e-mail dated July 11, 2020. (EXHIBIT D).

I am aware that [named member of the public], a fervent opponent of the project, regularly corresponded with [the then Executive Director of the BMAHC] on a variety of concerns regarding the BMAHC, and in February 2016, shortly after Council approved moving forward with planning amendments to allow going to four stories, started a petition "Stop High Rise Buildings in Thornbury" <https://www.change.org/committeeforthornbury> in opposition to the Gateway Project. [...]

As [a named member of the public's] e-mail was sent to Councillor Hope's personal e-mail [email address], the full degree of Councillor Hope's involvement in working with opponents of the project can only be determined through an examination of her e-mail correspondence with the individuals listed above.

The evidence presented above suggests that Councillor Hope may have worked closely with opponents of the project. ***Without access to her personal e-mails, however, there is no proof, so in my remarks before Council, I clearly stated that my remarks were based on what is in the public record.*** There is ample evidence in the public record to support my remarks. Councillor Hope's voting record is tabulated on the attached spreadsheet. (EXHIBIT F), and her remarks are summarized below. I have only gone back as far as June 16, 2020. [emphasis added]

V. The Complainant's Supplementary Submissions

On July 1, 2022, the Complainant provided the following:

During a Committee of the Whole meeting on Tuesday, June 28, 2022, before members of Council in a meeting which is live-streamed to between 300-800 members of the community, the [Respondent] disparaged [Councillor Hope] by accusing [her] of "working hard to get this project (attainable housing) deferred for a long time...she was involved with the community...this is an example of politics getting in the way of practicality".

On a point of privilege, [Councillor Hope] gave the opportunity to the [Respondent] to reconsider his remarks with the statement, "I have been accused of working to defer the (approval of this project)". The [Respondent] replied that "there is a lot of correspondence that (Councillor Hope) was working with citizens to challenge every...(its height, density, its look and feel)...all of those issues have been answered...the last straw for me...now it has taken so long to get there and now its being deferred even further...I'm not going to apologize for what is on the public record." There is no merit to any of these statements, the [Respondent] would not be able to find any documentation that [Councillor Hope] intentionally tried to slow down the Gateway project as this documentation does not exist. As a Councillor, it is [Councillor Hope's] role to represent the community's thoughts on all matters before Council, including concerns with the Gateway project about exceeding the height limitation of the Official Plan which is set at 3 storeys. As [Councillor Hope] said in the Committee of the Whole meeting, bringing different points of view for discussion was the role of Council.

Attainable housing is a crisis in [Town of The Blue Mountains] affecting all members of the community. To suggest that [Councillor Hope] had been intentionally delaying the project, with malice intent, is a falsehood and is injurious to [her] reputation. It is for this reason that [this formal code complaint has been filed] asking the [Respondent] to retract his statement in the same setting in which he made his original statement which was in the Council Chambers in a livestreamed and recorded meeting. If the [Respondent] sees his way to retracting his statement in this context, [the Complainant] will request no further action. If he does not retract his statement, the formal complaint will go forward, and his breach of conduct will be shared with the public in the Council Chambers.

Unfortunately, the media has picked up the [Respondent's] language about [Councillor Hope] "delaying" the Gateway project as opposed to "deferring" the decision (Complainant's words) to the new Council, given that the RFP for the project will be completed in November, after the new Council has been elected (Councillor Hope's argument which was never reported). Please find attached the June 29th Collingwood Today article entitled, "TBM council votes to give land to attainable housing corporation" in which the reporter has written, "Coun. Paula Hope sought to have the decision on the transfer of land *delayed*". The [Respondent's] inaccurate positioning of [Councillor Hope's] management of this issue has gone past the Council Chambers into the press, and further, [a named private citizen] heard comments on [Councillor Hope's] role with "delaying" the decision on the 99.3 radio station.

This outcome is unacceptable to me and I must ask the [Respondent] to retract his statement and remove this cloud over [Councillor Hope's] reputation which was created by inaccurate statements and accusations, generated by him. As stated earlier, if this retraction is not forthcoming in a timely manner, I will be given no other choice than to ask that this formal complaint be pursued.

VI. Analysis

The Councillor took strong exception to the statements the Respondent had made at the Meeting. In evaluating the Respondent's conduct with respect to Rule 13 of the Code, I am required to determine if the Respondent's justification – that his statements were fair comment- is borne out.

Councillor Bias:

Elected officials do not come to a position on Council without interests or personal perspectives. In fact, it is this spectrum of knowledge and viewpoints that make the coming together of individual Members of Council as one decision-making body, a strength for the community. However, an elected official must avoid pecuniary and non-pecuniary conflicts of interest, including perceived bias and prejudgement. Allegations of bias can be evaluated by the integrity commissioner and generally can be avoided by a Member of Council by avoiding any comments that may lead a reasonable person to believe that the Member is entrenched in a particular position and has a closed mind.

In the Supreme Court decision *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, the court stated that "the Councillor's participation in the initial discussions between the developer and the City was to be commended and encouraged as a normal part of his duties. Persons for or against a development proposal should feel free to discuss it with their Municipal Councillor, and the Councillor should be free to express an initial reaction

without running the risk of being disqualified from subsequent participation in the decision-making process”¹

The Court further observed in the above cited case that “the Councillor was still capable of having an open mind concerning the merits of the development as a whole and as to the kinds of condition which should be imposed upon the developer as a pre-condition to rezoning”.

In *McGill v. Corporation of the City of Brantford*², the Court found that:

“It must be assumed that the Legislature knew the functions, and the mode of developing such a project from its inception to the advanced stages, and nonetheless designated the [municipal] council as the body to hold the hearing. In these circumstances, all that can be required of the council is to put aside their tentative views individually and collectively, hear the objections, consider them honestly and fairly, see if they can be accommodated and then make the final decision. No more and no less can be expected of them.”

I must be clear that this Complaint is not an investigation of the conduct of the Councillor. However, the Respondent raised in his reply several issues that he believes justify his comments as fair comment and thus I have had to review if on its face, the Councillor’s conduct that the Respondent alleged in his statement, was within her role or an example of bias. The Code deals with non-pecuniary interests such as improper use of influence and bias. In order for the Integrity Commissioner to arrive at a finding of contravention of the Code in this regard, a complainant would have to provide evidence in their supporting documentation to the complaint that the position taken by a Member was immovable and that they were incapable of changing their position even after hearing positions of members of the public and/or staff, including those contrary to their stated position. This would require a demonstration that a Member was not amenable to persuasion by speakers, evidence, staff, and consultant reports, such that their minds were so closed that they were incapable of being persuaded to change. The added allegation that a Member’s entrenched position is also brought forward at the behest of a small group in the community, would require evidence in support. The fact that a Member of Council holds a particular position on a matter, that may also be representative of concerns of some members of the community, does not in and of itself, mean that the Member has an entrenched, immovable or adverse position to the Town or is purposefully working to delay a particular outcome (against the community engagement of the Town).

VII. Were the Respondent’s Comments at the June 28, 2022 Council Meeting “Fair Comment”

In a court decision, the Ontario Court of Appeal provided helpful advice to municipal councillors when considering acceptable commentary at Council. In this decision³ the Court confirmed for municipal councillors that they do not enjoy absolute privilege for

¹ *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, 1990 CanLII 31 (SCC), [1990] 3 SCR 1170

² *McGill v. Corporation of the City of Brantford* (1980), 12 M.P.L.R. 24, at p.35

³ *Gutowski v. Clayton*, 2014 ONCA 921, December 24, 2012

offensive and defamatory statements they make during municipal council meetings. I have also reported this year on the principle of Councillor fair comment. The core issue in the Court decision was whether the Court should extend absolute privilege to what some Members of Council were calling offensive or defamatory statements made by municipal councillors in the course of council meetings.

On appeal, all parties and the Court accepted that the present state of law only gives a **qualified** privilege to municipal councillors for their remarks in council. What this means, according to Justice Blair, is that “municipal councillors are not liable in defamation for statements they make **during council meetings, unless** the [Councillor who makes the complaint] is able to demonstrate that the statements were made with **malicious intent** on the part of the councillor”.

The Court noted that in contrast to statutory privilege extended to members of the federal and provincial legislatures, no such statutory protection was extended to members of municipal council.

The parties in this example case were all elected Members of Council of the County of Frontenac and at a May 2013 Council meeting, the defendant Councillor Jones made a motion, alleging that the plaintiff, Councillor Gutowski, had engaged in a form of corruption and the “peddling of political favours”, and had lost the trust of council. Councillor Jones also alleged to have asked rhetorically, “What other tricks has she been up to?”

In this case, the Councillors who were accused of making offensive statements [“peddling of political favours” and “what other tricks has she been up to”], put forward their belief that there is an overriding value that Canadian society places on the right to freedom of expression and speech in public disclosure, and municipal councillors need to be able to exercise that right in order to perform their role properly and effectively, inform the public and set the record straight.

In response, the Court stated that without any evidence to justify the need for a change in the law, the Court refused to extend absolute privilege to such statements made at a municipal council and deemed them to be outside of the protection of qualified privilege. In denying absolute privilege, the Court in the above case cited the decision of the Supreme Court in *Prud'homme*, where the Court said:

The English and Canadian courts... have held that words spoken at a meeting of a municipal council are protected by qualified privilege...Accordingly, the fact that words spoken at a meeting are defamatory does not, in itself, mean that a municipal councillor will be liable, therefore. In order to succeed in his or her action, the plaintiff must prove malicious intent or intent to harm on the part of the councillor.⁴

The Supreme Court went on to state:

...freedom of expression takes on singular importance, because of the intimate connection between the role of that official and the preservation of municipal

⁴ *Prud'homme v. Prud'homme*, 2002 SCC 85, [2002] 4 SCR 663

democracy. Elected municipal officials are, in a way, conduits for the voices of their constituents: they convey their grievances to municipal government...**That freedom of speech is not absolute.** It is limited by...the requirements imposed by other people's right to the protection of their reputation..., reputation is an attribute of personality that any democratic society concerned about respect to the individual must protect[...].

Although it is not specifically mentioned in the Canadian Charter, the good reputation of the individual represents and reflects the innate dignity of the individual, a concept which underlies all the Canadian charter rights. (emphasis added)

The Court concludes that:

Accordingly, while elected municipal officials may be quite free to discuss matters of public interest, they must act as would the reasonable person. **The reasonableness of their conduct will often be demonstrated by their good faith and prior checking they did to satisfy themselves as to the truth of their allegations.** These are guidelines for exercising their right to [fair] comment, which has been repeatedly reaffirmed by the courts. (emphasis added)

The Legislature has not felt it necessary to extend absolute privilege to the speech of municipal councillors. As a result, municipal councillors are not protected from misspeaking or unreasonably not checking with the veracity of their statements to the detriment of the reputation of another Member of Council.

Generally speaking, as Integrity Commissioner for the Town, in addition to my investigator role, I also have a duty to provide general education and guidance to Members of Council and Local Boards with respect to their obligations under the Code. As a general proposition, Members of Council are encouraged to raise their discontent with colleagues' actions or concerns of bias that they wish to underscore for the public, through established channels as set out in the Code of Conduct. The use of innuendo or hyperbole to articulate and promote a position that has been raised and promoted by Council and not supported by a Councillor arguably because the Councillor has always voted in the negative on a project and has been included in emails from opponents of the project, should be distinguished from fair comment which is necessary for the fulfilment of the official duties of the Member. If a Member of Council believes that a Councillor has worked at the "behest" of a small group of opponents to a Town project to the point where a "strategy" has been employed to purposefully, intentionally, and baselessly delay approval of the project, and the Member believes the public should be aware of this subterfuge, then the Member should avail themselves of the Code of Conduct complaint process requesting that the Integrity Commissioner investigate into these allegations. Frustration at the proliferation of misinformation regarding Town initiatives and projects is certainly a concern at the Town and a matter for which the head of council should be concerned. However, if a Member believes a Councillor colleague has intentionally delayed a project, in other words, worked adverse to the Town's position, especially at the behest of anyone, that is a matter that should be brought forward in the form of a formal Code complaint to the Integrity Commissioner.

VIII. Conclusion

The reciprocity of interest or duty between the Respondent and the public was a relevant consideration in my assessing whether qualified privilege (or fair comment) applied in his statements at the Meeting of Council.

A privileged occasion is described in *Hill v. Church of Scientology of Toronto*⁵:

...a privileged occasion is...an occasion where the person who makes a communication has an interest or duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.

In the matter at hand, the citizens of the Town constituted an audience with an interest in receiving the Respondent's statement about the project (cost, etc.), which was a matter of significant and often controversial debate. The Respondent could not be deemed to have a defense of fair comment even assuming that privilege applied at the Meeting, in that he spoke with what appeared to be a disregard for having all the facts, insisting that the Councillor worked hard with opponents to put politics before practicality and intentionally delay the project. The facts that formed part of the public record, were that the Councillor consistently voted in the negative when the matter was at Council. Voting in the negative on items at Council does not, in and of itself, denote working against the approval of a project or working to delay a project. It could, if found during an investigation that a Council had no intention of listening to any information brought forward by staff or consultants, but it is not de facto evidence of working to delay a project.

At the Meeting, there was a lot of emotion as evidenced by the tone and content of the comments of the Respondent. While it may be viewed as unwise for the Integrity Commissioner to intervene to referee political speech through a Code complaint investigation, in the circumstance of this Complaint, the Respondent did call into question the actions of the Councillor. By way of guidance and caution to Members of Council, including the Councillor in this Complaint, I reiterate what I pointed out in an earlier Memorandum to the Town dated July 2019 on page 3:

There is no doubt that an elected member of the Town of The Blue Mountains Council could champion a community cause: for example, to advocate for the municipal support of community preservation of parkland. However, promoting or **championing** the position of one site over another for the location of attainable housing development may result in violations of the Code of Conduct, as this action may be perceived as prejudgment or bias. (emphasis added)

[...] A Member of Council cannot circumvent the rules of the Procedural By-law or the decision-making processes of the Town...with the effect of wearing both the hat of a member of the public to make submissions for Council consideration and the official decision-making hat of a Member of Council.

⁵ *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 (S.C.C.):[143]

Receiving information from and bringing forward positions held by members of the community on issues before Council, is a legitimate exercise of official duties of a Member of Council. Acting as the shadow opposition to Council in concert with friends, associates, or others in the absence of the transparent communication through Committee and Council meetings, is tantamount to participating in lobbying activities without the lobbyists registering their activities.

A strong accountability and transparency framework contributes to effective governance by ensuring that the municipality is accountable to the public for its actions, and by clearly defining the manner in which its governance practices will be made transparent to the public. Lobbying Members of Council and staff on municipal issues can enhance the deliberative process by providing the perspective of stakeholders that might otherwise be lost. Lobbying Members of Council in secret does not bode well for good governance. Greater transparency of who has communicated with which Members of Council and about what, will enhance the public's perception that decisions are being made in an accountable way and facilitate in clarifying if a Member is working at the behest of a special interest group.

IX. Findings

As one Integrity Commissioner commented in a 2017 Code of Conduct Complaint investigation report:

The Code is a public declaration of the principles of good conduct and ethics that the members of Council have decided its stakeholders could reasonably expect from them in the performance of their duties as elected representatives. Attaining an elected position within the community is a privilege which carries significant responsibilities and obligations.

The purpose of the Code is to reassure the community that their elected representatives will be held to a high standard as they govern, and to remind the members of Council of this obligation. Practically speaking, this means that members of Council must rise above the frustrations they face, the inadequacies they find, and the failings they encounter. They must not lower the quality of the public discourse, but raise it.⁶

In determining if the Respondent's statements amounted to maliciously or falsely injuring the reputation of the Councillor, one could consider if such statement could impact her prospects for the future and if her future as an elected official has been compromised, as a direct result. Municipal elected officials are evaluated by the public at the ballot box every four years and a candidate for a municipal office may share their voting record and stance of matters of interest to the community during the political campaign leading up to the municipal election. In other words, any candidate in a municipal election may tell their truth, disclose their voting record at Council meetings and the reasons for their positions

⁶ Municipal Integrity Commissioners of Ontario › 2017 ONMIC 6 (CanLII)

taken (as long as they do not disclose confidential information or information discussed at closed meetings).

The Respondent's public reference to the Councillor "... working hard to get this project deferred for a long time" and that her actions were "an example of politics getting in the way of practicality" was inaccurate. The Councillor did have a lot to say at the Council meetings and the item was often deferred but having a lot to say and voting in the negative does not, de facto, amount to intentionally working to delay an item. Did the Respondent say, "the Councillor worked against the Town's best interest and together with a small group of strident and vocal opponents to the project, did everything in her power to delay the project for a long time to the detriment of the Town's best interests"? No, he did not say this. Of relevance to my finding that notwithstanding those words were not used, the effect was as if he did, is the commentary of an academic paper in which the author explains the importance of context and innuendo in determining harm. While as Integrity Commissioner, I cannot receive or investigate complaints alleging defamation, as this can only be enforced by the courts, the discussion in this paper around how courts determine harms is relevant to my reasons upon which I base a Code contravention finding.

To be defamatory, a statement must tend to harm reputation. However, Canadian case law shows that disparaging statements are often assumed to be defamatory, even when they may have little potential to harm reputation because a right-thinking audience member is unlikely to believe them. The author argues that this is the result of an overly literal approach to ordinary meaning, a disregard for how right-thinking people interpret statements, and a tradition of not adducing evidence of context to prove meaning.⁷

In this paper, the writer states that many believe it would be unreasonable to conclude that people take an individual's comments pejoratively, during a public debate, when the statements are simply intended as a statement of opinion. However, the author goes on to say that sometimes this assumption is incorrect because it ignores the fact that a particular audience may have entrenched views or knowledge about the author of the statements, the complainant or the subject matter in question, or may make credibility judgements based on the importance of who makes the statements and how likely the statements would be believed without the audience necessarily checking on its veracity.⁸

Based on my review of the information before me in this Complaint and the limited time available for me before the August 19th deadline to complete the investigation, I have determined that the Respondent's statements are contrary to the spirit and intent of the *Code of Conduct*. The implication of the Respondent's comments was that the Councillor was working with a small group of residents to prevent or delay the approval of the Gateway project on the basis of her political position (whatever that may be). Working with residents is a part of a Councillor's official duties and would not in and of itself, run afoul of the Code rules. Working with a small or large group to undermine the

⁷ But Names Won't Necessarily Hurt Me: Considering the Effect of Disparaging Statements on Reputation, Hilary Young, [Queen's Law Journal](#) › [vol 37 no 1](#) › 2011 CanLIIDocs 529, p.3

⁸ *Ibid.*

legitimate work of Council, staff and corporations with connections to the Town (i.e., the BMAHC) is not consistent with a Councillor's official duties and would not be conduct condoned under the Code. However, it this was the Respondent's underlying belief, this would have to be proven through a Code investigation. If the Respondent believed this to be the case, the appropriate way to address the alleged his concern with the alleged behaviour of the Councillor would be to bring forward a Code of Conduct complaint. The Respondent replied to the Complaint stating that "Councillor Hope has constantly raised issues with the Gateway Project, both publicly, and I am told privately, at the behest of a small group of constituents who have been vocal opponents of the project. I don't have a problem with this. I believe that me bringing this to the attention of the public during the debate of her wanting to defer the decision of the transfer of the land to the next council, is appropriate and relevant and fair comment".

As set out earlier in this report, the Respondent's statements were not fair comment. Stating that a Councillor raises issues from the community is fair comment. Stating that a Councillor has consistently voted against a project is fair comment, even though it is an elected official's right when based on their informed review of the information and facts brought to Council, to vote based on their convictions. Stating that a Councillor has worked hard to delay, at the behest of a small group of constituents who have been vocal opponents of the project" letting "[her] politics get[ting] in the way of practicality" [of conduct the business of the Town], is not fair comment, but rather an allegation of a Councillor using their status as a Member to improperly influence the decision of Council to the private advantage of oneself or friends, or associates or otherwise, which , if subject of a Code complaint and sustained, is a Code violation. The Respondent's statement implied that the Councillor's conduct was tantamount to constituting a clearly improper use of influence, contrary to the Code, and likely would be seen as using her office for an improper purpose. Such an allegation could be damaging to that Councillor's reputation in the eyes of the public. The Complainant emphasized in the Complaint that the Respondent declined to retract the statement on the floor of Council and apologize to Councillor when given an opportunity to do so during the discussion at Council on June 28, 2022, thus there was no mistaking what the Respondent intended.

In the words of the former Integrity Commissioner of the City of Toronto,

Councillors will of course from time to time disagree about positions and engage in political rhetoric in order to criticize the judgment of other Councillors. Councillors must be permitted sufficient leeway for public criticism in order for municipal democracy to thrive. There must also be, however, limits on the legitimate scope for public criticism. One such limit is imposed by [the rules of the Code relating to treating one another, staff, and the public appropriately, without abuse or intimidation].⁹

⁹ CITY OF TORONTO INTEGRITY COMMISSIONER, LORNE SOSSIN, VAUGHAN V. FORD, 2009 ONMIC 1, 2009-02-13

In conclusion, I found no evidence that the Respondent knowingly and intentionally made false allegations in an attempt to harm the Councillor's reputation. Discreditable conduct, however, includes not only deliberately making statements that discredit another colleague with an intent to harm, but also acting in a manner that treats other Councillors unfairly.¹⁰ Unlike a case of defamation (a complaint alleging defamation can only be enforced through the courts), the Code complaint process does not require proof of malicious intent or intent to harm on the part of the Respondent. Rather, the Code requires the Integrity Commissioner to review the effect of the conduct of the Respondent, and if there was harm, this harm can only be justified (i.e., the Member will not run afoul of the Code) through the "fair comment" defense. The "fair comment" defense will shield the Member from being found in contravention of the Code, if the statement was necessary for the Respondent to fulfil their official role and duty (in other words, they would have fallen short of their duty as a public official if they had not made the statement), even in the absence of malicious intent. In the circumstances of the matter before me, I find that the Respondent failed to take reasonable steps to ensure his information about the Councillor's role in "working hard to get this project deferred for a long time..." was accurate, and he did not demonstrate care or diligence in how he conveyed the information, or due regard for the consequences of his statements or how the statements could be received by his audience. Consequently, I find that the Respondent's conduct disparaged the Councillor, and while the statements did not rise to the level of, Abuse, Bullying, Violence, or Intimidation, as contemplated under rule 13 of the Code, the Respondent's statement had the effect of injuring the reputation of a fellow Member of Council.

As the Respondent has stated that he stands on his statements and given that this is the end of the Council term, I have decided to make no recommendations on this matter.

Respectfully submitted,

August, 15, 2022



Suzanne Craig
Integrity Commissioner

¹⁰ *Ibid.*



Policy

POL.COR.21.06

Code of Conduct for Members of Council, Local Boards and Advisory Committees

Policy Type:	Corporate Policy (Approved by Council)
Date Approved:	November 22, 2021
Department:	Administration
Staff Report:	FAF.21.132
By-Law No.:	2021-86

Policy Statement

Policy direction for the behaviour of Members of Council, Local Boards and Advisory Committees in the performance of their duties and responsibilities as elected and appointed community representatives.

This Policy replaces POL.COR.07.07 being the Code of Conduct for Members of Council, Local Boards and Advisory Committees.

Purpose

Subsection 223.2(1) of the *Municipal Act, 2001* authorizes a Municipality to establish Codes of Conduct for Members.

Subsection 223.3(1) also authorizes a Municipality to appoint an Integrity Commissioner who is responsible for performing in an independent manner the functions assigned by Council with regard to the application of a Code of Conduct with respect to:

- the application of the Code of Conduct;
- the application of any procedures, rules and policies of the Municipality and Local Boards governing the ethical behaviour of Members;
- the application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to Members;
- requests by Members for advice about obligations under the Code of Conduct, procedures, rules, policies or the *Municipal Conflict of Interest Act*; and
- the provision of education/information to Members, the Municipality and the public about the Municipality's Codes of Conduct for Members and about the *Municipal Conflict of Interest Act*.

The Code of Conduct sets minimum standards for the behaviour of Members in carrying out their functions. It has been developed to assist Members of Council, Local Boards and Advisory Committees to:

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1. Understand the standards of conduct that are expected of them, and the law that applies in relation to these standards;
2. Fulfill their duty to act honestly and exercise reasonable care and diligence; and
3. Act in a way that enhances public confidence in local government.

Statement of Principal

A written Code of Conduct helps to ensure that Members of Council, Local Boards and Advisory Committees of the Municipality share a common understanding 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 Town of The Blue Mountain's elected and appointed representatives will serve the public with integrity, justice and courtesy.

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. Members are expected to uphold the letter and spirit of the laws of Canada, Ontario and the laws and policies adopted by Council, Local Boards and Advisory Committees.

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

Application

This policy applies to Members of Council, Local Boards and Advisory Committees of The Corporation of the Town of The Blue Mountains in the performance of their duties and responsibilities as elected/appointed community representatives. It is understood that this applies at all times and in all places while a Person is subject to this Code of Conduct.

This policy applies to all Members; however a Code of Conduct for Advisory Committee Members is attached as Appendix D. Provisions of the Code of Conduct for Members of Council, Local Boards and Advisory Committees which are relevant only to Members of Council have been eliminated from the specific Code of Conduct for Members of Local Boards and Advisory Committees. The definitions, principles and intent of the overarching Code of Conduct policy will apply and may be referred to for clarification and interpretative assistance in understanding the Code of Conduct for Members of Local Boards and Advisory Committees.

Definitions

Abuse: Abuse is an attempt to control the behaviour of another Person through a misuse of power, trust or dependency. It can include physical, sexual, verbal, financial, isolation, emotional or psychological Abuse. Abuse may include an attempt to control the behaviour of another Person through improper use of office or position of authority.

Advisory Committee means a committee established by Council, including any ad hoc, subcommittee or task force, to advise on matters which Council has deemed appropriate. A list of Advisory Committees to which these Code rules apply will be updated by the Town from time to time and appointed Members will be provided notice of their requirement to follow the Code rules.

Assets: means all property of the Municipality, including equipment, financial Assets, land, vehicles, material, paper and electronic documents, inventories, tools, electronic equipment, computers, email, internet services and intellectual property.

Chief Administrative Officer (CAO): means the senior executive appointed by Council who is responsible for managing the Municipality.

Clerk: means the Person as appointed by Council pursuant to Section 228 of the Municipal Act, 2001.

Code of Conduct: means the “Town of The Blue Mountains Code of Conduct for Members of Council, Local Boards and Advisory Committees” and/or “The Code of Conduct for Local Boards and Advisory Committee Members”.

Complainant: means a Person who has filed a Complaint to the Integrity Commissioner on the prescribed form.

Complaint: means an allegation of actions and/or behaviour of a Member contrary to one or more provisions of the Code of Conduct, policies and procedures of the Municipality and/or The Municipal Act.

Confidential Information means:

- i. Information in the possession of, or received in confidence by the Municipality, that it is prohibited from disclosing, or has decided to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act;
- ii. A matter that has been debated or discussed at a meeting of Council closed to the public, unless the matter is subsequently discussed in Open Session as authorized by Council and Council has authorized the release of this information;
- iii. Information concerning litigation, negotiation, or personnel matters; and
- iv. Reports of consultants, draft documents and internal communications, which, if disclosed may prejudice the reputation of the Municipality, its officers and Employees, or its effective operation.

Nothing in this definition of Confidential Information shall be construed to limit Members use or dissemination of information that:

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- Council as a whole has resolved is no longer confidential.

Council: means the elected Council of the Town of The Blue Mountains.

Employee: means a Person employed by the Municipality, including those employed on a contract and volunteers but does not include Members of Council, Local Boards or Advisory Committees.

Harassment: may include behaviour as defined in the Ontario Human Rights Code subsection 10(1) as *"engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome"*. However, Harassment under the Code is not limited to behaviour as defined by the Ontario Human Rights Code. Harassment may also include behaviour or actions that constitute Abuse, Bullying or Intimidation under the Town's Workplace Harassment and Human Rights policies.

Local Board: means a Local Board established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities but **(as per the *Municipal Act* Section 238 (1))** for the purposes of the Code of Conduct, a Local Board does not include The Blue Mountains Police Services Board or The Blue Mountains Public Library Board, a School Board, a Hospital Board, the Niagara Escarpment Commission, a Conservation Authority of the Blue Mountains Attainable Housing Corporation (BMAHC).

Immediate Relative: As per the Municipal Conflict of Interest Act Immediate Relative shall mean parent, spouse or child as defined by s.1 of the Municipal Conflict of Interest Act.

Integrity Commissioner: The Person(s) appointed by Town Council By-Law (including the person delegated by the appointed integrity Commissioner) in accordance with Section 223.3 of the *Municipal Act, 2001* and who is responsible for performing in an independent manner the functions assigned by the Municipality with respect to the application of the Code of Conduct for Members of Council, Local Boards and Advisory Committees.

Members: means Members of Council, Local Boards and Advisory Committees (and any such Ad Hoc or Sub-Committee thereof) of the Town of The Blue Mountains. A list of Local Boards and Advisory Committees whose Members are governed by Code rules will be updated by the Town from time to time.

Municipality: means The Corporation of the Town of The Blue Mountains.

Nomination Day: means the last day for filing or withdrawing a nomination as provided for by the *Municipal Elections Act, 1996*.

Official Hospitality: means 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 at a conference, seminar or event where the Member is either speaking or attending in an official capacity at an official event (for example: at meetings of AMO, FCM, or conducted by providers of continuing education).

Person: For the purpose of the Code of Conduct and the eligibility to file a Code complaint, "person" is a member of the public, member of staff and member of Council.

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Personal Information: as defined in the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990 c, M56 (MFIPPA), means recorded information about an identifiable individual and includes:

- i. Information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual;
- ii. Information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relation to financial transactions in which the individual has been involved;
- iii. Any identifying number, symbol or other particular assigned to the individual;
- iv. The address, telephone number, fingerprints or blood type of the individual;
- v. Correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;
- vi. The views or opinions of another individual about the individual; and
- vii. The individual's name if it appears with other Personal Information related to the individual or where the disclosure of the name would reveal other Personal Information about the individual.

Respondent: is any Member named in a Code complaint who is alleged to be in violation of non-compliance of the Code of Conduct rules.

Social Media: means publicly available, third part hosted, interactive web technologies used to produce, post and interact through text, images, video and audio to inform, share, promote, collaborate or network.

Token of Appreciation: means such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation, or which are a suitable memento of a function honouring the Member.

Gifts and Benefits

Members shall not accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of their duties of office, unless permitted by the exceptions listed below.

For these purposes, a fee or advance paid to, or a gift or benefit provided with the Member's knowledge to an Immediate Relative, or to a Member's Employee that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to that Member.

The following are recognized as exceptions:

- a) compensation authorized by by-law;
- b) tokens of appreciation, such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- c) a political contribution otherwise reported by law, in the case of Members running for office (i.e. disclosure related to election campaign contributions that are required to be otherwise reported.);
- d) services provided without compensation by Persons volunteering their time;
- e) a suitable memento of a function honouring the Member;

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- f) Official Hospitality, including 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 where the Member is either speaking or attending in an official capacity;
- g) Business Hospitality if:
 - i. attendance is because of protocol or social obligations that accompany the responsibility of office;
 - ii. by a conference, seminar or event organizer where the member is either speaking or attending in an official capacity;
 - iii. the Person extending the invitation, or a representative of the organization is in attendance; and
 - iv. the value is reasonable, and the invitations are infrequent.

- h) communication to the offices of a Member, including subscriptions to newspapers and periodicals.

In the case of categories (b), (e), (f), (g) and (h), if the value of the gift or benefit exceeds \$300, or if the total value received from any one source over a twelve (12) month period exceeds \$300, the Member shall within thirty (30) days of receipt of the gift or of reaching the annual limit, file a disclosure statement (attached as Appendix B - Disclosure Statement) with the Clerk.

The disclosure statement must indicate:

1. The nature of the gift or benefit;
2. Its source and date of receipt;
3. The circumstances under which it was given or received;
4. Its estimated value;
5. What the recipient intends to do with the gift; and
6. Whether any gift will at any point become the property of the Town.

All disclosure statements will be a matter of public record.

On receiving a disclosure statement, the Clerk shall make the disclosure statement public. If a member of the public believes the Member has not conformed to the requirements of the Code of Conduct with respect to accepting gifts and benefits, they may request the Integrity Commissioner examine the statement to ascertain whether the receipt of gift or benefit might, in their opinion, create a conflict between a private interest and the public duty of the Member. If the Integrity Commissioner makes that preliminary determination, they shall call upon the Member to justify receipt of the gift or benefit.

Should the Integrity Commissioner determine that receipt was inappropriate, they may direct the Member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, or forfeit the gift, or remit the value of any gift or benefit not already consumed to the Town.

Except in the case of (a), (c), (f) and (g), a Member may not accept a gift or benefit worth in excess of \$500 from one source during a calendar year, unless it falls within an exemption.

To clarify, if a Member accepts a gift over \$300, a disclosure statement must be completed. A member is not permitted to accept a gift over \$500 unless they fall under (a), (c), (g) and (f).

Honesty

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, Members, Employee and the public.

Confidentiality

All information, documentation or deliberation received, reviewed or taken in Closed Session of Council, Local Boards of Advisory Committees is 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, unless a decision of Council, Local Board or Advisory Committee has made a resolution to place the information before the public in an open 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:

- a) Labour relations and personnel matters;
- b) Information about suppliers provided for evaluation which might be useful to other suppliers;
- c) Matters relating to the legal affairs of the Town of The Blue Mountains;
- d) Information that infringes on the rights of others or where disclosure would contravene a Town policy (i.e. Confidential Information relating to investigations conducted pursuant to the Town's Harassment policies and procedures, which is intended to remain confidential to the extent possible);
- e) Items under litigation or negotiation;
- f) Price schedules in contract tender or Request for Proposal submissions if so specified;
- g) Information deemed to be "Personal Information" under the *Municipal Freedom of Information and Protection of Privacy Act*; and
- h) 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 exhaustive. 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*.

Use of Town Property

Subject to Section 5, no Member shall use for personal purposes any Town property, equipment,

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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 their duties that is not available to the general public for any purposes other than their official duties.

1. 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 license.

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 their re- election campaign. Further, no Member shall use the services of Town Employees for their re- election campaign, during hours in which the Employees are in the paid employment of the Town.

No Member shall use Town Assets for their personal business gain. No Member shall use the services of Town Employees for their personal business during the hours in which the Employees are in the paid employment of the Town.

Conduct at Meetings

Members shall conduct themselves with decorum at meetings in accordance with the provisions of the Town's Procedural By-law(s).

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

Discreditable Conduct

All Members have a duty to treat Members of the public, one another and Employees appropriately and without Abuse, Bullying, Violence or Intimidation. All Members shall ensure that their work environment is utterly free and completely devoid of discrimination, personal and sexual Harassment.

The Ontario *Human Rights Code* applies and recognizes the right of every Employee to work in an environment that is free from discrimination and Harassment, by the employer, agent of the employer, another Employee, or any other Person with whom s/he comes into contact in the normal performance of

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his/her duties. The *Occupational Health and Safety Act* requires that the Town take every reasonable precaution to protect the safety of workers, including as it relates to workplace Violence and Harassment.

Members shall abide by the provisions of, among other applicable legislation, the *Human Rights Code*, and, in doing so, shall treat every Person, including other Members, Employees, and individuals providing services on a contract for service, students on placements, and the public, with dignity, understanding and respect.

In accordance with the *Human Rights Code*, Members shall not discriminate against anyone because of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, disability, gender identity or gender expression.

Without limiting the generality of the foregoing, Members shall not:

- a) Make inappropriate comments or gestures to or about an individual where such conduct is known or ought reasonably to be known to be offensive to the Person(s) to whom they are directed or are about;
- b) Display materials or transmit communications that are inappropriate, offensive, insulting or derogatory, including on business and personal Social Media platforms;
- c) Make threats or engage in any abusive activity or course of conduct towards others;
- d) Vandalize the personal property of others;
- e) Commit Assault of any kind, including making or requesting unwanted physical contact, including hugging, touching, patting, or pinching; and/or
- f) Refuse to converse or interact with anyone based on any ground listed in the *Human Rights Code*.

Improper Use of Influence

No Member shall use the influence of their office for any purpose other than for the exercise of their official duties.

Examples of prohibited conduct are the use of one's status as a Member to improperly influence the decision of another Person to the private advantage of oneself or Immediate Relative, Employees, friends, or associates, business or otherwise. This includes attempts to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties. Prohibited conduct also includes the holding out of the prospect or promise of future advantage through a Member's supposed influence within Council or the Local Board in return for present actions or inaction.

For the purposes of this provision, "private advantage" does not include a matter that:

- a) Is of general application;
- b) Affects a Member, their Immediate Relative, Employees, friends, or associates, business or otherwise as one of a broad class of Persons; and/or
- c) Concerns the remuneration or benefits of a Member in their role with the Town.

Communications and Media Relations

Members will attempt to accurately and adequately communicate the attitudes and decisions of Council, Local Boards or Advisory Committees even if they disagree with a majority decision so that:

- a) There is respect for the decision-making processes;
- b) Official information related to decisions and resolutions made will normally be communicated in the first instance to the community and the media in an official capacity by the Mayor/Chair or designate;
- c) Information concerning adopted policies, procedures and decisions is conveyed openly and accurately; and
- d) Confidential Information will be communicated only when and after resolution by Council, Local Board or Advisory Committees.

Representing the Town

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

Professional Development

Members have an obligation to complete all mandatory training and orientation assigned by the Town and including training delivered by the Integrity Commissioner. Members are encouraged to promote, support, pursue and partake in opportunities for professional development. Members are encouraged to stay updated on issues and trends so that they can be as efficient and effective as possible in the carriage of their duties and responsibilities. Local Board and Advisory Committee Members are encouraged to attend, review or watch online Advisory Committee meetings, Committee of the Whole and Council proceedings to ensure they are aware of and familiar with the issues before Council that may affect Advisory Committee work.

Respect for the Role of Employee

Members shall be respectful of the fact that Employees 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 an Employee. Members shall be respectful of the fact that Employees 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.

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

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

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 Advisory Committee or Local Board of Council or any Agency at which the Town is represented.

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 reasonable out-of-pocket expenses incurred in accordance with approved Town policies while attending official functions and representing the Town in their official capacity.

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, Advisory Committees or Local Boards.

Discrimination and Harassment

2. Members have a duty to treat members of the public and one another with respect and without Abuse, Bullying or Intimidation as defined by the Town's Workplace Harassment and Human Right policies and the Ontario Human Rights Code;
3. 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 Harassment as defined by the Town's Workplace Harassment and Human Rights policies and the Ontario Human Rights Code; and
4. Members are responsible for avoiding communications that may constitute Harassment, Intimidation, Bullying or disrespectful behavior, whether in Person, in writing, by public comment and on-line, including via Social Media.

A Member may be found to have breached the Code if any of the above have occurred. A pattern of conduct in which a Members actions are Intimidating, uncivil, disrespectful or rude, may lead to a finding of Harassment. A pattern of behavior that is perceived to be harmful (e.g. disrespectful or frustrating) by the target, may constitute Harassment or Intimidation even if the Member did not intend their behavior to have that effect.

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 (requests in writing include e-mail correspondence). 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 Integrity Commissioner, the Integrity Commissioner may release part, or all of the advice provided to the Member without obtaining the Member's consent.

Respect for Code of Conduct

Members should respect the Process for Complaints made under the Code of Conduct. 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.

A Member named a Respondent in a Code of Conduct complaint must respond to the requests from the Integrity Commissioner. Failure to respond to the Integrity Commissioner's request for a reply to a Code Complaint shall constitute a contravention of this Code and cause the Integrity Commissioner to bring a report on Obstruction to Council with recommendation of penalties.

Failure to Comply

Upon Council's decision on the Integrity Commissioner's recommendations, the Member who has violated the Code of Conduct shall comply with Council's decision. Failure to comply with Council's decision shall constitute a contravention of this Code and the Member can be subject to further penalties.

Integrity Commissioner Vacancy

Should the position of the Town's Integrity Commissioner become vacant, the Code of Conduct remains in effect and all Members shall continue to abide by the provisions set out therein. When a vacancy occurs, all formal Complaints shall be held in abeyance until coverage from a neighbouring municipality can be arranged.

Annual Report

The Integrity Commissioner's annual report shall consist of:

- a) All informal and formal Complaints dismissed by the Integrity Commissioner;
- b) All Complaints received that are determined to be not within the jurisdiction of the Integrity Commissioner;

Code of Conduct for Members of Council, Local Boards and Advisory Committees

- c) All Formal Complaints that resulted in a formal investigation and conclusions; and
- d) A cost breakdown with respect to service provided within the reporting year by the Integrity Commissioner.

The annual report shall be provided within sixty (60) days after December 31 of the calendar year that is being reported.

Consequences of Non-Compliance

When Council receives a report from the Integrity Commissioner that there has been a contravention of the Code of Conduct by a Member of Council, Local Board or Advisory Committee, Council 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 their services as a Member of Council for a period up to 90 days.

Council, may, on the basis of a recommendation from the Integrity Commissioner take remedial action. Such remedial actions may include but are not limited to any or all of the following action 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; and/or
- (iv) be removed as Chair of a Committee.

This Code of Conduct operates along with and as a supplement to existing statutes governing conduct. The following federal and provincial legislation governs the conduct of Members:

- *Municipal Act, 2001,*
- *Municipal Conflict of Interest Act*
- *Municipal Freedom of Information and Protection of Privacy Act*
- *Municipal Elections Act*
- *Provincial Offenses Act*
- *Criminal Code*
- *Ontario Human Rights Code*
- *Occupational Health and Safety Act*
- Procedural By-law No. 2018-20
- by-laws and policies of Council as adopted and amended from time to time, including but not limited to the procedural by-law, procurement by-law, Workplace Violence and Harassment Program, Communications and Media policies.

Review Cycle

This policy will be reviewed once per term of Council in conjunction with the Integrity Commissioner, as required by legislative changes or at the request of Council.

Appendix A - Protocol Policy for Complaints Related to Members

5. PART A - INFORMAL COMPLAINT PROCEDURE

Individuals are encouraged to use the Informal Complaint Procedure first to address behaviour or activity of a Member that they believe violates the Code of Conduct. With the consent of the Complainant and the Respondent, 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. The Informal process is confidential, and secrecy shall be maintained by all Members participating in an informal process.

An informal process will not be a formally recorded process. A Complainant is encouraged to detail their issues to the Respondent prior to any informal meetings to ensure both parties are aware of the concerns and ample opportunity is provided for the Respondent to reflect and research the issues raised by the Complainant.

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

1. Advise the Member that the conduct appears to contravene the Code of Conduct. Advising the Member may be completed in Person, by e-mail, formal letter or phone call. If in Person or via telephone, ensure that a witness is present.
2. Ask the Member to acknowledge and agree to stop the conduct;
3. 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;
4. Council Members shall notify the Mayor. Members of Local Boards and Advisory Committee's shall notify their Committee Chair. If the Complaint involves the Mayor or the Committee Chair, Members shall contact the Integrity Commissioner directly about the concerns regarding the Member's actions;
5. Tell the Member which parts of the Code of Conduct may have been contravened;
6. Ask the Integrity Commissioner to participate in an informal discussion of the Complaint with the Member to resolve the issue;
7. If applicable, confirm to the Member that their response is satisfactory, or advise the Member that their response is unsatisfactory; and
8. Consider a Formal Complaint Procedure as set out in Part B, or any other applicable legal process.

The Informal Complaint Process is not a precondition to making a formal Complaint. However, it is highly encouraged in the spirit of fair treatment for everyone concerned. Early intervention is key to keeping behaviors and issues from escalating. Individuals are encouraged to seek guidance from the Integrity Commissioner on how to conduct the informal Complaint process.

6. PART B - FORMAL COMPLAINT PROCEDURE

7. 1. Formal Complaints: Requests for Inquiry

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 sworn before a Commissioner;
- (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 the allegation;

Council, a Local Board or an Advisory Committee may request an inquiry by the Integrity Commissioner about whether a Member has contravened the Code of Conduct.

8. 2. Filing of Complaint and Classification by Integrity Commissioner

The Complaint shall be filed with the Clerk who shall forward the matter within two business days 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.

A Formal Complaint may be sent directly to the Integrity Commissioner.

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

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 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 a member of the public, 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.

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 Complaint under the Human Rights Code pertaining to discrimination, Harassment or Violence, or similar process, or civil proceedings, the Integrity Commissioner may, in their 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.

9. Refusal to Conduct Investigation

Where the Integrity Commissioner concludes at the outset, or during an investigation that:

- a Complaint is frivolous or vexatious,
- a Complaint is not made in good faith, or
- there are no grounds or insufficient grounds for an investigation,

the Integrity Commissioner shall not be required to investigate and in the case of an ongoing investigation, shall terminate the investigation without a formal report to Council. The Integrity Commissioner shall notify the Complainant and the Member that further work on the complaint will not be continuing and the reasons why.

10. Opportunities for Resolution of Formal Complaints

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. With an informal resolution pursued through mediation with the Integrity Commissioner, there shall be no formal report to Council. Confidentiality shall be maintained by the Member and the Complainant.

11. Investigation

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 enough detail to allow the Member to understand the Complaint against them;
- (b) request that the Member provide a written response to the allegations to the Integrity Commissioner within ten (10) business days, Members shall provide the integrity Commissioner with a sworn affidavit accompanying their response;
- (c) provide a copy of the Member's response to the Complainant with a request that any written reply be provided within ten (10) business days; and
- (d) provide the Member with advance notice of the findings and any sanctions or remedial actions to be recommended to Council.
- (e) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to any Person, access and examine any other documents or electronic materials and may enter any Municipal work location relevant to the Complaint for the purpose of investigation and potential resolution.
- (f) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the formal Complaint investigation.
- (g) It is intended that all reports will be submitted to the Clerk, by the Integrity Commissioner. Where due to relevant circumstances the investigation is not completed within ninety (90) the Integrity Commissioner shall advise the parties and provide them with an approximate date of when the investigation will be complete. The Integrity Commissioner may submit an interim report to Council and address the reasons for any delay within the report.
- (h) The Integrity Commissioner shall retain all records related to the Complaint and investigation.

12. Reporting and Recommendations

- a) The Integrity Commissioner shall provide his or her draft findings to the Complainant and the Member whose conduct has been investigated, generally no later than ninety (90) days after the official receipt of the Complaint and prior to providing the final investigation report to Council. 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.
- b) The Integrity Commissioner shall generally provide an update to the Complainant and the Member no later than ninety (90) days after the official receipt of the Complaint.
- c) Where a Member has been found to have contravened the Code of Conduct, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement and/or any recommended remedial action or sanction. It is recommended that the Integrity Commissioner will cite jurisprudence including, but not limited to, decisions related in scope by other Provincial Integrity Commissioner. This information will aid Council in determining the appropriate decision when evaluating recommendations from the Integrity Commissioner.

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- d) Pursuant to the *Municipal Act*, the Integrity Commissioner may recommend that the Town impose either of the following penalties on a member of council or local board:
- a) A reprimand;
 - b) Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or Local Board for a period of up to 90 days.

In addition, Council, may, based on a recommendation from the Integrity Commissioner take remedial action.

Such remedial actions may include but are not limited to any or all of the following action and require that the Member:

- a) provide a written or verbal apology;
 - b) return property or make reimbursement of its value of money spent;
 - c) be removed from the Membership of a Committee; or
 - d) be removed as Chair of a Committee.
- e) 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.
- f) The Integrity Commissioner may disclose such information as in their opinion is necessary in the written reasons given by the Integrity Commissioner in relation to an inquiry into whether a Member has contravened the Code of Conduct.
- g) 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, or if required at a special meeting (to accommodate the Integrity Commissioners availability), for consideration by Council or the Local Board.
- h) 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, 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.
- i) The Integrity Commissioner may attend at Council at his or her next available opportunity to present the report formally for Council's consideration. It is recommended that where a report recommends a sanction the Clerk will schedule a meeting for the Integrity Commissioner to attend at Council to present. Where possible the meeting will be scheduled at the next available Council meeting. If the Integrity Commissioners schedule does not permit this, the Clerk will schedule a special meeting of Council to receive the report. 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.

13. Findings

If the Integrity Commissioner determines that:

- (a) there has been no contravention of the Code of Conduct, or
- (b) a contravention occurred but:

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- (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*.

14. Duty of Council

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

15. Termination of Inquiry When Regular Election Begins

- (a) 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.
- (b) If an inquiry is terminated under subsection (1), the Integrity 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 whose conduct is concerned makes a written request to the Commissioner that the inquiry be commenced.
- (c) 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:
 - i. There shall be no requests for an inquiry about whether a Member has contravened the Code of Conduct.
 - ii. The Commissioner shall not report to the Municipality or Local Board about whether, in their opinion, a Member has contravened the Code of Conduct.
 - iii. The Municipality or Local Board shall not consider whether to impose the penalties referred to in the Code of Conduct.

16. Public Disclosure

The Integrity Commissioner and every Person acting under their instructions shall preserve Confidentiality with respect to all matters that come to their knowledge in the course of their duties under this Part, in accordance with applicable legislation.

The Integrity Commissioner may disclose such information as in the Integrity Commissioner's opinion is necessary and provided for in section 223.5 of the *Municipal Act*.

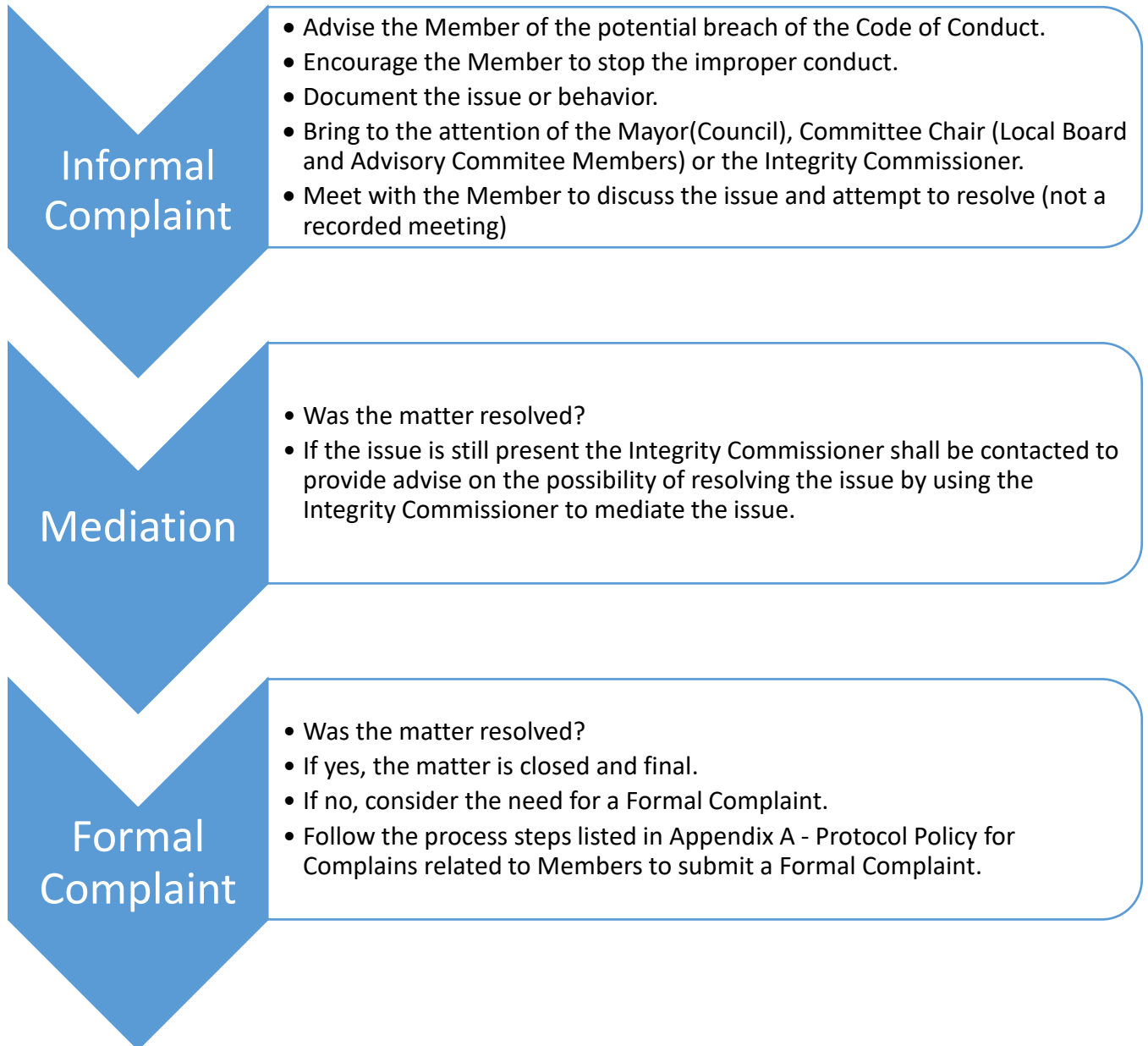
The Integrity Commissioner shall retain all records related to the Complaint and investigation.

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. If the Complainant is an elected official their name will be released in the final report as a matter of public interest.

All reports from the Integrity Commissioner to Council or the Local Board will be made available to the public by the Clerk on the Town's website.

Diagram 1 – Complaints Protocol Process Flow Chart

Please note – all processes (Informal, Mediation and Formal) are to be treated with Confidentiality.



APPENDIX 'B' - Disclosure Statement

Section 13 of the Code of Conduct regarding the acceptance of gifts and benefits, requires Members to disclose the receipt of certain gifts and benefits if the dollar value of a single gift or benefit exceeds \$300 or if the total value of gifts and benefits received from one source in a calendar year exceeds \$300. This Disclosure Statement is to be used to report on such gifts and benefits and shall be filed with the Clerk within 30 days of receipt of such gift or benefit, or upon reaching the annual limit.

Disclosure Statements are a matter of public record.

Nature of Gift or Benefit received:

Source of Gift or Benefit:

Circumstances under which Gift or Benefit received:

Intended use of the Gift or Benefit (i.e. will it be donated/provided to the Town):

Estimates Value of Gift or Benefit: \$ _____

Date Gift or Benefit was received: _____(MM/DD/YR)

Signature of Member

Date

Signature of Clerk

Date received

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APPENDIX 'C' - Formal Complaint Form / Affidavit

I, _____ (full name) of the Town of The Blue Mountains, in the Province of Ontario do solemnly swear (affirm and declare) that the following contents of this affidavit as subscribed by me are true and correct:

Permanent place of residence: _____

Mailing address (if different from above): _____

I have personal knowledge of the facts as set out in this Affidavit because:

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

I have reasonable and probable grounds to believe that _____ (specify name of Member in question) has contravened section(s) _____ of the Code of Conduct of the Town of The Blue Mountains. The particulars of which are as follows:

(Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space please use the attached Schedule "A" form and check the applicable box below.)

Schedule A attached: ☐ Yes ☐ No

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

Sworn (or Affirmed) before me at the Town of The Blue Mountains, in the County of Grey, in the Province of Ontario on the _____ day of _____, _____.

A Commissioner, etc.
(to be witnessed by Commissioner)

Signature of Complainant

NOTE: This is a sworn (affirmed) affidavit of the deponent only. No investigation has been conducted by this authority to confirm or verify the above sworn information. THE CRIMINAL CODE OF CANADA provides that: everyone commits perjury who, with intent to mislead, makes before a Person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation by affidavit, solemn declaration or deposition or orally, knowing that the statement is false, is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years (sections 131, 132) or by summary conviction (section 134). Signing a false affidavit may expose you to prosecution under section 131 and 132 or 134 of the Criminal Code, R.S.C 1985, c. C-46 and also to civil liability for defamation.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

APPENDIX 'D' APPLICATION FOR MCIA INVESTIGATION

For MCIA applications pursuant to section 223.3 (1) of the Municipal Act, 2006 about Members of Council and Local Boards.

Part 1: Applicant Information

Last Name (required): _____ First Name (required): _____

Address (required): _____

Town (required): _____ Province (required): _____

Postal Code (required): _____ E-mail address: _____

I am an elector as defined by section 17 of the Municipal Elections Act, 1996. (required)

Yes ☐ No ☐

If no, I believe that I am acting in the public interest because: (explain how)

Part 2: Alleged Contravention

Who do you believe contravened the Municipal Conflict of Interest Act? Select On. (required)

Member of Council ☐ Member of Local Board (restricted definition) ☐

Name of Member (required): _____

Name of Board (if applicable): _____

What sections(s) of the Municipal Conflict of Interest Act do you believe were contravened?
Select all that apply (required)

1. The member participated in the discussion and/or voted about a matter in which the member has a direct or indirect pecuniary interest: ☐
2. The member failed to file a written statement of a declared interest. ☐
3. The member used their office to attempt to influence a decision or recommendation of an officer or Employee of the Town and/or the Board about a matter in which the member has a director or indirect pecuniary interest. ☐

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Part 3: Description of Alleged Contravention

Why do you believe the member has contravened the Municipal Conflict of Interest Act (required)?

If you need additional space, please use additional pages.

Sample wording: I believe that (member name) contravened section(s) (x,y,z) of the Municipal Conflict of Interest Act when they....

I have attached supporting records and/or additional pages. Yes ☐ No ☐

I am making this application to request that the Integrity Commissioner conduct an investigation into a possible contravention of the Municipal Conflict of Interest Act. Yes ☐ No ☐

I also intend to file a Complaint regarding a possible contravention of the applicable Code of Conduct in relation to this matter. Yes ☐ No ☐

Signature of Applicant: _____

Date (MM/DD/YYYY): _____

Part 4: Statutory Declaration (required)

I _____ (name of applicant) solemnly declare that I became aware of the alleged contravention described in this Application on _____ (date), and I make this solemn declaration conscientiously believing to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me at _____ (Town, Province) this _____ (day) of _____ (month), _____ (year).

Signature of Declarant (Applicant): _____

Commissioner for Taking Affidavits: _____

APPENDIX E – Local Boards and Advisory Committee Members' Code of Conduct

1. The purpose of a Local Board and Advisory Committee is to provide informed advice and guidance, as well as to facilitate public input to Town Council on programs and policies. In recognition of the impartial and objective advice received from Local Boards and Advisory Committees, as well as the challenges and inherent restrictions placed upon these same individuals in assessing and recommending various options in a conscientious and ethical manner, the following Code of Conduct is provided as a general standard for all Local Boards. The main concepts of the overarching Code of Conduct remain applicable for all Local Boards and Advisory Committee Members.
2. The Local Boards and Advisory Committee Members' Code of Conduct shall be applicable to all Members of the Town of The Blue Mountains' Advisory Committee's (with the exception of the appointed Council Members), including any subcommittees or ad hoc committees established.
3. Local Board and Advisory Committee Members shall, when conducting committee business, preparing written correspondence, interacting with the media, Members of Council, Employees or Members of the public, act in a manner that accomplishes the following:
 - (a) fulfils the mandate and mission statement of their Advisory Committee;
 - (b) respects due process and the authority of the Chair, Co-Chair or Presiding Officer;
 - (c) demonstrates respect for all fellow Local Board Members, Advisory Committee Members, Council, Employees and the public;
 - (d) respects and gives fair consideration to diverse and opposing viewpoints;
 - (e) demonstrates due diligence in preparing for meetings, special occasions, or other committee- related events;
 - (f) demonstrates professionalism, transparency, accountability and timeliness in completing any tasks or projects undertaken by the committee;
 - (g) conforms with all relevant legislation, by-laws, policies and guidelines; and,
 - (h) contributes in a meaningful manner, offering constructive comments to Council, Employees and fellow Advisory Committee Members.
4. A member of a Local Board or Advisory Committee shall not:
 - (a) place themselves in a position where the Member is under obligation to any Person who might benefit from special consideration or favour on their part or who might seek in any way preferential treatment;
 - (b) accord, in the performance of their official duties, preferential treatment to relatives or to organizations in which the Member, their relatives have an interest, financial or otherwise;
 - (c) deal with an application to the Town for a grant, award, contract, permit or other benefit involving the Member or their Immediate Relative;

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- (d) place themselves in a position where the Member could derive any direct benefit or interest from any matter about which they can influence decisions; and,
 - (e) benefit from the use of information acquired during their official duties which is not generally available to the public.
- 5. A Local Board or Advisory Committee Member shall disclose immediately to the Advisory Committee or the Clerk or the Executive Assistant Committees of Council, who would disclose to the Advisory Committee, that the Member could be involved in either a real or conflict of interest as prohibited by the Code of Conduct; and shall abide by any decision made by Council, with respect to such conflict of interest without reprisal.
- 6. If a Local Board or an Advisory Committee Member is known to have a conflict of interest as prohibited by the Code and has not disclosed this to the Advisory Committee; then that matter may be brought forward for Council's consideration. When such a matter has been brought forward, Council, through a majority vote, would determine if the Member is in a conflict position in accordance with the provisions of Section 2 of this Code.
- 7. Where a Local Board or Advisory Committee Member believes or has been advised by Council that they have a conflict of interest in a particular matter, they shall:
 - (a) prior to any consideration of the matter, disclose their interest and the general nature thereof;
 - (b) leave the room for the duration of time that the matter is being considered;
 - (c) not take part in the discussion of, or vote on any question or recommendation in respect of the matter; and,
 - (d) not attempt in any way whether before, during or after the meeting to influence the voting on any such question or recommendation.
- 8. Where the number of Local Board or Advisory Committee Members who, by reason of conflict, are incapable of participating in a meeting such that the remaining Members no longer constitute a quorum; then the remaining Members shall be deemed to constitute a quorum provided there are not less than two Members present.
- 9. Local Board or Advisory Committee Members who are seeking consideration of an application, permit or appeal are permitted to address the Advisory Committee regarding their application, permit or appeal; but are prohibited from taking part in the Advisory Committee's deliberation and / or voting regarding that matter.
- 10. Should a Member of a Local Board or Advisory Committee breach any of the clauses set out herein, the Clerk may refer the matter to Council who will consider whether to take any of the possible corrective actions, as outlined in the Code of Conduct for Members of Council, Local Boards and Advisory Committees.

Policy for Complaints Related to Local Boards and Advisory Committees

The Complaint Protocol attached to the Code of Conduct as Appendix A applies with necessary modifications to Complaints regarding Members of Local Boards and Advisory Committees. If any interpretation issues arise between the Codes and applicability the Integrity Commissioner will be consulted.

17. Consequences of Failure to Adhere to Code of Conduct

Members who are found by the Integrity Commissioner to have failed to comply with the Code of Conduct for Local Boards and Advisory Committees may be subject to the following sanctions by Council:

- (a) a reprimand; or
- (b) suspension of remuneration paid to the Member in respect of their services as a Member of the Local Board or Advisory Committee (if any).
- (c) Members may also be subject to such other remedial actions recommended by the Integrity Commissioner that directly flow from the action or behaviour of the Member of the Local Board or Advisory Committee.
- (d) Members are subject to removal from the Local Board or Advisory Committee, or removal as Chair of the Local Board, by Council.

Appendix F – Applicable List of Local Boards and Advisory Committees for the Code of Conduct

This list will be updated as required and is current as of XXX Date.

The Blue Mountains Property Standards Committee
The Blue Mountains Abandoned Orchard Advisory Committee
The Blue Mountains Committee of Adjustment
The Blue Mountains Agricultural Advisory Committee
The Blue Mountains Fence Viewer Committee
Economic Development Advisory Committee
The Blue Mountains Communications Advisory Committee
Council Compensation Review Committee
Sustainability Committee
Transportation Committee
Joint Municipal Physician Recruitment and Retention Committee
Grants and Donations Committee

- Please note that Ad Hoc committees and Sub-Committees of Council, Local Boards and of Advisory Committees may not be listed (due to their inherent short-term nature) however the Code of Conduct still applies.

Appendix G - Code of Conduct Definition References

Abuse: sourced from [Edmonton Police Victim Support Resource Document](#)

Advisory Committee: written by the Director of Human Resources

Assets: written by the Director of Human Resources

Chief Administrative Officer (CAO): abbreviated from [Municipal Act section 229](#)

Clerk: abbreviated from [Municipal Act section 228](#)

Code of Conduct: written by the Director of Human Resources

Complainant: sourced from the [City of Toronto Office of the Integrity Commissioner Complaint and Application Procedures](#)

Complaint: sourced from the [City of Toronto Office of the Integrity Commissioner Complaint and Application Procedures](#)

Confidential Information sourced from the Municipal Act and the Municipal Freedom of Information and Privacy Act: [Municipal Act](#), [Municipal Freedom of Information and Privacy Act](#)

Council: sourced from [Municipal Act](#)

Employee: written by the Director of Human Resources

Harassment: sourced from the [Ontario Human Rights Code](#) and written by Integrity Commissioner Suzanne Craig

Local Board: sourced from [Municipal Act](#)

Immediate Relative: sourced from [Municipal Conflict of Interest Act](#)

Integrity Commissioner: sourced from [Municipal Act](#)

Members: written by the Director of Human Resources

Municipality: written by the Director of Human Resources

Nomination Day: sourced from [Municipal Elections Act](#)

Official Hospitality: sourced from [Collingwood Code of Conduct 2015](#)

Person: sourced from the [Canadian Charter of Rights and Freedoms](#)

Personal Information: sourced from [Municipal Freedom of Information and Privacy Act](#)

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Respondent: sourced from the [City of Toronto Office of the Integrity Commissioner Complaint and Application Procedures](#)

Social Media: written by the Director of Human Resources.

Token of Appreciation: sourced from [Collingwood Code of Conduct 2015](#)