

# HALDIMAND COUNTY

## POLICY No. 2008-02

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**Subject:**      **CODE OF CONDUCT AND COMPLAINT PROTOCOL FOR MEMBERS OF COUNCIL**

**Purpose:**

To establish a Code of Conduct and Complaint Protocol for Members of Council

**Policy:**

Attached fourteen pages form Haldimand County Policy No. 2008-02

<b>Topical Index</b>	Code of Conduct and Complaint Protocol for Members of Council
<b>Policy Number</b>	2008-02
<b>Short Title</b>	Code of Conduct and Complaint Protocol
<b>SMT Approval Date</b>	
<b>Council in Committee</b>	September 22, 2008 Recommendations # 23, 24
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# **THE CORPORATION OF HALDIMAND COUNTY**

## **CODE OF CONDUCT AND COMPLAINT PROTOCOL FOR MEMBERS OF COUNCIL**

**HALDIMAND COUNTY POLICY NO. 2008-02**

**Approved September 29, 2008  
Revised January 21, 2013**

# CODE OF CONDUCT FOR MEMBERS OF COUNCIL

## HALDIMAND COUNTY

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## **Part 1      Background**

Section 270 of the *Municipal Act*, 2001, as amended, (*the Act*) requires that a municipality adopt and maintain a policy respecting the manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public.

Haldimand County Council has adopted a policy relating to accountability and transparency pursuant to the Section 270 obligations described above. In addition, this Code of Conduct is adopted pursuant to the provision of Section 223.2 of the said *Act*.

The key principles which form the basis of this Code of Conduct are the following:

1. Council is responsible to its constituents to provide good government in respect of all matters within its jurisdiction.
2. Members of Council shall serve and shall be seen to serve their community in a conscientious, ethical and diligent manner.
3. Members of Council shall be committed to performing their duties with integrity.
4. Members of Council shall truly, faithfully and impartially exercise the office of councillor to the best of their knowledge and ability.
5. Members of Council shall uphold the letter and spirit of this Code of Conduct and shall discharge their duties in a manner that will inspire public confidence in the abilities and integrity of Council and its local boards.
6. Members of Council shall discharge their duties in a manner that respects the dignity of individuals and in accordance with the Ontario Human Rights Code and the Charter of Rights and Freedoms (Canada).

*The Act* authorizes Council to appoint an Integrity Commissioner for the purpose of investigating alleged contraventions of the Code of Conduct, report to Council on the findings of such investigation and recommend an appropriate penalty as set out in the Act.

## **Part 2      Statutory Provisions Relating to Conduct**

This Code of Conduct operates pursuant to and supplemental to other legislation governing the conduct of Council members, which include the following:

1. The *Municipal Act*, 2001, as amended.
2. The *Municipal Conflict of Interest Act*.
3. The *Municipal Elections Act*, 1996.
4. The *Municipal Freedom of Information and Protection of Privacy Act*.
5. The Criminal Code.
6. Ontario Human Rights Code.
7. Charter of Rights and Freedoms (Canada).

### **Part 3        Application**

This Code of Conduct applies to all members of Council, including the Mayor;

The term “members of Council” when used in this policy includes each member of Haldimand County Council and the Haldimand County Mayor.

### **Part 4        Release of Confidential Information**

1. Members of Council have an obligation to hold in the strictest confidence any and all information concerning matters dealt with at a session closed to the public. Members of Council shall not, either directly or indirectly, release, make public, or in any way divulge any such information in respect of a closed session deliberation to anyone, unless expressly authorized by Council or as required by law to do so.
2. Members of Council shall familiarize themselves with, and shall abide by, the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, ensuring that they do not release information in contravention of the provisions of this Act. In the event that any member of Council is uncertain about whether or not it is appropriate to release information, the member of Council shall consult with the Clerk prior to releasing any such information publicly.
3. Members of Council shall not release any information that is subject to solicitor/client privilege between Council and the County solicitor, unless expressly authorized by Council or required by law to do so.
4. Members of Council shall not use confidential information for any personal or private gain or for the gain of any relatives or any person or corporation.
5. Members of Council shall not misuse confidential information such that it may cause detriment to the County, Council or others.

For the purposes of interpreting the above, examples of confidential information include, but are not limited, to the following:

- information defined as personal information under the *Municipal Freedom of Information and Protection of Privacy Act*;
- human resource/personal letters;
- legal matters such as advice or recommendations on litigation or potential litigation before the Courts or tribunals;

- items under negotiation (labour relations or employment, acquisition of municipal assets), information regarding contract tenders.

## **Part 5        Incompatible Activity**

Members of Council shall not engage in any activity, financial or otherwise, which is incompatible or inconsistent with the ethical discharge of duties in the public interest. Without limiting the above, members of Council shall not:

- (a) use influence of office for any purpose other than official duties;
- (b) act as an agent before Council or any committee or local board;
- (c) use or rely on any information gained or acquired through the execution of official duties that is not readily available to the general public;
- (d) influence any administrative or Council decision, or decision-making process, involving or affecting persons or organizations in which the member has a financial interest;
- (e) use County materials, equipment, facilities or employees for personal gain or private purpose;
- (f) use their office to advance their interests or the interests of any person or organization with whom or with which they are associated;
- (g) use their office to obtain employment with the municipality for themselves, their family member or their same-sex partner.

## **Part 6        Gifts and Benefits**

Members of Council shall not accept, offer or agree to accept a commission, reward, gift, advantage or benefit of any kind, personally or through a family member or friend, which is connected directly or indirectly with the performance of duties of office.

Members of Council are not precluded from accepting:

- (a) personal gifts, benefits or rewards from any person or organization who is not directly or indirectly connected with the performance or duties of office;
- (b) political contributions offered, accepted and reported in accordance with applicable law;
- (c) food and beverages at banquets, receptions, ceremonies or similar events;
- (d) food, lodging, transportation and entertainment provided by provincial, and local governments, or boards or commissions thereof;
- (e) token gifts such as souvenirs or mementos of a function honoring the member;

- (f) gifts that are received as an incident of protocol or social obligation that normally and reasonably accompany the responsibility of office.

Members of Council shall return any gifts or benefits that do not fall within the above-noted parameters.

## **Part 7      Personal Behaviour**

1. Members of Council shall familiarize themselves with and abide by the provisions of the Ontario Human Rights Code. In doing so, members of Council shall treat every person, including members of Council, staff, contract providers and the public with dignity, understanding and respect for the right to equality and the right to an environment that is safe and free from harassment and discrimination.
2. Members of Council shall not discriminate against anyone on the basis of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same sex partnership status, family status or disability. These terms are defined in accordance with the definitions provided in the Ontario Human Rights Code.
3. In accordance with the Ontario Human Rights Code, harassment constitutes engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.
4. Without limiting the generality of the foregoing, members of Council shall not:
  - (a) make racial, homophobic, sexist or ethnic slurs;
  - (b) display pornographic, homophobic, sexist, racist or other offensive or derogatory material;
  - (c) make leering (suggestive staring) or other offensive gestures;
  - (d) make written or verbal abuse or threats;
  - (e) vandalize the personal property of others;
  - (f) commit physical or sexual assault;
  - (g) make unwelcome remarks, jokes, innuendos or taunting statements about a person's physical appearance, racial background, colour, ethnic origin, place of origin, citizenship, ancestry, creed (religion or belief), sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, disability (physical or mental);
  - (h) make unwelcome remarks, insulting gestures or jokes which cause embarrassment or awkwardness;
  - (i) refuse to converse or interact with anyone because of their racial or ethnic background, colour, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, or disability;
  - (j) make unnecessary or unwanted physical contact, including touching, patting, or pinching; and

- (k) harass any person or persons when such harassment occurs in the course of or in any way related to the performance of duties by a member of Council.

## **Part 8            Conduct Respecting Council**

Members of Council shall conduct themselves at Council meetings in accordance with the provisions of the County's Procedural By-law.

1. No member of Council shall purport to speak on behalf of the Council unless he or she is authorized by Council to do so.
2. A member of Council who expresses disagreement with a decision of Council shall make it clear that he or she is expressing a personal opinion.

## **Part 9            Haldimand County Policies**

1. The provisions of this Code of Conduct are in addition and supplemental to the obligations of Council pursuant to the following Haldimand County policies:
  - (i) Council/Staff Protocol;
  - (ii) Respect in the Workplace;
  - (iii) Information Technology Acceptable Usage;
  - (iv) Expectations of Council Appointees to Corporate Bodies;
  - (v) Expense Reimbursement.
2. Any alleged action or inaction by a member of Council which results in a breach of any of the above-noted policies shall be deemed to be in breach of this Code of Conduct.

## **Part 10          Integrity of the Code of Conduct**

All members of Council shall respect and uphold the letter, the spirit and the integrity of the Code of Conduct, and of any investigations conducted in respect of the Code of Conduct.

## **Part 11          Contravention of the Code of Conduct**

1. Upon receipt of a formal complaint alleging that the Code of Conduct has been contravened, the Clerk shall recommend the services of a qualified candidate and Council shall appoint that individual as the Integrity Commissioner who shall report to Council and is responsible for performing, in an independent manner, an inquiry regarding the alleged contravention of the Code of Conduct by a Member of Council.



2. Council may impose either of the following penalties on a Member of Council if the Commissioner reports that, in his or her opinion, the Member has contravened the Code of Conduct:
  - (i) a reprimand;
  - (ii) suspension of the remuneration paid to the Member in respect of his or her services as a Member of Council, as the case maybe, for a period of up to 90 days.

## **Part 12      Complaint Protocol**

A written request with respect to possible contravention of the Code of Conduct shall be processed in accordance with the Complaint Protocol shown as Schedule 1 to the Code of Conduct.

## **Schedule 1 to the Code of Conduct**

### **COMPLAINT PROTOCOL**

#### **A INFORMAL COMPLAINT PROCEDURE**

Council, a member of Council or a member of the public who has identified or witnessed behavior or an activity by a member of Council that they believe is in contravention of the Code of Conduct who wishes to address this behavior or activity through the informal complaint procedure shall:

1. File a written request and supporting affidavit with the Clerk, noting grounds for belief of an alleged contravention including, dates, times, locations, other persons present, and any other relevant information;
2. The Clerk shall provide to the subject member of Council a copy of the allegation without disclosing the identity of the complainant;
3. The member of Council will be provided ten working days in which to provide the Clerk with a written response to the allegation;
4. The complainant will be provided with a copy of the member's response and be given ten working days in which to:
  - (i) provide a written response to the Clerk stating satisfaction with the response; or,
  - (ii) provide a written response to the Clerk stating dissatisfaction with the response and the need to pursue the matter in accordance with the Formal Complaint Procedure of this protocol.
5. The Clerk shall advise the member of the complainant's position.

Anyone wishing to file a request for an investigation is encouraged to initially pursue the Informal Complaint Procedure as a means of stopping and remedying the behavior or activity that is inconsistent with the Code of Conduct. However, it is not a precondition or prerequisite that the complainant pursue the Informal Complaint Procedure prior to pursuing the Formal Complaint Procedure.

#### **B FORMAL COMPLAINT PROCEDURE: Integrity Commissioner**

##### **1. Request for Inquiry**

Where a Council, member of Council, or a member of the public have reasonable and probable grounds to believe that a member of Council has contravened the Code of Conduct may request that the matter be reviewed by the Integrity Commissioner.

##### **2. Complaint**

The filing fee to initiate a formal request is \$200.00, payable in cash, or certified cheque to Haldimand County. This filing fee will be refunded if it is determined by the Integrity Commissioner that the complaint warrants proceeding to the investigation stage.

The request shall be in writing and shall set out the grounds for the belief of the alleged contravention and including a supporting affidavit that states evidence in support of the complaint.

For example, facts should include the name of the alleged violator, the provision allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information respecting the complainant during normal business hours.

The Clerk or Deputy Clerk is authorized to take the supporting affidavit.

### **3. Initial Classification by Integrity Commissioner**

3.1 The request shall be filed with the Clerk who shall forward the matter to the Integrity Commissioner for initial classification with respect to non-compliance with the Code of Conduct.

#### **3.2 Incomplete Request**

If the complaint does not include a supporting affidavit, the request will be deemed incomplete and returned to the complainant by the Clerk.

#### **3.3 Requests not Applicable to the Code of Conduct**

If the complaint, including the supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or constitutes a complaint that should be pursued under other legislation, the Integrity Commissioner shall instruct the Clerk to advise the complainant in writing as follows:

- a) if the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that the proper recourse is to pursue the matter with the appropriate Police Force;
- b) if the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to pursue the matter with their own legal counsel;
- c) if the complaint on its face is with respect to non-compliance with a more specific Council policy, other than those policies listed in Part 9, which has a separate complaint procedure, the complainant shall be advised that the matter will be processed under that policy.
- d) if the complaint, on its face, is not with respect to non-compliance with matters described in (a) (b) or (c) above, but is not within the jurisdiction of the Integrity Commissioner, the complainant shall be so advised.

### **3.4 Reports**

The Integrity Commissioner shall report to Council when a specific complaint is not within the jurisdiction of the Integrity Commissioner, but shall not disclose confidential information that could identify a person concerned.

## **4. Integrity Commissioner's Investigation**

### **4.1 Refusal to Conduct Investigation**

The Integrity Commissioner shall terminate the investigation if in his or her opinion the matter is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation. The Integrity Commissioner shall report to Council that a specific complaint has been terminated, but shall not disclose confidential information that could identify a person concerned.

### **4.2 Investigation**

If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under the previous section, the Commissioner shall conduct an investigation.

The Integrity Commissioner will proceed as follows:

- a) bearing in mind the confidentiality requirements of the *Municipal Act*, it will be at the discretion of the Integrity Commissioner whether to disclose the identity of the complainant to relevant parties in order to facilitate the investigation. Any party to this investigation who is made aware of the identity of the complainant is bound to maintain the secrecy of the complainant and to not use this information for any purpose other than to provide a full answer or defense to the complaint.
- b) file a copy of the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation by way of affidavit be filed within ten working days; and
- c) serve a copy of the response provided upon the complainant with a request for a written reply within ten working days.

If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, examine any other documents relevant to the complaint and may enter any County work location relevant to the complaint for the purposes of investigation.

The Integrity Commissioner may make interim reports to Council as required to address any instances of interference, obstruction or retaliation encountered during the investigation.

#### **4.3 Final Report**

- a) The Integrity Commissioner shall report to the complainant and the member no later than 90 days after the filing of the complaint with the Clerk.
- b) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining the findings and when applicable, recommend corrective action, while maintaining the confidentiality of the complainant.
- c) Where the complaint is dismissed, the Integrity Commissioner shall report to Council, maintaining the confidentiality of any information which could identify a person concerned.

#### **4.4 Lawful Recommendations**

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

#### **4.5 Member not Blameworthy**

If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall provide a report to Council and shall make recommendation with respect to any corrective action, having regard for the findings.

#### **4.6 Copies**

The Clerk shall give a copy of the report to the complainant and the member whose conduct is the subject of investigation.

#### **4.7 Report to Council**

The Clerk shall process all reports of the Integrity Commissioner to the next available meeting of Council.

#### **4.8 Publication of Reports**

The Clerk shall ensure that reports received from the Commissioner by the municipality are made available to the public.

### **5. Council Review**

#### **5.1 Duty of Council**

Council shall consider and respond to the report within 90 days after the day the report is presented at a meeting of Council.

#### **5.2 Penalties**

Council may impose one of the following penalties on a member of Council if the Integrity Commissioner reports that in his or her opinion, the member has contravened the Code of Conduct:

- 1) a reprimand; or,
- 2) suspension of the remuneration paid to the member in respect of his or her services as a member of Council, for a period of up to 90 days.

### **6. Request for Reimbursement of Members Costs**

A member of Council who is party to a complaint under this procedure where the findings of the Integrity Commissioner do not substantiate a contravention of the Code of Conduct or that the member was not blameworthy as set out in Section 4.5 of this protocol, may apply for reimbursement of relevant expenses under the County's Indemnification By-law. Such application shall be referred to the County Solicitor for a ruling on whether reimbursement under the by-law is applicable.