



Staff Report

Human Resources

Report To: Committee of the Whole
Meeting Date: May 14, 2018
Report Number: FAF.18.75
Subject: **Protocol Policy for Complaints Related to Members of Council and Local Boards Public Meeting Comments**
Prepared by: Jennifer Moreau, Human Resources Manager

A. Recommendations

THAT Council receive Staff Report FAF.18.75, entitled "New Policy Protocol Policy for Complaints Related to Members of Council and Local Boards Public Meeting Comments"; and

THAT Council approve the new policy entitled "Protocol Policy for Complaints Related to Members of Council and Local Boards", POL.COR.18.XX.

B. Overview

This report provides Council with a summary of themes from Public Comment received and asks Council to adopt a new policy that supports the Code of Conduct for Members of Council and Local Boards.

C. Background

On November 14, 2016 at a Committee of the Whole meeting Staff Report FAF.16.99 Town's Workplace Harassment and Violence Program was presented for consideration of Council. The report provided a recommendation to Council to approve a revision to the Town's Workplace Harassment and Violence Program.

On November 28, 2016 at a Council meeting Councilor John McGee moved the following motion:

THAT Council receive correspondence from Patrick Delaney dated November 24, 2016 regarding the Town's proposed changes to the Workplace Harassment and Violence Policies;

AND THAT Council direct staff to compile the written concerns of residents regarding the proposed changes to the Workplace Harassment and Violence Policies and summarize the same in a staff report to Council before changes to the policy are made.

The motion was seconded by Councilor Gamble and approved by Council.

A subsequent Staff Report FAF.17.02 provided Council with a summary of themes from Public Comment received and asked Council to consider as a next step having the policy reviewed by our Integrity Commissioner.

On January 23, 2017 at a Council meeting Councilor Bob Gamble moved the following motion:

THAT Council receive Staff Report FAF.17.02 “Workplace Harassment and Violence Program Public Comments”;

AND THAT Council provide staff direction to engage our Integrity Commissioner, Janet Leiper, to provide recommended revisions to the Workplace Violence and Harassment Program, Code of Conduct Policy for Members of Council, and Complaint Protocol.

The motion was seconded by Councilor McGee and approved by Council.

On February 21, 2018 the Integrity Commissioner attended our Committee of the Whole Meeting to present her revisions and suggestions to Council. On March 5, 2018 Council directed staff to move forward through the public process to seek feedback from the public regarding the new proposed policy. On May 7, 2018 a Public Meeting was held to solicit feedback from members of the public regarding this new policy.

D. Analysis

In response to the revision to the Code of Conduct for Members of Council and Local Boards the Town received two pieces of correspondence written letters, e-mail and PowerPoint presentations. The main areas of concern are broken down in the themes listed below. It should be noted that this list is intended to provide a summary only. At the public meeting one ratepayer spoke regarding the policy. Mr. Alar Soever offered a suggestion that all formal complainants should be required to swear an affidavit as part of the submission process. Staff directed the suggestion to our Integrity Commissioner and she recommends not including an affidavit for the following reasons:

1. Swearing an affidavit can be a complicated process that might deter a member of the public stepping forward with a valid complaint.
2. The cost of the affidavit might deter some members of the public with a valid complaint.
3. Any frivolous complaint will not proceed whether or not an affidavit is signed.

Based on the feedback from our Integrity Commissioner Staff recommend adopting the policy as written.

E. The Blue Mountains Strategic Plan

Goal #2: Engage Our Communities & Partners

- Objective #1 Improve External Communication With Our Constituents
 - Objective #2 Strengthen Partnerships
- Goal #4: Promote a Culture of Organizational & Operational Excellence
- Objective #3 To Consistently Deliver Excellent Customer Service
 - Objective #5 Constantly Identify Opportunities To Improve Efficiencies and Effectiveness

F. Environmental Impacts

Not Applicable

G. Financial Impact

Although there are no financial figures associated with the approval of this policy, staff note that a properly worded policy based on best municipal practice as recommended by our Integrity Commissioner, can help aid in mitigating legal costs for both the Town, Council and Members of Local Boards.

H. In Consultation With

- Janet Leiper, Integrity Commissioner
- Ruth Prince, Director Finance & IT Services
- Michael Benner, Director Planning & Development Services
- Reg Russwurm, Director Infrastructure & Public Works
- Shawn Everitt, Interim Chief Administrative Officer
- Rob Collins, Director Enforcement and Fire Services

I. Attached

1. Proposed new policy, Protocol Policy for Complaints Related to Members of Council and Local Boards, POL.COR.18.XX;

Respectfully submitted,

Jennifer Moreau
Manager of Human Resources

Shawn Everitt
Interim Chief Administrative Officer

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Protocol Policy for Complaints Related to Council Members and Local Boards

POL.COR.18.xx

Policy Type: Corporate Policy (Approved by Council)

Date Approved:

Department: Administration

Staff Report:

By-Law No.:

Protocol

PART A - INFORMAL COMPLAINT PROCEDURE

Individuals are encouraged to use the Informal Complaint Procedure first to address behaviour or activity of a Member of Council, Local Committee or a Local Board (a “Member”) that they believe violates the Code of Conduct. With the consent of the complaining individual and the Member, 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.

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

- a. advise the Member that the conduct appears to contravene the Code of Conduct;
- b. Ask the Member to acknowledge and agree to stop the conduct;
- c. 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;

Protocol Policy for Complaints Related to Council Members and Local Boards

- d. tell a relevant third party about the concerns regarding the Member's actions;
- e. tell the Member which parts of the Code of Conduct may have been contravened;
- f. ask the Integrity Commissioner to help with an informal discussion of the complaint with the Member to resolve the issue;
- g. if applicable:
 - (i) confirm to the Member that his or her response is satisfactory, or
 - (ii) advise the Member that his or her response is unsatisfactory;
- h. consider the need to make a Formal Complaint Procedure as set out in Part B, or any other applicable legal process or complaint procedure.

The Informal Complaint Process is not a precondition to making a formal complaint as described in Part B.

PART B - FORMAL COMPLAINT PROCEDURE

Formal Complaints: Requests for Inquiry

1. 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 dated and signed by an identifiable individual;
 - (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 of the allegation;
2. Council or a Local Board may request an inquiry by the Integrity Commissioner about whether a Member of Council or the Local Board as the case may be has contravened the Code of Conduct.

Filing of Complaint and Classification by Integrity Commissioner

3. The complaint shall be filed with the Clerk who shall forward the matter 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 4.

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

4. 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 an 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 (Effective March 1, 2019).

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 Human Rights complaint or similar process, or civil proceedings, the Integrity Commissioner may, in his/her 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.

Periodic Reports to Council

5. The Integrity Commissioner shall report annually to Council on the activities of the office. In that report, the Integrity Commissioner shall report on all complaints received and their disposition, including complaints deemed not to be within the jurisdiction of the Integrity Commissioner.

Refusal to Conduct Investigation

6. Where the Integrity Commissioner concludes at the outset, or during an investigation that:
 - (a) a complaint is frivolous or vexatious,
 - (b) a complaint is not made in good faith, or
 - (c) there are no grounds or insufficient grounds for an investigation,the Integrity Commissioner shall not be required to conduct an investigation and in the case of an ongoing investigation, shall terminate the investigation.

Opportunities for Resolution of Formal Complaints

7. 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.

Investigation

8. (1) 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 sufficient detail to allow the Member to understand the complaint against him or her;
 - (b) request that the Member provide a written response to the allegations to the Integrity Commissioner within ten (10) days;
 - (c) provide a copy of the Member's response to the complainant with a request that any written reply be provided within ten (10) days; and

Protocol Policy for Complaints Related to Council Members and Local Boards

- (d) provide the Member with advance notice of the findings and any sanctions or remedial actions to be recommended to Council.
- (2) 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 or Local Board work location relevant to the complaint for the purpose of investigation and potential resolution.
- (3) The Integrity Commissioner may make interim reports to Council or the Local Board where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the formal complaint investigation.
- (4) It is intended that all reports will be presented before Council within ninety (90) days of the filing date. Where due to relevant circumstances the report is not presented to Council within 90 days the Integrity Commissioner shall address the reasons for the delay within the report.
- (5) The Integrity Commissioner shall retain all records related to the complaint and investigation.

Reporting and Recommendations

- 9. (1) The Integrity Commissioner shall generally report to the complainant and the Member no later than ninety (90) days after the official receipt of the complaint. 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.
- (2) Where a Member has been found to have contravened the Code of Conduct, the Integrity Commissioner shall report to Council or the Local Board outlining the findings, the terms of any settlement and/or any recommended remedial action or sanction.
- (3) 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.
- (4) The Integrity Commissioner may disclose such information as in the Commissioner's opinion is necessary in the written reasons given by the Commissioner in relation to an inquiry into whether a Member has contravened the Code of Conduct.
- (5) The Member shall, subject to Subsection 9(6), have the right to address the report when it is considered by Council or the Local Board.
- (6) 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

Protocol Policy for Complaints Related to Council Members and Local Boards

discussion of the matter, including making submissions to council or the local board, 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. (Effective March 1, 2019)

Findings

10. If the Integrity Commissioner determines that:
- (a) there has been no contravention of the Code of Conduct, or
 - (b) a contravention occurred but:
 - (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*.

Report to Council

11. 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 for consideration by Council or the Local Board.

Duty of Council

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

Termination of Inquiry When Regular Election Begins

- 13.(1) 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.
- (2) If an inquiry is terminated under subsection (1), the 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

Protocol Policy for Complaints Related to Council Members and Local Boards

or entity who made the request or the member or former member whose conduct is concerned makes a written request to the Commissioner that the inquiry be commenced.

- (3) 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:
 1. There shall be no requests for an inquiry about whether a Member has contravened the Code of Conduct.
 2. The Commissioner shall not report to the municipality or local board about whether, in his or her opinion, a Member has contravened the Code of Conduct.
 3. The municipality or local board shall not consider whether to impose the penalties referred to in the Code of Conduct.

Public Disclosure

- 14.(1) The Integrity Commissioner and every person acting under his or her instructions shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.
- (2) The Commissioner may disclose such information as in the Commissioner's opinion is necessary and provided for in section 223.5 of the *Municipal Act*
- (2) The Integrity Commissioner shall retain all records related to the complaint and investigation.
- (3) 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.
- (4) All reports from the Integrity Commissioner to Council or the Local Board will be made available to the public by the Clerk and on www.thebluemountains.ca.

Delegation

15. The Integrity Commissioner may delegate in writing to any person, other than a Member of Council or Local Board, any of the Integrity Commissioner's powers and duties.

Code of Conduct — Formal Complaint Form

COMPLAINT OF _____

I, _____ (full name), of the (City, Town etc.)
_____ (municipality of residence) in the Province of Ontario.

STATE:

1. I have personal knowledge of the facts as set out in this complaint, because

_____.

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

2. I have reasonable and probable grounds to believe that:

_____ (specify name of Member)

a member of the Council/Town Committee/ Local Board (circle applicable body) of the Town of Blue Mountains, has

contravened section(s) _____ (specify section(s)) of

the Code of Conduct of the Town of Blue Mountains.

3. The particulars of this complaint are:

(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 attach to this form. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B etc. and attach them to this complaint form.)

Protocol Policy for Complaints Related to Council Members and Local Boards

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

DATED this _____ of _____, 2_____
(day) (month) (year)

Signature

Printed Name

DRAFT