



Staff Report

Administration

Report To: Council
Meeting Date: March 5, 2018
Report Number: FAF.18.33
Subject: Integrity Commissioner Report, Complaint dated January 4, 2018
Prepared by: Corrina Giles, Town Clerk

A. Recommendations

THAT Council receive Staff Report FAF.18.33 “Integrity Commissioner Report, Complaint dated January 4, 2018”;

AND THAT Council adopts the Integrity Commissioner’s Report dated February 12, 2018 on the Dismissal of a Complaint Alleging a Violation of the Code of Conduct for Members of Council, as attached to this Staff Report.

B. Overview

The purpose of this report is to attach the Integrity Commissioner’s report in response to the January 4, 2018 complaint received under the Code of Conduct for Members of Council Policy, POL.COR.07.07.

C. Background

In accordance with the “Code of Conduct for Members of Council” Policy No. POL.COR.07.07, as revised, complaints under the Code of Conduct may be submitted to the Clerks Department in written form. Within 48 hours of receipt of the complaint, the Clerk will forward the complaint to the Integrity Commissioner who will process the complaint in accordance with Section 223.3 of the Municipal Act, 2001. The complaint to which this Report applies was forwarded to the Integrity Commissioner, and processed by the Integrity Commissioner in accordance with the Code of Conduct.

The Code of Conduct requires that the Integrity Commissioner shall report the results of the investigation in an open meeting of Council.

D. Analysis

n/a

E. The Blue Mountains Strategic Plan

Goal #4: Promote a Culture of Organizational & Operational Excellence

F. Environmental Impacts

N/A

G. Financial Impact

1. Integrity Commissioner fees.

H. In consultation with

N/A

I. Attached

1. Janet Leiper, C.S., "Report on the Dismissal of a Complaint Alleging a Violation of the Code of Conduct for Members of Council dated February 12, 2018"
2. Code of Conduct for Members of Council, Policy POL.COR.07.07

Respectfully submitted,

Corrina Giles
Town Clerk

Shawn Everitt
Interim Chief Administrative Officer

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**Report on the Dismissal of a Complaint Alleging a Violation of the
Code of Conduct for Members of Council**

for

Town of the Blue Mountains

February 12, 2018

Janet Leiper, C.S.

I. Introduction

[1] This is a report on the outcome of a complaint that members of Council violated the Code of Conduct for Council.

[2] The Town of the Blue Mountains has appointed dual Integrity Commissioners who provide services on a rotating basis concerning the investigation of complaints under the Code of Conduct. In that capacity, I received a copy of a complaint from the Clerk dated January 4, 2018.

[3] The complaint was first assessed for sufficiency and jurisdiction. There were three issues raised by the complaint. First, it contained insufficient objective detail to support an allegation that there had been a breach of the Code of Conduct. Second, it sought an investigation into the actions of members of Staff, who are not subject to the provisions of the Code of Conduct. Finally, the complaint did not allege a breach by any identifiable member of Council. I determined that the complaint be dismissed. These are the reasons for that decision.

[4] A copy of this report has been provided to the complainant. Given that no particular member of Council was the subject of the complaint, it is being brought to Council as a whole for information. The details of the complaint have been anonymized.

II. The Complaint

[6] This was a complaint about a prior workplace matter which involved members of Staff and a member of Council and whether it had been made on the basis of inaccurate statements. The complainant was advised by unnamed others that a member of Council approached members of Council and/or the Mayor about that prior workplace matter. The complainant alleges that the result was that the member of Council “was rebuffed.” The member of Council is not a party to the complaint. The members of Council approached were not identified. Details of the conversations were not provided.

[7] The complainant alleged that the failure of the unidentified members of Council to address the concerns of their colleague was a violation of Section 1 of the Code of Conduct which requires members to “operate from a base of integrity, justice and courtesy” and to “serve their constituents in a conscientious and diligent manner.”

[8] The complainant asked for an investigation into the actions and motives of Staff at the time of the prior workplace complaint. It also asked whether there was “any legitimate reason” for members of Council not to address the concerns.

III. Jurisdiction: The Code of Conduct

[9] The present Code of Conduct for Members of Council (Council Policy, POL.COR.07.07) was revised August 22, 2016 and in accordance with Section 233.3 of

the Municipal Act. It applies to Members of Council but it does not apply to members of Staff.

[10] This complaint seeks an investigation in part, into the actions taken by Staff in relation to an earlier workplace complaint. In that regard, the complaint is outside the jurisdiction of the Code of Conduct.

IV. Sufficiency: Lack of Reasonable and Probable Grounds

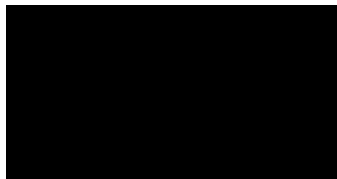
[12] The balance of the complaint refers to an alleged refusal to address concerns of one member of Council. It does not identify any particular member of Council. It provides no details of the conduct which is alleged to have breached the Code, other than in the most general of terms. The person who had the conversation, another member of Council, has not brought the complaint forward. The complaint did not have sufficient detail that could enable a finder of fact to say that if all the allegations were found to be true, that this would be a breach of the Code of Conduct by a specific individual or individuals. This makes it insufficient to require any investigation.

[13] It is reasonable to require that there be some objective evidence to support an allegation that there has been a breach of the Code of Conduct. Although as of the time of writing, this is not yet part of the formal procedures at the Town of the Blue Mountains, I find that this constitutes a fair balance between the interests of the public and the reputation of members of City Council who may be subject to complaints.

VI. Conclusion

[14] As a result of these findings as to classification of the complaint, I did not require a formal response to the complaint by any member of Council and declined to investigate the complaint.

DATED this 12th day of February, 2018



Janet Leiper, C.S.

TOWN OF THE BLUE MOUNTAINS

POLICY & PROCEDURES

Subject Title: Code of Conduct for Members of Council

Corporate Policy (Approved by Council)	<input checked="" type="checkbox"/>	Policy Ref. No.:	POL.COR.07.07
Administrative Policy (Approved by CAO)	<input type="checkbox"/>	By-law No.:	2009 - 86
Department Policy: (Approved by Mgr.)	<input type="checkbox"/>	Name of Dept.:	Administration
Date Approved: December 14, 2009		Staff Report:	A.09.11
Date Revised: August 22, 2016		Staff Report:	FAF.16.84

Policy Statement

Policy direction for the behaviour of members of Council in the performance of their duties and responsibilities as elected community representatives.

Purpose

Subsection 223.2(1) of the *Municipal Act, 2001* authorizes a municipality to establish codes of conduct for members of the council of the municipality and of local boards. Subsection 223.3(1) also authorizes a municipality to appoint an Integrity Commissioner who would be responsible for performing in an independent manner the functions assigned by Council with regard to the application of a Code of Conduct.

The Code of Conduct sets minimum standards for the behaviour of Council members in carrying out their functions. It has been developed to assist Council to:

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.

Application

This policy applies to members of the Council of The Corporation of the Town of The Blue Mountains in the performance of their duties and responsibilities as elected community representatives, as well as members of Town Committees and Local Boards.

Definitions

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

Members – means members of The Blue Mountains Council, Town Committees and Local Boards of the municipality.

Committee - means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more Councils or local boards.

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 does not include The Blue Mountains Police Services Board or The Blue Mountains Public Library Board, a school board, a hospital board or a conservation authority.

Integrity Commissioner -The person appointed by Town Council By-Law 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 and Local Boards.

Procedures

1. Statement of Principle

A written Code of Conduct helps to ensure that the members of Council, Committees and Local Boards of the municipality share a common basis 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 should serve to enhance public confidence that The Blue Mountain's elected and appointed representatives operate from a base of integrity, justice and courtesy.

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 and the public.

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. (ie 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 of Council.

All members whom this Code of Conduct applies to shall serve their constituents in a conscientious and diligent manner. No member shall use the influence of office for any purpose other than the exercise of his or her official duties.

2. Gifts and Benefits

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly to the performance of his or her duties of Office, unless permitted by law. Members shall make decisions based on impartial and objective assessment, free from the influence of gifts, favours, hospitality and entertainment.

Members shall decline any personal gift where the acceptance of such gift would imply a contractual agreement with or obligation to the donor.

This section does not apply to tokens, mementoes, souvenirs, or such gifts or benefits up to and including a value of \$300.00 that are received as an incident of protocol or social obligation that normally accompanies the responsibilities of office. Tokens, mementoes, souvenirs or gifts with a value of greater than \$300.00 shall be the property of the municipality.

No member shall seek or obtain by reason of his or her office any personal privilege or advantage with respect to Town services not otherwise available to the general public and not consequent to his or her official duties.

Exceptions to Section 2 shall be approved by the Mayor and in circumstances when the exception is for the Mayor, the Chair of the Finance and Administration Committee shall approve the exception.

3. Confidentiality

All information, documentation or deliberation received, reviewed or taken in closed session of Council and its Committees and Local Boards are 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.

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:

- Labour relations and personnel matters;
- Information about suppliers provided for evaluation which might be useful to other suppliers;
- Matters relating to the legal affairs of the Town of The Blue Mountains;
- Information that infringes on the rights of others (i.e. sources of complaints where the identity of the complainant was given in confidence);
- Items under litigation or negotiation;

- Price schedules in contract tender or Request for Proposal submissions if so specified;
- Information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*, and
- 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 exclusive. 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*.

4. Use of Town Property

Subject to Section 5, no member shall use for personal purposes any Town property, equipment, 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 exclusive property of the Town of The Blue Mountains.

No member shall use information gained in the execution of his or her duties that is not available to the general public for any purposes other than his or her official duties.

5. 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 licence.

6. Work of a Political/Personal Nature

Members shall comply with Town Policy A.POL.01, Use of Corporate Resources for Election purposes and no member shall use Town facilities, services or property for his or her re-election campaign. Further, no member shall use the services of Town employees for his or her re-election campaign, during hours in which the employees are in the paid employment of the Town.

No member shall use Town facilities, services or property for his or personal business gain. No member shall use the services of Town employees for his or her personal business during the hours in which the employees are in the paid employment of the Town.

7. Conduct at Meetings

Members shall conduct themselves with decorum at Council, Committee and Local Board meetings in accordance with the provisions of the Town's Procedural By-law.

Respect for deputations and for fellow members and staff requires that all members show courtesy and not distract from the business of Council, Committees and Local Boards during presentations and when other members have the floor.

8. Representing the Town

Members shall make every effort to participate diligently in the activities of the Agencies, Committees and Local Boards to which they are appointed. Members are encouraged to attend openings and charity events.

9. Influence on Staff

Members shall comply with Town Policy HR.06.02, Respectful Workplace, and shall be respectful of the fact that staff work for the Town as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate perspective. Members shall be further respectful of the fact that staff carry out 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 of Council.

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

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

12. 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.

13. Harassment

Members shall comply with Town Policy HR.06.01, Discrimination and Harassment-Free Workplace. Discrimination or harassment of another member, staff or any member of the public is misconduct. All persons shall be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment.

Harassment may be defined as any behaviour by any person that is directed at or is offensive to another person on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status and any other grounds under the provisions of the Ontario Human Rights Code.

14. Interpretation

Members seeking clarification of any part of this Code should consult with their solicitor.

15. Complaints

Where a member of Council or local board, an employee of the Town or a member of the public has reasonable grounds to believe that a Member has breached this code, a complaint may be submitted to the Clerks Department in written form. This complaint will be forwarded within 48 business hours to the Town's Integrity Commissioner who will process it in accordance with Section 223.3 of the Municipal Act, 2001.

Confidentiality

1. The Integrity Commissioner shall carry out all enquiries in a manner which will ensure that the individual to whom the complaint relates is treated fairly and all complaints shall be treated as confidential to the extent possible and in accordance with the *Municipal Act*.
2. All records of investigations shall be kept confidential and access limited to those in the Town with a need to know for the purposes of conducting a full investigation.

Investigations

The Integrity Commissioner shall take all steps necessary to promptly investigate the complaint within his or her jurisdiction, including entering any Town office for such purpose and consultation with Town staff with access to all information and records described in subsections 3 and 4 of Section 223.4 of the *Municipal Act* and may retain independent professional services if required.

1. The Integrity Commissioner shall make every effort to complete an investigation within 30 days.
2. If the Integrity Commissioner requires more than 30 days to complete an investigation, the following shall be notified accordingly:
 - a) The complainant;

- b) The individual to whom the complaint relates; and
- c) The Mayor in the case of a complaint concerning another Member; or the three longest serving members of Council in the case of a complaint concerning the Mayor.

Reporting the Results of an Investigation

1. The Integrity Commissioner shall report his/her findings to an open meeting of Council and where the enquiry relates to a local board the report will be submitted to both Council and the local board.
2. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.
3. The Commissioner shall give a copy of the final report to the complainant and the Member whose conduct is concerned 15 days prior to the Council meeting at which it will be considered

Actions by Council

1. In reviewing the final report, Council will determine whether it will impose any of the following penalties on a Member if the Integrity Commissioner reports that it is his/her opinion that the Member has contravened the Code:
 - a) Issue a motion of reprimand
 - b) Suspension of the remuneration paid to the Member in respect of his services as a Member for a period of up to 90 days; or such other recommendation put forth by the Integrity Commissioner
2. All reports to Council by the Integrity Commissioner on the investigation of complaints are public documents.
3. The Integrity Commissioner shall be responsible for ensuring the above procedures are followed with respect to requests for enquiries and for conducting investigations. Council shall be responsible for determining penalties where appropriate.

Protection from Retaliation

Any employee who files a complaint of a contravention of the Code of Conduct will not be subjected to any form of penalty or reprisal provided the complaint is made:

- in good faith; and
- in the reasonable belief of the complainant that a contravention of the Code of Conduct has occurred.

Exclusions

None

References and Related Policies

The *Municipal Act, 2001*, the *Municipal Conflict of Interest Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, Procedural By-law No. 2007-29, Town Policies POL.AD.07.01 through and including POL.AD.07.06, as approved, together with this Policy document and the Town of The Blue Mountains Strategic Plan.

Consequences of Non-Compliance

Penalties described in subsection 223.4(5) of the *Municipal Act, 2001* that a municipality may impose if a member has contravened a Code of Conduct include:

A reprimand.

Suspension of the remuneration paid to the member in respect of his or her services as a member of council or local board, as the case may be, for a period of up to 90 days or such other recommendation put forth by the Integrity Commissioner.

Review Cycle

This policy will be reviewed in each term of Council by the C.A.O. in conjunction with Council.