



## HANDLING COMPLAINTS UNDER YOUR CODE OF ETHICS

### A guide to dealing with alleged contraventions of a council member code of ethics

#### INTRODUCTION

*The Cities Act, The Municipalities Act, and The Northern Municipalities Act, 2010* require municipal councils to adopt a council member code of ethics. Every code of ethics must set out a process for dealing with contraventions of the code. However, the legislation does not provide rules or instructions for setting up the process. This guide describes the key steps of a fair complaint-handling process for dealing with alleged council member conflicts of interest and other contraventions of a code of ethics.

An effective code of ethics complaint-handling process must be highly visible, easily accessible, and valued and supported by the council and administration. Complaints must be responded to quickly; investigated objectively, fairly and confidentially; and resolved at the earliest possible point. Reasonable sanctions should be imposed on council members found to have contravened the code and, where appropriate, reparations should be made to complainants and others found to have been negatively affected by contraventions of the code.

To be effective, a code of ethics complaint-handling process needs to be based on the principles of fairness, accessibility, responsiveness and efficiency.

#### ENABLING COMPLAINTS

Ratepayers, residents, municipal employees and other council members form opinions about whether council members are behaving in ways that are conflicts of interest or other contraventions of a code of ethics. When they start asking questions about what can be done, it is important for the code of ethics complaint-handling process to be widely publicized and accessible. Importantly, it needs to be valued by all staff and council members.

#### VALUING COMPLAINTS

Councils are responsible for ensuring complaints about alleged code of ethics contraventions are addressed fairly, efficiently and effectively. To do this, the complaint-handling process needs to be considered a part of the municipality's overall governance. Collectively and individually, council members are to ensure that the municipality's approach to resolving complaints about council member conduct is citizen-focused. A key contribution council members can make is in setting the right culture, one that values complaints and recognizes the role they play in improving municipal governance. Promoting the value of complaints – along with a proactive approach to effectively resolving, monitoring and learning from them – is an essential part of effective public governance.

Handled well, code of ethics complaints provide important feedback for councils to use to improve and restore positive relationships with citizens who feel let down by poor governance. Handled badly, they erode public confidence and trust.

## PROMOTING THE PROCESS

It is important to make citizens aware of their right to complain about council member conduct. Information about the process should always be easily accessible. The first time a person finds out about it should not be when they ask to make a complaint. Widely publicize your code of ethics complaint-handling process on the municipality's website and in print materials prominently displayed in public areas. Instead of just posting your code of ethics bylaw, consider creating a code of ethics webpage or package of materials that includes all the forms, requirements and information about how to make a complaint and what citizens can expect from the municipality when they submit a complaint.

Promotional materials, whether online or printed, should answer these questions:

- What can be complained about? What can't?
- Who can complain? Fellow council members? Municipal staff? Ratepayers? The public?
- How are complaints made? Is there an informal complaint process to start with? To whom do I submit my formal complaint? What does my formal complaint have to include?
- What happens once I have complained? Who does the investigation? How will frivolous or vexatious complaints be handled? What process does the council use to decide whether the complaint is founded? How will I be informed of the council's decision? What things will be considered in deciding what sanctions should be imposed?

In addition, all municipal staff should be encouraged to direct potential complainants to the process when issues are raised with them.

## TAKING COMPLAINTS

All complaint-handling processes start with someone making a complaint. For a code of ethics complaint process to be fair and effective, making a complaint should be easy and straightforward.

### INFORMAL COMPLAINTS

As a starting point, consider providing for an informal complaint process. This might be as simple as empowering complainants who honestly believe that a council member has contravened the code of ethics to approach the council member or the administration about it. To manage interpersonal issues that might arise, the process could provide for a third party to help facilitate communications between the complainant and the council member.

Sometimes, informal complaint processes are not appropriate or possible, for example, if there is too much animosity between the people involved. Because of this, complainants should not be required to use the informal process before using a formal process.

### FORMAL COMPLAINTS

Getting people to put their complaints in writing on a pre-designed form allows the municipality to guide complainants to submit relevant information focused on specific code of ethics provisions and to avoid submitting irrelevant information. However, there's formal, and then there's formal. An overly complicated complaint form that is replete with legalistic warnings about possible criminal sanctions for making false affidavits simply discourages people from coming forward. False or vexatious complaints need to be effectively addressed, but this can be done during the intake or investigation process.

A good complaint form will get the following information from complainants:

- The name, address and contact information of the person submitting the complaint
- The name of the council member being complained about
- The specific ethical standard(s) the council member is alleged to have contravened, such as:
  - Honesty (truthfulness)
  - Objectivity (making decisions carefully, fairly and impartially)
  - Respect (treating people with dignity and respect, not using derogatory language, etc.)
  - Transparency and Accountability (conducting council business openly unless it is legitimately confidential)
  - Confidentiality (not disclosing confidential or personal information except when legally required or authorized)
  - Leadership and the Public Interest (inspiring trust and behaving in a way that will bear close public scrutiny)
  - Responsibility (acting in accordance with the law, disclosing conflicts of interest, following municipal policies and procedures, not using powers for improper purposes)
- Details about the specific facts and circumstances that the complainant reasonably believes could show that the council member has contravened a specific ethical standard including:
  - Date(s), time(s) and location(s) of the conduct alleged to be a contravention of the code
  - Names, contact information and other details about every person involved and all other witnesses
  - All documents (letters, emails, meeting minutes, reports, policies, procedures, etc.) that the complainant has and are related to the circumstances of the complaint

People should be able to submit a complaint by email, mail, fax, or by bringing it into any municipal location. Consider developing an online form that can be submitted through the municipality's website. Municipalities should also consider accommodating special needs, such as for people with learning difficulties or who are visually impaired. Where appropriate, suitable arrangements should be made, including, for example, having administrative staff help them complete the complaint form.

## RESPONDING TO COMPLAINTS

### FOLLOWING THE PRINCIPLES OF FAIRNESS

Everyone involved in the code of ethics complaint-handling process, from administrative staff, to investigators, to the council members who ultimately make decisions about how to address the contraventions, should be required to conduct themselves to a high standard of fairness, independence and impartiality, confidentiality, integrity and accountability.

#### **Fairness**

Everyone involved in administering, investigating and deciding what to do about a code of ethics complaint should practice and promote fairness in all aspects of the process, including interpersonal interactions and complaint outcomes. This includes, for example, following all related bylaws, policies and procedures, always acting reasonable, not making decisions or taking actions for improper purposes or based on irrelevant grounds, and treating people with courtesy and respect – generally, treating everyone involved fairly.

## **Independence and Impartiality**

Independence and impartiality are essential principles of an effective and credible code of ethics complaint handling system. Every person involved in handling the complaint should be clearly and visibly independent from the people affected by the complaint. The complainant, the affected council member, anyone else affected by the complaint and the public should be able to have confidence knowing that no one involved in handling the complaint has any private or political interest in the outcome.

Everyone involved in administering, investigating and decided what to do about a complaint, must set aside their personal views about the complaint and maintain impartiality. They must avoid actual conflicts of interest but also the appearance of conflicts of interest. This includes refraining from partisan and political activities that create a conflict of interest, or a reasonable perception of a conflict of interest, in the outcome of any complaint investigation. For example, the council member whose conduct is in question should not be involved in any way with the complaint-handling process or the council's decision about how to resolve the complaint, except to provide information about the circumstances of the complaint to whomever is investigating it.

Complainants who are also fellow council members, need to carefully consider whether they would also be in a conflict of interest if they participate in the decision-making process. Could an informed person reasonably conclude that there is a real likelihood of bias? Would a reasonable person believe that the complainant/council member could further his or her private interests by participating in the decision? If the answer to either of these questions is "yes", then that council member should not participate in the council's discussions and decisions about what to do to resolve the complaint.

## **Confidentiality**

Everyone involved must maintain the confidentiality of all communications, documents and other information received while dealing with a code of ethics complaint, including taking all reasonable and proper steps to safeguard the information from being divulged, whether inadvertently or intentionally. Information should only be divulged as is necessary to fairly and fully address the code of ethics complaint.

While an affected council member needs a full and fair opportunity to respond to the information that the council expects to use to review and decide what to do about a complaint, depending on the circumstances it might not be appropriate for the council member to know the identity of the complainant if, for example, the complainant has a fear of reprisal.

## **Integrity**

Given the complaint-handling process is ultimately used in support of the ethical principles in the code of ethics, everyone involved in the process should exemplify the standards of integrity in the code of ethics throughout the entire process. They should carry out their roles in the process honourably, with integrity, and in a manner that engenders respect and confidence in them as individuals and in the municipality. Complainants, affected council members, and the public must never have any reasonable reason to doubt their trustworthiness and integrity.

## PROCEDURAL STEPS

The key steps in the process of responding to a complaint about an alleged contravention of a code of ethics include:

1. Receiving and acknowledging the complaint
2. Notifying the affected council member
3. Notifying the council
4. Trying to resolve the complaint informally
5. Investigating the complaint
  - Clarifying the issues
  - Fact finding
  - Determining the relevant law and policy
  - Applying the law and policy – Making preliminary findings
6. Giving the council member and others an opportunity to comment on preliminary findings
7. Deciding how to deal with the complaint
8. Giving reasons

### **1. Receiving and Acknowledging the Complaint**

Once submitted, all complaints should be received by whomever is initially responsible for responding to them: the clerk, the administrator, an integrity commissioner, or a code of ethics officer or investigator. This should be done within the first few days after the complaint is submitted.

Whomever receives the complaint must initially assess whether it meets the definition of a complaint under the code of ethics. For example, the complainant might have raised more than one issue – one of which is an alleged contravention of a code of ethics, along with other issues that are not. It might be important to reach out to the complainant to clarify the information provided in the complaint.

In any event, the official should acknowledge receiving the complaint and explain to the complainant who will be dealing with it. If the complaint is not a proper complaint under the code of ethics, the official can direct the complainant to other avenues of redress or review that may be available to them.

### **2. Notifying the Affected Council Member**

The council member who is the subject of the complaint is entitled to be notified that a complaint has been made against them. Ideally, this should be done before the rest of the council or anyone else is notified. Depending on the nature of the complaint, the council member may be able to take steps to resolve the complaint informally.

### **3. Notifying the Council**

Though the council has the ultimate authority to decide how to address a proven contravention of its code of ethics by one of its own members, depending on the nature of the allegation, it might not be necessary or fair to formally notify the council about a complaint being received until later in the complaint-handling process – for example, if the complaint was leveled by another council member, or if the complaint is salacious, or ends up being found to be false. This helps maintain the affected council member's confidentiality until the allegations are investigated and confirmed to be true or false.

#### 4. Trying to Resolve the Complaint Informally

Depending on the specifics of the complaint, it might still be reasonable to try to resolve it early and informally, even if the complainant did not start off using the informal process. The main point of early resolution is to resolve a complaint at the earliest opportunity at the most appropriate level. As mentioned earlier, this often means the complainant and the council member meeting face-to-face. For example, if the allegation is that the council member was disrespectful to the complainant, the complaint might be resolved by the council member offering a sincere apology, since it was the complainant's personal interest at stake. On the other hand, if it is alleged that the council member participated in a decision of council to further his or her private financial interests, then informal resolution might not be reasonable since the public's interest is at stake.

#### 5. Investigating the Complaint

A complaint should be investigated if:

- Informal resolution failed to resolve the complaint, or the complainant refuses to take part in the informal resolution process.
- The issues are complex and require detailed investigation.
- The complaint relates to serious, high-risk or high-profile issues.

##### Step 1: Clarifying the issues

It is useful to clarify the issues raised by a complaint before collecting and reviewing any additional information. If an investigator is not clear about the issues, he or she might not gather all the relevant information or might waste time gathering irrelevant information. If the questions are wrong, the answers will be wrong. If the investigator is clear about the issues, they can help focus witnesses on providing relevant (and not irrelevant) information and submissions.

##### Step 2: Fact Finding

Getting the facts right is the most important step in an investigation. If the facts are wrong or irrelevant, the decision is very likely to be wrong or irrelevant. When the council is reviewing the investigator's findings, it needs to be able to decide what is relevant and analyze the relevant information to decide the facts and events upon which its decision will be based. The investigator's assessment of what evidence is valid and relevant is crucial for the council to be able to do this. Here are some of the key steps in the fact-finding process:

**Gathering Information:** This includes information provided by people in interviews or hearings, documents (emails, letters, notes, photographs, videos, etc.) and, sometimes, physical evidence.

**Identifying the Information That is Relevant to the Issues:** Is the information logically connected to an issue arising from the complaint? Does it help to prove or disprove the issue? Information is relevant if it directly relates to the issues.

**Resolving Conflicts or Inconsistencies:** Reliable information stands up to scrutiny. It often (not always) comes from credible sources. Part of dealing with inconsistent information includes deciding how much weight to give certain information and why. Reliable information should be given more weight. For example, if several people give the same information, that information is usually entitled to more weight unless there is a reason to think they are working together. If several people have credibility issues, then giving more weight to the information of one credible individual might be the best decision. As a rule, determine the facts that everyone agrees on first. Then deal with anything directly linked to the facts that everyone agrees on. Finally, deal with contradictory facts, assessing credibility and assigning weight to the information.



### **Step 3: Determining the Relevant Law and Policy**

The rules that are relevant to an alleged contravention of a code of ethics are found in municipal legislation, bylaws (the code of ethics itself and maybe others), the common law, and possibly local policies and practices. In many cases, the only relevant law is the code of ethics bylaw and relevant provisions of the municipal statute (e.g. the conflict of interest rules). Keep this in mind: What is the purpose of the code and what are the provisions of the statute? What are they trying to accomplish? Sometimes, rules and principles set out in the common law (court cases) are relevant. Cases that have similar facts and similar issues are going to be more relevant. Decisions from higher courts are more important than lower courts. Local policies or common practices might also be relevant to a code of ethic complaint. In many cases, it would be wise to get advice from a lawyer about what rules are relevant and how to interpret them.

### **Step 4: Applying the Law and Policy**

The final step is to apply the relevant rules to the findings of fact. If steps 1, 2 and 3 are done well, this step is often straightforward. The conclusion the investigator needs to reach should be clear. If it isn't, the investigator may have missed something in the first three steps.

## **6. Giving the Affected Council Member and Others an Opportunity to Comment on Findings**

For a decision-making process to be fair, it is critical that the affected council member and possibly others who will be substantially affected by the council's decision be given a reasonable opportunity to review the investigator's preliminary findings and conclusions and to provide contrary or alternative relevant information for consideration. Practically, it helps to ensure that the investigator has all the relevant information available. It is also fundamental to a procedurally fair process.

Once the investigator has considered the comments and submissions made by the affected council member and others, the findings and conclusions should be presented to the council in a written report. The report should summarize the complaint as it was received, the issues that were investigated, the findings of fact, the relevant laws and rules, the analysis of how the laws and rules apply to the facts, the investigator's conclusions, and any recommendations to the council about how to resolve the complaint.

## **7. Deciding How to Deal with the Complaint**

Once the council receives the investigator's report, and each council member who is going to participate in making a decision about the complaint has had a reasonable opportunity to review it, the council should convene an in camera session at a special or regular council meeting to discuss the report. The investigator should attend the session to answer questions. Once the council has discussed the report, it should go back into public session and pass a resolution about the complaint.

The resolution should answer the question: Did the council member contravene the code of ethics or not? If the council decides that there was a contravention of the code of ethics, it should also decide how it intends to resolve the complaint. Depending on the circumstances, the council might need to seek further advice before deciding how to resolve a founded complaint. Will it sanction the council member in accordance with its code of ethics? Will it ask the council member to resign (i.e. if the member is found to have been in a conflict of interest)? Will the council apply to the court for an order enforcing the council member's disqualification? In addition, the council may make other decisions intended to remedy the complaint. For example, if the complaint is about a council member voting on a decision in which he or she had a conflict of interest, the council could consider repealing the decision and voting on it again. Or if the complaint was about a council member treating a person inappropriately, the council might want to issue a formal apology.

## **8. Giving Reasons**

In any event, whether the council decides the complaint was founded or not, it should ensure that both the affected council member and the complainant are given reasons for its decision. Depending on the circumstances, this might be accomplished by sharing the investigation report and a copy of the resolutions based on it. Sometimes, however, it will not be appropriate, for reasons of confidentiality, to share the entire investigation report. Instead, it might be appropriate for the investigator or staff member to meet with a person to explain the results and the council's reasons for its decision. However, giving no reasons is never appropriate or reasonable.

The reasons should address all issues raised in the complaint. All points raised by the complainant and the affected council member should be fully addressed. If the investigation identified a contravention of the code of ethics, the response to the complainant should explain what actions the municipality proposes to take to resolve it. What will be done and when? The response to the complainant should explain their right to complain to the Ombudsman if they are still dissatisfied with the outcome of their complaint and include contact information for the Ombudsman.