



Municipal Fact Sheet

FAQs on Handling Complaints Under a Code of Ethics

The following questions were collected based on our webinars on this topic on November 28 & 29 and December 5, 2018. To reduce duplication and ensure questions will apply to municipalities generally (and not just one), we have adjusted the wording.

Please note that the responses provided are based on general principles. We do not provide advice to municipalities on specific decisions because if someone makes a complaint to us about the matter, we must be able to review it in an unbiased manner.

ACCESSING INFORMATION

Q. Where would I find the webinar slides/notes/companion document?

A. This information is available on the [Completed Workshops and Presentations](#) page of our website..

Q. Where would I find the formal complaint form that Paul mentioned during the webinar?

A. Paul referred to the Sample Code of Ethics Bylaw prepared by the Ministry of Government Relations. The complaint form is in Schedule A, which is at the end of the [sample Code of Ethics Bylaw](#).

Q. Do you have a sample complaint policy that municipalities could adopt for municipal complaints (not related to ethics)?

A. The webinar provided information on what a municipality should consider when setting up a complaint process under its Code of Ethics. The same key elements should be included in any complaint-handling policy.

MAKING AND RECEIVING COMPLAINTS

Q. Who can make a complaint under the code of ethics about a council member?

A. The prescribed code of ethics defines the values and standards that the council expects its members of council to comply with in their dealings with each other, employees of the municipalities, and the public. Therefore, council members, employees and the public should be able to make complaints.

Q. What type of conduct or behaviour is covered by the prescribed code of ethics? For example, what if someone swore in public or said something obnoxious on social media?

A. Municipal legislation states that each council has to adopt a code of ethics defining the standards and values that the council expects its council members to comply with in their dealings with each other, employees, and the public. For example, the prescribed code of ethics in the regulations says council members are to treat every person, including the public, with dignity, understanding and respect, and not to use derogatory language towards others. This is the minimum that has to be included in a Code. Every council is free to add specific standards to its own code of ethics bylaw to meet its own needs.

Q. How about if the conduct occurred when the council member was not acting in the role of a council member?

A. A code of ethics for council members is meant give them standards they should adhere to when carrying out their council duties. It does not limit this to specific settings, such as while a member of council is in a council meeting.

Q. If there is a complaint about a council member, and the member resolves the matter informally, do you still need to inform the rest of council about the complaint?

A. A municipality should determine what process it wants to use, who should be responsible for attempting to resolve a matter, and what steps are appropriate in trying to resolve the matter.

Q. When a complaint comes in, should we be asking the complainant if their complaint is formal or informal?

A. If you have established an informal resolution process, whoever takes the complaint can let the complainant know this is available as an option. Your formal process should be set up in such a way that if the complainant chooses the formal route, it will be obvious to the person taking the complaint.

Q. Can you give me an example of an informal vs. a formal complaint?

A. In our experience, complaints that can be resolved informally are typically ones where the allegations are less severe, the facts are not in dispute, and can be addressed promptly. As a general example: if a ratepayer complains about being disrespected by a council member while making a presentation in a council meeting, the council member might be able to approach the ratepayer to discuss it and possibly apologize if an apology is warranted. Whether a complaint can be resolved informally really depends on the circumstances.

Q. Do we have to accept anonymous complaints under the code of ethics bylaw?

A. In principle, there is nothing stopping a council from accepting anonymous complaints. In practice, it might not be possible to effectively investigate an alleged contravention of the code of ethics without knowing who made the complaint, depending on the specific circumstances.

Remember, whether a complaint is valid or not does not always depend on who made it. If an anonymous person drops off a 'brown envelope' with the administrator that discloses facts and allegations which, if proven true, would implicate a council member in a serious code of ethics breach, then it does not seem reasonable to refuse to look into the complaint just because the complainant's identity is unknown.

WORKING THROUGH THE PROCESS

Q. Who should be responsible for investigating complaints and providing a report to council?

A. A municipality will have to determine who would be best suited to carry out such an investigation, and it should be someone who has some investigation skills and who can follow a fair, objective, unbiased investigation process. We note that some municipalities have contracted with companies, used legal counsel, or hired 'integrity commissioners' to undertake investigations and report back to council.

Q. Can the administrator determine if the complaint is valid?

A. The legislation says that the council must adopt a code of ethics bylaw. That bylaw must set out a process for dealing with contraventions of the code. The bylaw should set out clearly who is responsible to make a finding on a complaint. Unless municipal legislation says that a council cannot delegate that duty, then it can delegate it. However, it may not be appropriate for an employee of a municipality to make decisions about a council member.

Q. What if council doesn't believe the complaint is valid?

A. If a council has established rules for dealing with contraventions that require the council itself to determine the validity of complaints, then it can decide a complaint is not valid. If a complainant is unsatisfied with council's decision and thinks that it did not review the complaint in a fair and reasonable manner, the Ombudsman can review the complaint and determine whether the council followed a fair, reasonable and unbiased process in making its decision. If appropriate, we could then make recommendations about how the complaint should have been dealt with so that it was dealt with fairly and objectively.

Q. What if the council member being complained about refuses to leave the room when the complaint is being discussed?

A. It is the responsibility of the council member who is or may be in a conflict of interest to take the appropriate steps. For more details about dealing with potential conflicts of interest, see our conflict of interest [brochure](#).

Q. When a council is "split", how does a council stay impartial? At what point does someone else, other than the council, step in?

A. If for any reason, a council decides that it cannot make a decision about a complaint in a fair, reasonable and impartial manner, it has the authority to make a decision to hire a third-party advisor or consultant to help it.

Q. The slides indicate that decisions are to be made in public. Can you clarify this? We believed the process had to be *in camera* and that only sanctions are to required to be made in public in case it was decided that the complaint is not valid.

A. Municipal legislation states which matters can be discussed *in camera*. It also says that decisions need to be made in public.

Q. What happens if the complainant and/or the council member do not accept the decision? What is the next step?

A. It is important to have a credible investigation process and to provide appropriate and clear reasons for the decisions that are made – but even with these in place, you may still have parties who disagree with the decisions. When developing your process, you can decide whether you will have an appeal mechanism, and if so, how it will work. If one or both of the parties are still dissatisfied once your process is complete, they can contact us to see if there is a role for our Office.

Q. What if council finds that a member has contravened the code of ethics, and decides that a certain action must be taken – but the member refuses to do it?

A. The process a council sets up should address what the consequences should be for a council member refusing to abide by a specifically authorized sanction.

Q. How do you handle a chronic complainer who does not like the answer you give them?

A. Remember that even chronic complainers might bring valid points forward. It is important to provide clear and valid reasons for your decisions. That said, we acknowledge that there are times when individuals engage in unreasonable behaviour. When developing your complaint-handling process, it is a good idea to decide what will be considered unreasonable behaviour and how you will deal with it.

Q. Is it mandatory to appoint an integrity commissioner?

A. No. However, as we suggested in the webinar, whoever investigates complaints should be able to do so in a professional, competitive, fair and unbiased manner.

Q. Can municipal employees or other council members make a complaint to the Ombudsman about the conduct of a council member?

A. Yes, and if you are not sure whether we can take your complaint, you are welcome to contact us. As part of our process, we will ask you questions to determine whether there is a role for our Office. For example, we will want to know what the allegations are, what steps you have taken to resolve the matter, and whether it has gone through your complaint-handling process.

Q. Would the Ombudsman take a complaint that the complainant had not brought to the municipality first?

A. Sometimes. When we receive calls of this nature, we usually refer the complainant back to local processes and invite them to call us back if they have tried this and still think the result is unfair. However, if we decide the local process is not reasonable or not being administered in a reasonable way, or if for some other reason we decide that it would not be fair to expect the complainant to follow through with the local process, we will get involved without referring them back first.