


<b>Procedure Title:</b> Procedure for Complaints under the Council Code of Conduct and Inquiries under the <i>Municipal Conflict of Interest Act</i>			<b>Procedure Number</b> ADM 070-001
<b>Reference</b> <i>Municipal Act, 2001</i> <i>Municipal Conflict of Interest Act, 1990</i> Council Code of Conduct ADM 070	<b>Date Originated (m/d/y)</b> December 2012	<b>Date Revised (m/d/y)</b> March 2014 March 2019	<b>Pages</b> 8
<b>Approval: Chief Administrative Officer</b> 		<b>Point of Contact</b> Director, Corporate Services & City Solicitor	

**Procedure Objective**

All complaints must be addressed in accordance with the procedure set out herein or no action will be taken on the complaint.

**Index**

- 01 Informal Complaint – Code of Conduct
- 02 Formal Complaint – Code of Conduct
- 03 Review and Classification of Code of Conduct Complaints
- 04 Response if Complaint is not a Code of Conduct Violation
- 05 Refusal to Conduct Investigation
- 06 Opportunities for Resolution
- 07 Investigation
- 08 No Complaints or Reports Prior to Election
- 09 Recommendation Report
- 10 No Appeal of Integrity Commissioner's Decision
- 11 Report to Council
- 12 Duty of Council
- 13 Public Disclosure

14 Code Prevails

15 Request for Inquiry under the *Municipal Conflict of Interest Act*

**01 Informal Complaint - Code of Conduct**

01.01 Any resident of Pickering who has observed conduct by a Member that the person believes contravenes the City's Code of Conduct, is encouraged to deal initially with the matter informally by advising the Member that the conduct contravenes the Code and by encouraging the Member to stop the prohibited conduct.

01.02 The following measures could be taken for an informal complaint:

- a) advise the Member that the behaviour or activity appears to contravene the Code of Conduct;
- b) encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behavior or activity;
- c) document the incidents including dates, times, locations, other persons present, and any other relevant information;
- d) request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the Member in an attempt to resolve the issue. If applicable, confirm to the Member your satisfaction with the response of the Member or, if applicable, advise the Member of your dissatisfaction with the response; and,
- e) pursue the matter in accordance with the formal complaint procedure outlined in Section 02, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.

01.03 Individuals are encouraged to pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that they believe violates the Code of Conduct. With the consent of both the complaining individual and the Member, the Integrity Commissioner may participate in any informal process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a complaint. However, it is not a precondition that those making a complaint pursue the informal complaint procedure prior to pursuing the formal complaint procedure set out in Section 02.

## **02 Formal Complaint - Code of Conduct**

- 02.01 Members of the public who identify or witness behaviour or an activity by a Member of Council that they believe is in contravention of the Code of Conduct, may file a formal complaint with the City Clerk no later than 6 months from the date the Complainant became aware of the alleged contravention. Formal complaints shall:
- a) be in writing on the prescribed Code of Conduct Formal Complaint Form (Appendix 1);
  - b) set out the grounds for the belief and the contravention alleged;
  - c) be signed and dated by an identifiable individual;
  - d) include the original or copy of any supporting documentation or other supporting material available to the complainant;
  - e) include the name and contact information of the complainant and any witnesses; and,
  - f) include the name of the alleged violator, the provision of the Code of Conduct allegedly contravened, and the facts constituting the alleged contravention.
- 02.02 The Complaint Form will be disclosed to the respondent and to others who may be involved in carrying out this procedure and enforcing the Code of Conduct.
- 02.03 Receipt of formal complaints will be acknowledged in writing.
- 02.04 Any complaints received after the 6 month timeframe noted above will not be accepted and no action will be taken.

## **03 Review and Classification of Code of Conduct Complaints**

- 03.01 Each formal complaint filed with the City Clerk shall be forwarded to the Integrity Commissioner for review to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code or under the *Municipal Conflict of Interest Act* and within the jurisdiction of the Integrity Commissioner to consider.

## **04 Response if Complaint is not a Code of Conduct Violation or is Outside Jurisdiction of Integrity Commissioner**

- 04.01 If a complaint or a part of a complaint is not, on its face, a complaint with respect to non-compliance with the Code or not within the jurisdiction of the

Integrity Commissioner to process, the Integrity Commissioner may refer the matter to the appropriate person or body as follows:

- a) **Criminal Matter** – 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 if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate Police Service;
- b) **Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)** – if the complaint is more appropriately addressed under *MFIPPA*, the complainant shall be advised that the matter must be referred to the City Clerk for Access and Privacy review; and/or,
- c) **Other Matters** – if the complaint is covered by other policies or legislation, the complainant shall be advised to pursue the matter as considered appropriate by the Integrity Commissioner.

## 05 Refusal to Conduct Investigation

05.01 If upon review of a complaint, or at any time during an investigation, the Integrity Commissioner is of the opinion that the complaint is frivolous, vexatious or not made in good faith, or that there are no or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation or shall discontinue the investigation and shall communicate this position in writing to the Complainant and the Member identified in the Complaint Form. The Integrity Commissioner is under no obligation to prepare a report for any matters that he or she summarily dismisses or determines not to investigate or after an investigation is discontinued.

## 06 Opportunities for Resolution

06.01 Following receipt and review of a formal complaint, or at any time during the investigation, 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, efforts may be pursued to achieve an informal resolution. The formal complaint will be held in abeyance during such time.

## 07 Investigation

07.01 If the Integrity Commissioner determines a formal investigation is required, he/she shall:

- a) provide a copy of the complaint and supporting material to the Member whose conduct is in question with a request that a written response to the allegation be provided within 10 days; and,
  - b) provide a copy of the response provided by the Member to the complainant with a request for a written reply within 10 days.
- 07.02 If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any City documents, files, financial records, correspondence and other data, and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.
- 07.03 The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.
- 07.04 The Integrity Commissioner may elect to exercise the powers under Sections 33 and 34 of the *Public Inquiries Act*, in which case those Sections would apply to the investigation.

## **08 No Complaints or Reports Prior to Election**

- 08.01 If the Integrity Commissioner has not completed an inquiry before nomination day for a regular election, as set out in Section 31 of the *Municipal Elections Act*, the Integrity Commissioner shall terminate the inquiry on that day.
- 08.02 If an inquiry is terminated, the Integrity Commissioner shall not commence another inquiry in respect of the matter unless, within 6 weeks after voting day in a regular election, as set out in Section 5 of the *Municipal Elections Act*, the person or entity who made the request or the Member whose conduct is the subject matter of the request, makes a written request to the Integrity Commissioner that the inquiry be commenced. No inquiry respecting a former Member may be commenced.
- 08.03 Between Nomination Day and Voting Day in a regular election:
- a) There shall be no requests for an inquiry, and the Integrity Commissioner shall not accept any requests for an inquiry, respecting whether a Member has contravened the Code of Conduct;
  - b) The Integrity Commissioner shall not report to Council on whether a Member has contravened the Code of Conduct or the *Municipal Conflict of Interest Act*; and,
  - c) Council shall not consider whether to impose penalties on a Member.

## **09 Recommendation Report**

- 09.01 The Integrity Commissioner shall report to the complainant and the Member generally no later than 90 days after the receipt of the Formal Complaint Form. If the investigation process requires more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date that the report will be available.
- 09.02 Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement, or recommended corrective action. Where the complaint is not sustained, the Integrity Commissioner shall report to Council the result of the investigation.
- 09.03 If upon completion of the investigation, the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred but the Member took all reasonable measures to prevent it, or that the contravention was trivial or committed through inadvertence or 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*.
- 09.04 The City Clerk shall give a copy of the report to the complainant and to the Member whose conduct is concerned.

## **10 No Appeal of Integrity Commissioner's Decision**

- 10.01 There is no appeal from the decision of the Integrity Commissioner.

## **11 Report to Council**

- 11.01 Upon receipt of a report, the Clerk shall process the report for the next meeting of Council.

## **12 Duty of Council**

- 12.01 Council shall consider and respond to the report within 45 days after the day the report is presented to it. This time period may be extended by the length of any intervening summer hiatus.

## **13 Public Disclosure**

- 13.01 The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this Complaint Procedure.

- 13.02 At the time of the Integrity Commissioner's report to Council, and as between the parties, the identity of a complainant and the identity of the person who is the subject of the complaint shall not be treated as confidential information.
- 13.03 All reports from the Integrity Commissioner to Council will be made available to the public.

#### **14 Code Prevails**

- 14.01 The purpose of this Procedure is to provide guidance for the use of the Code of Conduct. In the event of any conflict between the provisions of this Procedure and the provisions of the Code of Conduct, the Code of Conduct prevails.

#### **15 Request for Inquiry under the *Municipal Conflict of Interest Act***

- 15.01 An elector, or any person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*. All requests shall be forwarded to the City Clerk and shall be:
- a) made in writing using the City's Application for Inquiry – Alleged Contravention of the *Municipal Conflict of Interest Act* Form (Appendix 2) and shall be dated and signed by the person making the inquiry;
  - b) the inquiry must include an explanation as to why the issue raised may be a contravention of the applicable sections of the *Municipal Conflict of Interest Act* and any evidence in support of the allegation must be included with the Inquiry Form;
  - c) the Inquiry Form must include the name of the Member alleged to have breached the *Municipal Conflict of Interest Act*, and any other information as required on the form;
  - d) the request for inquiry shall be provided to the Integrity Commissioner who will conduct any such enquiries he/she considers necessary; and,
  - e) the inquiry must be submitted no later than six (6) weeks from the date in which the applicant became aware of the alleged contravention, unless both of the following are satisfied:
    - the applicant became aware of the alleged contravention within the period of time starting six weeks before nomination day for a regular election, as set out in Section 31 of the *Municipal Elections Act*, and ending on voting day in a regular election, as set out in Section 5 of that *Act*; and,

- the applicant makes application within six weeks after the day after voting day in a regular election.
- 15.02 The City Clerk shall forward all requests for inquiry to the Integrity Commissioner who will proceed with reviewing the allegation.
- 15.03 The Integrity Commissioner may request additional information from the applicant, the municipality, or may conduct a public meeting as he/she believes necessary to investigate the inquiry.
- 15.04 The Integrity Commissioner shall complete the inquiry within 180 days after receiving the completed application.
- 15.05 A complainant may at any time abandon a complaint, provided in the judgement of the Integrity Commissioner, the matter does not warrant an application to the courts.

## **Appendices**

- Appendix 1 Council Code of Conduct Formal Complaint Form
- Appendix 2 Application for Inquiry Form – Alleged Contravention of the *Municipal Conflict of Interest Act*



**Council Code of Conduct  
Formal Complaint Form**

**Applicant Information:**

Full Name:

Address:

Phone:

Email:

I, \_\_\_\_\_ (insert full name), of the City of Pickering, in the Province of Ontario, have personal knowledge of the facts set out in this Complaint Form because:

I have reasonable and probable grounds to believe that a member of Pickering City Council namely:

\_\_\_\_\_ (insert name of Member), has contravened section(s) \_\_\_\_\_

of the Council Code of Conduct for the City of Pickering. The particulars of which are as follows:

**[Set out the statements of facts in consecutively numbered paragraphs in the space provided below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, use the attached Schedule A]**

**Names and Contact Information of any Witnesses:**

1.
2.
3.
4.
5.
6.

**Please read the following before signing:**

If the Integrity Commissioner launches an inquiry into the complaint, the content of this form, including the Applicant's identity, may be shared with the Member who is the subject of the complaint. At the end of the inquiry the Integrity Commissioner may issue a public report that includes information about the complaint, including the identities of the parties involved. Only sign this complaint form if you understand and accept the potential for disclosure of your identity and the information provided.

I the undersigned, request that this matter be reviewed by the Integrity Commissioner for the City of Pickering:

Signature of Applicant	Date
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**Schedule A – Continued Information**

Code of Conduct Complaint Form of \_\_\_\_\_ (insert name of Applicant)

Signature of Applicant

Date

Personal Information on this form is collected pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* and will be used to review, assess and potentially investigate the details of the complaint. Any questions related to the collection of this information should be directed to the City Clerk, One The Esplanade, Pickering, ON, L1V 6K7, 905.420.4611.

**Application for Inquiry  
Alleged Contravention of the  
*Municipal Conflict of Interest Act***

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**Applicant Information:**

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Full Name:

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Address:

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Phone:

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Email:

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Applicant is (check one):

- An elector in the City of Pickering
- An individual demonstrably acting in the public interest
- A corporation (including a municipality) demonstrably acting in the public interest

Where the Applicant is a corporation, please identify its authorized representative for purposes of this application:

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**About the Allegation:**

Name of the Member of Council who is the subject of the allegation (complete a separate form for each Member who is the subject of an allegation):

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The Applicant alleges that the Member contravened the following sections of the *Municipal Conflict of Interest Act* (check all that apply):

- Section 5                       Section 5.1                       Section 5.2

The following are the Applicant's reasons for believing that the Member has contravened the above section(s) of the *Municipal Conflict of Interest Act*:

**[Set out the statements of facts in consecutively numbered paragraphs in the space provided on page 2, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, use the attached Schedule A]**

**Application for Inquiry  
Alleged Contravention of the  
Municipal Conflict of Interest Act**

**Reasons:**

**Please read the following before signing:**

If the Integrity Commissioner launches an inquiry into an allegation, the content of this form, including the Applicant's identity, may be shared with the Member who is the subject of the allegation. Information on this form and information obtained during the inquiry, including the identities of the parties involved, may be disclosed in the Integrity Commissioner's published reasons at the end of the inquiry and may be disclosed in an application to the Superior Court. Only sign this application form if you understand and accept the potential for disclosure of your identity and the information provided.

I the undersigned, make application to the Integrity Commissioner for the City of Pickering, for an inquiry to be carried out concerning the alleged contravention as contained in this application:

Signature of Applicant	Date
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**Note: The statutory declaration on page 4 is a mandatory part of the application and required under the *Municipal Act*. It must be declared before a person authorized to take declarations in Ontario (including any Ontario lawyer).**

Personal Information on this form is collected pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* and will be used to consider and potentially conduct an inquiry into the details of the application. Any questions related to the collection of this information should be directed to the City Clerk, One The Esplanade, Pickering, ON, L1V 6K7, 905.420.4611.

**Application for Inquiry  
Alleged Contravention of the  
*Municipal Conflict of Interest Act***

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**Schedule A – Continued Information**

Application for inquiry, alleged contravention of the *Municipal Conflict of Interest Act*  
\_\_\_\_\_ (insert name of applicant)

Signature of Applicant

Date

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Personal Information on this form is collected pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* and will be used to consider and potentially conduct an inquiry into the details of the application. Any questions related to the collection of this information should be directed to the City Clerk, One The Esplanade, Pickering, ON, L1V 6K7, 905.420.4611.

**DECLARATION**

Required by subsection 223.4.1 (6) of the *Municipal Act, 2001*

I, \_\_\_\_\_, (insert full name), of the  
\_\_\_\_\_ (city, town, etc.) of \_\_\_\_\_ (specify  
municipality) in the Province of \_\_\_\_\_ (enter country if outside Ontario)  
solemnly declare that:

- 1. I am the Applicant.
- 1. The Applicant is a corporation and I am its authorized representative.

(Strike out the line above that does not apply and initial the striking out)

- 2. I attest to the fact that the Applicant became aware of the Member's alleged contravention of the *Municipal Conflict of Interest Act* not more than six weeks before today.
- 2. [In a municipal election year:] I attest to the fact that the Applicant became aware of the Member's alleged contravention of the *Municipal Conflict of Interest Act* within the period of time starting six weeks before the fourth Friday of July, and ending on voting day.

(Strike out the paragraph above that does not apply and initial the striking out)

- 3. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the )

\_\_\_\_\_ of \_\_\_\_\_, )

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ )

)  
)  
)

\_\_\_\_\_  
Applicant or Representative

\_\_\_\_\_  
A Commissioner, etc.