

## **“Appendix “B” - Conflict of Interest Investigation Protocol**

Under Section 223.4,1(2) of the *Municipal Act*, a Member, an elector as defined in the *Municipal Conflict of Interest Act*, or a member of the public demonstrably acting in the public interest, may request the IC to conduct an inquiry about whether a Member has contravened Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.

### **1. Request for Inquiry**

- I. A request for an inquiry into a potential contravention of Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* shall be in writing and may only be made within six weeks of the complainant becoming aware of the alleged contravention.

**NOTE:** If both of the following are satisfied, the six week limitation period does not apply: 1) The complainant became aware of the alleged contravention within the period starting six weeks before Nomination Day for a regular election and ending on Voting Day; and, 2) The complainant makes the request for an inquiry within six weeks after Voting Day in a regular election.

- II. All requests shall be signed by an identifiable individual (including the signing officer of an organization).
- III. A request shall set out all reasonable and probable grounds for the allegation that the Member has contravened Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* and shall include a supporting affidavit that sets out the evidence in support of the complaint.
- IV. Staff in the City Clerk’s office, who are commissioners for taking affidavits, are authorized to swear the supporting affidavit.
- V. In a municipal election year, starting on Nomination Day and ending on Voting Day, no requests for an inquiry shall be submitted and the IC shall not report to the City about whether or not a Member of Council contravened the *Municipal Conflict of Interest Act*.

### **2. Initial Review by Integrity Commissioner**

- I. The request shall be filed with the City Clerk who shall forward the matter to the IC for initial review to determine if the matter is, on its face, a complaint with respect to non-compliance with Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.
- II. If the request does not include the required affidavit, the City Clerk shall not forward the request to the IC until one is provided.

- III. If the complaint, including any supporting affidavit, is not on its face, a complaint with respect to non-compliance with Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* or the complaint is covered by other legislation or a complaint procedure under another Council policy, the IC shall instruct the City Clerk to advise the Complainant in writing as follows:
- a. If the complaint is, on its face, an allegation of a contravention of the *Council Code of Conduct*, the IC will investigate it as outlined in **Appendix “A”**.
  - b. If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the Integrity Commissioner shall refer it to the appropriate authorities and advise the complainant that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police service;
  - b. If the complaint on its face relates to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the City Clerk for review.
  - d. If the complaint on its face is with respect to non-compliance with a different Council policy , with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
  - e. In other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the IC to process, with any additional reasons and referrals as the IC considers appropriate.
- IV. The IC shall report annually to Council on complaints made that were determined not to be within the jurisdiction of the IC, but shall not disclose information that could identify a person concerned.

### 3. Integrity Commissioner Investigations

- I. If the IC is of the opinion that the referral of a matter to them is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the IC shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, shall terminate the investigation.
- II. Other than in exceptional circumstances, the IC shall not report to Council on any complaint described in subsection (i) except as part of an annual or other periodic report.

#### 4. Investigation & Settlement

- I. If a complaint has been classified as being within the IC's jurisdiction and not rejected under Section 2 or 3, the IC shall investigate and may attempt to settle the complaint.
- II. The IC shall complete their investigation within 180 days after the date of submission of the complaint.
- III. Section 223.4(2) of the *Municipal Act* authorizes the IC to elect to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*.
- IV. When the *Public Inquiries Act* applies to an investigation of a complaint, the IC shall comply with the procedures specified in that Act and this *Complaint Protocol*, but if there is a conflict between a provision of the *Complaint Protocol* and a provision of the *Public Inquiries Act*, the provision of the *Public Inquiries Act* prevails.
- V. The IC will proceed as follows, except where otherwise required by the *Public Inquiries Act*.
  - a. Serve the complaint and supporting material upon the Member whose conduct is in question with a request that a written response to the allegation by way of affidavit be filed within ten days or such longer period as the IC may authorize in writing; and,
  - b. Serve a copy of the response provided by the Member upon the complainant with a request for a written reply within ten days or such longer period as the IC may authorize in writing.
- VI. Section 33 of the *Public Inquiries Act* allows the IC to require anyone relevant to the complaint to give evidence and to access and examine any information relevant to the complaint and to enter any City work location relevant to the complaint for the purpose of investigation and settlement. The IC is to be provided free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality. The IC may conduct a public meeting to discuss the inquiry.
- VII. Upon completion of the inquiry, the IC may, if they deem it appropriate, apply to a judge under Section 8 of the *Municipal Conflict of Interest Act*, for a determination as to whether the Member has contravened Section 5, 5.1, or 5.2 of the Act.
- VIII. After making their decision as to whether or not to apply to a judge as set out above, the IC will provide the City Clerk, the complainant and the Member with written reasons for the decision. Upon request, the City Clerk will also provide a copy of the written reasons to a member of the public.

- IX The City shall pay any costs incurred by the IC in making its application to a judge as set out above.
- X. The IC may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during their investigation.

## 5. Final Report

- I. The IC's written submission to the City Clerk outlining their decision to not apply to a judge under Section 8 of the *Municipal Conflict of Interest Act*, for a determination as to whether the Member has contravened Section 5, 5.1, or 5.2 of the Act shall constitute the final report on the matter.
- II. Where the IC has applied to a judge under Section 8 of the *Municipal Conflict of Interest Act*, for a determination as to whether the Member has contravened Section 5, 5.1, or 5.2 of the Act, the resulting court decision shall constitute the final report on the matter. The City Clerk shall post this court decision on the City's website.

## 6. Confidentiality

- I. Section 223.5(1) of the *Municipal Act* provides that the IC shall preserve secrecy with respect to all matters that come to their knowledge in the course of their duties.
- II. If the IC provides a periodic report to the municipality on their activities, the IC may summarize advice they have given but shall not disclose confidential information that could identify a person concerned.
- III. The IC may disclose any information that is, in their opinion necessary for:
  - a) the purposes of a public meeting into an inquiry as to whether a Member has contravened Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*;
  - b) in an application to a judge for a determination as to whether a Member has contravened Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*; and,
  - c) in the written reasons provided by the IC as to why they did/did not apply to a judge as to whether a Member has contravened Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.