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May 10, 2017

Our File No.: 133915

Chair Caslin & Members of the Procedural By-law Review Committee  
Regional Municipality of Niagara  
1815 Sir Isaac Brock Way  
Thorold, ON L2V 4T7

Dear Chair Caslin and Committee Members:

**Re: Report on Niagara Region's Revised Code of Conduct and  
Accountability Framework**

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**A. INTRODUCTION**

On December 8, 2016, Council of the Regional Municipality of Niagara ("Niagara Region") passed a resolution that the Procedural By-law Review Committee ("PBRC") review and update Niagara Region's Code of Conduct for Members ("Code of Conduct").

On January 31, 2017, the PBRC approved a recommendation to engage our services to conduct a review of the Code of Conduct in consultation with the PBRC. The review process by the PBRC has been composed of three meetings, which have included:

- a thematic discussion of the Code of Conduct and associated procedures;
- a public meeting conducted by the PBRC to receive feedback and comments from the public on the Code of Conduct; and
- a final meeting at which this report is to be presented to the PBRC for consideration and possible submission to Council.

Council's existing Code of Conduct is Appendix "A" to its Procedural By-law. The existing Code of Conduct was first enacted on January 18, 2013 when Council passed By-law No. 06-2013 to amend the Procedural By-law. It has been revised several times.

**B. BACKGROUND****1. Code of Conduct**

A municipality is entitled to establish a code of conduct pursuant to section 223.2 of the *Municipal Act, 2001*.<sup>1</sup> A code of conduct is the document by which a municipal council establishes and maintains standards of appropriate conduct to foster public confidence and trust. In *Municipal Ethics Regimes*, Gregory J. Levine describes the purpose of a code of conduct as follows:

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<sup>1</sup> S.O. 2001, c. 25, as amended.

May 10, 2017  
Page 2

Codes of ethics in the public sector are intended to promote integrity in public affairs and to provide guides to acceptable behaviour. They are intended to gain and retain public confidence and trust in public institutions. They are intended to help ensure that decision-making is fair, that information is appropriately shared and confidences maintained; that public resources are properly used; and that office is properly attended, acquired and utilized. Codes are about promoting fairness at large, and avoiding corruption and corrupt influences. They are intended to promote a public service imbued with a sense of public purpose and propriety.<sup>2</sup>

As far back as 2010, Council considered it appropriate to establish a code of conduct to set out its policy for the proper conduct of its elected officials in order to ensure that members of Council behaved and conducted themselves in an ethically responsible and acceptable manner.

It is our view that a code of conduct establishes a standard set of requirements to guide members of Council so that they comport themselves in a manner that is acceptable to their residents, taxpayers and all others, and that fosters public confidence in their integrity, honesty and professionalism since they are representatives of Niagara Region.

A code of conduct is not an encyclopaedia and does not, and is not meant to, address in specific and express in detail each and every instance of ethical behaviour. Rather, a code of conduct sets out general standards which serve to guide councillors' behaviour and provide a standard against which the public may view and assess councillors' actions.

## **2. Statutory Authority to Establish a Code of Conduct**

Niagara Region's authority to establish the Code of Conduct is found in the accountability and transparency provisions of Part V.1 of the *Municipal Act, 2001*. These provisions were modeled after those found in Part V of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A.

Part V of the *City of Toronto Act, 2006* was added as a direct result of Justice Denise Bellamy's public inquiry report in the *Commission of the Toronto Computer Leasing Inquiry, Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry*.<sup>3</sup>

Justice Bellamy's report included a large number of recommendations and advocated for an expanded municipal code of conduct, the hiring of a full-time Integrity Commissioner who would report directly to city council, a gift registry and a number of other enhancements to improve the accountability and transparency of government in the City of Toronto (including additional accountability officials).

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<sup>2</sup> Gregory J. Levine, *Municipal Ethics Regimes*, (St. Thomas, Ontario: Municipal World Inc., 2009) at 7.

<sup>3</sup> Denise E. Bellamy, *Commission of the Toronto Computer Leasing Inquiry, Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry* (Toronto: City of Toronto, 2005).

May 10, 2017  
Page 3

The *Municipal Statute Law Amendment Act, 2006*<sup>4</sup> made significant amendments to the *Municipal Act, 2001*. The amendments implemented a recognition of municipalities as responsible and accountable governments and provided them with enhanced general powers and authorities. This additional authority was counterbalanced by the inclusion of Part V.1 – Accountability and Transparency into the statute to ensure that municipalities acted appropriately and responsibly within an ethical and accountability framework.

Part V.1 is proposed to be significantly amended by Bill 68 – Modernizing Ontario's Municipal Legislation Act, 2017. As of the writing of this report, Bill 68 has been ordered for Third Reading and its enactment is expected imminently. We have taken into account the proposed statutory amendments and have attempted to the best of our ability to address issues so as to ensure the proposed Code of Conduct complies with the anticipated amendments to the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*.

While municipalities are granted broad authority to enact by-laws in respect of the “accountability and transparency of the municipality and its operations and of its local boards and their operations” under subsections 10(2) and 11(2) of the *Municipal Act, 2001*, the specific powers in Part V.1 set out the authority for codes of conduct and for integrity officers to carry out their functions.

Section 223.2 of the *Municipal Act, 2001* authorizes municipalities to establish codes of conduct for members of council.<sup>5</sup> The statute does not prescribe the contents of a code of conduct. A municipality is accordingly left to determine the ethical standards to govern the actions and behaviour of its own members of council.

While municipalities now have the authority to establish codes of conduct, it is anticipated that forthcoming amendments to the *Municipal Act, 2001* will impose a mandatory requirement on all municipalities to establish a code of conduct.<sup>6</sup> It is also proposed that the Province will retain onto itself the authority to prescribe certain mandatory contents for codes of conduct for all municipalities.

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<sup>4</sup> S.O. 2006, c. 32, as amended.

<sup>5</sup> Section 223.2 of the *Municipal Act, 2001* provides for the establishment of a code of conduct for members of municipal council:

**Code of Conduct**

**223.2 (1)** Without limiting sections 9, 10 and 11, those sections authorize the municipality to establish codes of conduct for members of the council of the municipality and of local boards of the municipality.

**(2)** A by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence.

<sup>6</sup> Bill 68 proposes to amend section 223.2 of the *Municipal Act, 2001* to:

- (a) require all municipalities to implement codes of conduct for members of council and local boards; and
- (b) reserve onto the Province the ability prescribe certain mandatory requirements that are to be included in a municipal code of conduct.

May 10, 2017  
Page 4

### 3. Niagara Region's Existing Code of Conduct

Niagara Region's original Code of Conduct was originally established on September 24, 2010, when Council passed By-law No. 120-2010, which included an Appendix "A", Code of Conduct for Members of Council.

On January 17, 2013, Council enacted By-law No. 06-2013 to amend the procedural by-law. This amendment consisted of replacing Appendix "A", Code of Conduct for Members of Council, which is the Code of Conduct in its current substantive form.<sup>7</sup>

On October 10, 2013, Council passed By-law No. 109-2013 to amend the procedural by-law, and which repealed By-law No. 06-2013 and again replaced Appendix "A", Code of Conduct for Members of Council. By-law No. 01-2014 once again amending the procedural by-law by including a minor addition to the Code of Conduct.

Council promulgated a Complaint Protocol when it passed By-law No. 91-2013 on August 2, 2013. The Complaint Protocol was later repealed by Council by By-law No. 31-2015.

On July 2, 2015, Council passed By-law No. 65-2015 to amend the procedural by-law, which established the current complaint procedure as outlined in Appendix "A", Code of Conduct for Members of Council.<sup>8</sup>

### 4. The Role and Function of an Integrity Commissioner

An Integrity Commissioner is a statutory official created pursuant to section 223.3 of the *Municipal Act, 2001*:

#### **Integrity Commissioner**

**223.3** (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

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<sup>7</sup> Appendix "A" consisted of the following sections: Purpose of the Code of Conduct; Scope of the Code of Conduct; General Principles; Foster Respect for Decision-making Process; Release of Confidential Information Prohibited; Avoiding Conflict of Interest and Unethical Behaviour; Compliance with the *Municipal Conflict of Interest Act* and Avoidance of Conflicts; Respect, Truth, Honesty and Integrity; Pursuit of Excellence; Gifts and Benefits, and; Complaint Procedure.

<sup>8</sup> The Code of Conduct provides as follows:

#### **Complaint Procedure**

The procedure for filing complaints alleging that a member of Council has contravened the Code shall be governed by the policies of Council as amended from time to time.

Niagara Region's webpage, entitled Code of Conduct for Members of Council, contains various information and documents respecting complaints under the Code of Conduct, including a link entitled "Submit a complaint" that sets out the "Complaint Process for Council Code of Conduct" (see <https://www.niagararegion.ca/government/council/code-of-conduct/submit-complaint.aspx>).

May 10, 2017  
Page 5

- (a) the application of the code of conduct for members of council ...;
- (b) the application of any procedures, rules and policies of the municipality...governing the ethical behaviour of members of council; or
- (c) both of clauses (a) and (b).<sup>9</sup>

The *Municipal Act, 2001* does not explicitly describe an Integrity Commissioner's role. An effective Integrity Commissioner system provides: (1) an advisory service to assist councillors and staff seek advice before they act, and (2) an investigative or enforcement service, to examine conduct alleged to be an ethical breach.<sup>10</sup>

It is important to note that the Integrity Commissioner is an independent statutory officer of the municipality who reports directly to Council. Council cannot direct the Integrity Commissioner in carrying out his or her duties. The role and function of the Integrity Commissioner should be free of any political interference. Furthermore, a code of conduct can only be enforced if an Integrity Commissioner is appointed. We are aware that there are municipalities which have established codes of conduct but have not appointed Integrity Commissioners. It is our view that the scheme of Part V.1 of the *Municipal Act, 2001* provides that the enforcement of a code of conduct can only be effectively undertaken if an Integrity Commissioner is appointed.<sup>11</sup>

#### C. INPUT FROM THE PUBLIC, THE PBRC AND MEMBERS OF COUNCIL

In preparing the proposed Code of Conduct, we took into account the views and input as expressed by the PBRC, members of Council and the public.

As a general theme, the proposition that councillors should be fully accountable to members of the public was universally supported. There was also a consensus among members of the public and members of Council that the new Code of Conduct must incorporate well-defined procedures for dealing with contraventions in order to ensure that the process is fair and transparent, and that all procedures related to the complaint process are clearly laid out for the benefit of members of Council and the public.

There was also broad support for the appointment of an independent Integrity Commissioner.<sup>12</sup>

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<sup>9</sup> An Integrity Commissioner is one of five accountability officers set out in the *Municipal Act, 2001* (which include the municipal Ombudsman, Auditor General, Lobbyist Registrar and Closed Meeting Investigator). Bill 68 proposes that a municipality must either appoint an Integrity Commissioner or make arrangements for the services of an Integrity Commissioner to be provided for its residents.

<sup>10</sup> *Di Biase v. Vaughan (City) Integrity Commissioner* (2016), 55 M.P.L.R. (5th) 173 (Ont. Div. Ct.) at para. 22.

<sup>11</sup> Bill 68 proposes that the services of an Integrity Commissioner will be made *mandatory* for all municipalities in Ontario.

<sup>12</sup> In one instance, it was suggested that the Integrity Commissioner should be an elected position. We note that subsection 223.3(1) of the *Municipal Act, 2001* specifically contemplates that municipal councils "appoint" an Integrity Commissioner. It is not an elected office.

May 10, 2017  
Page 6

## **1. Application of the Code of Conduct**

We heard from both members of the public and members of the PBRC with respect to the applicability of the Code of Conduct to members of Council: should the Code of Conduct apply to members of Council at all times or only when the member of Council is "on duty" (i.e. acting in his or her official capacity as a member of Council at meetings, etc.).

Several members of the public expressed the opinion that the Code of Conduct should apply to members of Council at all times. One individual stated that Council members should be treated like doctors, police officers, social workers and teachers, and accordingly their conduct should be judged at all times. Several individuals noted the difficulty of differentiating between a council member's own "personal" time and the time during which the Council member is acting in his or her official capacity. These individuals were clear that councillors should be held accountable for all comments made publicly, whether in person, at public meetings or through social media, as a council member's representative role is full-time.

We also heard from others who expressed concern that holding a councillor to the Code of Conduct in his or her free time would be unfair. These individuals argued in favour of stipulating that the Code of Conduct only apply to councillors when they are acting in their official capacity. Some members of the PBRC concurred with this view, pointing out that members of Council are paid on a part-time basis.

## **2. Defined Terms**

Several members of the public and PBRC asked that the Code of Conduct include definitions for key terms. Some participants asked that all terms in the Code of Conduct be defined. In general, codes of conduct typically contain *some* defined terms but the definitions are not extensive. We have included some additional defined terms in the proposed Code of Conduct in order to assist with the interpretation of the document.

## **3. Complaint Process**

We heard the public express a desire that political partisanship be kept out of the complaint process, and that unmeritorious complaints be dealt with expeditiously and summarily. The PBRC was very clear that frivolous, vexatious and abusive complaints/requests for investigation should be summarily dismissed and that the Integrity Commissioner should have clear authority to do so.

A number of specific submissions with respect to the complaint process were received throughout the consultation process. It was suggested that the complaint process incorporate or maintain the following:

- establish clear criteria for filing complaints
- include guidance for assessing the validity of a complaint
- provide for a "pre-meeting" or informal complaint process to be followed before the Integrity Commissioner is asked to engage in a formal complaint process

May 10, 2017  
Page 7

- provide an opportunity for the councillor to respond to the complaint before the Integrity Commissioner issues his or her final report
- impose a fixed timeline for the Integrity Commissioner's report to be included on Council's agenda
- stipulate how often the Integrity Commissioner must report to Council with an overview of the number of complaints received, dismissed, outstanding and ruled upon
- impose a time limit within which complaints must be filed from the date of the alleged contravention or breach of the Code of Conduct

We were also provided with a variety of other suggestions specifically addressing the issue of frivolous and vexatious complaints, which were sometimes contradictory. For example, it was suggested by some individuals that the Code of Conduct impose certain requirements or limits on complaints, while others suggested that *all* complaints should be investigated. We heard that the Code of Conduct and complaint process should:

- impose a refundable fee for filing a complaint for the purpose of deterring frivolous complaints
- impose a moratorium on complaints before elections in order to prevent the use of the complaint process for partisan or political purposes
- impose a limit on the number of complaints investigated per year per complainant
- provide that all complaints be treated as legitimate and accordingly that all complaints be fully investigated

Additionally, we received a range of suggestions with respect to the confidentiality of the complaint process. A number of these suggestions conflicted with one another. For example, we were advised that the Code of Conduct and complaint process should:

- prohibit councillors from filing complaints respecting other councillors
- provide that the identity of the complainant be publicly disclosed
- permit anonymous complaints
- provide that an original, un-redacted copy of the complaint be publicly available
- provide that investigations should remain strictly confidential
- provide that the results of the process be made public

Finally, we also received requests to increase public outreach and education as part of the complaint process and ethical accountability framework.

May 10, 2017  
Page 8

#### **4. Form & Structure**

Although the current Code of Conduct contains a majority of the substantive terms and provisions that are typically found in other municipal codes of conduct, the format and structure left something to be desired. It was suggested that the Code of Conduct be presented in a list format instead of in paragraph form. The current Code of Conduct does not contain section numbers which makes it difficult to reference.<sup>13</sup> We have created a numbered listing in the Code of Conduct.

#### **5. Social Media**

With respect to the use of social media by members of Council, we received a range of comments from the community. While there were some persons who commented that the Code of Conduct should permit councillors to enjoy, unabated, their right to freedom of speech, the vast majority recommended that councillors posting on social media must remain professional and respectful, and must not post racist or discriminatory content.

We understand that the Region currently does not have a social media policy for members of Council. We would recommend that Council consider adopting such a policy to further guide regional councillors.

#### **6. Additional Requirements for Members of Council**

It was recommended that a requirement be imposed as part of the Region's accountability and transparency system that Council members undergo periodic mandatory diversity training.

It was also suggested that the Council member's duties under the *Municipal Conflict of Interest Act* be reviewed at the beginning of every meeting in order to remind councillors of their duty to disclose direct or indirect pecuniary interests in matters before Council or committees.

#### **7. Public Meeting**

We received various correspondence forwarded to us directly that expressed a great degree of disappointment and frustration with the public meeting conducted by the PBRC on April 11, 2017.

In particular, a number of persons complained about the strictures imposed at the meeting and the Chair's handling of deputations from the public, including allowing a Council member to address the PBRC as a resident and reserving that member's ability to speak last, as well as allowing the same member and other persons to speak directly to specific instances and investigations when the clear direction to the public at the commencement of the meeting was to refrain from doing so and others were admonished for doing so.

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<sup>13</sup> For example, the downloadable Request for Investigation Form/Affidavit that is available on-line contains a box (in paragraph 2) that provides the complainant with the direction to "specify section(s) of the Code of Conduct" that is alleged to have been contravened. However, the Code of Conduct does not actually number its main provisions. This does not invalidate the Code of Conduct in any way but it certainly does not make it user-friendly for complainants.



May 10, 2017  
Page 9

A number of persons commented that the meeting, purportedly called to receive representations from the public, appeared to be orchestrated to allow a particular view to be propagated.

#### **D. BEST PRACTICES FROM OTHER MUNICIPALITIES**

We reviewed municipal codes of conduct from approximately two dozen municipalities across the province in order to identify best practices from other municipalities. We conducted this review recognizing that no two codes of conduct would be identical since they are intended to reflect local concerns which will differ in each municipality and geographical region.

The inclusion of a purpose statement and/or principles as well as a list of other applicable legislation governing the conduct of members of Council was consistent in the vast majority of other codes of conduct.<sup>14</sup>

Most codes of conduct included a definitions section. The breadth of defined terms varied significantly, with some codes of conduct defining only two or three key terms (usually "child", "parent" and "spouse" to incorporate with definitions under the *Municipal Conflict of Interest Act*) and others providing a more extensive list of definitions including definitions for terms such as "frivolous," "vexatious" and "good faith", as well as "lobbyist", "*in camera*", "confidential information" and "pecuniary interest".

We also noted stipulations in a number of codes of conduct providing that they were to be given "broad, liberal interpretation in accordance with applicable legislation and the definitions set out herein."<sup>15</sup> These codes often emphasized that their contents were "illustrative and not exhaustive." Some codes of conduct explicitly referenced the fiduciary role of councillors as "public trustees."

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<sup>14</sup> It should be noted that the purpose of a preamble and the articulation of key principles is to provide an interpretive guide to the operative provisions of the Code of Conduct and not to create stand-alone obligations. Much like the recitals to a by-law, a preamble establishes a general framework for the understanding of the responsibilities of elected officials under a code of conduct. The principles of a code of conduct are not intended to create operate, stand-alone obligations – in general, the intent of the principles or a purpose clause is to assist with the interpretation of the code of conduct and to provide guidance to both members of council and public.

For example, while many of these codes of conduct state that members of council are governed by other legislation such as the *Criminal Code*, municipalities are obviously not able to deal with *Criminal Code* allegations since these are laws established by the federal Parliament and are therefore outside of a municipality's jurisdiction to enforce.

<sup>15</sup> We note that the principle of "broad and liberal" interpretation of statutes is codified in subsection 64(1) of the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F:

##### **Rule of liberal interpretation**

64 (1) An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.

May 10, 2017  
Page 10

We noted that most codes of conduct include certain standard provisions relating to matters such as the role of members of council, policies about the use of municipal property, rules about election activity and a statement of penalties that may be recommended by the Integrity Commissioner following an investigation into a contravention of the code of conduct.<sup>16</sup>

The codes of conduct we reviewed frequently included a statement providing that "members are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny."

#### **E. PROPOSED CODE OF CONDUCT**

The proposed Code of Conduct (and the accompanying Complaint Protocol) are the result of review and consideration of feedback from residents of Niagara Region, members of Council and the PRBC, in addition to a review of best practices from other municipal codes of conduct.

The proposed Code of Conduct maintains the basic principles of the existing Code of Conduct, but has been reformatted and now includes section numbers and lists where appropriate for ease of reference.

The proposed Code of Conduct is comprised of seventeen sections:

- 1.0 Application
- 2.0 Statement of Principles
- 3.0 Definitions
- 4.0 Responsibilities of Council
- 5.0 General Obligations
- 6.0 The Role of Staff
- 7.0 Regional Property
- 8.0 Gifts and Benefits
- 9.0 Confidentiality
- 10.0 Discrimination and Harassment
- 11.0 Improper Use of Influence
- 12.0 Conflicts of Interest
- 13.0 Council Policies and Procedures
- 14.0 Election Activity

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<sup>16</sup> While subsection 223.4(5) of the *Municipal Act, 2001* specifically enumerates the penalties that Council may impose if a councillor is found to have contravened the applicable code of conduct, a municipality may nevertheless choose to include these penalties in its code of conduct so that the penalties for contravention are easily accessible for councillors and the public.

May 10, 2017  
Page 11

- 15.0 Respect for the Code of Conduct
- 16.0 Penalties for Non-Compliance with the Code of Conduct
- 17.0 Complaint Protocol

Additional language was added to further define and clarify the Code of Conduct's provisions.

Section 3.0 - Definitions provides a number of defined terms within the Code of Conduct. For example, "non-pecuniary interest" has been specifically defined in order to clarify the circumstances under which councillors' non-pecuniary interests are engaged. Other terms such as "conflict of interest," "fiduciary", "frivolous" and "vexatious" have also been defined.

In other instances, certain sections such as sections 4.0 - Responsibilities of Council, 7.0 - Regional Property and 14.0 - Election Activity have been imported into the document, as the inclusion of these provisions appeared to be contained in many, if not most, of the other municipal codes of conduct we canvassed. Inclusion of these sections serves to restate the law from other statutes (such as the *Municipal Elections Act, 1996*) for ease of reference and also ensures that members' obligations are incorporated explicitly and not just by reference.

While we heard conflicting opinions about whether or not the Code of Conduct should apply to members of Council at all times or only while members of Council are acting in their official capacity or when carrying out their council obligations, we opted to maintain Council's approach in the existing Code of Conduct. Accordingly, the proposed Code of Conduct seeks to recognize the representative capacity of elected office and ensure that members of Council act at all times in accordance with the Code of Conduct.

## F. PROPOSED COMPLAINT PROTOCOL

The proposed Complaint Protocol is Appendix 1 to the Code of Conduct.<sup>17</sup>

It sets out a process that is in keeping with the principles of procedural fairness in this context.<sup>18</sup> The intent of the proposed Complaint Protocol is to properly balance the desire to curb frivolous and vexatious complaints while at the same time not imposing policies that will have a chilling effect on complaints. The Complaint Protocol also seeks to

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<sup>17</sup> Bill 68 proposes to authorize Integrity Commissioners to have a role with respect to the interpretation and application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*. The rules relating to this aspect of the Integrity Commissioner's powers are quite different than a complaint under a code of conduct and will require its own separate complaint protocol or procedure. We have reserved the space in the proposed Code of Conduct for Appendix 2 which will be a form of form of Complaint Protocol for requests for inquiries pursuant to the *Municipal Conflict of Interest Act*.

<sup>18</sup> For more information on the content of procedural fairness owed in the context of a code of conduct for municipal councillors, please see the Ontario Divisional Court's decision in *Di Biase v. Vaughan (City)*, *supra* note 10.

May 10, 2017  
Page 12

maintain the Integrity Commissioner's duty of confidentiality found in sections 223.5 and 223.6 of the *Municipal Act, 2001*.

Part A of the proposed Complaint Protocol sets out an informal process that may be pursued by complainants and members of Council, either with or without the involvement of the Integrity Commissioner, before a formal complaint is filed. This informal process is not a precondition or prerequisite to pursuing the formal complaint process.

Section 1 of the proposed Complaint Protocol stipulates the information that must be included when a formal complaint is filed. The proposed Complaint Protocol provides that complaints will be filed with the Clerk, who must in turn forward the complaints to the Integrity Commissioner. The proposed Complaint Protocol also lists and explains the types of complaints that are outside of the Integrity Commissioner's jurisdiction, for example criminal matters or if the complaint relates to a decision of Council or a local board as a whole and not one or more individual members.

The proposed Complaint Protocol prescribes a number of timelines. Pursuant to section 4 of the proposed Complaint Protocol, the Integrity Commissioner shall report annually to Council on all complaints received and on their disposition. Section 10 of the proposed Complaint Protocol provides that the Integrity Commissioner must report to the complainant and the councillor named in the complaint within 90 days of the official receipt of the complaint.

Similarly, sections 8 and 13 of the proposed Complaint Protocol impose a moratorium on complaints being referred to the Integrity Commissioner and Integrity Commissioner's report to Council, respectively, after the fourth Friday in July in a municipal election year.<sup>19</sup>

Section 7 of the proposed Complaint Protocol sets out the investigative steps to be followed by the Integrity Commissioner. In conformity to the principles of procedural fairness appropriate in this context, the Integrity Commissioner is under no obligation to disclose the identity of the complainant or any witnesses unless it is essential for the member of Council to be able to adequately respond to the complaint. The Complaint Protocol contemplates an opportunity for both the member of Council to provide a written response to the allegations and the complainant to provide a written reply to the member's response within a set timeframe.

The proposed Complaint Protocol also provides that if the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a

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<sup>19</sup> Bill 68 proposes to create new subsections 223.4(7) to (9) of the *Municipal Act, 2001* to provide that an Integrity Commissioner is required to terminate all ongoing inquiries, cannot accept new inquiries and cannot report to the council after nomination day for a regular election. The municipality would similarly not be permitted to consider whether to impose penalties for a contravention of the Code of Conduct after nomination day.

Section 5 of the *Municipal Elections Act, 1996* provides that the voting day in a regular election is the fourth Monday in October in an election year (which is every fourth year starting in 2006). Section 31 of the *Municipal Elections Act, 1996* provides that nomination day for a regular election is the fourth Friday in July in an election year.

May 10, 2017  
Page 13

contravention occurred but the councillor took all reasonable measures to prevent it, it was trivial, it was committed through inadvertence or it resulted from an error of judgment made in good faith, the Integrity Commissioner may state so in a report and can take such matters into consideration in making appropriate recommendations pursuant to the *Municipal Act, 2001*.

#### **G. ACCOUNTABILITY FRAMEWORK BY-LAW**

We have also prepared a draft by-law, entitled the Accountability Framework By-law, that essentially establishes the office of the Integrity Commissioner for Niagara Region and the various accountability services he or she is to provide. It is an updated and refreshed version of now-repealed By-law 91-2013 – Integrity Commissioner By-law.

The previous version of now-repealed By-law 91-2-13 included much of the procedural steps and rules that we propose to include in the Complaint Protocol as Appendix 1 to the Code of Conduct. In our view, attaching the Complaint Protocol to the Code of Conduct achieves a greater level of transparency and accessibility, since the procedural rules governing the process would be more readily available to members of Council and the public.

The draft by-law addresses matters related to the selection, appointment, removal and resignation of the Integrity Commissioner as well as a recommended fixed term of office for this statutory officer. We have also added a two-thirds majority requirement for the removal of the Integrity Commissioner during his or her term of office.

#### **H. CONCLUSIONS**

The policies contained in the proposed Code of Conduct and Complaint Protocol are the result of our review of the statutory framework governing the accountability and transparency provisions of municipalities in Ontario, their codes of conducts and complaint procedures and accountability office by-law; a consideration of comments received from members of the public and members of Council; and our analysis of best practices in other municipal codes of conduct and ancillary documents.

As noted above, we have also, to the date of writing, kept apprised of the progress and status of the proposed amendments to the municipal accountability framework in Bill 68. We have provided our recommendations and have drafted the proposed Code of Conduct, the Complaint Protocol and the Accountability Framework By-law in order that they comply with Bill 68 in its current ordered-for-Third-Reading format. We expect that there will be a transition period for the amendments to be implemented so that modifications can be made as needed.

Ultimately, the final form and content of Niagara Region's revised Code of Conduct are at the discretion of Council. However, the policies proposed in the enclosed Code of Conduct, Complaint Protocol and Accountability Framework By-law reflect a concerted effort to balance the wide range of comments, suggestions and approaches that were advanced throughout the review process dictated by Council, while at the same time

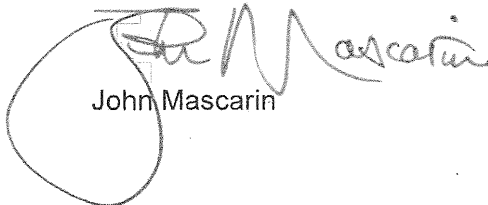
May 10, 2017  
Page 14

taking into account the constraints of the law and the spirit and intent of the policies in Niagara Region's existing Code of Conduct.

We respectfully submit the foregoing.

Yours truly,

AIRD & BERLIS LLP



John Mascarin

JM/MTB/cw

Encl.	Appendix A	-	Code of Conduct
	Appendix B	-	Complaint Protocol: Code of Conduct
	Appendix C	-	Accountability Framework By-law

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# **Appendix A**

## **Code of Conduct**

**REGIONAL MUNICIPALITY OF NIAGARA**  
**CODE OF CONDUCT FOR MEMBERS OF COUNCIL**  
**[MAY, 2017]**

**1.0 Application**

1.1 This Code of Conduct applies to Members of the Council of Niagara Region, including the Regional Chair.

1.2 The purpose of this Code of Conduct is to establish a general standard to provide a common basis for the acceptable conduct of Members and to which all Members are expected to adhere to and comply with. This Code of Conduct augments other laws which Members are governed by and which requires Members to follow the Procedural By-law and other sources of applicable law, including but not limited to:

- *Municipal Act, 2001*
- *Municipal Conflict of Interest Act*
- *Municipal Elections Act, 1996*
- *Municipal Freedom of Information and Protection of Privacy Act*
- *Human Rights Code*
- *Occupational Health and Safety Act*
- *Provincial Offences Act*
- *Criminal Code*

**2.0 Statement of Principles**

2.1 This Code of Conduct is intended to set a high standard of conduct for Members in order to provide good governance and a high level of public confidence in the administration of the Region by its Members as duly elected public representatives to ensure that they each operate from a foundation of integrity, justice, truth, honesty and courtesy.

2.2 The following key statements of principle are intended to guide Members and assist with the interpretation of the Code of Conduct:

- Members shall serve the public in a conscientious and diligent manner;
- Members shall observe and act with the highest standard of ethical conduct and integrity;
- Members shall avoid the improper use of the influence of their office and act without self-interest;



- Members shall act and are expected to perform their functions with honesty, integrity, accountability and transparency;
- Members shall perform their duties and arrange their private affairs in a manner that promotes public confidence and that will bear public scrutiny;
- Members shall be cognizant that they are at all times representatives of the Region and of Council, recognize the importance of their duties and responsibilities, take into account the public character of their function, and always maintain and promote the public trust in the Region; and
- Members will uphold the letter of the laws of Canada, Ontario and the laws and policies adopted by Council from time to time.

### 3.0 Definitions

3.1 The following terms shall have the following meanings in this Code of Conduct:

- (a) “CAO” means the Chief Administrative Officer of the Region;
- (b) “child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;
- (c) “Chair” means the Regional Chair;
- (d) “confidential information” means information or records that are in the possession, in the custody or under the control of the Region that the Region is either precluded from disclosing under the *Municipal Act, 2001* or other applicable legislation, its Procedural By-law or any of its other by-laws, policies, rules or procedures, or that it is required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act* or other legislation;
- (e) “conflict of interest” means a situation in which a Member has competing interests or loyalties between the Member’s personal or private interests and his or her public interests as an elected representative such that it might influence his or her decision in a particular a matter;
- (f) “Council” means the Regional Council for Niagara Region;
- (f) “fiduciary” means the obligation of a person in a position of authority to act on behalf of another, assuming a duty to act in good faith and with care, candour and loyalty in fulfilling this obligation;
- (g) “frivolous” means something that is not worthy of serious consideration, or that is of little or no importance, due to its lack of seriousness or sense;
- (h) “Member” means a Member of the Council for the Region;

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- (i) “non-pecuniary interest” means a private or personal interest that a Member may have that is non-financial in nature and that would be considered by a reasonable person, apprised of all the circumstances, as being likely to influence the Member’s decision in any matter in which the non-pecuniary interest arises, and may include, but is not limited to, an interest that arises from a relationship with a person or entity;
  - (j) “parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;
  - (k) “Region” means the Regional Municipality of Niagara;
  - (l) “spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage;
  - (m) “staff” means the CAO and all commissioners, officers, directors, managers, supervisors and all non-union and union staff, whether full-time, part-time, contract, seasonal or volunteer, as well as agents and consultants acting in furtherance of the Region’s business and interest;
  - (m) “vexatious” means something that is instituted without sufficient grounds and serving only to cause annoyance, frustration or worry.

#### **4.0 Responsibilities of Council**

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- 4.1 Council is responsible for and dedicated to providing good and effective government for the public in the Region in an open, accountable and transparent manner.
- 4.2 A fiduciary relationship exists between the Council and residents of the Region.

#### **5.0 General Obligations**

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- 5.1 In carrying out their duties, Members shall:
- (a) make every effort to act with good faith and care;
  - (b) conduct themselves with integrity, courtesy and respectability at all meetings of the Council or any committee and in accordance with the Region’s Procedural By-law or other applicable procedural rules and policies;
  - (c) seek to advance the public interest with honesty;
  - (d) respect the individual rights, values, beliefs and personality traits of any other person and refrain from imposing their own personal moral and religious beliefs on others;
  - (e) refrain from making statements known to be false or with the intent to mislead Council or the public;

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- (f) accurately communicate the decisions of Council and respect Council's decision-making process even if they disagree with Council's ultimate determinations and rulings; and
  - (g) refrain from making disparaging comments about another Member or unfounded and speculative accusations about the motives of another Member.

## **6.0 The Role of Staff**

6.1 Council as a whole approves the budget, policies and governance of the Region through its by-laws and resolutions. Individual Members do not direct or oversee the functions of the staff of the Region.

6.2 The Region's staff serve Council and work for the Region as a body corporate under the direction of the CAO. Inquiries of staff from Members should be directed to the CAO or to the appropriate senior staff as directed by the CAO. Members shall not publicly criticize staff. Should a Member have any issue with respect to staff such issue shall be referred to the CAO who will direct the matter to the particular staff member's appropriate superior.

6.3 Members shall respect the role of staff in the administration of the business affairs of the Region. Members shall respect that staff:

- (a) provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations and that Members must not falsely or maliciously injure the reputation of staff members whether professional or ethical or otherwise;
- (b) work within the administration of justice and Members must not make requests, statements or take actions which may be construed as an attempt to influence the independent administration of justice and, therefore, Members shall not attempt to intimidate, threaten, or influence any staff member from carrying out that person's duties, including any duty to disclose improper activity; and
- (c) carry out their duties based on political neutrality and without undue influence from any individual Member and, therefore, Members must not invite or pressure any member of staff to engage in partisan political activities or be subjected to discrimination or reprisal for refusing to engage in such activities.

## **7.0 Regional Property**

7.1 Council is the custodian of the assets of the Region. The community places its trust in Council and those it appoints to make decisions for the public good in relation to these assets.

7.2 By virtue of their office or appointment, Members must not use or permit the use of the Region's land, facilities, equipment, supplies, services, staff or other resources for activities other than the business of the Region. No Member shall seek financial

gain for themselves, family or friends from the use or sale of Region-owned intellectual property, computer programs, technological innovations, or other patent, trademarks or copyright held by the Region.

## **8.0 Gifts and Benefits**

- 8.1 Gifts to Members risk the appearance of improper influence. Gifts may improperly induce influence or create an incentive for Members to make decisions on the basis of relationships rather than in the best interests of the Region. A Member shall not accept a fee, advance, gift, gift certificate, cash, hospitality or any form of personal benefit connected directly or indirectly with the performance of his or her duties. A gift, benefit or hospitality provided with the Member's knowledge to a Member's spouse, child, or parent, or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to that Member. Any doubt concerning the propriety of the gift should be resolved by the Member not accepting or keeping it.
- 8.2 For greater clarity, Members shall not accept any gift or benefits in their public capacity other than in the following circumstances:
- (a) compensation authorized by law;
  - (b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
  - (c) a political contribution otherwise reported by law, in the case of Members running for office;
  - (d) services provided without compensation by persons volunteering their time;
  - (e) a suitable token, memento or souvenir received as an incident of protocol or social obligation that normally accompanies the responsibilities of elected office or at a function honouring the Member;
  - (f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or any agencies or subdivisions of them or by the federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity;
  - (g) food and beverages consumed at banquets, receptions or similar events, if:
    - (i) attendance serves a legitimate purpose related to the normal business of the Region,
    - (ii) the person extending the invitation or a representative of the organization is in attendance, and
    - (iii) the value is reasonable and the invitations are infrequent;

- (h) gifts of nominal value (for example, a baseball cap, t-shirt, flash drive, book, etc.); and
- (i) any gift or benefit, if the Integrity Commissioner is of the opinion, before the gift or personal benefit has been accepted, that it is unlikely that receipt of the gift or benefit gives rise to a reasonable presumption that the gift or benefit was given in order to influence the Member in the performance of his or her duties.

## 9.0 Confidentiality

- 9.1 Members receive confidential information from a number of sources as part of their work as elected officials. This includes information received in confidence by the Region that falls under the privacy provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and other applicable privacy laws and information received during closed meetings of Council. Members shall comply with the Region's "Information Access and Privacy Protection Policy".
- 9.2 A Member shall not disclose the content of any confidential information, or the substance of deliberations, of a closed meeting and the Member has a duty to hold any information received at closed meetings in strict confidence for as long and as broadly as the confidence applies. A Member shall not, either directly or indirectly, release, make public or in any way divulge any such information or any confidential aspect of the closed deliberations to anyone, unless authorized by Council or as required by law.
- 9.3 A Member shall not disclose, use or release confidential information in contravention of applicable privacy laws. Members are only entitled to information in the possession of the Region that is relevant to matters before the Council, or a committee. Otherwise, Members enjoy the same access rights to information as any other member of the community or resident of the Region and must follow the same processes as any private citizen to obtain such information.
- 9.4 Members shall not release information subject to solicitor-client privilege, unless expressly authorized by Council or as required by law.
- 9.5 Members shall not misuse confidential information in any way or manner such that it may cause detriment to the Region, Council or any other person, or will benefit themselves or others.
- 9.6 Members shall respect the right to confidentiality and privacy of all clients, volunteers and staff, and should be aware of their responsibilities under applicable legislation, Regional policies, procedures and rules, ethical standards and, where appropriate, professional standards.

## 10.0 Discrimination and Harassment

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10.1 Members shall treat all members of the public, another Member and staff with respect and without abuse, bullying or intimidation and ensure that their work environment is free from discrimination and harassment.

10.2 Members shall not use indecent, abusive or insulting words, phrases or expressions toward any member of the public, another Member or staff. Members shall not make an expression in any manner that is discriminatory to any individual based on the individual's race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability.

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#### **11.0 Improper Use of Influence**

11.1 Members shall not use the influence of their office or appointment for any purpose other than the exercise of his or her official duties in the public interest.

11.2 Members shall not use the status of their position to influence the decision of another person to the private advantage or non-pecuniary interest of themselves, their parents, children or grandchildren, spouse, or friends or associates, or for the purpose of creating a disadvantage to another person or for providing an advantage to themselves.

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11.3 Members who are asked to support charitable activities within the community may do so by accepting honorary roles, lending their names to organizations or events and encouraging public support of events. In doing so, Members shall ensure that they do not have a conflict between their private interest and their duties to the public. Members shall not directly solicit funds nor receive funds for charitable purposes in their role as a Member. Members shall remain at arms-length from financial aspects of external events which they support in their public capacity and shall not participate in decisions concerning the disbursement of funds or determining the beneficiaries of the funds.

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#### **12.0 Conflicts of Interest**

12.1 Members shall avoid conflicts of interest, both pecuniary and non-pecuniary. Members shall take proactive steps to mitigate conflicts of interest in order to maintain public confidence in the Region and its elected officials. Members are encouraged to seek guidance from the Integrity Commissioner when they become aware that they may have a conflict between their responsibilities to the public as a Member and any other interest, pecuniary or non-pecuniary.

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#### **13.0 Council Policies and Procedures**

13.1 Members shall strictly observe and adhere to the policies, procedures and rules established by Council.

#### **14.0 Election Activity**

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- 14.1 Members of Council are required to conduct themselves in accordance with the *Municipal Elections Act, 1996* and any Region policies. The use of the Region's resources, both property and staff time, for any election-related activity is strictly prohibited. Election-related activity applies to the Member's campaign and any other election campaigns for municipal, provincial or federal office.

## **15.0 Respect for the Code of Conduct**

- 15.1 Members shall respect the process for complaints made under the Code of Conduct or through any process for complaints adopted by the Region. Members shall not act in reprisal or threaten reprisal against a person who makes a complaint or provides information to the Integrity Commissioner during an investigation. Members shall interact courteously and respectfully with the Integrity Commissioner and with any person acting under the direction of the Integrity Commissioner.

- 15.2 Members shall cooperate with requests for information during any investigations or inquiries under the Code. Members shall not destroy documents or erase electronic communications or refuse to respond to the Integrity Commissioner where a complaint has been lodged under the Code or any process for complaints adopted by the Region.

## **16.0 Penalties for Non-Compliance with the Code of Conduct**

- 16.1 Where Council receives a report from the Integrity Commissioner that there has been a violation of the Code of Conduct by a Member, Council may impose the following penalties on the Member:

- (a) a reprimand; or
- (b) a suspension of the remuneration paid to the Member in respect of his or her services as a Member for a period up to 90 days.

- 16.2 Council may, on the basis of a recommendation from the Integrity Commissioner, also take any or all of the following actions in furtherance of a reprimand, and require that the Member:

- (a) provide a written or verbal apology;
- (b) return property or make reimbursement of its value or of money spent;
- (c) be removed from or not be appointed to the membership on a committee of Council;
- (d) be removed from or not be appointed as chair of a committee of Council.

## **17.0 Complaint Protocol**

- 17.1 The Complaint Protocol – Code of Conduct is Appendix 1 to the Code of Conduct.

# **Appendix B**

## **Complaint Protocol: Code of Conduct**



## COMPLAINT PROTOCOL

### Council Code of Conduct - Appendix 1

#### PART A - INFORMAL COMPLAINT PROCEDURE

1. Any individual who identifies or witnesses behaviour or activity by a Member that they believe contravenes the Code of Conduct may seek to address the prohibited behaviour or activity themselves in the following manner by following the Informal Complaint Procedure:
  - (a) document the incident(s) where the Member may have contravened the Code of Conduct including dates, times, locations, other persons present, and any other relevant information;
  - (b) advise a third party about the concerns regarding the Member's actions;
  - (c) advise the Member that the behaviour or activity appears to contravene the Code of Conduct;
  - (d) identify to the Member the specific provision(s) of the Code of Conduct that may have been contravened;
  - (e) encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to undertake to refrain from future occurrences of the prohibited behaviour or activity;
  - (f) request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the Member in an attempt to settle or resolve the issue;
  - (g) if applicable:
    - (i) confirm to the Member that his or her response is satisfactory, or
    - (ii) advise the Member that his or her response is unsatisfactory;
  - (h) consider the need to pursue the matter in accordance with the Formal Complaint Procedure set out in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
2. Individuals are strongly encouraged to pursue the Informal Complaint Procedure as the first means of remedying behaviour or activity of a Member that they believe violates the Code of Conduct.
3. 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.
4. The Informal Complaint Procedure is not a precondition or a prerequisite to pursuing the Formal Complaint Procedure set out in Part B.

## PART B - FORMAL COMPLAINT PROCEDURE

### Formal Complaints

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- 1.(1) Any individual who identifies or witnesses behaviour or activity by a Member that they reasonably believe contravenes the Code of Conduct may file a formal complaint to request an inquiry by the Integrity Commissioner as to whether a Member has contravened the Code of Conduct in accordance with the following requirements:
- (a) all complaints shall be in writing on the prescribed form and shall be dated and signed by an identifiable individual;
  - R** (b) the complaint must set out reasonable and probable grounds for the allegation that the Member has contravened the Code of Conduct and must be accompanied by a supporting sworn affidavit setting out the evidence in full in support of the allegation; and
  - A** (c) Council may also file a complaint against any of its Members by passing a resolution requesting the Integrity Commissioner to undertake an inquiry.
- (2) Individuals filing a formal complaint must provide a full and complete record of evidence to the Integrity Commissioner who is under no obligation whatsoever to, but may, seek additional or further information to supplement or complete the evidentiary record to substantiate or support the allegation set out in the complaint.

### Filing of Complaint and Classification by Integrity Commissioner

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- 2.(1) The complaint shall be filed with the Regional Clerk, who shall forward the matter forthwith to the Integrity Commissioner without added comment.
- T** (2) The Integrity Commissioner shall initially classify the complaint to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council procedures, policies or rules as set out in Section 3.

### Complaints Outside Integrity Commissioner's Jurisdiction

3. If the complaint, including the supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint relates to matters addressed by other legislation or complaint procedure under another Region procedure, policy or rule, the Integrity Commissioner shall advise the complainant in writing as follows:

#### ***Criminal Matter***

- (a) if the complaint is, on its face, an allegation of a criminal nature consistent with the *Criminal Code*, the complainant shall be advised that:

- (i) the Integrity Commissioner will refer it to the appropriate police service, or
- (ii) the complainant may pursue it with the appropriate police service if the complainant wishes to pursue any such allegation;

***Municipal Freedom of Information and Protection of Privacy Act***

- (b) if the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter must be referred to the Regional Clerk to deal with under its access and privacy policies under the statute;

***Other Procedure, Policy or Rule Applies***

- (c) if the complaint appears to fall within the scope of another procedure, policy or rule of the Region, the complainant shall be advised to pursue the matter under such procedure, policy or rule with the appropriate Regional official;

***Lack of Jurisdiction***

- (d) if the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner (for example, it relates to a decision of Council or a local board as a whole and not one or more individual Members), the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate;

***Matter Already Pending***

- (e) if the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding, a human rights or workplace harassment complaint or similar process, or to a civil matter that is pending before the courts, the Integrity Commissioner may, in his/her sole discretion and in accordance with legislation, suspend any investigation, in whole or in part, pending the result of the other process;

***Similar Matter Already Pending***

- (f) if the complaint is in relation to a similar matter which is subject to an outstanding complaint before the Integrity Commissioner, the Integrity Commissioner may, in his/her sole discretion, consider the matter in conjunction with the similar matter or deal with it separately, including not undertaking an inquiry if the matter can be adequately addressed in any report and/or recommendations made with respect to the complaint in the similar matter; and

***Municipal Conflict of Interest Act***

- (g) if the complaint is in relation to a contravention of sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, an elector, as defined in section 1 of that statute, or a person demonstrably acting in the public interest may file a formal

complaint to request an inquiry by the Integrity Commissioner as to whether a Member has contravened any of those aforementioned provisions of the statute.

### **Limitation Period**

4. The Integrity Commissioner shall not accept a complaint for which the event giving rise to the complaint occurred or came to the attention of the complainant more than one (1) year prior to the complaint. The complainant must establish that the event giving rise to the complaint occurred and/or came to the complainant's attention within one (1) year of the complaint being filed in accordance with Section 2.

### **Periodic Reports to Council**

- 5.(1) The Integrity Commissioner shall provide an annual report to Council summarizing his or her activities, including a report on all complaints received and on their disposition (including complaints deemed and ruled not to be within the jurisdiction of the Integrity Commissioner).
- (2) Notwithstanding Section 5(1), Council may by resolution request that the Integrity Commissioner provide a periodic report more frequently than once a year.

### **Refusal to Conduct Investigation**

6. If the Integrity Commissioner is satisfied, after considering the information contained in the complaint, that a complaint:
- (a) is frivolous or vexatious,
  - (b) is not made in good faith,
  - (c) constitutes an abuse of process, or
  - (d) discloses no grounds or insufficient grounds for an investigation,

the Integrity Commissioner shall not be required to conduct an investigation and, where this becomes apparent in the course of an investigation, the Integrity Commissioner shall terminate the inquiry and provide notice to the complainant and, if necessary, to the Member.

### **Opportunities for Resolution**

7. Following receipt and review of a formal complaint or at any time during the investigation where the Integrity Commissioner, in his or her discretion, 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.

### **Investigation**

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8. (1) The Integrity Commissioner may proceed as follows, except where the Integrity Commissioner has a full factual record and believes, in his or her discretion, that no additional information is required, where otherwise required by the *Public Inquiries Act, 2009* or where the Integrity Commissioner has not otherwise terminated the inquiry:
    - (a) provide the Member with an outline of the complaint with sufficient particularity to allow the Member to understand the complaint against him or her but shall not have any obligation to disclose:
      - (i) the identity of the complainant, or
      - (ii) the identity of any witnesses set out in the complaint or that are questioned/interviewed by the Integrity Commissioner,unless it is essential for the Member to adequately respond to the complaint;
    - (b) request that the Member provide a written response to the allegations to the Integrity Commissioner within seven (7) days; and
    - (c) provide a copy of the Member's response to the complainant with a request that any written reply be provided by the complainant within seven (7) days.
  - (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may contact and speak to or correspond with any other persons, access and examine any other documents or electronic materials, including any materials on the Region's computers and servers, and may enter any Region work location relevant to the complaint for the purpose of investigation and potential resolution.
  - (3) The Integrity Commissioner may, but is under no obligation, to provide the Member with a draft of the proposed report on the complaint.
  - (4) The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any Member unless the Member has had an opportunity either in person or in writing to comment to the Integrity Commissioner on the proposed finding(s).
  - (5) The Integrity Commissioner may, but is under no obligation, to advise either the Member or the complainant of any proposed sanction or recommendation the Integrity Commissioner may include in the report to Council.
  - (6) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, intimidation, delay, reprisal or retaliation by the Member or any other person encountered during the formal complaint investigation.
  - (7) The Integrity Commissioner shall retain all records related to the complaint and investigation but may provide copies of certain records, in confidence, to Regional administrative staff who are required to ensure that any such records are securely and confidentially retained.

#### **No Complaint Prior to Municipal Election**

9. Notwithstanding any other provision of this Complaint Protocol, no complaint may be referred to the Integrity Commissioner on or after the fourth Friday in July in a municipal election year.

#### **Advice Provided to Member by Integrity Commissioner**

10. (1) Subject to Section 10(2), a Member is entitled to rely upon any written advice given by the Integrity Commissioner to the Member respecting the Code of Conduct in any subsequent consideration of the conduct of the Member in the same matter provided that the Member fully disclosed all relevant facts known to him or her to the Integrity Commissioner and acted in accordance with the written advice provided by the Integrity Commissioner.
- (2) A Member under investigation by the Integrity Commissioner shall not request advice from the Integrity Commissioner as to the Member's rights under the Code of Conduct or generally at law, nor is the Member entitled to rely upon any statement(s) made by the Integrity Commissioner during the course of the investigation that may impact the Member's rights under the Code of Conduct or at law.

#### **Investigation Report**

11. (1) The Integrity Commissioner shall report to the complainant and the Member no later than ninety (90) days after the official receipt of any complaints. If the investigation process is anticipated to or takes more than ninety (90) days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date the report will be available. The Integrity Commissioner may also, at his or her discretion, advise any witnesses or other persons of the date the report will be available.
- (2) 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 and/or any recommended remedial or corrective action.
- (3) The Integrity Commissioner may provide a copy of the report to the complainant and the Member whose conduct has been investigated in advance of the public release of the report, in strict confidence until the report is publicly released. The Member shall, subject to Subsection 11(5), have the right to address the report when it is considered by Council.
- (4) Where the complaint is not sustained, the Integrity Commissioner is not obligated to report to Council on the result of the investigation or any findings although such information may be included in a report or as part of an annual or other periodic report by the Integrity Commissioner.
- (5) If the report of the Integrity Commissioner recommends a penalty that suspends the remuneration paid to the Member, the Member shall not have a right to address the report and recommendation when the matter is considered by Council.

#### **Findings**

12. If the Integrity Commissioner determines that:

- (a) there has been no contravention of the Code of Conduct, or
- (b) a contravention occurred but:
- (i) the Member took all reasonable measures to prevent it,
  - (ii) it was trivial,
  - (iii) it was committed through inadvertence, or
  - (iv) it resulted from 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, 2001*, including but not limited to, a recommendation of no penalty.

### **Report to Council**

13. Upon receipt of a report from the Integrity Commissioner, the Regional Clerk shall place the report on the next regular agenda of Council for consideration by Council and Council must consider the report at that meeting and may accept or refuse the recommendations set out in the report and accept, refuse or vary any penalties or sanctions contained in the report. A report from the Integrity Commissioner may also be considered by Council in advance of its next regular meeting should Council agree to hold a special or other meeting before its next regular meeting to consider the report.

### **No Reports Prior to Municipal Election**

14. Notwithstanding any other provision of this Complaint Protocol, the Integrity Commissioner shall not make any report to Council or to any other person on or after the fourth Friday in July in a municipal election year, until the first official meeting of the newly-elected Council following the election.

### **Duty of Council**

15. Council shall consider and make a determination on the Integrity Commissioner's report at the same meeting at which the report is tabled.

### **Public Disclosure**

- 16.(1) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where it does not interfere with the course of any investigation, except as required by law and as required by this Complaint Protocol.
- (2) The Integrity Commissioner shall retain all records related to the complaint and investigation although copies may be provided to the Region's administrative staff, subject to the duty of confidentiality under subsection 223.5 of the *Municipal Act, 2001*.

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- (3) The identity of the Member who is the subject of the complaint shall not be treated as confidential information in the Integrity Commissioner's report to Council. The identity of the complainant may be disclosed if deemed appropriate and necessary by the Integrity Commissioner or if consented to by the complainant.
- (4) All reports from the Integrity Commissioner to Council shall be made available to the public by the Regional Clerk.

**Delegation**

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17. The Integrity Commissioner may delegate in writing to any person, other than a Member of Council, any of the Integrity Commissioner's powers and duties under Part V.1 of the *Municipal Act, 2001*.
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**Code of Conduct — Formal Complaint Form/Affidavit****AFFIDAVIT OF** \_\_\_\_\_

I, \_\_\_\_\_ (full name), of the (City, Town etc.)  
 \_\_\_\_\_ (municipality of residence) in the Province of  
 Ontario.

**MAKE OATH AND SAY (or AFFIRM):**

1. I have personal knowledge of the facts as set out in this affidavit, because

\_\_\_\_\_  
 \_\_\_\_\_.

(insert reasons e.g. I work for... I attended a meeting at which... etc.)

2. I have reasonable and probable grounds to believe that:

\_\_\_\_\_ (specify name of Member)

a member of the Council of Niagara Region, has contravened section(s) \_\_\_\_\_ (specify section(s)) of the Council Code of Conduct of Niagara Region. The particulars of which are as follows:

(Set out the statements of fact in consecutively numbered paragraphs in the space above, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space please use the attached Schedule A form. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B etc. and attach them to this affidavit.)

This affidavit is made for the purpose of requesting that this matter be reviewed and/or investigated by Niagara Region's appointed Integrity Commissioner and for no other purpose.

SWORN (or AFFIRMED) before me at the )

\_\_\_\_\_ (City, Town etc. of), )

in the Regional Municipality of Niagara on )

\_\_\_\_\_ (date) )

)

\_\_\_\_\_

(Signature)

A Commissioner for taking affidavits etc.

Please note that signing a false affidavit may expose you to prosecution under ss. 131 and 132 or 134 of the *Criminal Code*, R.S.C. 1985, c. C-46 and also to civil liability for defamation.

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# **Appendix C**

## **Accountability Framework By-law**

**THE REGIONAL MUNICIPALITY OF NIAGARA**  
BY-LAW NO. \_\_\_\_ -2017

**A BY-LAW TO ESTABLISH AN ACCOUNTABILITY FRAMEWORK FOR  
NIAGARA REGION**

WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides for the establishment of codes of conduct for members of council and local boards of a municipality and for the appointment of an Integrity Commissioner to carry out certain functions and responsibilities;

AND WHEREAS The Regional Municipality of Niagara will benefit from having a framework that creates a regime to provide for a code of conduct, the appointment of an Integrity Commissioner and the accountability services to be provided by an Integrity Commissioner;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001* authorize The Regional Municipality of Niagara to pass by-laws necessary or desirable for municipal purposes, and in particular paragraph 2 of subsection 11(2) authorizes by-laws respecting accountability and transparency in the municipality and its operations;

THEREFORE the Council of The Regional Municipality of Niagara hereby enacts as follows:

**1. Definitions:**

In this By-law the following terms shall have the meaning indicated:

- (a) **“Accountability Services”** means advice, education, complaint resolution, reporting to Council and matters required for assisting Council in the application of any procedures, rules and policies of the Region governing the ethical behaviour of members of Council;
- (b) **“By-law”** means this Accountability Framework By-law;
- (c) **“Code of Conduct”** means the Niagara Region Code of Conduct for Members of Council established under the authority of subsection 223.2(1) of the *Municipal Act, 2001*;
- (d) **“Complaint Protocol”** means the Complaint Protocol, Appendix 1 to the Code of Conduct;
- (e) **“Council”** means the Council for the Region;
- (f) **“Integrity Commissioner”** means the Integrity Commissioner for the Region appointed under the authority of subsection 223.3(1) the *Municipal Act, 2001*;

- (g) “**Member**” means a person who is a Member of the Council;
- (h) “**Region**” means The Regional Municipality of Niagara;
- (i) “**Regional Clerk**” means the individual appointed by Council to the office of clerk in accordance with section 228 of the *Municipal Act, 2001*;
- (j) “**Year**” means calendar year, unless otherwise indicated.

## 2. Code of Conduct

- (a) Council shall adopt a Code of Conduct for Members of Council in accordance with the provisions of the *Municipal Act, 2001*.
- (b) In recognition of their roles as elected representatives and as Members of Council, Members shall at all times conduct themselves in accordance with the Code of Conduct.

## 3. Integrity Commissioner

- (a) Council shall appoint an Integrity Commissioner by by-law to provide Accountability Services in accordance with Part V.1 of the *Municipal Act, 2001*, sections 5, 5.1. or 5.2 of the *Municipal Conflict of Interest Act*, the Code of Conduct, the Complaint Protocol and this By-law.
- (b) The Integrity Commissioner carries out in an independent manner the duties and responsibilities of his or her office as set out in Part V.1 of the *Municipal Act, 2001*, sections 5, 5.1. or 5.2 of the *Municipal Conflict of Interest Act*, the Code of Conduct, the Complaint Protocol and this By-law.
- (c) The Integrity Commissioner is accountable to and reports directly to Council.
- (d) The Integrity Commissioner is independent of Council and the Region’s administration, subject to the requirements of this By-law.
- (e) The Integrity Commissioner has full carriage and control of, and is fully responsible for, carrying out his or her responsibilities in compliance with the Code of Conduct, the Complaint Protocol, this By-law and all applicable laws except that the Integrity Commissioner is entitled to rely on the services of Regional staff to ensure that complaints are validly received and that adequate reporting to Council is facilitated and arranged.
- (f) The Integrity Commissioner shall liaise with the Regional Clerk, or his or her delegate and any persons that the Regional Clerk assigns responsibility to deal with any matter related to Part V.1 of the *Municipal Act, 2001*, subject to the duty of confidentiality set out in subsection 223.5(1).

**4. Appointment, Removal and Resignation of Integrity Commissioner**

- (a) A simple majority of Council is required for the appointment of an Integrity Commissioner and a two-thirds majority is required for an the extension of term, removal from office or termination for cause of the Integrity Commissioner.
- (b) The Integrity Commissioner shall be appointed for a fixed term of office.
- (c) The term of office for the Integrity Commissioner may be extended by Council in exceptional circumstances.
- (d) The Integrity Commissioner may only be removed from office for cause, prior to the expiry of the term of office, in accordance with this By-law and the procedures established by Council.
- (e) The Integrity Commissioner may resign from office at any time by giving ninety (90) days' written notice to the Council, unless the notice requirement is waived by both parties.

**5. Selection of Integrity Commissioner**

- (a) The selection process for the Integrity Commissioner shall be overseen by a selection panel appointed by the Chair and chaired by the Chair or the Chair's designate.
- (b) The appointment of the Integrity Commissioner shall be recommended to Council by the selection panel.

**6. Term of Office for Integrity Commissioner**

The Integrity Commissioner shall be appointed for a four (4) year non-renewable term of office.

**7. Responsibilities of the Integrity Commissioner**

The Integrity Commissioner will provide Accountability Services to the Region including:

- (i) to provide advice on the application of the Code of Conduct, Regional policies, procedures and rules, the Complaint Protocol and sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*,
- (ii) to conduct inquiries as directed by Council regarding whether a Member has contravened the Code of Conduct or sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*,

- (iii) to provide advice to a Member, upon written request, respecting the Member's obligations under the Code of Conduct, Regional policies, procedures and rules, the Complaint Protocol and the *Municipal Conflict of Interest Act*;
- (iv) to provide opinions on policy matters and make other reports to Council as requested on issues of ethics and integrity;
- (v) to provide educational information and training to Council, to Members and to the public on matters related to the Code of Conduct and issues of ethics and integrity and to the *Municipal Conflict of Interest Act*;
- (vi) to provide general information to members of the public, on request, about the Code of Conduct, the Complaint Protocol and the availability of complaint resolution services or referrals as contemplated by the Complaint Protocol;
- (vii) to maintain custody and control of the Integrity Commissioner's complaint and inquiry/investigation files and, on completion of his or her term of appointment, to retain jurisdiction of any complaints that are made to the Integrity Commissioner during the term of the contract;
- (viii) to provide such other services respecting ethical and integrity matters as assigned by Council or as may be required by the *Municipal Act, 2001*.

## **8. Two-thirds Vote Required for Changes**

- (a) A two-thirds vote of all Council Members is required to pass a motion to amend or repeal this By-law.
- (b) This By-law shall come into force and take effect on the date it is passed, except for such provisions as may be required to come into force and take effect by any transitional provisions included within the *Modernizing Ontario's Municipal Legislation Act, 2017* or any regulations made thereunder.

## **9. Short Title**

This By-law shall be referred to as the "Accountability Framework By-law".