

**THE CORPORATION OF THE TOWN OF LAKESHORE**

**BY-LAW 106-2019**

**A BY-LAW TO ADOPT AN INTEGRITY  
COMMISSIONER COMPLAINT MANAGEMENT  
PROTOCOL FOR COMPLAINTS UNDER THE  
CODE OF CONDUCT FOR COUNCIL, LOCAL  
BOARDS AND COMMITTEES**

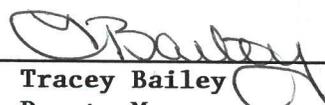
**WHEREAS**, Section 223.1 of the *Municipal Act 2001*, provides that the council of a municipality shall establish an office of an integrity commissioner for The Corporation of the Town of Lakeshore;

**AND WHEREAS**, it is deemed expedient to adopt an Integrity Commissioner Complaint Management Protocol for Complaints under the Code of Conduct for Council, Local Boards and Committees;

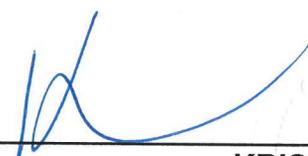
**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF LAKESHORE ENACTS AS FOLLOWS:**

1. That the Integrity Commissioner Complaint Management Protocol for Complaints under the Code of Conduct for Council, Local Boards and Committees, be adopted as contained in the attached Schedule "A" to this By-Law.
2. This By-law comes into force and effect upon passage.

**Read and passed in Open Council this 10<sup>th</sup> day of September, 2019.**

  
\_\_\_\_\_  
Tracey Bailey  
Deputy Mayor

  
**TOM BAIN**  
**MAYOR**

  
\_\_\_\_\_  
KRISTEN NEWMAN  
DIRECTOR OF LEGISLATIVE &  
LEGAL SERVICES

/kdn

**Schedule “A” to By-law 106-2019 of  
The Corporation of the Town of Lakeshore**

**Integrity Commissioner Complaint Management Protocol for Complaints under  
the Code of Conduct for Council, Local Boards and Committees**

**Part 1: Interpretation**

1.1 The following terms are defined as follows:

1.1.1 “Code of Conduct” means the Town of Lakeshore’s Code of Conduct for Members of Council or any successor thereto;

1.1.2 “Complainant” means an individual who makes a complaint as described in section 2 of this protocol;

1.1.3 “Member” means a Council member, Committee member or Board member of the municipal council, a committee of the council or a local board, respectively; and

1.1.4 “Respondent” means a Member who is the subject of the complaint.

1.2 The terms in this protocol have the same meaning as terms in the Code of Conduct unless otherwise defined in this protocol.

**Part 2: Complaint Management**

2. An individual that believes a Member’s behaviour or activity contravenes the Code of Conduct may pursue the complaint procedures described in this protocol.

**Part A: Informal Complaint Procedure**

3. Where a Complainant has reasonable grounds to believe that a Member has committed a contravention, the Complainant is encouraged to pursue the informal complaint procedure as the first means of remedying an alleged contravention. In doing so, the Complainant is encouraged to pursue the following steps:

3.1 Inform the Member that the Complainant believes that the Member’s behaviour or activity constitutes a contravention.

- 3.2 Encourage the Member to acknowledge and stop the activity or behavior that the Complainant believes constitutes a contravention and to avoid the activity or behavior in the future.
- 3.3 Document the incidents including dates, times, locations, witnesses to the activity or behavior, and any other relevant information and request that the Integrity Commissioner assist in an informal discussion with the Member about the alleged behaviour or activity in an attempt to resolve the Complaint.

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 of issues relating to an informal complaint. However, the informal process is not a precondition to pursuing the formal complaint procedure outlined in Part B.

- 3.4 Where applicable, the Complainant may confirm to the Member the individual's satisfaction with the response of the Member, or, if applicable, inform the Member of the individual's dissatisfaction with the response.
- 3.5 Failing a resolution of the complaint, consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
- 3.6 Where the Integrity Commissioner is contacted by a Complainant with an informal complaint, the Integrity Commissioner will notify the Clerk of the general nature of the complaint for the purpose of contract administration as time permits.

#### **Part B. Formal Complaint Procedure**

4. Where a Complainant has reasonable grounds to believe that a Member has committed a contravention, the Complainant may file a formal complaint by pursuing the following steps and by paying the prescribed user fee, if any, to the Town:
  - 4.1 The Complainant shall be made in writing using the Complaint Form (attached as Appendix "A") and dated and sworn before a commissioner of oaths. The Complainant must provide the following information in the Complaint Form:
    - 4.1.1 the section(s) of the Rules that the Complainant believes were or are being contravened by the Member; and
    - 4.1.2 the background, including date(s), time(s) and location(s) of the activity or behaviour, supporting documentation, details and names of all persons involved, and names of any witnesses.

4.2 The Complainant may submit the complaint to the Integrity Commissioner by email, mail (marked confidential and in care of the Clerk) or personal delivery, along with any relevant documents or other evidence in support of the complaint.

In the event that a complaint is sent to or left at the Town office, the Clerk shall ensure that it is delivered unopened (or, if left unsealed, is placed in an envelope without being read and then sealed and delivered) to the Integrity Commissioner.

4.3 A complaint is deemed to be received by the Integrity Commissioner when it is acknowledged, clarified, amended or resubmitted as the case may be.

The complaint, or part of it, lies outside the Commissioner's jurisdiction if the subject matter of the complaint, or part, relates more properly to another law or to other complaint process or dispute resolution procedure.

4.4 Where the Integrity Commissioner receives a formal complaint and as time permits, the Integrity Commissioner will notify the Clerk of the general nature of the complaint for the purpose of contract administration and to secure the required administrative resources.

4.5 A Complainant may withdraw the complaint at any time.

#### ***Powers of the Integrity Commissioner***

4.6 Upon receiving a complaint, the Integrity Commissioner shall conduct a preliminary review of the complaint within 5 business days to determine if the complaint falls within the jurisdiction of the Integrity Commissioner to investigate. During the preliminary review, the Integrity Commissioner may:

4.6.1 invite a Complainant to clarify;

4.6.2 invite a Complainant to amend or resubmit a complaint with additional information.

4.7 If for any other reason the complaint or part is not within the jurisdiction of the Integrity Commissioner then the Complainant shall be so informed and given such additional reasons and/or referred to such agencies or authorities as the Integrity Commissioner considers appropriate.

4.8 The Integrity Commissioner may commence an investigation of a complaint, or part of it, that on its face contains allegations that, if substantiated, would constitute a contravention, and then only in relation to such provision(s).

- 4.9 The Integrity Commissioner has the discretion to decline to commence an investigation if, on its face, the complaint appears to be frivolous, vexatious or has not been made in good faith.
- 4.10 If, on its face, the complaint relates more properly to another law or to other complaint process or dispute resolution procedure then the Integrity Commissioner shall respond to the Complainant in writing as follows:
- 4.10.1 If the complaint alleges or may constitute an offence under the Criminal Code or another regulatory statute, then the Complainant shall be informed that such allegation, if the Complainant wishes to pursue it, may be brought to the attention of the police or other applicable regulatory body.
- 4.10.2 If a complaint is more appropriately managed pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, then the Complainant shall be informed that the matter falls under the responsibility of the Clerk, and advised of the Clerk's phone number, email address and a link to the Town's Freedom of Information Web page.
- 4.10.3 If the complaint is more appropriately managed pursuant to a Town policy or procedure, then the Complainant shall be informed of the dispute resolution policy available under the policy or procedure.
- 4.10.4 If the complaint or part relates to a matter that is already subject to another process, including but not limited to a court proceeding under the *Municipal Conflict of Interest Act*, a human rights complaint, an arbitration hearing, or another court or tribunal proceeding, then the Integrity Commissioner may, in the Integrity Commissioner's sole discretion, suspend any investigation pending the result of the other process.
- 4.11 The Integrity Commissioner may terminate an investigation if, at any time, the Commissioner forms the opinion that the complaint is frivolous or vexatious or that the Complainant is not acting in good faith.

If the Complainant is a Member, where the Integrity Commissioner declines to commence an investigation or terminates an investigation on the grounds that the complaint is frivolous or vexatious or that the Complainant is not acting in good faith, the Integrity Commissioner may report that fact to Council and name the Complainant Member.

- 4.12 At any time after receipt of a formal complaint, where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without starting or continuing an investigation and both the Complainant and the

Respondent agree, the Commissioner may pause or delay the investigation and make efforts to achieve an informal resolution.

- 4.13 If a complaint is withdrawn, settled or informally resolved, the Integrity Commissioner shall not report to Council except as part of the annual report.
- 4.14 Except where the Integrity Commissioner exercises powers pursuant to the *Public Inquiries Act*, the investigation process shall be as follows:
- 4.14.1 Without identifying the Complainant, the Respondent or the circumstances, the Integrity Commissioner shall give notice to the Clerk that an investigation is being commenced.
- 4.14.2 The Integrity Commissioner shall, within 2 business days, give the Respondent notice of the complaint (including a copy of the complaint and all supporting documentation) and invite the Respondent to provide a written response within 7 business days.
- To protect the right of a full and fair opportunity to respond, the Respondent shall be given a copy of the entire complaint, including the Complainant's name but not the contact information of the Complainant.
- In exceptional circumstances and only where the Integrity Commissioner is satisfied that a fear of intimidation or reprisal is well-founded, the Integrity Commissioner may redact information that would identify the Complainant or a witness, provided that the Respondent receives sufficient disclosure to understand the allegation(s) and to receive a full and fair opportunity to respond.
- 4.14.3 Within three business days after receiving the Respondent's reply, if any, the Integrity Commissioner shall send it to the Complainant.
- 4.14.4 After reviewing the complaint, the response and the reply, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials, and may enter any Town work location relevant to the complaint for the purpose of investigation and potential resolution.
- 4.14.5 Within 45 calendar days after the complaint is received, or such longer period as the Integrity Commissioner deems necessary, the Commissioner shall draft a report containing the findings of the investigation, including draft conclusions about whether the Respondent committed a contravention and, where applicable, a draft recommended penalty, and submit it to the Respondent for representations and comments within 7 business days.

4.14.6 Within 10 business days after receiving the representations and comments of the Respondent, and taking them into account, the Integrity Commissioner shall finalize the report and deliver it to the:

- (a) Clerk, for delivery to Council.
- (b) Complainant; and
- (c) Respondent.

4.14.7 The Integrity Commissioner has the discretion to extend any of the time frames and deadlines in this protocol. If, however, a report will not be completed within 90 days of the receipt of a complaint, the Integrity Commissioner shall provide an interim report to Council (and the Respondent and Complainant). The interim report shall describe the complaint without identifying the Respondent and the Complainant, explain the delay and state when the final report is expected to be ready.

4.14.8 The Integrity Commissioner may make interim reports to Council where necessary and as required, including to address any instances of interference, obstruction, delay, reprisal or retaliation associated with an investigation.

***Report to Council and Recommendation***

5. Upon receipt of a report, the Clerk shall place it on the next regular agenda of Council.

6. Where a report states the Integrity Commissioner's opinion that a Respondent has committed a contravention:

6.1 The Integrity Commissioner may include a recommended penalty in the report.

6.2 If the Integrity Commissioner is of the opinion that the contravention was trivial or committed through inadvertence or an error of judgment made in good faith, or occurred despite the Respondent taking reasonable measures to prevent it, then the report shall so state.

6.3 The Respondent shall have the right of reply when the report is considered by Council. Despite the foregoing, where the report recommends that the Respondent pay a pecuniary penalty, the Respondent may not take part in the discussion, voting on any question in respect of the matter and attempting in any way before, during or after the Council meeting to influence the voting on any such question. In that circumstance the Integrity Commissioner shall invite the Respondent to deliver a reply to the Integrity Commissioner concerning the recommendation and the Integrity Commissioner shall submit that reply to the Clerk for delivery to Council.

6.4 If the disclosure of information about a complaint or investigation makes it impossible, in the Integrity Commissioner's opinion, to conclude a fair and proper investigation that respects the rights of the parties then the Integrity Commissioner shall report that opinion to Council.

6.5 If the Integrity Commissioner is of the opinion that the investigation has revealed the need for an amendment to the Code of Conduct, Procedure By-law or other policies or procedures or this Protocol then the report shall so state.

### **Part C: Confidentiality**

7. To ensure that a complaint is investigated, settled or informally resolved in a fair manner that respects the rights of the Complainant, the Respondent and witnesses, until the final report is delivered to Council, the parties shall maintain the confidentiality of the complaint, process, and information exchanged during the complaint process.

8. If a Complainant discloses information about a complaint or investigation then the Integrity Commissioner may take that fact into account in exercising discretion before declining to commence or terminating an investigation on the ground that the complaint is frivolous or vexatious or the Complainant is not acting in good faith.

9. The following are prohibited by Members:

9.1.1 Obstruction of the process set out under this protocol;

9.1.2 Premature disclosure of information about a complaint or investigation; and

9.1.3 Reprisal or retaliation against an individual participating in a complaint process pursuant to this policy.

### **Part D: Restrictions**

10. If the Integrity Commissioner has not completed an investigation of a complaint before nomination day for a regular municipal election, the Commissioner shall terminate the inquiry on that day. If an inquiry is terminated for this reason, the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election, the person or entity who made the request or the member or former member whose conduct is concerned makes a written request to the Commissioner that the inquiry be commenced.

11. The following rules apply during the period of time starting on nomination day for a regular election, and ending on voting day in a regular election:

- 11.1 There shall be no requests for an inquiry about whether a Member has contravened the code of conduct applicable to the Member. The Integrity Commissioner shall not accept any such requests.
- 11.2 The Integrity Commissioner shall not report to the Town or local board about whether, in his or her opinion, a member of council or of a local board has contravened the code of conduct applicable to the member.
- 11.3 The Town or local board shall not consider whether to impose the penalties prescribed by the *Municipal Act, 2001* for contraventions of the Code of Conduct.

**Part E: Annual Reports to Council**

12. The Integrity Commissioner shall report to Council annually pursuant to the by-law establishing the Office of the Integrity Commissioner. In the annual report, the Commissioner shall report on all complaints received and on their disposition (including complaints not falling within the jurisdiction of the Integrity Commissioner and other complaints that were not investigated). Unless otherwise provided in this protocol, a complaint that has not been the subject of a public report to Council will be described in the annual report without identifying the Complainant or the Respondent.







4. I acknowledge that at the time of the Integrity Commissioner's report to Council in this matter, and as between the parties, the identity of a complainant and the identity of the person who is the subject of the complaint shall not be treated as confidential information.

5. This Affidavit is made for the purpose of requesting that this matter be reviewed and for no other purpose.

Signature of complainant: \_\_\_\_\_

Sworn/Affirmed before me at the [City, Town, etc. of] in the Province of Ontario on \_\_\_\_\_ [Day] of \_\_\_\_\_ [Month] \_\_\_\_\_ [Year]

Signature of commissioner: \_\_\_\_\_

Print name of commissioner: \_\_\_\_\_

**Please note:** Swearing a false affidavit is a criminal offence and may expose you to civil liability.

Personal information collected on this form and through the Integrity Commissioner Complaint Process is collected pursuant to the *Municipal Act, 2001* for the purpose of processing your complaint. Questions regarding the collection of your information may be directed to the Lakeshore Town Clerk at 519-728-1975 x 231 or [clerk@lakeshore.ca](mailto:clerk@lakeshore.ca).