

TOWNSHIP OF SIOUX NARROWS - NESTOR FALLS POLICY & PROCEDURE MANUAL

Category: Human Resources

**Topic: Integrity
Commissioner Inquiry
Procedure**

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POLICY STATEMENT

The Township of Sioux Narrows – Nestor Falls has appointed persons as Integrity Commissioners and authorized the execution of agreements with the appointees. Persons who have complaints to the municipality with respect to the conduct of Council should know that their complaints are being taken seriously and should have an expectation that the complaints will be acted upon accordingly. At the same time, members of Council, volunteers and staff need to be protected from complaints that are false, “vexatious” or being brought forward with ulterior motives.

PURPOSE

The purpose of this policy is to establish a process for reviewing and responding to complaints that is fair and thorough and meets the requirements of the Statutory Powers Procedure Act.

DEFINITIONS

“**Act**” means the Municipal Act, 2001, cited in the first recital to this By-law.

“**By-law**” means the By-law respecting Integrity Commissioners for the Council of the Corporation.

“**Clerk**” means the person, regardless of his or her title, who fulfils the role of the clerk for the Municipality

“**Closed Meeting**” means a meeting to which members of the general public are excluded from attending.

“**Code of Conduct**” means the rules and principles set out in the Township’s Council Code of Conduct.

“**Corporation**” means The Corporation of the Township of Sioux Narrows – Nestor Falls.

“**Complainant**” means a person who advises the Clerk that he or she believes that one or more Members of Council have contravened the Code of Conduct, or that the Council or a committee of the Council has held a Closed Meeting without following the applicable rules.

“**Council**” means the municipal council for the Corporation.

“**Frivolous**” means not having any serious purpose or value.

“**Integrity Commissioner**” means a person appointed to the role of integrity commissioner as contemplated in the Act.

“**Member of Council**” means any elected or appointed member of the Council, including the Mayor.

“**Policy**” means the policy for Integrity Commissioner Investigation Procedure.

“**Vexatious**” means undertaken with the intention of causing annoyance, frustration, or worry, and for no other purpose.

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FUNCTIONS

The Integrity Commissioner(s) reports to council and is/are responsible for performing in an independent manner, the functions assigned by the Municipality with respect to any of the following [Section 223.3 (1) of the Municipal Act]:

1. The application of the Code of Conduct for Members.
2. The application of any procedures, rules and policies of the Municipality and Local Boards governing the ethical behaviour of Members.
3. The application of sections 5, 5.1 and 5.2 of the MCI (Municipal Conflict of Interest Act) to Members.
4. Requests from Members for advice respecting their obligations under the Code of Conduct applicable to the Member.
5. Requests from Members for advice respecting their obligations under a procedure, rule or policy of the Municipality or of the Local Board, as the case may be, governing the ethical behaviour of Members.
6. Requests from Members for advice respecting their obligations under the MCI.
7. The provision of educational information to Members, the Municipality and the public about the Municipality's Code of Conduct for Members and about the MCI.

GUIDELINES

Part A: Initial Steps by Complainant:

1. Options: A person who has either:
 - a) observed one or more Members of Council participating in activities or behavior that he or she feels contravenes the Corporation's Code of Conduct; or

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- b) observed Council or a committee of Council close a portion of a meeting to the public in a manner that he or she feels contravenes the Act;

is welcome to either address the matter in (a) with the individual(s) directly, or the matter in (b) with the Council at an upcoming Council meeting, or to submit a formal complaint. The Complainant may pursue a formal complaint without having first advised the individuals or Council, as the case may be.

2. Direct Address: Where a person wishes to deal with the matter directly, this paragraph applies.
 - a) To address a Code of Conduct complaint directly, each Member of Council whose activity is involved should be spoken to individually, and privately. The speaker should reference the activity or behaviour, should advise the Member of Council that he or she believes that it contravenes the Code of Conduct and should encourage the Member of Council to cease the offending behavior or activity. If a resulting discussion resolves the issue to the satisfaction of the offended person, he or she should communicate that fact to the Member of Council involved.
 - b) To address a Closed Meeting complaint directly, the Complainant should request a deputation before an upcoming Council meeting in accordance with the rules associated with deputation requests in the Corporation's Procedure By-law.
3. Formal Complaint Requirements: Any person may submit a complaint in writing to the Corporation alleging that one or more Members of Council have acted in a manner which is contrary to the Code of Conduct or alleging that Council (or a committee of Council) closed a meeting to the public illegally. The complaint document must set out the Complainant's reasonable and probable grounds for his or her belief that the contravention occurred. Verbal and/or anonymous complaints will not be accepted. A person with literary or other disabilities may request the assistance of others in preparing a written complaint, however, he or she must either sign the complaint or make his or her mark upon it once it is completed, to acknowledge it as his or her own. Where the complaint is not signed before an employee of the municipal office, the complainant's signature or mark must be witnessed by an adult person who is capable of attesting to the fact that the signature or mark is indeed that of the person's that it is purporting to belong to, and that the person who so marked the form did so without undue influence, and while having the mental capacity to do so.

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4. Formal Complaint Submission: The written complaint shall be provided to the municipal office. Forms attached, as Schedule A (Conduct) and Schedule B (Municipal Conflict of Interest Act – Affidavit) are provided. If it is submitted electronically such that the recipient does not have an original signature, the complainant must otherwise (i.e. by mail or delivered copy) provide the original, bearing original signatures (and Commissioner Stamp, if applicable). If the Complainant wishes to have his or her identity concealed from anyone other than the Clerk or the Integrity Commissioner, he or she should so indicate (check applicable box on the submission form). Upon receipt of the original document, the municipal staff shall open a file. No action will be taken until the original document is received. Once that occurs, the process in paragraph 5 (and beyond) can commence.

Part B: Secondary Steps by Clerk and Integrity Commissioner:

5. Content Review: When a complaint is received by the municipality it shall be forwarded by the Clerk to the Integrity Commissioner. The Integrity Commissioner will conduct an initial review of the request to ensure that it is a proper allegation of a breach of the Code of Conduct. If, after the initial review, the Integrity Commissioner determines that the request is not properly an allegation of a breach of the Code of Conduct, there are insufficient grounds to believe that there has been a contravention of the Code of Conduct, or the Integrity Commissioner, determines that an inquiry is not appropriate for any other reason in the Integrity Commissioner's reasonable discretion, the Integrity Commissioner will dismiss the request. When determining if an inquiry is appropriate, the Integrity Commissioner may, among other things, take into account the date of the alleged breach. Further, the Integrity Commissioner shall, in his or her discretion, dismiss the request if, upon initial review, the Integrity Commissioner determines that the Requestor has not supplied adequate information. If the Integrity Commissioner does not dismiss a request for this reason, the Integrity Commissioner will advise the Requestor that he or she must supply additional information and shall take no further action until the Requestor supplies such information.

In either case, the written communication from the Integrity Commissioner to the Complainant will include a copy of the Policy outlining the investigation process.

The steps in paragraphs 6 and 7 may occur simultaneously.

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6. Copy to Member of Council: The Clerk shall provide a photocopy of the Code of Conduct complaint document to each Member of Council who is the subject matter of the complaint. The Clerk shall provide a photocopy of the Closed Meeting complaint document to all Members of Council and to each member of a committee that is the subject matter of the complaint. In each case, the document shall be redacted to delete the personal information of any person who has not consented to the use of his or her personal information in this step of the investigative process.
7. Engagement of Integrity Commissioner: Where the Corporation has appointed more than one Integrity Commissioner, each of them will be contacted by the municipality to see whether or not he or she is available to investigate and report on the complaint. If there is more than one Integrity Commissioner who is able and willing to serve, they may be asked to consult with one another to agree upon which of them will undertake the work.

Alternatively, or in circumstances where they cannot agree, the Clerk shall make a determination, based on the individual's expertise and/or fee submission, which of them will be selected to undertake the work. The Clerk shall advise any Integrity Commissioners who are not retained of this fact and shall provide the retained Integrity Commissioner with confirmation of the retainer, contact information for all involved, and an unreacted copy of the complaint document. In the case of a Closed Meeting complaint, the Clerk shall provide the Integrity Commissioner with the information relating to the meeting that is the subject matter of the complaint, including a copy of the resolution (if any) passed to close the meeting, a copy of the agenda, copies of any reports or other documents reviewed in closed session, whether circulated with the agenda or provided later, including at the meeting, and copies of the minutes of the meeting, if same have been finalized. The Clerk shall advise the Complainant and the involved Members of Council, separately, in writing, of the identity of the Integrity Commissioner who has been assigned to the investigation.

Part C: Investigation by Integrity Commissioner

8. Written Response to the Complaint Document: The Integrity Commissioner shall, as a first step, require those Members of Council named in a Code of Conduct complaint, or the Mayor or Committee Chairperson if a Closed Meeting complaint is involved, to respond to the complaint document in writing, setting out which parts of it, if any, are agreed to as factual, and which parts of it, if any are denied, together with any facts statements that the Integrity Commissioner should review in the course of the investigation, and copies of any other documents that might have relevance.

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The request for written response shall occur within fifteen (15) days of the receipt by the Integrity Commissioner of his or her retainer. The person whose response is required is to be provided a minimum of ten (10) days to respond. The Integrity Commissioner shall take into consideration any information that comes to his or her attention, such as absence from the area for vacation, etc., and shall set all time limits, and permit extensions of time limits upon request, accordingly, at his or her discretion in order to provide fairness to the parties involved.

The Integrity Commissioner shall provide the Complainant with the written response document and any accompanying documents or materials that the Integrity Commissioner agrees are relevant to the matter. Personal information and/or information identifying a Complainant who wishes to remain confidential must be redacted from the disclosed document.

The Integrity Commissioner may require a person to re-write or re-word a document if the required redaction will make the document impossible to understand. If it is impossible to provide a useable document without disclosing the identity of a person who does not wish to be identified, the Integrity Commissioner may request the person to re-consider his or her position in that regard. If the investigation cannot reasonably proceed without identifying the Complainant (or a material witness) against his or her wishes, Section 13 applies.

9. Clarifying Questions: The Integrity Commissioner shall undertake interviews, either in person or through telecommunication, with the Complainant, any named witnesses, any involved Members of Council, and/or the Mayor/Committee Chair for the purposes of clarification of the points outlined in the complaint document and the written response to the complaint document. If there is any doubt as to the identity of the person with whom the Integrity Commissioner is speaking or corresponding, or any concern that the person is being unduly influenced by another person in providing answers, the Integrity Commissioner can insist that interviews be conducted in person.

At any time during this process, should the Integrity Commissioner require it, the Complainant, any material witness or any responding individual may be asked to swear an oath as to the accuracy of the facts that he or she is relating.

If the investigation cannot reasonably proceed without identifying the Complainant (or a material witness) against his or her wishes, the Integrity Commissioner may terminate the investigation, and Section 13 applies.

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The Integrity Commissioner may speak with anyone relevant to the complaint and may access and examine any of the information described in Subsections 223.4(3) and (4) of the Act. He or she may enter any of the Corporation's work locations relevant to the complaint for the purposes of investigation and reporting.

10. Interim Report if Necessary: If the Integrity Commissioner is unable to provide his or her report on the conclusion of the investigation within ninety (90) days of his or her having received the retainer, he or she shall provide the Clerk with an interim report that sets out the work undertaken to date, the work still required, and an anticipated time frame within which the final report will be available. This report shall be presented at a public Council meeting and must be prepared with that in mind to protect any confidential information as required.

11. Confirmation of Complaint – Report Process: Where the Integrity Commissioner, after concluding his or her investigation, determines that the complaint has been sustained, either wholly or partially, he or she will provide a written report to Council for inclusion at an upcoming Council meeting. Where the complaint involved a Committee of Council, the Clerk shall provide a copy of the Report to the Committee Chair. In all cases, the Clerk shall provide a copy of the Report to the Complainant. This report shall be presented at a public Council meeting and must be prepared with that in mind to protect any confidential information as required.

With respect to the Municipal conflict of Interest complaints if, after completing the investigation the Integrity commissioner believes it is appropriate, they may apply to a judge for a determination as to whether the member has a conflict of interest. After deciding whether or not to apply to a judge, the Integrity Commissioner must publish written reasons for the decision.

In this Report, the Integrity Commissioner shall outline his or her conclusion, and detailed reasons for that conclusion. Conclusions and reasons shall also be included for any portions of the complaint that were not sustained.

The Report shall also include a recommendation for Council's consideration as to an appropriate penalty for the contravention, with detailed reasons for that recommendation.

With respect to Code of Conduct complaints, the two penalties authorized by the Act are (a) a reprimand to the offending Member(s) of Council; or (b) suspension of the remuneration paid to the offending Member(s) of Council for a period of up to ninety (90) days. Other penalties that the Integrity Commissioner may recommend, recognizing that they are not enforceable, include:

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- Removal of the person from committee and/or committee chair duties;
- Request of the person to pay compensation/damages;
- Request return of property or a reimbursement of the value of property; or
- Request that an apology be tendered, identifying to whom the apology should be directed and the mechanism by which it should be delivered.

With respect to Closed Meeting complaints, the Act does not authorize any penalties where a violation has been confirmed. Rather, the Report from the Integrity Commissioner shall include any recommendations that he or she sees fit to make in the circumstances. These may include amendments to the Procedural By-law, amendments to notice provisions, recommendations relating to record-keeping, etc.

In making recommendations, the Integrity Commissioner shall consider the importance of corrective action that will deter a recurrence of the event that instituted the complaint.

Where the Integrity Commissioner submits a report under this Section, the Clerk shall place it on the agenda for a meeting of Council that will be held within thirty (30) days of the date that the Clerk received the report.

The report shall be kept confidential until such time as it has been provided to all Members of Council and to the Complainant.

The Council shall make a decision with respect to the recommendations in the report and shall provide its decision, in writing, with reasons, to the Integrity Commissioner and to the Complainant within sixty (60) days of having considered the report at a public Council meeting.

12. No Contravention – Report Process: Where the Integrity Commissioner, after concluding his or her investigation, determines that the complaint has not been sustained, he or she will provide a written report to Council for inclusion at an upcoming Council meeting. Where the complaint involved a Committee of Council, the Clerk shall provide a copy of the Report to the Committee Chair. In all cases, the Clerk shall provide a copy of the Report to the Complainant. This report shall be presented at a public Council meeting and must be prepared with that in mind to protect any confidential information as required.

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For clarity, this section also applies in circumstances where the Integrity Commissioner has determined that a contravention of the Code of Conduct did occur, however, the Member or Members of Council involved took all reasonable measures to prevent it or committed the contravention through inadvertence or through an error in judgement that had been made in good faith.

This Report will state the Integrity Commissioner’s reasons for concluding in the manner that he or she did and will not contain recommendations. Where appropriate, recommendations may be provided

to individual Members of Council independently of the report to the Council, and those Members of Council (if any) who receive them may or may not choose to implement them.

This Report is a public document from the time that it is provided to the Clerk.

13. Termination of Investigation – Report Process: The Integrity Commissioner may unilaterally terminate the investigation in any one or more of the following circumstances:

- a) In circumstances where it is impossible to properly and fairly investigate the complaint without disclosing the identity of a person who will not consent to that disclosure;
- b) In circumstances where the Integrity Commissioner requested the Complainant, or a material witness to the Complainant’s allegations, to provide evidence under oath or affirmation, and that person refused to do so;
- c) The Integrity Commissioner determines that the complaint is Frivolous, Vexatious, or not made in good faith; or
- d) The Integrity Commissioner determines that there are no grounds, or there are insufficient grounds for an investigation.

The Complainant may not unilaterally terminate the investigation. If a request is made by a Complainant to the Clerk to terminate the investigation, the Clerk will notify the Integrity Commissioner of the request, and the Integrity Commissioner will consider that request and determine whether or not to terminate the investigation under this Section. If the request is made by the Complainant directly to the Integrity Commissioner, he or she will so advise the Clerk, immediately upon receipt of the request, and will consider it and determine whether or not to terminate the investigation under this Section.

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Where the Integrity Commissioner has determined that the investigation should be terminated, he or she shall so advise the parties, in writing, including, with detail the reason for the termination. This Report shall be presented at a public Council meeting and must be prepared with that in mind to protect any confidential information as required.

14. Re-opening a Terminated Investigation: If the investigation was terminated under Section 13(a) or (b), the Complainant may submit a written request within ten (10) days of the date that the investigation was terminated, requesting that it be re-opened if the person referenced in clause (a) is now willing to allow his or her identity to be disclosed or a person referenced in clause (b) is now willing to provide the oath or affirmation.

Part D: General Provisions

15. Chronic Complaining: This policy allows the Integrity Commissioner to make a determination as to whether or not a complaint is Vexatious, Frivolous or made in bad faith. If a complaint is characterized in this fashion, that characterization may not be applied to subsequent complaints submitted by the same Complainant without an initial investigation unless:
- a) that Complainant, or a member of his or her immediate family, has submitted two or more complaints within the past twelve (12) months that have all been determined to fall under one of those categories; or
 - b) the new complaint, submitted by a member of the immediate family of a prior Complainant, which is a repeat of one of the prior complaints that was determined to fall within one or more of those categories, whether in identical language or re-worded;
 - c) the Complainant, or a member of his or her immediate family, has already submitted three (3) complaints within the past twelve (12) months.

This section is permissive in nature. The Integrity Commissioner may dismiss any complaint meeting the criteria in paragraphs 15(a), (b) or (c) upon receipt of it, without investigation, however, that decision is his or hers to make in his or her sole discretion. The Integrity Commissioner may, upon reviewing the complaint document, determine that an investigation should be commenced.

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16. Records Management: The Integrity Commissioner is a municipal officer when acting under this policy, regardless of the location of his or her place of work. After his or her report has been submitted, the Integrity Commissioner shall provide his or her complete file to the Clerk as a municipal record. The record shall be considered confidential and shall be retained by the Corporation for no fewer than eight (8) years, after which time it may be destroyed in accordance with the Corporation's records retention by-law and policies. The Integrity Commissioner shall not keep any record of the file off of the premises of the Corporation, in any format. The Integrity Commissioner shall not destroy any records associated with the file, in any format, at any time, whether during the investigation and reporting process or afterwards.

17. Access: The Integrity Commissioner shall be permitted full and complete access to the file record of any matter that he or she investigated for research or reference purposes, at any time prior to its destruction. That access will be provided at the Corporation's office. Neither the original nor any copy of any document or other format of record in the file shall be copied or removed from the Corporation's property. This clause applies whether or not the Integrity Commissioner involved continues to be retained by the Corporation as such.

18. Process Control: The parties to a complaint may at any time request that the Integrity Commissioner look at relevant documents or interview relevant witnesses, however, the Integrity Commissioner need not agree to any such request. The Integrity Commissioner retains full control over the methods of his or her investigation, subject to acting reasonably and adhering to the processes set out in this Policy.

19. Process Improvement Suggestions: After completing an investigation, the Integrity Commissioner may recommend to the Clerk improvements to this policy which will facilitate efficiency and expediency in future investigations. The Clerk will report to the Council on the recommendations of the Integrity Commissioner in this regard within thirty (30) days of his or her receipt of them for Council's consideration.

Schedule A - Integrity Commissioner Request for Inquiry - Code of Conduct

This form will be used to request the Integrity Commissioner to conduct an inquiry of an alleged Code of Conduct contravention.	Submit completed complaint in a sealed envelope to: Request for Inquiry Re: Code of Conduct Township of Sioux Narrows – Nestor Falls P.O. Box 417, Sioux Narrows, ON, P0X 1N0
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Requestor's Information

Last Name	First Name
Street Address	Municipality
Postal Code	Phone
E-mail	Name of Member

Details of Alleged Code of Conduct Contravention

Date(s) of alleged Code of Conduct contravention	
Provision(s) of Code of Conduct allegedly contravened	
Facts constituting the alleged Code of Conduct contravention (please use separate pages if required)	
Names(s) and contact information of any witnesses	
<input type="checkbox"/> I agree to release my identity with regard to this request <input type="checkbox"/> I do NOT agree to release my identity with regard to this request	
Signature	Date Year/Month/Day

For Office Use Only

Date Received	Request Number	Comments

Personal information contained on this form is collected under the authority of the *Municipal Freedom of Information and Protection of Privacy Act* and will be used for the purpose of requesting an inquiry.

Schedule B - Integrity Commissioner Application for Inquiry - Municipal Conflict of Interest Act

AFFIDAVIT OF (insert full name) I, _____ (insert full name),
of the (insert Township, etc) _____ (Municipality of residence)
in the Province of Ontario.

MAKE OATH AND SAY (or AFFIRM) THAT:

1. I have personal knowledge of the facts as set out in this affidavit, because: (insert reasons – e.g. I worked for/I attended a meeting at which, etc.)

I have reasonable and probable grounds to believe that a Member, namely: (insert specify name of Member) _____ has contravened section(s) _____ (specify section(s) 5, 5.1, or 5.2) of the *Municipal Conflict of Interest Act*, RSO 1990, c M. 50. The particulars of which are as follows:

(if more room is required, attach and initial extra pages to set out the statement of facts in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact. Exhibits should be labelled as Exhibit A, B, etc. and attached to this affidavit.)

2. I became aware of the alleged contravention:

- Not more than six (6) weeks before the date of this application.
- Within the period of time beginning six (6) weeks before nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act, 1996*, and ending on voting day in a regular election, as set out in section 5 of that *Act*.

This affidavit is made for the purpose of applying for an inquiry by the Integrity Commissioner and for no other purpose.

SWORN (or AFFIRMED) before me at the)
Town of _____,)
This _____ day of _____,)
20____.)
)
)
)
)