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<b>Report To:</b>	General Government Committee		
<b>Date of Meeting:</b>	February 13, 2017		
<b>Report Number:</b>	CLD-003-17	<b>Resolution:</b>	<b>GG-123-17</b>
<b>File Number:</b>		<b>By-law Number:</b>	<b>2017-019 2017-020</b>
<b>Report Subject:</b>	<b>Council Code of Conduct and Appointment of Integrity Commissioner</b>		

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### Recommendations:

1. That Report CLD-003-17 be received;
2. That Guy W. Giorno be appointed as Integrity Commissioner for the Municipality of Clarington, as per the Region of Durham's award to Fasken Martineau DuMoulin LLP (Request for Proposal 1042A-2016) for the provision of Municipal Integrity Commissioner Services for the Municipality of Clarington for a term ending December 31, 2021;
3. That the appointment by-law, being Attachment 1 to Report CLD-003-17, appointing Guy Giorno as Clarington's Integrity Commissioner, and detailing the powers, duties and services of Guy Giorno, be approved;
4. That the Mayor and Clerk be authorized to execute the necessary agreement;
5. That the By-law establishing a new Code of Conduct for Members of Council, being Attachment 4 to Report CLD-003-17, be approved; and
6. That all interested parties listed in Report CLD-003-17 and any delegations be advised of Council's decision.

## Report Overview

On February 29, 2016, Council approved the appointment of a Municipal Integrity Commissioner, with the Region of Durham's Integrity Commissioner acting as Clarington's Commissioner. Staff were instructed to report back at the conclusion of the Region's RFP process to contract for Integrity Commissioner services. Staff were also directed to review and update the Council Code of Conduct to ensure it is suitable and feasible for use by an Integrity Commissioner. The Region of Durham awarded Fasken Martineau DuMoulin LLP the contract for Integrity Commissioner Services for the Region of Durham with Guy Giorno appointed as Integrity Commissioner. Staff are therefore recommending that Council appoint Guy Giorno, of Fasken Martineau DuMoulin LLP as the Integrity Commissioner for the Municipality of Clarington. Staff are also recommending that Council adopt a proposed new Council Code of Conduct.

## 1. Appointment of Integrity Commissioner

### 1.1 Background

#### 1.1.1 Authority to Appoint an Integrity Commissioner

Subsection 223.3 (1) of the *Municipal Act, 2001*, as amended, grants the authority to municipalities to appoint an Integrity Commissioner who would "report to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

- (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them; and
- (b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or
- (c) both of clauses (a) and (b)."

On February 29, 2016, Council considered Report CLD-010-16 and passed Resolution #C-058-16 as follows:

That Report CLD-010-16 be received;

That Council approve the appointment of an Integrity Commissioner who shall be responsible for performing, in an independent manner, the functions assigned by the municipality with respect to,

- (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them; and

(b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them.

That the Region of Durham be advised that Clarington supports the concept of a Regional Integrity Commissioner acting as Clarington's Integrity Commissioner on a "fee for service" basis;

That any costs that may be incurred in 2016 be funded through the unclassified administration section, with appropriate budget amounts established in future years based on the usage of the Integrity Commissioner as experience is developed;

That Staff report back on proposed amendments to Clarington's Code of Conduct specifically to include: the appointment of an Integrity Commissioner for the Municipality of Clarington; local boards; to add a "no reprisals or obstruction" section; and to provide for sanctions;

That Staff continue to work with the Region of Durham, as deemed appropriate, in the RFP process to ensure that Clarington's needs are included in the Regional RFP;

That Staff report back at the conclusion of the RFP process; and

That all interested parties listed in Report CLD-010-16 be advised of Council's decision.

### 1.1.2 Region of Durham

The Region of Durham was notified in writing of Council's decision. On September 21, 2016, the Regional RFP-1042A-2016 was formally issued to receive proposals for the Integrity Commissioner services. The RFP closed on October 20, 2016.

On December 14, 2016, Regional Council considered Report #2016-COW-75 and passed the following resolution (See Attachment 2).

- A) That Request for Proposal ("RFP") 1042A-2016 for Municipal Integrity Commissioner Services be awarded to Fasken Martineau DuMoulin LLP for the term January 1, 2017 to December 31, 2021;
- B) That Regional Council appoint Guy W. Giorno as the Integrity Commissioner for the Region for the period January 1, 2017 to December 31, 2021 and confirm the appointment with formally passing the attached appointment by-law, as amended at the December 7, 2016 Committee of the Whole meeting, for the Regional Integrity Commissioner attached hereto as Attachment #1 to Report #2016-COW-75;
- C) That Regional Council authorize a retainer agreement with Fasken Martineau DuMoulin LLP to provide Integrity Commissioner Services on the payment of an

annual retainer and hourly fee for service basis for the period January 1, 2017 to December 31, 2021;

- D) That the Regional Chair and Regional Clerk be authorized to execute the retainer agreement as described in Recommendation B) and any other such contractual documents as may be required to give effect to Recommendation A); and
- E) That the Regional Clerk circulate Report #2016-COW-75 to the Clerks of the local area municipalities for their review and consideration as to whether they wish to join in on the retainer agreement as described in Recommendation C) above.

## 1.2 Proposal

### 1.2.1 Fasken Martineau DuMoulin LLP – Guy W. Giorno – Recommended Proponent

Based on the technical presentation, demonstration and financial evaluation of the compliant bid proposals submitted to the Region of Durham, Fasken Martineau DuMoulin LLP achieved the highest combined score and was recommended for award. On December 14, 2016 Guy W. Giorno was appointed as Integrity Commissioner for the Region of Durham.

Although Clarington staff were not involved in the selection of the particular proponent, staff are confident in the procurement process undertaken by the Region of Durham and therefore recommend that Council appoint Guy W. Giorno of Fasken Martineau DuMoulin LLP as Integrity Commissioner for the Municipality of Clarington for the term ending December 31, 2021.

### 1.2.2 Financial Implications

The Region of Durham has confirmed that the \$900.00 retainer fee (to cover the Region of Durham and any participating municipalities within the Region) will be paid by the Region for the term of this initial contract (i.e. until December 31, 2021).

The retainer fee will include all initial steps to process a complaint up to the stage where if the complaint is to be dismissed, a letter to be sent to the complainant indicating as such and that the file will be closed. Any work beyond that (ie. where an investigation is undertaken) would not be included under the retainer fee. The retainer will also include one annual report to Clarington Council.

The Municipality of Clarington would be required to pay any service fees at a rate of \$239.00 per hour for complaints made to Guy W. Giorno, at the point that he decides that a complaint warrants a formal investigation, which pertain to Clarington and for any special project requests. The volume of calls/complaints cannot be predicted at this time. As there are cost implications to this appointment, an initial value of \$2000.00 has been added to the 2017 operating budget and this value will be adjusted year to year as experience is gained pertaining to the volume of activity in this area.

### 1.2.3 Complaint Process and Reporting Relationship

The Complaint Procedures detail the steps for receipt, investigation, and resolution of complaints and is included as Appendix A to the Council Code of Conduct (Attachment 4 to this Report).

## 2. Council Code of Conduct

### 2.1 Background

On November 23, 2009 Council enacted By-law 2009-163, being a by-law to establish the Council Code of Conduct. This by-law was amended in December 2015. A copy of the current consolidated Council Code of Conduct is included in this Report as Attachment 3. The existing Council Code of Conduct does not refer to an Integrity Commissioner nor does it include any sanctions. It therefore needs to be updated. As per Council direction, staff undertook a review of Clarington's Council Code of Conduct.

### 2.2 Proposal

Staff recommends that a draft new Code of Conduct as set out in Attachment 4 to Report CLD-003-17, which includes reference to the Integrity Commissioner, a "no reprisals or obstruction" section, and provides for sanctions, be approved by Council to replace the existing Code.

The draft new Code of Conduct is consistent with the provisions of the model form of Code of Conduct (previously presented to Council as an attachment to Report LGL-007-13) and is similar to the Region of Durham's Council Code of Conduct. It includes some of the proposed changes identified in Bill 68 (summarized in Attachment #2 to Regional Report 2016-COW-75 being Attachment 2 to Report CLD-003-17).

(Bill 68 -- Modernizing Ontario's Municipal Legislation Act, 2016, proposes changes to the role of the Integrity Commissioner. While Bill 68 is currently in second reading undergoing debate in the Ontario Legislature, the recommended draft new Code of Conduct includes proposed changes, specifically those directly dealing with the Council Code of Conduct, as identified in Bill 68. The Bill 68 proposed changes which speak to the *Municipal Conflict of Interest Act* and the role of the Integrity Commissioner have not been included in the draft new Council Code of Conduct as it would be contrary to the current *Municipal Conflict of Interest Act*.)

## 3. Concurrence

This report has been reviewed by the Municipal Solicitor and Director of Corporate Services who concur with the recommendations.

## 4. Conclusion

Based on the foregoing, it is respectfully recommended that Guy W. Giorno of Fasken Martineau DuMoulin LLP be appointed as Integrity Commissioner for the Municipality of Clarington for the term ending December 31, 2021, and that the existing Council Code of Conduct (By-law 2009-163, as amended) be repealed and replaced with the new draft Code of Conduct as detailed in Attachment 4 to this Report.

## 5. Strategic Plan Application

Not applicable.



Submitted by:  
C. Anne Greentree,  
Municipal Clerk



Reviewed by:  
Curry Clifford, MPA, CMO  
Interim CAO

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Staff Contact: C. Anne Greentree, Municipal Clerk, 905-623-3379 ext. 2102 or  
agreentree@clarington.net

### Attachments:

- Attachment 1 By-law to Appoint Integrity Commissioner
- Attachment 2 Notice of Appointment of Integrity Commissioner by Region of Durham, Report, and By-law
- Attachment 3 Current Consolidated Code of Conduct (By-law 2009-163, as amended)
- Attachment 4 Proposed new Draft Council Code of Conduct

The following is a list of the interested parties to be notified of Council's decision:

Regional Clerk/Director of Legislative Services, Region of Durham  
Guy W. Giorno, Fasken Martineau DuMoulin LLP

## **The Corporation of the Municipality of Clarington**

### **By-law 2017-xxx**

Being a by-law to an Integrity Commissioner for the  
Municipality of Clarington.

Whereas Section 8 of the *Municipal Act, 2001*, S.O. c. 25 provides, in part, that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising authority;

And Whereas Sections 223.4 to 223.8 of the *Municipal Act, 2001* provide that an Integrity Commissioner has certain powers and protections during investigations;

And Whereas the Municipality of Clarington Council has approved a new Code of Conduct, as recommended in Report CLD-003-17;

And Whereas the Municipality of Clarington deems it necessary to appoint an Integrity Commissioner to administer the Code of Conduct;

Now therefore the Council of the Corporation of the Municipality of Clarington hereby enacts as follows:

1. That the Mayor and Clerk be authorized to execute, on behalf of the Municipality of Clarington, an agreement with Fasken Martineau to affect the appointment of Guy W. Giorno as Clarington's Integrity Commissioner and also to provide the required services for Clarington's Integrity Commissioner on such terms and conditions as were presented in the Regional Request For Proposals and such other terms and conditions as may be required and approved by the Manager of Purchasing to give effect to the Agreement.
2. That Guy W. Giorno be appointed for a term from the date of February 28, 2017 to the end of the current term of Clarington Council and the entire subsequent term of a subsequent Clarington Council.

3. That an agreement with Fasken Martineau and Guy W. Giorno being appointed as Clarington's Integrity Commissioner provide the following roles and provide the following services:

**3.1. Role**

- (a) The role of Integrity Commissioner is to advise Members of Council to ensure that they are performing their functions in accordance with the Council Code of Conduct and other applicable legislation, procedures, rules or policies governing their ethical behaviour. The Integrity Commissioner will provide no legal advice as it relates to conflict of interest matters and just provide general consultative advice and guidance.
- (b) The Integrity Commissioner will serve the public interest and is granted authority under the *Municipal Act, 2001* to educate, advise and investigate the conduct of Members of Council.

**3.2. Duties**

The Integrity Commissioner shall cause to perform, in an independent manner, the functions of an Integrity Commissioner pursuant to Part V.1 of the *Municipal Act, 2001* with respect to applications of the Code of Conduct for Members of Council including any legislation, procedures, rules and policies of the Municipality of Clarington governing the ethical behaviour of the Members of Council. The mandate of the Integrity Commissioner will include:

- (a) Provisions of advice and education upon request by a Member of Council or by Council as a whole, regarding ethical obligations and responsibilities under their Code of Conduct, and any other legislation, rules or policies governing their ethical behaviour; and
- (b) Receiving, assessing and investigating where appropriate, complaints made by Council, a member of Council, a member of staff, or a member of the public respecting an alleged breach of the Code of Conduct for the Members of Council of the Municipality of Clarington through the provisions of the Code of Conduct and the Complaints Protocol.
- (c) Giving advice on policy issues and the workings of the Integrity Commissioner's office.



**3.3. Reporting to Council**

- (a) The Integrity Commissioner will report directly to Council, via the General Government Committee or the calling of a special meeting, with the a written report containing the results of investigations and one annual report summarizing the year's activities, observations and any resulting general recommendations.
- (b) The Integrity Commissioner may recommend that Council impose penalties in accordance to the *Municipal Act, 2001* if, in the opinion of the Integrity Commissioner, a Member of Council has contravened the Code of Conduct.

**3.4. Other General Provisions**

- (a) That, should the Integrity Commissioner conduct an investigation or provide any other service, it shall do so in accordance to the terms and conditions of the Agreement executed between it and the Municipality of Clarington and shall adhere to all applicable laws, applicable statutes and established municipal policies.
- (b) That, should the Municipality of Clarington desire any further services from the Integrity Commissioner outside what is outlined in this by-law, the Integrity Commissioner may oblige in providing such other services, so long as the Council passes a resolution to authorize the Integrity Commissioner to provide such other service. If authorized to do so, the Integrity Commissioner will charge their hourly fee in accordance to the Agreement for such other services to the municipality requesting such other services.

Passed this 27th day of February, 2017.

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Adrian Foster, Mayor

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C. Anne Greentree, Municipal Clerk

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## The Regional Municipality of Durham Report

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To: Committee of the Whole  
From: Matthew L. Gaskell, Commissioner of Corporate Services  
Report: #2016-COW-75  
Date: December 7, 2016

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**Subject:**

Bill 8 - *Public Sector and MPP Accountability and Transparency Act*, 2014: Appointment of Regional Integrity Commissioner

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**Recommendations:**

THAT the Committee of the Whole recommends to Regional Council that they adopt the following recommendations:

1. That Request for Proposal ("RFP") 1042A-2016 for Municipal Integrity Commissioner Services be awarded to Fasken Martineau DuMoulin LLP for the term January 1, 2017 to December 31, 2021;
  2. That Regional Council appoint Guy W. Giorno as the Integrity Commissioner for the Region for the period January 1, 2017 to December 31, 2021 and confirm the appointment with formally passing the attached appointment by-law for the Regional Integrity Commissioner attached hereto as Attachment #1;
  3. That Regional Council authorize a retainer agreement with Fasken Martineau DuMoulin LLP to provide Integrity Commissioner Services on the payment of an annual retainer and hourly fee for service basis for the period January 1, 2017 to December 31, 2021;
  4. That the Regional Chair and Regional Clerk be authorized to execute the retainer agreement as described in Recommendation 2 and any other such contractual documents as may be required to give effect to Recommendation One; and
  5. That the Regional Clerk circulate this report to the Clerks of the local area municipalities for their review and consideration as to whether they wish to join in on the retainer agreement as described in Recommendation 3 above.
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**Purpose**

- 1.1 This report provides Council with the outcome of the RFP 1042A-2016 for Integrity Commissioner services and recommends the appointment of Guy W. Giorno of Fasken Martineau DuMoulin LLP as the Integrity Commissioner for the Region of Durham.

**2. Background**

- 2.1 Effective January 1, 2016 the Ontario Ombudsman's jurisdiction was expanded to include the municipal sector, including municipal agencies and some municipal boards.
- 2.2 Regional staff reported to Regional Council on Bill 8 through Report 2015-A-26 of the Commissioner of Corporate Services, dated June 24, 2015 in which Regional staff were directed to report back on the feasibility of establishing a code of conduct for Regional Council and the appointment of an Integrity Commissioner to administer the Code of Conduct and conduct inquiries.
- 2.3 A Regional Code of Conduct and Complaints Procedure was formally approved by Regional Council by virtue of the passage of Report 2016-COW-6 on September 14, 2016. A by-law was also passed to formally establish the Code of Conduct and the by-law is to come into effect upon the appointment of an Integrity Commissioner to enforce the Code of Conduct.
- 2.4 On December 16, 2015, Regional Council received Report #2015-A-40 which initially approved the Region to issue an RFP to hire an Integrity Commissioner.
- 2.5 On August 26, 2016, Report #2016-INFO-9 was published on the Council Information Package giving an update on the Integrity Commissioner RFP and advising that the RFP would have to be reissued after a first attempt resulted in all bids being non-compliant over the summer of 2016.
- 2.6 This report is now being brought to formally make a recommendation for the Regional Integrity Commissioner and to report on the results of the Integrity Commissioner RFP as the process is now complete.

**3. Authority**

- 3.1 Under the *Municipal Act, 2001*, Council has the authority to appoint an Integrity Commissioner.
- 3.2 Section 223.3 of the *Municipal Act, 2001* outlines the legislated role of an Integrity Commissioner. It identifies that the role of an Integrity Commissioner is to perform in an independent manner those functions assigned by a municipality with respect to:

- (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;
  - (b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behavior of members of council and of local boards or of either of them; or
  - (c) both of clauses (a) and (b).
- 3.3 Under the *Municipal Act*, 2001, Council has the authority to assign duties and functions to an Integrity Commissioner. Duties may typically involve, but not necessarily be limited to the following:
- (a) Providing advice to Members of Council on ethical behavior;
  - (b) Providing education to Members of Council on the application of a Code of Conduct;
  - (c) Assisting in the development of policies and processes for the Office of the Integrity Commissioner;
  - (d) Receiving complaints and conducting investigations in accordance with a Council approved process with respect to alleged contraventions of a Code of Conduct for Members of Council;
  - (e) Provide a report on his or her findings and recommendations to Council, (including adjudicating and imposing sanctions as necessary) and;
  - (f) Provide an annual summary of report of complaints, investigations and advice provided and make any recommendations for any changes to the approved process.
- 4. Issuance of the RFP**
- 4.1 On September 21, 2016, RFP 1042A-2016 was formally issued to receive proposals for the Integrity Commissioner services. The RFP closed on October 20, 2016.
- 4.2 Along with the issuing of the Integrity Commissioner RFP, encompassed within it was cooperative purchasing arrangement under which the local area municipalities may choose to appoint the selected respondent, within the term of the contract, for the same terms and conditions including price.
- 4.3 Participation in the co-operative purchasing arrangement allows the local area municipalities the option to appoint the selected proponent as their Integrity Commissioner as well.

4.4 In addition, should the local area municipalities wish for additional services to be provided by the Regional Integrity Commissioner they may pass an appointment by-law with their local Councils to confirm any duties to be assigned to the Regional Integrity Commissioner and they would perform such duties under the hourly fee as a "Special Project" as defined under the RFP.

## **5. The Proposals**

5.1 Three proposals were received and deemed compliant. The submissions were from ADR Chambers Inc., the law firm of Fasken Martineau DuMoulin LLP and John Arkelian. The proposals were evaluated by a team of 2 lawyers in Legal Services and the Regional Clerk and the process overseen by the Purchasing Section of the Finance Department.

5.2 The RFP identified the following criteria to be used for evaluation of the proposals that met the mandatory submission requirements:

- Company and Staff Background, Qualifications and Experience
- Communication and Public Awareness
- Technical Solution - Methodology and Resources
- Presentation and Demonstration
- Pricing

5.3 The Respondents were evaluated on the above listed criteria.

5.4 All three reached the presentation and demonstration stage of the RFP.

5.5 The Respondents were required to achieve a minimum score of 70% on the score allocated to the Presentation and Demonstration stage in order to qualify for a recommendation of contract award.

## **6. RFP Award**

6.1 Based on the overall Technical, Presentation and Demonstration and Financial evaluation of the compliant proposals submitted, Fasken Martineau DuMoulin LLP achieved the highest combined score and is recommended for award of RFP1042A-2016 for Municipal Integrity Commissioner Services with Guy W. Giorno to be appointed as Integrity Commissioner for the Region of Durham.

6.2 Fasken Martineau DuMoulin LLP's bid was for a \$900.00 annual retainer to provide Integrity Commissioner services and to charge an hourly fee of \$239.00 per hour for Special Projects.

**7. Current Term of Council and Subsequent Four Year Term of Council**

- 7.1 The initial term of the appointment will be the balance of the current term of Council with a start date of January 1, 2017. The contract will continue for a subsequent four year term of the next Regional Council.
- 7.2 Under the terms of the contract the Region retains the right to terminate the contract for unsatisfactory performance at any time, or without cause upon giving at least (30) thirty days written notice.
- 7.3 All proponents were advised that in undertaking assignments for the Region, their performance may be reviewed throughout the duration of the contract.

**8. Financial Implications**

- 8.1 During the entire term, the Region will pay a fixed annual retainer fee of \$900.00 to Fasken Martineau DuMoulin LLP to provide Integrity Commissioner Services to the Region of Durham and the local area municipalities that choose to participate in the cooperative purchasing arrangement by appointing Guy W. Giorno as their Integrity Commissioner.
- 8.2 A fee of \$239.00 per hour will be incurred for complaints made to Guy W. Giorno at the point that he decides that a complaint will warrant a formal investigation. The annual retainer includes all initial steps to process a complaint up to if the complaint is to be dismissed, a letter to be sent to the complainant indicating as such and that the file will be closed. Annual retainer will also include one annual report to Regional Council. The hourly fee will also include any "Special Projects" as may be requested by a participating municipality such as teaching seminars or public meetings or other special assignments as they may wish to assign to the Integrity Commissioner.
- 8.3 During the initial term, the Region of Durham will pay the retainer fee for the Region of Durham and all the local area municipalities that choose to appoint Guy W. Giorno of Fasken Martineau DuMoulin LLP. Each participating municipality will then pay the service fees of \$239.00 per hour associated with calls for service from any person wishing to file a complaint which applies to the participating municipality from the point of a formal investigation being commenced and any Special Project requests.

**9. Conclusion**

- 9.1 The appointment of the recommended proponent as the Regional Integrity Commissioner would ensure the Region of Durham continues to operate as a corporation with greater accountability and transparency to the public.

9.2 The Province recently introduced Bill 68 which proposes some changes to the role of the Integrity Commissioner. The Bill is in first reading; however, Attachment #2 speaks to some of the proposed changes to the Integrity Commissioner role that may be coming.

**10. Attachments**

Attachment #1 By-law Number 58-206 being a by-law to authorize the Region of Durham to appoint Guy W. Giorno as the Integrity Commissioner for the Regional Municipality of Durham (Regional Integrity Commissioner)

Attachment #2 Modernizing Ontario's Municipal Legislation Act (BILL 68)

Respectfully submitted,

Original signed by

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Matthew L. Gaskell  
Commissioner of Corporate Services

Recommended for Presentation to Committee

Original signed by

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Garry H. Cubitt, MSW  
Chief Administrative Officer

**BY-LAW NUMBER 58-2016**

**OF**

**THE REGIONAL MUNICIPALITY OF DURHAM**

**being a by-law** to authorize the Region of Durham to appoint Guy W. Giorno as the Integrity Commissioner for the Regional Municipality of Durham (Regional Integrity Commissioner).

**WHEREAS** pursuant to Section 8 of the Municipal Act 2001 S.O. c. 25 provides in part that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising authority;

**AND WHEREAS** pursuant to Section 223.4 to 223.8 of the Municipal Act, 2001 provides that an Integrity Commissioner has certain powers and protections during investigations;

**AND WHEREAS** Regional Council passed a Code of Conduct and Complaint Procedure for Regional Council on September 16, 2016 contained in Report 2016-COW-6 (Code of Conduct);

**AND WHEREAS** Council for the Regional Municipality of Durham passed a resolution at its meeting of December 14, 2016 to authorize the execution of an agreement with Fasken Martineau that Guy W. Giorno be appointed the Regional Integrity Commissioner and for Fasken Martineau to provide services to facilitate the delivery of services for the Regional Integrity Commissioner.

**NOW THEREFORE BE IT ENACTED AND IT IS HEREBY ENACTED** as a by-law of The Regional Municipality of Durham through its Council as follows:

1. That the Regional Chair and Regional Clerk are hereby authorized and instructed to execute on behalf of the Regional Municipality of Durham an agreement with Fasken Martineau to affect the appointment of Guy W. Giorno as the Regional Integrity Commissioner and also to provide the required services for Regional Integrity Commissioner (the Agreement) on such terms and conditions as were presented in the Request For Proposals and such other terms and conditions as may be required and approved by the Commissioner of Corporate Services to give effect to the Agreement.
2. That the Agreement provide for that Guy W. Giorno be appointed for a term from the date of January 1, 2017 to the end of the current term of Regional Council and the entire subsequent term of a subsequent Regional Council.
3. That an agreement with Fasken Martineau and Guy W. Giorno being appointed as the Regional Integrity Commissioner provide the following roles and provide the following services:



## **ROLE**

- (a) The role of the Regional Integrity Commissioner is to advise Members of Council to ensure that they are performing their functions in accordance with the Code of Conduct and other applicable legislation, procedures, rules or policies governing their ethical behaviour. The Integrity Commissioner will provide no legal advice as it relates to conflict of interest matters and just provide general consultative advice and guidance.
- (b) The Regional Integrity Commissioner will serve the public interest and is granted authority under the Municipal Act, 2001 to educate, advise and investigate the conduct of Members of Council.

## **DUTIES**

The Regional Integrity Commissioner shall cause to perform, in an independent manner, the functions of an Integrity Commissioner pursuant to Part V.1 of the Municipal Act, 2001 with respect to applications of the Code of Conduct for Members of Council of the Regional Municipality of Durham, including any legislation, procedures, rules and policies of the Region of Durham governing the ethical behaviour of the Members of Council. The mandate of the Regional Integrity Commissioner will include:

- (a) Provisions of advice and education upon request by a Member of Council or by Council as a whole, regarding ethical obligations and responsibilities under their Code of Conduct, and any other legislation, rules or policies governing their ethical behaviour; and
- (b) Receiving, assessing and investigating where appropriate, complaints made by Council, a member of Council, a member of staff, or a member of the public respecting an alleged breach of the Code of Conduct for the Members of Council of the Regional Municipality of Durham through the provisions of the Code of Conduct and the Complaints Protocol.
- (c) Giving advice on policy issues and the workings of the Regional Integrity Commissioner's office.

## **REPORTING TO COUNCIL**

- (a) The Regional Integrity Commissioner will report directly to Regional Council via the Committee of the Whole or the calling of a special meeting with the a report containing the results of investigations and one annual report summarizing the year's activities, observations and any resulting general recommendations.
- (b) The Integrity Commissioner may recommend that Regional Council impose penalties in accordance to the Municipal Act, 2001 if in the opinion of the Regional Integrity Commissioner, a Member of Council has contravened the Code of Conduct.

**OTHER GENERAL PROVISIONS**

- (a) That should the Regional Integrity Commissioner conduct an investigation or provide any other service, it shall do so in accordance to the terms and conditions of the Agreement executed between it and the Regional Municipality of Durham and shall adhere to all applicable laws, applicable statutes and established Regional policies.
  
- (b) That any local municipality within the geographic region of the Regional Municipality of Durham desirous to retain the Regional Integrity Commissioner to provide Integrity Commissioner services for their municipality that they may execute the Agreement with the Regional Municipality of Durham and shall pay the Regional Integrity Commissioner for services in accordance to their hourly fee in accordance to the terms of the Agreement provided they have obtained the required approvals to do so.
  
- (c) That should the Regional Municipality of Durham or any local municipality desire any further services from the Regional Integrity Commissioner outside what is outlined in this by-law, the Regional Integrity Commissioner may oblige in providing such other services, so long as the respective Council of the municipality requesting such other service has passed a resolution through their respective Council to authorize the Regional Integrity Commissioner to provide such other service. If authorized to do so, the Regional Integrity Commissioner will charge their hourly fee in accordance to the Agreement for such other services to the municipality requesting such other services.

BY-LAW read and passed this 14<sup>th</sup> day of December 2016.

Original signed by

\_\_\_\_\_  
Roger Anderson, Regional Chair & CEO

Original signed by

\_\_\_\_\_  
Debi A. Wilcox, Regional Clerk

Modernizing Ontario's Municipal Legislation Act (Bill 68)

On November 16, 2016, the Government of Ontario introduced Bill 68 which is a bill proposing amendments to three key pieces of municipal legislation that would, if passed, help local governments to be more open, flexible and accountable to the people they serve, while giving the public added confidence in the rules governing local elected officials.

The *Municipal Act, 2001* sets out many of the roles, responsibilities and powers of Ontario's municipalities. *The City of Toronto Act, 2006* sets a similar framework specifically for the City of Toronto, while reflecting Toronto's status as Ontario's largest municipality. The *Municipal Conflict of Interest Act* sets out conflict of interest rules for municipal council members and members of local boards.

A public review of the three pieces of legislation took place between June and October 2015. Region of Durham provided commentary through Regional Council approved Report Number 2015-A-51. The review was meant to identify potential solutions and focused on the themes of accountability and transparency, municipal financial sustainability and responsive and flexible service delivery.

The proposed changes respond to concerns heard from the public, municipal councils and staff during the review. Once the Bill has reached third reading and Royal Assent, Regional staff will provide a more fulsome report outlining the impacts of Bill 68.

For the purposes of this report and the appointment of a Regional Integrity Commissioner, and upon initial review of the legislation, there appear to be three impacts immediately identified which are outlined below:

1. Bill 68 seeks to clarify the meaning of the definition of "meetings" under the *Municipal Act, 2001* to meet the recent Ombudsman decisions. Once Bill 68 is passed, this may require updates to the Code of Conduct and perhaps the procedural by-law.
2. Bill 68 seeks to increase the powers being granted to integrity commissioners to investigate conflict of interest matters which would be accomplished by proposed amendments to the *Municipal Conflict of Interest Act*. Once Bill 68 is passed, the attached appointment by-law may have to be amended to include the newly granted powers to the Integrity Commissioner. See the specific Bill 68 wording proposed below for the expansion of powers.
3. Bill 68 seeks to make it mandatory to have Codes of Conduct for Council. Region of Durham has passed their Code of Conduct pursuant to Report 2016-A-40.

**Bill 68 Integrity Commissioner Proposed Amendment to Powers**

**Subsection 223.3 (1) of the Act**

***“19. (1) Subsection 223.3 (1) of the Act is repealed and the following substituted:***

*Integrity Commissioner*

*(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 any or all of the following:*

- 1. The application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them.*
- 2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them.*
- 3. The application of sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act to members of council or of local boards.*
- 4. The conducting of, on the Commissioner’s own initiative, inquiries about whether a member of council or of a local board has contravened the code of conduct applicable to the member or has contravened section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act.*
- 5. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.*
- 6. Requests from members of council and of local boards 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.*
- 7. Requests from members of council and of local boards for advice respecting their obligations under the Municipal Conflict of Interest Act.*
- 8. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality’s codes of conduct for members of council and members of local boards and about the Municipal Conflict of Interest Act.”*

**Section 223.3 of the Act**

**“(2) Section 223.3 of the Act is amended by adding the following subsections:**

*Request for advice shall be in writing*

*(2.1) A request by a member of council or of a local board for advice from the Commissioner under paragraph 5, 6 or 7 of subsection (1) shall be made in writing.*

*Advice shall be in writing*

*(2.2) If the Commissioner provides advice to a member of council or of a local board under paragraph 5, 6 or 7 of subsection (1), the advice shall be in writing.*

*Content of educational information*

*(2.3) If the Commissioner provides educational information to the public under paragraph 8 of subsection (1), the Commissioner may summarize advice he or she has provided but shall not disclose confidential information that could identify a person concerned.”*

**Section 223.3 of the Act**

**“20. The Act is amended by adding the following sections:**

*Provision for functions if no Commissioner appointed*

**223.3.1** *If a municipality has not appointed a Commissioner under section 223.3, the municipality shall make arrangements for all of the responsibilities set out in subsection 223.3 (1) to be provided by a Commissioner of another municipality.*

*Provision for functions if responsibility not assigned*

**223.3.2** *If a municipality has appointed a Commissioner under section 223.3, but has not assigned functions to the Commissioner with respect to one or more of the responsibilities set out in subsection 223.3 (1), the municipality shall make arrangements for those responsibilities to be provided by a Commissioner of another municipality.*

**21. Subsection 223.4 (1) of the Act is amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding the following clause:**

*(c) on the Commissioner’s own initiative about whether a member of council or of a local board has contravened the code of conduct applicable to the member.”*

## Office Consolidation of By-Law 2009-163



The Corporation of the  
Municipality of Clarington  
By-Law 2009-163

Being a By-law to establish a Code of Conduct for Members of Council.

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Passed, by Council, on: November 23, 2009  
Consolidated as of: December 16, 2015

Amendments:

Amending By-Law	Date	Amendment Details
2013-096	November 4, 2013	Added Sections 2.1 & 2.2 of Schedule A

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Official versions of all By-laws may be obtained from the Municipal Clerk's Department.

# Office Consolidation of By-Law 2009-163

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

BY-LAW 2009-163

Being a by-law to Establish a Code of Conduct for Members of Council

WHEREAS section 223.2 of *The Municipal Act, 2001*, as amended, authorizes the municipality to establish a Code of Conduct for members of the council; and

WHEREAS the Council of the Municipality of Clarington has determined the need to establish a standalone Code of Conduct for members of council:

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON HEREBY ENACTS AS FOLLOWS:

1. THAT Schedule A attached hereto is adopted as the Municipality of Clarington's Code of Conduct for members of council; and
2. THAT Schedule A attached hereto forms part of this by-law.

By-law read a first, second and third time this 23<sup>rd</sup> day of November, 2009.

# Office Consolidation of By-Law 2009-163

## Schedule A to By-law 2009-163

### Code of Conduct – Members of Council

#### 1. Purpose

The Code of Conduct for members of council serves as a guide to members of council in the individual conduct of their official duties. The Code represents general standards. It does not replace council member's roles, responsibilities, actions and behaviours required by various statutes.

#### 2. Conduct

Members of council shall not:

- a) breach the public trust or misappropriate public funds and/or resources.
- b) use Municipal property, equipment, supplies or services of consequence for activities not associated with the discharge of official duties.
- c) benefit from the use of information relating to the affairs of the Municipality.
- d) benefit from the use of information acquired during the course of official duties which is not generally available to the public.
- e) sell goods or services to the Municipality or have a direct or indirect interest in a company or own a company which sells goods or services to the Municipality.
- f) conduct their work activities in a manner which may cause personal injury to themselves or others or damage to equipment or property of the Municipality.
- g) bid on the sale of goods except those disposed by public auction.
- h) use Municipal buying power for personal gain or benefit.

#### 2.1 Gifts and Benefits

For the purposes of this Code, a gift or benefit provided, with the member's knowledge, to a member's spouse, child or parent, or to his or her staff, that is connected directly or indirectly to the performance of the member's duties, is deemed to be a gift or benefit to that member.

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office, unless permitted under one or more of the exceptions listed below.



## Office Consolidation of By-Law 2009-163

Each of the following is recognized as an exception:

- (a) compensation authorized by law;
- (b) a gift or benefit of the kind that normally accompanies the responsibilities of office and is received as an incident of protocol or social obligation;
- (c) a political contribution otherwise authorized and reported as required by law, in the case of a member running for office;
- (d) services provided without compensation by a person volunteering his or her time;
- (e) a suitable memento of a function honouring the member;
- (f) food, lodging, transportation or entertainment lawfully provided by any Provincial, regional or local government or board or political subdivisions of any of them, by the Federal government, a foreign government, or by those organizing a conference, seminar or event where the member is speaking or attending in an official capacity;
- (g) food and beverages consumed at a banquet, reception or similar event, if:
  - (i) attendance by the member is for a legitimate municipal purpose;
  - (ii) the person extending the invitation, or a representative of the organization holding the event, is in attendance; and
  - (iii) the value is reasonable;
- (h) communications to the office of a member, including subscriptions to newspapers and periodicals; and
- (i) a sponsorship or donation for a community event organized or run by a member, or a third party on behalf of a member, subject to the limitations set out in any applicable municipal policy.

Except for exception (c) (political contributions allowable by law), these exceptions do not apply where a gift or benefit is provided by a lobbyist or a lobbyist's client or employer. In this provision, a lobbyist is an individual, organization or business who or that:

- (a) lobbies, or causes the lobbying of, any public office holder of the municipality, the municipal council or corporation, or a local board;

## Office Consolidation of By-Law 2009-163

- (b) the member knows is attempting or intending to lobby the member or any of the public persons or bodies listed in paragraph (a); or
- (c) is maintaining an active lobbyist registration with the municipality, whether or not with respect to any specific or current subject matter.

In the case of any of the recognized exceptions (b), (e), (f), (h) and (i), if the value of the gift or benefit exceeds \$300.00, or if the total value of gifts or benefits received from any one source during the course of a calendar year exceeds \$300.00, the member shall file, within 30 days of receipt of the gift or benefit, or of reaching the annual limit, a disclosure statement with the Municipal Clerk.

The disclosure statement must set out:

1. the nature of every gift or benefit received;
2. its source and date of receipt;
3. the circumstances under which it was given and received;
4. its estimated value;
5. what the recipient intends to do with any gift; and
6. whether any gift will at some point be provided to the municipality.

Every disclosure statement filed under this Code shall be made a public record.

Upon receiving a disclosure statement, the Municipal Clerk shall examine it to ascertain whether the receipt of the gift or benefit might, in his or her opinion, constitute a contravention of this Code or create a conflict between a private interest and the public duty or responsibilities of the member. In the event that the Municipal Clerk makes such a determination, he or she shall call upon the member to justify receipt of the gift or benefit.

Should the Municipal Clerk determine that receipt of any gift or benefit was inappropriate, he or she may direct the member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, forfeit the gift or remit the value of any gift or benefit already consumed, to the Municipality.

Except in the case of exceptions (a), (c), (f) and (i), no member shall accept a gift or benefit worth in excess of \$500.00, or gifts or benefits from one source during a calendar year which together are worth in excess of \$500.00.

### 2.2 No Improper Use of Influence

No member of Council shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes.

## Office Consolidation of By-Law 2009-163

No member of Council shall use his or her office or position to influence or attempt to influence the decision of any other person, for the member's private advantage or that of the member's parent, child, spouse, staff member, friend or associate, business or otherwise. No member shall attempt to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. No member shall hold out the prospect or promise of future advantage through the member's supposed influence within Council, in return for any action or inaction.

For the purposes of this provision, "private advantage" does not include a matter:

- (a) that is of general application;
- (b) that affects a member of Council, his or her parents/children or spouse, staff member, friends or associates, business or otherwise, as one of a broad class of persons; or
- (c) that concerns the remuneration or benefits of a member of Council.

This provision does not prevent a member of Council from requesting that Council grant a lawful exemption from a policy.

### 3. Enforcement

The onus of compliance of the Code is on the individual member of council. In addition, the provisions of various statutes pertaining to the roles, responsibilities, actions and behaviours governing members of council apply to instances of improper conduct.

**The Corporation of the Municipality of Clarington  
By-law 2017-xxx**

Being a by-law to Establish a Code of Conduct for  
Members of Council.

Whereas section 223.2 of *The Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes the municipality to establish a Code of Conduct for members of the council; and

Whereas the Council of the Municipality of Clarington passed By-law 2009-163, as amended, to establish a Code of Conduct for Members of Council; and

Whereas the Council of the Municipality of Clarington deems it necessary to update the Code of Conduct for Members of Council:

Now therefore the Council of the Municipality of Clarington hereby enacts as follows:

1. That "Schedule A" attached hereto is adopted as the Municipality of Clarington's Council Code of Conduct for Members of Council; and
2. That "Schedule A" attached hereto forms part of this by-law.
3. That By-law 2009-163 and its amending By-law 2013-096 are repealed.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Adrian Foster, Mayor

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C. Anne Greentree, Municipal Clerk

# **Municipality of Clarington**

## **Council Code of Conduct**

**Municipality of Clarington**  
**Code of Conduct for Members of Council**

**1. PRINCIPLES**

- 1.1 Improving the quality of Municipal administration and governance can best be achieved by encouraging high standards of conduct on the part of all municipal officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government. In turn, adherence to these standards will protect and maintain the Municipality's and the Council members' reputation and integrity.
- 1.2 Key statements of principles that underline this Council Code of Conduct are as follows, members of Council shall,
- (a) serve, and be seen to serve, their constituents in a conscientious and diligent manner;
  - (b) be committed to performing their functions with integrity, avoiding the improper use of the influence of their office, and conflicts of interest, under the *Municipal Conflict of Interest Act*;
  - (c) perform their duties in office in a manner that promotes public confidence and will bear close public scrutiny;
  - (d) recognize, and act upon, the principle that democracy is best achieved when the operation of government is made as transparent and accountable to members of the public as possible; and
  - (e) seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the by-laws and policies adopted by Clarington Council.

**2. DEFINITIONS**

- 2.1 In this Council Code of Conduct:
- (a) "child" means a child born within or outside marriage and includes an adopted child or a person whom a member has demonstrated a settled intention to treat as a child of his or her family;
  - (b) "Council Code of Conduct" means the rules which govern the conduct of members established pursuant to the authority of section 223.2 of the *Municipal Act, 2001, S.O. 2001, c. 25*;
  - (c) "complaint" means a written request to investigate the conduct of any member for a possible violation of the Council Code of Conduct filed in accordance with the Complaint Procedure;

- (d) "confidential information" means any information in the possession of, or received in confidence by, the Municipality that the Municipality is prohibited from disclosing, or has decided to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, or any other law, which includes, but is not limited to:
- (i) information of a corporate, commercial, scientific or technical nature received in confidence from third parties,
  - (ii) personal information as defined in subsection 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act*,
  - (iii) information that is subject to solicitor-client privilege,
  - (iv) information that concerns any confidential matters pertaining to matters related to an identifiable individual, personal, labour relations, litigation, property acquisition, the security of the property of the municipality or a local board,
  - (v) any other information lawfully determined by the Council to be confidential, or required to remain or be kept confidential by legislation or order, and
  - (vi) any information considered by, or made available to Council, during a closed meeting pursuant to subsection 239(2) of the *Municipal Act, 2001*.
- (e) "Council" means the Council of the Municipality;
- (f) "gift and benefits" means any cash or monetary equivalent, fee, object of value, service, travel and accommodation, or entertainment;
- (g) "information" means any record, document, data, material, correspondence or evidence however recorded, whether oral or in printed form, on film, by electronic means or otherwise;
- (h) "Integrity Commissioner" means the Integrity Commissioner appointed by the Council pursuant to section 223.3 of the *Municipal Act, 2001*;
- (i) "member" means a member of Council, unless the context otherwise requires;
- (j) "Municipality" means the Corporation of The Municipality of Clarington
- (k) "parent" means a person who has demonstrated a settled intention to treat a child as a part of his or her family whether or not that person is the natural parent of the child;
- (l) "person" includes a corporation, partnership, association and any other entity, as the context allows, and expressly includes a member as well as

Council;

- (m) "spouse" means a person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage; and
- (n) "staff" means the municipal administrative staff of the Municipality and of its municipal corporations and local boards.

### **3. APPLICATION OF THIS CODE**

- 3.1 This Council Code of Conduct applies to every member of Council.

### **4. COMPLIANCE WITH DECLARATION OF OFFICE**

- 4.1 Every member shall act in accordance with his or her declaration of office sworn pursuant to Section 262 of the *Municipal Act, 2001*.

### **5. ADHERENCE TO COUNCIL POLICIES AND PROCEDURES**

- 5.1 Every member shall observe and comply strictly with every provision of this Council Code of Conduct, as well as all other policies and procedures adopted or established by Council affecting the member, whether or not acting in his or her capacity as a member of Council.

### **6. CONDUCT AT MEETINGS**

- 6.1 Every member shall conduct himself or herself properly and in a civil manner at Council, committee and other meetings, and in accordance with the provisions of the Municipality's Procedural By-law, this Council Code of Conduct, and any other applicable law.

### **7. CONDUCT RESPECTING OTHERS**

- 7.1 Every member has the duty and responsibility to treat all members of the public, other members of Council, and all staff appropriately and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment.
- 7.2 No member shall,
  - (a) use indecent, abusive or insulting-words or expressions toward any other member, any member of staff or any member of the public; or
  - (b) speak in a manner that is discriminatory to any individual, based on that person's race, ancestry, place of origin, creed, gender, sexual orientation or gender identification, age, colour, marital status, or disability.



**8. CONDUCT RESPECTING STAFF**

8.1 Every member acknowledges that staff operate under the direction of the senior municipal administration, and in accordance with the decisions of Council, and are required to serve the Municipality as a whole and not the needs or desires of any individual member.

8.2 Every member shall:

- (a) be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any member or faction of the Council; and
- (b) show respect for staff, and for their professional capacities and responsibilities.

8.3 No member shall,

- (a) maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff;
- (b) compel any member of staff to engage in partisan political activities, or subject any member of staff to threat or discrimination for refusing to engage in any such activity; or
- (c) use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or influencing improperly any staff member or interfering with that staff person's duties, including the duty to disclose improper activity.

**9. GIFTS, BENEFITS, SERVICES AND HOSPITALITY**

For the purposes of this Code, a gift or benefit provided, with the member's knowledge, to a member's spouse, child or parent, or to his or her staff, that is connected directly or indirectly to the performance of the member's duties, is deemed to be a gift or benefit to that member.

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office, unless permitted under one or more of the exceptions listed below.

Each of the following is recognized as an exception:

- (a) compensation authorized by law;
- (b) a gift or benefit of the kind that normally accompanies the responsibilities of office and is received as an incident of protocol or social obligation;
- (c) a political contribution otherwise authorized reported, as required by law, in the case of a member running for office;

- (d) services provided without compensation by a person volunteering his or her time;
- (e) a suitable memento of a function honouring the member;
- (f) food, lodging, transportation or entertainment lawfully provided by any Provincial, regional or local government or board or political subdivisions of any of them, by the Federal government, a foreign government, or by those organizing a conference, seminar or event where the member is speaking or attending in an official capacity;
- (g) food and beverages consumed at a banquet, reception or similar event, if:
  - (i) attendance by the member is for a legitimate municipal purpose;
  - (ii) the person extending the invitation, or a representative of the organization holding the event, is in attendance; and
  - (iii) the value is reasonable;
- (h) communications to the office of a member, including subscriptions to newspapers and periodicals; and
- (i) a sponsorship or donation for a community event organized or run by a member, or a third party on behalf of a member, subject to the limitations set out in any applicable municipal policy.

Except for exception (c) (political contributions allowable by law), these exceptions do not apply where a gift or benefit is provided by a lobbyist or a lobbyist's client or employer. In this provision, a lobbyist is an individual, organization or business who or that:

- (i) lobbies, or causes the lobbying of, any public office holder of the municipality, the municipal council or corporation, or a local board;
- (ii) the member knows is attempting or intending to lobby the member or any of the public persons or bodies listed in paragraph (a); or
- (iii) is maintaining an active lobbyist registration with the municipality, whether or not with respect to any specific or current subject matter.

In the case of any of the recognized exceptions (b), (e), (f), (h) and (i), if the value of the gift or benefit exceeds \$300.00, or if the total value of gifts or benefits received from any one source during the course of a calendar year exceeds \$300.00, the member shall file, within 30 days of receipt of the gift or benefit, or of reaching the annual limit, a disclosure statement with the Municipal Clerk.

The disclosure statement must set out:

1. the nature of every gift or benefit received;
2. its source and date of receipt;
3. the circumstances under which it was given and received;
4. its estimated value;
5. what the recipient intends to do with any gift; and
6. whether any gift will at some point be provided to the municipality.

Every disclosure statement filed under this Code shall be made a public record.

Upon receiving a disclosure statement, the Municipal Clerk shall forward the statement to the Integrity Commissioner who shall examine it to ascertain whether the receipt of the gift or benefit might, in his or her opinion, constitute a contravention of this Code or create a conflict between a private interest and the public duty or responsibilities of the member. In the event that the Integrity Commissioner makes such a determination, he or she shall call upon the member to justify receipt of the gift or benefit.

Should the Integrity Commissioner determine that receipt of any gift or benefit was inappropriate, he or she may direct the member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, forfeit the gift or remit the value of any gift or benefit already consumed, to the Municipality.

Except in the case of exceptions (a), (c), (f) and (i), no member shall accept a gift or benefit worth in excess of \$500.00, or gifts or benefits from one source during a calendar year which together are worth in excess of \$500.00.

## **10. CONFIDENTIAL INFORMATION**

10.1 No member shall,

- (a) disclose, release or publish by any means to any person or to the public any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so;
- (b) use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body;
- (c) disclose a matter, the substance of the matter, and information pertaining to a matter, that has been debated or discussed at a meeting closed to the public, and shall be maintained as confidential, unless authorized by the Council or legislation to be released, generally or subject to conditions, and such are complied with;
- (d) disclose the content of any matter referred to in the preceding paragraph or the subject-matter of deliberations at a meeting closed to the public meeting, unless such matter has been lawfully and knowingly discussed by Council at a meeting that is open to the public or where Council authorizes

the release the information to the public;

- (e) without lawful authority, disclose, or make personal use of, any of the following types of confidential information:
  - (i) information concerning litigation, negotiation or personnel matters,
  - (ii) information the publication of which may infringe on the rights of any person (e.g. source of a complaint where the identity of a complainant is given in confidence),
  - (iii) price schedules in any contract, tender or proposal document while such remains a confidential document,
  - (iv) information deemed to be "personal information" under the *Municipal Freedom of Information and Protection of Privacy Act*, or
  - (v) any other information or statistical data required by law not to be released; and
- (f) obtain access, or attempt to gain access, to confidential information in the custody of the Municipality except to the extent that such access is necessary for the performance of his or her duties and such access is not prohibited by Council or otherwise by law.

## **11. USE OF MUNICIPAL PROPERTY, SERVICES AND OTHER RESOURCES**

11.1 Subject to 11.2 below, no member shall,

- (a) use, or permit the use of, Municipal land, facilities, equipment, supplies, services, staff or other resource, including any municipally-owned information, website, transportation delivery service or funds allocated for the member expenses of his or her office, for any purpose or activity other than the lawful business of the Municipality; or
- (b) seek or acquire any personal financial gain from the use or sale of confidential information, or of any municipally-owned intellectual property including any invention, creative writing or drawing, computer program, technical innovation, or any other information or item capable of being patented or copy righted, of which property remains exclusively that of the Municipality.

11.2 Incidental and occasional personal, non-commercial use of email/internet and a personal communication device (i.e. Blackberry) is permitted.

## **12. CONDUCT OF ELECTION CAMPAIGN**

12.1 Every member shall comply with all applicable requirements of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched.

12.2 No member shall,

- (a) use confidential information, facilities, equipment, supplies, services or other resources of the Municipality, including any member newsletter or website linked through the Municipality's website, for any election campaign or campaign-related activity;
- (b) undertake campaign-related activities on municipal property except as otherwise provided for in Policy F5 – Political Activities; or
- (c) use the services of any person for election-related purposes during hours in which that person receives any compensation from the Municipality.

## **13. NO IMPROPER USE OF INFLUENCE**

13.1 No member shall,

- (a) use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes;
- (b) use his or her office or position to influence or attempt to influence the decision of any other person, for the member's private advantage or that of the member's parent, child, spouse, staff, friend, or associates, business or otherwise;
- (c) attempt to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties; or
- (d) hold out the prospect or promise of future advantage through the member's supposed influence within Council, in return for any action or inaction.

13.2 For the purposes of this provision, "private advantage" does not include a matter that,

- (a) is of general application;
- (b) affects a member, his or her parents/children or spouse, staff, friends or associates, business or otherwise, as one of a broad class of persons; or
- (c) concerns the remuneration or benefits of a member.

13.3 Section 13.1 does not prevent a member from requesting that Council grant a lawful exemption from a Municipal policy not including this Council Code of Conduct.

**14. NO REPRISAL OR OBSTRUCTION IN THE APPLICATION OR ENFORCEMENT OF THIS CODE**

14.1 Every member must respect the integrity of the Council Code of Conduct and inquiries and investigations conducted under it, and shall cooperate in every way possible in securing compliance with its application and enforcement.

14.2 No member shall obstruct the Integrity Commissioner, his or her designate, or any other Municipal official involved in applying or furthering the objectives or requirements of the Council Code of Conduct, in the carrying out of such responsibilities, or pursuing any such objective.

14.3 No member shall undertake any act of reprisal or threaten reprisal against a complainant or any other person for providing relevant information to the Integrity Commissioner or any other person under the Council Code of Conduct.

**15. STATUTES REGULATING THE CONDUCT OF COUNCILLORS**

15.1 Members acknowledge that in addition to this Council Code of Conduct, the following legislation and Clarington Policies also govern the conduct of members:

- (a) *Municipal Act, 2001;*
- (b) *Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50;*
- (c) *Municipal Elections Act, 1996;*
- (d) *Municipal Freedom of Information and Protection of Privacy Act;*
- (e) *Occupational Health and Safety Act, R.S.O. 1990, c. O.1;*
- (f) *Human Rights Code, R.S.O. 1990, c. H.19;* and
- (g) *Criminal Code, R.S.C. 1985, c. C-46.*
- (h) Clarington Policy F-110 Use of Corporate Resources for Election Purposes
- (i) Clarington Policy F5 Political Activities

- 15.2 A member may become disqualified and lose his or her seat by operation of law, including being convicted of an offence under the *Criminal Code* or the *Municipal Elections Act, 1996*, or being found to have failed to comply with the *Municipal Conflict of Interest Act*, whether or not the conduct in question involves a contravention of this Council Code of Conduct.
- 15.3 In the case of any inconsistency between this Council Code of Conduct and a federal or provincial statute or regulation, the statute or regulation shall prevail.
- 15.4 All references to any statute, regulation, by-law or legislation shall be deemed to be a reference to the statute, regulation, by-law or legislation as amended, consolidated, replaced or superseded.

## **16. INTEGRITY COMMISSIONER**

- 16.1 The Integrity Commissioner shall be responsible for performing in an independent manner the following functions as assigned by the Municipality with respect to:
- (a) the application of the Council Code of Conduct; and
  - (b) the application of any procedures, rules and policies of the Municipality governing the ethical behaviour of members;

and, without limiting the generality of the foregoing, shall be entitled to undertake investigations or not undertake investigations in accordance with provisions of Part V.1 of the *Municipal Act, 2001*.

- 16.2 In addition, to the responsibilities set out in Section 16.1, the Integrity Commissioner shall also provide:
- (a) information to Council as to members' obligations under the Council Code of Conduct and the Complaint Procedure;
  - (b) advice to individual members regarding specific situations as they relate to the application of the Council Code of Conduct;
  - (c) advice to Council on other policies and procedures that relate to the ethical behavior of members;
  - (d) information to the public regarding the Council Code of Conduct and the obligations of members under the Council Code of Conduct; and
  - (e) an annual report to Council on the activities of the Integrity Commissioner.

- 16.3 Without limiting the generality of Section 16.1, the Integrity Commissioner may determine, on a case-by-case basis, whether to undertake an investigation or not to undertake an investigation. The Integrity Commissioner shall be entitled to summarily dismiss a complaint filed in accordance with the Complaint Procedure on the basis that it constitutes in his or her opinion, an abuse of process or is frivolous or vexatious.
- 16.4 Without limiting the generality of Section 16, all determinations of the Integrity Commissioner under the Council Code of Conduct shall be made in his or her own absolute discretion and shall be final and binding.
- 16.5 A request by a member of Council, or of a local board for advice from the Integrity Commissioner shall be made in writing.
- 16.6 Where the Integrity Commissioner provides advice to a member of Council or local board, the advice shall be in writing.
- 16.7 Where the Integrity Commissioner provides educational information to of the public about the Municipality's Council Code of Conduct, the Integrity Commissioner may summarize advice he or she has provided, but shall not disclose confidential information that could identify a person concerned.

## **17. COMPLAINTS**

- 17.1 All complaints pursuant to the Council Code of Conduct shall be filed in accordance with the Complaints Procedure in Appendix "A" attached hereto.

## **18. PENALTIES**

- 18.1 Council may, where it has received a report from its Integrity Commissioner that there has been a violation of the Council Code of Conduct, impose one of the following penalties on a member who has been found to be in contravention of the Council Code of Conduct:
- (a) a reprimand; or
  - (b) suspension of the remuneration paid to the member in respect of his or her services as a member for a period of up to 90 days.



**19. ANNUAL REPORTS**

- 19.1 The Integrity Commissioner shall submit an annual report to Council which will include information on the nature and volume of activity for the past year and provide examples, while maintaining the anonymity of the persons involved, in respect of advice provided and the nature of complaints received and for which a response was issued.
- 19.2 The annual report of the Integrity Commissioner shall be provided to Council for information purposes. The report is a public document.

**Municipality of Clarington**  
**COUNCIL CODE OF CONDUCT**  
**PROCEDURES**

**Municipality of Clarington's  
COUNCIL CODE OF CONDUCT  
COMPLAINT PROCEDURE  
(the "Complaint Procedure")**

**1. Procedure — Informal Complaint**

- 1.1 Any person who believes that a member is in contravention of the Municipality of Clarington's Council Code of Conduct may address their concerns in the following manner:
- (a) advise the member that their behaviour or activity contravenes the Council Code of Conduct;
  - (b) encourage the member to stop the prohibited behaviour or activity;
  - (c) if applicable, confirm to the member their satisfaction or dissatisfaction with the member's response to the concern identified; and
  - (d) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information, including steps taken to resolve the matter.
- 1.2 If any person is not satisfied with the response received through the aforementioned informal process, the person may proceed with a formal complaint through the Integrity Commissioner as outlined in Section 2 of the Complaint Procedure.

**2. Procedure — Formal Complaint**

- 2.1 Any person who has reasonable grounds to believe that a member of Council has contravened the Council Code of Conduct may address their concerns through the formal complaint process set out below:
- (a) all formal complaints ("Complaints") must be made using the Municipality's Complaints Form (see Schedule "A") and shall be dated and signed by the person making the Complaint (the "Complainant");
  - (b) the Complaint must include an explanation as to why the issue raised may be a contravention of the Council Code of Conduct and any evidence in support of the allegation must be included with the Complaints Form;
  - (c) any witnesses in support of the allegation must be identified on the Complaint Form;

- (d) the Complaint Form must include the name of the member alleged to have breached the Council Code of Conduct, the specific provision(s) of the Council Code of Conduct allegedly contravened, the date, time and location of the alleged contravention(s) and any other information as required on the Complaint Form;
- (e) the Complaint shall be filed directly with the Integrity Commissioner who will determine whether the matter is, on its face, a Complaint with respect to non-compliance with the Council Code of Conduct and not covered by other legislation or policies; and
- (f) the Complaint must be submitted to the Integrity Commissioner no later than six (6) months from the date in which the alleged violation occurred and no action will be taken on a Complaint received after this deadline.

2.2 The Integrity Commissioner may request additional information from the Complainant in order to properly assess the Complaint.

2.3 A Complainant may, at any time, abandon a Complaint.

### **3. Response of Integrity Commissioner of Complaint Outside Jurisdiction**

3.1 If the Complaint received by the Integrity Commissioner does not relate to a non-compliance with the Council Code of Conduct, it will be deemed not to be a Complaint and the Integrity Commissioner shall advise the Complainant in writing as follows:

- (a) Criminal Matter — if the Complaint is an allegation of a criminal nature consistent with the *Criminal Code*, R.S.C. 1985, c. C-46, the Complainant shall be advised that pursuit of such an allegation can only be made through the appropriate police service;
- (b) Municipal Conflict of Interest — if the Complaint is an allegation with respect to matters under the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, the Complainant shall be advised of their right to review the matter with their own legal counsel;
- (c) Municipal Freedom of Information and Protection of Privacy — if the Complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56,
- (d) Where the complainant is seeking access to records, the Complainant shall be advised of their option to contact the Clerk for details regarding the application process, or

- (e) Where the complainant is pertaining to a confidentiality breach, the complainant shall be advised of their option to contact the Information and Privacy Commissioner;
- (f) Overlap of Jurisdiction – where the complaint pertains to a member that is also a member of the Council of the Region of Durham, the Integrity Commissioner shall, based on the details of the complaint, make a determination as to whether the complaint pertains to the member in his/her capacity of a member of Clarington Council or in his/her capacity of a member of Regional Council and shall proceed with the investigation involving the appropriate organization.
- (g) Other Matters – if the matter is covered by other policies or legislation, the Complainant will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner.

#### **4. Refusal to Conduct an Investigation**

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

#### **5. Opportunity for Resolution**

- 5.1 If at any time following the receipt of a Complaint or during the investigation process, the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the Complainant and the member agree, efforts may be made to achieve an informal resolution. The formal Complaint will be held in abeyance during such time.

#### **6. Investigation**

- 6.1 If the Integrity Commissioner determines that a formal investigation is required, he or she shall:
  - (a) provide a copy of the Complaint and any supporting materials to the member whose conduct is in question with a request that a written response to the allegation be provided to the Integrity Commissioner within ten (10) days;
  - (b) provide a copy of the response provided by the member to the Complainant with a request for a written reply within ten (10) days;

- (c) have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality that the Integrity Commissioner believes to be necessary for an investigation; and
- (d) make interim reports to Council where necessary and as required to address any issues of interference, obstruction, delay or retaliation, if any, encountered during the investigation.

6.2 The Integrity Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6, in which case those sections apply to the investigation.

## **7. Co-Operation**

- 7.1 A Member shall co-operate in every way possible with the Integrity Commissioner in any investigation of a Complaint and the enforcement of the Council Code of Conduct.
- 7.2 A member of staff may not assist a member in his/her duties under this Procedure, including, but not limited to, assisting in preparing the member's written response to the Integrity Commissioner.

## **8. Suspension of Investigation**

- 8.1 The Integrity Commissioner will cease the investigation if:
  - (a) a Complainant abandons the request for an investigation, in which case the Integrity Commissioner shall report to Council as set out in Section 9; or
  - (b) the Integrity Commissioner determines that there are reasonable grounds to believe that there has been a contravention of any other statute or of the *Criminal Code*, in which case the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the investigation until any resulting police investigation and charge(s) have been finally disposed of, and shall report the suspension to Council.

## **9. Report Regarding Recommendation**

- 9.1 The Integrity Commissioner shall report to the Complainant and the member on the results of his or her review within 60 days of receiving a complete Complaint Form upon completion of an investigation. If the investigation process requires more than 60 days, the Integrity Commissioner shall provide an interim report to the Complainant and member indicating when the complete report may be available.

- 9.2 If, during the investigation process, the Complaint is withdrawn, sustained or resolved, the Integrity Commissioner shall report to Council outlining the findings, the terms of any resolution and any recommended action within 30 days.
- 9.3 If, upon completion of the investigation, the Integrity Commissioner finds that there has been no contravention of the Code, or that a contravention occurred but the member took all reasonable measures to prevent it, or the contravention committed was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall set this out in a report to Council.
- 9.4 If, upon completion of the investigation, the Integrity Commissioner finds that a breach of the Council Code of Conduct has occurred, the Integrity Commissioner shall report his or her findings to Council including a recommendation as to the imposition of a penalty as set out in subsection 223.4(5) of the *Municipal Act, 2001* S.O. 2001, c. 25, namely either:
- (a) a reprimand; or
  - (b) a suspension of remuneration paid to the member for a period of up to 90 days.
- 9.5 The report shall only disclose such information that, in the Integrity Commissioner's opinion, is required for the purposes of the report.

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

- 10.1 There is no appeal of the decision of the Integrity Commissioner.

## **11. No Complaints or Reports Prior to Election**

- 11.1 No Complaint may be referred to the Integrity Commissioner or forwarded by the Clerk for review and/or investigation after July 1 in any year in which a regular municipal election will be held. The Clerk shall forward any Complaint received after July 1 to the Integrity Commissioner on as soon as possible after the new Council has taken office in a regular election year and advise the Complainant of this process.
- 11.2 Notwithstanding Section 9 of this Complaint Procedure, the Integrity Commissioner shall not make any report to Council or any other person after the last regular Council meeting in July in any year in which a regular municipal election is to be held. Any reports will be made to the first Council meeting held after the inaugural meeting of the new Council.

## **12. Confidentiality**

12.1 The Integrity Commissioner and every person acting under his or her instructions shall preserve the confidentiality of all documents, material or other information, whether belonging to the Municipality or not, that come into their possession or to their knowledge during the course of their duties as required by section 223.5 of the *Municipal Act, 2001*. Pursuant to subsection 223.5(3) of the *Municipal Act, 2001*, Section 9 of the Complaint Procedure prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

## **13. Delegation**

13.1 The Integrity Commissioner may delegate, in writing, to any person, other than a member, any of the Integrity Commissioner's powers and duties.



**Municipality of Clarington**  
**COUNCIL CODE OF CONDUCT**

**FORMAL COMPLAINT FORM**

Schedule A to  
Clarington's Council Code of Conduct Complaint Procedure



Complaint to Integrity Commissioner  
(as per Council Code of Conduct)

**Submission Instructions:**

To request Clarington's Integrity Commissioner to conduct an inquiry pursuant to section 223.4 of the Municipal Act, 2001, and Section 2 of the Council Code of Conduct, complete this complaint form and submit it by mail, fax, email or otherwise, to:

Guy-Giorno, Integrity Commissioner  
Fasken-Martineau  
P.O. Box 20  
333 Bay Street, Suite 2400  
Toronto, ON M5H 2T6

Telephone: 416-366-8381  
Fax: 416-364-7813  
Email: ggiorno@fasken.com

**Part 1 – Applicant / Contact Information**

Name	Telephone (Home)	Telephone (Cell)
Address	City, Province	Postal Code
Email	Fax	

**Part 2 – Request for Investigation**

I hereby request the Integrity Commissioner for the Municipality of Clarington to conduct an inquiry pursuant to Part V.1 of the Municipal Act, 2001 and Section 2 of the Council Code of Conduct, about the following Council Member(s) / Local Board Member(s)

**Part 3 – Details of Code of Conduct Breach**

The Council Code of Conduct is available on the Municipal website and in the Clerk's Office.  
What Section of the Council Code of Conduct you believe has been breached?

**Background** (include date, time and location of conduct, supporting documentation, details and names of all persons involved, and names of any witnesses; attach extra pages if necessary).

- ¶
- ¶
- ¶
- ¶
- ¶
- ¶
- ¶

Signature of Applicant	Date
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Personal information provided with this application is collected under the authority of the *Municipal Act* and will be used by for the purpose of conducting an investigation of a possible breach of the Council Code of Conduct. Questions concerning this collection may be addressed to the Municipal Clerk at 905-623-3379 ext. 2102, 40 Temperance Street, Bowmanville, ON L1C 3A6

[1] department\ad0-administration\forms & letters & templates & samples\by-law-enforcement\forms\Integrity-commissioner-complaint-form.docx -- February 3, 2017