

The Corporation of the Township of Killaloe, Hagarty and Richards

By-Law #15-2019

Being a By-Law to establish a complaint protocol for Council and local boards under the Code of Conduct for the Township of Killaloe, Hagarty and Richards.

WHEREAS the Municipality, pursuant to Subsection 223.2 of the Municipal Act, 2001, as amended, shall as of March 1, 2019, establish codes of conduct for members of Council of the municipality and of its local boards, and

WHEREAS the Council for the Corporation of the Township of Killaloe, Hagarty and Richards established a code of conduct;

NOW THEREFORE the council for the Township of Killaloe, Hagarty and Richards enacts as follows:

That Council hereby adopts a complaint protocol for members of Council and local boards for the Township of Killaloe, Hagarty and Richards.

Read a first and second time this 5th day of March, 2019.

Read a third and final time this 5th day of March, 2019.

Janine Wisneski Moore

Mayor

Susan Lewda

Acting CAO

Part A: Informal Complaint Procedure

1. Informal complaints can be addressed by any person who believes that the activity of a Member has breached this Code of Conduct or the *Municipal Conflict of Interest Act*, but the person does not want to initiate a formal complaint. Any person may:
 - a) Advise the Member that his or her behavior or activity appears to constitute a contravention;
 - b) Encourage the Member to acknowledge and agree to stop the prohibited behavior or activity and avoid future occurrences of the prohibited behavior or activity;
 - c) Where the Member agrees to cease the behavior, confirm in writing that the agreement is satisfactory;
 - d) Where the Member's response is not satisfactory, advise the Member of your dissatisfaction with the response; and
 - e) Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B.
2. Individuals are encouraged to pursue the informal complaint procedure as the first means of remedying behavior or an activity that they believe violates the Code of Conduct.

Part B: Formal Complaint Procedure

Formal Complaints

1. Any individual who identifies or witnesses behavior or an activity by a Member that they believe is in contravention of this Code of Conduct or the *Municipal Conflict of Interest Act*, may file a formal complaint.
2. Any person may file a complaint with the Municipality by submitting in writing the prescribed complaint form to the Clerk. The form must contain an attestation from the complainant that they believe that the facts as set out in the complaint are true to the best of their knowledge and belief and that they make those statements as if they were under oath.
3. Every complaint must be accompanied by the prescribed fee in the amount of \$125.00.
4. In the event that the Integrity Commissioner determines that a complaint is frivolous, vexatious or does not disclose a breach of this Code of Conduct or the *Municipal Conflict of Interest Act*, at any point after the submission of the complaint, the complainant shall forfeit the fee. If the result of the complaint is a negotiated resolution or a finding that the Member breached this Code of Conduct or the *Municipal Conflict of Interest Act*, the fee shall be refunded in part, up to 50%, based on the recommendation of the Integrity Commissioner.
5. Every complaint shall include the following:

- a) All information requested in the prescribed complaint form;
- b) The complaint must set out reasonable and probable grounds for the allegation that the Member has contravened this Code of Conduct or the *Municipal Conflict of Interest Act*;
- c) Names of any witnesses in support of the allegation must be identified in the complaint;
- d) A cheque in the amount of \$125.00 made payable to the Township of Killaloe, Hagarty and Richards.

6. The complaint shall be filed with the Clerk by mail or in person, who shall forward the matter to the Integrity Commissioner. The Clerk shall also provide notice to Council by way of confidential internal communication that a complaint has been filed, but no details of the complaint shall be provided other than the fact of a complaint and whether it is a complaint under this Code of Conduct, the *Municipal Conflict of Interest Act* or other policy.
7. If the complaint is not, on its face, a complaint with respect to non-compliance with this Code of Conduct or the *Municipal Conflict of Interest Act* or the complaint is covered by other legislation or complaint procedure under another policy, the Integrity Commissioner shall refer the complaint to the appropriate entity for investigation, advise the complainant in writing, suspend the investigation until after the matter has been finally disposed of, and report the suspension of the investigation to Council.

Refusal to Conduct Investigation

8. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation and, where this becomes apparent in the course of an investigation, shall terminate the investigation. The Integrity Commissioner shall communicate this position in writing to the complainant and the Member identified in the complaint.

Opportunities for Resolution

9. Following receipt and review of a formal complaint, or at any time during the investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued, and both the complainant and the Member agree, efforts may be pursued to achieve an informal resolution at the discretion of the Integrity Commissioner.

Investigation

10. The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*.
 - a) Provide the complaint and supporting material to the Member whose conduct is in question within 10 business days of the determination that an investigation will proceed. A request will be included that the Member

- provide any written response to the Integrity Commissioner within 10 business days;
- b) Provide a copy of any response from the Member to the complainant within 10 business days. A request will be included that the complainant provide any written response to the Member's response within 10 business days;
 - c) Provide a copy of any response from the complainant to the Member within 10 business days. A request will be included that the Member provide any written response to the complainant's response within 10 business days;
 - d) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any work location of the Municipality relevant to the complaint for the purpose of investigation and potential resolution;
 - e) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation;
 - f) The Integrity Commissioner shall retain all records related to the complaint and investigation;
 - g) The Integrity Commissioner may extend deadlines at his discretion.

Timing of Complaints in Relation to Municipal Elections

- 11. The report for completed investigations must be submitted to Council on or before Nomination Day in the year of a municipal election.
- 12. Investigations of complaints that are not completed as of Nomination Day in an election year shall be terminated on Nomination Day.
- 13. The complainant or the Member or former Member whose conduct was at issue may re-commence the complaint within six (6) weeks of Voting Day by submitting a written request to the Integrity Commissioner, who shall, provided the request is received on or before six (6) weeks from Voting Day, recommence the investigation.
- 14. In addition, on or after Nomination Day until the end of Voting Day in the year of a municipal election:
 - a) no complaint shall be filed;
 - b) the Integrity Commissioner shall not report to the Municipality about an ongoing investigation; and
 - c) the Municipality shall not consider whether to impose any penalty on a Member subsequent to an investigation.

Complaints Under the Municipal Conflict of Interest Act

- 15. After March 1, 2019, an elector as defined in section 1 of the *Municipal Conflict of Interest Act*, or a person demonstrably acting in the public interest, may submit a request to the Integrity Commissioner to conduct an investigation concerning an

alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* by filing with the Clerk a completed and signed complaint form and paying the prescribed fee of \$125.00.

16. No request may be submitted more than six (6) weeks after the complainant became aware of the alleged contravention.
17. A request for an investigation in an election year may only be submitted prior to Nomination Day or after Voting Day.
18. In the event that a complainant becomes aware of the alleged contravention within the period of time starting six (6) weeks before Nomination Day in an election year, the complainant may apply to the Integrity Commissioner within six (6) weeks after the day after Voting Day, provided that the complainant includes in their written request for an investigation a statutory declaration attesting to the fact that the complainant became aware of the contravention not more than six (6) weeks before the date of the request, or in the case where a complainant became aware of the alleged contravention prior to Nomination Day, a declaration that the facts were not known to the complainant more than six (6) weeks prior to Nomination Day.
19. The Integrity Commissioner has all the powers set out in the *Municipal Act* and the *Public Inquiries Act* when undertaking an investigation under this section and shall follow the investigation process established in paragraph 10 above.
20. Where an investigation has not been completed before Nomination Day in an election year, the Integrity Commissioner shall terminate the investigation on that day.
21. An investigation terminated pursuant to paragraph 20 above shall not be recommenced unless the person who made the request, or the Member whose conduct is at issue, applies in writing to the Integrity Commissioner to recommence the investigation.
22. The Integrity Commissioner shall complete the investigation within 180 days of receipt of the complaint, unless the investigation is terminated in accordance with paragraph 20 above.
23. The Integrity Commissioner may, after completing an investigation, apply to a judge in accordance with the *Municipal Conflict of Interest Act* for a determination under the Act. Prior to making an application to court, the Integrity Commissioner shall present to Council a request to make the application and allow Council to provide recommendations to the Integrity Commissioner as to whether such an application should be made. The Integrity Commissioner is not bound by the advice or recommendation of Council and shall refer the matter to a judge in his or her sole discretion.

Recommendation Report

24. The Integrity Commissioner shall report to the complainant and the Member generally no later than 90 days after the official receipt of the complaint (180 days

in the case of a compliant under the *Municipal Conflict of Interest Act*). If the investigation process takes more than 90 (180) days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date the report will be available.

25. After completing the investigation, the Integrity Commissioner shall prepare a report which shall make findings of fact and conclusions as to whether a breach of this Code of Conduct or the *Municipal Conflict of Interest Act* occurred, as the case may be, make recommendations to Council, and in the case of a *Municipal Conflict of Interest Act* investigation, make a determination as to whether or not the matter will be referred to the court, and include written reasons for the decision.
26. The report of the Integrity Commissioner shall be published by posting the report on the Municipal website and making a copy available to all Members of Council and the Members of the Board or Committee, as applicable.

Member Not Blameworthy

27. If the Integrity Commissioner determines that there has been no contravention of this Code of Conduct or the *Municipal Conflict of Interest Act*, or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner may so state in the report and may make appropriate recommendations.
28. Where a Member has sought and followed advice from the Integrity Commissioner and is subsequently the subject of a complaint, the Integrity Commissioner may refer to the earlier advice and, provided that the facts as set out in the earlier advice are still applicable, determine in a summary manner that there has been no breach of this Code of Conduct or the *Municipal Conflict of Interest Act*.

Public Disclosure

29. The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this complaint protocol.
30. The Integrity Commissioner shall retain all records related to the complaint and investigation.
31. At the time of the Integrity Commissioner's report to Council, the identity of the person who is the subject of the complaint shall not be treated as Confidential Information if the Integrity Commissioner finds that it is necessary to disclose that person's identity.