

THE CORPORATION OF THE TOWNSHIP OF HORNEPAYNE

BY-LAW NO. 1749

**Being a By-Law to adopt a  
Code of Conduct for  
Members of Council  
and Local Boards**

**WHEREAS** Section 223.2 (1) *Municipal Act, 2001*, as amended, authorizes municipalities to establish Codes of Conduct for Member of Council and Local Boards; and,

**WHEREAS** Council wishes to employ a Code of Conduct that will hold them to a high standard as leaders of the Community and requires them to act with honesty, integrity and generally conduct themselves in a way that both generates community trust and confidence as individuals, and enhances the role and image of Council and local government generally; and

**WHEREAS** Council wishes to illustrate their intention to operate in an open and transparent manner;

**NOW THEREFORE** the Council of the Corporation of the Township of Hornepayne enacts as follows:

1. That the attached Code of Conduct for Members of Council and Local Boards forms an integral part of this By-Law as Appendix "A".
2. That By-Law No. 1656 is hereby repealed.
3. This By-Law may be known as the "Council Code of Conduct".
4. This By-Law comes into force and takes effect upon passage.

Read a first and second time this 11<sup>th</sup> day of July 2019.

Read a third time and finally passed this 11<sup>th</sup> day of July 2019.



Presiding Officer



Clerk

## Appendix "A" to By-Law No. 1749

### THE CORPORATION OF THE TOWNSHIP OF HORNEPAYNE

#### CODE OF CONDUCT FOR MEMBERS OF COUNCIL AND LOCAL BOARDS

##### 1.0 POLICY STATEMENT

- 1.1 The Code of Conduct is a public declaration of the principles of good conduct and ethics (standards of behaviour) that Council has decided its Stakeholders could reasonably expect of Council and its Local Boards to demonstrate in the performance of their responsibilities as elected community representatives or public appointees.
- 1.2 Elected positions in the community are a privilege which carries significant responsibilities and obligations. Members of Council are held to a high standard as leaders of the community and they are expected to become well informed on all aspects of municipal governance, administration, planning and operations. Members of Council are expected to carry out their duties in a fair, impartial, transparent and professional manner.
- 1.3 The Township of Hornepayne has recognized that the shifting of more responsibility to municipal government has resulted in a higher level of accountability to all stakeholders. This shift requires a statement with respect to the expected conduct of Council, and it's Local Boards.
- 1.4 The Township of Hornepayne recognizes that local municipal government is the most transparent and accountable level of government.
- 1.5 Improving the quality of municipal governance can best be achieved by encouraging high ethical standards of conduct on the part of all Municipal Officials and adherence to these standards protects and maintains the public interest and the Municipality's reputation and integrity.
- 1.6 In addition, the Township has adopted a Council-Staff Relations Policy in order to demonstrate Council's commitment to establishing an environment of mutual trust and respect between Council and Township employees. Both this Code and the Council-Staff Relations Policy play an integral role in ensuring that the Township is a tolerant and respectful workplace free of all forms of harassment. Council will have regard for both the Code and the Council-Staff Relations Policy when interacting with Township employees.

## 2.0 PURPOSE

- 2.1 This policy recognizes that Members of Council and Local Boards are committed to discharging their duties conscientiously and to the best of their ability.
- 2.2 Members of Council and Local Boards shall act with honesty, integrity and generally conduct themselves in a way that both generates community trust and confidence as individuals and enhances the role and image of Council and local government generally. Members of Council and Local Boards shall, at all times, seek to achieve the common good of the community which they serve.
- 2.3 This policy shall be administered by the Mayor, or designate, in so far as it relates to Members of Council and Local Boards.

## 3.0 DEFINITIONS

**"Board Member"** or **"Member"** means the Mayor or a Member of Council, or a Member of the public, appointed by Municipal Council, to a Municipal Council Board or Committee.

**"Corporation"** means the Corporation of the Township of Hornepayne.

**"Council"** means the Council of the Corporation of the Township of Hornepayne.

**"Integrity Commissioner"** or **"Commissioner"** means a person or firm appointed by Municipal Council as an "Integrity Commissioner" for the Corporation of the Township of Hornepayne in accordance with the Municipal Act 2001.

**"Municipality"** means the Corporation of the Township of Hornepayne.

**"Municipal Act"** or **"the Act"** means the Municipal Act 2001, S.O. 2001, Chapter 25, as amended and regulations thereto.

**"Local Board"** means a Committee of many individuals appointed by Municipal Council to a Board or Committee, in accordance with the *Municipal Act 2001*, S.O. 2001, Chapter 25.

**"Stakeholder"** means a person, group or organization that has interest or concern in the Township of Hornepayne. Stakeholders can affect or be affected by the township's actions, objectives and policies.

#### **4.0 REGULATIONS**

##### **4.1 Members of Council**

###### **4.1.1 Use of Information**

In their decision-making process, Members of Council are sometimes privy to information which may be confidential or controversial such as, but not limited to, "Closed Session" meetings, and may include emails and correspondence from Staff, Members of Council or third parties. Members of Council have a duty to hold, in strict confidence, all information concerning matters dealt with at a "Closed Session" meeting or that is determined to be confidential by the CAO/Clerk or specifically declared by Council. It is expected that Members of Council shall:

- a) Use internal information appropriately, so as not to be used to their personal advantage;
- b) Use confidential information appropriately so as not to cause detriment to the Corporation, Council, themselves or others, or benefit to others or themselves;
- c) Respect the status of confidential information until after the matter ceases to be confidential as determined by Council or the CAO/Clerk;
- d) Understand that the rights of access to municipal information will be the same for all Members of Council; and
- e) Only release information according to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter M.56. A Member of Council shall not, either directly or indirectly, release, make public, or in any way divulge any such information or any aspect of the "Closed Session" or confidential information to anyone, unless expressly authorized by Council or required by law to do so.

###### **4.1.2 Compliance with the Law**

- 4.1.2.1 Members of Council shall comply with the laws of Canada, the Province of Ontario and the Township of Hornepayne in the performance of their public duties.

#### **4.1.3 Communications with Public/Media Relations**

- 4.1.3.1 Members of Council understand there shall be respect for the decision-making process.
- 4.1.3.2 Members of Council shall be honest and respectful of each other in their communications with the public and the media.
- 4.1.3.3 Open and thorough public debate of major issues shall be encouraged.
- 4.1.3.4 Members of Council shall accurately and adequately communicate the attitudes and decisions of Council, even if they disagree with a majority decision of Council.
- 4.1.3.5 Members of Council shall stay focused on issues when making public statements and issuing media releases.
- 4.1.3.6 Members of Council shall avoid public statements that pit one Councillor against another, or damage the reputation of Council, or another Member of Council.
- 4.1.3.7 For major issues, Council shall attempt to reach collective agreement on the common themes to be communicated.
- 4.1.3.8 Official information related to Council decisions and/or Resolutions of Council shall be communicated to the community and the media in an official capacity by the Mayor as Head of Council, or designate.
- 4.1.3.9 Information concerning the adoption of policies, procedures and decisions of Council shall be conveyed openly and accurately.
- 4.1.3.10 "Bad news" or failures shall be dealt with in a forthright manner that includes identifying the problem, communicating the corrective action to be taken, and resisting the temptation to ascribe blame.
- 4.1.3.11 Confidential and privileged information shall not be disclosed.

#### **4.1.4 Relations with Municipal Employees and Other Members of Council**

- 4.1.4.1 Members of Council shall read and respect the role of Council as set forth in Section 224 of the Act, attached as Schedule 1 of this Policy.
- 4.1.4.2 Members of Council understand and acknowledge that only Council as a whole has the capacity to direct members of Staff to carry out specific tasks or functions.
- 4.1.4.3 Members of Council shall refrain from using their position to improperly influence members of Staff in their duties or functions or to gain an advantage for themselves or others.
- 4.1.4.4 Members of Council shall refrain from publicly criticizing individual members of Staff in any way that casts aspersions on their professional competence and credibility.
- 4.1.4.5 Members of Council shall read and respect the Hiring Policy of the Municipality as adopted by By-Law of Council.
- 4.1.4.6 Members of Council shall read and abide by the Council-Staff Relations Policy.

#### **4.1.5 Reporting Relationships**

- 4.1.5.1 No direct reporting relationships shall exist between employees, Elected Officials and Officers of the Corporation who are related by birth or marriage except under extenuating circumstances. The final decision shall be rendered by the Council of the Corporation.

#### **4.1.6 Gifts and Benefits**

- 4.1.6.1 Members of Council understand that the stipend paid to each Member is not intended to fully remunerate Members of Council for services to the Corporation. Members of Council shall not solicit, offer or agree to

accept a commission, reward, gift, advantage or benefit of any kind, personally or through a family member or friend, which is connected directly or indirectly with the performance of duties of the office.

- 4.1.6.2 Members of Council shall only accept gifts, hospitality or entertainment of a nominal value that could not be reasonably construed as being given in anticipation or recognition of special consideration by the corporation.
- 4.1.6.3 Members of Council shall only accept hospitality or entertainment if the offer is infrequent and appropriate for the occasion. In these circumstances, it is assumed that the nature of the business discussed is important enough to the Municipality that reciprocal arrangements could openly be made and charged to the Municipality.
- 4.1.6.4 Members of Council acknowledge that the Mayor, or designate will, in his/her role, periodically receive and distribute ceremonial or other similar items.
- 4.1.6.5 Members of Council are not precluded from accepting:
  - a) political contributions that are otherwise offered, accepted and reported in accordance with applicable law;
  - b) services provided without compensation by persons volunteering their time;
  - c) food, lodging, transportation and entertainment provided by other levels of government or by other local governments, boards or commissions; or
  - d) a reimbursement of reasonable expenses incurred and honorariums received in the performance of activities connected with municipal associations.
- 4.1.6.6 Members of Council shall return any inappropriate gifts or benefits along with an explanation of why the gifts or benefits cannot be accepted.

#### **4.1.7 Political Activity**

- 4.1.7.1 Elected Officials of the Corporation may be involved in provincial and federal campaigns as long as this

involvement does not affect the objectivity with which they must discharge their duties.

#### **4.1.8 Conflicts of Interest – Pecuniary Interest**

- 4.1.8.1 It is the responsibility of individual Councillors to ensure that they are aware and trained in the application of the *Municipal Conflict of Interest Act*. The onus is on the Councillor to identify a conflict of interest and to take the appropriate action to identify the existence of a conflict in favour of his/her public duty.
- 4.1.8.2 A conflict of interest exists when an individual is, or could be, influenced, or appear to be influenced by a personal interest, financial (pecuniary) or otherwise, when carrying out their public duty. Personal interest can include direct or indirect pecuniary interest, bias, pre-judgement, close-mindedness or undue influence.
- 4.1.8.3 Members of Council must appropriately resolve any conflict or incompatibility between their personal interests and the impartial performance of their public or professional duties in accordance with statutory requirements. When considering whether or not a conflict exists, it is important to consider where there are grounds for a reasonable person to think that a conflict exists.
- 4.1.8.4 Recognizing that it is impossible to anticipate all possible conflicts that may arise during a Member's term of office and, those conflicts may not be only pecuniary in nature, it is generally advisable to be as open as possible. It is not enough that a conflict of interest not exist – it must also be seen by taxpayers to be non-existent.
- 4.1.8.5 The following principles should be used as a guide:
  - a) In making decisions, always place the interests of the taxpayers first and, in particular, place them before the interest of colleagues on Council, Staff, friends, or family;
  - b) Always interpret the phrase "Conflict of Interest" in the broadest possible terms;
  - c) A factor which could be considered a conflict by a taxpayer should be treated as a conflict and be disclosed by the Member of Council;



- d) If in doubt, it is better to disclose a situation;
- e) It is the responsibility of the individual Councillors to obtain independent legal advice with respect to any situation that might arise whereby there is a potential for a conflict of interest; and
- f) It is considered a breach of this policy, and the Act, to require or to attempt to burden members of Staff to assist in the determination of a conflict of interest of individual Councillors.

#### **4.1.9 Use of Corporate Property**

- 4.1.9.1 Members of Council may only use corporate property, equipment, supplies or services of consequence, for activities connected with the discharge of official duties or associated community activities having the sanction of Council or its committees.
- 4.1.9.2 Members of Council shall avoid waste, abuse and extravagance in the provision of use of public resources and shall expose fraud and corruption of which the Member of Council is aware.

#### **4.1.10 Transparency and Openness in Decision-Making**

- 4.1.10.1 Members of Council will ensure to conduct and convey Council business in an open and public manner (other than for those items which, under the Act may be held in Closed Session) so that stakeholders can obtain the process, logic and rationale which were used to reach conclusions or decisions.

#### **4.1.11 Outside Work or Business Activities**

- 4.1.11.1 Members of Council may not engage in any outside work or business activity that conflicts with their duties as a Member of Council; which uses their knowledge of confidential plans, projects, or information about the holdings of the Corporation; or that will, or is likely to, negatively influence or affect them in carrying out their duties as a Member of Council.

4.1.11.2 Members of Council shall not engage in any activity, financial or otherwise, which is incompatible or inconsistent with the ethical discharge of official duties in the public interest.

4.1.11.3 Without limiting the generality of the foregoing, Members of Council shall not:

- a) use any influence of office for any purpose other than official duties;
- b) solicit, demand, or accept the services of any corporate employee, or individual providing services on a contract for service, for re-election purposes during hours in which the employee, or individual providing services under a contract for service is in the paid employment of the Corporation;
- c) place themselves in a position of obligation to any person or organization which might reasonably benefit from special consideration or may seek preferential treatment;
- d) give preferential treatment to any person or organization in which a Member or Members of Council have a financial interest; or
- e) influence any administrative or Council decision or decision-making process involving or affecting any person or organization in which a Member or Members of Council have a financial interest.

#### **4.1.12 Professional Development**

4.1.12.1 Members of Council shall, where practicable, promote and participate in opportunities for professional development in order to stay updated on issues and trends so that they can be as efficient and effective as possible in the carrying out of their duties and responsibilities.

#### **4.1.13 Public Input**

4.1.13.1 Council, as a whole, may periodically use formal or informal opportunities to seek public input as a component of the decision-making process which have broad impacts on the community. The purpose of the exercise shall be to provide stakeholders with a mechanism to provide opinions and advice so that the widest range of views and information is available before final decisions are made.

### **5.0 DRESS CODE**

5.1 The Township of Hornepayne strives to present an approachable and professional image to the general public. Members of Council are expected to dress appropriately and use discretion in wearing attire that is appropriate for the official duties.

### **6.0 POSITIVE WORKPLACE ENVIRONMENT**

6.1 Council and Local Boards shall support the maintenance of a safe, healthy, friendly and positive work place environment for municipal employees, and for citizens and businesses dealing with the Township of Hornepayne. Council and Local Boards will seek to achieve a team approach in an environment of mutual respect, trust and acceptance of their different roles in accordance with the Township's Council-Staff Relations Policy and applicable law.

### **7.0 COMPLIANCE**

7.1 Council shall appoint an Integrity Commissioner, who is an independent third party, to administer this Code of Conduct and to carry out the duties of the Integrity Commissioner as set out in Section 223 of the *Municipal Act, 2001*, as amended.

7.2 The Mayor, or designate, and Chairs of Boards and Committees have the responsibility to ensure that Municipal Councillors, or Local Boards (as applicable) are fully aware of and understand the Code of Conduct.

**8.0 COMPLAINTS OF DISCRIMINATION OR HARASSMENT MADE BY MUNICIPAL EMPLOYEES**

- 8.1 Where a municipal employee files a complaint of harassment or discriminatory treatment by a Member(s) of Council, the Member(s) of Council may participate in the Informal Resolution and/or Mediation processes under the Workplace Violence/Harassment Prevention Policy for the Corporation.
- 8.2 If the Member(s) of Council do not participate in these processes or if the complaint is not resolved through these processes, the complainant may lodge a complaint to the Ontario Human Rights Commission by contacting the commission by telephone (1-800-387-9080), in person, by mail or on its website ([www.ohrc.on.ca](http://www.ohrc.on.ca)).

**9.0 OTHER COMPLAINTS MADE BY ANY PERSON (Allegation of Activity other than 8.1 above)**

- 9.1 Any complainant may take the following steps, if applicable, to address prohibited activity by a Member of Council:
- a) a complainant may contact the Ontario Provincial Police with respect to an investigation under s.122 of the Criminal Code of Canada, where the allegation is that a Member of Council, in a matter connected to the duties of office, commits fraud or a breach of trust;
  - b) a complainant may contact the Ontario Provincial Police with respect to an investigation under s.123 of the Criminal Code of Canada, where the allegation is that a Member of Council, in a matter connected to the duties of office, accepts or offers or agrees to accept from any person a loan, reward, advantage or benefit of any kind;
    - (i) a complainant may advise the Member of Council verbally or in writing that the activity contravenes this policy;
    - (ii) a complainant may encourage the Member of Council to stop the prohibited activity;
    - (iii) a complainant should keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information; or
  - c) a complainant may refer his or her complaint to the Ontario Human Rights Commission where the alleged misconduct involves a violation of the Human Rights Code.

**10.0 COMPLAINT PROTOCOL OF AN ALLEGED BREACH OF CODE OF CONDUCT**

10.1 Complaints by the general public, staff and/or Council will be handled by the Integrity Commissioner, as appointed by the Township of Hornepayne, and shall be in accordance with Schedule 2 attached herein.

**11.0 PENALTIES FOR A BREACH OF THE CODE OF CONDUCT**

11.1 Council, as a whole, provides for the enforcement of this policy as it relates to Members of Council. Any allegation or breach made under this policy will be directed to the Integrity Commissioner and he/she will direct the investigation and make recommendations as are reasonable. In determining appropriate discipline, Council will have regard to the responsibilities as well as the severity of any misconduct. Disciplinary action arising from violations of this Code of Conduct is the responsibility of the Council, depending upon the circumstances.

## SCHEDULE 1

### CODE OF CONDUCT FOR MUNICIPAL COUNCIL AND LOCAL BOARDS CORPORATION OF THE TOWNSHIP OF HORNEPAYNE

#### 1.0 ROLE OF COUNCIL

- 1.1 to represent the public and to consider the well-being and interests of the Municipality;
- 1.2 to develop and evaluate the policies and programs of the Municipality;
- 1.3 to determine which services the Municipality provides;
- 1.4 to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of Council;
- 1.5 to ensure the accountability and transparency of the operations of the Municipality, including the activities of the senior management of the Municipality;
- 1.6 to maintain the financial integrity of the Municipality;
- 1.7 to carry out the duties of Council under the *Municipal Act, 2001*, c. 25, s. 224; 2006, c. 32, Sch. A, s. 99. or any other Act; and
- 1.8 to abide by and respect the guiding principles as well as the roles of Council and staff as articulated in the Council-Staff Relations Policy.

## **SCHEDULE 2**

### **COMPLAINT PROTOCOL – Township of Hornepayne**

#### **1.0.0 Integrity Commissioner Review Process and the Code of Conduct for Council Members and Local Boards**

The complaint protocol identified in the Integrity Commissioner Review Process in the Code of Conduct for Council Members and Local Boards was implemented to handle complaints by the general public, staff and/or Council using the services of a Municipal Integrity Commissioner. Accordingly, the Municipal Clerk shall forward complaints to the Municipal Integrity Commissioner, who shall turn would forward to Council the report findings and recommendations through the Municipal Clerk without endorsement, comment, or editing, and will recommend on the disclosure aspects of report findings by Council under the provisions of the "Integrity Commissioner Review Process" under the Code of Conduct for Council Members and Local Boards policy. The complaint protocol shall only apply to alleged transgressions and be relevant to proceedings occurring after January 1, 2008.

#### **2.0.0 Informal Complaint Procedure**

21.0 Individuals (for example, Municipal employees, members of the public, members of Council or local boards, or organizations who have identified or witnessed behaviour or an activity by a member of Council or a local board that they believe is in contravention of the Code of Conduct for Members of Council and Local Boards (the "Code of Conduct") would address the prohibited behaviour or activity themselves as follows:

- (a) advise the member that the behaviour or activity contravenes the Code of Conduct;

- (b) encourage the member to stop the prohibited behaviour or activity;
- (c) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- (d) tell someone else (for example, a senior staff member or officer of the corporation) about their concerns, their comments, to the member and the response of the member;
- (e) if applicable, confirm to the member satisfaction with the response of the member; or, if applicable, advise the member of their dissatisfaction with the response; and
- (f) consider the need to pursue the matter in accordance with the formal complaint procedure outlined in article 6.3.0, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.

2.2.0 Individuals and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code of Conduct. With the consent of the complaining individual or organization and the member, the Integrity Commissioner may be part of any informal process. However, it is not a precondition or a prerequisite that those complaining pursue the informal complaint procedure prior to pursuing the formal complaint procedure in article 6.3.0.

### 3.0.0 **Formal Complaint Procedure**

3.1.0 **Statutory Authority:** Under Section 223.3(1) "Integrity Commissioner of the Municipal Act 2001 as amended:

- (a) Municipal Council, a member of council, municipal employees or a member of the public may request the Integrity Commissioner to conduct an inquiry about whether a member of council or of a local has contravened the Code of Conduct for Members of Council and Local Boards; and



- (b) a local board or a member of a local board may request the Integrity Commissioner to conduct an inquiry about whether a member of the local board has contravened the Code of Ethics.

### **3.2.0 Definitions:**

- (a) **"Code of Conduct"** shall mean the Township of Hornepayne's Code of Conduct Policy for Council Members and Local Boards;
- (b) **"Vexatious"** means instituted without sufficient grounds and serving only to cause annoyance to the defendant.; troublesome; annoying; a vexatious situation;
- (c) **"Integrity Commissioner"** means the Integrity Commissioner appointed by the Township of Hornepayne;
- (d) **"Complaint"** means a purported contravention of the Code of Conduct for Council Members and Local Boards;
- (e) **"frivolous"** means little or no weight, worth, or importance; not worthy of serious notice;
- (f) **"good faith"** means in accordance with standards of honesty, trust, sincerity.

### **3.3.0 Requests for Inquiries**

#### **3.3.1 Application of Review Request**

- (a) All the provisions of this section apply to a request for an inquiry by an individual or an organization other than council or a local board.
- (b) Section 3.3.5 to 3.3.13, except clause 3.3.6 (a) (ii) and clause 3.3.7 (c), apply to a request for an inquiry by Council or a local board.

#### **3.3.2 Complaint**

- (a) A request for an investigation of a complaint that a member has contravened the Code of Conduct (the "complaint") shall be in writing.
- (b) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization).
- (c) A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code of Conduct and include a supporting affidavit that sets out the evidence in support of the complaint.
- (d) Staff of the Township of Hornepayne who are commissioners for taking affidavits, are authorized to take the supporting affidavit.

### **3.3.3 File with the Clerk**

- (a) The request shall be filed with the Municipal Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Ethics and not covered by other legislation or other Council policies as described in 3.3.3 (c).

#### **Deferral**

- (b) If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until an affidavit is received.
- (c) If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Ethics or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner advise the complainant in writing as follows:

- (i) if the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police force;
- (ii) if the complaint on its face is with respect to non-compliance with the Municipal Conflict of Interest Act, the complainant shall be advised to review the matter with the complainant's own legal counsel;
- (iii) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the Municipal Freedom of Information and Protection of Privacy Act Head, the CAO/Clerk;
- (iv) if the complaint on its face is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and,
- (v) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

#### **Reports**

- (d) The Integrity Commissioner may report to

Council or the local board that a specific complaint is not within the jurisdiction of the Integrity Commissioner.

- (e) The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.

#### **3.3.4 Refusal to Conduct Investigation**

- (a) 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 for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.
- (b) Complaints referred that are repetitious in nature, not relevant to the Code of Conduct in the opinion of the Integrity Commissioner, deemed frivolous and without substance in the opinion of the Integrity Officer, or, where the complaint is deemed vexatious in the opinion of the Integrity Commissioner, complaints shall not be advanced to an investigation stage and subject to provisions of section 3.3.4 (c).
- (c) Other than in exceptional circumstances, the Integrity Commissioner will not report to Council or a local board on any complaint described in section 3.3.4 (a) and 3.3.4 (b) except as part of an annual or other periodic report.

#### **3.3.5 Investigation**

- (a) If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under Section 3.3.4, the Integrity Commissioner shall investigate and may attempt to settle the complaint.

### ***Public Inquiries Act***

- (b) Under subsection 223.4(2) of the *Municipal Act, 2001*, as amended, the Integrity Commissioner may elect to investigate a complaint by exercise of the powers of a commission under Parts I and II of the *Public Inquiries Act*.
- (c) When the *Public Inquiries Act* applies to an investigation of a complaint, the Integrity Commissioner shall comply with the procedures specified in that Act and this Complaint Protocol, but, if there is a conflict between a provision of the Complaint Protocol and a provision of the *Public Inquiries Act*, the provision of the *Public Inquiries Act* prevails.

### **3.3.6 Opportunity to Comment**

- (a) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:
  - (i) serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation by way of affidavit or otherwise will be filed within ten (10) days; and,
  - (ii) serve a copy of the response provided upon the complainant with a request for a written reply within ten (10) days.
- (b) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the Complaint, access and examine any of the information described in subsections 223.4(2) of the *Municipal Act, 2001*, as amended, and may enter any Municipal or local board work location relevant to the complaint for the purposes of investigation and settlement.

- (c) The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any member unless the member has had reasonable notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment on the proposed finding and any recommended sanction.

#### **Interim Report**

- (d) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.

#### **3.3.7 Final Report**

- (a) The Integrity Commissioner shall report to the complainant and the member generally no later than ninety (90) days after the making of the complaint.
- (b) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council or the local board, or both, outlining the findings, the terms of any settlement, or recommended corrective action.
- (c) Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Council or the local board except as part of an annual or other periodic report.

#### **Lawful Recommendations**

- (d) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.

### **3.3.8 Member Not Blameworthy**

If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct policy 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 shall so state in the report and shall recommend that no penalty be imposed.

### **3.3.9 Copies**

The Integrity Commissioner shall give a copy of the report to the complainant and the member whose conduct is concerned. Said report shall remain confidential until the matter has received complete and final disposition by the Integrity Commissioner and has been accepted, in an "Open Session", by the members of Council through the Municipal Clerk.

### **3.3.10 Report to Council**

The Municipal Clerk shall process the report for the next regular meeting of Council or the Local Board, or both, to be presented to Council in a "Closed Session". Said report shall remain confidential until the matter has received complete and final disposition by the Integrity Commissioner and has been accepted, in an "Open Session", by the members of Council through the Municipal Clerk.

### **3.3.11 Duty of Council or Local Board**

Council or the Local Board shall consider and respond to the report within ninety (90) days after the day the report is laid before it.

### 3.3.12 Payment of Costs

- (a) Subject to this section, claims for reimbursement by a member of Council for costs under this section shall be processed under the Indemnification Policy for Members of Council and the tariff as set out in the policy, as amended, applies to all claims for reimbursement under this section.
- (b) A complainant and a member (Hornepayne Municipal Council) who is/are party to a complaint under this procedure shall each be reimbursed for actual and reasonable legal and related expenses up to a maximum of:
  - (i) \$5,000; or
  - (ii) \$20,000, if the Integrity Commissioner has elected to investigate the complaint by exercise of the powers of a commission under Parts I and II of the *Public Inquiries Act*.
- (c) In the case of an application under the Judicial Review Procedure Act for judicial review of actions taken on a complaint against a member of council or a local board by the Integrity Commissioner, Council or a local board:
  - (i) where a member made the judicial review application. the member is eligible for reimbursement of legal costs, including additional legal costs in a successful application, that are not covered by the costs awarded by the court, up to a maximum of \$20,000;
  - (ii) a member may apply for reimbursement of the legal costs of intervention in a judicial review application where the member's interests are at stake, up to a maximum of \$20,000.



- (d) Council may consider the reimbursement of costs above the limit in subsections 3.3.12 (b) and 3.3.12 (c) on a case by case basis.
- (e) Costs may be provided in advance in an investigation, if the Integrity Commissioner is of the opinion that the use of a lawyer by one or more of the parties would facilitate the carrying out of the investigation, and subsections 3.3.12 (f) and 3.3.12 (g) do not apply to the advance costs paid under this subsection.
- (f) Costs shall only be reimbursed under this section to the complainant, if the Integrity Commissioner concludes that the complaint is not frivolous, vexatious or made in bad faith and the Integrity Commissioner's conclusion is not overturned on judicial review.
- (g) Costs shall only be reimbursed under this section to the member, if the Integrity Commissioner concludes that there has been no contravention of the Code of Conduct by the member or any contravention was committed through inadvertence or an error of judgment made in good faith, and the Integrity Commissioner's conclusion is not overturned on judicial review.

### **3.3.13 Confidentiality**

- (a) A complaint will be processed in compliance with the confidentiality requirements in section 223.5 of the *Municipal Act, 2001*, as amended, which are summarized in the following subsections.

- (b) The Integrity Commissioner and every person acting under her or his instructions shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of any investigation except as required by law in a criminal proceeding or in accordance with the provisions of section 223.5(1) of the *Municipal Act, 2001*, as amended.
- (c) This Section prevails over the *Municipal Freedom of Information and Protection of Privacy Act, 2006*.
- (d) If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned. 2006, c. 32, Schedule A, s.98.
- (e) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable Code of Conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report.
- (f) The Municipality and each Local Board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public upon the matter being reported out to the members of Council.

Neither the Commissioner nor any person acting under the instructions of the Commissioner is a competent or compellable witness in a civil proceeding in connection with anything done under this Part.

- (g) If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the Criminal Code (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council through the Municipal Clerk.

The Commissioner's opinion is necessary for the purposes of the report.

**SCHEDULE 2**

**Appendix "A"**

**AFFIDAVIT**

**Code of Conduct Complaint Protocol – Formal Complaint Procedure**

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

**AFFIDAVIT OF**

\_\_\_\_\_ (full name)

I, \_\_\_\_\_, (full name) of the Township of Hornepayne, in the Province of Ontario,

**MAKE OATH AND SAY (or Affirm)**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. I have reasonable and probable grounds to believe that a member of Hornepayne Municipal Council, \_\_\_\_\_, (name of member), has contravened section(s)

\_\_\_\_\_ (specify sections) of the Code of Conduct for Council Members (the "Code of Conduct"). The particulars of which are as follows: *(Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, please use the attached Schedule "A" form and check the appropriate box below. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc., and attach them to this affidavit.)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please see the Attached Schedule A**

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

**SWORN (or AFFIRMED)** before me at )  
the Township of Hornepayne in the )  
District of Algoma in the )  
Province of Ontario )

\_\_\_\_\_  
Complainant Signature

\_\_\_\_\_  
A Commissioner for Taking Affidavits )

\_\_\_\_\_  
Date

Dated this    day of )  
)  
)  
)

