

**THE MUNICIPALITY OF CASSELMAN**

**BY-LAW NO. 2019-037**

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**\*Including amendment 2021-029\***

**A BY-LAW TO ESTABLISH THE COMPLAINT-HANDLING PROCESS UNDER THE CODE OF CONDUCT OF THE COUNCIL OF THE MUNICIPALITY OF CASSELMAN**

**WHEREAS** a municipality must establish codes of conduct for members of the Council under Section 223.2 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended;

**AND WHEREAS** Section 223.3 of the Municipal Act authorizes a municipality to appoint an Integrity Commissioner who will report to the Council and who is responsible for providing independently of the duties that the municipality was allocated to the responsibilities listed in Section 223.3 the Municipal Act;

**AND WHEREAS** the Code of Conduct for members of the Council of the Municipality of Casselman was adopted on January 22, 2019 as By-law 2019-008;

**AND WHEREAS** the Municipality of Casselman has appointed an Integrity Commissioner to ensure that the members of the Council comply with ethical standards in the performance of their duties and are held accountable for compliance with their Code of conduct and any other applicable terms, rules or policies governing their ethical behaviour.

**NOW THEREFORE** the Council of the Municipality of Casselman adopts the following:

**1. DEFINITIONS**

“Good faith”;

- 1.1. "Good faith" means in accordance with the standards of honesty, trust and sincerity.
- 1.2. "Code of Conduct" means By-law 2019-008 of the Municipality of Casselman ("Code of Conduct of the Council") approved by the Council.
- 1.3. "Integrity Commissioner" means the person appointed by Council to provide services for the investigation and resolution of complaints independently and consistent manner in accordance with the application of the Code of Conduct, By-law 2019-008.
- 1.4. "Council" means the elected representatives who constitute the Municipal Council of the Municipality of Casselman.
- 1.5. "FIPPA" means the Access to Information Act Municipal and Protection of Privacy Act, R.S.O. 1990, chap. M56, as amended.
- 1.6. "Municipal Conflict of Interest Act" means the Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50, as amended.
- 1.7. "Public Inquiries Act" means the act of 2009 on the public inquiries, S.O. 2009, Chapter 33, Appendix 6, as amended.
- 1.8. "Municipal Act" means the Municipal Act, 2001, S.O. 2001, c. 25, as amended.
- 1.9. "Member of the Council" means any member of the Council, including the Chair.
- 1.10. "Complaint" means an application by a legal person that the Integrity Commissioner conduct an investigation into an event or a series of events that allegedly contravened the code of conduct or other terms and conditions, rules or policies governing the ethical behaviour of members of the Council.
- 1.11. "Complainant" means an individual who files a complaint; and
- 1.12. "Secretary" means the Secretary of the Municipality of Casselman ("Clerk").

## **2. ROLE OF THE INTEGRITY COMMISSIONER**

The role of the Integrity Commissioner is to ensure that the members of the Council perform their duties in accordance with the Code of Conduct, other terms, rules or policies governing their ethical behaviour and the Municipal Conflict of Interest Act. In addition, the Integrity Commissioner may, at the request of the Council or a member of the Council, provide advice and decisions on ethical issues and dilemmas, as specified in subsections 3.1 (c) or 3.1 (d) of this By-law.

## **3. DUTIES OF THE INTEGRITY COMMISSIONER**

3.1 The Integrity Commissioner shall:

- a) conduct investigations in response to complaints as to whether a Member of the Council has violated the Code of Conduct or other terms and conditions, rules and policies of the Municipality of Casselman governing the ethical behaviour of

members of the Council, and report back to the Commission with a recommendation of appropriate sanctions;

- b) conduct investigations in response to complaints as to whether a member of the Council has violated Sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act and report to Council with a recommendation for appropriate sanctions.
- c) at the request of a member of the Council, provide written advice on their obligations under the Code of Conduct and other terms, rules or policies governing their ethical behaviour. This advice may include recommendations on how to proceed when a member of the Council seeks advice based on specific factual circumstances. Requests must be made by completing the Request for Advice Form (see appendix "B" of this By-law) and shall be submitted directly to the Integrity Commissioner.
- d) at the request of a member of the Council, provide advice and recommendations to the Council on amendments to the Code of Conduct and other terms, rules or policies governing the ethical behaviour of members of the Council. Requests must be made by completing the Request for Advice Form (see Appendix "B" of this By-law and shall be submitted directly to the Integrity Commissioner.
- e) at least once during the term of Council, prepare and provide educational information to Council members, the Municipality of Casselman and the public regarding the Code of Conduct, other terms, rules and policies governing ethical behaviour of the members of the Council and to the Municipal Conflict of Interest Act; and
- f) prepare and submit to the Council an annual report containing a summary of activities, if applicable, that occurred during the previous calendar year.

#### **4. COMPLAINTS UNDER THE MUNICIPAL CONFLICT OF INTEREST ACT**

Notwithstanding the provisions of this By-law, any complaint filed under Section 223.4.1 of the Municipal Act related to an alleged contravention of Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act conducted by a member of the Council, and any investigation by the Integrity Commissioner in response to these complaints must be in accordance with Section 223.4.1 of the Municipal Act and the provisions of the Municipal Conflict of Interest Act.

#### **5. FILE A COMPLAINT**

5.1 Any individual can act as a Complainant.

5.2 Complaints must be made by completing the Official Complaint / Affidavit Form (see Appendix "A" to this By-law) and submitted directly to the Integrity Commissioner.

5.3 Complaints filed with the Chief of Administration or the Secretary will be forwarded to the Integrity Commissioner without delay and without any comments.

## **6. COSTS**

6.1. A complainant must pay a non-refundable fee of \$300 at the time of filing a complaint to the Municipality of Casselman.

6.2. In order to respect the confidentiality of the complainant, the deposit may also be sent to the Integrity Commissioner. The latter will credit the full amount to the Municipality of Casselman.

## **7. LIMITATION PERIOD**

7.1 The Integrity Commissioner will conduct an investigation only if the complaint is made less than 180 days from the date on which the incident or the last incident of a series of incidents covered by the complaint.

7.2 Notwithstanding Article 7.1 of this By-law, the Integrity Commissioner will conduct an investigation in respect of a complaint filed after the expiration of the time period set out in Article 7.1 of this By-law if the Integrity Commissioner is satisfied that:

- a) the delay was incurred in good faith;
- b) it is in the public interest to proceed with an investigation; and
- c) no material harm will be caused to anyone as a result of the delay.

7.3 A complainant is deemed to know the incident or incidents covered by the complaint referred to in Article 7.1 of this By-law at the time of the incident or the most recent incident of a series of incidents, unless the contrary is proven. The complainant bears the burden of proof.

## **8. CONDUCT AN INVESTIGATION**

8.1 The Integrity Commissioner may refuse to investigate if it is determined that:

- a) the complaint does not fall under the jurisdiction of the Integrity Commissioner;
- b) the complaint is frivolous or vexatious in nature;
- c) the complainant does not demonstrate that the complaint is valid; or
- d) the complainant does not provide requested additional information or clarification.

8.2 When, in accordance with Article 8.1 of this By-law, the Integrity Commissioner decides not to proceed with an investigation, the Integrity Commissioner must prepare and submit a report under Article 9.1 of this By-law explaining the decision.

8.3 If the complainant provides additional information after an investigation is suspended as per Article 8.1 of this By-law and there is sufficient information to establish an apparent

breach of the Code of Conduct, or other terms, rules or policies governing the ethical behaviour of Council members, the Integrity Commissioner must reopen the investigation.

8.4 When the Integrity Commissioner has determined that it is appropriate to investigate, the Integrity Commissioner will conduct an in-depth investigation in a timely manner. The member of the Council who is the subject of the Complaint must be given the opportunity to know the nature of the complaint against the member and provide comments to the Integrity Commissioner. A notice of the investigation outlining the complaint, including the opportunity to respond prior to opening a formal investigation, shall be given to the Council member.

8.5 The information provided to the member of the Council on the nature of the complaint may be used by the Council Member only to make representations to the Integrity Commissioner with respect to the complaint.

8.6 When conducting an investigation into a complaint about a member of the Council, the Integrity Commissioner may exercise the powers conferred on him by this By-law or Part V.1 of the Municipal Act, including the power to compel witnesses to testify and compel the release of documents under the Public Inquiries Act.

8.7 If the Integrity Commissioner, in the course of an investigation determines that there are reasonable grounds to believe that there has been a contravention of another Act or the Criminal Code of Canada, R.S.C., 1985, c. C-46, the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the investigation until the police investigation and the resulting charges have been permanently decided and report the suspension of the investigation to the Council

## **9. COMMISSIONER'S RESPONSIBILITIES DURING INVESTIGATIONS**

9.1 When the Integrity Commissioner has received a complaint concerning a member of the Council, he must, as soon as possible after his decision and no later than 60 days after receiving the Complaint, prepare and submit, to the Secretary, a report to the Council regarding the investigation of the complaint.

9.2 When the Integrity Commissioner is of the opinion that it is not possible to prepare and submit a report to the Council within the set time specified in Article 9.1 of this By-law, the Integrity Commissioner must notify the Council with:

- a) the reasons for the inability to prepare and file the report; and
- b) the date on or before which the report will be prepared and filed.

9.3 The report under Article 9.1 of this By-law must include:

- a) the nature of the complaint

- b) whether the complaint was filed after the expiration of the time period set out in Article 7.1 of this By-law, the findings of the Integrity Commissioner regarding Articles 7.2 and 7.3 of this By-law, which are to be made based on the civil standard of a balance of probabilities;
- c) the evidence gathered as a result of the complaint and the investigation;
- d) the Integrity Commissioner's findings of fact pertaining to the complaint, must be based on the civil standard of a balance of probabilities;
- e) the decision of the Integrity Commissioner, based on the findings of fact, indicating that the member of the Council has contravened the Code of Conduct, or to any other terms, rules or policies governing its ethical behaviour; and
- f) when the Integrity Commissioner decides that the member of the Council has contravened the Code of Conduct, or to any other terms, rules or policies governing ethical behaviour, a recommendation to impose sanctions from among those referred to in Article 10.1 of this By-law will be provided, as applicable, including a draft letter of reprimand or notice of suspension of compensation, if applicable.

9.4 The Integrity Commissioner may submit progress reports to the Council, as required, to address any interference, obstruct and delay or reprisal encountered during the course of the investigation.

9.5 The Integrity Commissioner must produce a copy of his report under Article 9.1 of this By-law to the complainant, to the Council member who is the subject of the complaint and, when the report is filed with the Secretary, to all other members of the Council.

9.6 When a report from the Integrity Commissioner or his delegate concludes that the member of the Council has contravened the Code of Conduct, or any other terms, rules or policies governing the ethical behaviour of the members of the Council, but has acted in accordance with the advice of the Integrity Commissioner given under subsection 3.1 (c) of this By-law and had, prior to receiving such advice, disclosed to the Integrity Commissioner all relevant facts, the delegate must mention such information in the report provided under Article 9.1 of this By-law and no sanction may be imposed.

9.7 The Secretary shall ensure that the remuneration of the member of the Council is suspended in accordance with the decision of the Council in respect to the report of the Integrity Commissioner under subsection 9.3 (f) of this By-law.

9.8 Where the Integrity Commissioner has filed a report in respect of an investigation with the Secretary under Article 9.1 of this By-law, the Secretary shall place this report on the Council's Agenda for decision.

## **10. SANCTIONS**

10.1 The penalties for a member of Council who contravenes the Code of Conduct, or any other procedures, rules or policies governing the ethical behaviour of Members of Council shall be those authorized under subsection 223.4 (5) of the Municipal Act, including:

- a) a reprimand;
- b) suspension of the remuneration paid to the member of the Council in respect of his or her services as a member of the Council for a period of up to 90 days and;
- c) the sanctions and actions provided for in the Council Code of Conduct, as amended from time to time.

## **11. COMPLAINT AND CONFIDENTIALITY**

11.1 Pursuant to subsection 223.4 (4) of the Municipal Act, the Integrity Commissioner has the right to have free access to all books, accounts, financial records, computer files, reports, records and to any other document, object or property owned or used by the Municipality of Casselman which the Integrity Commissioner considers necessary for an investigation.

11.2 The Integrity Commissioner and any delegate under Article 13.1 of this By-law must maintain confidentiality with respect to all matters to which they have knowledge in the performance of their duties, unless required by law in a criminal proceeding or in accordance with Section 223.5 of the Municipal Act.

11.3 The Integrity Commissioner and any delegate under Article 13.1 of this By-law recognize that the Municipality of Casselman is an institution for the purposes of FIPPA. Therefore, the Integrity Commissioner and any delegate under Article 13.1 of this By-law are committed not to disclose information subject to FIPPA, except to the extent that is necessary to properly carry out their duties in accordance with the provisions of this By-law, FIPPA and the Municipal Act.

11.4 In accordance with subsection 223.5 (3) of the Municipal Act, subsection 223.5 of the Municipal Act takes precedence over FIPPA.

11.5 The Integrity Commissioner and any delegate under Article 13.1 of this By-law must comply with the Council's rules of Procedure regarding personal or privileged information.

## **11.6 COMPLAINT AND EXCLUSION PERIOD**

11.7 Notwithstanding any other provisions of this By-law, any complaint or request for counselling may be directed to the Integrity Commissioner during the period that begins on the day of the nomination for a regular election, as set out in Section 31 of the

Municipal Elections Act 1996, SO 1996, c. 32, as amended, and which ends on polling day in a regular election, as set out in Section 5 of the Municipal Act.

- 11.8 During the exclusion period, the Integrity Commissioner shall not, in a report presented to the Council, give an opinion on whether a member of the Council has violated the Code of Conduct, or other terms, rules or policies governing the ethical behaviour of Council members.

## **12. CONFLICT OF INTEREST**

- 12.1 If the Integrity Commissioner becomes aware of a situation in which a potential conflict of interest could arise, the Integrity Commissioner must notify in writing the Secretary and shall delegate in writing its duties and responsibilities to conduct an investigation , including the exercise of powers under the Public Inquiries Act and the obligation to postpone the investigation.
- 12.2 The fact that the Integrity Commissioner has given advice under Article 3.1 (c) before being informed of a complaint under Article 3.1 (a) does not necessarily constitute a conflict of interest.
- 12.3 Prior to making a delegation under Article 13.1 of this By-law, the Integrity Commissioner must ensure that the person to whom the functions will be delegated will be fully capable of carrying out the duties.
- 12.4 The Integrity Commissioner and any delegate under Article 13.1 of this By-law must be impartial and neutral, and shall perform their duties with skill, competence and independence and in accordance with all applicable laws.

## **13. GENERAL PROVISIONS**

- 13.1 If, during an investigation, the Integrity Commissioner determines that it would be more appropriate to address the complaint under FIPPA, the complainant must be referred to the Secretary for the matter to be considered under this Act.
- 13.2 Solely for the purpose of concision, use of the masculine was privileged.

## **14. FORMS**

The following appendices are attached to this By-law and form an integral part thereof:

- 14.1 Les appendices suivants sont joints au présent règlement et en font partie intégrante :

**Appendix "A"** - Formal Complaint / Affidavit Form and its Annex "A", Supplementary Information Form

**Appendix "B"** - Request for Advice Form