

Appendix "A"

TO:	CHAIR AND MEMBERS BOARD OF CONTROL
FROM:	JAMES P. BARBER CITY SOLICITOR
	MEETING ON NOVEMBER 19 TH , 2003
SUBJECT:	Code of Conduct for Members of Council; Authority for a formal complaint process

RECOMMENDATION

That this report regarding legal authority for a formal complaint process against Council Members **BE RECEIVED** for information.

BACKGROUND

The Municipal Council, at its session held on September 2, 2003, adopted the "Policy to Establish a Code of Conduct for Members of Municipal Council", "subject to a report back from the City Solicitor with respect to the matter of whether or not a formal complaint process can be incorporated into the Policy as it relates to complaints made against a member of Council, such report to also include a comparison between the old and the new Municipal Acts as it relates to the Municipal Council's authority to institute such a process".

A. Can a formal complaint process be incorporated into the Policy as it relates to complaints made against a member of Council?

It is our opinion that a formal complaint process cannot properly be incorporated into the Policy as there appears to be no authority under the *Municipal Act, 2001*, other legislation, or in the case law to do so. The reasons for our opinion follow.

(a) Municipalities are creatures of statute – power derived only from provincial legislation

The case law is clear that municipalities are creatures of statute and derive their power only from provincial legislation. They have no inherent powers. Both Parliament and provincial legislature derive their powers from the *Constitution Act* and other legislative acts (i.e. *Parliament of Canada Act, Legislative Assembly Act*). Any power to control members is contained within these Acts. Likewise, any power to control members of Municipal council is contained within the *Municipal Act, 2001, Municipal Conflict of Interest Act, Municipal Freedom of Information and Protection of Privacy Act*, and the Criminal Code. It is arguable that since there are specific provisions within the legislation to control the conduct of members of Council, that there would not therefore be any further powers outside of the legislation.

The Parliament of Canada utilizes "Parliamentary Rules and Forms" and Parliamentary Privilege which are akin to those used by the British Parliament. The authority for this stems from the *Constitution Act*, wherein the preamble states that the Constitution is similar in principle to that of the United Kingdom. Further, in both the *Constitution Act* and the *Parliament of Canada Act*, the House of Commons and its members are given the privileges, immunities and powers as

were exercised by the Commons House of Parliament of the United Kingdom. However, the case law is clear that this parliamentary privilege does not extend to municipalities, as evidenced by two recent decisions of the Ontario Court of Appeal. Both involved the authority to lead prayers, one at a council session and the other in the Legislative Assembly. The first case (*Freitag v. Penetanguishene Town* (1999)) involved the authority of the Mayor to open Council meetings with a recitation of the Lord's Prayer. The court held that the prayer was a violation of the *Charter* and was not authorized by by-law or other law. The second case (*Ontario (Speaker of the Legislative Assembly) v. Ontario (Human Rights Commission)* (2001)) involved the authority of the Speaker on behalf of the Legislative Assembly to lead prayer at daily opening exercise. In that case, it was held that the internal affairs of the Legislative Assembly are protected by Parliamentary Privilege, and are a constitutional right expressly recognized in the preamble to the *Constitution Act*. This case further compared itself to *Penetanguishene*, and made it clear that in *Penetanguishene*, the offending body was a municipal council, not a provincial legislative assembly. Finlayson J.A. goes on to say "This is an extremely significant difference. A municipal council is a creation of the legislature and only has those powers granted and delegated to it by the province. In the case at bar, the court is being asked to scrutinize the actions of a provincial legislative body that enjoys constitutional status. It is the direct successor to the "mother of all parliaments" in the United Kingdom."

Unless there is statutory authority to pass a by-law for a formal complaint process, then it seems clear that a municipality would have no other authority to do so.

(b) Is there any authority in the *Municipal Act, 2001* to implement a formal complaints process against a Council Member?

(i) Section 102 / Section 130

Section 102 of the previous *Municipal Act* provided that "Every council may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by this Act and for governing the conduct of its members as may be deemed expedient and are not contrary to law."

By contrast, in the new *Municipal Act, 2001*, this section has become section 130 and provides "A municipality may regulate matters not specifically provided for by this Act or any other Act for purposes related to the health, safety and well-being of the inhabitants of the municipality." It is to be noted that the clause "and for governing the conduct of its members as may be deemed expedient and are not contrary to law" is absent from the new *Municipal Act, 2001*.

(ii) Section 9 – Broad Interpretation of the Act

Section 9 regarding interpretation of the *Act* was raised during the September 2, 2003 Council meeting. It is true that section 9(1) states that "Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities, (a) to enable them to govern their affairs as they consider appropriate; and (b) to enhance their ability to respond to municipal issues." Further, section 9(2) states "In the event of ambiguity in whether or not a municipality has the authority to pass a by-law under sections 8 and 11, the ambiguity shall be resolved so as to include, rather than exclude, municipal powers that existed on December 31, 2002."

It is our opinion that subsections 9(1) and 9(2) do not assist, since they can only be applied to sections 8 and 11 of the *Act*. Section 8 deals with the powers of a natural person. This issue does not relate to having the powers of a natural person. Section 11 deals with the spheres of jurisdiction. It is our opinion that the regulation of Councillor conduct, including a formal complaint system, would not fall within any of the spheres of jurisdiction. Therefore, in our opinion, section 9 is not helpful in attempting to broadly interpret the *Act* in terms of councillor conduct and a formal complaint system.

(iii) Specific authority in the *Municipal Act, 2001* and other legislation– Conduct of Council Members

Section 274 of the new *Act* (similar to section 100 of the previous *Act*) provides that a municipality may request, by resolution, a judge of the Superior Court of Justice to investigate an alleged breach of trust or other misconduct of a member of council. Usually, this section is used to deal with serious misconduct, such as deriving public funds or criminal offences. It is to

be noted that there are no powers given to the Judge beyond conducting an investigation or inquiry and reporting his or her findings to Council.

The *Municipal Conflict of Interest Act* may be used where a member has a direct or indirect pecuniary interest in a matter which he or she fails to disclose. The *Municipal Freedom of Information and Protection of Privacy Act* creates an offence for a person who willfully discloses personal information in contravention of the Act.

Section 122 of the Criminal Code, "Breach of Trust by a Public Officer" states "Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person."

From the above, it is clear that there are several instances where specific authority is provided in legislation to control or regulate members of Council. Since there is specific authority, it is arguable that the legislature did not intend for any further authority for municipalities beyond what is specifically contained in the legislation.

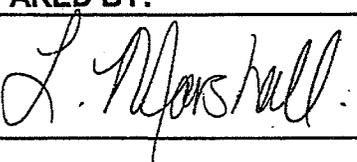
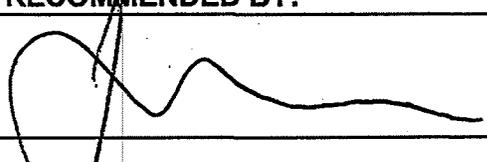
B. If Complaints Were to be Entertained

Notwithstanding our recommendation that City Council no longer possesses the power to pass by-laws to "govern the conduct of its members" as may be deemed expedient and not contrary to law, if City Council wished to entertain complaints concerning the conduct of council members outside of council and committee meetings, the English case *R. v. Portsmouth City Council, Ex parte Gregory and Another* (Q.B.), 88 LGR 478 dealt with the legal requirements surrounding a complaints procedure. In that case, the removal of two councillors from a committee for alleged misconduct was quashed on the basis that they had been denied a fair hearing. The Court held that the committee with the responsibility to provide a fair hearing should not have considered the findings or recommendations of a preliminary investigation into the matter in reaching their determination to remove the two councillors.

Two conclusions follow from this case. Firstly, if complaints are going to be entertained by City Council, as a matter of fairness City Council must hold a hearing into the complaints. Where Council fails to hold a fair hearing, any decision is liable to be quashed. Secondly, findings or recommendations by an investigator cannot be relied upon by the Council in conducting the hearing as the Council has a responsibility to conduct a fair hearing without predetermining the issues before it. A third party investigation or mediation can only be relied upon with the agreement of all parties to the complaint.

Under section 252 of the *Municipal Act, 2001*, where Council is required by law to hold a hearing or give interested parties an opportunity to be heard, the Council may delegate that responsibility to a committee of council. It may be possible for City Council to delegate the responsibility for holding a hearing to a committee of council consisting of 1 or more members of City Council.

Where disciplinary proceedings are instituted and a municipal council is found to have improperly instituted the proceedings, the House of Lords considering the *Portsmouth* decision observed that there may be civil liability for damages for defamation, malicious falsehood, conspiracy, or misfeasance in office where a person is unjustly subjected to disciplinary proceedings mounted without justification [[2000] 1 All E.R. 560].

PREPARED BY:	RECOMMENDED BY:
	
LYNN P. MARSHALL, ASSISTANT CITY SOLICITOR	JAMES P. BARBER CITY SOLICITOR

TO:	CHAIR AND MEMBERS BOARD OF CONTROL MEETING ON NOVEMBER 10, 2004
FROM:	JAMES P. BARBER CITY SOLICITOR
SUBJECT	COUNCILLOR CODE OF CONDUCT

RECOMMENDATION

That, on the recommendation of the City Solicitor, this report **BE RECEIVED** for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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November 19, 2003
August 27, 2003

BACKGROUND

At its meeting of November 23, 2003, the Municipal Council requested that the Civic Administration be requested to provide Council with options for resolution of complaints against Councillors by fellow Councillors, staff or members of the public including:

- (i) informal resolution;
- (ii) formalization of complaints;
- (iii) involvement of the Human Rights Specialist;
- (iv) mediation;
- (v) investigation;
- (vi) corrective action and/or disciplinary action;
- (vii) harassment and discrimination training;
- (viii) whether or not approval of a complaints resolution process is required beyond the jurisdiction of the Municipal Council; and
- (ix) an identification of the risks and liabilities of instituting the aforementioned complaints resolution process.

The previous reports of the City Solicitor are **ATTACHED**. Since those reports were furnished, the Superior Court rendered several decisions in *R.S.J. Holdings Inc. v. London* where the Court only identified section 274 of the *Municipal Act, 2001* and the Code of Conduct as mechanisms to address councillor conduct. Notwithstanding the decisions of the Superior Court, City Council requested the Civic Administration to report back with respect to other options. These options are discussed below.

INFORMAL RESOLUTION

Informal resolution of complaints is available to resolve conduct issues under the current policy. It is always open to someone who complains about the conduct of another person to approach that person to attempt to resolve issues concerning their conduct directly. This approach would involve complainants contacting the Councillor directly and raising issues of concern with the Councillor.

A direct approach to a Councillor may not be appropriate for a variety of reasons. Where a direct approach is not warranted, some mechanism may be made available for concerns about conduct to be raised. Concerns can be addressed to other councillors or officers or employees of the Corporation. Where a complaint is made to a third party, the third party may informally intervene with the Councillor in an effort to address the issues raised in the complaint. The intervention may consist simply of an attempt by the person who has been approached to use their good offices to attempt to effect a resolution of the complaint.

The difficulty with complaints to officers and employees concerning councillors' conduct is that officers and employees are subject to the direction of the municipal council and are not likely to be able to intervene in an effective manner where there is a complaint concerning individual councillors. Involvement of the Human Rights Specialist would not be recommended for this reason.

A complainant is also entitled to address concerns about individual councillors to Committees of Council, Board of Control or the City Council itself by appearing in person or by writing a letter. It would not appear that a complaints procedure has been adopted by the Council or by the Civic Administration to this point in time for complaints against individual councillors indicating what would be done with such a complaint if it were received. A complainant who pursues this approach should be aware that the Committees, Board of Control and City Council have limited powers to consider the conduct of individual councillors and may owe a duty to hold a hearing as a matter of fairness in relation to complaints. Complaints about individual councillors can always be referred to the councillors to resolve themselves.

A complainant is also entitled to raise the issue in a public forum in some other way. To the extent that this approach is adopted, complainants may be liable civilly if the allegations in the complaint cannot be proved and the reputation of the affected councillor is damaged.

FORMALIZATION OF COMPLAINTS – INVESTIGATION, MEDIATION, CORRECTIVE ACTION, TRAINING

Under the *Municipal Act, 2001*, the council may request a Superior Court Judge to inquire into a breach of trust or misconduct by a councillor. This section has various deficiencies which result in it almost never being employed except with respect to extremely serious issues. Firstly, an investigation must be requested by a municipality by resolution into breach of trust or misconduct of a member of council. No one other than the council has standing to initiate a complaint to a judge. Secondly, the legal proceedings associated with a section 274 investigation are extremely expensive and there appears to be no way to control the costs once an inquiry begins. The recent inquiries in other municipalities including Samia, Waterloo and Toronto have cost many millions of dollars in legal fees. Thirdly, the grounds for an inquiry are limited to breach of trust or misconduct. Fourthly, the proceedings are extremely time consuming and result in findings by the Judge which are recommendations only and are incapable of enforcement.

Another approach to the formalization of complaints would be for the municipality to institute its own formal complaints procedure. This was formerly the case in London and is presently the case in Toronto. A formal complaints procedure remedies some of the deficiencies in section 274. Depending upon the nature of the complaints procedure, a complaint can be initiated by anyone. The grounds of complaint may be broader than breach of trust or councillor misconduct as those terms are used in the *Municipal Act, 2001*. The proceedings associated with the investigation of a complaint are less costly although the estimate of cost in Toronto associated with investigations by external consultants was reported to be between \$8,000 and \$20,000 per complaint. An investigation by an external investigator may be completed much more expeditiously than an inquiry under section 274.

There are difficulties associated with finding independent investigators who are prepared to investigate complaints against municipal councillors. There is no statutory immunity for an external or internal investigator who may be sued civilly with respect to his/her findings unless the parties to the complaint agree to waive their rights to sue. This has resulted in the past in external agents retained by the City of London requiring hold harmless agreements with those persons involved in the complaint before they would commence an investigation. Where a waiver or release can be obtained from all parties, the likely outcome arising out of a formal complaints procedure is a finding from the investigator as to whether the councillor conduct complained about meets the code of

conduct or not. Unfortunately, such a finding cannot serve as a basis for any kind of sanction by the Council itself as there must be a formal hearing by the body imposing the sanction unless the parties consent to the use of the investigator's report by the Council for the purpose of the imposition of sanctions. Securing advance agreement on the use of the investigator's report appears to the writer to be next to impossible. In any event the sanctions available appear to be extremely limited (i.e. censure, removal from committees, or loss of councillor privileges). Finally, in Great Britain where code of conduct complaints have been addressed by municipal councils, the council and committee proceedings have been the subject of legal challenge by way of judicial review with the attendant legal costs.

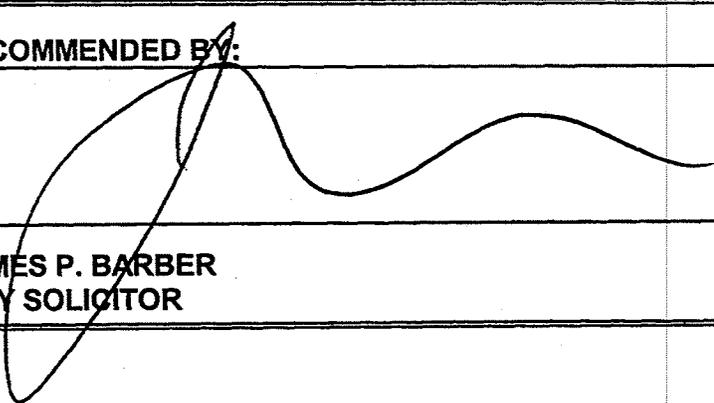
Mediation is always an avenue which may be employed with respect to complaints about individual councillors. Mediation can form part of a formal complaints procedure. The benefits of mediation are that the complainant and the councillor are brought together and some kind of mutually acceptable resolution may be worked out. The difficulties of mediation surround the selection of a mediator and issues arising out of the potential liability of the mediator who will want to be indemnified.

It may be unreasonable to expect anything more from a formal complaints procedure than a non-binding declaration by the investigator that a councillor has or has not violated the council policy and reasons for that finding unless something resembling a hearing is conducted by the council or a hearings committee into the complaint.

It may be advisable to institute some kind of training program with councillors to educate them with respect to the Code of Conduct and their obligations under various statutes. AMO has a training program for new councillors to assist them in fulfilling their responsibilities.

APPOINTMENT OF AN INTEGRITY COMMISSIONER

Given that the outcome of a complaints process is a declaration as to whether a councillor has conformed to the Code of Conduct, the municipality may wish to appoint an integrity commissioner whose role it is to issue non-binding declarations or advisory opinions concerning conduct issues raised by or about councillors. Complaints might be referred to the integrity commissioner who could provide consistent and fair consideration of complaints. As well, the integrity commissioner could provide opinions and interpretations of the code of conduct to assist council members where there is some question surrounding the appropriateness of some action which they have under contemplation.

RECOMMENDED BY:

JAMES P. BARBER CITY SOLICITOR

TO:	CHAIR AND MEMBERS BOARD OF CONTROL
FROM:	JAMES P. BARBER CITY SOLICITOR
	MEETING ON NOVEMBER 19 TH , 2003
SUBJECT:	Code of Conduct for Members of Council; Authority for a formal complaint process

RECOMMENDATION

That this report regarding legal authority for a formal complaint process against Council Members **BE RECEIVED** for information.

BACKGROUND

The Municipal Council, at its session held on September 2, 2003, adopted the "Policy to Establish a Code of Conduct for Members of Municipal Council", "subject to a report back from the City Solicitor with respect to the matter of whether or not a formal complaint process can be incorporated into the Policy as it relates to complaints made against a member of Council, such report to also include a comparison between the old and the new Municipal Acts as it relates to the Municipal Council's authority to institute such a process".

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(ii) Section 9 – Broad Interpretation of the Act

Section 9 regarding interpretation of the *Act* was raised during the September 2, 2003 Council meeting. It is true that section 9(1) states that "Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities, (a) to enable them to govern their affairs as they consider appropriate; and (b) to enhance their ability to respond to municipal issues." Further, section 9(2) states "In the event of ambiguity in whether or not a municipality has the authority to pass a by-law under sections 8 and 11, the ambiguity shall be resolved so as to include, rather than exclude, municipal powers that existed on December 31, 2002."

It is our opinion that subsections 9(1) and 9(2) do not assist, since they can only be applied to sections 8 and 11 of the *Act*. Section 8 deals with the powers of a natural person. This issue does not relate to having the powers of a natural person. Section 11 deals with the spheres of jurisdiction. It is our opinion that the regulation of Councillor conduct, including a formal complaint system, would not fall within any of the spheres of jurisdiction. Therefore, in our opinion, section 9 is not helpful in attempting to broadly interpret the *Act* in terms of councillor conduct and a formal complaint system.

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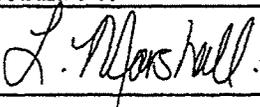
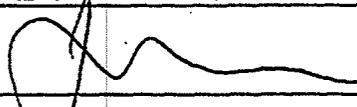
B. If Complaints Were to be Entertained

Notwithstanding our recommendation that City Council no longer possesses the power to pass by-laws to "govern the conduct of its members" as may be deemed expedient and not contrary to law, if City Council wished to entertain complaints concerning the conduct of council members outside of council and committee meetings, the English case *R. v. Portsmouth City Council, Ex parte Gregory and Another* (Q.B.), 88 LGR 478 dealt with the legal requirements surrounding a complaints procedure. In that case, the removal of two councillors from a committee for alleged misconduct was quashed on the basis that they had been denied a fair hearing. The Court held that the committee with the responsibility to provide a fair hearing should not have considered the findings or recommendations of a preliminary investigation into the matter in reaching their determination to remove the two councillors.

Two conclusions follow from this case. Firstly, if complaints are going to be entertained by City Council, as a matter of fairness City Council must hold a hearing into the complaints. Where Council fails to hold a fair hearing, any decision is liable to be quashed. Secondly, findings or recommendations by an investigator cannot be relied upon by the Council in conducting the hearing as the Council has a responsibility to conduct a fair hearing without predetermining the issues before it. A third party investigation or mediation can only be relied upon with the agreement of all parties to the complaint.

Under section 252 of the *Municipal Act, 2001*, where Council is required by law to hold a hearing or give interested parties an opportunity to be heard, the Council may delegate that responsibility to a committee of council. It may be possible for City Council to delegate the responsibility for holding a hearing to a committee of council consisting of 1 or more members of City Council.

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PREPARED BY:	RECOMMENDED BY:
	
LYNN P. MARSHALL, ASSISTANT CITY SOLICITOR	JAMES P. BARBER CITY SOLICITOR

TO:	CHAIR AND MEMBERS BOARD OF CONTROL MEETING ON AUGUST 27TH, 2003
FROM:	ROBERT BLACKWELL
SUBJECT:	CODE OF CONDUCT FOR MEMBERS OF COUNCIL

RECOMMENDATION

That, on the recommendation of the Manager of Legal Services, the attached Policy to Establish a Code of Conduct for Members of Council **BE INTRODUCED** at the Council Meeting on September 2, 2003;

and further that, on the recommendation of the Manager of Legal Services, the attached by-law to repeal By-law A-13 entitled "A By-law to Adopt a Code of Conduct for Members of Council" **BE INTRODUCED** at the Council Meeting on September 2, 2003.

BACKGROUND

Deputy Mayor Monteith has asked Legal Services to review and revise the Code of Conduct for Members of Council, which is contained in Schedule "A" of By-law A-13. The law firm of Hicks Morley was consulted in this review to ensure that it is in harmony with the "Workplace Harassment / Discrimination Prevention Policy and Complaint Procedure". The revised Code of Conduct has been drafted as a Council Policy instead of a by-law. The major change to the Code is the removal of the Formal Complaint Process. The proposed Code of Conduct contains the following major changes:

A. Standards of Conduct

- (a) that Council Members shall at all times seek to advance the common good of the community which they serve; and
- (b) Council Members shall truly, faithfully and impartially exercise the office to the best of their knowledge and ability.

B. Conduct to be Observed

1. **Foster Respect for Decision-making Process:** All Council Members shall accurately and adequately communicate the attitudes and decisions of the Council, even if they disagree with Council's decision, such that respect for the decision-making processes of Council is fostered.
2. **Release of Confidential Information Prohibited:** Information dealt with *in camera* shall be held in strict confidence, as will information subject to solicitor-client privilege, unless expressly authorized by Council or required by law to release such information. Council Members will use confidential information appropriately so as not to cause detriment to Council or the City, or detriment or benefit to others. Council Members shall not release information in contravention of the *Municipal Freedom of Information and Protection of Privacy Act*.
3. **Release of Information to Public and Media:** Members of Council acknowledge that official information related to decisions and resolutions of Council will normally be communicated to the community and the media by the Mayor as Head of Council or by his or her designate.
4. **Acceptance of Gifts Prohibited:** The prohibition against acceptance of gifts is the same as exists in the current by-law, with one revision: meeting allowances received from the Upper Thames River Conservation Authority are no longer listed in the list of gifts that Council may accept.
5. **Engaging in Incompatible Activity Prohibited:** This section remains unchanged.

6. **Avoidance of Waste:** Council Members shall avoid waste, abuse and extravagance in the provision or use of public resources, and shall expose fraud and corruption of which the Council Member is aware.

C. Interpersonal Behaviour of Members of Council

1. **Treat Every Person with Dignity, Understanding and Respect:** This section remains essentially unchanged, but specifically includes individuals providing services on a contract for services, and students on placements.

2. **Not to Discriminate:** This section also remains essentially unchanged, with only minor revisions to reflect the wording under the *Human Rights Code*.

3. **Not to Engage in Harassment:** This section remains essentially unchanged. There were minor revisions to reflect the wording under the *Human Rights Code*. Two provisions were removed as they are not *Human Rights Code* based, and are too uncertain in their application: (1) a Member of Council shall not undertake patronizing or condescending behaviour; and (2) a Member shall not make compromising invitations.

D. Allegations of Prohibited Activity

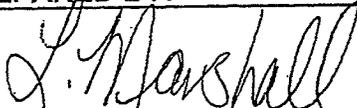
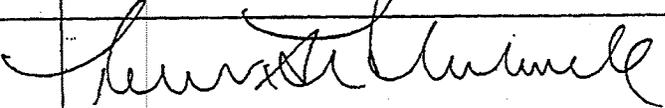
Where complaints are made by corporate employees of discrimination or harassment against a Council Member, the Member of Council may participate in the Informal Resolution and/or Mediation processes under the Workplace Harassment/Discrimination Prevention Policy and Complaint Procedure for employees. If the Member of Council chooses not to participate, or if the complaint is not resolved through this process, the complainant may lodge a complaint to the Ontario Human Rights Commission.

Any other complaints made by any person against a Councillor can be addressed in the following ways:

- (1) Where criminal activity is involved, charges under the *Criminal Code* may arise including s. 122 "Breach of Trust by a Public Officer", s. 123 "Municipal Corruption";
- (2) The complainant may advise the Member of Council verbally or in writing of the contravention of the Code. The complainant may encourage the Council Member to stop the prohibited activity, and the complainant should keep a written record of the incidents.
- (3) A complainant may refer the complaint to the Ontario Human Rights Commissions, if applicable.
- (4) Where a supposed breach of trust or other misconduct has occurred, section 274(1) of the *Municipal Act, 2001* can be invoked, in which Council can request a judicial investigation into a Member's misconduct. It is to be noted that there are no sanctions against the Member that arise from this investigation;
- (5) Where a Member wilfully discloses personal information, it may be an offence under the *Municipal Freedom of Information and Protection of Privacy Act*;
- (6) Where a Member has a direct or indirect pecuniary interest in a matter which they fail to disclose, the *Municipal Conflict of Interest Act* may be invoked.

As stated above, the major change to the proposed Policy is that the Formal Complaint Process has been removed. There appears to be no authority for Council to take this type of action against a Council Member. It appears that, in general, the Legislature intended that Councillor misconduct would be dealt with in the court of public opinion.

The Code of Conduct is proposed as a Policy and not a by-law since the authority that existed under section 102 of the old *Municipal Act* giving Council authority to pass by-laws for governing the conduct of its members has been removed.

PREPARED BY:	RECOMMENDED BY:
	
L.P. MARSHALL SOLICITOR I	R.A. BLACKWELL GENERAL MANAGER OF LEGAL SERVICES

Bill No.

By-law No.

Being a by-law to repeal by-law A-13
entitled "A by-law to adopt a Code of
Conduct for Members of Council"

WHEREAS Municipal Council has adopted a Policy to Establish a Code of Conduct for
Members of Council;

NOW THEREFORE the Municipal Council of The Corporation of the City of London
enacts as follows:

1. By-law A-13 is hereby repealed.
2. This by-law comes into force on the day it is passed by Council.

Passed in Open Council on

Mayor

City Clerk

First Reading -
Second Reading -
Third Reading -

POLICY TO ESTABLISH A CODE OF CONDUCT FOR MEMBERS OF COUNCIL

Purpose: The purpose and intent of this Policy is to establish guidelines for ethical and interpersonal standards of conduct for Members of Council.

A. STANDARDS OF CONDUCT

1. Members of Council shall at all times seek to advance the common good of the community which they serve.
2. Members of Council shall truly, faithfully and impartially exercise the office to the best of their knowledge and ability.

B. CONDUCT TO BE OBSERVED

1. **Foster Respect for Decision-making Process**

All Members of Council shall accurately and adequately communicate the attitudes and decisions of the Council, even if they disagree with Council's decision, such that respect for the decision-making processes of Council is fostered.

2. **Release of Confidential Information Prohibited**

Members of Council have a duty to hold in strict confidence all information concerning matters dealt with at *in camera* meetings. 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 *in camera* deliberations to anyone, unless expressly authorized by Council or required by law to do so.

Members of Council shall not release information in contravention of the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.

Members of Council shall not release information subject to solicitor-client privilege, unless expressly authorized by Council or required by law to do so.

Members of Council shall not misuse confidential information (information that they have knowledge of by virtue of their position as Councillor that is not in the public domain, including e-mails and correspondence from other Members of Council or third parties) such that it may cause detriment to the Corporation, Council or others, or benefit or detriment to themselves or others.

3. **Release of Information to Public and Media**

Members of Council acknowledge that official information related to decisions and resolutions made by Council will normally be communicated to the community and the media by the Mayor as Head of Council or by his or her designate.

4. **Acceptance of Gifts Prohibited**

The stipend paid to each Member of Council is intended to fully remunerate Members of Council for service to the Corporation. Members of Council shall not solicit, accept, 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 or duties of office.

Members of Council are not precluded from accepting:

- (a) personal gifts, benefits, rewards, commissions or advantages from any person or organization not connected directly or indirectly with the performance or duties of office;
- (b) political contributions that are otherwise offered, accepted and reported in accordance with applicable law;

- (c) food and beverages at banquets, receptions, ceremonies or similar events;
- (d) services provided without compensation by persons volunteering their time;
- (e) food, lodging, transportation and entertainment provided by other levels of governments or by other local governments, boards or commissions;
- (f) a reimbursement of reasonable expenses incurred in the performance of duties or office;
- (g) a reimbursement of reasonable expenses incurred and honorariums received in the performance of activities connected with municipal associations;
- (h) token gifts such as souvenirs, mementoes and commemorative gifts that are given in recognition of service on a committee, for speaking at an event or representing the Corporation at an event; and
- (i) gifts that are received as an incident of protocol or social obligation that normally and reasonably accompany the responsibility of office.

Members of Council shall return any gifts or benefits which exceed these limits, along with an explanation of this policy.

5. **Engaging in Incompatible Activity Prohibited**

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.

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

- (a) use any influence or office for any purpose other than official duties;
- (b) act as an agent before Council or any committee, board or commission of Council;
- (c) 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;
- (d) use any information gained in the execution of office that is not available to the general public for any purpose other than for official duties;
- (e) place themselves in a position of obligation to any person or organization which might reasonably benefit from special consideration or may seek preferential treatment;
- (f) give preferential treatment to any person or organization in which a Member or Members of Council have a financial interest;
- (g) 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; and
- (h) use Corporate materials, equipment, facilities or employees for personal gain or for any private purpose.

6. **Avoidance of Waste**

Members of Council shall avoid waste, abuse and extravagance in the provision or use of public resources, and shall expose fraud and corruption of which the Member of Council is aware.

C. **INTERPERSONAL BEHAVIOUR OF MEMBERS OF COUNCIL**

1. **Treat Every Person with Dignity, Understanding and Respect**

Members of Council shall abide by the provisions of the *Human Rights Code* and, in doing so, shall treat every person, including other Members of Council, corporate employees, individuals providing services on a contract for service, students on placements, and the public, with dignity, understanding and respect for the right to

equality and the right to an environment that is safe and free from harassment and discrimination.

2. **Not to Discriminate**

In accordance with the *Human Rights Code*, Members of Council shall not discriminate against anyone on the basis of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, or disability. "Age", "disability", "family status", "record of offences", "same sex partnership status" shall be as defined in the *Human Rights Code*.

3. **Not to Engage in Harassment**

In accordance with the *Human Rights Code*, harassment shall mean engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

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

- (a) make racial, homophobic, sexist or ethnic slurs;
- (b) display pornographic, homophobic, sexist, racist or other offensive or derogatory material;
- (c) make leering (suggestive staring) or other offensive gestures;
- (d) make written or verbal abuse or threats;
- (e) vandalize the personal property of others;
- (f) commit physical or sexual assault;
- (g) make unwelcome remarks, jokes, innuendos or taunting statements about a person's physical appearance, racial background, colour, ethnic origin, place of origin, citizenship, ancestry, creed (religion or belief), sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, disability (physical or mental);
- (h) make unwelcome remarks, insulting gestures or jokes which cause embarrassment or awkwardness;
- (i) refuse to converse or interact with anyone because of their racial or ethnic background, colour, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, or disability;
- (j) make unnecessary or unwanted physical contact, including touching, patting, or pinching; and
- (k) demand sexual favours or requests.

Harassment which occurs in the course of or related to the performance of duties by Members of Council is subject to this policy.

Good faith exercises of performance management with respect to corporate employees for legitimate purposes by Council is not harassment.

D. **ALLEGATIONS OF PROHIBITED ACTIVITY**

Organizations or individuals (including the public, Members of Council, and corporate employees) who have:

- identified or witnessed any **prohibited activity** by a Member of Council under this policy;
- witnessed or been subject to **discriminatory treatment** by a Member of Council under this policy; or
- witnessed or been subject to **harassment** by a Member of Council under this policy

may address the prohibited behaviour or activity as set out below.

1. Complaints made by Corporate Employees of Discrimination or Harassment

Where a corporate employee makes a complaint of harassment or discriminatory treatment by a Member of Council, the Member of Council may participate in the Informal Resolution and/or Mediation processes under the Workplace Harassment/Discrimination Prevention Policy and Complaint Procedure for employees.

If the Member of Council does 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.

2. Other Complaints made by Any Person (Allegations of Activity Other Than in 1. above)

Any complainant may take the following steps, if applicable, to address prohibited activity by a Member of Council:

1. a complainant may contact the London Police Department 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.
2. a complainant may contact the London Police Department 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, demands, accepts, or offers or agrees to accept from any person a loan, reward, advantage or benefit of any kind.
3. (a) a complainant may advise the Member of Council verbally or in writing that the activity contravenes this by-law;
(b) a complainant may encourage the Member of Council to stop the prohibited activity.
(c) a complainant should keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information.
4. 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*.

E. JUDICIAL INVESTIGATION

In circumstances where liability is denied and the alleged misconduct is serious in nature, Council may pass a resolution, pursuant to s. 274(1) of the *Municipal Act*, requesting a judicial investigation into the Member of Council's conduct.