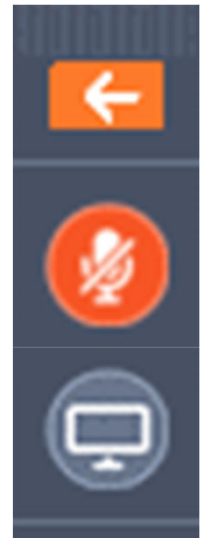


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1



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Handling Complaints Under Your Code of Ethics

**Administering Your Bylaw the Right Way and
Establishing a Good Complaint-handling Process**

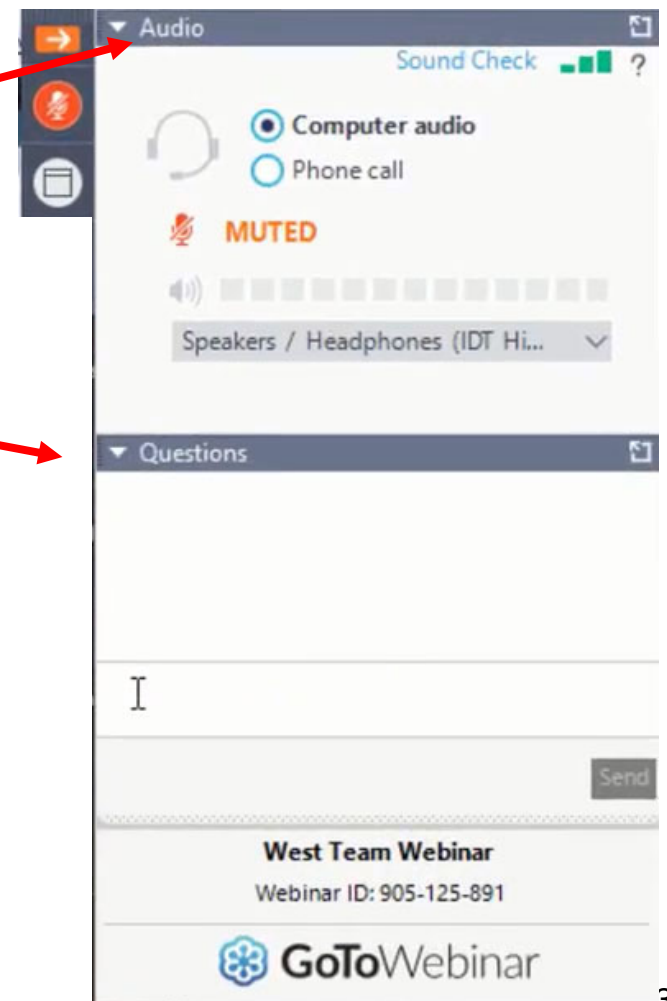
*Webinar
November/December 2018*

*Moderator: Leila Dueck
Presenters: Mary McFadyen & Paul Dawson*

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Webinar Housekeeping

- Webinar Controls
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3



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Introductions

- Presenters
 - Mary McFadyen
Ombudsman
 - Paul Dawson
Assistant Ombudsman



Today's Outline

- The Ombudsman's Role
- Municipal Code of Ethics Requirements
- Key Elements of a Good Code of Ethics
Complaint-handling Process



What is an Ombudsman?

- Independent, impartial public official
- Authority to:
 - take, resolve and investigate complaints about government decisions and actions
 - make findings and recommendations
 - issue public reports
- Powers & duties: *The Ombudsman Act, 2012*
- Officer of the Legislative Assembly of Saskatchewan



Who can we investigate?

- Most provincial government entities
 - Ministries, boards, commissions, agencies, Crown corporations and publicly-funded health entities
- All municipal entities
 - Cities, towns, villages, resort villages, rural municipalities, northern municipalities, their committees and controlled corporations
 - Municipal council members



What can we investigate?

- Matters of administration that aggrieve persons in their personal capacity
 - Includes acts, omissions, and decisions done or made “in the exercise of any power, duty or function conferred or imposed on them by an Act”
- Allegations of council member:
 - Conflicts of interest
 - Code of ethics contraventions



Standards of Fairness

- Was the action, omission or decision fair? Was it:
 - Contrary to law? Unreasonable? Unjust? Oppressive? Improperly discriminatory? Wrong?
 - Based on a mistake of law or fact?
 - Done for an improper purpose? On irrelevant grounds? By taking into account irrelevant considerations?



Office of Last Resort

- We only get involved when a municipality fails to reasonably address a code of ethics complaint.
- If there is a reasonable local complaint-handling process, we refer people to it first.
- If they are still unsatisfied, we might get involved.



Code of Ethics Complaints

- Ratepayers can complain to us about alleged contraventions of the code of ethics.
- If we decide to investigate, we look at:
 - Did the council member contravene the code of ethics?
 - If yes, did the council take reasonable steps to address the contravention as detailed in its Code of Ethics Bylaw?



Code of Ethics Complaints

- Our role is to make recommendations to fix the issues we uncover.
- We can make recommendations to the council member, council, or to the Ministry of Government Relations.



Today's Outline

- The Ombudsman's Role
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Complaint-handling Process



Legislation

- Municipalities must have code of ethics bylaws that apply to council members
- Codes must set out the standards and values council members must comply with when dealing with each other, municipal employees, and the public
- Code must include the model code in the Regulations



Must have a process

- The Code of Ethics must set out the process for dealing with contraventions
- The code in the regulations does not provide any rules for how to set up a process
- Process must fairly and effectively deal with (receive, review, decide) complaints



The question of the day!

What are the key elements of a fair and effective code of ethics complaint-handling process?



Today's Outline

- The Ombudsman's Role
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Complaint-handling Process



Key Elements

- The process must be:
 - Highly visible
 - Easy to access
 - Valued and supported by council and administration
- Complaints must be:
 - Responded to quickly
 - Investigated objectively, fairly and confidentially
 - Resolved at the earliest possible point
- Council members found to have contravened the code should receive reasonable sanctions.



Four Good Questions

1. Is it based on the principles of fairness?
2. Is it accessible?
3. Is it responsive?
4. Is it efficient?



Key Stages

1. Enabling Complaints

- Valuing Complaints
- Promoting the Process
- Taking Complaints

2. Responding to Complaints

- Following the Principles of Fairness
- Procedural Steps



1. Enabling Complaints

The complaint-handling process needs to be part of the municipality's overall governance.

Valuing Complaints



Council members play a key role in setting the right culture – one that values complaints and recognizes the role they play in improving governance.

Handled well, code of ethics complaints provide important feedback for councils to improve and restore public confidence and trust.



1. Enabling Complaints

Promoting the Process



Citizens need to be made aware of their right to complain about council member conduct.

Information about the process should be clear and easily accessible.

Widely publicize the code of ethics complaint-handling process on the municipality's website and in print materials.



1. Enabling Complaints

Promoting the Process



Print materials should answer these questions:

- What can be complained about? What can't?
- Who can complain? Fellow council members? Employees? Ratepayers? The public?
- How are complaints made? To whom? What information needs to be in a complaint?
- How will a complaint be handled? Who investigates? When? How will the council make a decision about the complaint?
- How will a complainant be informed of the decision?



1. Enabling Complaints

Taking Complaints



Make sure staff are prepared.

Decide how to deal with informal complaints.

Set up your formal complaint process.



1. Enabling Complaints

Make sure staff know:

Taking Complaints



- What to say if someone wants to make a complaint.
- How to direct someone to the process.
- Their role in the process.



1. Enabling Complaints

Taking Complaints



Decide how you will deal with informal complaints.

- Consider providing an informal complaint process for use in suitable situations.
- Sometimes, informal processes are not appropriate or possible, for example, if there is animosity between the people involved.
- Have guidelines for what types of complaints are suitable for informal resolution.
- Complainants should not be required to use an informal process before using a formal process.



1. Enabling Complaints

Set up your formal complaint process.

Taking Complaints



- Getting complaints in writing on a pre-designed form helps guide complainants to provide all necessary information.
- Information to get at the start:
 - Complainant's contact info
 - Council member name and specific code provisions alleged to have been contravened (e.g. honesty, respect, accountability, etc.)
 - Dates, times, locations of conduct
 - Names, contact info and other details of people involved and of other witnesses
 - All relevant documents that the complainant has

27



1. Enabling Complaints

Set up your formal complaint process.

Taking Complaints



- Make it easy!
 - No fees or other barriers
 - By mail, fax, email, or in person
 - Note who will receive complaints
 - The administrator or clerk?
 - The council?
 - An integrity commissioner?
 - How will you accommodate complainants with special needs?
 - Decide how to address third party complaints and anonymous complaints.



1. Enabling Complaints



2. Responding to Complaints

Complaints need to be responded to quickly, and then investigated objectively, fairly, thoroughly and confidentially.

Following a Fair Process



Have a good investigation process.

Have good reasons for your decisions.

Make every stage of your review process fair.



2. Responding to Complaints

Following a Fair Process



Make every stage of your review process fair.

Everyone involved must:

- Act reasonably
- Follow all legislation, bylaws and procedures
- Do not act for any improper purpose (no personal motives or vendettas)
- Be impartial – be clearly and visibly independent from the people affected
- Be courteous and respectful
- Maintain confidentiality
- Only divulge as much information as necessary to fairly and fully deal with the issues
- Follow the standards in the code of ethics throughout the process.

31



2. Responding to Complaints

Procedures



Key procedural steps include:

1. Acknowledge the complaint.
2. Notify the affected council member.
3. Notify the council.
4. Try to resolve the complaint informally.
5. Investigate the complaint.
6. Give an opportunity to respond to preliminary findings.
7. Decide how to deal with the complaint.
8. Give reasons.



2. Responding to Complaints

Procedures



1. Acknowledge the complaint.

- Do this within the first few days of receiving it.
- Initially assess whether it meets the definition of a complaint under your code of ethics.
- If not, refer the complainant to another appropriate avenue.
- Explain how the complaint will be reviewed including expected timelines.
- Every complaint requires a response.



2. Responding to Complaints

Procedures



2. Notify the affected council member.

- Ideally, this should be done before the rest of the council is notified.
- The member may be able to take steps to informally resolve the complaint.

3. Notify the council.

- The council has ultimate authority to decide how to address a contravention under Code.



2. Responding to Complaints

Procedures



4. Try to resolve the complaint informally.

- If this hasn't been tried yet, it might still be appropriate, even if the complainant started with the formal complaint process.
- For example, if the complaint is that the council member was disrespectful, it might be resolved by a sincere apology.
- On the other hand, if it is about an alleged conflict of interest, informal resolution is probably not appropriate.



2. Responding to Complaints

Procedures



5. Investigate the complaint.

Four main steps to a code of ethics investigation:

1. **Clarify the issues** – If the issues are not clear up front, there is a risk that irrelevant information will be gathered and relied upon.
2. **Fact finding** – Getting the facts right is important. If the facts are wrong or irrelevant, the decision is likely to be wrong or irrelevant.
3. **Determine the relevant law and policy** – What rules (legislation, bylaws, common law, and local policies and practices) are relevant?
4. **Apply the law and policy** – to the findings of fact. This answers the question: Did the council member contravene the code of ethics? If steps 1, 2 and 3 are done well, this is often straightforward. If it isn't, something may have been missed in the earlier steps.



2. Responding to Complaints

Procedures



6. Give an opportunity to respond.

- The council member complained about should not participate in the review of the complaint, including how it will be reviewed, or in the decision.
- However, he or she (and others whose personal interests may be affected by the decision) should be given a reasonable opportunity to review the preliminary findings and to provide contrary or alternative information for consideration.
- This is not only part of a fair process, it is also an effective way of ensuring the findings are valid.



2. Responding to Complaints

Procedures



7. Decide how to deal with the complaint.

- Once the council has discussed the investigator's report, it needs to pass a resolution about the complaint.
 - Ensure all relevant information is considered, and no irrelevant information is considered.
 - Everyone involved in the decision must be free from bias or a reasonable perception of bias.
 - What will be reviewed *in camera*? (Decisions cannot be made *in camera*.)
- Answer the question: Did the council member contravene the code of ethics?

38



2. Responding to Complaints

Procedures



7. Decide how to deal with the complaint.

- If the council member contravened the code of ethics, what is an appropriate sanction?
 - It should be reasonable.
 - Where appropriate, reparations should be made to complainants and others found to have been negatively affected by contravention of the code.



2. Responding to Complaints

Procedures



8. Give reasons.

- The affected council member and the complainant should both be given reasons for the council's decision one way or the other.
- Ensure the reasons you provide are:
 - Reasonable
 - Meaningful
 - Stand up to scrutiny
- Ensure they have an opportunity to ask reasonable questions and seek clarity (while respecting confidentiality, etc.).



2. Responding to Complaints

Other Considerations

Procedures



- Consider processes for:
 - Dismissing frivolous complaints expeditiously, if appropriate (and based on good reasons)
 - Dealing with unreasonable complainant conduct (unreasonable persistence, demands, lack of cooperation, and unreasonable arguments and behaviour)



Final Thoughts

- Set the right tone – it is council’s responsibility to ensure complaints are addressed fairly, efficiently and effectively.
- If you follow a fair process, you are more likely to reach a fair and correct decision.
- Complaints provide feedback and play a role in improving municipal government.
- Badly-handled complaints erode public confidence and trust.
- Finally, keep good records.

42



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Thank you!