

# THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES

## BY-LAW No. 95 of 2013

Being a by-law to Adopt a Code of Conduct for Members of Council

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**WHEREAS** Section 8 of the Municipal Act, 2001, S.O. 2001, c.25, provides a Municipality has the capacity, rights powers and privileges of a natural person;

**AND WHEREAS** Part V.1, Accountability and Transparency, Section 223.2(1) of the Municipal Act, 2001, c.25, as amended authorizes a Municipality to establish codes of conduct for Members of Council of the municipality;

**AND WHEREAS** the establishment of a *Code of Conduct* for Members of Council reflects the principles of transparent and accountable government;

**AND WHEREAS** ethics and integrity are essential to the effective and fair operation of government and to the assurance of public confidence and trust in government and in the political process;

**AND WHEREAS** elected officials are expected to perform their duties in a manner that promotes public confidence and avoids the improper use of their office;

**AND WHEREAS** there are important conduct obligations established in the *Municipal Act, 2001*; *Municipal Conflict of Interest Act*; *Municipal Elections Act, 1996*; and the *Municipal Freedom of Information and Protection of Privacy Act* to which Council and council members must adhere, a *Code of Conduct* further ensures that Members of Council share a common basis and understanding for acceptable conduct in addition to the statutory obligations;

**AND WHEREAS** the Council of the Corporation of the Municipality of Lambton Shores deems it expedient to adopt a Code of Conduct for members of Council;

**NOW THEREFORE** the Council of the Corporation of the Municipality of Lambton Shores hereby enacts as follows:

### 1. CODE OF CONDUCT

That the "Code of Conduct", attached hereto as Schedule "A-1" to this by-law be approved;

### 2. SCHEDULES

THAT the attached schedules are approved and form part of this by-law:

(a) Schedule "A-2" "Complaint Procedures and the Integrity Commissioner Review Process" attached hereto; and

(b) Schedule "A-3" Advice Protocol for Members of Council

(c) Schedule "A-4" "Complaint Affidavit"

### **3. SEVERABILITY**

In the event that section or sections of this by-law are found by a Court of competent jurisdiction to be invalid or ultra virus, such section, sections or parts thereof shall be deemed to be severable, with all other sections or parts of this by-law remaining in the full force and effect.

### **4. EFFECTIVE DATE**

THAT this By-law shall take effect upon its adoption, and shall repeal by-law 55 of 2012.

Read a first and second time this 19<sup>th</sup> day of September 2013

Read a THIRD time and finally passed this 19<sup>th</sup> day of September 2013.

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Bill Weber, Mayor

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Carol McKenzie, Clerk

Amended August 11, 2015

15-0811-06 – Application form amended (Schedule “A”)

15-0811-08 – Application Fee – reduced to \$ 25.00

## Schedule “A-1” to By-law 95 of 2013

### THE CODE OF CONDUCT FOR THE MEMBERS OF COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES

#### A. PRINCIPLES

This Code of Conduct is based on the following key principles:

Conscientious and diligent representation is critical to democracy

Integrity which encompasses honesty, a sense of fair play, and propriety, is essential to good governance

Putting the public interest before private and self interest is a basic element of fair, just and equitable government

#### B. DEFINITIONS

“apparent conflict of interest” means a reasonable apprehension which a reasonably well-informed person could properly have that a conflict of interest exists

“child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family

“Commissioner” means Integrity Commissioner

“complainant” means a person who or which makes a written allegation of a breach of the Code of Conduct by a member of Council

“confidential information” includes information in the possession of, or received in confidence by the Municipality that the Municipality is either prohibited from disclosing, or may refuse to disclose, pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”) or other legislation and in the latter case where disclosure while discretionary will harm the interests of the Municipality or third parties

“conflict of interest” exists where a private interest clashes with a public duty

“family”, when used with reference to a person, means,

(a) his or her spouse and minor children, and

(b) any other adult who is related to the person or his or her spouse, shares a residence with the person and is primarily dependent on the person or spouse for financial support

“harass” means to engage in offensive behaviour toward a person on the grounds of race, ancestry, place of origin colour, ethnic origin, citizenship, creed, sex, age, disability, sexual orientation, marital status, or family status and any other grounds identified under the Ontario Human Rights Code

“Integrity Commissioner” means the Integrity Commissioner appointed by Council pursuant to s. 223.3(1) of the Municipal Act, 2001

“interest” means stake, share, entitlement, benefit

“Municipality” means the Municipality of Lambton Shores

“parent” means a person’s mother or father

“spouse” means either member of a married pair in relation to the other; one's husband or wife or common-law-partner.

“real conflict of interest” is where a member has an actual interest in a matter which clashes with the member’s public duties

## **C. APPLICATION**

This Code applies to all members of Council.

## **D. STATUTORY OBLIGATIONS AND CODE OBLIGATIONS**

This Code of Conduct operates with and as a supplement to existing federal and provincial statutes and municipal by-laws including, but not limited to:

*Criminal Code of Canada*  
*Municipal Act*  
*Municipal Conflict of Interest Act*  
*Municipal Elections Act*  
*Municipal Freedom of Information and Protection of Privacy Act*  
*Ontario Human Rights Code*  
*Municipality of Lambton Shores By-Laws*

## **E. RULES**

### **1. Use of Municipal Property and Services**

a. No member shall use any municipal property, equipment, services and/or supplies other than for purposes connected with the discharge of his or her municipal duties or associated community activities of which Council has been advised and has approved.

b. No member shall obtain financial gain from the use of municipally developed intellectual property, computer programs, technological innovations or other patentable items.

## **2. Use of Municipal Information**

- a. No member shall use information gained in the execution of his or her duties that is not available to the general public for any purposes other than his or her official duties.
- b. No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of his or her office, either oral or written, except when required by law and authorized by Council to do so.
- c. No member shall use confidential information for personal or private advantage or gain or, for the gain of relatives or any person or corporation (other than the Municipality).
- d. No member shall access or attempt to gain access to confidential information in the custody or under the control of the Municipality unless it is necessary for the performance of his or her duties.

## **3. Improper Use of Influence**

- a. No member of council shall use the influence of his or her office for any purpose other than for the exercise of his or her official duties.
- b. Rule E.3.a applies to but is not limited to:
  - i. attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties.
  - ii. the holding out of the prospect or promise of future advantage through a member's supposed influence within Council in return for a member's action or inaction.
  - iii. acting as a paid agent of a third party before council or its committees or any agency board or commission of the Municipality or before staff for purposes of influencing a decision favourable to the third party

## **4. Conflict of Interest**

No member of council shall discharge any official duty or participate in any meeting of council or its committees where he/he has a real or apparent conflict of interest.

## **5. Gifts and Benefits**

- a. Members of Council shall not accept gifts that would, to a reasonable member of the public, appear to be in gratitude for influence, to induce influence, or otherwise to go beyond the necessary and appropriate public functions involved.

For these purposes, a gift, benefit or hospitality provided with the Member's knowledge to a Member's spouse, child, or parent, or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to that Member.

b. Rule E. 5.a does not apply to fees, benefits and gifts as follows:

- a) compensation authorized by law;
- b) gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation; ;
- c) a suitable memento of a function honouring the member;
- d) food, lodging, transportation and entertainment provided by provincial, regional and local governments, or political subdivisions of them, by the federal government or by a foreign government within a foreign country, or by a conference, seminar or event organization where the member is either speaking or attending in an official capacity;
- e) food and beverages consumed at banquets, receptions or similar events, if: attendance serves a legitimate municipal purpose and is done in the performance of official duties of the member

b. If the value of the gift or benefit exceeds \$100, or if the total value received from any one source during the course of a calendar year exceeds \$100, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the Integrity Commissioner. The disclosure statement must indicate:

- i) the nature of the gift or benefit;
- ii) its source and date of receipt;
- iv) the circumstances under which it was given or received;
- v) its estimated value;
- vi) what the recipient intends to do with any gift; and
- vii) whether the gift will at any point be left with the Municipality.

c. Any disclosure statement will be a matter of public record. Once reviewed by the Integrity Commissioner, the statement will be given to the Clerk to ensure that it is available to the public.

## **6. Conduct at Meetings**

a. Members shall conduct themselves in accordance with the provisions of the Procedure By-Law, show courtesy and respect to delegations, fellow members and staff, and not distract from the business of the Municipality during presentations and when other members have the floor.

b. Members shall not use social media or other means of communicating with others during Council meetings.

## **7. Conduct towards the Public**

- a. In their interaction with the public, members shall conduct themselves with decorum at all times and shall not engage in rude or intimidating behaviour towards members of the public.
- b. No member shall bully or harass a member of the public.

## **8. Staff and Workplace Relations**

- a. Only Council as a whole has authority to approve budgets, policies, committee processes and other matters. No Member shall individually direct the actions of staff, except as authorized by Council.
- b. All members shall have respect for the professional capacities of the staff of the Municipality. No member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practices of staff,
- c. No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. No member shall use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering with that person's duties, including any duty to disclose improper activity.
- d. No member shall bully or harass staff.

## **9. Respect for Council and the Municipality**

No member shall knowingly disregard the terms of by-laws enacted by Council or policies and procedures established by resolution of Council.

## **F. ENFORCEMENT OF THE RULES**

### **1. Penalties and Remedial Measures**

- a. Where a rule of this Code has been breached or violated, Council may impose one of the following penalties:
  - i. A reprimand,
  - ii. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.
- b. Instead of or in addition to the penalties in subsection F1a above, Council may take the following remedial measures:

- i. Require that a member apologize to Council or an affected party
- ii. Remove a member from being Chair of a committee
- iii. Remove a member from membership in a committee

## **2. Investigation of Allegations of Breaches of the Code**

a. The Integrity Commissioner for the Municipality appointed pursuant to 223.3 (1) of the Municipal Act is responsible for the conduct of investigations of breaches of this Code. Complaints about and investigations of allegations of Code breaches or violations shall be conducted in accordance with ss. 223.3 to 223.5 of the Municipal Act, 2001 and Schedule A-2 of the Bylaw 95 of 2013.

b. In all cases, the Integrity Commissioner shall first do an initial assessment in Accordance with schedule A-2 in order to determine whether or not to proceed with an investigation.

## **3. Reports**

a. With respect to investigations, the Commissioner shall report his opinions and recommendations to Council in accordance with s. 223.4(5) and s.223.6(2) of the Municipal Act, 2001. The Commissioner shall report on investigations whether or not in his opinion a breach of the Code has occurred and on recommendations to rectify a breach where it has occurred.

***The Commissioner shall report to Council on investigations within 90 days of receipt of the initial complaint. In the event, where an investigation is unusually complex or materials or witnesses not available in the 90 day time frame more time is required, the Commissioner shall report on the need to extend the time and what an appropriate extension would be.***

b. With respect to refusal to investigate, after an initial assessment done in accordance with Schedule A-2, the Commissioner shall indicate his determination to the person who has alleged a breach and the reasons for his determination and shall similarly report to the Clerk. The Commissioner shall not provide a separate report to Council on such refusals.

c. The Commissioner shall provide a brief annual report to Council on his activities during the year including refusals to investigate, on investigations and their outcomes and on any matters of interest respecting the development of ethics issues in municipal government.

***The annual report shall be based on the calendar year shall be submitted to Council no later than March 30 of the subsequent year.***

d. The Commissioner may periodically report to Council on the operation of this Code of Conduct and make recommendations for change as appropriate.

#### **4. Council Decision**

- a. The Integrity' Commissioner's reports shall be available to the public.
- b. Despite s. F.4.a above, subject to s. 239 of the Municipal Act, 2001 the Commissioner's reports may be considered in camera where appropriate prior to a decision being rendered by Council in open meeting.

***Reports may be discussed in camera if they contain personal matter about identifiable individuals, legal advice including advice respecting interpretation of this Code or any other matter included in s.239(2) of the Municipal Act, 2001***

***All decisions of Council taken in respect of these reports must be taken in open Council.***

- c. Council shall render a decision regarding the Integrity Commissioner's recommendation(s) ***no later than 30 days after the submission of a Commissioner's report.***

The decision regarding implementation of any recommended action by the Integrity Commissioner is at the sole discretion of Council with a simple majority vote in accordance with the Procedural bylaw and said decision shall be final.

#### **5. Advice**

- a. Members of council may consult with or seek advice from the Integrity Commissioner concerning conduct matters in accordance with Schedule A-3 of the Bylaw establishing this Code.
- b. Members may not seek advice of a matter which is the subject of an ongoing investigation of the matter by the Integrity Commissioner.

#### **6. Obstruction and Reprisal**

***Members of Council shall respect the integrity of the Code of Conduct and investigations conducted under it. Any reprisal or threat of reprisal against a complainant or anyone else for providing relevant information to the Integrity commissioner is prohibited. Withholding or destruction of documents or any other obstruction of an investigation is prohibited. The Commissioner shall report such breaches to the Council with recommendations as outlined in F.1 above.***

## **Schedule “A-2” to By-law 95 of 2013**

### ***Complaint Procedures and the Integrity Commissioner Review Process***

#### **A. DEFINITIONS**

“Clerk” is the Clerk of the Municipality of Lambton Shores

“Code” means Code of Conduct

“Code of Conduct” means Schedule A-1 to the Bylaw 95 of 2013

“commissioner” means Integrity Commissioner,

“complaint” means an allegation about a breach of the Code of Conduct submitted in the form required in s. B.1.a below,

“complainant” means a person who or which makes a written allegation of a breach of the Code of Conduct by a member of Council,

“Integrity Commissioner” means the Integrity Commissioner appointed by Council pursuant to s. 223.3(1) of the Municipal Act, 2001

#### **B. COMPLAINT PROCESS**

##### **1. Submission of Complaint**

a. Complaints regarding an alleged breach of the Code of Conduct shall be made in writing, on the prescribed Affidavit form (Schedule A-4 to the Bylaw 95 of 2013) and submitted in a sealed envelope to the Municipal Clerk.

b. The affidavit must include specific details as to the alleged transgression, when / where it is purported to have occurred, the member or members of Council the alleged transgression pertains to, and how the alleged transgression contravenes the Municipal Code of Conduct.

c. The Clerk shall forward all complaints to the Integrity Commissioner for investigation and review.

##### **2. Fee Requirement**

a. On submission of a complaint, the Complainant shall pay to the Municipality a refundable fee in the amount of \$100.00 upon the filing of a complaint.

b. The fee shall be refunded to the complainant when the Integrity Commissioner files his/her report (or determines the complaint is valid), except as may otherwise be required under this section.

c. In the event that the Commissioner determines that the complaint is not within his/her jurisdiction, the complainant will receive a refund in the amount of 50% of the fee paid.

d. Where the Integrity Commissioner determines that a complaint is frivolous, vexatious, trivial or not made in good faith, no portion of the fee shall be refunded.

e. Where a Complainant withdraws his/her complaint prior to the investigation commencing, a full refund of the fee will be provided.

### **3. Limitation Period**

a. The Integrity Commissioner shall not proceed with an inquiry in regard to a complaint which is filed with the Clerk more than 60 days after the date when the event or series of events which are the subject matter of the complaint were discovered by the complainant.

b. For purposes of s. B.3.a above, an event, or series of events, is discovered on the earlier of the date upon which the Complainant first knew,

a. that the event, or series of events, had occurred,

b. that the event, or series of events, constituted a contravention of the Code of Conduct,

c. the identity of the member of Council involved in the event or series of events; and

d. the date on which a reasonable person with the abilities and in the circumstances of the Complainant first should have known the matters took place.

### **4. Initial Review, Evaluation and Assessment of the Complaint**

a. The Integrity Commissioner shall evaluate the complaint in terms of jurisdiction, whether or not it contains sufficient information to be investigated, whether or not there is an allegation susceptible to investigation and whether or not the complaint is vexatious or trivial.

b. In the event that the Commissioner determines that the complaint is not within his/her jurisdiction, or that there is not an allegation susceptible to investigation, he shall so advise the complainant and the municipality, and close the file.

c. In the event that the Commissioner determines that the complaint is frivolous, vexatious or not made in good faith, the Commissioner shall advise the Complainant and the municipality.

d. If the Commissioner determines that he/she has jurisdiction, that there is sufficient information and an understandable and coherent allegation, and that the complaint is not frivolous or vexatious, the Commissioner shall investigate.

## **C. INVESTIGATION**

### **1. Notice**

a. If an investigation is to proceed pursuant to s. B.4.d. above, the Commissioner shall give written notice to the member of council along with particulars of the allegation. The name of the complainant will only be disclosed where it is necessary to do so to further the investigation.

b. If an investigation is to proceed pursuant to s. B.4.d. above, the Commissioner shall inform the complainant when the investigation is to begin.

### **2. Obtaining Information**

a. The Integrity Commissioner may obtain the information he/she deems necessary to assess the allegation. Members of Council and municipal officials are expected to provide information on request.

b. If the Integrity Commissioner deems it necessary, he/she may utilize formal powers of inquiry as contained in sections 33 and 34 of the *Public Inquiries Act, 2009* and provided for in s. 223.4(2) of the *Municipal Act, 2001* to obtain information.

### **3. Procedure at Conclusion of Investigation**

a. If the Commissioner finds a breach of the Code of Conduct he/she shall give the member of Council an opportunity to respond in writing, and orally if appropriate, to that finding prior to reporting to Council.

***Responses shall be submitted to the Commissioner within ten business days of receipt of a written request for response. This time limit may be extended at the discretion of the Commissioner.***

The Commissioner may alter his finding if he receives new and compelling information or argument from the member. After the member has had an opportunity to comment the Commissioner, in his discretion, may seek further information from the complainant and then finalize his or her report.

b. If the Commissioner finds no breach of the Code of Conduct, he/she shall inform the member of Council and the complainant.

c. If the Integrity Commissioner determines that there has been a breach of the Code of Conduct, in accordance with the Report section of the Code of Conduct , he or she shall report to council about the alleged breach of the Code of Conduct and may make recommendations as appropriate.

#### **4. Referral By Commissioner**

a. If, when conducting an inquiry, it is determined 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 of the review to council.

b. If at the initial assessment stage or during the investigation, the Commissioner determines that the matter concerns a pecuniary conflict of interest and is more appropriately dealt with under the process established in the Municipal Conflict of Interest Act he or she shall inform the complainant, and where appropriate, the member of Council.

#### **D. CODE OF CONDUCT – COMPLAINT PROTOCOL DURING AN ELECTION YEAR**

1. To ensure equity for all candidates running for municipal office, where an incumbent is the subject of a complaint allegation filed between June 1st to August 15 of an election year, and where any allegations found to have substance, the report on the situation must be reported to Council prior to September 1st.

2. Where it is not able to complete his or her investigation and report out on the matter prior to September 1st, the investigation procedure will continue, but no action or reporting on the allegations shall be undertaken until the new Council is sworn in.

## **SCHEDULE A-3 to By-Law 95 of 2013**

### **ADVICE PROTOCOL**

In order to enhance the effectiveness of the Code and to encourage adherence to it as well as other ethics rules which govern council members, it is appropriate to allow members to consult with and seek advice from the Integrity Commissioner. This Protocol outlines the circumstances for seeking and the effect of consultation and advice.

#### **1. DEFINITIONS**

“consult” means discussion of principles and rules of ethical conduct

“advice” means guidance respecting the application of the Code of Conduct or the Municipal Conflict of Interest Act to a specific problem

#### **2. CIRCUMSTANCES AND EFFECTS OF CONSULTING OR SEEKING ADVICE**

a. Where a Member discloses all known facts to the Integrity Commissioner and as long as those facts remain unchanged, the Member may rely on written advice provided by the Integrity Commissioner. The Integrity Commissioner will be bound by the advice given, as long as the relevant facts remain unchanged, in the event that he or she is asked to investigate a complaint or comment on a subsequent issue relating to a complaint pertaining to those facts and the matter raised by the Member.

b. Members may seek conflict of interest advice, including a written opinion, from the Integrity Commissioner however, where members choose to seek external legal advice on conflict of interest issues, these fees will not be reimbursed by the Municipality.

c. Members seeking clarification of sections and terms in the Code who are provided advice in a general way, cannot rely on advice given by the Integrity Commissioner to the same extent as written advice given in respect of specific facts. Advice that is general in nature is subject to change when applied to specific facts that may not have been known at the time the general advice was provided.

d. All consultation between the Integrity Commissioner and members seeking advice and clarification is confidential. Reliance on written advice of the Commissioner may become public at such time as a public report on a complaint is presented to Council.

e. The Integrity Commissioner may include generalized and anonymized advice on issues of interest to members in Annual Reports and in commentary on the Municipality’s web site (as requested by the Council or Clerk).

Schedule "A-4" to By-law 95 of 2013

**Affidavit**

Affidavit of \_\_\_\_\_ [full name]

I, \_\_\_\_\_ [full name], of the

**City/Town/Other** of \_\_\_\_\_ [municipality of residence]  
in the Province of Ontario

**MAKE OATH AND SAY/AFFIRM:**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ [insert reason(s), e.g. I work for. . . , I attended the meeting at which .  
. . . , etc.].

2. I have reasonable and probable grounds to believe that a member of the  
Municipality of Lambton Shores' Council,  
\_\_\_\_\_ [name of member], has contravened  
section(s) \_\_\_\_\_ [specify section(s)] of the Code of Conduct  
for members of the Municipality of Lambton Shores' Council, other procedure,  
rule or policy, 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 attach an additional page or pages, numbered  
consecutively, with a statement at the top of each additional page that the contents form  
part of this affidavit.*

*If you wish to include documents or other exhibits to support this Complaint, please refer to  
them as Exhibit A, B, etc. and attach them to this affidavit.*

*If you are relying on the information of others, please indicate this and identify the source of  
the information by name, providing contact information if possible.]*

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

\_\_\_\_\_ [specify the number of additional pages, if any, attached]

*If you are filing this Complaint more than six months after the date of the event or series of events which form the basis of the Complaint, you should include information regarding the reasons why your date of discovery is later than the deemed date of discovery under that section.*

3. This affidavit is made for the purpose of making a Complaint for consideration by the Municipality of Lambton Shores Council or Integrity Commission and for no other purpose.

SWORN/AFFIRMED before me at the  
City/Town/etc. of :

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In the Province of Ontario on *[date]*

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A Commissioner for taking affidavits,  
etc. *[Signature of Commissioner]*

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Complainant *[Signature]*

**Signing a false affidavit may expose you to prosecution under section 131 and 132 or 134 of the Criminal Code (Canada) and also to civil liability for defamation.**

**Notice of Collection of Personal Information pursuant to the  
Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)**

**Personal information contained on this form is collected under the authority of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, and will be used for the purposes of an inquiry into a Code of Conduct issue pursuant to By-law 95 of 2013.**

**Questions about this collection may be directed to the Municipal Clerk.**