

The Corporation Of The Township Of Elizabethtown-Kitley

By-Law No. 18- 34

A By-Law To Establish A Code Of Conduct For The Council Of The Township Of Elizabethtown-Kitley And To Repeal By-law 15-07

WHEREAS Section 11(2) of the Municipal Act 2001, SO 2001, c. 25, as amended, authorizes municipalities to pass by-laws regarding Accountability and Transparency of the municipality and its operations;

AND WHEREAS Section 223.2(1) of the Municipal Act 2001, SO 2001, c. 25, as amended, authorizes municipalities to establish codes of conduct for members of the council of the municipality;

AND WHEREAS Ontario Regulation 55/18 sets out the prescribed subject matters for municipal codes of conduct;

NOW THEREFORE the Council of the Corporation of the Township of Elizabethtown-Kitley enacts as follows:

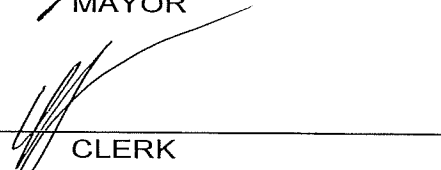
- 1 That the Code of Conduct, as attached as 'Schedule A' hereto be adopted by the Council of the Corporation of the Township of Elizabethtown-Kitley.
2. That By-law 15-07 be repealed in its entirety.
3. That this by-law shall come into force and take effect upon receiving the final passing thereof.

Read a First and Second time this 13th day of August, 2018.

Read a Third time and finally Passed this 13th day of August, 2018.



MAYOR



CLERK

**Schedule A
By-law 18-34
Code of Conduct for Elected Officials**

Code of Conduct for Elected Officials

Purpose: The purpose and intent of this Policy is to establish guidelines for ethical and interpersonal standards of conduct for Members of Council and shall also apply to all future Members of Council. This Code of Conduct also applies equally to all Members of Boards and Committees of the Municipality, whether or not a Member of that Board or Committee is also a Member of Council.

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.

CONDUCT TO BE OBSERVED

1. Confidential Information

“Confidential information” includes information in the possession of the Township that the Township is either prohibited from disclosing or has decided to refuse to disclose under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) or other legislation. Confidential information also includes:

- i) "personal information" as defined in MFIPPA;
- ii) information of a corporate, commercial, scientific or technical nature received in confidence from third parties;
- iii) information that is subject to solicitor client privilege;
- iv) information that concerns any confidential matters pertaining to personnel, labour relations, litigation, property acquisition, or the security of the property of the municipality or a local Board;
- v) information provided or discussed in a closed session of Council;
- vi) information members of Council obtain by virtue of their position that is not in the public domain, including e-mails, documents and correspondence from other Members, or third parties; and
- vii) any other information determined by Council to be confidential or required to remain or be kept confidential by legislation or order.

Schedule A
By-law 18-34
Code of Conduct for Elected Officials

1. No member shall disclose or release by any means to any member of the public, or in any way divulge, any confidential information, in either oral or written form, except when required by law or authorized by Council resolution to do so.
2. Members shall not release information subject to solicitor-client privilege, unless expressly authorized by Council, Local Board resolution (if so empowered), or required by law to do so.
3. Any matter that has been discussed at a closed meeting remains confidential. Members have a duty to hold information received at closed meetings in strict confidence for as long and as broadly as the confidence applies. Members shall not, either directly or indirectly, release, use for personal reasons, make public or in any way divulge the content of any such matter, or the substance of deliberations of the closed meeting, including memorandums and staff reports that are distributed for consideration during the in-camera meeting, unless specifically authorized by Council resolution or required by law.
4. Members of Council shall not access or attempt to gain access to confidential information in the custody of the Township unless it is necessary for the performance of their duties and not prohibited by Council policy.
5. Members are only entitled to information in the possession of the Township that is relevant to matters before the Council or a committee. Otherwise, they enjoy the same level of access rights to information as any other member of the community and must follow the same processes as any private citizen.
6. The obligation to keep information confidential applies event if the Member ceases to be a Member for any reason.

Consequences

A Member found by Council to have contravened any provision of this Code is subject to one or more of the following consequences imposed by Council.

Where recommended by the Integrity Commissioner, Council may impose the following penalties:

- i. a reprimand; or
- ii. suspension of the remuneration paid to the Member in respect of his or her services as a member of Council or a local board, as the case may be, for a period of up to 90 days.

Schedule A
By-law 18-34
Code of Conduct for Elected Officials

In appropriate circumstances, Council may impose remedial measures on any Member determined to have breached the Code of Conduct, including any of the following:

- a. require an apology to Council, the complainant or both;
- b. require that municipal property wrongfully used be returned;
- c. prohibit the Member from attending closed sessions of Council for a specified period of time, with no impact on the Member's remuneration;
- d. remove a Member from a Committee or Board;
- e. remove a member as Chair of a Committee or Board; and
- f. any other remedial measure deemed appropriate by Council.

2. 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 Council as a whole or the Mayor as Head of Council or by his or her designate.

Members, when communicating with the public and media, will accurately and adequately communicate the decisions of the Council, Board or Committee, even if a Member disagrees with a majority decision, so that there is respect for and integrity in the decision making process.

Any use of social media in any form by a Member constitutes communication with the public that is governed by this section. Members shall identify in any social media communication that the views expressed by the Member are the views of that Member personally, and do not represent the views of the Municipality.

If Council has taken a position in a Local Planning Appeals Tribunal, or other tribunal or court, and instructed the Municipal Solicitor to appear at a hearing in support of such position, no Member who disagrees with such position shall give evidence at such hearing or otherwise work against the will of Council expressed in its direction to the Municipal Solicitor in such matter.

3. 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.

Schedule A
By-law 18-34
Code of Conduct for Elected Officials

A family member is defined as set out in the Municipal Conflict of Interest Act, more specifically the parent, spouse and/or child of the member.

Members of Council are not precluded from accepting:

- personal gifts, benefits, rewards, commissions or advantages from any person or organization not connected directly or indirectly with the performance or duties of office;
- political contributions that are otherwise offered, accepted and reported in accordance with applicable law;
- food and beverages at banquets, receptions, ceremonies or similar events;
- services provided without compensation by persons volunteering their time during an election campaign in accordance with the applicable legislation;
- food, lodging, transportation and entertainment provided by other levels of government or by other local governments, boards or commissions;
- a reimbursement of reasonable expenses incurred in the performance of duties or office;
- a reimbursement of reasonable expenses incurred and honorariums received in the performance of activities connected with municipal associations;
- 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
- 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 why the gifts or benefits cannot be accepted.

Where it is not possible to decline unauthorized gifts, hospitality or other benefit, Members shall report the matter to the Administrator-Clerk. The gift shall become the property of the Municipality and the Administrator-Clerk may require that the gift be retained by the Corporation or be disposed of for charitable purposes in the Administrator-Clerk's sole discretion.

**Schedule A
By-law 18-34
Code of Conduct for Elected Officials**

4. 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:

- use any influence of office for any purpose other than official duties;
- act as an agent before Council or any committee, board or commission of Council;
- 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;
- 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;
- place themselves in a position of obligation to any person or organization which might reasonably benefit from special consideration or may seek preferential treatment;
- give preferential treatment to any person or organization in which a Member or Members of Council have a financial interest;
- 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;
- use Corporate materials, equipment, facilities or employees for personal gain or for any private purpose, and
- post-employment conflict: elected officials shall not act, after they leave public office, in such a manner as to take improper advantage of the Corporation in which they were elected to serve.

Members shall abide by the following principles:

- a) Members shall at all times act ethically;
- b) Members shall perform their functions with integrity, accountability and transparency;
- c) Members shall comply with all applicable legislation, by-laws and policies pertaining to their position, including this Code of Conduct;
- d) Members acknowledge that the public has a right to open government and transparent decision-making; and

Schedule A
By-law 18-34
Code of Conduct for Elected Officials

- e) Members shall at all times serve the interests of their constituents and the Municipality in a conscientious and diligent manner and shall approach decision-making with an open mind.

5. 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.

INTERPERSONAL BEHAVIOUR OF MEMBERS OF COUNCIL

1. Treat Every Person with Dignity, Understanding and Respect

Every Member has the duty and responsibility to treat members of the public, staff and each other in a respectful manner, without abuse, bullying, harassment or intimidation.

A Member shall not use indecent, abusive, or insulting words or expressions toward any other Member, any member of Staff, or any member of the public.

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.

Schedule A
By-law 18-34
Code of Conduct for Elected Officials

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

- make racial, homophobic, sexist or ethnic slurs;
- display pornographic, homophobic, sexist, racist or other offensive or derogatory material;
- make leering (suggestive staring) or other offensive gestures;
- make written or verbal abuse or threats;
- vandalize the personal property of others;
- commit physical or sexual assault;
- 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);
- make unwelcome remarks, insulting gestures or jokes which cause embarrassment or awkwardness;
- 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;
- make unnecessary or unwanted physical contact, including touching, patting, or pinching; and
- 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.

A good faith exercise of performance management with respect to corporate employees for legitimate purposes by Council is not harassment.

USE OF CORPORATE RESOURCES

No Member shall use or permit the use of Township property, including land, facilities, equipment, supplies, services, employees or other resources (i.e. Township owned materials, computers, networks, websites, corporate transportation) for activities other than the business of the Corporation. Nor shall any Member or the Member's family members or friends obtain personal benefit or financial gain from the use or sale of Township property, including Township developed intellectual property (i.e. inventions, creative writings, computer programs and drawings), technical innovations, township owned

**Schedule A
By-law 18-34
Code of Conduct for Elected Officials**

images, logs, cost of arms, or other items capable of being patented, since all such property remains exclusively that of the Township.

COUNCIL AND STAFF RELATIONS

1. Members shall not:
 - a) maliciously or falsely injure the professional or ethical reputation of Staff;
 - b) compel Staff to engage in partisan political activities or be subjected to threats of discrimination for refusing to engage in such activities; or
 - c) use their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any Staff member with the intent of interfering with Staff duties.

2. Operational inquiries and complaints received from the public will be addressed by Members as follows:
 - a) Members who are approached by the public with inquiries/complaints regarding operational matters should encourage the party to contact the appropriate department for review/resolution.
 - b) where the Member of the public is reluctant to contact the department directly, the Member should take the person's name, phone number and details of the inquiry/complaint and advise them that the matter will be referred to the Administrator-Clerk for review/resolution.
 - c) members of the public should be encouraged to provide their issue/matters of concern in writing to the appropriate department.
 - d) where the inquiry/complaint is not resolved to the satisfaction of the member of the public, then the issue may be brought forward to the Mayor and then Council for resolution.

3. Members shall recognize and respect that many members of Staff are bound by professional associations to a code of ethics and professional conduct and that they provide their reports and recommendations objectively, in the best interests of the Township and within the requirements of their profession.

4. Municipal Council, acting as a body, can dictate that staff performs such duties as are necessary for the efficient management of the affairs of the community, and/or research such matters as the Council deems necessary. Individual Council members do not have authority to direct staff. Council shall direct staff through the Administrator-Clerk.

Schedule A
By-law 18-34
Code of Conduct for Elected Officials

5. Board and Committee Members do not have the authority to direct Staff, with the limited exception of any Staff member assigned by Council to that Board or Committee. Ultimately, Council retains the discretion to assign, remove and direct Staff who provide assistance to any Board or Committee. Requests for Staff changes shall be directed to the Administrator-Clerk who shall make Staffing determinations, and consult with Council as necessary.

CONFLICT OF INTEREST

1. Members must be familiar with and comply with the *Municipal Conflict of Interest Act*, 1990, as amended. It is the responsibility of each Member, not Staff, to determine whether they have a direct or indirect pecuniary interest with respect to matters arising before Council, a Board or Committee. Each Member shall determine whether he or she has a direct or indirect pecuniary interest and shall at all times comply with the Act.
2. For purposes of this Code, a pecuniary interest, direct or indirect, of a Family Member of the Member shall be deemed to also be the personal/pecuniary interest of the Member. All Members shall declare a conflict of interest where they or their Family Member has a pecuniary interest in a matter and shall take all of the actions prescribed in the *Municipal Conflict of Interest Act* as if the Act applied to that interest.
3. In addition to pecuniary interests, Members must perform their duties impartially, such that an objective, reasonable observer would conclude that the Member is exercising their duties objectively and without undue influence. Each Member shall govern their actions using the following as a guide:
 - a) in making decisions, always place the interests of the taxpayers and the Township first and, in particular, place those interests before your personal interests and the interests of other Members, staff, friends, business colleagues or Family Members;
 - b) interpret the phrase "conflict of interest" broadly and with the objective of making decisions impartially and objectively;
 - c) if there is doubt about whether or not a conflict exists, seek the advice of the Integrity Commissioner or legal counsel;
 - d) do not make decisions that create an obligation to any other person who will benefit from the decision;
 - e) do not make decisions or attempt to influence any other person for the purpose of benefitting yourself, other Members, Staff, friends, business colleagues or Family Members, or any organization that might indirectly benefit such individuals;

Schedule A
By-law 18-34
Code of Conduct for Elected Officials

- f) do not put yourself in the position where a decision would give preferential treatment to other Members, Staff, friends, business colleagues or Family Members, or any organization that might indirectly benefit such individuals; and
 - g) do not promise or hold out the prospect of future advantage through your influence in return for a direct or indirect personal interest.
4. Direct or indirect personal interests do not include:
- a) a benefit that is of general application across the Municipality;
 - b) a benefit that affects a Member or his or her Family Members, friends or business colleagues as one of a broad class of persons;
or
 - c) the remuneration of Council, a Member or benefits available to Council or Members.
5. Every Member has the following obligations:
- a) To make reasonable inquiries when there is reason to believe that a conflict of interest may exist;
 - b) To make Council or the Board or Committee aware of the potential conflict of interest and where appropriate declare the interest;
 - c) To refuse to participate in the discussion of Council, the Board or Committee and to not vote on the matter or seek to influence the vote of any other Member where a conflict of interest exists;
 - d) To refuse be involved in any way in the matter once the conflict is identified, including without limitation participating in meetings, facilitating meetings or introductions to Staff or Members or providing advice to any person that would materially advance the matter; and
 - e) If the matter which creates the conflict of interest is discussed in closed session, the Member may not attend that portion of the closed session where that matter is discussed.

ADVICE AND OPINIONS

1. Members may request, in writing, advice or opinions from the integrity Commissioner with respect to:
- a) The obligations of the Member under the *Municipal Conflict of Interest Act*;
 - b) The obligations of the Member under this Code; and
 - c) The obligations of the Member under a procedure, rule or policy of the Municipality governing the ethical behavior of the Member.

Schedule A
By-law 18-34
Code of Conduct for Elected Officials

2. The Integrity Commissioner shall not provide to any Member any advice or opinion with respect to obligations of another Member.
3. The advice and opinions received by any Member are personal to the Member and are considered confidential. No opinion or advice may be shared by the Integrity Commissioner without the written permission of the Member who requested the opinion or advice. The Member may grant permission to share part of an opinion or advice, but in circumstances where the member shares only a portion of an opinion or advice the Integrity Commissioner may release all or a part of the opinion or advice without the consent of the Member.

ROLE OF THE INTEGRITY COMMISSIONER

1. The Integrity Commissioner shall be appointed by By-law of the Municipality.
2. The Integrity Commissioner shall operate independently of Council in accordance with all of the authority and powers granted by the *Municipal Act*.
3. The Integrity Commissioner may delegate his or her duties and powers to any person, other than a Member. The delegation shall be in writing, shall be disclosed to the Clerk and shall set out the precise delegation, including the duration of the delegation.
4. Any delegation shall be at the sole discretion of the Integrity Commissioner, provided that the delegate is qualified and capable of independently undertaking the work.
5. The Integrity Commissioner shall make an assessment prior to undertaking any investigation as to whether the complaint gives rise to the need for another entity to undertake an investigation. In those circumstances where the allegations disclose a potential Criminal Code offence or the breach of other legislation (other than the *Municipal Conflict of Interest Act*), the Integrity Commissioner shall refer the investigation to the appropriate entity and shall not conduct his or her own investigation unless the entity determines that no investigation is required.
6. The Integrity Commissioner shall prepare and submit to Council an Annual Report that shall include at a minimum:
 - a) A break-down of costs incurred for the following categories of work performed (advice/investigations/dispute resolution/training);

**Schedule A
By-law 18-34
Code of Conduct for Elected Officials**

- b) A summary of the nature of requests made and the resolution of the matters, without providing any confidential information in the Report; and
- c) Any recommendations for improvements to this Code or processes.

COMPLAINT PROTOCOL

The complaint protocol shall not retroactively apply to any alleged transgression occurring prior to the date on which the Code of Conduct was formally adopted by Council.

The complaint protocol will be as follows:

1. A request for an investigation of a complaint that a member has contravened the Code of Conduct shall be in writing as set out in Appendix A of this Policy.
2. All complaints must be signed by an identifiable individual (which includes the authorized signing officer of an organization).
3. A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code of Conduct and include a supporting affidavit that sets out the evidence in support of the complaint.
4. The request shall be filed with the Municipal Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council policies.
5. If the complaint is determined not to be a complaint with respect to non-compliance with the Code of Conduct, the complainant shall be advised that the matter is not within the jurisdiction of the Integrity Commissioner to process with any additional reasons and referrals as the Integrity Commissioner considers appropriate.
6. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.
7. The Integrity Commissioner shall not issue a report finding a violation of the Code of Ethics on the part of any member unless the member has had

Schedule A
By-law 18-34
Code of Conduct for Elected Officials

- reasonable notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment on the proposed finding and any recommended sanction, provided that comment period after having been notified does not exceed 30 calendar days.
8. The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the making of the complaint.
 9. Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining the findings, the terms of any settlement, or recommended corrective action.
 10. Any recommended corrective action must be permitted by law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.
 11. Section 223.4 of the *Municipal Act, 2001* authorizes Council to impose either of two penalties on a member of Council following a report by the Integrity Commissioner that, in his/her opinion, there has been a violation of the Code of Conduct:
 - a) reprimand; or
 - b) suspension of the remuneration paid to the member in respect of his or her services as a member of Council for a period of up to 90 days.
 12. The Integrity Commissioner may also recommend that Council take the following actions:
 - a) removal from membership from a committee or local board;
 - b) removal as Chair of a committee or local board;
 - c) repayment or reimbursement of moneys received;
 - d) return of property or reimbursement of its value; or
 - e) request for an apology to Council, the complainant or both.
 13. Where the complaint is dismissed, the Integrity Commissioner shall not report to Council, except as part of an annual or other periodic report.
 14. A complaint will be processed in compliance with the confidentiality requirements of Section 223.5(1) of the *Municipal Act, 2001*, as amended.
 15. If the Integrity Commissioner reports to Council his or her opinion about whether a member of council has contravened the Code of Conduct, the Commissioner may disclose in the report such matters as, in the Commissioner's opinion, are necessary for the purposes of the report.

Schedule A
By-law 18-34
Code of Conduct for Elected Officials

16. The Township of Elizabethtown-Kitley will not tolerate retaliations, taunts or threats against anyone who complains about harassment or takes part in an investigation.

**Schedule A
By-law 18-34
Code of Conduct for Elected Officials**

APPENDIX A

**FORMAL COMPLAINT PROCEDURE
AFFIDAVIT**

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

AFFIDAVIT OF _____
(Full Name)

I, _____, of the _____
(Full Name) (Township, Town, City, etc)

Of _____ in the Province of Ontario **MAKE OATH AND**
(Municipality of Residence)

SAY (or AFFIRM):

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

(insert reasons, 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 Township of Elizabethtown-Kitley Council, advisory committee or local board

(Specify name of Member)
has contravened section (s) _____ of the Code of
(Specify Section (s))

Conduct. The particulars of which are as follows:

(Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, please use additional sheets and check the appropriate box below. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this affidavit.)

**Schedule A
By-law 18-34
Code of Conduct for Elected Officials**

Please see additional, attached sheet(s)

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

SWORN (or AFFIRMED) before me at the)

_____ of _____)
(Township, Town, City, etc))

_____ In the)
(Municipality Name))
Province of Ontario on this _____)
day of _____, 20__)

Signature of Commissioner)
A Commissioner for Taking Affidavits)

Signature of Complainant