

~~TCDSB CODE OF~~  
~~CONDUCT~~  
COMPLAINT  
PROTOCOL

## COMPLAINT PROTOCOL

### Definitions:

**“Appellant” means the party appealing the Integrity Commissioner’s determination;**

**“Business Day” means a day from Monday to Friday, excluding holidays;**

**“Respondent” means the party responding to an appeal of the Integrity Commissioner’s determination.**

~~“Eligible Complainant” means:~~

- ~~a) — a Trustee, student, staff member, contractor or service provider of the TCDSB;~~
- ~~b) — a Roman Catholic (Separate School) elector;~~
- ~~c) — an Eastern Rite Catholic;~~
- ~~d) — a representative of an organization demonstrably interested in TCDSB matters; or~~
- ~~e) — such other persons demonstrably interested in TCDSB matters.~~

### **PART A: — INFORMAL COMPLAINT PROCEDURE**

~~Any Eligible Complainant who has identified or witnessed behaviour or an activity by a Trustee that they believe is in contravention of the *Trustee Code of Conduct* (the “Code”) may wish to address the prohibited behaviour or activity themselves as follows:~~

- ~~(1) — advise the Trustee that the behaviour or activity contravenes the Code;~~
- ~~(2) — encourage the Trustee to stop the prohibited behaviour or activity;~~
- ~~(3) — keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;~~
- ~~(4) — if applicable, confirm to the Trustee their satisfaction with the response of the Trustee; or, if applicable, advise the Trustee of their dissatisfaction with the response; and~~
- ~~(5) — consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.~~

~~All Eligible Complainants are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or~~

activity that is prohibited by the Code. With the consent of the complaining individual or organization and the member, the Integrity Commissioner may be part of any informal process. However, it is not a precondition or a prerequisite that those complaining must pursue the informal complaint procedure before pursuing the Formal Complaint Procedure in Part B.

### **Notification of Alleged Breach**

1. **(1) A Trustee who has reasonable grounds to believe that a Trustee has contravened the Code may file a formal complaint (the “Complaint”) to request an inquiry of the Integrity Commissioner as to whether a Trustee has contravened the Code in accordance with the following requirements:**
  - (a) The Complaint shall be in the form attached to the Complaint Protocol at Schedule “A” and shall be dated and signed by the Trustee; and**
  - (b) The Complaint shall include the name and contact information of Trustee who is the subject of the notification, the date of the alleged breach of the Code, the provision of the Code that was allegedly breached, a description of the alleged breach of the Code and overview of the complainant’s reasonable grounds to believe that the provision of the Code has been allegedly contravened, the names and contact information of any witnesses, and name and contact information of the complainant Trustee.**
- (2) The Complaint shall be filed by sending it directly to (i) the vice-chair of the Board, if the conduct relates to the conduct of the chair; (ii) another member of the Board who is neither the complainant nor the subject of the Complaint if the notice relates to the conduct of both the chair and vice-chair; and (iii) in all other situations, to the chair of the Board.**
- (3) A Trustee who gives notice of a Complaint shall also provide a copy of the notification to the director of education.**
- (4) The individual in receipt of the Complaint shall (i) immediately provide a copy of the Complaint to the Trustee whose conduct is the subject of the alleged breach and to the entire Board; and (ii)**

in the event the matter is not resolved within twenty (20) Business Days after the Trustee received notice of the Complaint (or such other period of time as may be prescribed), the Board shall refer the Complaint to the Integrity Commissioner.

### Intake and Classification by Integrity Commissioner

2. (1) The Integrity Commissioner shall commence an investigation into a Complaint no later than fourteen (14) days after being provided with the Complaint.
- (2) Notwithstanding subsection 2(1) above, no investigation shall be commenced or continued, nor shall the Integrity Commissioner report to the Board respecting an investigation, within the election period described within s.223.4 and 223.4.1 of the *Municipal Act*, except as described in those sections.
- (3) Upon receipt of a **Complaint**, the Integrity Commissioner shall make an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code and not covered by other legislation, a complaint with respect to the *Municipal Conflict of Interest Act* or other relevant the Board policies.
- (4) If the **Complaint**, on its face, is not a complaint with respect to non-compliance with the ~~Trustee Code of Conduct~~ or another Board policy governing ethical behaviour or the *Municipal Conflict of Interest Act*, or if the **Complaint** is covered by other legislation, the Integrity Commissioner shall advise the **Trustee** complainant, **the Trustee that is the subject of the Complaint and the Board** in writing as follows:
  - (a) if the **Complaint** on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the **Trustee** complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police force;
  - (b) if the **Complaint** on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the **Trustee** complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, and shall be provided with any

additional reasons and referrals as the Integrity Commissioner considers appropriate. The Integrity Commissioner may proceed with that part of the complaint that is within jurisdiction.

- (5) The Integrity Commissioner may also refuse to commence an investigation into an alleged breach of the Code, and such decision shall be deemed to be final, if,**
  - (a) The Complaint was made more than sixty (60) days after the day the alleged breach occurred or was discovered, whichever is later, unless the Integrity Commissioner is satisfied the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. For clarity, if a breach relates to a series of incidents, the sixty (60) day limitation period runs from the day the last incident in the series occurred or was discovered and a breach is deemed to be discovered on the earlier of: (i) the day on which the Trustee notifying the Board first knew that the breach had occurred and (ii) the day on which a reasonable person with the abilities and in the circumstances of the Trustee notifying the Board first ought to have known the breach occurred; or**
  - (b) In the opinion of the Integrity Commissioner, the Complaint is made in bad faith or is frivolous or vexatious.**
- (6) The Integrity Commissioner shall provide written notice of a refusal to commence an investigation to the Trustee, the Trustee who is the subject of the Complaint and the Board.**
- (7) The Integrity Commissioner may define the scope of the investigation and reformulate a complaint by restating, narrowing or clarifying the complaint so that the public interest will be best served.**  
~~were the complaint to be pursued~~
- ~~(8) The Integrity Commissioner may report to the Board that a specific complaint is not within the jurisdiction of the Integrity Commissioner.~~
- ~~(9) The Integrity Commissioner shall report annually to the Board on complaints not within the jurisdiction of the Integrity Commissioner, or which have been resolved informally by the Integrity Commissioner, but, where possible, shall not disclose information that could identify a person concerned.~~

## Investigation

3. (1) The Integrity Commissioner is responsible for performing the duties set out in this Protocol independently and shall report directly to the Board in respect of all such matters. In applying this Protocol, the Integrity Commissioner shall retain the discretion to conduct investigations applying the principles of procedural fairness, and any deviation from the provisions of this Protocol for that purpose shall not invalidate the investigation or result in the Integrity Commissioner losing jurisdiction.

~~If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, or that the pursuit of the investigation would not, in the opinion of the Integrity Commissioner, be in the public interest, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.~~

- (2) If a **Complaint** has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under section 3, the **Integrity** Commissioner shall investigate the **Complaint**.
- (3) The Integrity Commissioner will provide the **Complaint** (or where the **Complaint** has been restated in accordance with subsection 2(37), the restatement) and relevant supporting material to the **Trustee** whose conduct **has been identified in the Complaint** and will provide the **Trustee** with a reasonable opportunity to respond, as well as a right of reply, where appropriate.
- (4) **Section 33 of the *Public Inquiries Act, 2009* applies to an investigation.**
- (5) **In the course of conducting the investigation, the Integrity Commissioner may,**
- (a) **require the production of any records that may in any way relate to the investigation;**
  - (b) **examine and copy any records required; and**
  - (c) **require any officer or the Board or any other person to appear before him or her and give evidence, on oath or affirmation, relating to the investigation.**

- (6) The Integrity Commissioner shall not issue a report finding a violation of the Code on the part of any Trustee unless the Trustee has had reasonable notice of the basis for and an opportunity to comment on the proposed findings.
- (7) The Integrity Commissioner may make interim reports to the Board where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.

~~The Integrity Commissioner shall report to the complainant and the respective Trustee generally no later than 90 days after the making of the complaint.~~

~~Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also submit a public report to the Board outlining the findings, and any recommended corrective action.~~

~~Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to the Board except as part of an annual or other periodic report.~~

~~Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.~~

- (8) The Integrity Commissioner shall make a determination with respect to a Complaint no later than ninety (90) days after commencing the investigation, or within such other time period as may be prescribed by regulation, unless the Integrity Commissioner notifies the Board and the Trustee who is the subject of the Complaint that an extension is necessary and of the reasons for the extension.**
- (9) The Integrity Commissioner shall provide the Trustee whose conduct was the subject of the Complaint and the Board written notice of a determination that the Trustee has or has not breached the Code and any sanctions imposed.**
- (10) The written report of the Integrity Commissioner shall include the reasons for the determination, the reasons for any sanctions and information about the right to appeal pursuant to the *Education Act*.**

- (11) If the Integrity Commissioner determines, **following an investigation, that the Trustee has breached the Code, the Integrity Commissioner may impose one or more of the following sanctions:**
- (a) Censure **of** the Trustee;
  - (b) **Requiring the Board to reduce the Trustee's honorarium by an amount not exceeding twenty-five (25) per cent (%) of the Trustee's combined base and enrolment amount for the year of the term of office in which the breach occurred, requiring the Trustee to return any excess already paid to the Trustee and authorizing the Board to recover the excess from the Trustee;**
  - (c) **barring the Trustee from attending all or part of one or more meetings of the Board or one of more meetings of a committee of the Board, for the period of time specified by the Integrity Commissioner, up to a maximum of ninety (90) days or the balance of the Trustee's term of office, whichever is less.**
  - (d) **barring the Trustee from sitting on one or more committees of the Board, for the period of time specified by the Integrity Commissioner, up to a maximum of 90 days or the balance of the Trustee's term of office, whichever is less;**
  - (e) **barring the Trustee from becoming the chair or vice-chair of the Board or of any committee of the Board, or removing the Trustee from any of those positions;**
  - (f) **barring the Trustee from exercising the privileges of a Board member or acting as a Board representative, or removing the Trustee from a position the Trustee holds as a Board representative; and**
  - (g) **subject to any other limits set out in paragraphs (a) to (f), any other sanction that, in the opinion of the Integrity Commissioner, is reasonable and appropriate in the circumstances and would promote compliance with the Board's Code.**
- (12) If the Integrity Commissioner determines that there has been no contravention of the Code or that a contravention occurred although the member took all reasonable measures to prevent it, or that a



contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report. ~~and shall recommend that no penalty be imposed~~

~~The Recording Secretary shall process the report for the next meeting of the Board.~~

- (13) The Integrity Commissioner shall file an annual report to the Board respecting the advice, education and investigations carried out in the previous year, and developments or recommendations of significance related to the role of the Integrity Commissioner. ~~Other than in exceptional circumstances, the Integrity Commissioner will not report to the Board on any complaint described in subsection (2) except as part of an annual or other periodic report.~~

~~Where the Integrity Commissioner rejects or terminates an investigation pursuant to this section, reasons shall be provided.~~

~~The Integrity Commissioner will proceed as follows, except where otherwise required in the context of a particular situation, the principles of procedural fairness~~

- ~~— Except where the Integrity Commissioner determines that it is not in the public interest to do so, the name of the complainant shall be provided as part of the complaint documents.~~

~~The Integrity Commissioner may speak to anyone relevant to the complaint, and access and examine any information as the Integrity Commissioner believes to be necessary to support an investigation into a matter, including all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the TCDSB, and the Integrity Commissioner may enter any Board work location relevant to the complaint for the purposes of investigation and settlement.~~

## **~~Board Review~~**

- ~~1. (1) The Integrity Commissioner's report shall be considered to be a report brought to the attention of the Board pursuant to subsection 218.3(1) of the *Education Act*.~~
- ~~(2) Consideration of the Integrity Commissioner's report by the Board satisfies the requirement of the Board to make inquiries into the matter pursuant to subsection 218.3 (2) of the Education Act.~~

~~(3) The Board shall consider the Integrity Commissioner's report at a meeting open to the public provided that where the breach or alleged breach involves:~~

- ~~(a) the security of the property of the Board;~~
- ~~(b) the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian;~~
- ~~(c) the acquisition or disposal of a school site;~~
- ~~(d) decisions in respect of negotiations with employees of the board; or~~
- ~~(e) litigation affecting the board;~~

~~The meeting may be closed to the public to the extent required to permit the Board to consider such confidential content so long as the vote on whether the Trustee has breached the Trustee Code of Conduct, and any vote on any imposition of a sanction, is open to the public.~~

~~(4) If after consideration of the Integrity Commissioner's report the Board determines that a Trustee has breached the Trustee Code of Conduct, the Board may:~~

- ~~a) Censure the Trustee~~
- ~~b) Bar the Trustee from attending all or part of a meeting of the Board or a meeting of a committee of the Board.~~
- ~~c) Bar the Trustee from sitting on one or more committees of the Board, for the period of time specified by the Board~~
- ~~d) Revoke the appointment of the Trustee as Chair of the Board or as Chair of a Committee of the Board, or as a member of a body to which the Board appoints one or more Trustee~~
- ~~e) Such other remedies within the Board's power to impose that are directly relevant to the nature of the breach and/or which are designed to prevent future occurrences of a similar breach. Without restricting the generality of the foregoing such remedies may include:
 
  - ~~a. a request that a genuine apology be made~~
  - ~~b. training as may be recommended by the Integrity Commissioner~~
  - ~~c. the Board adopting a public resolution disassociating itself from any action or statement the Trustee has been found to have taken or made.~~~~

## Consequences of the Imposition of a Sanction

4. (1) A Trustee who is barred from attending all or part of a meeting of the Board or a meeting of a committee of the Board is not entitled to receive any materials that relate to that meeting or that part of the meeting that are not available to members of the public.
- (2) Where a Trustee is barred from attending all or part of a meeting of the Board the Trustee's absence is deemed to be authorization for the Trustee to be absent from the meeting for the purpose of clause 228 (1) (b) of the *Education Act*.
- ~~(5) If the Board determines that a Trustee has breached the Trustee Code of Conduct under subsection (4),
  - ~~(a) the Board shall give the Trustee written notice of the determination and of any sanction imposed by the Board;~~
  - ~~(b) the notice shall inform the Trustee that he or she may make written submissions to the Board in respect of the determination or sanction by a date specified in the notice that is at least 14 days after the notice is received by the member; and~~
  - ~~(c) the Board shall consider any submissions made by the Trustee in accordance with clause (b) and shall confirm or revoke the determination within 14 days after the submissions are received.~~~~
- ~~(6) If the Board revokes a determination under clause (7) (c), any sanction imposed by the Board is revoked.~~

- ~~(7) If the Board confirms a determination under clause (7) (c), the board shall, within the time referred to in that clause, confirm, vary or revoke the sanction.~~
- ~~(8) If a sanction is varied or revoked under subsection (8) or (9), the variation or revocation shall be deemed to be effective as of the date the original determination was made under subsection (4).~~
- ~~(9) The Board's deliberations and voting to confirm or revoke a determination that the Trustee has breached the Trustee Code of Conduct, or to confirm, vary or revoke a sanction imposed as a consequence, shall be open to the public and only such portions of the meeting as provided for in subsection (3) may be closed to the public~~

## **Appeal**

- 5. (1) Either the Board or the Trustee whose conduct was the subject of the Integrity Commissioner's determination may appeal the determination, the sanctions imposed, or both, and the Board and the Trustee are the parties to such an appeal.**
- (2) The Trustee whose conduct was the subject of the Integrity Commissioner's determination shall not vote on a Board resolution to determine whether the Board will appeal the Integrity Commissioner's determination and/or sanctions.**
- (3) The Appellant shall give written notice of the appeal to the other party and the Deputy Minister no later than fifteen (15) Business Days after receiving written notice of the Integrity Commissioner's determination, or within such other time period as may be prescribed by regulation.**
- (4) The appeal shall be heard by a panel of three (3) integrity commissioners appointed by the Deputy Minister or his or her delegate, but the panel shall not include the Integrity Commissioner whose determination is the subject of the appeal (the "Panel").**
- (5) The Panel shall hear the appeal in writing as follows:**
  - (a) the Appellant shall provide written submissions to the Panel and the Respondent no later than twenty (20) Business Days after receiving notice that the Panel has been appointed;**
  - (b) the Respondent shall provide written submissions to the Panel and the Appellant no later than twenty (20) Business Days after**

receiving the Appellant's submissions;

- (c) the Appellant shall provide their written reply to the Respondent's submissions no later than ten (10) Business Days after receiving the Respondent's submissions; and
  - (d) the Chair of the Panel may extend any timeline for the filing of written submissions at the written request of a party in order to provide for the fair, just and expeditious resolution of the appeal. A decision to extend a timeline shall be provided to the parties in writing and a copy of the decision shall be provided to the Deputy Minister.
- (6) The Panel shall convene to consider the appeal at such times and in such places as they may determine, including by electronic means.
  - (7) The Panel may define or narrow the scope of the appeal, limit the length of the submissions from the parties and make interim decisions and orders.
  - (8) The Panel may dismiss an appeal as frivolous or vexatious or commenced in bad faith, and such decision is final.
  - (9) If the Panel overturns the determination made by the Integrity Commissioner, any sanction imposed by the Integrity Commissioner is revoked.
  - (10) If the Panel upholds the determination made by the Integrity Commissioner, the Panel shall uphold, vary or overturn the sanction.
  - (11) If a sanction is varied or overturned by the Panel, the variation or overturning shall be deemed to be effective as of the date the original determination was imposed or made by the Integrity Commissioner.
  - (12) The Panel shall provide its decision and its reasons, including any dissent, to the parties no later than thirty (30) Business Days after receiving the Respondent's submissions. A copy of the Panel's decision shall be provided to the Deputy Minister
  - (13) The decision of a Panel respecting the determination of the

**Integrity Commissioner is final.**

**Confidentiality, Records and Information**

6. (1) The Integrity Commissioner and every person acting under her or his instructions shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of any investigation except as required by law. ~~in a criminal proceeding~~

~~(2) All reports from the Integrity Commissioner to the Board will be made available to the public.~~

- (2) Any references by the Integrity Commissioner in an annual or other periodic report to a complaint or an investigation shall not disclose confidential information that could identify a person concerned.

~~(4) The Integrity Commissioner in a report to the Board on whether a Trustee has violated the Code of Conduct shall only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.~~

- (3) The Board shall keep records and publish information on its website about each of the following:**

**(a) a notification brought to the Board by a Trustee alleging that another Trustee had breached the Code;**

**(b) A determination of the Integrity Commissioner, including where the Integrity Commissioner refuses to commence an investigation; or**

**(c) if a Panel upholds or overturns a decision of the Integrity Commissioner.**

- (4) The Board shall publish only such information on its website as appropriate where the alleged breach of the Code or the determination regarding the breach involves any of the following matters:**

**(a) the security of the property of the Board;**

**(b) the disclosure of intimate, personal or financial information in respect of a member of the Board or committee, an**

**employee or prospective employee of the Board or a pupil or his or her parent or guardian;**

**(c) the acquisition or disposal of a school site;**

**(d) decisions in respect of negotiations with employees of the Board; or**

**(e) litigation affecting the Board.**

**Schedule  
"A"  
Complaint  
Form**

I, name of Eligible Complainant **being** a Trustee of the TCDSB **hereby give notice of an alleged breach of the Code and** request the Integrity Commissioner appointed by the **TCDSB** to conduct an inquiry about whether or not the following Trustee(s) has contravened the Trustee Code of Conduct or the *Municipal Conflict of Interest Act*.

~~being an Eligible Complainant on the basis that I am (select all that are relevant)~~

- ~~a Trustee, student, staff member, contractor or service provider of the TCDSB;~~
- ~~a Roman Catholic (Separate School) elector;~~
- ~~an Eastern Rite Catholic;~~
- ~~a representative of an organization demonstrably interested in TCDSB matters; or~~
- ~~an other person demonstrably interested in TCDSB matters,~~

**(Name** of Trustee(s): \_\_\_\_\_

I have reasonable and probable grounds to believe that the above Trustee(s) has contravened the Code and/or the *Municipal Conflict of Interest Act* by reason of the following (please include date of the **alleged breach**, the **Regulation(s) alleged to have been** contravened, **a description of the alleged breach** and **any further** particulars, including **documents and/or** names of all persons involved, and of all witnesses, and information as to how they can be reached (attach additional pages as needed):

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I hereby request the Integrity Commissioner to conduct an inquiry with respect to the above conduct. Attached are copies of documents and records relevant to the requested inquiry.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

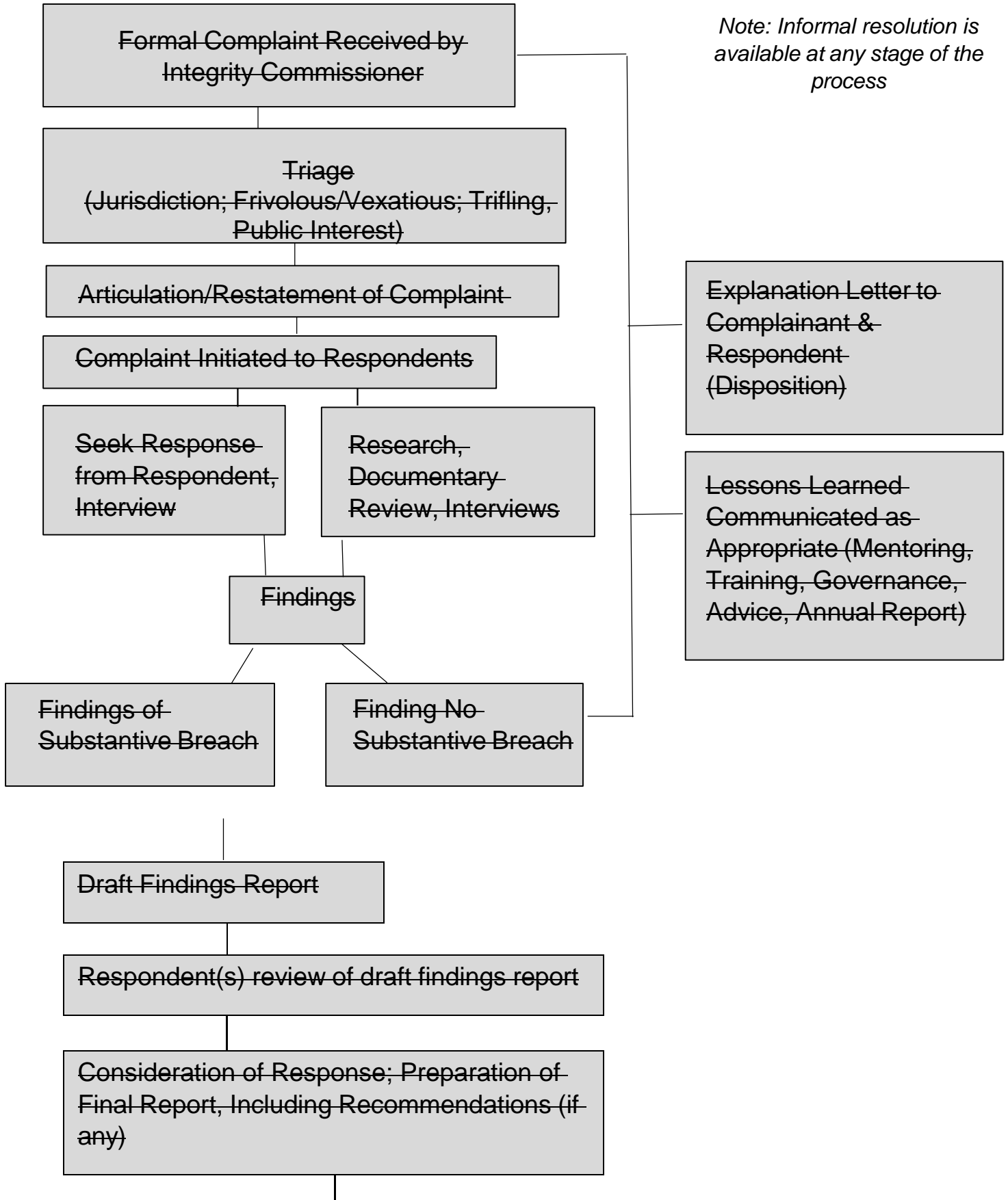
Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_



Part 1 – Integrity Commissioner Process



Submission to ~~Public Meeting of the Board~~  
(~~See Part 2~~)

Part 2 – Board Review

