

Regional District of Okanagan-Similkameen

Elected Official Code of Conduct Policy

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POLICY: Elected Official Code of Conduct

AUTHORITY: Board Resolution dated September 7, 2023.

PART ONE – ETHICAL CONDUCT

Division 1 – Interpretation and Application

Policy Statement

1 (1) This Code of Conduct policy is intended to guide elected officials in conducting their business in accordance with the guiding principles of integrity, transparency, accountability, civility, openness, respect, leadership and collaboration.

(2) This policy is intended not to stifle Members or to limit their ability to fully perform the governmental and advocacy functions that their position entails, with all the vigour, flair and freedom that is typical of a well-functioning democratic institution, but instead to guide Members to undertake those functions in a manner that accords with sound ethical principles.

(3) This policy does not cover every possible situation that a Member, Committee Member, Governing Body or committee may face. It is therefore important that Members make every effort to align their actions with the spirit and intent of this Code of Conduct.

Scope

2 (1) This policy, after its adoption by each local government, applies to the Governing Body of the following jurisdictions:

- (a) the Regional District of Okanagan-Similkameen; and
- (b) participating member municipalities.

(2) This policy applies to all Members, inclusive of their actions in their capacity as members of various boards, committees, and other discretionary appointments.

(3) The provisions of this policy apply without limitation to a Member's use of personal and professional social media accounts.

(4) Unless otherwise provided, this policy does not apply to a Member's conduct in their personal life, except to the extent that such conduct reasonably undermines public confidence in local governance.

Definitions

3 (1) In this policy:

“Adjudicator” means an independent third party appointed by the Regional District who has the necessary professional skills, knowledge and experience to perform intake and preliminary assessment of a complaint;

“Campaign Period” means the period between the last day of the nomination period for local government elected officials and the election day;

“FIPPA” means the *Freedom of Information and Protection of Privacy Act* (British Columbia);

“Governing Body” means the Council or Board of Directors of a local government that has adopted this policy;

“Member” means the Mayor and Councillors of a local government or the Chair and Board members of the Regional District of Okanagan-Similkameen;

“Solicitor” means an independent third party appointed by the Regional District who has the necessary professional skills, knowledge and experience to formally investigate a complaint;

“Staff” means an officer or employee of a local government, but does not include contractors; and

“Volunteer” means a person engaged by the local government who, without compensation, offers their time, skills or services to the local government.

Interpretation

4 (1) This policy is to be interpreted broadly and in a manner that is consistent with the *Community Charter* and *Local Government Act*.

(2) The foundational principles in section 5 are to inform the interpretation of the substantive provisions of this policy and are not stand-alone bases for complaints.

(3) Nothing in this policy is intended to preclude Members, prior to the filing of a complaint, from speaking to each other in order to resolve matters which may otherwise be captured by this policy.

Foundational Principles

5 Responsible conduct is essential to providing good governance. Members recognize that responsible conduct is based upon the foundational principles of integrity, accountability, leadership, respect, openness and collaboration:

- (a) Integrity: Members are keepers of the public trust and must uphold the highest standards of ethical behaviour. Members are expected to act lawfully, be free from undue influence and make decisions that benefit the community.
- (b) Accountability: Members are trusted to act competently, diligently and responsibly. They must be held accountable for their actions and decisions.
- (c) Leadership: Members must demonstrate and promote the key principles of the Code of Conduct through their decisions, actions and behaviour. Their behaviour must build and inspire the public's trust and confidence in the local government.
- (d) Respect: Members must conduct public business efficiently, with decorum and with proper attention to the local government's diversity. They must treat each other and others with respect at all times.
- (e) Openness: Members must conduct their duties in an open and transparent manner, except where this conflicts with their duties to protect confidential information.
- (f) Collaboration: The social fabric of communities and the wellbeing of residents depends on solid and sustainable community partnerships. Members shall seek to collaborate whenever possible and appropriate.

Division 2 – Conduct Regulations

Comply with all Laws

- 6** Members shall comply with all applicable federal, provincial and municipal laws in the performance of their public duties, including but not limited to:
- (a) the *Local Government Act*;
 - (b) the *Community Charter*;
 - (c) FIPPA;
 - (d) the *Financial Disclosure Act*; and
 - (e) all bylaws and policies of the local government.

General Conduct

- 7** (1) Members shall not engage with others, including the public, Staff, Volunteers, and other Members, in a manner that is bullying, abusive, derogatory, or intimidating.
- (2) Members shall not use their office to attempt to gain personal or financial benefits for themselves, their family members, their friends, or business interests.

Handling of Personal and Confidential Information

- 8** (1) Members shall collect, use and disclose personal information in accordance with FIPPA and the policies and guidelines as established by the local government, including:
- (a) the local government's Records Management Policy; and
 - (b) the local government's Freedom of Information and Protection of Privacy Bylaw, if applicable.
- (2) Members shall keep information and records prohibited from release under section 117 of the *Community Charter* in strict confidence.
- (3) Without limiting the generality of subsection (2), Members shall not disclose:
- (a) information or records concerning the property, personnel, legal affairs, or other information of the local government distributed for the purposes of, or considered in, a closed meeting;
 - (b) resolutions or Staff report contents from a closed meeting of the Governing Body unless and until a Governing Body decision has been made for the information to become public; or
 - (c) details on the Governing Body's closed meeting deliberations or how individual Members voted on a question in a closed meeting.
- (4) Members shall not use confidential information to advance, directly or indirectly, their own personal, financial, or other private interests.

Conflict of Interest

- 9** (1) Members shall not participate in discussion of a matter, or vote on a question in respect of that matter, if the Member has a conflict of interest.
- (2) In respect of each matter before the Governing Body or Committee, Members shall:
- (a) assess whether they have a conflict of interest; and
 - (b) determine whether it is necessary to seek independent legal advice at their own cost, except where the CAO approves the cost, with respect to any situation that may result in a conflict of interest.
- (3) If a Member believes that they have a conflict of interest in respect of a matter in a Governing Body or committee meeting, the Member shall:

- (a) prior to the matter's consideration, notify the Mayor or Chair of the meeting that they have a conflict of interest, stating in general terms why they consider that to be the case;
- (b) leave any meeting if the matter is discussed and not return until the discussion has ended or voting has been concluded;
- (c) refrain from discussing the matter with any other Member publicly or privately; and
- (d) refrain from attempting in any way to influence the voting on any question in respect of the matter.

Interactions with Staff, Volunteers, and Other Members

10 (1) Members shall:

- (a) direct questions and inquiries regarding departmental issues to the CAO; and
- (b) refrain from contacting Staff directly, unless the communication is minor and for the purpose of seeking administrative clarity.

(2) Members shall not:

- (a) interfere with, hinder or obstruct Staff, Volunteers, or other Members in the exercise or performance of their roles, responsibilities, powers, duties or functions;
- (b) impair the ability of officers or Staff to implement the Governing Body's policy decisions;
- (c) request or require Staff to:
 - i. undertake personal or private work for or on behalf of a Member; or
 - ii. engage in political activities, or subject them to reprisal of any kind for refusing to engage in such activities;
- (d) induce, request encourage, aid, or permit Staff, directly or indirectly, to do something which, if done by the Member, would be a breach of this policy;
- (e) issue instructions to or otherwise communicate with any of the local government's contractors, tenderers, consultants or other service providers unless expressly authorized to do so by the CAO or a resolution of the Governing Body; or

- (f) communicate, except in a meeting, with a tenderer or proponent regarding the subject matter of the procurement.

Conduct of Meetings

- 11** (1) Members shall conduct themselves with decorum at meetings. This includes:
- (a) complying with all conduct provisions set out in the local government's Procedure Bylaw;
 - (b) adequately preparing for meetings;
 - (c) using respectful language;
 - (d) not using offensive gestures or signs;
 - (e) listening courteously and attentively to all discussions before the Governing Body, and focusing on the business at hand;
 - (f) not making comments not germane to the business of the Governing Body;
 - (g) not interrupting other speakers, except to raise a point of order;
 - (h) not leaving the meeting or making any disturbance while a vote is being taken and until a vote is declared; and
 - (i) not otherwise interfering with the orderly conduct of a meeting.

Interactions with the Public and Media

- 12** (1) In an effort to promote respect and integrity for the Governing Body's decision-making, Members shall not misrepresent the decisions of the Governing Body or Committee, even if they disagree with the majority decision.
- (2) Members shall refrain from making any disparaging comments about other Members.
- (3) When presenting their individual opinions and positions, Members shall explicitly state that it is their own personal view and that they do not represent the Governing Body, the Committee, or the local government in those views.

Gifts

- 13** (1) Members shall not accept a gift or personal benefit, except in accordance with section 105 of the *Community Charter*.

- (2) Members shall disclose a gift or personal benefit, received in accordance with section 105 of the *Community Charter*, as per section 106 of the *Community Charter*.

Use of Public Resources

- 14** (1) Members shall not use any local government property or assets, or any other public resources such as Staff time, equipment, technology, supplies, facilities or other property, for private gain, personal purposes or election-related purposes.
- (2) Members shall not undertake municipal election campaign related activities at the local government's office or on other premises owned by the local government during regular working hours, unless such activities are organized by the local government.
- (3) A Member shall not participate in any local government events requiring them to perform official ceremonial duties during the Campaign Period, unless authorized by a resolution of the Governing Body.
- (4) During the Campaign Period, a Member shall not:
 - (a) deliver local government funded campaign materials;
 - (b) conduct open houses funded by the local government;
 - (c) distribute mass e-mails from the Member's local government email address, unless the communication arises from an emergency or the communication is authorized by the CAO; or
 - (d) use devices issued by the local government for campaign-related purposes.

PART TWO – INVESTIGATION, COMPLIANCE & ENFORCEMENT

Division 1 – Implementation and Preliminary Steps

Implementation

- 15** (1) As an expression of the standards of conduct for Members, this policy is intended to be self-enforcing.
- (2) This policy becomes most effective when Members are thoroughly familiar with it and embrace its provisions. For this reason, this policy shall be provided as information to candidates for a Governing Body or Committee.

Preliminary Steps

- 16** (1) If a Member believes that they have observed another Member engaging in conduct that would breach this policy, they must attempt to resolve the complaint directly with the other individual, if possible, prior to submitting a complaint under section 17.

Division 2 – Complaint Intake

Complaint Procedure

- 17** (1) Subject to section 16, a Member, Staff member or Volunteer may submit a complaint to the Corporate Officer, who will forward the complaint to the Adjudicator and copy the CAO.

(2) A complaint must be in writing, must be submitted within 60 days of the alleged breach, and must include, with sufficient detail:

- (a) the name of the complainant;
 - (b) the name of the respondent Member(s);
 - (c) the conduct that the complainant alleges was in breach of the Code;
 - (d) the date of the alleged conduct;
 - (e) the parts of the Code the alleged conduct breached;
 - (f) the basis for the complainant's knowledge of the conduct; and
 - (g) if a complaint is submitted by a Member, whether the Member attempted to resolve the complaint informally under section 16.
- (3) A complaint may be accepted notwithstanding that it does not comply with all of the requirements of subsection (2), if the Adjudicator determines that there has been substantial compliance or if the circumstances otherwise warrant acceptance.

(4) A complaint submitted outside the time limits set out in subsection (2) must be rejected, except that the Adjudicator may grant an extension of no more than 30 further days if the circumstances of the complaint are sufficiently serious.

(5) In an election year, complaints submitted from the first day of the nomination period to the general voting day must be accepted and held in abeyance until after the new Governing Body has taken office. At that time, complaints shall only proceed if they relate to a Member who was re-elected in that election year. For certainty, if the Member who is the subject of the complaint is not re-elected, the complaint must be rejected.

Preliminary Assessment

18 (1) On receipt of a complaint, the Adjudicator shall conduct a preliminary assessment or forward the complaint to the Governing Body's Solicitor to conduct the preliminary assessment. If the Adjudicator determines that any of the following circumstances apply, they must notify the complainant and respondent Member in writing that the complaint will be closed, stating the reasons for the closure:

- (a) the complaint is not with respect to a breach of this policy;
- (b) the complaint is frivolous, vexatious, or not made in good faith;
- (c) the complaint would be more appropriately addressed through another process;
- (d) the complaint was not in compliance with section 17, and the respondent Member will be prejudiced by the complainant's failure to comply;
- (e) the complaint concerns the same subject matter as a previous complaint that has already been accepted under this section, and it is not necessary to expand that original complaint or add the new complainant;
- (f) the complainant wishes to withdraw the complaint, and it would be appropriate to allow the complaint to be withdrawn;
- (g) the complaint was submitted by a Member, and the Member ought to have first attempted to resolve the complaint informally under section 16; or
- (h) there are no possible grounds on which to conclude that a violation of this policy has occurred.

(2) In completing the preliminary assessment, the Adjudicator may request further information from the complainant before determining whether there are sufficient grounds to believe that a breach of this policy may have occurred.

(3) Once a complaint is accepted under subsection (1),

- (a) the Adjudicator must refer the complaint to the Solicitor, if not already referred under subsection (1), for a determination under subsection (b); and
- (b) the Solicitor must then determine whether the complaint requires a formal investigation or whether the complaint may be resolved informally.

- (4) If the Solicitor receives multiple complaints concerning the same matter, the Solicitor must proceed with the first complaint accepted, but may expand the complaint and/or add complainants for the purpose of seeking resolution of the complaint.

Criminal Conduct

- 19** (1) If, at any stage in the complaint procedure, the Adjudicator or Solicitor determines that there are reasonable grounds to believe that there has been a contravention of the *Criminal Code*, or learns that there is an ongoing police investigation into the conduct that gave rise to the complaint, then they must immediately refer the matter to the appropriate authorities and suspend any investigation into the complaint until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to the Governing Body, the complainant, and the respondent Member.
- (2) For certainty, a complaint must be suspended while the respondent is on a mandatory leave of absence under section 109.3(1) of the *Community Charter*, and may be re-commenced only once the mandatory leave of absence ends pursuant to section 109.3(1)(b) of the *Community Charter*.

Disqualification Proceedings

- 20** (1) If, at any stage in the complaint procedure, the Adjudicator or Solicitor determines that:
 - (a) the subject-matter of the complaint is being addressed in a disqualification proceeding commenced under section 111 of the *Community Charter*; or
 - (b) the complainant could commence a disqualification proceeding under section 111 of the *Community Charter* in relation to the matter that is the subject of the complaint

the complaint must immediately be suspended until the proceeding under subsection (a) has concluded or the time-period within which the complainant could commence a proceeding under subsection (b) has expired.

- (2) The Adjudicator or Solicitor that has suspended a complaint under subsection (1) may, if
 - (a) the Member who is subject to the complaint has not been disqualified from office by the British Columbia Supreme Court; and
 - (b) it would be in the public interest to do so,

re-commence the complaint upon the conclusion of a disqualification proceeding or the time-period within which a disqualification proceeding could be filed has expired.

Division 3 – Resolution Procedures & Investigations

Informal Resolution

- 21** (1) Where the Solicitor has determined that the complaint may be resolved informally, the Solicitor may, at their discretion, either attempt to resolve the complaint directly, or refer the complaint to:
- (a) the Mayor or Chair, if the complaint is made by a Member, unless the complaint is against the Mayor or Chair in which case the complaint will be referred to the Acting Mayor or Acting Chair; or
 - (b) the CAO, if the complaint is made by a Staff member.
- (2) When determining whether the complaint may be resolved informally, the Solicitor may consider culturally appropriate or transformative or restorative justice approaches, and may engage a third-party mediator or facilitator to assist for this purpose.
- (3) Where the Solicitor has referred the complaint in subsection (1), the Mayor, Chair or CAO, as the case may be, may agree to assist in resolving the complaint directly, or may appoint a third party to assist in resolving the complaint at their discretion.
- (4) The person assisting in the informal resolution of a complaint shall assess the suitability for settlement or resolution on an ongoing basis and may decline to assist at any point.
- (5) The complainant or respondent Member may decline to participate in an informal resolution at any time.
- (6) If the complaint is resolved informally by someone other than the Solicitor, the person assisting in resolving the complaint must notify the Solicitor in writing of the terms of the resolution, upon receipt of which, the Solicitor must close the complaint.
- (7) If the person assisting in the informal resolution of a complaint declines to assist, the complainant or respondent Member declines to participate, or 30 days has passed since the determination in section 18(3) was made by the Solicitor to resolve the complaint informally, then the complaint shall be referred in accordance with section 22.

Referral to Solicitor

- 22** (1) If the Adjudicator determines that the complaint requires a formal investigation under section 18(3), or in the event that informal resolution is unsuccessful, they shall refer the complaint to the Solicitor to conduct an investigation and notify the complainant and respondent Member of the referral.

(2) The Solicitor shall, at all times during an investigation, have all of the same powers to dismiss a complaint on a preliminary basis as set out in section 18.

(3) A Solicitor, once retained, may only be dismissed for cause.

Formal Resolution

- 23** (1) Once retained, the Solicitor shall deliver the complaint to the respondent Member, along with a request that the respondent provide a written response to the complaint, together with any submissions that the respondent chooses to make, within 10 days, subject to the Solicitor's discretion to reasonably extend the timeline.
- (2) The Solicitor may, at their discretion, deliver the respondent Member's written response and submissions to the complainant and request a reply in writing within 10 days, subject to the Solicitor's discretion to reasonably extend the timeline.
- (3) The Solicitor may:
- (a) speak to anyone relevant to the complaint;
 - (b) request disclosure of documents relevant to the complaint, including closed meeting minutes; and
 - (c) access any record in the custody or control of the local government, within the meaning of FIPPA, with the exception of records subject to solicitor-client privilege.
- (4) The Solicitor has discretion to conduct the investigation as they see fit, but must ensure that the investigation complies with the rules of procedural fairness and natural justice required in the circumstances of the complaint.

Confidentiality

- 24** (1) The Adjudicator and Solicitor must make all reasonable efforts to process and investigate complaints in a confidential manner.
- (2) The Solicitor and every person acting under the Solicitor's instructions must preserve confidentiality with respect to all matters that come into the Solicitor's knowledge in the course of any investigation or complaint, except as otherwise required by law.
- (3) Members must make all reasonable efforts to keep complaints under this policy, at any stage, confidential, except as otherwise provided in this policy.

Adjudication and Reporting

- 25** (1) The Solicitor must conclude the investigation and make a determination regarding the alleged breach within 90 days of referral under section 22, unless the Solicitor determines that doing so is not practicable, in which case the Solicitor must notify the complainant and respondent Member of the delay and provide a revised decision date. The revised decision date may be extended by periods of up to 30 days at a time on provision of written notice to the complainant and respondent Member.
- (2) If, after reviewing all the material information, the Solicitor determines that the Member did not violate this Policy, then the Solicitor shall:
- (a) prepare a written investigation report providing reasons for their determination, which shall include a determination of whether the complaint was submitted frivolously, vexatiously, or in bad faith;
 - (b) deliver a summary of the investigation report to the complainant; and
 - (c) deliver a copy of the investigation report to the respondent Member and to the Governing Body.
- (3) If, after reviewing all the material information, the Solicitor determines that the Member did violate this Policy, then the Solicitor shall:
- (a) prepare a written investigation report providing reasons for their determination, which must include:
 - i. a summary of the factual findings of the Solicitor;
 - ii. an application of this policy, and any other applicable law, to the facts;
 - iii. a recommendation of the appropriate sanction, subject to subsection (iv); and
 - iv. if applicable, a determination of whether the respondent Member took all reasonable steps to avoid the breach or whether the breach was trivial, inadvertent, or due to an error in judgment made in good faith, in which case the Solicitor may recommend that no sanction be imposed;
 - (b) notify the complainant that the investigation is complete and inform them that the investigation report, or a summary thereof, will be subsequently released by the Governing Body in accordance with section 27(4);

- (c) deliver a copy of the investigation report to the respondent Member; and
 - (d) 48 hours after the delivery of the investigation report to the respondent Member, deliver a copy of the investigation report to the Governing Body.
- (4) The Solicitor may choose to distribute the investigation report to the Governing Body under this section through the Corporate Officer.

Obstruction

- 26** (1) No Member, Staff member or Volunteer shall interfere with or otherwise obstruct the Adjudicator or Solicitor in relation to the administration of this policy or the investigation of a complaint. Without limitation, the following shall constitute obstruction:
- (a) uttering of threats or reprisal against any person involved in the complaint;
 - (b) destruction of relevant records or documents; and
 - (c) refusal to cooperate with the Solicitor.
- (2) A person who is found to have obstructed the Adjudicator or Solicitor will be subject to appropriate disciplinary action, which may include, but is not limited to:
- (a) sanctions and remedies described in section 28;
 - (b) termination of employment for just cause; or
 - (c) prohibition against filing a complaint under this policy for a specified and reasonable period of time.

Division 4 – Governing Body Decision

Final Determination

- 27** (1) The Governing Body must, within 30 days of the Solicitor's delivery of the investigation report, or a longer period if approved by a 2/3 vote of the Governing Body, decide on the appropriate measures, if any, that are warranted by a breach of this policy.
- (2) Prior to making any decision regarding the findings and recommendations set out in the investigation report, the respondent Member must be provided with an opportunity, in person and in writing, to comment to the Governing Body on the Solicitor's determinations and recommendations.
- (3) While an investigation report may be considered in a closed meeting, if the circumstances warrant and there is a valid reason to close the meeting under section

90 of the *Community Charter*, when the Governing Body deliberates and votes on the Solicitor's recommendation, it will generally do so in an open meeting.

- (4) Within 30 days of receiving the investigation report under section 25, the Governing Body must, subject to the local government's obligations under FIPPA, release to the public the investigation report, or a summary thereof, along with a summary of the Governing Body's decision if applicable.

Remedies

- 28** (1) Remedies that may be imposed by the Governing Body for a violation of this policy include the following:
- (a) a letter of reprimand from the Governing Body, addressed to the respondent Member;
 - (b) a request from the Governing Body that the respondent Member issue a letter of apology;
 - (c) the publication of the letters contemplated in subsections (a) and (b), along with the respondent Member's response, if any;
 - (d) directions to the CAO regarding the method of providing documents that contain confidential information to the respondent Member;
 - (e) a recommendation that the respondent Member:
 - i. attend specific training or counselling;
 - ii. complete a specified number of volunteer hours; or
 - iii. make a charitable donation of a specified or unspecified amount to a particular charity;
 - (f) limitations on access to certain local government facilities;
 - (g) prohibition from representing the local government at events and/or attending conferences;
 - (h) suspension or removal of the respondent Member from the Acting Mayor or Acting Chair rotation;
 - (i) public censure of the respondent Member;
 - (j) removal of the Member's appointment to the committee; or

(k) any other sanction recommended by the Solicitor, so long as that sanction is within the authority of the Governing Body.

(2) The Governing Body must consider the following factors when determining whether to impose a sanction on a Member:

- (a) the degree and nature of the conduct;
- (b) whether the contravention was a single or repeated act;
- (c) whether the Member knowingly contravened this policy;
- (d) whether the Member took steps to mitigate or remedy the contravention;
- (e) the Member's history of other contraventions; and
- (f) if applicable, the Solicitor's finding that the respondent Member took all reasonable steps to avoid the breach, or that the breach was trivial or done inadvertently or because of an error in judgment.

Division 5 – Post- Decision Matters

Remuneration

29 (1) Where the Solicitor finds that a Member:

- (a) breached this policy; or
- (b) submitted a complaint that was frivolous, vexatious, or made in bad faith,

the remuneration to which that Member would otherwise have been entitled shall be reduced in accordance with the local government's remuneration bylaw or policy, as amended from time to time.

(2) Notwithstanding subsection (1), the remuneration of a Member shall not be reduced if the Solicitor makes a finding that:

- (a) the Member took all reasonable steps to prevent the breach;
- (b) the breach was trivial or inadvertent; or
- (c) the breach was because of an error in judgment made in good faith.

Reimbursement of Costs

30 (1) A Member may make a request to the Governing Body for reimbursement of the costs of legal advice and representation in responding to the formal complaint process outlined in this policy. If appropriate, after considering all of the circumstances, the Governing Body may resolve to reimburse legal fees reasonably incurred by a Member, provided that all of the following are met:

- (a) the Member has not previously been found to have breached this policy; and
- (b) the amount claimed does not exceed \$10,000.

Frivolous and Vexatious Complaints

31 (1) Any individual covered by this policy who makes a complaint that is subsequently found to have been made in a deliberately frivolous, vexatious or malicious manner, or otherwise made in bad faith, will be subject to appropriate disciplinary action, which may include, but is not limited to:

- (a) in the case of Members, sanctions and remedies as described in this policy;
- (b) in the case of Staff, disciplinary action or termination of employment for just cause, as applicable; and
- (c) in the case of any complainant, prohibition from filing complaints under this policy for a specified period of time.