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## **2021 ANNUAL REPORT OF THE INTEGRITY COMMISSIONER**

### **THE CORPORATION OF THE CITY OF GUELPH**

**John Mascarin**

**Aird & Berlis LLP**

**February 28, 2022**

## **INTEGRITY COMMISSIONER'S MESSAGE**

Aird & Berlis LLP was appointed as the Integrity Commissioner for The Corporation of the City of Guelph (the "City") pursuant to subsection 223.3(1) of the *Municipal Act, 2001* on December 14, 2020 by By-law No. 20553.

We took over from the only Integrity Commissioner the City had ever had, Robert Swayze. The City had been well-served by Mr. Swayze who provided practical and experienced advice to the municipality for almost ten years.

This is the first annual report that we have prepared since our appointment, encompassing the period from January 1, 2021 to December 31, 2021.

As is well-known and as will be detailed further below, the municipal accountability framework for all municipalities and their local boards in Ontario was significantly amended early in 2019.

The *Modernizing Ontario's Municipal Legislation Act, 2017* implemented changes to both the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*. A number of the statutory amendments in this statute were delayed to allow municipalities and their local boards sufficient time to become prepared. The majority of the municipal accountability amendments were proclaimed to come into force on March 1, 2019.

As of that date, all municipalities in Ontario were required to establish codes of conduct for both their members of council and members of their local boards, and to appoint or secure the services of an integrity commissioner. Prior to that date, both codes of conduct and integrity commissioners were permissive – they are now mandatory.

The City established a Code of Conduct for Members of Council (the "Code") on February 25, 2013, and updated and re-affirmed the Code on December 17, 2018 via the 2018 Governance Review detailed in Staff Report [CS-2018-66](#).

Since our appointment, we have had the opportunity to provide advice to members of Council and the City's local boards on inquiries with respect to the municipal accountability framework, the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*.

This report provides an executive summary of these activities undertaken in fulfilling our duties and responsibilities as the Integrity Commissioner for the City.

Key findings and issues which we find to be of value and benefit to enhancing the understanding of, and ensuring compliance to, applicable statutes and the City's Code and the *Municipal Conflict of Interest Act* are also summarized.

## ROLE OF THE INTEGRITY COMMISSIONER

The role of the integrity commissioner was enhanced in 2019 by amendments that were made to the *Municipal Act, 2001*. The new, broader authority and functions of the integrity commissioner were assigned by the City through the 2018 Governance Review.

The functions of an integrity commissioner are set out in subsection 223.3(1) of the *Municipal Act, 2001* which provides as follows:

### Integrity Commissioner

**223.3(1)** Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards.
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

All of the aforementioned functions were assigned to us as Integrity Commissioner for the City on December 14, 2020 pursuant to By-law No. 20553.

We have six (6) lawyers of varying experience available to serve the City. All matters are overseen and all advice and reports are peer-reviewed by the writer.

## COMPLAINT INVESTIGATION

Last year our office received two (2) formal complaints against two (2) members of Council pursuant to the Code.

### ***Complaint 2021-01***

A complaint was filed against a member of Council alleging that they withheld information and sought to improperly influence the sale of a municipal property and the subsequent application for re-zoning. The complaint was reviewed in accordance with our standard in-take protocol and was determined to be deficient. The complaint was unaccompanied by a sworn Statutory Declaration and failed to identify any specific provisions of the Code that were alleged to have been breached by the member. We advised the complainant that they could resubmit a complaint and provided information to them with respect to the proper procedures for filing a complaint, but the complainant chose to withdraw their complaint, specifically noting that the complaint procedure was too onerous, a message that we passed on to the City's staff for consideration.

### ***Complaint 2021-02***

The second complaint filed against a member of Council pertained to an alleged breach of confidential information. Upon review of the relevant materials, including the audiovisual recordings of the specific open and closed sessions of Council noted in the complaint, we summarily dismissed Complaint 2021-02, citing insufficient evidence to establish any reasonable basis for asserting that the member had breached Section 6 of the Code.

## ADVICE

From time to time, Council members seek written or verbal advice and interpretation of ethical policies. One of the new functions of the Integrity Commissioner is the express ability to provide specific written advice to members with respect to their obligations under the code of conduct, other council ethical policies, rules or procedures, and the *Municipal Conflict of Interest Act*. Our role in providing timely responses to members is very important.

We received and responded to a number of written requests for specific advice from members of Council and local boards. The inquiries related to the application of the Code and the *Municipal Conflict of Interest Act*, amongst others. We were very pleased to have received detailed and articulate questions with, in all cases, a very good level of context so that we could respond. We note this in particular because our experience in other municipalities is that members often are not cognizant of the fact that their requests must be in writing and should provide a detailed factual background given that much of the ethical advice the we provide is very fact specific.

The City has established and maintains a current registry of [Statements of Pecuniary Interest and General Nature Thereof](#) for all written statements of members that are required to be filed pursuant to section 5.1 of the *Municipal Conflict of Interest Act*.

We have not provided a summary of all the written advice that we have provided because, in most cases, the identification of the advice would likely disclose the requesting member and the actual incident or matter. We have done so in recognition of our duty to maintain confidentiality under section 223.5 of the *Municipal Act, 2001*.

We will, however, note some matters that we advised upon in the past year in order to provide a resource to members, staff, and the public:

- (a) The purpose of the *Municipal Conflict of Interest Act* is to prohibit members of Council from engaging in the decision-making process for matters in which they have a significant financial (i.e., pecuniary) interest, be it direct, indirect, or deemed.
  - (i) The nature of the statute is that it relates only to conflicts pertaining to a financial interest. However, the pecuniary interest must be definable and real rather than hypothetical or speculative in nature.
  - (ii) Section 3 specifically notes that for the purposes of the statute, only the direct or indirect pecuniary interests of a member's spouse, child or parent (as defined therein) may be deemed to be the pecuniary interest of the member; other familial relations are exempt. The [Collingwood Judicial Inquiry Report](#) noted that the scope of section 3 is very narrow and should be significantly expanded.
  - (iii) The exception is clause 4(k) of the *Municipal Conflict of Interest Act* provides that sections 5 and 5.2 do not apply to a pecuniary interest for any member if that interest is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the Member.
- (b) While acting as representatives of Council on local boards or other committees, members have a primary duty to keep confidential all information disclosed to them in their representative/appointed role, including from Council, despite the fact that they are also a member of Council. If a member believes such information would be of assistance to Council, the member is obligated to obtain permission and direction from the board or committee in order to disclose the information.
- (c) A member of council is entitled to sit on other boards, committees and bodies but is not permitted to participate in the decision-making at Council or a committee that relates to such entities as it may constitute a conflict of interest under the *Municipal Conflict of Interest Act*. A member cannot exert the influence of their office with respect to a decision or recommendation by a City officer or staff if the matter relates to such a board, committee or body. Such conflicts may relate to both pecuniary and non-pecuniary interests.

In total, we provided specific advice to four (4) different members of Council (two on multiple occasions) and to one (1) member of a local board of the City. We were unable to provide specific

advice to a member of the Guelph Police Services Board as our jurisdiction under Part V.1 of the *Municipal Act, 2001* does not extend to a police services board.

We also provided written advice to City staff relating to a question of general application pertaining to Section 5 in the Code related to gifts and benefits.

## **EDUCATION & TRAINING**

While we have not provided any education or training for Council during this past year, we have discussed the matter of future training sessions with City staff. We recommend an orientation session for the new Council-elect in 2022 and a more comprehensive training session some time thereafter in the new term.

## **MUNICIPAL INTEGRITY COMMISSIONERS OF ONTARIO**

Our firm hosted the Fall Conference of the Municipal Integrity Commissioners of Ontario (“MICO”) on November 4, 2021. Four of our lawyers made presentations at the Fall Conference. We also attended and presented a case law update respecting the *Municipal Conflict of Interest Act* at the MICO Spring Conference on June 16, 2021.

## **CLOSING REMARKS**

We are grateful to be appointed as Integrity Commissioner for the City.

We would like to extend a note of appreciation to City staff for their assistance, particularly Stephen O’Brien and Dylan McMahon, who provided us with a very smooth transition to our role as Integrity Commissioner. They also provided us with very timely responses for information, records and advice when requested, which made it possible for us to carry out our role in a diligent manner. Their insights were always keen and perceptive, and very much respected.

We look forward to working with all members of Council and City staff throughout this election year in 2022. We also hope to be able to work with the new Council once its term begins later this year and proceeds into 2023.

Respectfully submitted,

AIRD & BERLIS LLP



John Mascarin

Integrity Commissioner for the City of Guelph

