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# **2022 ANNUAL REPORT OF THE INTEGRITY COMMISSIONER**

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

**John Mascarin**

**Aird & Berlis LLP**

**February 28, 2023**

## **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. Our services commenced on January 1, 2021.

The functions of an Integrity Commissioner are set out in subsection 223.3(1) of the *Municipal Act, 2001* and Council has assigned all functions to Aird & Berlis LLP. The role of Integrity Commissioner had been enhanced by amendments to the *Municipal Act, 2001* in 2019 to expressly authorize the Integrity Commissioner to provide specific written advice to members with respect to their obligations under a code of conduct, any policy, procedure, rule or guideline relating to a member's ethical conduct and the *Municipal Conflict of Interest Act* and to apply and enforce sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*.

This is the second annual report that we have prepared since our appointment, and it encompasses the period from January 1, 2022 to December 31, 2022.

This report provides an executive summary of these activities undertaken in fulfilling our duties and responsibilities as the Integrity Commissioner for the City pursuant to our appointment, Part V.1 of the *Municipal Act, 2001*, the Code of Conduct for Members of Council (the "Code") and the *Municipal Conflict of Interest Act*.

## **CODE OF CONDUCT**

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

## **COMPLAINT INVESTIGATION**

Last year our office received six (6) formal complaints, all relating to the same incident, pursuant to the Code of Conduct.

### ***Complaints 2022-01 to 2022-06***

Six complaints were filed against a member of Council alleging that the member conducted themselves in an irresponsible and inappropriate manner and had contravened a number of City policies. Five of the complaints were identical; only the sixth differed somewhat in style and substance. The complaints were all reviewed in accordance with our standard in-take protocol and were all summarily dismissed. Relying upon a Supreme Court of Canada decision noting that the scope of freedom of political expression is established by the limits of the *Criminal Code* and common law, we concluded that the views expressed by the member did not violate the City's Code of Conduct and thus we had no jurisdiction as Integrity Commissioner to investigate.

## ADVICE

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 of Conduct and the *Municipal Conflict of Interest Act*, amongst others.

Once again, we commend the members for having submitted detailed and articulate questions so that we could provide our written advice to them in a responsive manner. As previously noted, subsections 223.3(2.1) and (2.2) of the *Municipal Act, 2001* expressly require that any requests from members be made in writing and that the Integrity Commissioner's advice to members also be set out in writing. The importance of the "in writing" requirement is necessary to ensure that both the relevant background facts as well as the advice given in respect thereof provide for certainty of understanding and application.

During 2022 we received four (4) requests for written advice from various members relating to the application of the City's Code of Conduct and the *Municipal Conflict of Interest Act*.

Below are anonymized summaries of the written advice we provided:

- (a) We received a request for advice with respect to an indirect pecuniary interest under the *Municipal Conflict of Interest Act* regarding an issue of representation before Council, a Local Board, or a Committee of either of them. We advised that members employed by private businesses engaged to work for or with the City have an indirect pecuniary interest under s. 2 of the *Municipal Conflict of Interest Act* by virtue of their employer's pecuniary interest in the matter before the City.
- (b) In response to a query regarding the requirement for a code of conduct for an established committee unrelated to Council or a Local Board but funded by the City, we advised that while a committee may be governed by a code of conduct, the City does not have the authority to impose a code of conduct on the entity, and consequently, the powers and authorities contained in Part V.1 of the *Municipal Act, 2001* related to penalties and investigatory powers do not apply.
- (c) Although the prohibition against disclosing confidential information is written in absolute terms in the Code of Conduct, there may be circumstances in which a member of Council may share what is otherwise confidential information in order to obtain legal advice on a matter respecting their own potential personal liability. We advised that in these circumstances, disclosure to independent legal counsel must be limited and restricted only to what is necessary to allow them to understand the matter at hand and to provide proper legal advice. We also advised that the Integrity Commissioner should be consulted to advise on the scope of disclosed. The importance of a member maintaining as confidential any information discussed or disclosed at an closed meeting of Council was considered in *Fallis v. Orillia (City)*, [2022 ONSC 5737](#) (Div. Ct.).

- (d) Members of Council cannot accept a “fee, advance, gift, or personal benefit that is connected directly or indirectly with the performance of their duties of office” as set out in s. 5 of the Code of Conduct. Exceptions are outlined in the Code of Conduct, and include gifts valued under \$300. However, members should be cognizant that the acceptance of gifts, even those valued under \$300, may be perceived as improper, and should accordingly proceed with caution when offered same.

In our capacity as Integrity Commissioner, we wrote and made a specific request to one individual doing business with the City to be mindful that the public may reasonably perceive that the receipt of any type of gift by a member and/or staff is inappropriate.

## **EDUCATION & TRAINING**

We did not provide any education or training for Council during 2022. We did, however, conduct a training session related to the Code of Conduct and the *Municipal Conflict of Interest Act* for members of the newly-constituted Council on February 15, 2023.

## **MUNICIPAL INTEGRITY COMMISSIONERS OF ONTARIO**

We attended the Spring Conference of the Municipal Integrity Commissioners of Ontario on May 27, 2022. We presented a case law update respecting recent decisions under the *Municipal Conflict of Interest Act*.

## **CLOSING REMARKS**

We greatly appreciated the opportunity to act as Integrity Commissioner for the City – we look forward to working with all members of Council and City staff throughout 2023.

Respectfully submitted,

AIRD & BERLIS LLP



John Mascarin

Integrity Commissioner for the City of Guelph