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# **2023 ANNUAL REPORT OF THE INTEGRITY COMMISSIONER**

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

**John Mascarin**  
**Aird & Berlis LLP**

January 25, 2024

## 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*:

### 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, 5.2 and 5.3 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*.

Council has assigned all of the foregoing functions to Aird & Berlis LLP.

The role of the Integrity Commissioner was originally quite narrow and really only encompassed the investigatory or enforcement role with respect to complaints made against a member under a code of conduct, although many Integrity Commissioner read in the authority to provide advice to members in order to prevent ethical contraventions.

The Integrity Commissioner's role has been significantly augmented by amendments to the *Municipal Act, 2001* which have expanded its functions. Integrity Commissioners are now expressly empowered 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*.

In addition, the Integrity Commissioner now has a very significant role to play with respect to the application and enforcement of sections 5, 5.1, 5.2 and 5.3 of the *Municipal Conflict of Interest Act*. Previously only an elector could seek to apply to a judge to determine whether a member had contravened the *Municipal Conflict of Interest Act*. Now an elector or a "person demonstrably acting in the public interest" (an undefined term) can file an application with an Integrity Commissioner to conduct an inquiry as to whether a member may have contravened the statute and the Integrity Commissioner has the decision-making authority to apply to a judge under section 8 of the *Municipal Conflict of Interest Act* to impose penalties. The last three times that Integrity Commissioners have taken applications to court, the result has been a removal from office of the contravening members.

This is the third annual report that we have prepared since our appointment, and it encompasses the period from January 1, 2023 to December 31, 2023.

This report provides an executive summary of our activities undertaken in carrying out our functions as the Integrity Commissioner for the City pursuant to our appointment.

## **CODE OF CONDUCT**

The City established its original Code of Conduct for Members of Council (the "Code") on February 25, 2013. Council updated and re-affirmed the Code on December 17, 2018 pursuant to the 2018 Governance Review contained in Staff Report [CS-2018-66](#). Recent modifications were made to the Code (as outlined below) with respect to the "strong mayor" powers granted to the City.

## **COMPLAINT INVESTIGATION**

Last year our office received three (3) formal complaints pursuant to the Code.

### ***Complaint 2023-01***

A complaint was filed against a member of an advisory committee alleging that the member engaged in intimidating behaviour at a committee meeting. Upon review of a video of the meeting, we found the member did not treat any person inappropriately and did not engage in abuse, bullying, or intimidation, and summarily dismissed the complaint. We had intended to proceed via a summary dismissal notice but lacked contact information for the complaints. We prepared a report which was filed on January 3, 2024 which noted that respectful disagreement and debate are essential to the public process.

### ***Complaints 2023-02 and 2023-03***

Two 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. A third complaint regarding the same matter was filed in early January, 2024. We provided notice to the member and the complainants that the complaints would be held in abeyance in case further complaints of a similar nature were filed. Consequently, these complaints will be dealt with in 2024 and will likely be summarized in our 2024 Annual Report.

### **ADVICE**

We received and responded to a number of written requests for specific advice from members of Council and as well as from members of Local Boards. The inquiries related to the application of the Code of Conduct and the *Municipal Conflict of Interest Act*, amongst others.

We remind members that 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. We kindly request that the request for advice provide all of the relevant background facts and include copies or links to supporting documents (such as correspondence, social media posts, staff reports, etc.). This will greatly assist us in providing our advice without the need for us to search for the information or undertake research to find records and materials that the member may have ready access to.

We seek to provide our advice within 24 to 48 hours of receiving the information and records that are necessary to be reviewed in order to provide our written advice.

In 2023 we received eight (8) requests for written advice from various members relating to the application of the Code and the *Municipal Conflict of Interest Act*.

Below are anonymized summaries of the written advice we provided:

- (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 pecuniary (i.e., financial) interest, be it direct, indirect, or deemed.
  - i. While the specific language of a program or policy amendment must be considered, we advised that situations involving a direct link to family members' pecuniary interests triggers section 3 of the *Municipal Conflict of Interest Act* by deeming the interest to be that of the member of Council, Local Board, or Committee of either of them, and a declaration of conflict would be required.
  - ii. Members employed by private businesses engaged to work for or with the City have an indirect pecuniary interest under section 2 of the *Municipal Conflict of Interest Act* by virtue of their employer's pecuniary interest in the matter before the City, and must consider this when determining if a declaration of pecuniary interest is required.

- iii. A pecuniary interest cannot be speculative, nor predicated on future contingencies. To have a conflict under section 5 of the *Municipal Conflict of Interest Act*, there must be a pecuniary interest existing at the time of a vote.
  - iv. We provided advice to a member that the receipt of a statutory or regulatory notice within a geographic area typically establishes a *prima facie* indication or presumption of some form of impact on a person or a property within that notice area. The receipt of such a notice should be taken as an indication that the member may have a pecuniary interest under the *Municipal Conflict of Interest Act* which may be sufficient to trigger the application of the member's obligations under section 5 to disclose and recuse.
  - v. We received a request for advice with respect to a non-pecuniary conflict of interest under the *Municipal Conflict of Interest Act*. While that statute is concerned only with pecuniary conflicts, we also reviewed section 12 of the Code which governs improper use of influence, and determined that in the particular circumstances of that matter, no declaration was required.
- (b) In response to a query regarding the rules and policies concerning the ability of a member of Council to seek office at the provincial or federal level of government, we reviewed the Code of Conduct and determined there was nothing precluding a member of Council from running in a provincial or federal election. We cautioned the member to be cognizant of section 7 of the Code with regards to the use of corporate resources, as well as the *Municipal Elections Act*, the *Election Finance Act*, and the *Canada Elections Act*.
- (c) We advised that the Code does not contain a specific provisions enshrining the "principle of supporting a decision made by Council." However, even in the absence of a specific outright prohibition, a member should always respect the decision made by the elected assembly and not seek to disparage or denigrate the decision, nor any members who voted in the majority. A member is always entitled to indicate that they do not agree with the decision, provided that they speak respectfully about it.

## REVISIONS TO THE CODE

The former Minister of Municipal and Housing exercised his authority under subsection 284.2 of the *Municipal Act, 2001* to extend the strong mayor powers to a number of municipalities, including the City of Guelph pursuant to O. Reg. 180/23. This necessitated a review of various City by-laws and policies, including the Code, all of which were outlined in a Staff Report to the Committee of the Whole on September 6, 2023. We recommended revisions to Section 11 – Influence on Staff to recognize that, in a strong mayor system, the head of council is entitled to provide direction to City staff in certain areas. The revisions to Section 11 acknowledged that Mayor Guthrie had made two delegations of his strong mayor powers back to Council (Decisions [2023-A1](#) and [2023-A2](#)) as authorized by the *Municipal Act, 2001*. Council subsequently approved and implemented the revisions to the Code.

At the end of the year, we also became aware of a deficiency in the City's online complaint form which did not contain mandatory fields for complainants to provide their contact information. Such information is required so that we can communicate directly with complainants, either to request further information related to a complaint or application, to seek clarification, or to communicate various determinations and decisions that we have made. We recommended that the contact information fields of the complaint form be made mandatory. We understand that this recommendation has been implemented by City staff.

## **EDUCATION & TRAINING**

We conducted a comprehensive training session related to the Code of Conduct, the Role of the Integrity Commissioner, and the *Municipal Conflict of Interest Act* for members of the newly-constituted Council on February 15, 2023. Members of the City's advisory committees and local boards who fall under the Integrity Commissioner's jurisdiction were invited to attend. The training session was conducted in an open meeting of Council which was livestreamed and thus, in part, also fulfilled the Integrity Commissioner's public education function.

## **CLOSING REMARKS**

In all respects, we have found that the members of Council and the City's local boards and advisory committees have acted in accordance with their ethical responsibilities and that no transgressions have been noted once again in our annual report.

We are privileged to act as Integrity Commissioner for the City – we look forward to working with all members of Council and the City's local boards as well as with administrative staff throughout 2024.

Respectfully submitted,

AIRD & BERLIS LLP



John Mascarini  
Integrity Commissioner for the City of Guelph

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