ANNUAL REPORT
OF THE INTEGRITY COMMISSIONER

Ms. Sherri Walsh

April 1, 2017 – March 31, 2018

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I. Introduction

I am pleased to provide my first Annual Report as Integrity Commissioner of the City of Winnipeg.

This report covers the period April 1, 2017 to March 31, 2018, being my first full year in the position.

The role of Integrity Commissioner forms an important part of what can be described as a new accountability framework for the Members of Council for the City of Winnipeg. That framework includes not only the appointment of an Integrity Commissioner in February 22, 2017 but also the approval in February 2018, of a new Code of Conduct for the Members of Council and the creation in April 2017, of a Voluntary Lobbyist Registry which the Integrity Commissioner is charged with overseeing.

When Council created the position of Integrity Commissioner, it set out the following mandate and duties for the role:

> Mandate and Duties of Integrity Commissioner
>
> 1. Advisory:
>
>   a. To provide written and oral advice to individual Members of Council on questions under the Code of Conduct, *The Municipal Council Conflict of Interest Act* and any other bylaws, policies, or Acts governing the behaviour of Council.
>
>   b. To provide Council with specific and general opinions and advice on by-laws, policies, protocols or Acts regulating the conduct of Members of Council, and issues of compliance with those by-laws, policies, protocols or Acts.
>
> 2. Investigative:
>
>   a. To Investigate complaints from members of the public, City staff or other Members of Council involving conflict or bylaw matters of Members of Council
>
>   b. To conduct inquiries into a request made by Council, a Member of Council, or a member of the public. into whether a Member of Council has contravened any applicable by-law, policy, or Act and report to Council on its findings.
>
> 3. Educational:
>
>   To publish an annual report on the work of the office of the Integrity Commissioner including examples in general terms of advice rendered and complaints received and disposed of.
>
> 4. Other Duties:
>
>   Oversee the City's Lobbyist Registry, should one be established.

II. Establishing a Professional Network

Council announced my appointment to this position on February 22, 2017 with an official start date of April 1, 2017.

In preparation for assuming the role, I spent many hours studying the ethics regimes of the different levels of government in other jurisdictions in Canada and I spoke with a number of municipal Integrity Commissioners, both past and present, across the country, each of whom was generous in sharing their expertise and experience with me.

In particular, I want to thank the following individuals – all Integrity Commissioners past and present: David Mullan, Valerie Jepson, Robert Marleau, Alice Woolley, Greg Levine, Robert Swayze and John Mascarin.

III. Establishing Professional Relationships and Processes

Once my official duties began, I spent a good portion of the months of April and May meeting on an individual basis with each Member of Council, including the Mayor and the fifteen Councillors.

This allowed me to share my views about how I intended to perform the mandate Council had given me and to hear from the Members as to their needs and concerns regarding the ethical framework in which they carry out their duties of office.

One of the most important aspects of the work which is performed by an Integrity Commissioner, is the ability to provide advice to Members of Council on a pro-active basis. It was important to me, therefore, to establish an understanding with Members of Council about our respective roles, from the outset.

In order to become knowledgeable about the work of City Council generally, I also met with the City Clerk, the City's Chief Administrative Officer, the City Auditor, Members of the City's Legal Services Department and the City's Corporate Coordinator for *The Freedom of Information and Protection of Privacy Act*. I also met with the Executive Assistants and staff who work closely with the Members of Council.

Later in the year, I met with the City's Chief Operating Officer to hear the City's plans for updating its Employee Code of Conduct. The purpose of that meeting was for me to provide information about the new Code of Conduct which was being proposed for the Members of Council, in order to promote consistency between the ethical obligations imposed on the public service and those imposed on Members of Council.

Outside the City structure, I met with the Provincial Ombudsman, Charlene Paquin, to discuss our respective roles and I consulted with the Provincial Conflict of Interest Commissioner, Jeffrey Schnoor, to learn about best practices in his office. Finally, I met with the Minister of Municipal

and Indigenous Relations to inform the Minister about the nature of the work I would be carrying out in my first term as Integrity Commissioner.

The fact that the Integrity Commissioner was a new role for the City of Winnipeg meant that I had to dedicate a fair bit of time to establishing how the role would be performed including, for example, establishing processes to document my activities in order to be able to report on them in an Annual Report and putting in place translation services to be able to offer services in both French and English.

I have also established a page on the City of Winnipeg's website, the content of which is controlled entirely by the Integrity Commissioner. The page includes information about: the Code of Conduct; advice provided to Members of Council; information about how to file a complaint about Members of Council; and a gift disclosure registry which allows the public to see information about any gifts and benefits that Members of Council accept in connection with their official duties.

IV. New Code of Conduct

A significant achievement for this first year was the fulfillment of the mandate I was given to draft a new Code of Conduct for Members of Council.

In drafting the new Code, as instructed by Council, I reviewed the *1994 Code of Conduct for Council for the City of Winnipeg* and conducted a cross-jurisdictional analysis of the ethics regimes and Codes of Conduct in place in other jurisdictions across Canada and in the United States. I also reviewed the Codes of Conduct for Members of the House of Commons and members of provincial legislatures across the country.

I studied authorities relating to the field of municipal government ethics and as indicated above, I consulted Integrity Commissioners from other jurisdictions to ensure that my recommendations for the new Code would be based on best practices from across the country.

Most importantly, I met extensively with the Members of Council both on an individual basis and as a group, to review with them what was being proposed for the new Code.

On February 22, 2018, Council for the City of Winnipeg approved my recommendations and enacted a By-law which put in a place a new Code of Conduct, the preamble of which identifies that Members of Council for the City of Winnipeg:

> "recognize that they hold office for the benefit of the public and that their conduct must adhere to the highest ethical standards, exceeding the minimum obligations required by law."

The ten rules of behaviour which are set out in the Code provide clear guidance to the Members about their conduct relating to: confidential information; conflicts of interest; gifts and benefits;

use of influence; use of City staff, resources and property; election related activities; and respectful conduct towards City staff, members of the public and each other.

One of the new, important features of the Code of Conduct is that it contains a mechanism for investigating and reporting on complaints which allege that Members have breached their obligations under the Code. Such complaints may be filed by a member of the public, a member of the City staff or a Member of Council.

Another new feature of the Code is that it contains a range of sanctions which Council may impose if a Member is found to have breached his or her obligations under the Code.

Following the enactment of the Code I held education sessions for the staff who work with the Members in order to inform them about the Code's significance for the work they perform, in assisting their respective Members of Council.

The enactment of this new Code of Conduct signals a renewed commitment by the Members of Council to serving the public in an ethical and accountable manner.

V. Advisory Function

A Code of Conduct works most effectively when it is applied in conjunction with receiving advice from the Integrity Commissioner as to how to apply it to a given set of circumstances.

Indeed, the most important aspect of an Integrity Commissioner's work and the one which will have the most impact, is the role's advisory function.

Since my commencement in this role I have been contacted on an increasingly frequent basis by Members of Council who seek my advice about their ethical obligations.

I consider the increasing volume of requests for advice and interpretation of the Code to be a sign that the accountability framework is functioning as it should.

VI. Sample Inquiries and Advice

In order to ensure the Code is applied consistently and to assist Members of Council and the public with understanding how the Code will be applied to real life situations, the following are samples of inquiries I received from Members of Council and the advice that I provided. The summaries have been anonymized.

It is important to note that in each case, my advice was provided in the context of a specific set of facts. The anonymized summaries should not be relied upon as rulings nor considered as a substitute for contacting the Integrity Commissioner for advice in a given situation.

Sample #1

Request: A Member of Council sought advice from both the Integrity Commissioner and the City Clerk with respect to an advertisement that the Member wanted to purchase. The purpose of the ad was to inform members of the public about an open house to be hosted by a company that was proposing to install a new service in the Member's Ward. The Member indicated they supported the installation of this service.

The Member wanted to know whether they could use advertising money from their Councillor's Ward Allowance Fund to purchase this ad and whether the advertisement violated the Code of Conduct for Members of Council.

Advice: The Clerk's advice was that the expense was permissible. The Councillor's Ward Allowance Fund policy allows Councillors to spend money for "paid advertising that is related to the business of the City and the office of the Councillor in all types of media".

The policy prohibits spending money for "advertising that promotes for-profit organizations, third parties, other levels of government, political parties or candidates in any election campaign".

In this case, the Clerk determined that the advertising expense for the proposed ad promoted an open house that might be of interest to the community. This type of expense had been allowed in the past.

From the Integrity Commissioner's perspective, having regard to the Code of Conduct, the issue was whether the ad violated the rule relating to use of influence. That rule reads:

> 4. Use of Influence
>
> Members must not use the influence of their office for purposes other than for the proper exercise of their duties of office.

In advising that I found the ad permissible I indicated that while it is generally not acceptable to assist a specific business or applicant by advertising, Councillors are certainly entitled to take positions and support various applications before Council so long as they do so within the bounds of standard channels. For example, a Member of Council should not allow a photograph of themselves to be used by a for-profit entity for that entity's own promotional purposes.

Having regard to the specific ad in question, I agreed with the Clerk that what was being promoted was an open house that was of interest to the community rather than a promotion for the for-profit organization itself. The fact that the Member of Council indicated they were in support of this particular endeavour was not considered a violation of the Code of Conduct. Members of Council are entitled to express opinions and advocate for various interests within their Ward so long as they do so within the bounds of standard processes.

Sample #2

Request: A Member sought advice about compliance with their disclosure requirements under *The Municipal Council Conflict of Interest Act*.

Section 10 of that Act requires that in the Annual Statement of Assets and Interests that they file with the Clerk of the Municipality, a Member of Council must disclose:

> 10 ... (d) the name of every person, corporation, subsidiary of a corporation, partnership, or organization which remunerates the councillor or any of his dependents, for services performed as an officer, director, manager, proprietor, partner or employee.

A "dependent" is defined in the Act to mean:

a. the spouse of a councillor,

   1 the common-law partner of a councillor and

b. any child, natural or adopted of a councillor, who resides with the councillor.

The Member wanted to know whether it was necessary to identify the name of the entity who had employed the Member's child and the amount of remuneration that the child received.

Advice: Because the child resided with the Member at the time of the employment in question, the child fell within the definition of "dependent" under *The Municipal Council Conflict of Interest Act.*

Accordingly, pursuant to the provisions of paragraph 10(d) of the Act, the Member was required to disclose the name of their child's employer. The Act does not, however, require that they disclose how much the child was paid.

Sample #3

Request: In March of this year, Members of Council were presented by the Canadian Cancer Society with a small bundle of daffodils which was accompanied by a letter asking the Members to raise awareness about the Society's work. The letter advised that "Daffodil Month" is the Society's national fundraising month.

A number of Members sought my advice with respect to whether they were able to accept the flowers and if so, whether they were required to disclose them on the online gift registry.

Advice: I determined that the flowers were acceptable and, therefore, needed to be disclosed on the gift registry. Rule 3 of the Code provides that:

> "Members must not accept any gift or personal benefit that would, to a reasonable, well-informed person, create the appearance that the donor is seeking to influence the Member or gain the favour of the Member"

The rule also requires Members to make public disclosure of any gifts or benefits that they accept.

In determining that the flowers were an acceptable gift, I noted that they were offered pursuant to a public awareness campaign and would not, therefore, be perceived as something that was being offered to influence the Members or gain the Members' favour. Under the Code of Conduct all gifts or benefits that a Member accepts must be disclosed, regardless of their value. Accordingly, Members were advised to disclose the flowers on the registry.

Sample #4

Request: A Member inquired generally as to whether the obligation to disclose gifts and benefits pertains to a situation where a constituent or person purchases lunch or dinner for the Member.

Advice: The Member was reminded that the first question to be asked was whether the gift or benefit was acceptable. Meals which are provided by constituents will generally be gifts or benefits within the meaning of the Code unless they are truly of a personal nature and not related to the Member's duties of office such as, for example, a meal provided by a friend or family member on a purely social occasion.

If the meal is offered as part of an occasion which is related to the Member's duties of office it will generally be acceptable but each situation will turn on its specific facts.

If a meal is accepted, it must be disclosed on the online gift registry. There is no need, however, to estimate the cost of the meal.

Wherever possible, Members of Council should pay for meals themselves.

VII. Complaints and Contact from Members of the Public

The ability to complain about the ethical conduct of elected officials is important for enforcing accountability in government and ensuring that ethical rules are followed.

When I first assumed the position of Integrity Commissioner, however, there was no mechanism in place to allow for such complaints to be received and investigated.

As I explained above, with the enactment of the new Code of Conduct on February 22, 2018, such a mechanism is now in place.

Nonetheless, from April 1 to December 31, 2017, I received a total of 17 contacts from members of the public:

- 7 related to complaints about the conduct of Members of Council (6 of which were related to the same incident);
- 1 related to the Winnipeg Police Service;
- 1 related to the City Planning Department;
- 1 related to problems dealings with the City generally; and
- 7 related to questions about the role and jurisdiction of the Integrity Commissioner.

From January 1 to March 31, 2018, I received a total of 5 contacts from the public:

- 2 related to questions about the jurisdiction of the Integrity Commissioner;
- 1 asked for information about the progress that had been made to establish a process for addressing unethical or unlawful activities at City Hall;
- 1 requested assistance in receiving a response from a number of Members of Council to various communications; and
- 1 related to a complaint about a Member of Council.

I responded to all contacts from the public either in writing or by telephone. I also met in person with individuals on two occasions.

Where I was able to determine immediately that a matter did not fall within my jurisdiction such as, for example, questions about the Winnipeg Police Service or the City Planning Department, I referred the individuals to contacts within those other bodies.

In one instance I determined that I had a conflict of interest with respect to the complainant and I therefore retained the services of another individual to act as an independent Integrity Commissioner.

With respect to complaints about the conduct of Members of Council which predated the enactment of the new Code, I advised the complainants that I was not able to accept or assess their complaints until Council had approved a process for doing so.

When I presented my report to Council recommending the approval of the new Code of Conduct, therefore, I provided an additional, separate report in which I recommended that Council authorize me to receive and investigate complaints about the conduct of Members of Council which occurred between February 22, 2017, being the date I was appointed, and February 22,2018, being the date of the enactment of the new Code of Conduct.

My rationale for doing this was that when the Members of Council announced the appointment of Winnipeg's first Integrity Commissioner they made a commitment to the public that from that time on, they would be held accountable for their behaviour through a process which would include the ability for the public to file complaints about their ethical conduct.

Council accepted my recommendation and authorized me to accept, investigate and report on complaints about conduct of the Members of Council which pre-dated the enactment of the new Code, using the process which was put in place in the Complaint Protocol of the new Code where:

a) the impugned conduct took place between February 22, 2017 and the date of the enactment of the new Code;

b) the conduct appeared to contravene the Code in place at the time, being the 1994 Code of Conduct for the Council of the City of Winnipeg; and

c) the complaint was filed prior to the date of the enactment of the new Code of Conduct.

As per the process established in the Complaint Protocol, following the investigation of a complaint, I will report publicly to Council if I determine that a Member has breached the Code. Where I find the Code has not been breached I may still report on the results of an investigation, in an anonymous way, for education purposes, in my Annual Report.

VIII. Conferences

In 2017, I attended the following conferences:

- Municipal Integrity Commissioners of Ontario Bi-Annual Meeting (May) – invited to give a presentation about Winnipeg's new ethics and accountability framework;
- Canadian Association of Programs in Public Administration (May);
- Council on Governmental Ethics Laws (December).

IX. Voluntary Lobbyist Registry

On April 26, 2017, Council approved the implementation of a Voluntary Lobbyist Registry.

Lobbying is a legitimate form of expression and a recognized part of the public policy development process.

The intent of this Registry is to provide a layer of accountability and transparency to lobbying activities by showing the public a record of who is lobbying Members of Council and on what subject matters.

While lobbyists are not required to register their activities, registration on a voluntary basis is encouraged in order to enhance the transparency and integrity of business conducted by the City.

A lobbyist is defined for the purpose of the Voluntary Lobbyist Registry as being:

> a. An individual who, when representing a financial or business interest, or the financial interest of a not-for-profit with paid staff, communicates with a member of council or city staff with the intent of influencing a decision on governmental matters outside of the standard process.

The Integrity Commissioner's mandate that was established by Council includes having oversight over the Voluntary Lobbyist Registry.

Accordingly, I am available to provide advice and interpretation with respect to how the Registry is intended to be applied.

The following is a sample of the requests for advice I have received with respect to the Registry:

Sample

Request: Several Members of Council have asked whether it would be appropriate for them to advise someone who falls within the definition of "lobbyist" that they will not meet with the individual unless the individual registers their activities on the Voluntary Lobbyist Registry.

Advice: While the Voluntary Lobbyist Registry is indeed voluntary and, therefore, there are no sanctions for failing to register, Members of Council are certainly entitled to advise individuals who fall within the definition of "lobbyist", that they will not meet with them unless the individual registers their activity. Doing this encourages compliance with the Voluntary Lobbyist Registry and promotes its purpose which is to inform the public who is seeking to influence Members of Council.

Note that the definition of lobbyist does not include someone who seeks to influence a Member of Council during the course of a standard process such as a meeting of Council or Committee.

X. Financial Statement

The City of Winnipeg established an annual budget of $100,000 for all services pertaining to the Integrity Commissioner including legal fees, disbursements and administrative costs.

Due to the extraordinary amount of work that was required to implement all processes and procedures to carry out the mandate given to the role by Council, it was necessary to seek approval for an over-expenditure in this first year of operation. Such approval was obtained through the City Clerk's Office and with the approval of the City's Chief Financial Officer.

April 2, 2017 – December 31, 2017

Budget: $133,866.45 inclusive of taxes

Hours associated with professional services: 714.6

January 1, 2018 – March 31, 2018

Budget: $33,803.49 inclusive of taxes

Hours associated with professional services: 169.8

XI. Independent Opinion regarding Conflict of Interest

When Council voted to appoint me as Integrity Commissioner, 4 Members of Council declared that they had a conflict of interest and recused themselves from voting. One asserted a conflict related to the fact that I had contributed in the past to the Member's electoral campaign. The others asserted conflicts related to the fact that they had, in the past, retained the services of one of the lawyers in my firm.

For the sake of clarity, therefore, shortly after I commenced my work as Integrity Commissioner I retained the services of Greg Levine to provide an independent opinion as to whether these were, in fact, conflicts of interest which would prevent me from performing my mandate with respect to the Members in question. Mr. Levine is a recognized authority on municipal ethics regimes in Canada.

He conducted an investigation of the issue and delivered a report on August 23, 2017. He concluded that while everyone involved acted out of an abundance of caution, the matters disclosed did not constitute conflicts of interest. Mr. Levine concluded his report by saying:

> The City and the Commissioner are entering an exciting new phase of the development of Winnipeg's ethics system. They should do so unburdened by the disclosures of "potential" conflicts which this report has discussed.

Mr. Levine's report can be found on the Integrity Commissioner's page on the City's website.

XII. Year Ahead

With the new Code of Conduct now in place, I can turn my efforts to additional matters which Council has authorized me to pursue. These include recommending policies for Council's approval regarding matters such as fundraising activities and compensation for legal fees in certain circumstances where Members are the subject of complaints under the Code of Conduct.

Council has also authorized me to work with the City's Legal Services Department to bring forward a report to Council recommending legislative amendments which should be requested of the Province of Manitoba to amend the City of Winnipeg *Charter*, in order to enhance the Integrity Commissioner's role and to give Council the authority to order sanctions of a pecuniary nature when a Member of Council is found to have breached the Code of Conduct.

Farther into the future, Council would like me to work with the Legal Services Department to recommend legislative amendments which should be requested of the Province of Manitoba to implement a mandatory lobbyist registry.

Most importantly, I will continue to be available to Members of Council to provide ongoing advice and education with respect to how they should meet their ethical obligations.

XIII. Conclusion

The position of Integrity Commissioner plays an important role in assuring public confidence in the fair and effective operation of government. I am honoured by the confidence which Council has placed in me.

In the 12 months since I started in this role, Council for the City of Winnipeg has implemented significant, positive changes to the ethics and accountability framework in which Members of Council perform their duties of office.

The work that I have done to promote those changes would not have been possible without the invaluable assistance of the City Clerk, Mr. Richard Kachur, who retired in March 2018, and the seamless transition afforded by his successor, Mr. Marc Lemoine.

I am also grateful for the work of my colleague Jennifer Gaba who ably assisted with the preparation of the new Code. Finally, I would like to thank Carol Dougan, my assistant, for her tremendous help in establishing processes that allowed me to deliver my services in this role in an efficient and effective manner.



Sherri Walsh
April 19, 2018