Report
Regarding Two Complaints
About the Conduct of
Councillor Allard

Sherri Walsh
Integrity Commissioner
for The City of Winnipeg
December 19, 2018

Introduction

1. This report flows from the investigation of two complaints which were made about the conduct of Councillor Matthew Allard. The complaints were investigated pursuant to the procedure set out in the Complaint Protocol which is Appendix B to the *Code of Conduct for Members of Council for the City of Winnipeg* ("the 2018 Code"). In accordance with section 9 of that Protocol, I combined the two complaints for the purposes of investigating and reporting on them because they concerned the same matter and neither of the complaints was personal to the individual Complainants. The allegations in both complaints relate to the manner in which Councillor Allard conducted himself at the Annual General Meeting of the Old St. Boniface Residents' Association ("OSBRA") which was held on March 22, 2017.

2. The code of conduct which governed the ethical obligations of Members of Council for the City of Winnipeg in March 2017 was the code which had been in effect since September 19, 1994 - *Code of Conduct for Council of the City of Winnipeg* (the "1994 Code").

3. Both complaints allege that by virtue of his conduct on March 22, 2017, Councillor Allard violated the following sections of the 1994 Code:

- *Members shall not engage in any activity, financial or otherwise, which is incompatible with the proper discharge of his/her official duties in the public interest*

- *Members shall not use influence of office for any purpose other than his/her official duties*

- *Members shall not use the services or resources of civic employees in any private or personal business or for his/her re-election during hours in which these employees are in the paid employment of the City*

4. For the reasons that follow, I have determined that Councillor Allard did not violate any of these provisions.

5. Section 20 of the Complaint Protocol provides that if the Integrity Commissioner determines that there has been no breach of the code, he or she will advise the Member of Council and the Complainant of that determination and will generally not report to Council about his or her determination except as part of an Annual Report.

6. Accordingly, because I have determined that there has been no breach of the 1994 Code, I will not be reporting my determination in this matter to Council, except as part of my next Annual Report.

7. The parties are reminded, therefore, that they must preserve the confidentiality of this Report and are not entitled to make it public.

Background

8. On February 22, 2017, Council for the City of Winnipeg announced that it had appointed an Integrity Commissioner whose mandate included investigating and reporting on complaints made by members of the public about the ethical conduct of Members of Council.

9. The complaints which are the subject of this investigation were originally submitted to the City of Winnipeg on March 23, 2017 and March 29, 2017 respectively and were provided to me on April 3, 2017 which was the day I officially began my work as the Integrity Commissioner.

10. At that time, there was no mechanism in place for investigating or reporting on complaints about the ethical conduct of Members of Council. Accordingly, I advised the Complainants that I was not able to accept or assess their complaints until Council had approved such a process.

11. Despite the mandate that Council had given me, it would not have been fair to any party, whether potential complainants or Members of Council who would become the subjects of complaints, to investigate and report on complaints until Council had approved a fair and transparent process for doing so.

12. Council approved such a process when it enacted the 2018 Code on February 22, 2018.

13. One of the important features of that code is the Complaint Protocol, attached at Appendix B to the 2018 Code, which sets out a clear process for investigating and reporting on complaints which allege that Members have breached their obligations under the Code.

14. When I presented my report to Council recommending the approval of the 2018 Code, I presented an additional report in which I recommended that Council authorize me to receive and investigate complaints about the conduct of Members of Council which had occurred between February 22, 2017, being the date Council announced my appointment as Integrity Commissioner, and February 22, 2018, being the date the 2018 Code was enacted.

15. The reason for this recommendation 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 members of the public to file complaints alleging that a Member had violated his or her obligations under a Code of Conduct.

16. Council accepted my recommendation and authorized me to accept, investigate and report on complaints about the conduct of Members of Council which predated the enactment of the 2018 Code, using the process contained in the Complaint Protocol of that 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.[1]

Process followed for the investigation

17. I reviewed the two complaints in this matter and determined that they fell within my jurisdiction to investigate. That is, they related to conduct which took place between February 22, 2017 and the date of the enactment of the 2018 Code, alleged that the provisions of the 1994 Code had been contravened, and were originally filed prior to the enactment of the 2018 Code.

18. Accordingly, I proceeded to conduct an investigation in accordance with section 12 of the Complaint Protocol which provides as follows:

> Investigation
>
> 12. If a complaint is within the Integrity Commissioner's jurisdiction and is not rejected by the Integrity Commissioner on one of the grounds listed in section 7, the Integrity Commissioner will investigate the complaint as follows:
>
> a. provide the Member whose conduct is in question with the details of the complaint and any supporting material determined to be relevant by the Integrity Commissioner, by mail or e-mail, together with a notice of intention to conduct an investigation.
>
> b. request that the Member provide a written response to the complaint, any supporting documents or materials, and a list of relevant witnesses, within ten (10) days.
>
> c. provide a copy of the Member's response to the Complainant with a request that any written reply be provided by the Complainant within ten (10) days. A copy of that reply will be provided to the Member.

19. I conducted in-person interviews of each of the Complainants and of the Respondent Councillor. I also spoke with a witness who was identified by one of the Complainants as having relevant information and I interviewed an additional witness who came forward of their own initiative to tell me that they could provide relevant information about this matter because they had been in attendance at the Annual General Meeting in question. I also spoke with the City Clerk.

20. I reviewed the following documents which were provided to me by the parties:

- article published from "ICI Manitoba" – CBC – March 23, 2017 entitled: *Mathieu Allard Imposes Candidates on the Old St. Boniface Residents Association Board of Directors*
- article published by the Winnipeg Free Press - April 1, 2017 entitled: *Allard accused of staging coup*
- By-law No. 3 of the Old St. Boniface Residents' Association

[1] The City of Winnipeg By-law No. 19/2018, section 4(2)

- Agenda for the Annual General Meeting of the Old St. Boniface Residents' Association – March 22, 2017
- Minutes of the AGM of the Old St. Boniface Residents' Association – March 22, 2017
- document entitled "A St. Boniface for Everyone" containing a slate of 9 candidates
- open letter printed on letterhead of Matt Allard, City Councillor St. Boniface, written in English and in French with 4 attachments being letters from other Residents of the Old St. Boniface community
- Facebook post published by Councillor Allard dated March 10, 2017 being a letter to Walter Kleinschmit, Vice-President Old St. Boniface Residents' Association
- document entitled *Public Hearing Summary re Public Hearing* September 12, 2016, October 3, 2016 and October 19, 2016 before Riel Community Committee
- article published by the Winnipeg Free Press on June 25, 2018 entitled: *Taché Residents take on developer, City*
- screenshot of the Agenda from the Old St. Boniface Residents' Association Facebook page giving notice that the AGM was scheduled for March 22 at 7:00 p.m.

The Complaints

21. The essence of both complaints is that on March 22, 2017, Councillor Allard improperly used his office as a City Councillor to influence the election at the Annual General Meeting of the OSBRA in a way that was incompatible with his official duties.

22. Complaint No. 1 alleged that Councillor Allard had worked to:

> "... undermine the democratic process, using his position and resources as a City of Winnipeg Councillor, Committee Chair and deputy mayor."

and that as a City Councillor, Councillor Allard:

> "... failed to remain neutral in elections that took place in a local organization, the Old St. Boniface Residents' Association (OSBRA) whose mandate is to represent Old St. Boniface Residents in their dealings with the City in property development matters that affect the community through zoning and variances."

23. It went on to say that Councillor Allard posted articles that were disrespectful of the OSBRA on Facebook and other sites, personally attacking members of the organization and that at the OSBRA's AGM on March 22, 2017, he used both his Executive Assistant's time and material printed on Councillor letterhead to promote the riverside condominium project, which is controversial in the Ward, and to present a slate of candidates for the OSBRA Board.

24. The complaint ended by stating that

> "Through his actions, Councillor Allard has shown that he does not tolerate criticism or opposition and that people who oppose him will come to regret it, which leaves several community members fearing intimidation and harassment by him. Instead of uniting the community he is creating division and conflict among the citizens who elected him to represent them transparently and impartially."

25. Complaint No. 2 complained about the Councillor's behaviour in a similar manner, describing it as "abhorrent" and "unprofessional" and reflecting "a blatant disregard to all the constituents of Old St. Boniface and the democratic process". The Complainant also identified that they felt bullied by the Councillor's conduct.

26. Complainant No. 1 in their interview expressed the concern that the Councillor used his influence of office to orchestrate the election of directors to the Board of the OSBRA who were sympathetic to his views. They also complained that through his supporters the Councillor was able to change the agenda at the AGM to move the election of new directors to the beginning of the meeting. The Complainant expressed concern that this stifled debate over the potential legal action which had been contemplated by the Association against the City. The Complainant stated that in their view the Councillor's comments that he made on Facebook combined with his actions have left people in the community fearing intimidation and harassment by the Councillor and his supporters.

27. The Complainant acknowledged that they had not personally been the target of any intimidation or bullying tactics but suggested that the Councillor and people who support him may have stopped supporting local businesses owned by members of the community who do not support the Councillor.

28. Both Complainants stated that the 825 Taché development was not relevant to their complaint other than that it was likely the motivation for the Councillor's actions at the AGM and that it was clear that the Councillor wanted to see members elected to the Board who would not be in opposition to projects that the Councillor felt were beneficial to the community.

Response

29. The Councillor has not denied that he carried out the activities which form the subject of the complaints. Rather, his position is that such engagement was in fact consistent with his official duties of office and did not constitute a misuse of his influence or of the resources available to him as a Councillor.

30. In the Responses he filed to both complaints, the Councillor stated that he believed his participation in the OSBRA's Annual General Meeting was beneficial to the discharge of his duties in the public interest and that he was using his influence of office in the performance of his official duties which in this case included engaging with the community regarding land planning issues and other issues in the neighbourhood.

31. He pointed out that as a resident he is a *de facto* member of the OSBRA according to the organization's by-laws but acknowledged that since becoming elected to City Council, when he attends the Association's meetings he does so in his role as City Councillor for the area.

32. He said that he regularly attends the Association's AGMs primarily in his role as City Councillor to speak to municipal issues and questions raised by residents and that this is a common practice for the Ward's councillor.

33. Councillor Allard explained that he viewed it to be part of his job description as a Councillor to work with associations such as the OSBRA, to communicate the "what and why" of the City's decisions regarding things such as the 825 Taché development.

34. He stated that he has attended the OSBRA meetings whenever possible because he believes they are an ideal opportunity to communicate about civic issues with area residents in his role as City Councillor for St. Boniface. He stated he has also attended residents' association events in Island Lakes, Niakwa Park and South St. Boniface.

35. Regarding the use of office resources, he stated that he regularly promoted community events like this one through his office and he believed his transparent endorsement of like-minded candidates on a community organization that works on civic issues was appropriate and was preferable to promoting a perspective "behind the scenes".

36. Councillor Allard stated in his Response in part:

> "I became convinced that the association's board had been captured by a private developer who I believed was using the OSBRA to advance his own private interest by trying to block 825 using the association. I published on my Facebook account that I had lost confidence in the leadership of the board on March 10, 2017 where I explained my concerns. In conversations with members of the public, I promoted attendance to the meeting so that we could give the board back to the community.
>
> I attended the OSBRA March 22 meeting with materials communicating the City of Winnipeg position on the 825 Taché development. I provided information regarding my decision to approve the project on my letterhead, as well as letters of support for the project from AMICALE (Amicale de la Francophonie Multiculturelle du Manitoba), the French Chamber of Commerce for St. Boniface as well as the Provencher Business Improvement Zone who all supported the project. In my conversations with residents, it became evident that many of them did not feel represented by the board at the time, and many of them were interested in running for the board. I provided a list of candidates that I supported, and of the nine open spots on the board, the nine candidates that I supported were elected. ...
>
> Using my office resource to promote the OSBRA AGM and explaining the 825 Taché decision was an important communication on the part of my office to residents in the area and in no way did I receive a private or personal business benefit by my participation in these meetings. I also believe that my endorsement of like minded candidates on a community organisation that works on civic issues is highly appropriate and preferred to promoting candidates behind the scenes."

Evidence

37. The facts in this matter are not in dispute.

38. At the outset of the AGM Councillor Allard and his Executive Assistant handed out a folder of materials which included a letter written by the Councillor on his Councillor letterhead in French and English. The letter explained the City processes that had taken place with respect to the 825 Taché development and the views that he had taken throughout the process. Attached to his letter were four letters of support for the development which were written by individuals on behalf of organizations representing various interests in the community. The folder also contained a document which was not on the Councillor's letterhead, entitled: "A St. Boniface for Everyone! A board which will support our vision of a growing, positive, safer St. Boniface, and an accountable Residents' Association board ... You can vote for three candidates per-zone no matter which zone you live in. You can vote for nine candidates total ..."

39. This last document was in French and English and listed three candidates for each of the three zones comprising the area of Old St. Boniface.

40. The Complainants said that they observed that Councillor Allard and his supporters were only handing these materials to certain people. One Complainant said that they and a person accompanying them were not handed these materials until they asked to be provided with them. Other witnesses said they experienced the same thing.

41. Attendance at the AGM on March 22, 2017 was much higher than usual, probably double what it would normally be. Due to this increased attendance the start of the AGM was delayed because it took more time to verify everyone's identity.

42. The Complainants did not believe there was any formal notice circulated for the AGM other than robo calls which only some residents received. Complainant No. 2 confirmed that they had received such a call.

43. The Facebook page for the OSBRA did state as follows:

> "The AGM of OSBRA is scheduled for 22 March 7:00 p.m. at the Notre Dame Recreation Centre. 825 Taché will be on agenda, as well as the election of new members for the Executive. We need residents interested in being part of a team which together help insure [sic] that development in Old St. B responds to our needs and aspirations."

44. Both Complainants in their interviews confirmed that they were not intending to imply that Councillor Allard received any financial benefit from either the 825 Taché development or his actions at the meeting. They were not suggesting that he had a private or personal interest whether financial or otherwise which motivated his actions other than a political or reputational interest.

45. In his interview, Councillor Allard described the City's process for approving the development known as 825 Taché and said that the OSBRA had objected to the development at a public hearing. The approval of the development was appealed and that appeal was subsequently dismissed.

46. After the development was approved, Councillor Allard distributed a letter on his Councillor letterhead which described the rationale for the approval of the project, to individuals who resided in the north part of Old St. Boniface, in the Pointe Hébert area.

47. He said he distributed the letter because he felt there was some misinformation that needed to be clarified about what had happened with the development during the City planning and approval process.

48. This was the letter that he ultimately included in the material that he handed out at the OSBRA's AGM on March 22, 2017.

49. The AGM was chaired by a member of the OSBRA who was a lawyer and minutes were taken. Near the beginning of the meeting when the Chair asked for the agenda to be approved, a motion was made to move the election of the directors up closer to the beginning of the AGM. The Complainants believe it was one of the Councillor's candidates who made the motion. One Complainant observed that one of the individuals who was sympathetic to the Councillor was standing on the side indicating to people who were not certain which way to vote that they should vote in favour of the motion to move the election up earlier in the agenda.

50. One Complainant confirmed that the Councillor himself was not directing people on which way to vote and remained seated in the audience along with other members of the Association. The vote on the motion was done through a show of hands.

51. Councillor Allard said he did not directly move to change the agenda but believes that he had asked someone to do so.

52. He said that some of the people he encouraged to attend had indicated that they could not stay for the entire meeting and they wanted an opportunity to vote before they had to leave. The meeting did end up running until approximately 11:00 p.m.

53. The vote to elect the members of the Association's Board was done by secret ballot.

54. Each of the three zones or sectors representing different areas of St. Boniface had three vacant board positions. For two of the sectors the members on the slate put forward by Councillor Allard were elected by acclamation. In the third sector several people ran and the matter proceeded to election. The minutes show that candidates who were nominated included both individuals who were on the slate of candidates handed out by Councillor Allard and others who were not. The successful candidates were the ones who were on the slate handed out by Councillor Allard. The minutes show that the vote in favour of those candidates was 60 in favour and 40 against.

55. The agenda for the meeting shows that Councillor Allard was scheduled to do a question and answer period towards the end of the meeting.

56. One of the Complainants expressed concern, however, that throughout the meeting Councillor Allard would intervene in debates by going to the front and taking the microphone to speak rather than waiting for a chance to speak, which is what they said usually happened.

57. The Chair of the AGM did not object to the Councillor's actions.

58. One Complainant confirmed that Councillor Allard has attended AGMs in the past and that it is standard for the local councillor to do so but that they had never seen one stand up during a meeting and intervene by speaking at the microphone during debates in such an active fashion.

59. The Complainants confirmed there was also a Q&A period near the end of the AGM with the Councillor, which is normal. Neither Complainant stayed for that session. They commented that the meeting ran later than usual, likely due to the delays caused by the increased attendance.

60. The Complainants both expressed the view that they expect neutrality from a Councillor and that Councillors should work to get a consensus on controversial topics such as the development at 825 Taché.

61. One Complainant attached two media articles to their complaint. The first was from ICI Manitoba (CBC Radio-Canada) and the second was from the Winnipeg Free Press.

62. I confirmed with this individual that this was an accurate quote.

63. The article went on to quote Councillor Allard as saying he believed his actions had been transparent.

64. The Councillor has confirmed that the matters at the meeting transpired as identified by the Complainants. He said that after the 825 Taché development project had gone through all of the standard City processes he felt there still remained concerns and misinformation that was being disseminated in the public.

65. He confirmed that he encouraged people to come to the AGM and got more responses and interest than he had expected. He received over 80 responses from people saying they would attend the meeting.

66. He said that leading up to the AGM he had talked to many residents who had never attended an AGM of the Association before. He said he wanted to encourage people to come to the meeting to support a thriving Provencher.

67. He also said that many of the new attendees were new Canadians who had recently arrived from African countries and who had said they did not previously feel welcome to attend the Association's AGMs. One of the candidates endorsed by Councillor Allard was one such individual.

68. With respect to publishing a slate of candidates he said that he felt it was more appropriate for him to be transparent about the people he had encouraged to run for nomination and election to the Association's Board and he considered the expenditure of resources to support that to be an allowable use of City resources.

69. The Councillor said he had spoken to someone from the City Clerk's Office about this use of resources who confirmed that that was the case. He could not recall specifically whether he had spoken to the Clerk or the Deputy Clerk.

70. I spoke with the City Clerk, Marc Lemoine, who was the Deputy Clerk at the relevant time. He advised that the type of materials that the Councillor distributed at the AGM would have been something that the City allows Councillors to prepare, using City resources.

71. The Councillor said that his actions were based on his discussions with many individuals in the community who represented both their own interests and the interests of various boards, businesses and organizations within the community.

72. He believed that his actions at the meeting were all done in his role as the Member of Council for the area, promoting what he believed were the best interests of the community.

73. Councillor Allard said he felt that the notice of the AGM that was posted on the OSBRA's Facebook page was inadequate notice for the meeting and this prompted him to post an open letter on his own Facebook page to the Acting Vice President in which he described his loss of confidence in the direction of the OSBRA's Board.

74. With respect to the Complainants' allegations that his behaviour constituted bullying or harassment, he adamantly disagreed and said that there is a difference between bullying and having a disagreement about key issues.

75. Councillor Allard felt that the language of his Facebook letter to the Acting Vice President was not inappropriate and that he made every effort to be as diplomatic as possible in the circumstances.

76. The Acting Vice President had previously served as President of the OSBRA. He assumed the role of Acting Vice President, however, for the 2017 AGM when the position of President of the Board became vacant.

77. He confirmed that the quotes in the ICI Manitoba article which were attributed to him were correct.

78. Those quotes included his saying in part: "It's unfortunate to see a politician getting so personally involved in a residents' association" and that it was something that should be re-examined in the Association's By-laws and maybe in the regulations governing the conduct of Councillors.

79. In my interview with him, he confirmed that it may be appropriate to expand OSBRA's regulations and rules to prevent such things from happening again.

80. He said that after the initial uproar following the 2017 AGM things have settled back down.

81. Both Complainants pointed out that several of the nine people who were elected did not finish their mandate.

82. Councillor Allard acknowledged that not all of the candidates he supported finished their term. He understood that one of those Board members was frequently absent because he had to work nights and was therefore unable to attend meetings.

83. Finally, following our interview, one of the Complainants provided me with an article from the Winnipeg Free Press entitled *Taché Residents take on developer, City* dated June 25, 2018. The article featured a story on one of two residents who is fighting the condo development at 825 Taché.

1994 Code

84. The 1994 Code contains what are described as six guiding principles.[2]

85. Each of the principles is worded in a prescriptive way using the word "shall". I interpret these principles, therefore, as being more than simply guidelines. They are rules. Each principle is followed by paragraphs which give guidance about how the principle should be interpreted. These paragraphs form part of the document which was passed by Council when it approved the 1994 Code and I am guided by them in determining whether the matters complained of in this case constitute a violation of that Code.

86. The principles which the complaints allege have been contravened in this matter are:

- ***MEMBERS shall not engage in any activity, financial or otherwise, which is incompatible with the proper discharge of his/her official duties in the public interest.***

- ***MEMBERS shall not use influence of office for any purpose other than his/her official duties.***

- ***MEMBERS shall not use the services or resources of civic employees in any private or personal business or for his/her re-election during hours in which these employees are in the paid employment of the City.***

Analysis

87. The allegations in these complaints engage questions about the role of a Member of Council - when is a Member performing official duties; when is it appropriate for them to exercise influence in their official capacity?

88. To answer the first question: although an elected official is entitled to have a private life the reality is that when they are out in public either physically or through a presence in the media, they are generally seen to be acting in their official capacity and must comply with the ethical obligations which are imposed on them under a Code of Conduct.

89. In this case, the Councillor acknowledged that although he was entitled to attend the OSBRA's AGM as a private citizen because of his residence in the area, he attended the event in his official capacity as the Member of Council for the Ward.

90. I agree and find that the Councillor's activities which are the subject of these complaints were done in the exercise of his role as a Member of Council.

91. Regarding the second question: there is no document or piece of legislation that specifically defines the duties of Members of Council for the City of Winnipeg or when it is appropriate for them to exercise their influence as a Council Member.

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[2] The relevant sections of the 1994 Code are attached as an appendix to this report.

92. Arguably, it would not be possible to articulate every task that comprises such a role.

93. Elected officials are elected to serve the interests of the Ward and the constituents they represent and in doing so are required to follow the statues, by-laws, policies and rules which govern how the City Council of which they are members, must function.

94. In terms of using their influence, it is perfectly appropriate for a Member of Council to advocate for one matter over another so long as the Member follows the standard City processes and does not act in such a way as to promote their private interest over the public interest.

95. The paragraphs which assist the interpretation of the principles of the Code which are engaged in this complaint identify a common thread that Members of Council must not put their personal interest ahead of the obligations they owe to the public.

96. They confirm that Members of Council must not knowingly place themselves in a situation that may result in a conflict between on the one hand their personal interest and on the other their duties of office; place themselves in a situation where they may have to choose between their own interest and that of the City; use their office to influence a decision or action that may result in a conflict between their personal interest and the interests of the City; or use civic resources for their personal interests.

Conflict of Interest

97. "Conflict of interest in the public sector is the clash of a private interest with a public duty. It involves the potential to further private personal interest at the expense of fulfilling public duty and acting in the public interest."[3]

98. The first question that must always be asked, therefore, when determining whether a conflict of interest exists, is to determine whether a Member of Council has a private interest which clashes with his or her public duty.

99. The role of a Member of Council in the context of allegations of conflict of interest was discussed by the Supreme Court of Canada in its 1990 decision *Old St. Boniface Residents' Association v Winnipeg (City).*[4] The court in that case determined that a City Councillor did not have a conflict of interest due to the fact that they had previously spoken on behalf of a private developer to the City Finance Committee.

100. The Court defined "conflict of interest" as follows:

> "... a Member of Council is disqualified if the interest is so related to the exercise of public duty that a reasonably well-informed person would conclude that the interest might influence the exercise of that duty".[5]

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[3] G Levine, *The Law of Government Ethics: Federal, Ontario and British Columbia* (2nd Ed), 2015 p.9
[4] [1990] 3 SCR 1170; 1990 CanLII 31
[5] *Old St. Boniface Residents' Association, supra,* p.1196

101. The Court said that did not mean, however, that Councillors can never have some interest in a matter. Justice Sopinka stated that:

> "... the members of council will have fought an election in which the matter upon which they are called upon to decide may have been debated and on which the would-be councillors may have taken a stand, some pro and some con. Indeed, the election of a particular councillor may have depended on the position taken ... Moreover, in the preparation and processing of a development, a municipal councillor is often involved in assisting parties supporting and opposing the development with respect to their presentations. In the course of this process, a councillor can and often does take a stand either for or against the development ..."[6]

102. Justice Sopinka went on to state that the only way in which the councillor in that case could be said to be acting in a conflict of interest would be

> "... if there was something to suggest that the councillor's support was motivated by some relationship with or interest in the developer rather than the development."[7]

103. Both Complainants in this case readily acknowledged that they were not alleging the Councillor had a pecuniary interest in the Association's activities. Rather, they identified his motivation and activities as being political.

104. I agree with that characterization. Such an interest is not, however, an interest which is engaged or regulated by the 1994 Code.

105. Private interests are not to be confused with political interests.

106. There is a distinction, in other words, between activities which are unethical according to a code of conduct and those which may simply not be popular. The latter are regulated by voters at the ballot box.

107. It is not the jurisdiction of an Integrity Commissioner to evaluate the political judgments made by Members of Council.

108. Marguerite Trussler, the ethics commissioner for Alberta, discussed the difference between political and private interests, in a recent interview published in the journal *Alberta Views*, May 2018. When asked what the distinction was, she answered:

> "Basically, with a political interest you are doing something to get yourself elected, you are doing something for a political reason. Whereas with a private interest there is usually financial gain to you personally or to one of your direct associates or your minor children or in some cases your adult children."

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[6] *Old St. Boniface Residents' Association, supra,* p.1192
[7] *Ibid, supra,* p.1197

109. I find there is no evidence that the Councillor had a private interest whether pecuniary or otherwise when he engaged in the activities of the Old St. Boniface Residents' Association. I find, therefore, that he did not violate the principle in the 1994 Code which provides that:

> ***Members shall not engage in any activity, financial or otherwise, which is incompatible with the proper discharge of his/her official duties in the public interest***

Use of Influence

110. It must be remembered that Members are entitled and indeed obliged to use their office for the purpose of influencing City affairs. What they are prohibited from doing is using their influence improperly.

111. What constitutes improper use of influence under the 1994 Code?

112. The paragraphs in the 1994 Code which provide interpretation for this principle require a Member of Council to refrain from seeking to influence a decision or an action if it may result in a conflict between their personal interest and the interest of the City.

113. As I indicated above, that was not the case here.

114. The interpretation paragraphs go on to require Members to refrain from soliciting, accepting or receiving from anyone a benefit for themselves in exchange for taking a position, making an intervention or offering a service.

115. In this case, I find there is no evidence that Councillor Allard's actions were done in the expectation of any personal benefit.

116. The concept of improper use of influence was more recently considered by the Integrity Commissioner for Toronto regarding the conduct of Mayor John Tory. Mayor Tory was the subject of a complaint that he exercised improper influence for allegedly preferring and supporting Uber through public statements and a motion that was made at a Council meeting. Integrity Commissioner Valerie Jepson ultimately dismissed the complaint. In her analysis, she identified that:

> "In order for Mayor Tory to have contravened Article VIII [Improper Use of Influence] in this case, he would have to have used the influence of his office for a purpose other than the exercise of his duties; with the intention to benefit a former campaign staffer as a reward or out of a sense of personal obligation. It must be observed from the outset that the Mayor, like all members of council, will undoubtedly be involved in and have influence over decisions that will benefit any number of stakeholders within the community, some of whom will have supported him in his campaign. **His involvement and influence are only improper if his decision was taken, or his influence was exercised, for the purpose of preferring or benefiting himself or another person**." [emphasis added]

117. Applying this principle to the facts of this case I have concluded that Councillor Allard's actions were not exercised for the purpose of preferring or benefiting himself or another person.

118. Leading up to the AGM and at the AGM itself, I find his actions were taken in what he felt were the best interests of the Ward and the City as a whole. Some constituents agreed with his position and others did not. The fact that not everyone agreed with the position that he took, however, does not mean that his involvement was exercised for an improper purpose.

119. When Councillor Allard engaged in the activities of the OSBRA's 2017 AGM he was not engaging in any activity in which he had an interest outside of his role as City Councillor.

120. Whether or not those activities were welcome or popular in the eyes of all the Association's members is not a matter which is regulated by the 1994 Code.

121. In particular, the Councillor's discussion at the AGM of what transpired at the City with respect to 825 Taché and his views on that developer and development for the community generally, took place after the process had gone through all of the standard City processes. Indeed, the Complainants confirmed that that process was not the subject of their complaint. Although the Complainants made a comment that they felt the Councillor's actions may have been intended to prevent the Association from pursuing formal legal action, there is no evidence to support the suggestion that the Councillor's actions constituted an obstruction of justice or were contrary to the Code of Conduct.

122. The board of the OSBRA is not a City board – whether adjudicative or decision making. I find there is no evidence that the Councillor's involvement with the OSBRA board constituted an attempt to improperly influence City affairs or City staff.

123. I note as well that the members of the OSBRA board were elected by secret ballot and counted by scrutineers. There is no evidence, therefore, that would support a suggestion that those who voted for the candidates the Councillor had promoted were doing so with an expectation of receiving some favour from the Councillor.

124. The essence of these complaints is ultimately about a process which belongs to the OSBRA.

125. I heard from several witnesses that going into the 2017 AGM there had been very little communication with the OSBRA and its membership, that it might be appropriate to review the Association's regulations and rules and that in any event matters involving the Association are now more settled.

126. I find, therefore, that the Councillor Allard did not violate the provision in the 1994 Code which states:

> ***Members shall not use influence of office for any purpose other than his/her official duties***

Use of Civic Resources

127. As set out above, I have determined that the Councillor's actions at the Association's AGM were performed in the course of his official duties and not for any private or personal business.

128. Accordingly, I find that he did not violate the provision of the 1994 Code which states:

> ***Members shall not use the services or resources of civic employees in any private or personal business or for his/her re-election during hours in which these employees are in the paid employment of the City.***

Conclusion

129. For all of the reasons set out above, I find that the Councillor's actions complained of in these two Complaints do not constitute a violation of the 1994 Code.

130. Both Complainants were clear that this issue was not personal to them; rather their concern was for the democratic process. Such engagement and commitment by members of the public is to be commended.

Sherri Walsh
Integrity Commissioner
December 19, 2018

1078 - September 19, 1994 Appendix "A" referred to in Clause 1 of the Report of the Secretariat Committee dated

CODE OF CONDUCT
COUNCIL OF THE CITY OF WINNIPEG

In order to strengthen the operation of the City of Winnipeg Council and to enhance public trust, this Code of Conduct supplements existing federal and provincial Conflict of Interest legislation. Members of Council hold office for the benefit of the public and their conduct must be of the highest standard. This conduct is expected by the public and it is critical that they have confidence in the integrity of the Members of City Council.

The Member's sworn declaration of office declares:

> "That I will truly, faithfully, and impartially to the best of my knowledge and ability, execute the office to which I have been elected and that I have not received, and will not receive, any payment or reward, or the promise of payment or reward, for the exercise of partiality, corruption or other improper execution of the office."

This Code of Conduct sets forth guiding principles to enhance the declaration of office:

- *Members shall not engage in any activity, financial or otherwise, which is incompatible with the proper discharge of his/her official duties in the public interest.*

- *Members must disclose any business or interest which may give rise to a reasonable apprehension of conflict. A Member shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office. This does not apply to a gift of personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.*

- *Members shall not use or disclose any information gained in the execution of his/her office that is not available to the general public for any purpose other than his/her official duties.*

- *Members shall not use influence of office for any purpose other than his/her official duties.*

- *Members shall not use the services or resources of civic employees in any private or personal business or for his/her re-election during hours in which these employees are in the paid employment of the City.*

- *Members shall respect the legislative and administrative regulations governing the decision-making mechanisms of the City.*

Appendix "A" referred to in Clause 1 of the Report of the Secretariat Committee dated September 19, 1994 (continued)

MEMBERS shall not engage in any activity, financial or otherwise, which is incompatible with the proper discharge of his/her official duties in the public interest.

The principle whereby Members must avoid placing themselves in a conflict of interest is the basis for all the other codes. All other codes can easily be said to be specific applications or variants of this base principle.

This principle goes beyond the legal requirements and exceeds the interpretation of the law. It affects the manner in which the general public perceives the actions of their elected representatives.

Members must avoid knowingly placing themselves in a situation that may result in a conflict between, on the one hand, their personal interest and on the other, the duties of their office.

A situation where a person may find himself/herself in a conflict of interest is a situation where he/she may have to choose between his/her own interest and that of the City or a municipal agency. The code prohibits not only the fact of choosing his/her interest over that of the City or one of the City's agencies, but more importantly, the code prohibits the Member from placing himself/herself in a situation where he/she may have to choose between the two.

Appendix "A" referred to in Clause 1 of the Report of the Secretariat Committee dated September 19, 1994 (continued)

MEMBERS shall not use influence of office for any purpose other than his/her official duties.

Members must refrain from participating in a decision or an action or from seeking to influence a decision or action if it may result in a conflict between their personal interest and the interest of the City.

When Members attend a meeting where consideration will be given to an issue in which they themselves have a stake, they must disclose the general nature of this interest before deliberations begin on the issue, refrain from participating in such deliberations or from voting on the issue and leave the meeting after having disclosed their interest, for the entire duration of the deliberations and the vote on the issue.

Members must refrain from soliciting, accepting or receiving from anyone a benefit for themselves in exchange for taking a position, making an intervention or offering a service.

The purpose of this code is to ensure that the steps taken and the decisions made by Members will be solely in the interest of the City and not in consideration or in expectation of a benefit.

There is no need to stress the fact that it is the public interest that must motivate steps taken and decisions made by Members and not their specific interest in receiving any benefit whatsoever in return for their action. Even if the step taken or the decision made is not really or solely motivated by the receiving or expecting of a benefit, Members must refrain from soliciting, accepting or receiving such benefits.

Appendix "A" referred to in Clause 1 of the Report of the Secretariat Committee dated September 19, 1994 (continued)

MEMBERS shall not use the services or resources of civic employees in any private or personal business or for his/her re-election during hours in which these employees are in the paid employment of the City.

Members shall not use or allow the use of, for purposes other than those for which they are intended, resources, property or services of the City or civic employees, or from using the authority of their office for their own interest.

The purpose of this rule is to ensure that the resources, property and services of the City serve only the interests for which they were acquired or implemented, and not the interests of individuals (ie. Council Members).

Council Members, whether as a group or individually, enjoy substantial moral or real authority related to the administration and management of the human and material resources of the City.

This authority must be exercised in the general interest of the City and not in the personal interest of the elected representatives.

This duty to exercise authority in the general interest of the City means that Members have the obligation to ensure that the resources, property and services of the City and the civic employees are only used for the purposes for which they are intended.