ANNUAL REPORT
OF THE INTEGRITY COMMISSIONER

Sherri Walsh

April 1, 2018 – December 31, 2018

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ANNUAL REPORT OF THE INTEGRITY COMMISSIONER

APRIL 1, 2018 – DECEMBER 31, 2018

I. Commissioner's Message

I am pleased to provide my second Annual Report as Integrity Commissioner for The City of Winnipeg.

This report covers the period April 1, 2018 to December 31, 2018. With this report, I am changing the Integrity Commissioner's reporting period to coincide with the calendar year in order to be consistent with the budgeting process which Council has established for the Integrity Commissioner's office.

On February 22, 2019, Winnipeg City Council will mark the first anniversary of its new *Code of Conduct for Members of Council* ("the Code").

The Code sets out standards of behaviour and rules to assist the Members of Council in performing their duties of office in a way that promotes public confidence in the operation of City Council – such confidence being essential for an effective democratic process.

A Code of Conduct works most effectively when it is applied in conjunction with receiving advice from an Integrity Commissioner whose primary role is to assist the Members of Council in adhering to the Code and creating a culture of ethical behaviour in the performance of their duties of office.

The most important aspect of the Integrity Commissioner's work, therefore, and the one which will have the most impact is its advisory function.

The Integrity Commissioner's investigative function is also important. The Code now contains an accountability mechanism in the form of a Complaint Protocol which allows the Integrity Commissioner to investigate and report on complaints which allege that Members of Council have breached the standards of conduct set out in the Code. This is a new and important accountability measure for the City.

It should also be remembered that the simplest and oldest municipal accountability mechanism is an election. The Integrity Commissioner has an important role to play in this regard as well. By providing necessary information to concerned citizens, the media, and potential candidates through the publishing of investigative reports and other forms of public education, the Integrity

Commissioner gives the electorate objective information upon which to base its decision at election time.[1]

In this report, I am pleased to outline the advisory, investigative and educational services I have performed in the reporting period, with a particular focus on the rules in the Code which pertain to gifts and conflict of interest respectively. These rules were the subject of much public discussion in December 2018.

In the period covered by this report, the City went through a municipal election which affected my work in a number of ways.

For example, during the campaign period, I was frequently called upon by Members of Council who were running for re-election to provide advice about how to comply with the rule in the Code regarding election related activity.

At the Clerk's request, I prepared material about both the Code and the role of the Integrity Commissioner, to include in the package of information which was provided to all candidates who were running for election. This gave new candidates in particular, an opportunity to learn about the ethical obligations which would be required of them should they be elected.

The election also had an impact on my ability to accept, investigate or report on complaints. The Code says that during the campaign period, the Integrity Commissioner will: (a) not receive any complaints; (b) suspend any ongoing investigation of a previously filed complaint; and (c) not submit any report to Council of findings with respect to complaints.

The rationale for this requirement is to preserve the integrity of the investigative process by preventing it from being used as a political tool.

As I note at the end of this report, I will be seeking Council's instructions to draft a formal policy regarding election related activity, for Council's approval before the next election. This will provide much needed clarity for the benefit of both Members of Council and members of the public.

[1] Andrew Sancton, *Accountability Officers and Integrity in Canadian Municipal Government,* IMFG Perspectives No. 17/2017, Toronto: University of Toronto, MFG Institute on Municipal Finance and Governance, p.10

Finally, I want to acknowledge the invaluable assistance and support I have received throughout this reporting period from the City Clerk's Department and from my own assistant, Carol Dougan.

Respectfully submitted,

Sherri Walsh, Integrity Commissioner

II. Advisory Function

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.

The Code works most effectively when applied in conjunction with receiving advice from the Integrity Commissioner as to how it should be applied in a given set of circumstances.

Since my commencement in this role I have been contacted on an increasingly frequent basis by Members of Council who seek advice on a number of topics. I consider the increasing volume of requests for advice and interpretation of the Code to be a sign that the City's ethics and accountability framework is functioning as it should.

In the period covered by this Report, I received 54 requests from Members of Council seeking advice on a variety of topics.

My advice was typically provided within 24-48 hours unless the matter required further research.

What follows are anonymized examples of inquiries I received from Members of Council and the advice that I provided.

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 a substitute for contacting the Integrity Commissioner for advice in a given situation.

- **Election Related Activity – General Advice**

The municipal election took place on October 24, 2018.

The rule in the Code regarding election related activity states:

> **"6. Election-Related Activity**
>
> *a. Members are required to follow all applicable election legislation and By-laws, including without limitation, The City of Winnipeg Charter, The Municipal Councils and School Boards Elections Act and all relevant City of Winnipeg By-laws.*
>
> *b. Members must not use the facilities, equipment, supplies, services or other resources of the City (including Members' newsletters or websites linked through the City's website) for any election campaign or campaign-related activities.*
>
> *c. Members must not use the services of City staff for election-related purposes during hours in which those staff members are in the paid employment of the City."*

The rule is designed primarily:

1. to ensure the City remains neutral during elections; and

2. to attempt to level the playing field between incumbents and other candidates by ensuring that Members of Council do not receive any undue benefit by virtue of being an incumbent.

On March 26, 2018, in anticipation of the election, I provided the Members of Council with an Advisory Bulletin on "Election Related Tips" which I also posted on the Integrity Commissioner's website page.

The purpose of the Bulletin was to provide guidance and assistance to Members of Council who were seeking re-election, regarding their obligations under the Code.

Upon discussion with a number of Members of Council and with Integrity Commissioners from other jurisdictions, notably Calgary, I revised some of the advice from the March 26 Bulletin. For example, I advised the Members that they could use their title in campaign material because this simply reflected what was a matter of fact.

I went on to advise that they were still not entitled to use the City logo for campaign purposes nor could they put a link to their campaign website on their City website. They were allowed, however, to put a link to their City website on their campaign site.

I also said that it was permissible for a Member of Council to use social media platforms and accounts that they had used in their role as a Member, so long as those accounts had not been funded by the City and so long as the Member put a disclaimer on the site which indicated that the site was neither paid for nor sponsored by the City of Winnipeg.

An updated Advisory Bulletin was published on the Integrity Commissioner's website page and provided to Council Members on July 11, 2018.

- **Conflict of Interest**

Sample #1

Request: The Member of Council advised that they had been appointed to the executive of the Board of a district Business Improvement Zone ("Biz Board"). The Member advised that all councillors are appointed to the respective Biz Boards in their Wards. The Member's question was whether serving on the Board's Executive put them in a conflict of interest with respect to their role as a Member of Council.

Advice: A Member who sits on a Biz Board is presumed not to have an interest which would give rise to a conflict of interest when Council deals with matters relating to that Board. It makes no difference whether the Member serves on the Executive of the Board.

The rationale for Council appointing Members to sit on certain Boards is to help ensure that a civic voice is heard on those Boards.

The rule in the Code relating to conflict of interest (Rule 2) specifically says that a Member is presumed not to have an interest in any appointment to serve in his or her official capacity on any commission, board or agency, or in matters arising in relation to that commission, board or agency.

Since providing this advice I have published an Advisory Bulletin on the Integrity Commissioner's website page which discusses, in further detail, the ability of Members of Council to participate on boards and related entities in the context of their obligations under the Code.

Sample #2

Request: A Member of Council sought advice about whether they should recuse themselves from participating in discussions or votes regarding a business entity of which the Member's spouse was a prominent employee. The business had previously made a delegation to Council and provided it with a report on a matter. The Member told me that they had recused themselves from the meeting at which that delegation was made.

The Member expected that the business entity would be coming before the City again to seek contract work. They asked whether they should recuse themselves from relevant discussions and votes should the City be asked to enter into such a contract.

Advice: I confirmed that in light of the fact that the Member's spouse was a prominent employee of the business, the Member should recuse themselves from influencing the City's decision. This would include withdrawing from both discussions and any opportunity to vote about the business' contract proposal.

- **Use of Influence**

Sample #3

Request: A Member of Council asked for my advice about a fundraising initiative. The Member wanted to send out a letter soliciting funds in support of a street festival with which the Member was involved.

Advice: The rule under the Code which is engaged by fundraising activity is the rule relating to use of influence (Rule 4). This rule requires that Members not use the influence of their office for purposes other than for the proper exercise of their duties of office.

I advised the Member that it would be fine if the fundraising letter referenced the fact that the Member supported the event but the Member should not be the person who signed the letter and all references to the Member's contact information should be removed from the letter.

The concerns that arise from using one's influence for fundraising, even for a good cause, are that such requests could be perceived as a way for someone to gain advantage from the

Member, in return for making a donation. Alternatively, the potential donor or recipient of the Member's fundraising request may feel uncomfortable about declining to make a donation for fear of losing favour with the Member.

The intention is not to inhibit Council Members from supporting causes. The main consideration is that fundraising be done in a way that is transparent and at arm's length. This means, therefore, that Members should not directly solicit funds themselves. They should also be careful about sending out mass mailings, if they are not certain who is on the mailing list. They would not, for example, want to send a fundraising letter to someone who has a matter before Council or who is a registered lobbyist.

- **Gifts and Benefits**

Sample #4

Request: A Member of Council was invited by an organization to be its guest in a golf tournament the organization was sponsoring. The organization's stakeholders often appear before committees of Council and Council as a whole.

The Member described the event as a good networking exercise. Their question was whether they could accept this invitation.

Advice: I recommended that the Member not accept this gift. If they wanted to participate in the tournament, they should pay for it themselves.

Acceptance of gifts and benefits is regulated at Rule 3 of the Code. The Rule says 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 Member's favour.

It is the source of the gift not the amount of the gift that is important.

The smallest gift can create the appearance that the donor is seeking to influence the Member or gain their favour.

Whether or not the Member truly believes they are influenced by the gift is not important.

Acceptance of gifts and benefits can compromise decision making and negatively influence public perception about the operation of government.

Sample #5

Request: All the Members of Council received a Christmas gift from another Member. A Member asked whether they could accept this gift and whether they should declare it on the public gift registry.

Advice: I advised that the gift was acceptable. The gift was a small box which contained cookies and a brownie. Having regard to the basic rule that Members must not accept any gift which would to a reasonable, well-informed person create the appearance that the donor was seeking to influence the Member or gain the Member's favour, I determined that this gift, which was offered as an expression of courtesy from one colleague to another on the occasion of Christmas, did not violate the rule.

If the gift had been offered on another occasion, for example, such as on the eve of an important vote about which there was dispute among the Members of Council, my advice might have been different.

Each situation for advice depends on the specific circumstances of the situation.

With respect to disclosure, I advised that if the value of the gift was under $50 the Members did not have to disclose it on the public registry but they were certainly welcome to do so if they so desired.

This issue became a matter of public record, was covered by a number of media outlets and ultimately provided a good opportunity to educate both Members of Council and the public about Members' ethical obligations relating to the acceptance of gifts and benefits.

Hopefully, members of the public will also keep in mind that they should not be offering gifts or benefits to elected officials who are already compensated for the services they perform and who should not personally benefit from what they are required to do as part of their role as a Member of Council, beyond the compensation which is authorized by law.

III. Complaints – Receiving, Reviewing and Investigating

The Code now contains a Complaint Protocol which sets out a process for the Integrity Commissioner to accept, investigate and report on complaints which are filed by members of the public, City staff, or other Members of Council.

This is a new process for Council and is the first time that such an accountability mechanism has been in place for the City.

When a complaint is within the Integrity Commissioner's jurisdiction and sets out sufficient grounds to cause an inquiry, the process set out in the Complaint Protocol requires that the complaint be provided to the Member who is the subject of the complaint, for their response. The Complainant is provided with that response and given an opportunity to provide a reply.

The Integrity Commissioner then commences an investigation which may consist of reviewing documents, conducting research and interviewing the parties and other witnesses.

If the Integrity Commissioner concludes that a Member of Council has contravened the Code the Integrity Commissioner is required to bring the report to Council directly. If the Integrity Commissioner finds that the Code was not contravened, they will advise the parties of their conclusion and will generally not report to Council about their determination except as part of an Annual Report, for education purposes.

Reports filed with Council are placed on the agenda for the respective Council meeting and are made a matter of public record at that time. Ultimately links to those Reports are also placed on the Integrity Commissioner's website page.

The primary purpose of this accountability mechanism is, in my view, remedial rather than punitive. The sanctions for misconduct which the Integrity Commissioner may recommend Council impose are not, for example, in the nature of criminal sanctions; nor can they lead to a Member losing their job.

Rather, an Integrity Commissioner's reports to Council following their determination that the Code has been breached are intended to serve the public interest and to provide education about compliance with the ethical standards set out in the Code.

- **Complaints Received During the Election**

The Code requires that the complaint process be suspended during the campaign period. The reason for this is to prevent undue influence and interference in the electoral process and in particular to prevent the complaint process from being used as a political or campaign tool.

Practically speaking this meant that the complaint process was suspended in the case of the Mayor, between May 1 and November 7, 2018 and in the case of candidates for Councillor, between June 30 and November 7, 2018.

During the campaign period I received 6 expressions of concern from members of the public who raised issues about various Council Members' election activity and 1 complaint about a candidate who was not an incumbent.

With respect to the complaint about this latter individual, I advised the complainant that I did not have jurisdiction over someone who was not a Member of Council.

With respect to the other 6 complaints, I advised that I was not accepting complaints at that time. I did bring the concerns to the attention of the respective Members of Council, however, and where necessary, asked that corrective action be taken.

- **Formal Complaints**

There were 4 Formal Complaints submitted during this reporting period. Of these, 1 was dismissed at intake; 2 were combined into one investigation because they related to the same subject matter and were dismissed; and 1 remains under investigation.

- **Complaint Dismissed at Intake – Alleging Breach of the Conflict of Interest Rule**

The Integrity Commissioner has neither the authority nor obligation to investigate every Formal Complaint which is submitted.

For example, if a complaint is not, on its face, a complaint with respect to non-compliance with the Code or if it relates to matters which are addressed by other legislation, then the Integrity Commissioner has no jurisdiction to conduct an investigation.

The Integrity Commissioner will also not conduct an investigation where they are of the opinion that there are no grounds for an investigation.

Typically, when I am contacted by the media for information about ongoing complaints or investigations, I advise that I will only report publicly about a complaint if, following an investigation, I determine that the Member of Council has breached the Code of Conduct. I am also able to report publicly where I determine that the Code has not been breached, if I believe it is in the public interest to do so.

In this reporting period, I dismissed one complaint at intake.

The complaint became a matter of public discussion when the media reported that the Complainant had provided them with both her Complaint and my letter of response.

In correspondence the Complainant confirmed that her complaint was that:

- the Councillor should not have a business interest in a media outlet that publishes criticism of the City; and

- the Councillor had not been transparent about the nature of his interest in the media outlet.

The complaint did not set out any allegation that the Councillor had taken any action to further his private interests, in the performance of his public duties.

Having assessed the complaint, I determined that there were no grounds for conducting an investigation and advised the complainant of my reasons, in writing.

Since the mandate which Council established for the Integrity Commissioner includes providing public education through the publication of an Annual Report, this report provides a good opportunity for me to provide clarification and about the rule in the Code which relates to conflict of interest, generally.

- **The Conflict of Interest Rule Explained**

It is important to understand that having an interest, whether pecuniary or otherwise, is not a problem. It is expected that elected officials will have interests of various sorts.

What is important is what the official does about their interests in the course of performing their duties of office.

Members will only be in a conflict of interest where they act on an opportunity to further their private interests over their public obligations, during the performance of their duties of office.

The Code regulates both "real conflicts of interest" and "apparent conflicts of interest". A "real" conflict of interest exists when a Member knows of a private interest that is sufficient to influence the exercise of his/her duties.

An "apparent conflict" of interest exists where there is a reasonable perception that the Member's ability to perform an official duty or function must have been influenced by his/her private interest.

The rule requires if they have a conflict of interest with respect to any matter a Member must refrain from influencing the matter and from discussing or voting on any decision with respect to the matter.

The Key Principles which are set out in the Code acknowledge that the public interest is best served when Members:

> **"… perform their duties of office and manage their private interests in a manner that promotes public confidence and trust in the political process."**

Perception is important for maintaining public trust. Members must keep in mind that their private interests may have a potential impact on their ability to vote in a given situation. Public trust can be enhanced if Members take active steps to arrange their private affairs in such a way as to minimize the opportunities which would require them to recuse themselves from exercising their duties of office.

In this particular case, the Councillor was transparent about the fact of his interest. Further, although not required to do so, he subsequently divested himself of his holdings in the media outlet in question and acknowledged the need to be mindful of his spouse's interest in the media site, when performing his duties of office, in the future.

- **Complaints Dismissed After Investigation**

Two complaints were combined into one investigation because they related to the same subject matter. For the reasons explained in my Investigation Report dated December 19, 2018, the conduct of the Councillor who was the subject of the complaints was assessed having regard to the 1994 Code of Conduct.

I provided my Report dismissing the complaints, to the parties on December 19, 2018.

I originally decided that because I had not found the Member of Council to be in violation, in accordance with the provisions of the Code, I would not report publicly to Council except as part of this Annual Report. I reconsidered that decision, however, because the complaints were already a matter of public record having been the subject of media discussion when they originally came forward. I therefore exercised my discretion to file the Report with Council at its meeting to be held on January 31, 2019.

IV. Meetings with Members of Council

The Code requires that Members of Council meet with the Integrity Commissioner at least once annually in order to discuss the obligations which govern their ethical behaviour.

All Members of Council complied with this requirement.

Throughout the reporting period, I frequently met in person with Members either individually or as a group, and communicated with them by phone and email.

On December 3, 2018, I held an orientation session to educate the new Members of Council about the Code. This session was also attended by a number of incumbents.

V. Inquiries from the Public

In this reporting period I received 12 inquiries from members of the public who had concerns about services they were receiving from the City or about decisions of Council. I determined that none of these fell within my jurisdiction and I directed the individuals to other contacts in the City administration, wherever possible.

I also received 3 inquiries about the complaint process in general and 1 inquiry about a Member's disclosure statement on the public gift registry.

VI. Other Outreach Activities

- On June 19, 2018, I had a very positive meeting with the Deputy Minister and Assistant Deputy Minister of Municipal Relations for the Province of Manitoba. The purpose of this meeting was to discuss proposed changes to *The City of Winnipeg Charter* that would enhance the Integrity Commissioner's role and Council's authority to impose more significant sanctions when a Member of Council has breached the Code.

  In November 2018, I was invited by the Minister's office to attend the First Reading of *The Municipal Amendment Act Strengthening Codes of Conduct for Council Members*. This Act does not apply to Members of Council for The City of Winnipeg but the invitation reflected the ongoing dialogue between the Province and the City with respect to the changes I am recommending be made to *The City of Winnipeg Charter*. My work in this regard is also referenced at section IX of this report.

- On December 18, I was consulted by the City of Surrey, B.C. with respect to how to set up an Integrity Commissioner office and accountability framework.

- Throughout the reporting period, I was frequently contacted by the media to provide information on a variety of topics relating to the application and interpretation of the Code.

- Throughout the reporting period, I engaged in dialogue and consultation with Integrity Commissioners from other jurisdictions and with Manitoba's Conflict of Interest Commissioner – Jeffrey Schnoor. I am grateful for the continuing generosity displayed by the members of this collegial network.

VII. Conferences

On April 27, 2018, I attended the annual spring conference sponsored by the Municipal Integrity Commissioners of Ontario.

VIII. Amendments to the Code

Two amendments were made to the Code of Conduct after it was passed on February 22, 2018:

i) On April 26, 2018, the definition of the "campaign period" which is the period of time in which the Integrity Commissioner will not accept, investigate or report on complaints about

Members of Council, was changed from being the period defined in section 31(1) *The City of Winnipeg Charter* to the period defined in s.18 of that Act.

The purpose of this amendment, which was brought on my initiative, was to shorten the time in which the complaints process was suspended during an election year.

ii) On July 19, 2018, the threshold at which a gift or benefit must be disclosed was changed from $0 to $50. This amendment was brought on the initiative of Council.

IX. Seeking Legislative Amendments to Enhance the City's Ethics and Accountability Framework

In February 2018 Council authorized me to work with the City's Legal Services Department to bring forward a report to Council recommending legislative changes which should be requested of the Province to amend *The City of Winnipeg Charter*. The purpose of these changes as stated above, will be to enhance the Integrity Commissioner's role and to give Council the authority to order more significant sanctions when a Member of Council is found to have breached the Code.

I met with the head of the City's Legal Services Department on July 23, 2018 to discuss these proposed amendments and continue to work with her on this task.

X. Financial Statement

On December 9, 2015, when Council first established the Integrity Commissioner's mandate, it established an annual budget of $100,000 which was to cover all of the operating costs pertaining to the Integrity Commissioner's services including legal fees, disbursements and administrative costs.

In the Annual Report that I submitted at the end of my first year in office, I explained that due to the amount of work that was required it had been necessary to seek approval for an over-expenditure which was obtained through the Clerk's office as a one-time administrative increase.

This process was only possible because there were surplus funds available in the City Clerk's 2017 operating budget.

It was apparent to me that the budget which Council established in 2015 was generally not going to be sufficient in light of the mandate established for this office. Accordingly, on August 22, 2018, I submitted a Report to Members of Council seeking an increase for the Integrity Commissioner's annual budget.

Council adopted my report on September 20, 2018 and approved my recommendation that the annual budget for the Office of the Integrity Commissioner for the year 2018 be increased to $150,000.

Council also referred the issue of setting the Integrity Commissioner's budget at $150,000 for future years, to its 2019 budget discussion.

The budget expenditure for this reporting period was as follows:

Apri1 1, 2018 – December 31, 2018

Budget: $108,793.20 inclusive of taxes

Hours associated with professional services: 349.2

XI. 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 includes having oversight over the Voluntary Lobbyist Registry.

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

During this reporting period I answered questions from Members of Council with respect to the Registry and monitored it on a regular basis.

In the first year following its creation there were 29 registrations filed by lobbyists.

Since April 1, 2018, an additional 13 lobbyists have registered their lobbying activities.

The Voluntary Lobbyist Registry is available for the public's review on the City's website:

XII. Fundraising Policy

In accordance with Council's request, I have drafted a Fundraising Policy which has been circulated to all the Members of Council. I will be meeting with the Members to discuss the Policy and expect that it will be brought forward through the usual approval process, next year.

XIII. Going Forward

Finally, in order to strengthen the application and interpretation of the Code of Conduct I recommend that Council authorize me to prepare Policies for its review and ultimate approval on the following topics:

1. the use of social media -both generally and in the context of elections; and
2. election related activity.