ANNUAL REPORT
OF THE INTEGRITY COMMISSIONER

Sherri Walsh

January 1, 2020 – December 31, 2020

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ANNUAL REPORT OF THE INTEGRITY COMMISSIONER

JANUARY 1, 2020 – DECEMBER 31, 2020

I. Commissioner's Message

I am pleased to present the Members of Winnipeg City Council with my Annual Report for the period January 1, 2020 to December 31, 2020.

The publication of an Annual Report is an integral part of the mandate which Council established for the Integrity Commissioner's role when it created the position in 2016.

That mandate is as follows:

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 by-laws, 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 by-law 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.

This is the fourth annual report I have presented to Winnipeg's City Council.

Over the past four years this Council has made significant and positive changes to strengthen its accountability framework. These changes include appointing the City's first Integrity

Commissioner in 2017 and approving a new *Code of Conduct* (the "*Code*") in 2018 pursuant to which the Members of Council committed to adhere to the highest ethical standards of behaviour.

The accountability framework continues to evolve in a robust and pragmatic manner.

A code of conduct works most effectively when it is applied in conjunction with reliance on an Integrity Commissioner who can provide clear guidance to Members and fair oversight of their conduct, thereby promoting a culture of ethical behaviour.

The Integrity Commissioner is an impartial, independent and non-partisan role.

In all my dealings with Members of Council during the period covered by this report, I found the Members to be respectful and fully cooperative with the work of my office and in particular with its complaint resolution role.

Throughout the year 2020 I also continued to have what I regard as an excellent working relationship with the City Clerk and his staff which was of tremendous assistance to seeing the various aspects of my work move forward.

I note that throughout our interactions, the City Clerk and his staff have acknowledged the independent nature of my office and at all times respected boundaries that ensure that I exercise independent judgment on matters that are properly before me. I am grateful for the relationship of trust and respect that has developed between our offices.

The COVID-19 pandemic crisis, of course, added major challenges to the work performed by Members of Council and by the Public Service.

My own office. which is independent from City Hall was also affected by the challenges associated with the pandemic and yet we continued to provide services, including responding to inquiries, providing intake analysis of complaints and conducting investigations, on a timely basis.

This could not have been accomplished without the invaluable work of my colleagues - Ryan Nerbas, an associate lawyer in my office and my assistant Carol Dougan. Thank you.

Respectfully submitted,

Sherri Walsh, Integrity Commissioner

II. Advisory Function

In my view 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 is a principles-based document that must be interpreted to apply to a given set of facts.

By being available to help Members of Council understand how the *Code* applies to a specific set of facts, the Integrity Commissioner assists Members in complying with their ethical obligations, on a proactive basis.

I am often reminded of the words of David Mullen, who was the City of Toronto's first Integrity Commissioner and indeed the first Municipal Integrity Commissioner in Canada:

> ... the best gauge of the success of the office of Integrity Commissioner is the extent to which Members seek advice in advance of acting on matters that potentially engage the Code of Conduct.[1]

In the first three years of my work in this role I was encouraged to see a steady increase in the number of occasions on which Members of Council sought my advice.

In the period covered by this report I received **27 requests** from Members of Council, seeking advice on a variety of topics. This is approximately half the number of requests I received in the previous reporting period. I think it is a reasonable assumption that the decrease in requests for advice was directly related to the changes and challenges Members were required to address resulting from the pandemic.

It may also be that Members are feeling more comfortable with their own understanding of the provisions of the *Code*. Although this is, of course, desirable, Members are reminded that each set of circumstances presents a unique opportunity to apply and interpret the *Code*.

Given the variety of circumstances in which the *Code* may be applied, Members are reminded to seek the guidance of the Integrity Commissioner on a regular basis.

Notwithstanding the challenges presented by the pandemic, my advice continued to be provided within 24 – 48 hours unless the matter required further research. Advice was provided by telephone, in writing, in person or by videoconference.

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

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[1] City of Toronto Integrity Commissioner's Annual Report – 2006, at p.11

Sample #1 Members' Participation on Commissions, Boards or Agencies: Conflict of Interest and Conflict of Duty

Request: A Member of Council asked if I could provide guidance with respect to their obligations and duties when participating on a board to which Council had appointed them. In particular the Member was concerned about whose interests they represent when participating on such a board and whether their participation could give rise to a conflict of interest within the meaning of the *Code* or the *Municipal Council Conflict of Interest Act*, with respect to their duties as a Member of Council.

Advice provided:

Conflict of Interest and Conflict of Duty

Under the *Code* a Member is presumed not to have a private interest in any appointment to serve in their official capacity on any commission, board or agency or matters arising in relation to that commission, board or agency. A similar presumption is set out in the *Municipal Council Conflict of Interest Act* (the "*Act*").

The *Act* only relates to interests which are of pecuniary nature while the *Code* defines "private interest" to include any personal benefit whether or not pecuniary.

In response to the Member's inquiry, I advised that generally, a Member's participation on a board to which they have been appointed by Council, will not give rise to a conflict of interest.

However, I noted that both the *Code* and the *Act* use the word "presume" in recognition of the fact that there may be specific situations in which a Member does have a pecuniary or private interest, which could give rise to a conflict of interest.

The Member then asked for further advice and clarification about the concept of a "conflict of duty".

A Member of Council who has been expressly appointed to a board by Council, owes their primary duty to the board or organization that board serves, when they are making decisions on behalf of and as a member of that board. It is true that the Member owes a fiduciary duty and duty of loyalty to the Council they represent when they are serving on Council but when sitting on a board to which Council has appointed them, they are obliged to exercise their discretion to vote in accordance with what they believe is in the best interest of the entity which the board serves.

It is not necessarily even accurate to characterize any concerns that a Member may have, arising from their participation on such a board as giving rise to a conflict of duty because their duty is to the do the job Council appointed them to do, namely: to participate meaningfully and honestly on the board in question.

This means that they must attend meetings and comply with the rules, procedures and policies of the board. In doing so, they are free to vote in the manner which they believe is the most appropriate. That vote or position may or may not align itself with the position of the appointing Council.

Resolution of Conflict of Duty

I confirmed with the Member that while I was able to provide guidance with respect to the distinction between a "conflict of interest" which is regulated by both the *Code* and the *Act*, and a "conflict of duty", the Integrity Commissioner does not have jurisdiction to give specific advice to Members of Council as to how they should comport themselves on an external board nor, as Integrity Commissioner, would I consider any complaints about such conduct unless the conduct also involved conduct that fell within the parameters of the *Code*.

Nonetheless, I appreciated the opportunity this request provided to review the issues of "conflict of interest" and "conflict of duty" in more depth and as a result I published an Advisory Bulletin which reflects this expanded discussion of what is meant by the two terms. That bulletin can be found at https://www.winnipeg.ca/council/integritycommissioner/pdfs/AdvisoryBulletin-20200715-Participation-on-Boards.pdf

Sample #2 Conflict of Interest

Request: A Member sought my advice regarding whether an employment contract their spouse was considering entering into, could give rise to a conflict of interest on the part of the Member.

The business who wanted to hire the Member's spouse was an entity which would likely be bringing matters before Council, including matters on which the spouse would be involved.

Advice Provided: Under the *Code*, Members must not act in situations in which they have a real or apparent conflict of interest whether during a meeting of Council or Committee of Council or at any other time while performing their duties of office.

A conflict of interest exists when a Member exercises their duties of office and at the same time knows that in the performance of those duties there is the opportunity to further their private interests. Private interest is defined to include any "personal benefit, whether or not pecuniary".

I advised that if an entity which hired the Member's spouse came before Council to seek approval of a matter, that would indeed give rise to a private interest on the part of the Member such that the Member would have to recuse themselves and refrain from influencing the matter including discussing or voting on any decision with respect to the matter.

Ultimately the Member advised that their spouse decided not to enter into a contract with the business and I confirmed that in that case, the Member was not precluded from participating in discussions or voting on any decision with respect to the business.

Sample #3 Use of Influence

Request: In response to the impact of the pandemic on small businesses, all Members of Council received a letter from an organization which represented independent businesses, asking them to show their support for small business recovery by using social media to encourage their followers to shop local. This request prompted a Member to seek my advice as to their ability to carry out such promotion and, in particular, whether the activities being requested of Members violated the *Code*.

Advice Provided: My short answer was that generally, what was being requested would not constitute a breach of the *Code*.

I advised that absent a private interest, it is generally permissible for a Member of Council to participate in a promotion to support local businesses.

As long as the Member is perceived to be fair in how they are promoting local business, for example, by not repeatedly singling out one business to promote to the exclusion of others and as long as they receive nothing and are promised nothing in return by the business, promotion is generally a permissible activity for a Member of Council.

Following this request, I received a number of similar requests throughout 2020 reflecting the fact that Members wanted to help their constituents navigate the challenges associated with the COVID-19 pandemic. In each case, I assessed the specific promotion and advised whether I felt what was being proposed complied with the *Code*. Generally, the proposals I was asked to review were consistent with the Member's obligations associated with their duties of office.

Sample #4 Gifts to Members of the Public Service

Request: A Member sought my advice as to the appropriateness of providing gifts to members of the Public Service to thank them for their work and to raise awareness of the public interest campaigns in which they were participating.

Advice Provided: While this issue did not engage a specific section of the *Code*, it provided a good opportunity to consider the relationship between Members of Council and members of the Public Service.

The *Code* addresses that relationship at Rule 8 – "Conduct Concerning Staff". The rule requires, among other things, that Members not compel staff to engage in partisan political activities or use

their authority for the purpose of intimidating or coercing or influencing staff with the intention of interfering with staff's duties and says that at all times Members must show respect for staff's professional capacities.

The rule reflects the fact that the relationship between a municipal council and its professional public service is critical to the overall success of local government. No matter what type of relationship exists between staff and council, the core must be respect for one another. [2]

Following this request, I reviewed the Public Service's Code of Conduct. It indicates, similar to the obligations imposed on Members of Council, that members of the Public Service should not receive gifts in exchange for the work they perform.

I advised the Member, therefore, that offering even nominal gifts to members of the Public Service would put the individuals in an awkward position and the Member decided that they would simply acknowledge the staff's work by a call or letter instead.

Sample #5 Annual Statement of Assets and Interests under *The Municipal Council Conflict of Interest Act*

Request: The Member had a question about how to fill out the Annual Statement of Assets and Interests which *The Municipal Council Conflict of Interest Act* requires every Member submit to the City Clerk's office. Specifically, the Member asked whether they needed to disclose the existence of their home business.

Advice Provided: I said that based on the information the Member provided to me, their business fell within the definition of 10(d) of the *Act* and they did need to disclose its existence on their Annual Statement.

Sample #6 Conflict of Interest

Request: A Member asked whether the fact that their spouse was a director on the board of an organization which was seeking funding from Council, gave rise to a conflict of interest on the part of the Member.

Advice Provided: I advised that yes, this would give rise to a private interest which is defined under the *Code* as "including any personal benefit whether or not pecuniary" such that they would have to recuse themselves from influencing, discussing or voting on any decision with respect to the entity's request.

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[2] *The Code of Conduct for Members of Council with Commentary* at pages 10 and 11
https://www.winnipeg.ca/council/integritycommissioner/pdfs/CodeofConduct_Commentary.pdf

Sample #7 Gifts

Request: The Member received a gift at Christmas from someone the Member described as a "developer". They asked what they should do with this gift.

Advice Provided: Rule 4 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 that Member.

In 2019 the *Code* was amended to add the following subparagraph to the rule relating to Gifts:

> Where a Member or their dependant or their staff is offered or given a gift that is not acceptable, the Member should refuse it or, at the earliest opportunity, return it to the donor without making any personal use of it.

The purpose of this amendment was to provide further guidance to Members of Council as to what to do with gifts which they could not accept and to educate the public about Members' obligations relating to gifts, in furtherance of promoting a culture of ethics and accountability.

I advised the Member that as awkward and possibly inconvenient as it might be, they should return the gift, confirm that they were not allowed to accept it and in doing so could point to the above referenced section in the *Code,* to explain their actions.

III. Complaints – Receiving, Reviewing and Investigating

In 2020 I received **23 complaints**: **7 formal** and **16 informal**.

The distinction between formal and informal complaints is that formal complaints are those which are submitted using the form which is prescribed under the *Code* and which must be signed and dated by the complainant.

The Integrity Commissioner will only investigate those complaints which have been filed pursuant to the formal process, subject to a preliminary assessment described below.

Informal complaints involve concerns which are raised about the conduct of Members of Council without proceeding through the formal process. Complaints which are initially brought to the Integrity Commissioner's attention on an informal basis can be submitted as formal complaints at any time, using the formal process.

Informal Complaints

The majority of the informal complaints I reviewed in 2020 related to matters over which I had no jurisdiction. Many of them, for example, were complaints about members of the Public Service.

As Integrity Commissioner, my authority to receive complaints relates only to ones which allege that one of the 16 Members of Council has breached the *Code*.

Two of the informal complaints I received were made by one Member of Council raising concerns about the conduct of another Member.

None of the complaints which were brought forward on an informal basis, resulted in the filing of a formal complaint.

Complaint Procedures – Appendix B of the *Code*

All complaints received during 2020 were handled in accordance with the *Complaint Procedures* – Appendix B to the *Code*. The *Procedures* set out processes to resolve complaints, using both informal and formal methods.

The Integrity Commissioner's work when conducting an investigation and preparing a report, whether or not the complaint is substantiated, typically involves significant use of resources.

Accordingly, whenever a formal complaint is received the *Complaint Procedures* require that the Integrity Commissioner conduct an initial review to determine whether they will accept the complaint for investigating.

For example, if the complaint is not, on its face, a complaint with respect to compliance with the *Code* or if the complaint relates to matters addressed by other legislation or other complaint procedures under another regime, the Integrity Commissioner will not accept it for investigation.

The *Complaint Procedures* further state:

> If the Integrity Commissioner is of the opinion that:
>
> a. the conduct described in the complaint is not within the Integrity Commissioner's jurisdiction to investigate;
>
> b. the complaint is frivolous, vexatious or not made in good faith;
>
> c. there are no grounds or insufficient grounds for an investigation, or that it is unlikely that the complaint will succeed; or
>
> d. an investigation would serve no useful purpose;
>
> the Integrity Commissioner shall not conduct an investigation and, where this becomes apparent in the course of an investigation, shall terminate the investigation.

There are also time limits within which complaints must generally be filed.

From time-to-time members of the public will raise questions about the number of complaints that get dismissed at intake.

As Integrity Commissioner I address each complaint on its merits and in accordance with the protocols established by the *Complaint Procedures*.

It is important to understand that the Integrity Commissioner has no control over the nature of complaints which are made. Other than being an indication that people are aware of the existence of the *Code*, therefore, the number of complaints that get dismissed at intake is not a measure of how well the Municipality's accountability framework is functioning.

Formal Complaints

Five of the formal complaints I received were dismissed at intake because, after conducting my preliminary assessment, I determined that the matter either: did not fall within my jurisdiction to accept; disclosed no evidence of a breach; or in one instance, was filed after the expiry of the time limit set out in the *Code* for filing complaints.

One formal complaint was dismissed based on my determination that in the circumstances, including the actions taken by the Member in response to the complaint, conducting an investigation would serve no useful purpose.

One formal complaint resulted in an investigation as discussed later in this report.

In each instance when a complaint is dismissed at intake, the complainant receives a detailed letter from my office outlining the review that I conducted of their complaint and my reasons for determining that I would not be undertaking an investigation. In those letters I also advise that I will provide the Member who was the subject of the complaint with an anonymized (so as to protect the complainant's identity) copy of the complaint, along with a copy of my letter to the complainant outlining why I decided not to conduct an investigation.

The reason for providing this information to the Member of Council is two-fold: to inform them as to the nature of a concern which has been raised about their conduct; and for education purposes to show them how I applied and interpreted the *Code*.

The following summaries are examples of how I applied the *Code* in determining not to investigate two of the formal complaints that I received in 2020.

Example #1

The primary allegation in this matter was that the Member had a conflict of interest when they brought a motion at a Council Committee meeting. The complaint also alleged that the Member

subsequently offered to assist the complainant in a manner which constituted a misuse of their influence of office.

The conduct which gave rise to the conflict of interest allegation occurred at a Committee meeting which took place nine months before the complaint was made.

The conduct which gave rise to the allegation of misuse of influence occurred several weeks before the complaint was made. With respect to this latter allegation, I noted that in their correspondence with the complainant, the Member specifically told the complainant they could not assist the complainant by using their influence of office other than through standard processes.

Based on this correspondence I determined that there was no evidence to support the allegation that the Member had misused their influence and therefore there were no grounds for investigating that allegation.

With respect to the allegation concerning the Member's conduct at the Committee meeting, I determined that the complaint was filed well beyond the time period in the *Code* for making complaints and I would not, therefore, be accepting it for investigation.

Sections 4 and 5 of Part B of the *Complaint Procedures* address the timeline within which a complainant must be made or accepted. Those sections read in part as follows:

> **Time for Filing Complaints**
>
> 4. Complaints must **generally** be made: (a) within 60 days after the date of conduct giving rise to the complaint; or (b) within 60 days after the Complainant became aware of the conduct giving rise to the complaint. (emphasis added)
>
> 5. The Integrity Commissioner may accept a complaint filed after the expiry of the time limit set out in section 4 if the Integrity Commissioner is satisfied that:
>
> a. the delay was incurred in good faith;
>
> b. it is in the public interest to conduct an investigation, or give consideration to whether or not to conduct an investigation; and
>
> c. no substantial prejudice will result to any person because of the delay.

The agenda for the Committee meeting in question was published on the City of Winnipeg's website as part of the City's Decision Making Information System (DMIS) one week in advance of the meeting. DMIS provides a comprehensive public record of all meetings of Council and Committees. The City is obliged by by-law to publish advance notice of all Council and Committee meetings. Meetings are live-streamed and the videos of the meetings are kept on the City's website as part of its DMIS for anyone to view at any time.

Agendas, minutes and a transcript of meetings are retained on DMIS for many years. Information about this particular Committee's meetings, for example, go back 18 years on the DMIS system.

The complainant said the reason they did not file a complaint until approximately nine months after the conduct about which they were complaining had occurred, was because they were not aware of the Council Member's motion and the Committee's decision at the time.

This was the first time that I had received a complaint about a Member's conduct at a public meeting, which was brought more than 60 days after the meeting had taken place.

The *Complaint Procedures* provide that generally complaints must be made within 60 days of the date of the conduct giving rise to the complaint or within 60 days after the complainant became aware of that conduct.

At the time the *Code* was drafted, in recognition of the fact that it was not possible to anticipate every specific situation to which it might apply in the future, many of the provisions were drafted in broad terms so as to allow the Integrity Commissioner the discretion to interpret and apply the *Code,* including the *Complaint Procedures*, to factual situations as they arose. Over time, as is the case with any legislation, the interpretation and application of the *Code* will develop and evolve.

This is why, for example, the word "generally" was included in section 4, cited above, recognizing that the *Code* would be applied to many different factual circumstances which could not be accounted for at the time it was drafted.

I determined that for complaints about a Member's conduct which takes place at a meeting which is held in public, for which advance public notice is given and the proceedings of which are retained on the publicly available DMIS system for many years, as was the case in this matter, it would not be reasonable to interpret section 4 to mean that a complainant should be able to file a complaint 60 days after they said they became aware of the conduct.

To interpret section 4 in such a literal way would allow any person to review the record of proceedings from any meeting and file a complaint within 60 days of watching the video or reading the minutes of a meeting, even if the conduct complained of happened many months or years earlier.

Such an interpretation would negate the purpose for having a time limit on filing complaints about Members' conduct and would ignore the purpose of publishing notice of Council and Committee meetings.

In reaching this determination I considered that in the course of performing their duties of office, Members of Council are required to deal with a complex and significant volume of matters. Save in exceptional circumstances, which I found did not exist in this case, it is not in the public interest

to interpret the *Code* in a way that requires Members to respond to complaints about their conduct for what is potentially an indefinite period of time.

I then went on to consider section 5 of the *Complaint Procedures*, set out above, which gives the Integrity Commissioner discretion to consider complaints which are brought after the expiry of the time limit if they are satisfied that: (a) the delay was incurred in good faith; (b) it is in the public interest to conduct an investigation or give consideration to whether or not to conduct an investigation; and (c) no substantial prejudice will result to any person as a result of the delay.

According to this provision, all three conditions must be met.

On the facts of this matter, I saw no basis for exercising my discretion to accept the complaint notwithstanding the fact that it fell outside the time limit for filing.

For the same reasons that supported my interpretation of the time limit prescribed by section 4, I determined that in all of the circumstances, it was not in the public interest to commence an investigation of this complaint about the Member's conduct.

Example #2

The complaint in this case alleged that a Member breached their obligations regarding respectful conduct.

The matter involved a social media post in which the Member had expressed concern about what they believed were racist comments made by a member of the public. The Member's post went on to say they had reached out to the individual's employer to see what policies the employer had regarding education on related issues.

The *Complaint Procedures* allow the Integrity Commissioner, when considering the allegations which are set out in a complaint, to look at all of the rules of the *Code* and not simply those which a complainant identifies as having been contravened.

In my view, the allegations in this complaint more properly engaged the rule of the *Code* relating to use of influence rather than the rule regarding respectful conduct, which states:

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

In conduct my preliminary assessment I reviewed the screenshots of the social media postings which were attached to the formal complaint, relevant speeches which the Member had made at Council meetings, email correspondence exchanged between the Member and a professional association and public statements made by the Member in the formal media and on social media.

I also had a number of communications with both the complainant and the Member by telephone and email.

In the course of these discussions, I advised the Member that in my view a Member of Council's duties of office do not extend to contacting a member of the public's employer or professional association, concerning that person's social media postings.

As the result of these discussions, the Member said that they understood what I was saying and noted that they had essentially already acknowledged this in a statement they had made in the formal media. The Member also discussed the possibility of resolving the complaint informally by, for example, posting an acknowledgement of their understanding about their use of influence on their social media account.

Ultimately the Member did publish an apology on the same social media platform which was connected to the complaint. As a result, I advised the complainant that in my view this public acknowledgement, together with the acknowledgement the Member had previously published in the formal media and most importantly, my discussions with the Member about their obligations under the *Code,* demonstrated that the Member understood those obligations.

I determined, therefore, that conducting an investigation would serve no useful purpose.

As I have stated on many occasions, the main purpose of the complaint process in the *Code* is remedial rather than punitive. It is designed to ensure that Members understand their obligations under the *Code* so as to promote a culture where they adhere to the highest ethical standards in performing their duties of office.

The process had achieved that purpose in this case.

IV. Investigations

One formal complaint resulted in an investigation which was undertaken in compliance with the process set out in the *Complaint Procedures*.

The complaint was made by a Member who alleged that another Member had made derogatory and discriminating comments about them during a discussion at a Council meeting – comments which were offensive and intended to discredit them in light of the complainant's personal circumstances, of which the respondent Member was aware.

After conducting a preliminary assessment of the complaint, I determined that the matter was within my jurisdiction to investigate because it engaged rule 9 of the *Code* relating to "respectful conduct" and the complaint was neither frivolous, vexatious nor made in bad faith.

Rule 9 says:

a. All Members have a duty to treat members of the public, one another, and staff with respect and without abuse, harassment, or intimidation.

Harassment includes:

i. any behaviour, whether a single incident or a course of conduct, that a reasonable person should have known would be unwelcome, and that is inappropriate, demeaning, humiliating, embarrassing, or otherwise offensive, including but not limited to:
   a. verbal or written insults, abuse or threats;
   b. racial or ethnic slurs, including racially derogatory nicknames;
   c. leering or other offensive gestures;
   d. bullying; or
   e. patronizing or condescending behaviour; and

ii. objectionable and unwelcome sexual solicitations or advances.

b. While Members may passionately debate issues and promote ideas, they must maintain proper decorum during meetings of: Council, Committees of Council, and boards, agencies or commissions on which they serve as part of their duties of office.

The *Code* provides that if the Integrity Commissioner concludes that a Member of Council has contravened the *Code* they must report their findings publicly to Council. If the Integrity Commissioner finds that the *Code* has not been contravened, they are required to advise the parties of their conclusion and are not report to Council about their determination except as part of an Annual Report.

In this case, having found that the Member did not contravene the *Code*, I reported my conclusion to each of the parties and did not report my findings to Council.

In accordance with my obligation to maintain the confidentiality of the investigation, my commentary on this matter here, is circumscribed.

As part of my investigation, I met with each of the parties, and with the Speaker and reviewed the video recordings of the relevant public proceedings.

The conduct of Members of Council which takes place during meetings of Council and committees of Council is regulated by both the *Code* and Winnipeg's *Procedural By-law* (50/2007).

Pursuant to these By-laws, both the Integrity Commissioner and the Speaker or Chair of a respective committee, have authority to regulate a Member's conduct during such meetings.

As Integrity Commissioner I will generally not accept a complaint about a Member's conduct during a meeting if the matter has already been dealt with by the Speaker or Chair of the relevant committee.

In this case, I noted that the Speaker did not address or comment on the speech which was made by the respondent Member at the meeting. My purpose in meeting with the Speaker as part of this investigation was not to inquire about her views as to the propriety of the Member's remarks.

Having accepted jurisdiction of this matter, I was not seeking the Speaker's opinion about the Member's conduct. A determination as to whether the Member's remarks breached the *Code* is a determination which must be made by me as Integrity Commissioner applying and interpreting the *Code*.

I did, however, want to confirm with the Speaker my understanding that if she does not address a question of order on a matter that arises during a meeting, depending on the nature of the matter, Members are still entitled to file a complaint with the Integrity Commissioner.

The Speaker confirmed this understanding of our respective roles and advised that while her role is certainly to maintain decorum in a meeting, sometimes the comments a Member makes are nuanced, require reflection and cannot be addressed immediately on the floor.

I focused my assessment of the complaint on whether the remarks the Respondent made at the Council Meeting constituted "abuse, harassment or intimidation" within the meaning of Rule 9 of the *Code*.

In applying and interpreting that rule, I am mindful that it is not my role to interfere with political debate; nor to decide whether views expressed by Members of Council are meritorious or properly held. The *Code* allows Members of Council to hold a position on an issue and to passionately debate and promote issues so long as they do so in a manner that does not rise to the level of abuse, harassment or intimidation.

Ultimately, I found that the respondent Member's remarks, while they were unkind and insensitive did not rise to the level of "abuse, harassment or intimidation" within the meaning of the *Code*.

Prior to my concluding the investigation, the respondent Member provided both a written and a public apology to the complainant, acknowledging that they understood why their remarks were felt to be demeaning.

V. Other Contacts from the Public

I received **7 inquiries** from the public which were not in the nature of complaints. These inquiries ranged from questions about the role of the Integrity Commissioner to questions seeking legal advice about how to deal with matters relating to City Council.

I am always available to explain the role of the Integrity Commissioner. I do not, however, provide legal advice with respect to how someone should deal with City Council and I advised the member of the public, accordingly.

VI. Annual Meetings with Members of Council

The *Code* requires that every Member of Council meet at least once annually with the Integrity Commissioner.

In November and December of 2020, I met individually by video conference with every Member of Council.

During these meetings we discussed a variety of matters relating to the Member's obligations under the *Code*.

We also discussed the two policies which Council had previously instructed me to draft for its consideration: a social media policy and a policy regarding election related activity.

VII. Other Meetings and Outreach Activities

- In 2020 I had a number of meetings with the Senior Manager of Labour Relations for the City's Public Service and the City's Acting Chief Administrative Officer, Michael Ruta, to discuss the Respectful Workplace Administrative Standard that was being developed for the Public Service.

  These meetings followed the presentation I gave to the Public Service Directors at the end of 2019 in furtherance of promoting a respectful working relationship between Council and the Public Service.

  My work in this regard has involved not only providing information to the Public Service about how Members of Council must treat Staff, pursuant to the *Code,* but also to remind the Public Service to be mindful of their own obligations to treat Members of Council with respect.

  As the commentary to the annotated *Code of Conduct* states:

  > The relationship between any municipal council and its professional public service is critical to the overall success of local government.[3]

  Following these meetings Mr. Ruta sent Council a communication about the updated Respectful Workplace Administrative Standard which applies to Staff, in which he acknowledged that both City Council and the Public Service must work cohesively together to accomplish the goals of Council.

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[3] Fenn, M. & Siegel, D. (2017), The Evolving Role of City Managers and Chief Administrative Officers, IMFG Papers on Municipal Finance and Governance, No. 31, Toronto: University of Toronto, IMFG Institute on Municipal Finance and Governance.

The updated Standard includes procedures for members of the Public Service to resolve respectful workplace concerns with a Member of Council and references the ability to refer a matter to the Integrity Commissioner's informal and formal complaint procedures.

The Standard also includes a reference to circumstances where a Member of Council who has a respectful workplace concern about their interactions with a member of the Public Service, can make a complaint.

I was pleased to assist in promoting these reciprocal obligations and dispute resolution mechanisms which are intended to promote the mutual efforts of the Public Service and Council to build and maintain a positive, productive and healthy working relationship for the benefit of Winnipeg's citizens.

- I met with the head of the City's Legal Services to discuss potential amendments to *The City of Winnipeg Charter Act* which would enhance the role of the Integrity Commissioner and the sanctions for breaching the *Code of Conduct*.

- I also had an opportunity to discuss these matters with the Provincial Minister for Municipal Relations.

- I participated in the Canadian Bar Association's Committee on Ethics and Lobbying. This is a national committee which meets on a monthly basis to discuss issues relating to lobbying and ethics for all levels of government, across the country.

- My office was contacted on various occasions by other municipalities seeking input about developing similar accountability frameworks.

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

VIII. Policies Regarding Use of Social Media and Election Related Activity

At the end of 2019, I was tasked with preparing a report and recommendations for Council's consideration on the most appropriate way to provide guidance to Members of Council about both election related activity and their use of social media.

Accordingly, I spent significant time this past year carrying out research in these areas and consulting with my counterparts across the country especially on the topic of the use of social media which is an evolving area for all members of society and which has particular significance for elected officials. I also consulted extensively with the Members of Council on this topic. This

consultation is continuing in 2021 with the expectation that I will be ready to bring forward a report with my recommendations to Council, in the first half of the year.

IX. Financial Statement

For the period January 1 – December 31, 2020, Council established a budget for the Integrity Commissioner's office of $125,000.

The budget expenditure for this reporting period was as follows:

Budget: $95,205.60 inclusive of taxes

Hours associated with professional services: 488.6

X. Voluntary Lobbyist Registry

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

The mandate established for the Integrity Commissioner's role includes having oversight over the Voluntary Lobbyist Registry. I am available to provide advice and interpretation to Members of Council and members of the public with respect to how the Registry is intended to be applied.

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

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

> 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.

In his recently published Report of the Collingwood Judicial Inquiry, Associate Chief Justice Frank N. Marrocco commented on the role of lobbying:

> Lobbying must happen in the light of day. There is no room for secrecy and no place for claims that lobbyists, as private business people, should not disclose details of the dealings they have or the compensation they receive for their work advocating Council Members on behalf of specific interests. Ultimately, dealing with a municipality involves dealing with the public, and that requires openness, transparency and honesty.[4]

[4] Report of the Collingwood Judicial Inquiry, 2020, Volume 1, page 56

In keeping with this commentary, while registration is only voluntary, members of the public are encouraged to register in order to enhance the transparency and integrity of business which is conducted by the City.

Lobbyists are also reminded that they should register their activities even if such activities take place via remote platforms.

In the first year following its creation there were **29 registrations** filed by lobbyists. From April 1, 2018 to December 31, 2018, an additional **13 lobbyists** registered their activities.

In 2019, an additional **10 lobbyists** registered their lobbying activities.

For the year 2020 an additional **7 lobbyists** registered their lobbying activities.

XI. Conclusion

Members of Council are responsible for making decisions at the local government level and the decisions they make affect Winnipeg's inhabitants in the most fundamental aspects of their daily lives. The ethical issues that arise in the performance of their duties can be challenging.

It has been my privilege to serve the public interest by providing advice to Members about their ethical obligations under the *Code* and by resolving complaints, whether from the Members themselves, Staff or the public.

All of which is respectfully submitted.

Sherri Walsh
March 9, 2021