REPORT OF THE INTEGRITY COMMISSIONER: PROPOSING CHANGES TO THE *CODE OF CONDUCT FOR MEMBERS OF COUNCIL*

REPORT NO. 6 – JANUARY 12, 2022

To: Members of Council for The City of Winnipeg

I. INTRODUCTION

On February 22, 2018, Council for the City of Winnipeg adopted a new *Code of Conduct for Members of Council* (the "*Code*").

The *Code* promotes a culture of ethical behaviour for Members of Council ("Members") by prescribing a set of rules which Members must follow and establishing a complaint process for enforcing those rules.

The *Code* is set within the framework of a Preamble and Key Principles, both of which provide the context for its interpretation and application.

Since it is not possible to anticipate every factual situation which may engage the *Code*, nor all the various ways in which the *Code* will be interpreted and applied, the *Code* must necessarily be a living document – one which is capable of being amended from time to time in order to ensure it remains relevant and effective.

Since 2018 when the *Code* was first passed, Council has made a number of changes to the document, on the recommendation of the Integrity Commissioner.

As I stated in my Report to Council dated January 16, 2018, in which I first recommended adoption of the *Code*:

> *The process of code development is at least as important, if not more important, than the product in terms of realizing the potential benefits and avoiding unforeseen consequences of adopting a code.*[1]

Having worked with the *Code* for over three years, I am of the view that certain further changes should be made, in order to make it a more useful and effective tool.

The changes that are proposed in this report are based on my interaction with members of the public, including consideration of complaints which I have received and on discussions I have had during the past year with every Member of Council, about their experience in using and applying the *Code*.

II. PROPOSED AMENDMENTS TO THE *CODE*

Overview

While all of the proposed amendments to the *Code* are clearly set out on Attachment #1 to this document, I only highlight in this report what I believe are the most significant of those changes.

The majority of the proposed changes are intended to make the *Code* easier to use and understand. None of the proposed amendments makes any changes to the Rules which relate to Members' ethical obligations.

With respect to the changes which pertain to the complaint process, most of those are intended to provide more information to Members of Council and the public about how the Integrity Commissioner performs their role. Some of the proposed changes are also intended to provide guidance to Council when it is required to perform an adjudicative function, following the receipt of an investigation report from the Integrity Commissioner which determines that a Member has breached the *Code*.

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[1] *A Code of Ethics or Code of Conduct for Political Parties as a Potential Tool to Strengthen Electoral Democracy in Canada – A Discussion Paper on the Advantages and Disadvantages of a Code Prepared for Elections Canada* by Dr. Paul G. Thomas, December 2014, p.17

How to read Attachment No. 1

Any wording which is new or changed is indicated in red.

Existing wording which is to be removed has a black line struck through it.

***Code* – Section C - Definitions**

Section C of the *Code* lists the definitions of certain words and phrases which are used in the *Code* and its Appendices.

It is important to understand that the meaning ascribed to words and phrases used in the *Code* is specific to their use in that document.

In the changes I am proposing, I added definitions for certain words which are used throughout the *Code* and which have not previously been defined and I recommended a change to the definition of an existing phrase. The intention behind all of the changes is to ensure that the *Code* is applied in a clear and consistent manner.

As an example, I am recommending that the definition of "campaign period" which is used in Sections 4 and 28 of the *Complaint Procedures* be changed and then moved into the Definitions Section to be included with all the other specific definitions.

"Campaign period" is currently defined in Section 4 of the *Complaint Procedures* as follows:

> *The "campaign period":*
>
> *(i) in the case of a candidate for mayor, begins on May 1 in the year of a general election and ends on the start of the new term of Council as defined in section 18 of The City of Winnipeg Charter; and*
>
> *(ii) in the case of other candidates, begins on June 30 in the year of a general election and ends on the start of the new term of Council as defined in section 18 of The City of Winnipeg Charter.*

The change to the definition I am proposing reads as follows:

"**Campaign Period**" means:

(a) in a general election begins on May 1 in the year of the election and ends on the start of the new term of Council as defined in Section 18(1) of The City of Winnipeg Charter; and

(b) in an election to fill a vacancy, begins on the day when the senior election officer receives the direction from the City Clerk to hold the election and ends on the start of the term as defined in section 18(2) of *The City of Winnipeg Charter*.

The new definition of "campaign period" I am recommending does not distinguish between the nature of the office the Member is seeking – whether that of Mayor or Councillor.

The primary use of the phrase "campaign period" is found in Section 28 of the *Complaint Procedures*. That section says that during the campaign period the Integrity Commissioner will: (a) not receive any complaints alleging that a Member of Council has breached the *Code*; (b) suspend any ongoing investigation of a previously filed complaint; and (c) not submit any report to Council of findings with respect to such complaints.

The rationale for this section is to avoid the Integrity Commissioner and the complaints process from being drawn into the political fray of an election.

By defining "campaign period" to include one single timeframe my intention is to ensure that the complaints process will not be used as part of any Member's election strategy – regardless of whether they are running for Mayor or Councillor.

***Code* – Section D - Key Principles**

Section D of the *Code* sets out the Key Principles which, like the Preamble, provide a helpful framework within which to review the actions of Members of Council. The Key Principles form part of the context within which the Rules of the *Code* are applied and interpreted.

From time to time, I receive complaints which allege that a Member has violated the Key Principles.

The *Code* says that the Integrity Commissioner's jurisdiction to receive and investigate complaints relates to allegations that the **Rules** of the *Code* have been breached (emphasis added).

The Rules of the *Code* are the eleven Rules which are found at Section E of the *Code.* Those Rules regulate specific conduct such as, for example, Members' acceptance of gifts, their use of influence, and their use of City staff, resources and property.

By contrast, the Key Principles are framed in very broad terms and do not prescribe specific kinds of behaviour.

Elected officials need to know what is expected of them. In order for Members of Council to be able to comply with the *Code* and for the Integrity Commissioner to be able to enforce such compliance, the boundaries of acceptable behaviour must be clearly defined. This is why only the Rules of the *Code* are capable of being the subject of a complaint.

Like the Preamble, the Key Principles do not identify a stand-alone set of obligations, the alleged violation of which can be the subject of an investigation by the Integrity Commissioner.

To make this clear, the change that I am proposing is to add the following paragraphs to the Key Principles section:

> *The Key Principles form a helpful framework within which to review the actions of Members of Council.*
>
> *Like the Preamble, however, they do not identify a stand-alone set of obligations the alleged violation of which can be the subject of a complaint.*

This change is intended to assist potential complainants in understanding the types of behaviour which can be the subject of a complaint made to the Integrity Commissioner.

I note that when I receive a Formal Complaint, regardless of how the complainant has described which Rules of the *Code* they believe have been breached and even where they allege that the Key Principles have been breached, I review the allegations in the complaint document as a whole to

determine whether the matters which are the subject of the complaint potentially engage any of the Rules of the *Code* such that they could be the subject of an investigation.

Changes to the *Complaint Procedures* Appendix B, Part B: Formal Complaint Procedure

Imposition of Sanctions by Council

Under the process in the *Code*, the Integrity Commissioner is charged with the responsibility, following an investigation, to make a determination as to whether the *Code* has been breached.

If the Integrity Commissioner finds the complaint is sustained, they are required to report publicly to Council with their findings and any recommended sanctions.[2]

The *Code* says that in that report the Integrity Commissioner may recommend to Council that it impose any of the following sanctions:

i. *the Member be reprimanded;*
ii. *the Member be required to make a public apology;*
iii. *the Member be requested to return a gift or benefit or, where the gift or benefit cannot be returned, reimburse the donor for the value of the gift or benefit;*
iv. *the Member be removed from a committee; and/or*
v. *the Mayor be requested to remove the Member from their position as Chair of a committee.*[3]

The *Code* goes on to say that when "Council receives a report from the Integrity Commissioner following an investigation it shall consider and act on that report forthwith"[4].

When the *Code* was drafted it was understood that the sanctions which Council could impose were the ones which the *Code* said the Integrity Commissioner could recommend.

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[2] *Complaint Procedures,* Appendix B, Part B, paragraph 18
[3] *Code,* Section F(4)
[4] *Complaint Procedures,* Appendix B, Part B, paragraph 24

For the sake of clarity, I am proposing that the *Complaint Procedures* reiterate the sanctions which Council may consider imposing, by adding the following paragraph:

> ***Imposition of Sanctions by Council***
>
> *When Council receives a report from the Integrity Commissioner which identifies that there has been a violation of the Code, Council may impose any or all of the following sanctions:*
>
> *i. That the Member be reprimanded;*
>
> *ii. That the Member be required to make a public apology;*
>
> *iii. That the Member be requested to return a gift or benefit or, where the gift or benefit cannot be returned, reimburse the donor for the value of the gift or benefit;*
>
> *iv. That the Member be removed from a committee; and*
>
> *v. That the Mayor be requested to remove the Member from their position as chair of a committee.*

To assist Members in performing the adjudicative role which the *Code* has assigned to them, I am proposing the addition of the following section:

> *When deciding whether to impose any of the sanctions for misconduct listed in paragraph __ above, Council must consider the following factors:*
>
> *a. The nature of the Code of Conduct contravention;*
>
> *b. The length or persistence of the Code of Conduct contravention;*
>
> *c. Whether the Member knowingly contravened the Code of Conduct;*
>
> *d. Whether the Member took steps to prevent, mitigate or remedy the Code of Conduct contravention;*
>
> *e. Whether the contravention was committed through an error of judgment made in good faith; and*
>
> *f. Whether the Member previously contravened the Code of Conduct.*

As political actors, Council Members are expected to express their views and even their preconceptions on matters that involve public interest.

When, however, a matter comes before them in their capacity as decision makers, it is important that they remind themselves of their responsibility to adjudicate fairly and with an open mind on

the matter before them, taking into account the Integrity Commissioner's findings, conclusions and recommendations.[5]

Having a list of factors they must take into consideration when imposing sanctions will assist Members in making their determination in a fair, principled and consistent manner.

This proposed list of factors which Council must take into consideration is the same as the list of factors which are required to be considered by members of council in all other municipalities in the province.[6]

III. Recommendations

That Council adopt the proposed changes to the *Code* which are shown on Attachment #1 to this report.

Sherri Walsh
January 12, 2022

[5] *Chiarelli v Ottawa (City of)* 2021 ONSC 8256 at para.151
[6] *The Municipal Act*, CCSM c.M225, Council Members' Codes of Conduct Regulation – Regulation 98/2020