ANNUAL REPORT
OF THE INTEGRITY COMMISSIONER

Sherri Walsh

January 1, 2022 – December 31, 2022

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ANNUAL REPORT OF THE INTEGRITY COMMISSIONER

JANUARY 1, 2022 – DECEMBER 31, 2022

I. Commissioner's Message

I am pleased to present my annual report for the period January 1 to December 31, 2022.

An effective democracy requires that the public have confidence in the actions of its elected officials. To that end, elected officials are reminded that:

> *Government ethics is not about being "good" or "a person of integrity" ... in fact, conduct that is praiseworthy outside of government, such as helping a family member get a job or returning a favor one has been given, is considered wrong in a government context.*
>
> *Government ethics is about acting responsibly and professionally, as a government official or employee, under certain circumstances and following certain rules and procedures. It is about preserving institutional rather than personal integrity. Government ethics decision- making should be just another professional routine.*[1]

In recognition of these principles, starting in 2017, the Members of Winnipeg's City Council ("Council") established an ethics regime which includes:

- a code of conduct which prescribes a set of rules that translate high level principles into practical rules, and a mechanism for enforcing those rules; and
- an Integrity Commissioner who performs the dual role of providing advice to Members of Council ("Members") about how to comply with that code and objective scrutiny of whether they have met the standards it contains.

The preamble to the City's *Code of Conduct for Members of Council* (the "*Code*")[2] says that:

> *A written code of conduct demonstrates that Members of Council share a common understanding of the ethical obligations which are essential to the fair and effective operation of government.*

A shared understanding of ethical values, however, does not simply happen by accident. By setting out specific rules of conduct, the *Code* gives Members a road map to follow when performing their duties of office – allowing them to ensure that they put the public's interest before their own.

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[1] Robert Weschler: *Local Government Ethics Programs in a Nutshell*, City Ethics Inc., 2013
[2] *Code of Conduct for Members of Council,* By-law No. 19-2018, Schedule A

The Integrity Commissioner's role is intended to encourage and sustain a culture of integrity and accountability for Members by providing them with independent, principled and consistent advice about how to comply with the *Code*, assessing complaints made about their behaviour, conducting investigations of allegations that they have breached their obligations under the *Code* and, where necessary, recommending appropriate sanctions Council should consider imposing on them.

As Integrity Commissioner, I have always taken a proactive approach to promoting a culture of ethical conduct.

In performing my work I strive to: avoid politicization of my Office; ensure effective communication of my mandate and decisions while maintaining my obligation of confidentiality; and respect the distinction between ethical issues which engage the *Code* and issues which are political in nature and should be left to the ballot box to be addressed.

In assessing the efficacy of my work, I look at factors such as how well Members understand their ethical obligations and how willing they are to engage with my Office.

In the five years that I have been in this role, I am pleased to see that in general Members have developed a greater understanding of how to conduct themselves in a way that complies with the *Code*.

In all my dealings with the Members during the period covered by this report, I found them to be respectful and fully cooperative with my Office.

I continue to have an excellent working relationship with the Office of the City Clerk and his staff and I am grateful for the relationship of trust and respect that has developed between our Offices.

I also want to acknowledge the invaluable work of my colleagues – Ryan Nerbas, an associate lawyer in my office and Carol Dougan, my administrative assistant.

Respectfully submitted,

Sherri Walsh, Integrity Commissioner

II. Advice Provided to Members of Council

The *Code* is a principles-based document which is applied and interpreted on a case specific basis to a given set of facts.

The advisory and educational mandate for the Integrity Commissioner is therefore the most effective aspect of the role when it comes to shaping the conduct of elected officials.

By being available to help Members understand how the *Code* applies to a specific set of circumstances, I am able to help them comply with their ethical obligations on a proactive basis. Given the variety of circumstances in which the *Code* may be applied, I constantly remind Members to seek my guidance on a regular basis.

In the period covered by this report, I received **48 requests** from Members seeking advice on a variety of topics.

I completed responses to each request within 24-48 hours unless the matter required further research. Advice was provided by telephone, in writing, in person or by video conference.

It is not uncommon for me to receive a request for the same or similar information from more than one Member on a given topic. When this happens, I often provide advice to all Members, typically by sending the same email to all of them, outlining the manner in which they are expected to comply with a given obligation under the *Code*.

What follows are some anonymized examples of inquiries I received from Members in the last year and the advice I provided in response.

Gifts and Benefits

Rule 4 of the *Code* requires that Members not solicit or 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.

This prohibition also applies to any gift or benefit provided to a Member's staff if it connected directly or indirectly with the performance of the Member's duties.

The reason for this general prohibition (there are some exceptions to reflect certain practicalities) is to prevent politicians from being inappropriately influenced in making decisions or giving the appearance that that might be the case.

As has been pointed out:

> *Officials are merely part of the government, individuals sitting in government positions at the moment. They are doing, or supposed to be doing, nothing but their government work*

> *and to be paid nothing but what the budget says they are paid. In other words officials do not personally act and should not personally benefit from what they are required to do as part of their public role. They should not be given special treatment, that is, no tickets, invitations to play golf or go on a vacation, or the like, because they should do nothing special for anyone. They should not be involved in reciprocity or feel gratitude to anyone in their role as an official.*[3]

Example #1

Request: All Members and their Executive Assistants were sent $100 gift cards by a local restaurant when it opened in a new location.

This prompted a number of Members to ask me whether they and/or their Assistants could accept the cards.

Since it came to my attention that every Member had received the same gift, I responded by sending the same email to all Members which set out the following advice.

Advice Provided:

First, in keeping with the rationale described above, I confirmed that elected officials are paid for their work and should not receive "perks" or gifts that are offered in connection with their work as a Council Member.

I told the Members that the gift cards were therefore not acceptable under the *Code* and should be returned to the donor at the earliest possible opportunity. I was clear that both the Member and their Assistant were required to return the gift.

I reminded Members about the Rule in the *Code* which deals with gifts and benefits and sent them a link to the Annotated *Code* for their ease of reference.[4]

I went on to remind them that the *Code* requires them to disclose any gift or benefit which is offered to them in connection with the performance of their duties of office, unless the value of the gift is less than $50. In this case, the gifts exceeded that threshold and needed to be disclosed.

Such disclosure statements are a matter of public record and must be made on the online Gift Registry on the City's website.[5]

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[3] Robert Weschler, Cityethics.org
[4] https://legacy.winnipeg.ca/council/integritycommissioner/pdfs/CodeofConduct.pdf
[5] https://legacy.winnipeg.ca/council/integritycommissioner/disclosures.stm

I note that in response to my email, several Members advised me that they had recognized their ethical obligation and had already returned the cards.

Example #2

Request: A Member was offered the opportunity by a business in their Ward to be a guest at a Jets game in the business' box at the Canada Life Centre. The Member told me that they were not participating in the event in any official way – for example, by bringing greetings at the beginning of the game. They were simply being invited by a local business to watch the game, as its guest. The Member asked whether they could accept the invitation.

Advice Provided:

The *Code* allows for certain exceptions to the general prohibition against accepting gifts.

One of those exceptions relates to the offer of admission to charitable or community organized events or widely attended events such as conventions or conferences or training or education programs, provided that:

- admission is offered by the entity responsible for organizing and presenting the event;
- admission is unsolicited by the Member; and
- the Member is attending or participating in their official capacity.

In this case, the Member was not being offered tickets by the organizer of the event i.e. the Winnipeg Jets; nor were they attending in their official capacity. The exception described above, therefore, did not apply and I advised the Member they could not accept the invitation to sit in their constituent's box.

Example #3

Request: A Member asked whether they could accept a Folklorama passport offered by an official of Folklorama. They were also concerned about whether the fact that it was an election year affected potential acceptance of the gift.

Advice Provided:

I advised the Member that they could accept the Folklorama passport, so long as it was being offered to them by Folklorama and not by a third party and so long as they were attending in their official capacity. Typically, in terms of this latter requirement, I said they should be able to show they were doing something such as bringing greetings as a Council Member. If this were not the case, I said, they should buy the passport themselves.

With respect to the effect of the upcoming election, I indicated that they were still entitled to perform their duties of office but if they were attending Folklorama in their official capacity, they should be careful not to use the occasion as an opportunity to conduct election-related activity.

Conflicts of Interest

The *Code* says that 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 interests" are defined in the *Code* to include any personal benefit whether or not pecuniary, i.e. financial.

Example #1

Request: A Member asked for practical advice about how to ensure their constituents were well served in situations where they had to recuse themselves from dealing with a matter because of a conflict of interest.

This prompted me to send the same email to all Members which contained the following general advice.

Advice Provided:

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

When a Member has a conflict they must refrain from influencing the matter including discussing or voting on any decision regarding the matter.

I acknowledged that this may leave Members with concerns about how their constituents will be represented on a matter.

I advised that in such situations they could arrange for another Member to be the designated Councillor to whom constituents could be directed if they had a comment or inquiry about the matter and that that information could be posted on the Member's website or social media.

I said they could also post information about how members of the public can make their concerns known to Council generally, for example, by appearing in delegation at a public meeting.

Finally, I told them they should let the Clerk's Office know about the specific matter so as to avoid any inadvertent breaches of the Conflict of Interest Rule in the future.

I was happy to receive this inquiry and to have an opportunity to provide advice of a practical nature which would assist Members in complying with their obligations under the *Code*.

Example #2

Request: Several Members asked for some general clarification on how the Conflict of Interest Rule applies in a situation where they are asked to vote on a development that exists in close proximity to where they live or on a matter such as property taxes, which affects them as a property owner in the City.

Advice Provided:

Whenever I am asked for information of a general nature I make it clear that each case turns on its particular facts and that I cannot give binding advice in the sense of advice which will be the answer to any complaint I might receive about a Member's future conduct.

In response to these general inquiries, I pointed out that the definition of "private interest" in the *Code* excludes an interest "in matters of general application" or "matters that affect a Member as one of a broad class of the public".

Accordingly, issues about property taxes which apply to all property owners or even issues about a development on the street where a Member lives, may well fall within one of these exceptions.

I referred the Members to the Advisory Bulletin that I published in 2021 entitled: "Exceptions to the Conflict of Interest Rule".[6]

In that Bulletin, I confirmed that when considering whether a Member has an interest that affects them as "one of a broad class of the public" or is "of general application", such that they do not have to refrain from engaging in a matter, it is helpful to refer to authorities which have interpreted Ontario's conflict of interest legislation which contains similar exceptions to those contained in the *Code*.

These authorities have interpreted the exceptions to apply where the electors in an area would generally be affected in the **same way** as the Member.[7]

They go on to say, however, that if the Member's interest is **different in kind** from that of others in the neighbourhood it is not going to be captured by the exception and the Member must recuse themselves from influencing the respective matter.

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[6] https://legacy.winnipeg.ca/council/integritycommissioner/pdfs/CodeofConduct.pdf

[7] John Mascarin, Legal Opinion re *Code of Conduct and Municipal Conflict of Interest Act Integrity Commissioner's Investigation Report*, December 20, 2019 ("Mascarin Opinion"), citing *Greene v Borins* (1985) 28 MPLR 251 (Ont.Div.Ct.)

I emphasized to Members that because each situation turns on its facts, it would be important for me to know the specific circumstances of a matter in order to decide whether the Member was truly affected in the same way as others such that they did not need to recuse themselves from addressing the matter.

Emails Containing Offensive Content

Example #1

Several Council Members asked me whether they could block emails from individuals who consistently sent them messages which contained offensive content, including statements that were of a discriminatory and harassing nature.

I reviewed the emails in question and agreed that the messages were offensive in the sense of containing discriminatory and harassing content and went far beyond, for example, simply expressing a difference of opinion.

I told the Members that they did not have to respond to the emails and could organize their settings to block the messages or have the messages sent to their spam folders.

Alternatively, I said they could simply ignore and/or delete the messages.

I also reminded the Members that their decision to delete emails or flag them as "spam" or "junk" will generally be considered by me to be a political rather than an ethical issue and therefore not one which I will regulate through the complaints process under the *Code*.

That is, unless a Member communicates with the sender of the email in a way that offends the *Code*, for example, by themselves being abusive, their decision not to "listen" to someone by blocking or deleting the individual's emails will not engage the *Code*.

III. Complaints – General Information

The *Complaint Procedures* which are found at Appendix "B" to the *Code* set out the process for filing complaints.

The *Code* allows the Integrity Commissioner to receive both formal and informal complaints.

Informal Complaints

Any person may follow the informal complaint process by: contacting the Member directly to advise that their behaviour or activity appears to contravene the *Code*; or asking the Integrity Commissioner to assist in informal resolution of a matter.

Parties are encouraged to take advantage of the Integrity Commissioner's potential role in this regard. Complaints which are initially brought to the Integrity Commissioner's attention on an informal basis can still be submitted as a formal complaint at any time.

While I will only consider investigating formal complaints I nonetheless respond to every complaint I receive, whether formal or informal.

Formal Complaints

Formal complaints are submitted using the form which is prescribed under the *Code.* The form must be signed and dated by the complainant. There is no fee for filing a formal complaint.

Whenever a formal complaint is received, the *Complaint Procedures* require that I conduct a preliminary assessment to determine whether I will accept the complaint for investigation.

After conducting this assessment, the Complaint Procedures say that:

> 7. *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.

Conducting a preliminary assessment can include reviewing documents and communications between the complainant and the Member who is the subject of the complaint, speaking with the parties and reviewing videos of public meetings.

If I determine that I will not investigate a complaint and therefore dismiss it at intake, I send the complainant a detailed letter which outlines the review that I have undertaken and my reasons for why I will not be conducting an investigation.

The *Code* requires that I provide the Member who was the subject of the complaint with copies of both the complaint and my dismissal letter.

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

Unless it is necessary for me to disclose the identity of the complainant for reasons of procedural fairness or because their identity is otherwise clear from the factual underpinnings of the complaint, I redact the complainant's identifying information from both the complaint and copy of my dismissal letter, before sending them to the Member.

IV. Complaints Addressed in 2022

In 2022 I received a total of 32 complaints: 22 informal and 10 formal.

Informal Complaints

Only 8 of the informal complaints I received in 2022 were made about Members. The rest were made about City employees, over whom I have no jurisdiction.

In terms of subject matter, the complaints raised concerns about such topics as Members' lack of respectful conduct and election issues.

One informal complaint I received, where the complainant sought my assistance in resolving a matter with the Member on an informal basis, became a matter of public record.

The *Code* requires the Integrity Commissioner and any person acting under the Integrity Commissioner's jurisdiction to preserve confidentiality around the investigation process, except as required by law and as required by the *Complaint Procedures* themselves.

There is no clear requirement in the *Code,* however, which prohibits anyone else from speaking publicly about either a complaint or an investigation.

When the matter became public, I received comments from both the public and the Public Service about whether the *Code* should be amended to allow for more specific confidentiality provisions regarding the complaint process.

This is a topic which I intend to explore in more detail with Members in the coming year.

Formal Complaints

In the first quarter of the period covered by this report I also completed my preliminary assessments of 2 formal complaints which I had received in 2021.

My preliminary assessments of 4 of the formal complaints I received in 2022 were not completed as of December 31 and those complaints will be addressed in 2023.

The 10 formal complaints I received in 2022 covered topics relating to: respectful conduct; use of influence; bias; eligibility to be on Council; and decisions made by Council as a whole.

The following summaries are anonymized examples of how I applied the *Code* in response to some of the formal complaints that I received in 2022 and complaints that were outstanding at the end of 2021.

Example #1 - Freedom of Information Request

In this case an individual complained about Council's failure to disclose documents they had requested, pursuant to the *Freedom of Information and Protection of Privacy Act* ("FIPPA").

I told the complainant that as Integrity Commissioner I did not have jurisdiction to deal with the subject matter of the complaint. Applications to review the City's decisions about disclosure of information can be made to the City Clerk and appealed to the Ombudsman, the Information and Privacy Adjudicator or the Court. In this case, I told the individual that I knew they had already engaged with at least one of those processes.

In dismissing the complaint without conducting an investigation, I referred to the following section of the *Complaint Procedures* which addresses complaints that fall outside the Integrity Commissioner's jurisdiction:

> ***Complaints Outside Integrity Commissioner's Jurisdiction***
>
> *6. If the complaint is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or if the complaint relates to matters addressed by other legislation or complaint procedure under another City of Winnipeg procedure, policy or rule, the Integrity Commissioner shall advise the Complainant in writing as follows:*
>
> ...
>
> ***Freedom of Information and Protection of Privacy Act***
>
> *(a) If the complaint is more appropriately addressed under the Freedom of Information and Protection of Privacy Act, the Complainant shall be advised that the matter must be referred to the City of Winnipeg Clerk to deal with under the City's access and privacy policies under the legislation.*

Example #2 - Conflict of Interest

The complainant alleged that a Member's conduct during a Community Committee meeting showed that they were biased in favor of a developer. The complainant said that they believed that it was the Member's "personal and career goal" to favor the developer's plan no matter what the

residents of the neighborhood thought". They alleged that the Member was performing their duties in a way that served the Member's own interest rather than the interest of the public.

As I described above, under the *Code*, 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.

A "private interest" is defined to include any personal benefit, whether or not pecuniary.

In reviewing the complaint, I determined that the matters which formed the subject of the complaint did not involve a "private interest" for the Member and promotion of the matters would not provide them with a personal benefit.

The mere fact that a Member takes a position with respect to matters such as developments in their ward does not create a private interest on their part within the meaning of the Conflict of Interest Rule in the *Code*.

As the Supreme Court of Canada has stated, in a democracy, the role played by municipal councillors is both political and legislative.[8]

As part of the political process, a council member is entitled to form views, hold views, express views and once in office, give effect to those views.[9]

Elected officials take positions on matters. That is the nature of their work and often their positions are deeply held.

For a private interest to exist within the meaning of the *Code*, there must be a direct and personal benefit accruing to the member, rather than an indirect and political one.[10]

After carefully considering the complaint, including watching a video of the Committee's proceedings, I determined that the Member's participation in the meeting had not furthered a private interest on their part and there were no grounds to support the allegation that they had violated the Conflict of Interest Rule. I therefore dismissed the complaint without conducting an investigation.

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[8] *Old Saint Boniface Residents Association Inc v Winnipeg (City)*, [1993] SCR 1170

[9] Giorno, Integrity Commissioner for the Town of Orangeville Report on Complaint April 27, 2018

[10] *Report re The Honourable Christy Clarke* May 4, 2016; Paul DK Fraser QC, Conflict of Interest Commissioner for the Province of British Columbia

Example 3 - Respectful Conduct

Several of the complaints that I dismissed without conducting an investigation involved allegations that one or more Members had breached the rule which prohibits harassment.

That Rule provides in part:

> ***9. Respectful Conduct***
>
> *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.*

The test for determining whether conduct amounts to harassment is an objective one. Harassment is not proven simply because an individual takes offense at something that was said or done.

In each case, after watching the video recordings of the meetings where the misconduct was alleged to have occurred, I found no evidence that the conduct of the respective Member was anything other than polite.

I did not see any conduct on the part of a Member which would rise to the level of harassment within the meaning of the *Code.* For example, I did not see any Member make personal remarks, raise their voice, use inappropriate language, or interrupt the people who were making presentations.

Example #4 – Decisions made by Council

One complainant expressed concern about a By-law which Council had passed.

I told the complainant that while it is not uncommon for members of the public to be upset with Council because of decisions it has made, the Integrity Commissioner cannot enter into the political decision-making process and has no authority either to advocate for a member of the public or to challenge decisions that Council makes.

As the Ontario Superior Court of Justice recently identified:

> *In simple terms, the Commissioner reports to and is responsible to City Council. City Council is not responsible to and is not subject to having its decisions reviewed by the commissioner.*[11]

V. Municipal Election - October 26, 2022

The fact that a municipal election took place during the period covered by this report had an impact on the work I conducted.

Advice

I received many inquiries from Members about how to comply with their obligations under the *Code* when conducting their election campaigns.

In this regard, with respect to election-related activity, Rule 7 of the *Code* requires that Members:

- follow all applicable legislation and by-laws;
- not use the facilities, equipment, supplies, services or other resources of the City for any election-related activities; nor
- use the services of staff for election-related purposes during hours in which those staff are in the paid employment of the City.

To remind all Members about this Rule, starting in the Spring of 2022, I sent emails to them which pointed out that during the election:

- all the Rules in the *Code* continued to apply to their conduct;

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[11] *Chiarelli and City of Ottawa and Integrity Commissioner for the City of Ottawa* 2021 ON SC 8256 at para.68

- they were required to keep their election-related activities separate from their activities as a Member of Council; and

- should, for example, create separate social media accounts that were dedicated to their election-related activity – ones which were not paid for by City resources, did not include a reference to the fact that they were a Member of Council and were not used for City or Council business.

I confirmed that on their campaign websites they were allowed to refer to their public record as a Member of Council.

I also said that it was permissible for a Member to put general information about the election on their City funded website so long as the information did not relate to their own or anyone else's campaign.

I referred all Members to the updated Advisory Bulletin on Election-Related Activity that I posted on the Integrity Commissioner's page on the City website.[12]

On September 12, 2022, I issued a letter addressed to "All Candidates Running for Election to City Council" which provided general information about the *Code* and the role of the Integrity Commissioner.

While this information was particularly important for candidates who were not incumbents, it also served as a good reminder to existing Members who were seeking re-election.

The City Clerk's Office included this letter in the package of information that it provided to all candidates.

Complaints

The election also had an impact on the complaints process under the *Code*.

The *Complaint Procedures* stipulate 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.

[12] https://legacy.winnipeg.ca/council/integritycommissioner/pdfs/AdvisoryBuletinElectionRelatedActivity.pdf

Under the *Code*, "campaign period" is defined to begin on May 1 and end on the start of the new term of Council which, in this case, was November 1, 2022.

The rationale for suspending the complaints process during the campaign period is to avoid having both the process and the Integrity Commissioner drawn into the political arena; or used as part of a candidate's election strategy.

This practice exists in municipal jurisdictions across the country. Time periods for suspending the complaint process vary depending on factors such as the timeline for the nomination period and the effect of the suspension in a given jurisdiction. For example, while under Winnipeg's *Code* ongoing investigations are merely suspended during the campaign period, in some jurisdictions, they are actually terminated.

Information about the temporary suspension of the complaints process was posted on the website and is set out in the *Code*. Despite this, members of the public still submitted complaints to my office during the campaign period.

The majority of those complaints dealt with matters over which I had no jurisdiction because, for example, they were complaints about the conduct of City employees regarding such matters as garbage collection or Transit concerns.

In those cases, rather than telling individuals I was not able to accept their complaint at that time, I simply wrote back to inform them that I had no jurisdiction to deal with their matter.

On October 26, 2022, three new Members were elected to Council - two of whom were actually part of the Council which enacted the current *Code* and created the Integrity Commissioner's role, in 2017.

Finally, I note that the fact that Members were engaged in campaigning while at the same time performing their duties of office meant that they were less available to engage with my Office to attend continuing education sessions. Plans for scheduling such sessions are already underway for the coming year.

VI. Education and Communications with the Public; Meetings and Outreach Activity

In furtherance of my mandate to educate Members and the public about the work of my Office, I make a range of information available on the Integrity Commissioner's page on the City's website, which I update on a regular basis, including, for example, the annotated version of the *Code*.[13]

[13] https://legacy.winnipeg.ca/council/integritycommissioner/pdfs/CodeofConduct_Commentary.pdf

On 18 occasions I was contacted by members of the public who wanted to speak with me about a variety of topics including: materials that I had posted on the website; my jurisdiction; the election; and the meaning of certain rules contained in the *Code*.

In January, I was invited to give a presentation to the Financial Management Institute, Manitoba Chapter (FMI) about the ethics and accountability framework that Winnipeg's City Council has put in place.

Later that month, I attended the annual meeting of the Municipal Lobbyist Registrars of Ontario, by video conference.

In both June and October, I was invited to present a webinar entitled: "Promoting a Culture of Ethical Behavior in a Political Environment", to a graduate studies course on Ethics and Advocacy at Seneca College of Applied Arts and Technology School of Media, in Toronto.

In October, I was invited by York University's Collegium for Public Ethics to be part of a three person panel of Integrity Commissioners discussing: "The Relationship and Distinctions Between Human Rights Codes and Municipal Codes of Conduct in Regulating the Conduct of Municipal Elected Officials".

Throughout this reporting period I engaged in regular dialogue and consultation with municipal Integrity and Ethics Commissioners from other jurisdictions across Canada and with the Province of Manitoba's Conflict of Interest Commissioner.

I am grateful for the opportunity to participate in this collegial network of ethics professionals who willingly share best practices and advice and I can report that the provisions of the Winnipeg's *Code* are often looked to with approval and followed by other jurisdictions.

I continue to be a member of the Canadian Bar Association's National Committee on Ethics and Lobbying. This committee meets by phone on a monthly basis to discuss issues relating to lobbying and ethics for elected officials at all levels of government.

VII. **Amendments to the Code**

Since Council adopted the *Code* on February 22, 2018 it has made a number of changes to the by-law, on my recommendation.

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

Consistent with this, on January 12, 2022, I published my Report Number 6 to Council in which I proposed that certain further amendments be made to the *Code*. The recommendations set out in that report were based on my interactions with members of the public, including complaints that I had received, and interactions that I had with Members.

The majority of the proposed changes in that report were intended to make the *Code* easier to use and understand. None of the amendments made any changes to the Rules which articulate Members' ethical obligations.

Some of the changes were intended to provide guidance to Council when it performs an adjudicative function after it receives an investigation report from the Integrity Commissioner which finds that a Member has breached the *Code*.

While the Integrity Commissioner can make recommendations about sanctions, only Council has the authority to determine whether and which sanctions should in fact be imposed.

As political actors, Members are expected to express their views and even their preconceptions on matters that involve public interest. However, when a matter comes before them in their capacity as decision makers in the adjudicative sense, such as when they are required to determine whether and how to sanction a Member, it is important that they remind themselves of their responsibility to adjudicate fairly and with an open mind, taking into account the Integrity Commissioner's findings, conclusions and recommendations.[14]

In my report, I expressed the view that Members would benefit from receiving specific guidance on this point and that having a list of articulated factors they must consider when imposing sanctions would assist them in making their determination in a fair, principled and consistent manner.

The factors I recommended be included in the *Code* were the same factors required to be considered by Members of Council in all other municipalities in Manitoba.[15]

On February 24, 2022, Council adopted all of the changes proposed in my report.

Still on the topic of amendments to the *Code*, on March 24 2022, Council passed a Resolution which restricts Members from making funding announcements during an election year. Council asked the Integrity Commissioner to recommend changes to the *Code* to reflect such restrictions.

In 2023, therefore, I intend to bring forward an amendment which reflects the intention of this Resolution along with further proposed changes to the *Code*, for Council's consideration.

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[14] *Chiarelli v Ottawa (City of)* 2021 ONSC 8256 at para 151

[15] *The Municipal Act*, CCSM c. M225, *Council Members Codes of Conduct Regulation* – Regulation 98/2020

VIII. Financial Statement

For the period January 1 - December 31, 2022, Council established a budget for the Integrity Commissioner's Office of $125,000.

The actual expenditure for this reporting period was as follows:

Budget: $58,668.27 inclusive of taxes

Hours Associated with professional services: 286.2

As discussed above, the fact of the election limited the amount of work that I was able to perform during the period covered by this report.

IX. Voluntary Lobbyist Registry

Lobbying is an important and legitimate aspect of public life in a liberal democracy. The right of individuals, businesses and interest groups to make representations to government, and the need for government to discuss policy proposals with those who might be affected, is essential.[16]

However, in order to enhance the public's confidence in the integrity of its elected officials and the public service, lobbying activity must not be associated with secrecy and undue influence.

That is why a lobbyist registry, even a voluntary one, is an important component of an accountability framework.

As the Voluntary Registry page on the City website states:

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

The Integrity Commissioner's role includes having oversight over the Voluntary Lobbyist Registry. (https://legacy.winnipeg.ca/clerks/LobbyistRegistry/default.stm)

A lobbyist is defined as:

> *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.*

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[16] United Kingdom, Committee on Standards in Public Life, Upholding Standards in Public Life November 2021

A "standard process" is any meeting open to the public in which individuals, organizations or businesses can attend to discuss policy processes or decisions.

If an individual is speaking on the public record during a Council or Committee of Council meeting or during a public process such as a public meeting or open house, therefore, they are not considered a lobbyist.

I am available to provide advice to both Members of Council and the public with respect to how the registry works.

History of Registrations

In the first year following its creation, there were **29 registrations** filed to the Voluntary Lobbyist Registry.

Additional registrations are as follows:

- from April 1, 2018 to December 31, 2018, **13 lobbyists** registered their activities;
- in 2019, **10 lobbyists** registered their lobbying activities;
- in 2020, **7 lobbyists** registered their lobbying activities;
- in 2021, **6 lobbyists** registered their lobbying activities; and
- in 2022, **5 lobbyists** registered their lobbying activities.

In May of 2022, I received an inquiry from the author of a Canadian textbook on lobbying law, asking whether Winnipeg was moving towards creating a mandatory lobbyist registry. I advised that to date the City has not taken steps to make the registry mandatory.

While Winnipeg's Lobbyist Registry remains voluntary, in Ontario, where provincial legislation gives all municipalities the ability to enact a lobbyist by-law, several municipalities have put a mandatory registry in place, including the cities of Vaughn, Hamilton, Brampton and Peel in addition to the larger cities of Toronto and Ottawa.

I continue to engage with my counterparts in these other cities in order to stay current about best practices regarding lobbyist regimes.

X. Conclusion

For a healthy democracy to exist it is essential that elected officials conduct themselves with integrity. Confidence in the democratic system is undermined if members of the public perceive

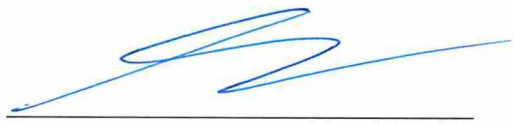
those in public life as being dishonest or untrustworthy.[17] Public trust is easily lost and slow to rebuild.

Winnipeg's *Code of Conduct for Members of Council* reflects the Members' deliberate intention to follow a shared understanding of the ethical values they believe are necessary to support good government.

Enforcing and upholding those values requires vigilance and ongoing commitment not only from the Members themselves but also from members of the public and the public service.

I want to thank all of the individuals - members of the public, the public service and Council who engaged with my office during the last year in pursuit of promoting a healthy democratic process.

Respectfully submitted.



Sherri Walsh
March 16, 2023

[17] The Constitution Unit Blog – https://constitution-unit.com/2022/10/11/protecting-constitutional-principles-what-are-they-and-why-do-they-matter/ at page 7