City of Windsor
Office of the Integrity Commissioner

Eight Month Interim Report Covering the Period from 1 August 2011 – 31st March 2012

Part I -- Introduction:

The Office of Integrity Commissioner came into existence in the Province of Ontario with amendments to the *Municipal Act*, effective January 1, 2007. These amendments were prompted by the Report of Madam Justice Bellamy, sitting as a Commissioner in the Toronto Computer Leasing Inquiry, published in 2005. Her recommendations, under the heading of "Ethics", included suggestions for improvements to the City's Code of Conduct for Councillors and staff. These improvements were to include, as she put it, "broader ethical considerations", setting out the "highest ideals and values towards which all public servants should be aspiring".

In 2007, the City of Windsor established the Office of the Integrity Commissioner and, in 2008, established a **Code of Conduct** for Members of Council, including the Mayor, and the members of certain Local Boards. On June 7, 2011, the City Council passed a new Procedural By-law for Windsor City Council Meetings and its Committees and the Conduct of its Members. Part 14 deals with the Conduct of Members of Council and certain Local Boards. Part 14.1(a) provides that Members of Council as well as City committees, agencies, boards and commissions shall act in accordance with the **Code of Conduct** which is set out in Appendix B to the By-law. The **Code of Conduct** notes that the purpose is to improve the quality of public administration and governance by encouraging high standards of conduct on the part of government officials and, thereby, protect and maintain the reputation and integrity of the City of Windsor.

Although I may have some concerns regarding the structure and contents of the **Code of Conduct** and the possible difficulties that members of the public might have in accessing it, there is no doubt that the **Code of Conduct** forms a very detailed and comprehensive guide for the ethical behaviour of Members

of Council, Committees and Local Boards and Council and the Mayor should be applauded for establishing this regime.

The Integrity Commissioner has four functions: (1) Education; (2) Advisory; (3) Complaint Investigation; and (4) Complaint Adjudication.

Part II -- Education Function:

1. **Speeches**: In terms of Public Education, I spoke to the Rotary Club 1918 in the fall of 2011 and I will be addressing the Annual General Meeting and Dinner of the Essex Law Association on April 28th.
2. **Meetings with Members of Council:** Shortly after the commencement of my term, I held a series of individual meetings with Councillors and the Mayor. I spent a minimum of 30 minutes with each member of Council. The meetings involved a discussion of (1) the **Code of Conduct** – its content and structure; (2) the Advisory Function; (3) the Education Function including a conversation regarding what type of Education program might interest Council members and when would be the best time to hold an such a program; (4) the Complaints process; and (5) more generally, what concerns they had regarding the **Code of Conduct** and what the priorities of the Office of Integrity Commissioner ought to be.
   In regard to these meetings, Members of Council seem to have a good intuitive sense of what is contained in the **Code of Conduct** but most willingly acknowledged that they "could not recite it chapter and verse". Once explained, Members also expressed some concern about its structure. Further, Members indicated a reluctance to seek out the advice of the Integrity Commissioner even though providing advice is one of the four main functions of the Office. Finally, the issue that arose most frequently in our discussions concerned the Duty of Confidentiality particularly as it pertains to information obtained during closed or *in camera* meetings. Consequently, it seemed to me that one way of fulfilling the "Advisory" function as well as the "Education" function would be to issue, from time to time, *Advisory Bulletins* on various topics to all Members of Council and, ultimately, to others who fall under the provisions of the **Code of Conduct**. Given the concerns of Members of Council, the first *Advisory Bulletin* dealt with the Duty of Confidentiality and Closed Meetings.

Part III -- Advisory Function:

As noted above, *Advisory Bulletin No. 1* was issued on the 23rd of December, 2011. It was two pages in length and concerned issues of Confidentiality, Closed Meetings, and the **Code of Conduct**. As a result of certain events, a follow-up "Confidential" letter was sent to Members of Council on the 3rd of February, 2012. I will have more to say about this issue later in my Report. My intention is that, in due course, the *Advisory Bulletins* will be placed on the Integrity Commissioner's Website.

Part IV -- Inquiries/Complaints:

1. **Older Cases:** Three cases were transferred to me from the former Integrity Commissioner. Two of those cases have been closed. One was closed because of a lapse of jurisdiction. The other case was closed as the alleged conduct did not fall within the **Code of Conduct**. In both instances, the complainants were consulted and agreed to have the cases closed. One case remains active. It is under preliminary assessment.
2. **New Cases:** Eight new Complaints or Inquiries have been received since August 1st, 2011. Six of those cases have been closed. One case was closed because there was no specific Member of Council named in the Complaint. One case was closed when the Complainant withdrew the Complaint. One case was closed because the alleged conduct did not violate the **Code of Conduct**. Three cases were closed by referral to other agencies and/or by the suggestion of an alternative course of action. Two cases remain active and are proceeding through the preliminary assessment stage.

Part V -- Policy Development:

1. **Complaint Protocol:** I have delivered to the City Clerk for transmission to Council a document entitled "Complaint Protocol for Members of Council and Others Governed by the **Code of Conduct**". This is a proposal for a regime under which **Code of Conduct** Complaints will be investigated and adjudicated. It is extraordinarily important that we have a systematic way of handling Complaints and, in my opinion, this Protocol will make our process more orderly, more efficient, and less arbitrary. It will also make it more accessible to Members of Council, City staff, and the citizens of Windsor. I hope that the Protocol meets with Council's approval so that it can be implemented as soon as possible.

2. **The Code of Conduct:** In the *1st Annual Report*, I expect to recommend a number of changes to the contents and structure of the **Code of Conduct**. My goal is threefold: (1) To reduce inconsistencies and contradictions; (2) To simplify the structure and make it more accessible to Members of Council, City staff, and the citizens of Windsor; and (3) To bring it up-to-date with other Municipal Codes of Conduct.
3. **Website:** Although it does not fall, technically, into the realm of Policy Development, the website needs some changes to make it more informative and accessible. The **Complaint Protocol** will need to be added to the website as will the *Advisory Bulletins* and *Reports.* We may, also, want to develop an FAQ page as well as other features.

Part VI -- The Issue of Confidentiality:

The most vexing issue to arise thus far has been breaches of the Duty of Confidentiality. Article VI of the **Code of Conduct** of the City of Windsor provides: "No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so." Examples of the types of information that a member of Council **must** keep confidential include: items under litigation, negotiation, or personnel matters; information that infringes the rights of others; price schedules in contract tender or Request for Proposal submissions if so specified; information deemed "personal information" under the *Municipal Conflict of Interest Act*; and statistical data that, by law, is required not to be released. Further, according to the City of Windsor Procedural By-law, "confidential information" includes matters discussed during *in camera* (closed) meetings. The **Code of Conduct** is very specific on this: "No member shall disclose the contents of any such matter, or the substance of deliberations, of the *in camera* meeting until Council or committee discusses the information at a meeting that is open to the public or releases the information to the public."

Open democratic debate is the hallmark of municipal governance in our Canadian polity. However, we recognize that, for the effective and efficient running of our municipal government, there will be times when the affairs of the municipality need to be conducted away from the "public eye". According to the *Municipal Act, 2001*, section 239, the following matters may be the subject of *in camera* (closed) meetings of Council: the security of the property of the City or a local board; personal matters about an identifiable individual; proposed acquisition or distribution of land by the municipality or local board; labour relations or employee negotiations; litigation or potential litigation; advice that is the subject of solicitor-client privilege; and other matters whose confidentiality is authorized by other legislation. The very existence of a provision for closed meetings indicates that the matters conducted at such *in camera* meetings are confidential until such time as they are discussed at an open meeting.

Closed meetings exist to protect private citizens as well as the municipality but they also promote democracy because they allow the residents of the municipality to be represented on important issues– whether related to labour relations or personnel or private or public development or the like -- as they

develop. However, *in camera* meetings can only serve their purpose if Members of Council feel free to express their own views and the views of their constituents in the Closed Meeting. Disclosure of Confidential Information emanating from a Closed Meeting will inhibit Members of Council and make it less likely that the views of their constituents will be heard.

As noted above, the Duty of Confidentiality was the issue most often raised by members of Council in my one-on-one discussions with them. It was the subject examined and explained in *Advisory Bulletin No. I* sent to Members of Council in December, 2011. Even so, breaches of confidentiality seemingly occurred in early February, 2012. This prompted a confidential letter to Members of Council. Shortly afterwards, the contents of this letter were also disclosed to the press. The apparent flagrant disregard for the Integrity Commissioner's advice on this issue is very worrisome.

Part VII – Conclusion:

As we move forward, it will be important for Council to adopt the **Complaint Protocol**, which is essential to ensuring that our Complaints process is orderly, efficient, accessible, and not arbitrary for Members of Council, City staff, and the residents of Windsor alike. In due course, I will be suggesting certain changes to the **Code of Conduct** to reduce inconsistencies, to simplify the structure, to bring it up-to-date, and to make it more accessible. Accessibility is important and we will make changes to the website to enhance accessibility. In August, I will Report the full year's activities.

Respectfully submitted,

Bruce P. Elman
Integrity Commissioner
City of Windsor