

City of Windsor

Office of the Integrity Commissioner

Annual Report 2011-12

Covering the Fourteen Month Period from
1 August 2011 – 30 September 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 included suggestions for improvements to municipal Codes of Conduct for Councillors and staff.

Pursuant to the amendments to the *Municipal Act*, the City of Windsor created the Office of the Integrity Commissioner in 2007 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 14.1(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 Procedural 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.

Effective August 1st, 2011, I assumed the Office of Integrity Commissioner for the City of Windsor. This will be my second Report on Activities to Council. My first Report – an Eight Month Interim Report – covered the period from August 1st, 2011 to March 31st, 2012. The Interim Report is posted on the Integrity Commissioner website at <http://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Documents/8%20Month%20Interim%20Report.pdf>. This "Annual Report" covers a 14 month period from August 1st, 2011 to September 30th, 2012. This Report includes

the material contained in my Interim Report as well as information regarding the six month period following the Interim Report.

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

Part II -- Education Function:

- 1. Presentations:** I delivered three presentations during the period of time covered by this Report: (1) To the Rotary Club 1918 in the Fall of 2011 on the "Office of the Integrity Commissioner"; (2) To the Annual General Meeting and Dinner of the Essex Law Association on April 28th, 2012 on "Public Integrity and Professional Ethics"; and (3) To a Legal Profession class at the University of Windsor, Faculty of Law, on "Issues in Public and Professional Ethics" on September 11th, 2012.
- 2. Meetings with Members of Council:** As I indicated in my Interim Report, shortly after the commencement of my term, I held a series of individual meetings with Councillors and the Mayor. 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. Members of Council seemed to have a good intuitive sense of what is contained in the **Code of Conduct**. Members, however, 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, as I indicated in my Interim Report, 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. I expand on this issue later in this Report.

Part III -- Advisory Function:

As noted above, Members of Council indicated a reluctance to seek out the advice of the Integrity Commissioner. 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**. Consequently, *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**. *Advisory Bulletin No. 1* was, also, posted to the Integrity Commissioner's webpage so that it would be accessible to the public. *Advisory Bulletin No. 1* may be found at <http://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Pages/Advisory-Bulletins.aspx>. As a result of certain events, a follow-up "Confidential" letter was sent to Members of Council on the 3rd of February, 2012. No further *Advisory Bulletins* have been issued since December 2011.

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.
- 2. New Cases:** Ten new Complaints or Inquiries have been received since August 1st, 2011. Seven 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**. One was closed because of multiple reasons including a lapse of jurisdiction and 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. One case, that involving Councillor Maghnieh's improper use of a Windsor Public Library corporate credit card, resulted in a Report to Council on September 4th, 2012. The Report may be found at <http://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Documents/Code-of-Conduct%20Sept%204,%202012.pdf>. At the time of this Report, this matter remains unresolved but Council is expected to give full consideration to the Report at its October 15th Meeting. Two cases remain active and are still proceeding through the assessment stage.

Part V -- Policy Development:

- 1. Complaint Protocol:** The **Complaint Protocol for Members of Council and Others Governed by the Code of Conduct** was presented to Council and adopted on May 8th, 2012. This Protocol provides 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. The Protocol will make our process more orderly, more efficient, and less arbitrary. It will also be more accessible to Members of Council, City staff, and the citizens of Windsor.
- 2. The Code of Conduct:** I had hoped, in this *Annual Report*, to recommend a number of changes to the contents and structure of the **Code of Conduct**. My goal was 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. The Investigation into Councillor Maghnieh's Windsor Public Library corporate credit card use took a significant amount of time. As a result, work on the **Code of Conduct** remains on my agenda. In addition to the goals stated above, I hope to make suggestions for a new provision on "Conflict of Interest" as well as some possible enhancements to the **Complaint Protocol** which would specify the procedures to be followed regarding the presentation of Investigation Reports to Council. (I will be making a presentation on this topic at the upcoming meeting of the Integrity Commissioners of Ontario.)
- 3. Website:** Thanks to the assistance of City staff, changes have been made to the Integrity Commissioner website: <http://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Pages/Integrity-Commissioner.aspx>. There is now easy access to the sub-webpages for Reports, Advisory Bulletins, and information on How to Make a Complaint. There are, also, quick links to the **Code of Conduct**, the **Complaint Protocol**, and the **Affidavit** form. These were very minor changes but I believe they make the website more informative and accessible. I still plan to create an FAQ page.

Part VI -- The Issue of Confidentiality:

In the Interim Report, I noted that "the most vexing issue to arise thus far has been breaches of the Duty of Confidentiality." 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. 1* 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. In the Interim Report, I stated: "The apparent flagrant disregard for the Integrity Commissioner's advice on this issue is very worrisome."

I am pleased to report that, in the six months since my Interim Report, concern over this issue seems to have diminished markedly. It must be said that, in the realm of integrity concerns, public focus has centred on the use of Windsor Public Library corporate credit cards, both by Councillor Maghnieh and by CEO Barry Holmes and not on issues of confidentiality. Whatever the reasons, breaches of confidentiality have not been brought to my attention since the presentation of my Interim Report.

Part VII – Conclusion:

As we move forward, I will, in due course, be suggesting certain changes to the **Code of Conduct** to reduce inconsistencies, to simplify the structure, to bring it up-to-date, to make it more accessible, and to add a specific provision on Conflicts of Interest. Some clarifications may be introduced to the **Complaint Protocol** to set out procedures for the presentation of Investigation Reports to Council. Finally, further enhancements will be made to the webpage.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce P. Elman", with a horizontal line extending to the right.

Bruce P. Elman
Integrity Commissioner
City of Windsor