

## REPORT TO COUNCIL REGARDING ACTIVITIES FROM 1 OCTOBER 2015 - 31 DECEMBER 2017

Bruce P. Elman  
Integrity Commissioner  
30 June 2018

### PART I - INTRODUCTION

The Office of Municipal Integrity Commissioner came into existence in the Province of Ontario with amendments to the *Municipal Act*, effective January 1, 2007. 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. The Complaint Protocol for Members of Council and Others Governed by the Code of Conduct was presented to Council and adopted on May 8, 2012. This Protocol provides a regime under which Code of Conduct complaints are to be investigated and adjudicated. A revised Code of Conduct was passed by Council on July 17, 2017.

Effective August 1, 2011, I assumed the Office of Integrity Commissioner for the City of Windsor. My appointment was renewed effective October 15, 2012. A further two-year renewal was

effective on October 15, 2013. My appointment has been renewed for various lengths of time since 2015. The latest renewal took effect on January 1, 2018 and will continue until December 31, 2019.

This will be my *Fifth Report to Council* on my Activities as Integrity Commissioner. My *First Report to Council* covered the period from August 1, 2011 to September 30, 2012. The *First Report* is posted on the Integrity Commissioner website at <http://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Documents/Annual%20Report%202011-12.pdf>.

The *Second Report to Council*

covered a 12 month period from October 1, 2012 to September 30, 2013 and can be found at <http://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Documents/Integrity%20Commissioner%20Annual%20Report%202012-13.pdf>.

The *Third Report to Council*

covered activities from October 1, 2013 to September 30, 2014. It can be found at

<http://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Documents/Integrity%20Commissioner%20Annual%20Report%202013-14.pdf>.

The *Fourth Report to Council*

covered the period from October 1, 2014 to September 30, 2015. The 4<sup>th</sup> Report can be found at <https://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Documents/Integrity%20Commissioner%20Annual%20Report%202014-15.pdf>.

The *Fifth Report to Council* covers the period from October 1, 2015 to December 31, 2017. In addition, where appropriate, I have included various "Updates" on what has transpired from January 1-June 30, 2018.

The Integrity Commissioner has four primary functions: (1) Education; (2) Advisory; (3) Complaint Investigation; and (4) Complaint Adjudication. In addition, the Integrity Commissioner, in some

instances, has a role to play as the City develops its policies or as it responds to legislative initiatives of the Province of Ontario.

## PART II -THE EDUCATION FUNCTION

**Presentations:** No groups or individuals requested presentations during the reporting period. In my *4<sup>th</sup> Report to Council*, I noted, among other matters, that I made a presentation to the Windsor Public Library Board in conjunction with a presentation by the City Clerk. As I indicated in that Report, these presentations can serve an important educative, and even prophylactic, function for the Members of Agencies, Local Boards, and Committees to whom the **Code of Conduct** applies. After the Municipal election, I intend to pursue a series of educational seminars with these agencies, boards, and committees. The purpose will be to explain the Municipal Integrity model as currently structured and as enhanced by Bill 68 which comes into effect on March 1, 2019. Further, I will highlight important sections in the **Code of Conduct** and explain the procedures required under the **Complaint Protocol**.

**Meetings with Members of Council:** Following the Municipal Elections of October of 2014, I met with every Member of Council, including the Mayor. The purpose of these meetings was to educate the Members of Council on the main provisions of the City's **Code of Conduct** and to answer any questions raised by Members in this context. The meetings lasted anywhere from 30 minutes to an hour. At the conclusion of the meeting, each Member of Council was asked to sign a Statement that they had read the **Code of Conduct**, that they understood it, and that they were committed to abiding by its terms. All Members signed the **Statement of Commitment to the Code of Conduct**. These were, in my opinion, very effective sessions because they brought home to the Members of Council the centrality of integrity in the exercise of their duties as public office holders. I intend to engage the new Council in the same way after the forthcoming Municipal elections.

### PART III -- ADVISORY FUNCTION

Providing advice is a key function of the Integrity Commissioner. Providing advice can often head-off Code of Conduct violations. Indeed, the Code of Conduct recognizes the importance of the "Advice function" by providing in Rule 19.0 that "Any written advice given by the Integrity Commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner." In this way, the Member is protected from any future Complaints regarding the same matter on which the Integrity Commissioner's advice has been sought out in advance.

Advice Files Opened: During my first 14 months as Integrity Commissioner, I received no requests for Advice. In my *2<sup>nd</sup> Report*, I indicated that four "Advice" files were opened. Two resulted in Letters of Advice (as per what is now Rule 19.0) being issued. In my *3<sup>rd</sup> Report*, I noted that two "Advice" files were opened. Both resulted in Letters of Advice being issued. In my *4<sup>th</sup> Report*, I indicated that three Advice files were opened and that all resulted in a Letter of Advice being provided. In this Reporting period, eight (8) Advice files were opened. Of these files, one resulted in a Letter of Advice, five did not require a Letter of Advice, and two resulted in Advisory Bulletins being issued. [Update: No new Advice files have been opened between January 1 and June 30 of 2018.]

Advisory Bulletins: During the Reporting period, I issued four Advisory Bulletins. The purpose of the Advisory Bulletins is, in part, educative but they also serve a preventative function. The Advisory Bulletins are intended to provide guidance to Members of Council so that they can avoid violations of the Code of Conduct. Advisory Bulletins, generally, concern matters of importance that Members of Council or members of the public have raised with me or they concern issues that have been identified by other Municipal Integrity Commissioners. Advisory Bulletins are placed on the Integrity Commissioner's webpage and are, therefore, available to

Members of Council and the public alike. The four Advisory Bulletins issued during the Reporting period were the following:

1. *Advisory Bulletin Regarding the Use of Social Media* (August 15, 2016);
2. *Addendum to the Social Media Advisory: Blocking or Unfriending Members of the Public* (November 1, 2016);
3. *Advisory Bulletin Regarding Member Statements and Conduct Concerning Council Decisions* (October 15, 2017); and
4. *Advisory Bulletin Regarding Fundraising for Third Party Organizations* (December 1, 2017).

[Update: Two new Advisory Bulletins have been issued in the period from January 1- June 30, 2018. These two Bulletins are: (1) *Advisory Bulletin Regarding 2018 Election-Related Activities* (June 1, 2018); and (2) *Advisory Bulletin Regarding Gifts and Benefits* (June 15, 2018). The latter Advisory Bulletin includes a "Gifts and Benefits Disclosure Statement for the Use of Members."]

#### **PART IV - INQUIRIES AND COMPLAINTS**

1. Cases Carried Forward: There were no Complaints carried forward from the previous year.
2. New Cases: Twelve (12) new Complaint files were opened between October 1, 2015 and December 31, 2017. Of these twelve cases, nine (9) involved Members of Council - in some cases, more than one Member, two (2) involved City staff (the Integrity Commissioner has no jurisdiction in these cases), and three (3) involved other entities to which the Code of Conduct could arguably apply. [Update: Five (5) new Complaint files have been opened since January 1, 2018. All remain open.]
3. Cases Closed: Ten (10) Complaint files were closed between October 1, 2015 and 31, 2017. In five (5) cases, jurisdiction was either refused or declined; four (4) cases were resolved, to a greater or lesser extent, through the Informal Complaint Process including one of the cases in which jurisdiction was denied; in one case, the individual was admonished (not an official sanction under the Code), and one case was not pursued by

the Complainant. [Update: The two other Complaint files that were carried over into 2018 have now been closed. One was closed due to lack of jurisdiction as to staff and declining of jurisdiction in regard to the Member of Council -- the Complainant was referred elsewhere. The final Complaint file resulted in the sanction of "Reprimand" being imposed by Council.]

4. **Brief Service:** There were approximately twenty-two (22) instances of "Brief Service". "Brief Service" constitutes instances where an individual has contacted the Integrity Commissioner but no Formal or Informal Complaint has been initiated and no file has been opened. This may occur because the concern is outside the jurisdiction of the Integrity Commissioner or because the alleged complaint is clearly not a violation of the Code of Conduct or because the individual is simply seeking information. In some instances, the answer provided ends the matter; in other instances, a referral may be made to a more appropriate entity or individual. In some instances, the individual is advised on the procedure for making a formal Complaint although, ultimately, no formal Complaint is received. The phrase "Brief Service" does not connote the amount of time expended in providing the service; rather it simply indicates that the Integrity Commissioner was contacted but that no file was opened. [Update: Since January 1, 2018, five (5) instances of "Brief Service" have been recorded.]

## Part V - Policy Development

**Revised Code of Conduct:** As indicated earlier in this Report, a Revised Code of Conduct was passed by Council on July 17, 2017. The Revised Code of Conduct was the product of considerable research as well as consultation with the City Clerk, Deputy Clerk, and the City Solicitor. The foundation for the Revised Code was our then-existing Code of Conduct, the City of Windsor *Procedure By-law*, and the provincial legislative regime. The major alterations to the Code include both format and content changes.

Format changes:

1. The Code now includes three Articles of Interpretation followed by 20 Rules;
2. A new numbering system has been implemented using rational numbers and sub numbers rather than Roman numerals;
3. The Rules are stated directly and are accompanied by Commentary, rather than using long, rambling paragraphs that mix prescriptive Rules and descriptive Commentary;
4. Generally, the language of the Code has been simplified in order to make the Rules more precise and less ambiguous;
5. A new Schedule "A" has been added regarding the Use of Corporate Resources When Seeking Re-election; and
6. Schedules "A" and "8" of the existing Code have been consolidated into a new Schedule "8". Schedule "C" of the existing Code has been removed.

Content changes:

1. Article III sets out a requirement that all Members of Council sign a Declaration at the beginning of their term confirming that they have read the **Code**, that they understand their obligations under it, and that they are committed to upholding it. Members of Council, Council committees, and local agencies, boards, and commissions will be required to receive regular training regarding the **Code**;
2. In Rule 2.0, "Conflict of Interest" is defined. A new Rule has been added regarding "Conflicts of Interest". This Rule is meant to ensure that Members of Council are aware of their obligations to avoid conflicts of interest where possible, and to promptly disclose conflicts if they do arise;
3. Some amendments have been made to Rule 3.0 regarding "Gifts and Benefits";
4. Rule 9.2 has been added. It provides: *No Member shall borrow money from any person who regularly does business with the City unless such person is an institution or company regulated under the Bank Act, SC 1991, c.46;*

5. Rule 14 has been amended to recognize the change in the Ward System and reflect the common practice today of holding, on an annual basis, a minimum of one meeting per Electoral Ward;
6. A new Rule - Rule No. 16 -- has been added regarding transparency and openness in Council decision-making. This Rule is intended to balance democratic processes, corporate decision-making, and freedom of expression for Members of Council. Members are free to disagree with decisions made by Council, but their dissent should reflect respectful, democratic decision-making and should not cast doubt on the integrity of Council as an institution;
7. Schedules A-1 and A-2 have been added. These Schedules pertain to the Use of Corporate Resources (i.e. city-owned facilities, constituency offices, and city employees) by Members Seeking Re-election;
8. Schedule B combines and rationalizes former Schedules A and B ("Roles and Responsibilities of the Council Members and Staff" and "City of Windsor Council-Staff Protocol", respectively). This will avoid the considerable overlap that existed in the subject matter of the two Schedules; and
9. Schedule C of the then-existing Code of Conduct -- the recommendations of the Bellamy Commission -- has been removed. The recommendations had either been already embodied in the Code of Conduct (making them redundant), had been spent, or were no longer applicable in the current legal and political environment.

[Update: The Consequences of Bill 68: As a result of the passing of Bill 68, considerable amendments have been made to the *Municipal Act*, the *Municipal Conflict of Interest Act*, and the *Municipal Election Act*. These amendments come into force on March 1, 2019 and may require further changes to the Code of Conduct and the Complaint Protocol. I will be consulting with the Clerk's Office and the City Solicitor to determine if any further revisions will be necessary.]



## PART VI -- CONCLUSION

To summarize:

Regarding the Integrity Commissioner's Advice function, two conclusions can be drawn: (1) There seems to have been a slight increase in the number of Advice files opened; and (2) there has been a concerted effort to increase the number of Advisory Bulletins issued. In my view, this is a positive development. The more instances in which Members of Council seek advice should reduce the number of potential Complaints. I am very pleased that there has been a positive response to the Advisory Bulletins. Regarding the Integrity Commission's Complaint Investigation and Adjudication function, the following conclusions can be drawn: (1) A greater number of Complaints have been received by the Integrity Commissioner; (2) the majority of these Complaints involve Members of Council but a small number involve other entities - agencies, Boards, committees, and commissions associated with Council; (3) About half of the Complaints are denied for either a lack of jurisdiction or declining to accept jurisdiction; (4) On a positive note, a significant number of Complaints were resolved through the Informal Complaint process; and (5) All Complaint files received during the Reporting period are closed although new Complaint files have been received in 2018.

My opinion continues to be this: Members of Council and members of other agencies, boards, committees and commissions in our City conduct themselves in a highly professional manner and live up to their commitments under the Code of Conduct to "protect and maintain the City of Windsor's reputation and integrity." In my view, Members of Council and members of other agencies, boards, committees, and commissions strive to follow the four Key Principles set out in Article III of the Code of Conduct:

- [a] Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- [b] Members of Council shall be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interests, both apparent and real;

[c] Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and

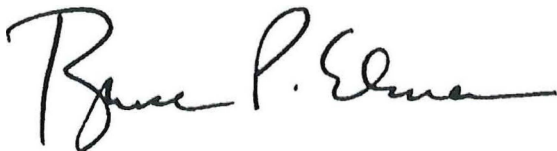
[d] Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Legislative Assembly of Ontario, and the City Council.

Regarding the Policy function, the revision of the Code of Conduct was an important accomplishment.

As of March 1, 2019, all municipalities in Ontario must either employ an Integrity Commissioner, share one with another municipality, or have access to "Integrity services". The City of Windsor and the Town of Amherstburg have agreed to share an Integrity Officer. I am pleased to be the first individual to serve as the Integrity Commissioner for both the City and the Town. I assume that this will take a certain degree of organization on my part and some understanding on the part of the City Clerk and the Town Clerk as we work through this new arrangement.

As I have said in previous Reports to Council, it continues to be an honour to serve as the Integrity Commissioner for the City of Windsor.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce P. Elman". The signature is fluid and cursive, with the first name "Bruce" being the most prominent.

Bruce P. Elman  
Integrity Commissioner

## **Further Information**

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