
REPORT TO COUNCIL REGARDING ACTIVITIES FROM 1 JANUARY 2018 – 31 DECEMBER 2019

Bruce P. Elman
Integrity Commissioner
30 June 2020

PART I – INTRODUCTION

History of The Office of Municipal Integrity Commissioner:

The Office of Municipal Integrity Commissioner came into existence in the Province of Ontario with amendments to the *Municipal Act*, effective January 1st, 2007. 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 7th, 2011, City Council passed a new *Procedural By-law* for City Council 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. One of my first tasks was to develop a set of procedures for the handling of Complaints under the **Code of Conduct**. Consequently, 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.

My initial appointment as Integrity Commissioner was renewed effective October 15th, 2012. A further two-year renewal took effect on October 15th, 2013. My appointment has been renewed for varying lengths of time since 2013. Because of various developments on the provincial level, it was thought to be important to revise the original **Code of Conduct**. That revision was completed, and an amended **Code of Conduct** was passed by Council on July 17th, 2017. I was re-appointed for a two-year term effective January 1st, 2018. As of March 1st, 2019, however, all municipalities in Ontario were required to either employ an Integrity Commissioner, share one with another municipality, or have access to “Integrity services”. Consequently, the City of Windsor and the Town of Amherstburg agreed to share my services as Integrity Commissioner for both Municipalities. Subsequently, the Town of Lakeshore joined with Windsor and Amherstburg in this arrangement. I am pleased to be the first individual to serve as the Integrity Commissioner for all three Municipalities. This agreement will extend to December 31st, 2021.

Previous Reports:

This will be my **Sixth Report to Council** on my Activities as Integrity Commissioner. My **First Report to Council** covered the period from August 1st, 2011 to September 30th, 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 1st, 2012 to September 30th, 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 1st, 2013 to September 30th, 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](https://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 1st, 2014 to September 30th, 2015. The 4th Report can be found at [https://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-](https://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Documents/Integrity%20Commissioner%20Annual%20Report%202014-15.pdf)

[Commissioner/Documents/Integrity%20Commissioner%20Annual%20Report%202014-15.pdf](https://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Documents/Integrity%20Commissioner%20Annual%20Report%202014-15.pdf).

The **Fifth Report to Council** covered the period from October 1st, 2015 to December 31st, 2017.

It can be found at <https://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Documents/Report%20to%20Council%20-%20October%202015%20through%20December%202017.pdf>.

This **Sixth Report to Council** covers the term from January 1st, 2018 to December 31st, 2019.

This two-year period included the last Municipal Election on October 22nd, 2018. Effectively, no activity takes place from June 30th in the year of an Election until after the initial Meeting of the new Council. Among other matters, no Complaints are investigated, and no Reports are made to Council. The prime reason for this “blackout” period, in my opinion, is to ensure that the “Integrity Regime” is not used as a “weapon” during an election campaign. Of course, individuals may seek the advice of the Integrity Commissioner and Brief Service or Advice may be provided.

Please note: Where relevant, I have included various “Updates” on what has transpired between January 1 – June 30, 2020.

Primary Functions of The Integrity Commissioner:

The Integrity Commissioner has four primary functions: (1) Education; (2) Advisory; (3) Complaint Investigation; and (4) Complaint Resolution and 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 or policy development by the Province of Ontario.

PART II – THE EDUCATION FUNCTION

Education and Training:

Following the Municipal Elections held in 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 regarding the main provisions of the City’s **Code of Conduct** and to answer any questions raised by Members in this context. Following the Municipal Elections in October 2018, it was decided to adopt a different approach to the education and training of Members of Council and to expand the scope of the training to include all Members of Local Boards and Agencies, Commissions and Committees similarly subject to the City of Windsor’s **Code of Conduct**.

The initial session was held in mid-January 2019 with Members of Council. Senior staff were also in attendance. Prior to this session, I prepared materials in conjunction with the Council Services Office to orient Members of Council to the Office of the Integrity Commissioner, to the provisions of the **Code of Conduct**, and the procedures outlined in the **Complaints Protocol**. Some information was provided on the *Municipal Conflict of Interest Act (MCIA)* as well. The Council session lasted in excess of an hour and a half. In my view, it was a very productive session. During Orientation, Members of Council were 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**.

The Council training was replicated in a slightly condensed fashion in three other educational meetings – two with members of Agencies, Boards, and Committees (so called ABCs) and one with members of the boards of the City’s nine Business Improvement Areas (BIAs), all of whom are subject to the provisions of the **Code of Conduct**. Materials were developed for these training sessions with some adaptations, depending upon the nature of the group attending the particular session. Attendance was mandatory and those in attendance were asked to sign a similar statement that they had read the **Code of Conduct**, that they understood it, and that

they were committed to abiding by its terms. It is my understanding that all attendees signed the **Statement of Commitment to the Code of Conduct**. These were, in my opinion, very effective sessions because they brought home to those in attendance the centrality of integrity in the exercise of their duties as public office holders. I believe that this new program of Education and Training, developed by the Council Service Office, should continue to be a central piece in the education and training of both elected Members of Council and those who volunteer their time on behalf of the community.

An Education and Training session was also held for the Boards of Directors of the Enwin Companies. Once again, a new set of materials was developed with some adaptation for the context of a municipally owned utility which, in the case of Enwin, also manages services for the Windsor Utilities Commission. Once again, members of the Boards were provided with information on the Office of the Integrity Commissioner and training on the **Code of Conduct** and the **Complaints Protocol**. From my perspective, this was a useful meeting as well.

As a general comment, I would say that the Educational aspect of the duties of the Integrity Commissioner is extremely important, especially in the period following a municipal election. Not only might there be newly elected Members of Council, but this is also the time when we replenish the membership of our Agencies, Boards, Commissions, and Committees. It is, effectively, the first line of defense against potential violations of the **Code of Conduct** and, now, the *Municipal Conflict of Interest Act*. I have often said – perhaps too often – if we get to the point where I am compelled to issue a Report to Council concerning a breach of the **Code of Conduct**, then we have failed. The first line of prevention is Education and Training.

Presentations:

There have been no community educational or informational sessions during this reporting period. It has become a regular occurrence, however, to make a presentation in the Municipal Law class at the Faculty of Law, University of Windsor. The class is held in the Fall term. I made

presentations in both 2018 and 2019. (Another such presentation will take place in October of 2020.) These presentations are somewhat lengthier than the training sessions noted above and certainly more extensive than a community presentation would be, as it provides a thorough (academic) examination of the municipal integrity regime for students.

PART III -- ADVISORY FUNCTION

If Education and Training represent the first line of defence against unethical conduct, the Advisory function provides a second layer of protection against violations of the **Code of Conduct**. Providing advice is a key function of the Integrity Commissioner and can often head-off **Code of Conduct** violations. Indeed, the **Code of Conduct** recognizes the importance of the Advice function and incentivizes its use. In Rule 19.0, the **Code** provides: “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 and, subsequently, followed.

Advice Files Opened:

Reporting Period	Requests for Advice	Formal Advice Letters
1st Report: 1 Aug 11 to 30 Sept 12	0	0
2nd Report: 1 Oct 12 to 30 Sept 13	4	2
3rd Report: 1 Oct 13 to 30 Sept 14	2	2
4th Report: 1 Oct 14 to 30 Sept 15	3	3
5th Report: 1 Oct 15 to 31 Dec 17	8	1
6th Report: 1 Jan 18 to 31 Dec 19	8	7

As one can observe from the chart above, there has been a steady increase over time of “Requests for Advice” as well as formal Letters of Advice under Rule 19.0. During this period, eight Requests for Advice were received – the same as in the previous reporting period even though the Municipal Election occurred during this time frame -- and seven of these Requests resulted in formal Letters of Advice being provided; only one File required no formal Letter of Advice. On one File, however, it became necessary to provide two Letters of Advice. **[Update:** January 1st and June 30th, 2020, there was one Request for Advice; no formal Letter was required.]

Advisory Bulletins:

During the Reporting period, I issued two Advisory Bulletins. The purpose of the Advisory Bulletins is in part educative but also preventative. The Advisory Bulletins are intended to provide guidance to Members of Council and others to whom the **Code of Conduct** applies so that they can avoid violations of the **Code**. 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 link to the Advisory Reports is found at:

<https://www.citywindsor.ca/cityhall/Municipal-Accountability-and-Transparency/Integrity-Commissioner/Pages/Advisory-Bulletins.aspx>. The two Advisory Bulletins issued during the

Reporting period were the following:

1. ***Advisory Bulletin Regarding 2018 Election-Related Activities*** (June 1, 2018); and
2. ***Advisory Bulletin Regarding Gifts and Benefits*** (June 15, 2018). This Bulletin includes a “Gifts and Benefits Disclosure Statement for the Use of Members.”

[Update: No new Advisory Bulletins were issued between January 1st and June 30th of 2020.]

Brief Advice:

In my previous Reports to Council, I had subsumed cases of “Brief Advice” under the rubric “Brief Service” without differentiating the types of “service” being provided. After the 2018 Municipal Election, I decided to separate these cases into distinct categories – “Brief Advice” and “Brief Service”. Therefore, from November 1st, 2018 to December 31st, 2019, there were nineteen (19) instances of Brief Advice. These represent occasions where, in my opinion, advice could be provided immediately or in a very short period of time, and where no File need be opened. These are instances where, once again in my opinion, neither extensive research nor lengthy consideration is necessary. Formal Letters of Advice are not provided except where the Member requests one. So far, this seems to have worked well. It is prompt, efficient, and less expensive than where a Request for Advice is made and a formal Letter of Advice is issued. [Update: Between January 1st and June 30th, 2020, there have been two other instances of Brief Advice.]

Observations

In my view, there has been a general and pronounced increase in the number of occasions – formal Requests and Brief instances – where my advice is sought. This is very positive. First, it indicates that those subject to the **Code of Conduct** are generally aware of its contents, are accustomed to thinking about their conduct in the context of its provisions, and genuinely wish to comply with its terms. This bodes well for the future now that Integrity Commissioners are expected to provide advice on the provisions of the *Municipal Conflict of Interest Act (MCIA)*.

PART IV – INQUIRIES AND COMPLAINTS

Cases Carried Forward:

There were two Complaints carried forward from the previous year.

New Cases:

Seven (7) new Complaint files were opened between January 1st, 2018 and December 31st, 2019. Of these seven cases, all but one involved Members of Council. Once again, it should be noted that this two-year reporting period included the last Municipal Election held on October 22nd, 2018 and that, effectively, no activity took place from June 30th until after the initial Meeting of the new Council, which, I believe, was held in early December. **[Update:** One new Complaint files have been opened since January 1st, 2020. This file remained open as on June 30th.]

Cases Closed:

Nine (9) Complaint files were closed between January 1st, 2018 and December 31st, 2019. One case resulted in a Report to Council. Council adopted the sanctions of Reprimand and Apology recommended by the Integrity Commissioner. In two cases, the matters were, to a greater or lesser extent, resolved through the Informal Complaint Process; in three other cases, jurisdiction was either refused or denied; and in three Files, the Complaint was denied with reasons provided.

Brief Service: There were approximately fifteen 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 plainly 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 denote 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 as a result of my response.

[**Update:** Between January 1st and June 30th, 2020, five (5) instances of “Brief Service” have been recorded.]

Part V – Policy Developments

Revised Code of Conduct:

In the last Report to Council, I described the Revised **Code of Conduct** which was passed by Council on July 17th, 2017. The Revised **Code** was the product of considerable research as well as consultation with City Staff. Amendments to the **Code** included both format and content changes. Major amendments included, among others, the following:

1. Rather than using long, rambling paragraphs that mix proscriptive Rules and descriptive explanations, the Revised **Code** states a series of Rules accompanied by Commentary;
2. 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 is set out in Article III. In addition, Article III states that everyone to whom the **Code of Conduct** applies will be required to receive regular training regarding the **Code**;
3. In Rule 2.0, “Conflict of Interest” is defined. A new Rule – Rule 6 -- has been added regarding “Conflicts of Interest”.
4. Some amendments have been made to Rule 3 regarding “Gifts and Benefits”;
5. 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*;

6. 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.

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*. Some of these amendments came into force on March 1st, 2019. Some of these amendments were anticipated in our 2017 **Code** Revision. However, further changes to the **Code of Conduct** and the **Complaint Protocol** may be required. The most extensive changes, in my view, concern the role of the Integrity Commissioner in Conflict of Interest issues. I am recommending that we examine our current **Code** and **Complaint Protocol** to ascertain whether further amendments are required to comply with the amended Provincial statutes.

Schedule “B” to the Code of Conduct -- City of Windsor Council-Staff Protocol:

Based upon certain concerns that have been expressed to me over the past number of years, I believe it would be prudent to re-examine Schedule “B” to the **Code of Conduct**. Schedule “B” is the product of a merging of Schedules “A” and “B” in the previous **Code**. However, little attention was given to whether these provisions ought to be continued in the Revised **Code**. The objective of Schedule “B” is laudatory – it sets out the roles and responsibilities of Members of Council, both individually and as a whole, as well as City Staff. It also attempts to provide guidelines for the relationship between the Mayor and other Members of Council.

Some of these provisions seem anachronistic. For example, the Mayor is to “oversees the conduct of the subordinate officers in the government and administration and sees that all proven negligence, carelessness and violation of duty are dealt with”. This is clearly a throwback to a time when Windsor had not as yet developed the strong senior management structure and team that it currently has. Other provisions appear to be highly technical and

would be better placed -- or may already be duplicative of – provisions in the *Procedure By-law*. For example, one provision states that the “Whole Council . . . must have a quorum in order to vote to amend or enact by-laws”.

Other provisions seem to stifle the creativity and initiative of Members of Council. See for example: The “expectations of Council, its committees, and its Members in fulfilling the above roles and responsibilities are [to] refrain from providing individual direction to the Chief Administrative Officer to initiate any action or prepare any report of a significant nature or initiate any project or study without the consent of the entire Council”. This is a very broad provision and seems to oppose any pro-active initiatives on the part of Members of Council.

Finally, there are, in fact, some thorny issues raised by the section entitled “Council Members on Agencies, Boards, and Commissions”. It is inescapable that Council Members who represent the City on Local Agencies and Boards often find themselves in difficult situations where their fiduciary duties to the Agency or Board conflict with their fiduciary duties to Council and the City. Members can also find themselves in, what I will call, confidentiality straightjackets – where, for example, a Councillor receives confidential information as a representative on a Local Agency or Board but cannot share that information with Council without violating rules of confidentiality, or *vice versa*.

My point is not that any of these provisions are necessarily “bad” – as I said, the aim of Schedule “B” is laudatory; my point is that the actual provisions either do not belong in a **Code of Conduct** or need to be properly explained and clarified. Even the question of whether the Schedule is aspirational or proscriptive should be determined. A re-examination of Schedule “B” is necessary.

My conclusion here is simply this: Even though the **Code of Conduct** was amended only three years ago, we need to revisit it to ensure that it complies with Provincial law and is working in an effective and efficient manner.

PART VI – CONCLUSION

1. Since the last Report to Council, a great deal of effort has been expended on an enhanced program of post-Election Education and Training for Members of Council as well as members of Agencies, Boards, Committees, and Commissions (ABCs) appointed by Council and to the Boards of Business Improvement Areas;
2. Regarding the Integrity Commissioner’s Advice function, I would conclude that there seems to have been an increase in the number of Requests for Advice and instances of Brief Advice. In my view, this is a positive development;
3. Regarding the Integrity Commission’s Complaint Investigation and Adjudication function, the following conclusions can be drawn: (1) There has not been an increase in Complaints, although this reporting period included a Municipal Election; (2) All but one of the seven new Complaints involved a Member of Council; (3) About half of the Complaints are denied for either a lack of jurisdiction or a refusal to accept jurisdiction; (4) The Informal Complaint process remains an important option for some Complainants; and (5) All Complaint files carried over from the previous reporting period as well as new Complaints received during the reporting period have been closed. New Complaint files have been received in 2020;
4. My conclusion is that Members of Council and members of Agencies, Boards, Commissions, and Committees 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”; and
5. Regarding the Policy function, a renewed examination of the **Code of Conduct** seems to be in order.

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 letters of the first and last names being capitalized and prominent.

Bruce P. Elman LL.D.
Integrity Commissioner

Further Information

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