

Annual Report of the Integrity Commissioner - 2019

Recommendation

That Administration prepare amendments to Bylaw 18483, Council Code of Conduct Bylaw, in line with the Recommendations of the Integrity Commissioner, as set out in Attachment 1 of the September 24, 2019, Office of the Integrity Commissioner report CR_7519, and return to Committee.

Executive Summary

This report presents the Annual Report of the Integrity Commissioner, which includes input from the Ethics Advisor. In accordance with Bylaw 18567, the Integrity Commissioner must provide, at least once annually, a report to City Council that includes a summary of activities undertaken in the past year and an analysis of trends or general observation that can be drawn from the complaints received and investigations conducted in the past year.

Report

Bylaw 18567, Integrity Commissioner Bylaw, was passed by City Council on September 5, 2018. In accordance with section 9 of the bylaw, the Integrity Commissioner must:

- (a) receive complaints and carry out investigations pursuant to the Council Code of Conduct Bylaw;
- (b) provide advice and recommendations to Council regarding the ethical behaviour of Councillors, including the Council Code of Conduct Bylaw and other bylaws or Council approved policies that are related to Councillor conduct; and
- (c) Perform any other functions directed by Council.

At least once annually, the Integrity Commissioner must provide a report to City Council that includes:

- (a) a summary of the activities undertaken by the Integrity Commissioner during the past year;

- (b) an analysis of any trends or general observations that can be drawn from the complaints received and investigations conducted in the past year; and
- (c) any other matters the Integrity Commissioner deems relevant.

The Integrity Commissioner's first annual report is provided in Attachment 1. The report includes input from the Ethics Advisor, who is not required to file an annual report.

Attachments

1. Annual Report of the Integrity Commissioner

ANNUAL REPORT

OFFICE of the INTEGRITY COMMISSIONER

The City of Edmonton

For the period September 5, 2018 to
September 2, 2019 (“Reporting Period”)

OFFICE OF THE INTEGRITY COMMISSIONER

On September 5, 2018, Edmonton City Council appointed Jamie Pytel as the City's Integrity Commissioner (IC) and Brent Rathgeber as the Ethics Advisor. The IC and the Ethics Advisor are not employees of, and are independent from, the City of Edmonton. These positions form an independent Integrity Office, which is focused on supporting elected officials to maintain the high level of integrity that they and the public have come to expect. By providing confidential advice to Councillors, the Ethics Advisor assists Councillors in supporting the high standards that Council expects of itself. When complaints are raised about Councillors, the IC investigates and provides recommendations to Council regarding the outcome of those investigations. The IC also provides general advice about amendments to *Bylaw 18483 Council Code of Conduct* (the Code) and other relevant bylaws, procedures, or policies.

The annual budget for the Integrity Office is \$185,000. The total expenditures for the Office of the Integrity Commissioner for the Reporting Period was \$132,164.01.

INTEGRITY COMMISSIONER ACTIVITIES

In the Reporting Period, the IC received 16 complaints and enquiries from the general public, six of which resulted in an investigation. All investigations were completed within the 90-day timeframe provided in the *Code*. None of the six investigated complaints were found to be substantiated. Complainants and the respondent Councillors were given a full copy of the IC's investigation report. No reports were given to Council as there were no findings of a breach of the *Code*.

The IC also received general enquiries from the public and the media that were answered if they related to the Integrity Office, otherwise were redirected to the appropriate City department.

The complaints that were not investigated included:

- Complaints outside the IC's jurisdiction;
- Complaints about alleged activities that occurred before the introduction of the *Code*;
- Complaints that even if proven to be true would not constitute a breach of the *Code*:
 - For example, complaints that Councillors were in a conflict of interest because they participated in a Council meeting the outcome of which could benefit a contributor to their election campaigns.

On this last item, the IC determined that the mere fact that a Councillor received a campaign contribution is not in itself evidence of a conflict of interest or a pecuniary

interest. A conflict of interest arises when there is evidence that Councillors are found to have a pecuniary interest in the subject matter, or when their decisions are influenced by the campaign contribution. Speculation that a Councillor was influenced because of a campaign contribution is not enough.

The IC also determined that as a result of issues raised in some of the complaints, it would be prudent to inform Council about the IC's perspectives on these issues. This included the IC's view that as Council evolves, the IC encourages phasing out the practice of hiring family members in Councillors offices, given the concerns around perceived and actual conflicts of interest. The IC also commented on professional development and training expenses for Councillors and recommended some guidelines be placed around those expenses to encourage Councillors to engage in professional development and training.

In November 2018, the IC attended a conference with other ICs from across Canada which was hosted by the Municipal Integrity Commissioners of Ontario. The IC benefitted greatly from the wealth of experience of other ICs, especially from Ontario where *Council Codes of Conduct* have been in place for years.

ETHICS ADVISOR ACTIVITIES

Throughout the Reporting Period, the Ethics Advisor provided advice to Members of Council on a confidential basis. He met with Council Staffers, as a group, to explain in detail the *Code of Conduct* and interpretation of various sections. During the Reporting Period, the Ethics Advisor provided confidential advice to Councillors or their designated representative on 80 separate occasions. The advice was provided orally (by telephone) or in writing (by email) depending on the Councillor's preference. On rare occasions, the advice was given during a face to face meeting with the Councillor at the Councillor's request. Part L of the *Council Code of Conduct* dealing with "Gifts and Benefits" generated the most inquiries.

The Ethics Advisor provided proactive *Code* interpretations regarding ancillary events associated with the 2018 Grey Cup celebrations, including a gift of Grey Cup jackets; Councillor participation in the 2019 Provincial Election; the acceptability of parking passes; and clarification concerning the uses of City of Edmonton promotional items.

Finally, the Ethics Advisor has met with the Council Services Committee on several occasions to discuss the future establishment of a Lobbyist Registry for Edmonton City Council, potential amendments to the *Council Code of Conduct*, implementation of a Councillor Budget and Expense Policy and the potential for establishing off-site constituency offices.

RECOMMENDATIONS OF THE INTEGRITY COMMISSIONER

The IC has the following comments and recommendations with respect to the *Code of Conduct*:

1. Part B d): Communications of the *Code of Conduct* says that Councillors will, amongst other things, ensure they are respectful and not “discriminate, harass, defame, or demonstrate disrespect toward any person”. The IC would like to remove the word “defame” as the IC feels a complaint of alleged defamatory remarks by a Councillor would require the IC to make a legal determination.

With respect to the procedures set out in the *Code*, the IC endorses the transparency of having the investigative procedures in the *Code*. This codification of the procedures combined with the requirements of the *Municipal Government Act* make up the statutory scheme that guides the work of the Integrity Office.¹ The IC is of the view that these procedures must be principles-based, but not prescriptive, in order to provide the IC with the flexibility needed to conduct proper investigations that adhere to the rules of procedural fairness and natural justice.

The IC has the following proposed amendments to the investigation procedures found in the *Code*:

2. The investigation procedure provides that:

“Prior to commencing a formal investigation, the complainant and respondent Councillor will receive written notice of the investigation, and the respondent Councillor will receive a copy of the complaint...”

The IC is committed to informing a respondent Councillor of a complaint as soon as practically possible after acceptance of the complaint. However, in some circumstances, to perform a proper investigation, it will be necessary to take steps in the formal investigation *before* informing the respondent Councillor. Such steps could include the preservation of evidence such as emails and documents. Accordingly, the IC recommends the following amendment to the *Council Code of Conduct Bylaw*:

~~“Prior to commencing a formal investigation, t~~ The complainant and respondent Councillor will receive written notice of the investigation, and the respondent Councillor will receive a copy of the complaint...”

3. The investigation procedure provides that the IC can provide interim reports to Council, including reports of any interference, obstruction, or retaliation with an ongoing investigation. However, there is no provision in the *Code* that prohibits these activities and it appears to only allow interim reports. The IC recommends that the following section be added to the *Code*:

¹ As endorsed by the court in *Di Biase v. City of Vaughan*; Integrity Commissioner of the City of Vaughan, 2016, ONSC 5620, paragraphs 118 and 131.

Part M: Retaliation, Interference and Obstruction

Councillors must not retaliate against anyone, including other Councillors, who participate or provide information, in good faith, in an Integrity Office investigation.

Interference with or obstructing an Integrity Office investigation is prohibited by the *Council Code of Conduct*.

4. The investigation procedure in the *Code* provides that:

“Once all information has been gathered, the respondent Councillor will have 10 days to respond to the complaint in writing and may provide any further information in support of their response. This deadline may be extended at the discretion of the Integrity Commissioner.”

The IC proposes the following amendment to ensure that respondent Councillors are given fair and proper time to respond to allegations [additions have been underlined]:

“Once all relevant information has been ~~gathered~~ provided to the respondent Councillor by the Integrity Office, the respondent Councillor will have 10 days to respond to the complaint in writing and may provide any further information in support of their response. This deadline may be extended at the discretion of the Integrity Commissioner.”

CLOSING COMMENTS

The number of complaints, enquiries and communications received by the IC and the Ethics Advisor in the first year is commensurate with the level of activity of Canadian cities of similar population and size of Council. Enquiries are expected and encouraged, especially when a *Code of Conduct* is first introduced. It’s a sign of good health of the integrity program, an indicator of awareness of the *Code*, and a desire to better understand the requirements of the *Code*. The IC and the Ethics Advisor welcome Council’s feedback on their interactions with them and with the *Code*.

We would like to acknowledge and thank the Office of the City Clerk for providing exceptional support and assistance during this past year.

Respectfully Submitted

Jamie Pytel
Integrity Commissioner

Brent Rathgeber
Ethics Advisor