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*Integrity  
Commissioner's  
Report*



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**DATE:** June 25, 2014

**TO:** The Mayor and Council  
Meeting Date: July 2, 2014

**FROM:** Robert J. Swayze  
Integrity Commissioner

**SUBJECT:** Annual Report of the Integrity Commissioner

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**RECOMMENDATION:** That Council receive the annual report of the Integrity Commissioner dated June 25, 2014

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**REPORT:** I was appointed Integrity Commissioner by agreement commencing on July 1, 2012 for a term of 5 years. This report covers the period from July 1, 2013 to June 30, 2014.

The duties assigned to me by the agreement are as follows:

1. Advise confidentially members of Council or Council as a whole on their ethical obligations and responsibilities under the *Council Code of Conduct and Complaint Protocol*. ("Code")
2. Upon receipt of a complaint, to determine whether the allegations made would, if substantiated, constitute a breach of the Code and if so to carry out an investigation.
3. Upon the request of Council, to provide educational sessions regarding the role of the Integrity Commissioner and the

ethical obligations of Council.

4. To report directly to Council on all of my activities.

It has been a distinct pleasure serving as Integrity Commissioner for past two years. During my tenure, the members of Mississauga Council stand out among most of the other municipalities in Ontario served by an Integrity Commissioner, including many of my other clients, as having the most cooperative and harmonious relationship with each other and with staff. I have never received a formal complaint in Mississauga from any member of Council or staff. I have dealt with most members of Council during the year and all have promptly responded to my requests for information and acted expeditiously on my recommendations.

This being an election year, the Code requires me to stay, until after the inaugural meeting of the new Council, complaints which request an investigation and are received by me from and after August 1. However, during the balance of the year leading up to the election, I will continue to oversee the enforcement of the Code and provide advice to members of Council and staff.

#### **Accomplishments during the Year**

The past year has been very active in recommending changes to the Code arising out of both instructions from Council and reacting to conclusions drawn from carrying out investigations. I continuously promote the Code as a living document which must stay current. The following is a brief summary of reports which resulted in changes to the Code made by Council:

- The Code was expanded to include all members of local boards of the City. Two different codes applying to adjudicative and non-adjudicative boards were approved by Council after extensive consultation with board members. These codes will become effective in 2015 and I am instructed to carry out educational sessions on the codes with board members, this year and next.
- Progress has been made in making amendments to Rule 6 of the Code relating to elections, to clarify what constitutes use of public funds in an election campaign. The use of social media

in a campaign has been debated by Council and is now clarified in the Code. Advice from the City Clerk to Councillor's staff has been given to define their role as city staff reporting to a member of Council, which becomes complicated in an election year. Several changes to the Code in this regard have been recommended by me and accepted by Council.

- The requirement to appoint an independent investigator under the Respectful Workplace Policy for complaints against members of Council has been changed to give jurisdiction to the Integrity Commissioner.
- The Code has been changed to continue to prohibit newsletters but permit letters and E-mails to be sent by Councillors to their constituents after June 30<sup>th</sup> in an election year, if they convey important ward information.
- The Code has been changed to clarify how Councillors can promote businesses in their ward.
- The rules for a Councillor advocating before an adjudicative tribunal appointed by Council, such as the Committee of Adjustment have been settled.

#### **Magder v. Ford**

Much attention has been focused on the Accountability and Transparency regime in Ontario by the application to unseat the Toronto Mayor. It was alleged that the Mayor had a pecuniary conflict of interest in taking part in Council deliberations over ordering him to pay back donations from lobbyists to a football team. The application Judge ordered him unseated but that decision was overturned on appeal by the Divisional Court. This case points up the inadequacy of the current conflict legislation as confirmed by Cunningham J. in the Mississauga Inquiry. One finding of that court is of interest to all members of Council. It found as a matter of procedural fairness, that unless the Integrity Commissioner recommends that Council impose a financial sanction, or there is some "real likelihood" that such a penalty is contemplated, a member may speak to a report on his or her conduct. The Court commented, "There is no reason to preclude a member from speaking to a report recommending a reprimand or requesting an apology."

### **Councillor Gift Information Statements**

During the year, all members of Council are required by the Code to file with me quarterly Gift Information Statements which identify any gifts received which are valued at more than \$500. I received Declarations for each quarter from all members of Council that no such gifts were received during the year except three gifts of more than \$500 which I examined and found not to create a conflict between a private interest and the public duty of the Councillor. Once all such reports are filed each quarter, I send them to the Clerk who makes them part of the public record.

### **Requests for advice from Members of Council**

I received 22 requests for advice from members of Council. Several of them were concerning their support of charitable organizations and my interpretation of Rule 2, which encourages Councillors to support community groups. My overriding concern in this area is where community fund raising is done with lobbyists of the City who might expect favours in return. Many requests related to the election and requested me to distinguish between what activities of a ward office might be regarded as ward business and not campaigning. Many other subjects were covered including concerns about participating in various activities that may amount to a conflict under the *Municipal Conflict of Interest Act*.

### **Public Contact**

I receive E-mails and telephone calls from members of the public, several each week, which I respond to by providing information on the Code and answer other questions about ethics in municipalities. I try to be helpful and have found the majority of these contacts to be polite and respectful of the process. I do not assist them with filing complaints but will send them a copy of the Code which contains a complaint form.

### **Complaints Requesting an Investigation**

During the year under review, I have received 18 complaints requesting an investigation and summarily dismissed 11 of them.

Some of them were unintelligible. Some were complaints against members of City staff. One was an attempt to collect a debt from a Councillor. Some were obvious attempts to embarrass the Councillor without any cogent evidence. Two were complaints about arguments between a member of Council and a citizen. Many were politically motivated and without merit. In the past several months, I have worked closely with the City Clerk on complaints related to the *Municipal Elections Act* and we have referred some of them back and forth to each other to be dealt with.

Of the seven remaining, I conducted 3 full investigations and reported to Council on them. I investigated the other 4 partially and on the information collected, decided to dismiss them without a report.

**PROFESSIONAL  
DEVELOPMENT:**

**Integrity Commissioners of Ontario**

As a founding member of the Integrity Commissioners Association, I continue to participate in meetings where we identify and discuss broad issues within our mandate. The Association meets twice a year and the City Manager has kindly permitted me to host one of these meetings in Mississauga in September of this year. I also delivered a paper to the International Municipal Lawyers Association at its annual conference held in San Francisco last year, on the subject of Accountability and Transparency in Canada.

**CONCLUSION:**

This report outlines the activities of the Integrity Commissioner for the past year and concludes all recommendations for this term of Council. For the future, it is hoped that several education sessions can be held for members of Council and Local Boards. I am also discussing with staff a stronger presence for the Integrity Commissioner on the City Website.



Robert J. Swayze  
Integrity Commissioner

*Prepared By:* Robert J. Swayze