



**City of Kingston
Report to Council
Report Number 19-054**

To: Mayor and Members of Council
From: John Bolognone, City Clerk
Resource: Same
Date of Meeting: February 5, 2019
Subject: Transmittal of Annual Report from Principles *Integrity*

Executive Summary:

On September 19, 2017 Council authorized the appointment of Principles *Integrity* as the City's Integrity Commissioner for a period of four years commencing November 1, 2017. The contract with Principles *Integrity* requires the submission of an Annual Report to Council respecting the advice, education and investigations carried out in the previous year, and developments or recommendations of significance related to the role of the City's Integrity Commissioner.

Attached hereto as Exhibit A is the "Integrity Commissioner's Annual Report, City of Kingston", dated January 22, 2019 covering the period from the appointment of Principles *Integrity* on November 1, 2017 until December 31, 2018. Principles *Integrity* will be in attendance on February 5, 2019 to speak to the Annual Report.

Recommendation:

That Council receive the "Integrity Commissioner's Annual Report, City of Kingston" submitted by Principles *Integrity*, dated January 22, 2019 attached as Exhibit "A" to Report Number 19-054.

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Authorizing Signatures:

John Bolognone, City Clerk

Lanie Hurdle, Acting Chief Administrative Officer

Consultation with the following Members of the Corporate Management Team:

Peter Huigenbos, Acting Commissioner, Community Services	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Deanne Roberge, Acting Commissioner, Corporate & Emergency Services	Not Required

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Options/Discussion:**Purpose**

The purpose of this report is to facilitate the transmittal to Council of the “Integrity Commissioner’s Annual Report, City of Kingston” dated January 22, 2019. This Annual Report has been submitted in accordance with the requirements of the contract between the City of Kingston and Principles *Integrity*, the City’s Integrity Commissioner.

Background

Recent amendments to the *Municipal Act, 2001* mandate that the City retain an Integrity Commissioner for Members of Council and Local Boards. The City of Kingston entered into a contract with Principles Integrity for the provision of Integrity Commissioner services for the period November 1, 2017 to October 31, 2021. The contract requires the submission of an Annual Report to Council respecting the advice, education and investigations carried out in the previous year, and developments or recommendations of significance related to the role of the City’s Integrity Commissioner.

Discussion

The role of the City’s Integrity Commissioner includes the following:

- to provide advice on the application of the Code of Conduct, City policies and procedures and rules relating to the ethical conduct of Members, and the *Municipal Conflict of Interest Act*;
- to conduct inquiries in response to complaints;
- to provide opinions on policy matters and provide reports to Council on issues of ethics and integrity;
- to provide information and training on matters related to the Code of Conduct and issues of ethics and integrity and to the *Municipal Conflict of Interest Act*;
- to provide general information to members of the public, on request;
- to maintain custody and control of the Integrity Commissioner’s complaint and inquiry files; and
- to provide such other services respecting ethical and integrity matters as required.

The Annual report submitted by Principles *Integrity* provides an overview of the role of the Integrity Commissioner and summarizes the activity undertaken with respect to the following areas of responsibility:

- policy development and education;

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- advice;
- complaint investigation and resolution; and
- ethical themes in Kingston and around the province.

A copy of the Annual Report submitted by Principles *Integrity* is attached as Exhibit A.

Existing Policy/By-Law:

Municipal Act, 2001, as amended – Section 233.3 (appointment of Integrity Commissioner)

Notice Provisions:

Not Applicable

Accessibility Considerations:

Not Applicable

Financial Considerations:

There are no Financial Considerations with this report. Principles *Integrity* is under contract with the City until October 31, 2021.

Contacts:

John Bolognone, City Clerk, 613-546-4291, extension 1247

Other City of Kingston Staff Consulted:

George Wallace, Senior Special Projects Manager

Exhibits Attached:

Exhibit A - “Integrity Commissioner’s Annual Report, City of Kingston” dated January 22, 2019 submitted by Principles *Integrity*

Principles *Integrity*

January 22, 2019

Integrity Commissioner's Annual Report City of Kingston

Principles *Integrity* is pleased to submit this annual report, covering the period from its appointment on November 1, 2017 to December 31, 2018.

The purpose of an integrity commissioner's annual report is to provide the public with the opportunity to understand the ethical well-being of the City's elected and appointed officials through the lens of our activities.

This being our first annual report to Council, we also take the opportunity to introduce ourselves and state our perspective on our role.

About Us:

In 2017 we formed Principles *Integrity*, a partnership focused on accountability and governance matters for municipalities. Since its formation, Principles *Integrity* has been appointed as integrity commissioner (and occasionally as lobbyist registrar and closed meeting investigator) in over 30 Ontario municipalities.

The Role of Integrity Commissioner, Generally:

Recent amendments to the *Municipal Act, 2001* mandate that all municipalities have codes of conduct and integrity commissioners for elected and appointed (local board) officials as of March 1, 2019. The City of Kingston has had a code of conduct and access to an integrity commissioner for several years.

The integrity commissioner's statutory role is to carry out the following functions in an independent manner.

Put succinctly, the role is to:

- Advise on ethical policy development
- Educate on matters relating to ethical behaviour
- Provide, on request, advice and opinions to members of Council and Local Boards
- Provide, on request, advice and opinions to Council
- Provide a mechanism to receive inquiries (often referred to as 'complaints') which allege a breach of ethical responsibilities
- Resolve complaints
- And where it is in the public interest to do so, investigate, report and make recommendations to council within the statutory framework, while guided by Council's codes, policies and protocols.

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This might contrast with the popular yet incorrect view that the role of the integrity commissioner is primarily to hold elected officials to account; to investigate alleged transgressions and to recommend 'punishment'. The better view is that integrity commissioners serve as an independent resource and guide focused on enhancing the municipality's ethical culture.

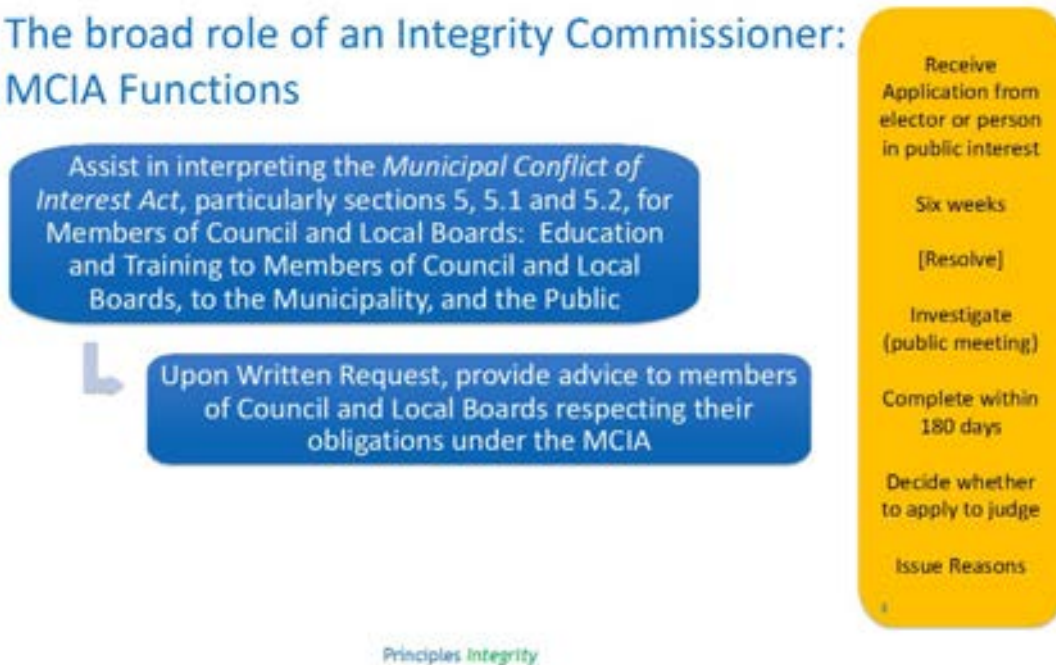
The operating philosophy of Principles *Integrity* recites this perspective. We believe there is one overarching objective for a municipality in appointing an Integrity Commissioner, and that is to raise the public's perception that its elected and appointed officials conduct themselves with integrity:

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an Integrity Commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

In carrying out our broad functions, the role falls into two principle areas. 'Municipal Act' functions, focused on codes of conduct and other policies relating to ethical behaviour, and 'MCIA' or *Municipal Conflict of Interest Act* functions, set out graphically in the following two charts:



The broad role of an Integrity Commissioner: MCIA Functions



In each of the charts above the primary functions of the integrity commissioner are summarized in the horizontal boxes to the left, and the review mechanism (or inquiry function) appears in the vertical box on the right.

The emphasis of *Principles Integrity* is to help municipalities enhance their ethical foundations and reputations through the drafting of effective codes of conduct and other policies governing ethical behaviour, to provide meaningful education related to such policies, and to provide pragmatic binding advice to Members seeking clarification on ethical issues. As noted in the Toronto Computer Leasing Inquiry report authored by the Honourable Madam Justice Bellamy (the “Bellamy Report”, seen by many as the inspiration for the introduction of integrity commissioners and other accountability officers into the municipal landscape), “*Busy councillors and staff cannot be expected to track with precision the development of ethical norms. The Integrity Commissioner can therefore serve as an important source of ethical expertise.*”

Because the development of policy and the provision of education and advice is not in every case a full solution, the broad role of the integrity commissioner includes the function of seeking and facilitating resolutions when allegations of ethical transgressions are made, and, where it is appropriate and in the public interest to do so, conducting and reporting on formal investigations. This in our view is best seen as a residual and not primary role.

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Confidentiality:

Much of the work of an integrity commissioner is done under a cloak of confidentiality. While in some cases secrecy is required by statute, the promise of confidentiality encourages full disclosure by the people who engage with us. We maintain the discretion to release confidential information when it is necessary to do so for the purposes of a public report, but those disclosures would be limited and rare.

City of Kingston Activity:

Since starting our role with the City of Kingston we have been engaged in a moderate level of activity which subdivides roughly into three categories:

1. Policy Development and Education

Shortly after our engagement we endeavoured to meet individually with Members of Council to better understand their concerns and issues. Recently, in November 2018, we had the opportunity to provide broad-based training to Council.

At the request of the City we attended Council to provide guidance with regard to recognizing and respecting differentiation in the role of Members of Council and the role of the administration, anticipating the coming Council-Staff Relations Policy which is mandated to be in place by March 2019, and providing support to senior staff on policy development.

2. Advice

The advice function of the integrity commissioner is available to all Members of Council and where applicable their staff and Members of local boards on matters relating to the code of conduct, the *Municipal Conflict of Interest Act* and any other matter touching upon the ethical conduct of Members. Advice provided by the integrity commissioner is confidential and independent, and where all the relevant facts are disclosed, is binding upon the integrity commissioner.

Our advice is typically provided in a short Advice Memorandum which confirms all relevant facts and provides with clarity our analysis and a recommended course of action.

Though advice is confidential, we can advise that some of the issues we provided guidance on this year arose in the context of properly identifying and appropriately recognizing actual and perceived conflicts of interest. The clarifications and guidance provided to Members seemed to be readily understood and welcome.

3. Complaint Investigation and Resolution

Our approach to reviewing complaints starts with a determination as to whether an inquiry to us is within our jurisdiction, is beyond a trifling matter, is not either frivolous or vexatious, and importantly, whether in its totality it is in the public interest to pursue. We always look to the possibility of informal resolution in favour of formal investigation and

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reporting. Once a formal investigation is commenced, the opportunity to seek informal resolution is not abandoned.

Where we are able to resolve a matter without concluding a formal investigation, our practice is to provide a written explanation to the complainant to close the matter. Often the potentially respondent Member is involved in preliminary fact-finding and will also be provided with an explanation. While also a courtesy, the provision of an explanation minimizes the potential for a formal review being undertaken by the office of the Ombudsman should the Complainant pursue further recourse.

Where formal investigations commence, they are conducted under the tenets of procedural fairness and Members are confidentially provided with the name of the Complainant and such information as is necessary to enable them to respond to the allegations raised. In only one case in the period covered by this report has an inquiry reached the formal investigation stage.

The circumstances of that investigation were unusual in that the alleged transgression involved the release of closed session information and all Members of Council were named as potential respondents. Further, the investigation took place within the looming shadow of the upcoming municipal election.

Breach of a councillors' obligation to maintain the confidentiality of closed session information is an important concern and the allegation met our threshold consideration - is it in the public interest to pursue this matter?

In the course of our investigation, which included interviews with Members of Council and outside parties, we concluded that there was insufficient evidence to conclude that the breach involved the release of information to an individual assumed by some number of councillors to be the recipient. Indeed, it became clear that if the breach occurred, it could well have involved a long list of potential recipients.

As noted in the outset of this report, we believe that "integrity commissioners serve as an independent resource and guide focused on enhancing the municipality's ethical culture."

We determined that it would not serve the public interest to pursue interviews with a long list of potential recipients of the confidential information. To do so would have been extremely costly, and provide no certainty that a culpable individual Member of Council could or would be identified. Most importantly, furthering the investigation was not necessary in order to reinforce to Members the importance of maintaining the confidentiality of closed session information.

Accordingly, as it was in our discretion to do so, we terminated the inquiry and did not submit a formal report to Council. Despite our confidence that Members are well aware of their duty to protect the confidentiality of closed session information, and their genuine commitment to abide by that duty, should the matter arise again in the course of the term our approach may well be different.

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Ethical Themes In Kingston and Around the Province:

With due regard to our obligation to maintain confidentiality, this annual report enables us to identify learning opportunities from advice requests and investigations conducted in a variety of municipalities.

One area of prominence is the failure of some Members of Council to adhere to rules against disparagement. Regardless of the medium, regardless of the intended audience, and regardless of motive, we have observed several instances where Members of Council in municipalities around the province have been found to have breached ethical standards by saying or recording things they have come to regret.

Another area Members have sought guidance on is the interpretation of the rules around receipt of gifts and hospitality. Some questions arose around gifts bestowed upon Members and their family members, and how best to meet the requirements of the Code. Other questions arose in respect of the appropriate treatment of hospitality such as meals paid by others at conferences. In furtherance of better transparency, our recommendation to our clients is that they recognize that even gifts and hospitality which fit within an established exception ought to be made transparent, if the value is above a nominal value. The public's perception is then enhanced when gift disclosures honestly reflect what gifts and hospitality are being received. In any event, we recommend that Members maintain their own records of gifts and hospitality received, as they are responsible for demonstrating the nominal and infrequent nature of gifts received in compliance with the existing code provisions.

Conclusion:

We look forward to continuing to work with Council and with Members of Local Boards to ensure a strong ethical framework. We embrace the opportunity to elevate Members' familiarity with their obligations under the Code and to respond to emerging issues.

As always, we welcome Members' questions and look forward to continuing to serve as Kingston's Integrity Commissioner.

We wish to recognize the Members of Council who are responsible for making decisions at the local level in the public interest. It has been a privilege to assist you in your work by providing advice about the Code of Conduct and resolving complaints. We recognize that public service is not easy and the ethical issues that arise can be challenging. The public rightly demands the highest standard from those who serve them, and we congratulate Council for its aspirational objective to strive to meet that standard.

Finally, we wish to thank the Clerk and the Chief Administrative Officer for their professionalism and assistance where required. Although an Integrity Commissioner is not part of the City administrative hierarchy, the work of our office depends on the facilitation of access to information and policy in order to carry out the mandate. This was done willingly and efficiently by the staff of the City.