



**City of Kingston
Report to Council
Report Number 21-251**

To: Mayor and Members of Council
From: John Bolognone, City Clerk
Resource Staff: Same
Date of Meeting: October 19, 2021
Subject: Transmittal of Annual Report from Principles Integrity

Council Strategic Plan Alignment:

Theme: Corporate business

Goal: See above

Executive Summary:

On September 19, 2017, Council authorized the appointment of Principles Integrity as the City's Integrity Commissioner for a period of four (4) years commencing November 1, 2017. A two (2) month extension to and including December 31, 2021, was approved at the September 7, 2021, Council meeting. 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' to Report Number 21-251 is the "Integrity Commissioner's Annual Report, City of Kingston, Fall 2021", covering the period from January 1, 2019 to August 31, 2021.

Recommendation:

That Council receive the "Integrity Commissioner's Annual Report, City of Kingston, Fall 2021" submitted by Principles Integrity, attached as Exhibit "A" to Report Number 21-251.

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Authorizing Signatures:

ORIGINAL SIGNED BY
CITY CLERK

John Bolognone, City Clerk

ORIGINAL SIGNED BY CHIEF
ADMINISTRATIVE OFFICER

**Lanie Hurdle, Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Paige Agnew, Commissioner, Community Services	Not required
Craig Desjardins, Acting Commissioner, Corporate Services	Not required
Peter Huigenbos, Commissioner, Business, Environment & Projects	Not required
Brad Joyce, Commissioner, Transportation & Public Works	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	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, Fall 2021”. This Annual Report has been submitted in accordance with the requirements of the contract between the City and Principles Integrity.

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 related to the Code of Conduct and issues of ethics and integrity;
- 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;
- 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’ to Report Number 21-251.

Earlier this year, staff requested the Integrity Commissioner to undertake a review and update of the Code of Conduct, Complaint Protocol and additional supporting material. However,

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subsequently on April 14th, the provincial government launched consultations to obtain broad feedback on strengthening municipal codes of conduct to ensure that councillors and heads of council maintain a safe and respectful workplace and carry out their duties as elected officials ethically and responsibly. Staff are of the opinion that it would be prudent to have the recommendations and legislative revisions on this matter from the provincial government before modifying the City of Kingston Member Code of Conduct. Changes to the Code of Conduct would need to have alignment with any forthcoming provincial requirements.

Existing Policy/By-Law:

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

Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

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

Contacts:

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

Other City of Kingston Staff Consulted:

None

Exhibits Attached:

Exhibit A – Integrity Commissioner's Annual Report, City of Kingston, Fall 2021, submitted by Principles Integrity.

Integrity Commissioner's Annual Report
City of Kingston

Principles *Integrity* is pleased to submit this annual report, covering the period from January 1, 2019, the date of our last annual report, to August 31, 2021.

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.

In this instance we have also included elements of our recommended workplan for modification of the City's ethical framework. The workplan, we hope, will inform the work of the City's next integrity commissioner in that we have decided not to make a submission in response to the City's RFP for integrity commissioner services, which by the time this report is presented to Council will have closed.

As we indicate in this Annual Report and our last one to Council, while serving as independent statutory officers we place great emphasis on a collaboration to support the City's elected officials. This, with regret, has not been fully reciprocated by the City's senior administrative leadership.

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 40 Ontario municipalities and other public bodies. Principles *Integrity* is an active member of the Municipal Integrity Commissioner of Ontario (MICO).

The Role of Integrity Commissioner, Generally:

An integrity commissioner's statutory role is to carry out, in an independent manner, the following functions:

- Advice on ethical policy development
- Education on matters relating to ethical behaviour
- Providing on request, advice and opinions to members of Council and members of Local Boards
- Providing, 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

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- Resolving complaints, and
- Where it is in the public interest to do so, investigating, reporting and making recommendations to council within the statutory framework, while being guided by Council’s codes, policies and protocols.

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, coach, 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.

The practical effect of achieving this objective is an increase in trust, respect and engagement in local affairs.

In carrying out our broad functions, the role falls into two principal 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. From an activity perspective, an integrity commissioner’s role can be depicted this way:

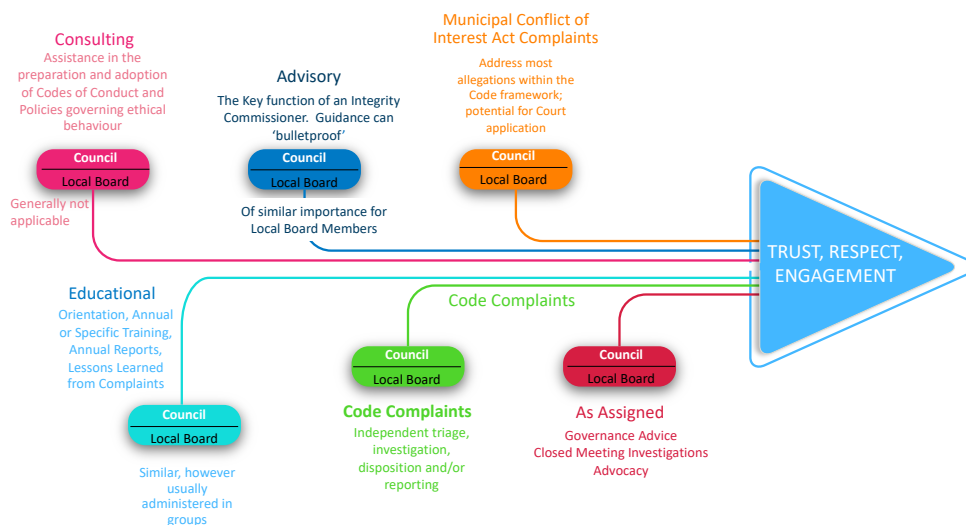


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The emphasis of Principles *Integrity* is to help municipalities enhance their ethical foundations and reputations through the drafting of effective codes of conduct and other policies governing ethical behaviour, to provide meaningful education related 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.

Requirement to Appoint:

Having been asked to extend our professional services agreement until the City can complete its RFP process, we are now in a ‘wind down’ phase of our work with the City.

The role of integrity commissioner is an important one, and should be regarded as a valuable ethical support to members of Council. While we always seek to work collaboratively with municipal administrative staff, an integrity commissioner is an independent statutory officer, with an obligation to communicate and report directly to Council.

In mid-March 2021, we began review work, in collaboration with staff, of the City’s Code of Conduct and Complaint Protocol, informed by the recommendations following the Collingwood Judicial Inquiry. At the time, we were advised to target mid-May for presentation to Council, although that was subsequently pushed off, as we proceeded to discuss recommended Code changes with staff.

In May we provided our first draft of this Annual Report, which we agreed should be held in abeyance, to be provided in conjunction with the policy document review.

In early July we provided suggested revisions to your Code of Conduct and Complaint Protocol, accompanied by blacklined versions of the documents and supported by detailed explanations set out in a chart format. At that time we were targeting a Council meeting of July 13 or August 10 for presentation of both our Annual Report and the Code revisions.

On August 5 we were advised by staff the document was still under review, and told that we could release the August 10 Council date. On August 20 we were notified that the City would not be moving forward with amendments to its Code at this time, and would be pursuing an RFP for integrity commissioner services in contemplation of the expiry of our professional services agreement. We were asked for and agreed to a 2-month extension of the agreement to ensure continuity of service. We were also asked to re-submit an updated Annual Report

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for presentation on September 21, and again for October 19.

The independence of an integrity commissioner is pivotal to our ability to inform and support Council members in their role. As such, we guard our independence, and our ability to communicate our unfiltered advice and guidance directly to Council. We are happy to receive comments on a draft report (and have made revisions to accommodate) but at the end of the day it is our responsibility to convey the information we think important for Council to hear.

In truth, only an appointed integrity commissioner can provide ethical and conflict of interest advice which ‘bulletproofs’ a member. For example, the City of Kingston complaint protocol provides as follows:

Reliance Upon Advice Provided to Member by Integrity Commissioner

9. A Member is entitled to rely upon any written advice given by the Integrity Commissioner to the Member in any subsequent consideration of the conduct of the Member in the same matter provided that the Member fully disclosed all relevant facts known to him or her to the Integrity Commissioner and acted in accordance with the written advice provided by the Integrity Commissioner.

An opinion provided by a lawyer who is not the municipality’s integrity commissioner does not bind the integrity commissioner. The protective advice of the municipality’s own appointed integrity commissioner is perhaps the most significant feature of the legislation, and it is important that Council’s understanding on the point be clear.

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:

During the period covered by this report, we have been engaged in a moderate level of activity as Integrity Commissioner for the City of Kingston which subdivides roughly into three categories:

1. Policy Development and Education

On February 5, 2019, we had the opportunity to provide training to Council in respect of its obligations regarding the Council-Staff Relations Policy.

We recommend that Council consider an integrity commissioner workplan which addresses, at minimum, the following elements to better reflect best practices in the field:

- Modifications to the Code of Conduct to better guide members’ common law responsibilities to avoid disqualifying conflicts of interest beyond those narrowly

described in the *Municipal Conflict of Interest Act*.

- The introduction of Transparency Disclosures so that members may acknowledge that they are able to participate in a matter despite what might appear, on its face, to be a conflict of interest.
- The removal of unnecessary barriers such as the requirement of an affidavit to commence a complaint process.
- The removal of any requirement that complaints be filed through the office of the City Clerk.

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 the bulk 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.

During the period covered by this report, we responded to twenty such requests for advice.

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 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 in the form of a Disposition Letter to the complainant to close the matter. Often the respondent Member is involved in preliminary fact-finding and will also be provided with a summary of the disposition.

Where formal investigations commence, they are conducted under the tenets of procedural fairness and Members are confidentially provided with the name of the

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Complainant and such information as is necessary to enable them to respond to the allegations raised.

During the period covered by this report, six complaints were filed with the Integrity Commissioner. In three of the matters, following review, it was determined that the matters did not present a prima facie contravention, or were not within the jurisdiction of an integrity commissioner, and so the complaints were disposed of with our explanation for the decision to do so.

For the three other complaints, in which it was determined during preliminary review that a full investigation was warranted, public recommendation reports were provided to Council.

Ethical Themes 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.

Non-disparagement

One area of prominence continues to be the failure of some Members of Council to adhere to rules against disparagement. Members of Council are entitled, and indeed expected to disagree on all manner of issues. However, one of the cornerstones to democracy must be the recognition that different opinions and perspectives are to be respected, and disagreement should not devolve into disrespect, disparagement and name-calling.

Disrespectful interactions and/treatment of others can fall along a continuum which may manifest as occasional incivility and micro-aggressions, but when unchecked can culminate in bullying and harassment. Members of Council should be mindful to treat each other, staff and the public with appropriate respect and professionalism at all times.

Some Members of Council hold a view that they are entitled to freely express their opinion, even if that includes disparagement of others, and so long as they share it via personal email, and not on the municipal server, they are not constrained by any rules around decorum. This is incorrect. Members are bound by the Code provisions of respectful and non-disparaging communication, whether sharing views on their own email, social media, or elsewhere.

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.

Recognizing and avoiding conflicts of interest

Another area Members frequently require additional clarification on is recognizing and appropriately identifying conflicts of interest when they arise. These often include when

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members are part of another organization or club whose interests are impacted by a matter before Council, or when members are active professionally within the community and a matter before Council may potentially impact one of their current or past clients.

Take-aways from the Collingwood Inquiry

The Collingwood judicial inquiry published its report, entitled “Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry,” on November 2, 2020. This Report contains 306 recommendations relating to best practices in municipal governance.

In particular, the Report contains important discussion regarding the rules relating to conflicts of interest applied to municipal councillors under the Municipal Conflict of Interest Act (“MCI Act”), which are overly narrow, focusing on pecuniary (i.e. monetary) interests. The Report warns against considering “pecuniary interest” as the sole criterion in assessing whether a councillor is subject to a conflict of interest:

...it is far too easy to misconstrue the Municipal Conflict of Interest Act as addressing all the kinds of conflict of interest that Council members must confront. Despite its name, the Municipal Conflict of Interest Act does not provide a complete conflict of interest code for municipal actors. It addresses the pecuniary interests of a narrowly defined group of family members related to a Council member which are by virtue of the Act deemed to be pecuniary interests of the Council member. Council members are obligated to avoid all forms of conflicts of interest or, where that is not possible, to appropriately disclose and otherwise address those conflicts.

As always, obtaining clear and reliable advice from the integrity commissioner can help avoid costly and time-consuming investigations.

Staying in your lane

One area of concern that still arises from time to time is members of Council overstepping their role, attempting to ‘take the reins’ to fix a constituent’s problem, or directing staff how to do their job. Members of Council serve an important role in putting constituents in touch with appropriate staff, and following established processes, but it is important to strike the correct balance. Failing to recognize this may be perceived by staff as undermining staff or interfering with their duties, and may attract exposure for the Member and the municipality where the Member’s activities are not in compliance with the relevant regulatory scheme (such as using mandated personal protective equipment; following proper risk management processes; ensuring safety for the Member, their constituents, and the general public). Equally importantly, it interferes with the line-management routines properly established by the municipality so that its workers have clarity in who they are to take instructions from.

Social media and blocking

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Another theme which has been the subject of complaints is members' activity on social media. It has come to be understood that an elected official's social media – open twitter accounts and Facebook pages – on which public information is provided, may be considered a kind of 'public forum' or 'town square'. Elected officials typically utilize such accounts and pages to share and disseminate information pertaining to government events, programs or services. It is understood that these open accounts and pages provide a forum for interaction and public debate, similar to what might occur in a town square.

Because they represent forums which engender public debate, elected officials should not arbitrarily block access simply because someone disagrees with their point of view. In other words, it is less than transparent for an elected official to 'scrub' and erase from the discussion voices of dissent or those expressing alternative points of view.

Access to public discussion on an elected official's social media, which site is utilized to share and disseminate information about events, programs, or services, should therefore not be blocked simply because a participant is critical of the elected official or of a program or a perspective. On the other hand, blocking users because their tweets or posts are profane, offensive, racist, misogynistic, abusive or harassing is necessary and appropriate.

We recommend Council consider adopting a social media policy to address these newly emerging issues. Such a policy should require that blocking on an open social media site should only occur when and as necessary, and be accompanied with notice to the offending party, describing the reasons for the blocking, and the period of time the sanction would be in place.

Provincial Consultation

Council is likely aware that the Province of Ontario has recently concluded a consultation regarding municipal codes of conduct, with the apparent intent to review options for strengthening enforcement mechanisms. Our perspective on the need for reform is that the regime largely functions well, and that the most egregious instances of bad behaviour should not be the basis for legislative amendments which could inadvertently render the integrity commissioner complaint mechanism less effective, more costly, and more litigious. Principles *Integrity* led the preparation of a submission by the Municipal Integrity Commissioners of Ontario (MICO) which spoke to a variety of suggested amendments seeking to improve the current system.

Conclusion:

We thank you for the opportunity to guide Members on their ethical obligations and to assist them to respond to emerging issues.

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

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Council for its aspirational objective to strive to meet that standard.