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2022-2023 ANNUAL REPORT OF THE INTEGRITY COMMISSIONER

THE CORPORATION OF THE CITY OF KINGSTON

Meghan Cowan

Aird & Berlis LLP

March 11, 2024

INTRODUCTION

Aird & Berlis LLP was appointed as the Integrity Commissioner for The Corporation of the City of Kingston (the “City”) pursuant to subsection 223.3(1) of the *Municipal Act, 2001* on December 7, 2021 by By-law No. 2022-4. Our services commenced on January 1, 2022.

As such this is our first Annual report and it will encompass the period January 1, 2022 to December 31, 2023. This report provides an executive summary of our activities undertaken in carrying out our functions as the Integrity Commissioner for the City pursuant to our appointment.

ROLE OF THE INTEGRITY COMMISSIONER

The functions of an Integrity Commissioner are set out in subsection 223.3(1) of the *Municipal Act, 2001*:

Integrity Commissioner

223.3 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1, 5.2 and 5.3 of the *Municipal Conflict of Interest Act* to members of council and of local boards.
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality’s codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

Council has assigned all of the foregoing functions to Aird & Berlis LLP.

The role of the Integrity Commissioner was originally quite narrow and really only encompassed the investigatory or enforcement role with respect to complaints made against a member under a code of conduct, although many Integrity Commissioners read in the authority to provide advice to members in order to prevent ethical contraventions.

The Integrity Commissioner's role has been significantly augmented by amendments to the *Municipal Act, 2001* which have expanded its functions. Integrity Commissioners are now expressly empowered to provide specific written advice to members with respect to their obligations under a code of conduct, any policy, procedure, rule or guideline relating to a member's ethical conduct and the *Municipal Conflict of Interest Act*.

In addition, the Integrity Commissioner now has a very significant role to play with respect to the application and enforcement of sections 5, 5.1, 5.2 and 5.3 of the *Municipal Conflict of Interest Act*. Previously, only an elector could seek to apply to a judge to determine whether a member had contravened the *Municipal Conflict of Interest Act*. Now an elector or a "person demonstrably acting in the public interest" (an undefined term) can file an application with an Integrity Commissioner to conduct an inquiry as to whether a member may have contravened the statute and the Integrity Commissioner has the decision-making authority to apply to a judge under section 8 of the *Municipal Conflict of Interest Act* to impose penalties. The last three times that Integrity Commissioners have taken applications to court, the result has been a removal from office of the contravening member.

CODE OF CONDUCT

The City established its original Code of Conduct for Members of Council (the "Code of Conduct") on March 29, 2017 by By-law No. 2017-65 pursuant to Staff Report No. 17-094. The most recent revisions were made in 2021. We understand that the Code of Conduct is scheduled to be reviewed in 2025 and we look forward to working with Council and staff to ensure that the City's Code of Conduct aligns with best practices.

COMPLAINT INVESTIGATIONS

2021

Before our appointment as Integrity Commissioner commenced, one complaint against a local board member from the prior Integrity Commissioner remained outstanding, and we assumed responsibility for the complaint. In August 2022, the complaint was suspended by our office pursuant to subsection 223.4(7) of the *Municipal Act, 2001*, given that 2022 was a regular election year. Post-election (October 2022), the complaint was revived, however it was immediately suspended pursuant to section 223.8 of the *Municipal Act, 2001*, as criminal proceedings had commenced with respect to the same matter. In February 2023, the local board member was not re-appointed, at which time the complaint was finally terminated due to lack of jurisdiction over former members of Council or local boards.

2022

In 2022, we received four (4) formal complaints pursuant to the Code. Two (2) complaints were filed against members of local boards, and two (2) were filed against members of Council. Two (2) complaints were summarily dismissed due to a lack of evidence, and two (2) complaints were terminated pursuant to subsection 223.4(7) of the *Municipal Act, 2001*, similar to the 2021 complaint, given that 2022 was a regular election year. No investigations were conducted, and consequently, no reports to Council were submitted.

2023

In 2023 our office received just one (1) multi-faceted complaint pursuant to the Code. The complaint filed against a member of Council was dismissed on all alleged breaches of the Code due to the unsubstantiated and vexatious nature of the complaint. The complainant filed a complaint with the Ontario Ombudsman who advised us on December 12, 2023 that he had reviewed the complaint and was taking no further action and closed the file.

In addition, we received one (1) request from Council to conduct review a matter to determine if a member had contravened either the Code of Conduct or the *Municipal Conflict of Interest Act* with respect to the 2023 Municipal Operating Budget. Our investigation concluded that the member took appropriate mitigative measures, that his conduct did not breach obligations respecting a potential conflict of interest, and that there was no contravention of the Code of Conduct or of the *Municipal Conflict of Interest Act*.

ADVICE TO MEMBERS

The authority of the Integrity Commissioner was amended in 2019 to allow members to make written requests for specific advice from the Integrity Commissioner with respect to their obligations under the Code of Conduct, any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members and the *Municipal Conflict of Interest Act*.

We received and responded to a number of written requests for advice from members of Council and as well as from members of local boards. The inquiries related to various issues pertaining to the application of the Code of Conduct and the *Municipal Conflict of Interest Act*.

Subsections 223.3(2.1) and (2.2) of the *Municipal Act, 2001* expressly require that any requests from members be made in writing and that the Integrity Commissioner's advice to members also be set out in writing. We kindly request that any members who seek our advice, set out all of the relevant background facts and include copies or links to supporting documents (such as correspondence, social media posts, staff reports, etc.). This will greatly assist us in providing our advice without the need for us to search for the information or undertake research to find records and materials that the member may have ready access to.

We seek to provide our advice within 24 to 48 hours of receiving the information and records that are necessary to be reviewed in order to provide our written advice. We typically provide our written advice to members in a quasi-formal manner via email and seek to provide an explanation for the determinations that we have made and advice that we are giving.

We remind members that we can only provide advice to them with respect to their own obligations and not the responsibilities of other members or persons.

2022

In 2022, we received six (6) requests from six (6) different members for written advice from various members relating to the Code of Conduct and the *Municipal Conflict of Interest Act*.

2023

Last year we received nineteen (19) requests from six (6) members for written advice relating to their ethical obligations. A number of the requests entailed supplementary and additional but related advice.

EDUCATION & TRAINING

We conducted a comprehensive training program, including a New Council Orientation as well as sessions related to the Code of Conduct, the Role of the Integrity Commissioner, and the *Municipal Conflict of Interest Act* for members of the newly-constituted Council on November 16, 2022. We did not provide any additional training to members in 2023.

CLOSING REMARKS

We are privileged to act as Integrity Commissioner for the City – we look forward to working with all members of Council and the City's local boards as well as with City staff throughout 2024.

Respectfully submitted,

AIRD & BERLIS LLP



Meghan Cowan

Integrity Commissioner for the City of Kingston