

Office of the Integrity Commissioner

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ANNUAL REPORT

OFFICE of the INTEGRITY COMMISSIONER

The City of Edmonton

Council Code of Conduct Bylaw 18483

(“Code of Conduct” or “Code”)

For the period January 1, 2023 to
December 31, 2023 (“Reporting Period”)

INTEGRITY OFFICE

1. On September 5, 2018, Edmonton City Council appointed Jamie Pytel as the City's Integrity Commissioner and Brent Rathgeber as the Ethics Advisor. These positions form an independent Integrity Office which supports City of Edmonton Council Members with maintaining the high level of integrity that they and the public have come to expect. Together, Jamie and Brent administer the *Council Code of Conduct* (the "Code").
2. The Integrity Commissioner and the Ethics Advisor are not City employees. The Integrity Commissioner was appointed by Council under Bylaw 18567 *Integrity Commissioner Bylaw*, which delegates the duty of receiving Code complaints and carrying out investigations to the Integrity Commissioner. The Integrity Commissioner reports directly to Council and, in addition to investigations, provides proactive advice with respect to the Code and related procedures, including best practices relative to codes of conduct and elected officials.
3. The Ethics Advisor provides legal advice to Councillors regarding the Code and individual ethics. The Ethics Advisor also provides educational programs and materials to Council Members and their staff upon request.
4. This report covers Integrity Office activities for the period January 1, 2023 to December 31, 2023 (the "**Reporting Period**").
5. The budget for the Integrity Office for the Reporting Period was \$150,000.00. Total expenditures for the Reporting Period were \$102,285.65. This is below previous reporting periods where the yearly expenses were in the \$132,000.00 range.

INTEGRITY COMMISSIONER ACTIVITIES IN THE REPORTING PERIOD

Complaints and Enquiries

6. In the Reporting Period, the Integrity Commissioner received 17 complaints, 8 of which were investigated and in 1 case (file 2313) findings of a breach of the Code were made. That investigation spanned from 2023 into 2024. The Integrity Commissioner submitted an Investigation Report with respect to file 2313 on March 19, 2024. As of the date of this Annual Report, file 2313 is the subject of a Judicial Review and the sanction hearing has been delayed pending the outcome of the Judicial Review.

7. Below is a summary of the investigation activity for 2023 and prior Reporting Periods:

REPORTING PERIOD	COMPLAINTS RECEIVED	COMPLAINTS INVESTIGATED	FINDINGS	SANCTIONS IMPOSED
Sept 2018 to Sept 2019	16	6	None	None
Sept 2019 to Sept 2020	20	12	9 investigations resulted in findings of multiple Code breaches, including conduct that was disrespectful, lacking in decorum and for posting misleading information about Council decisions on social media.	None
Sept 2020 to December 2021	38	6	6 investigations resulting in findings of violations, including: Council Member violated the Code when they used electronic mail addresses for their official Councillor duties and personal election campaign activities and communications (4 complaints). Council Member deliberately retaliated against Code complainants; publicly ridiculed and tried to intimidate Code complainants and published on social media information that was false and misleading about prior Code complaints; the Council Member's social media posts lacked decorum, were disrespectful and misleading (2 complaints).	None

January 2022 to December 2022	33	8	<p>7 investigations arising out of the same social media post. The Council Member was found to have violated the Code when a social media post containing a derogatory term about police officers was re-tweeted by the Council Member.</p> <p>1 investigation was undertaken but after a comprehensive review of the allegations it was dismissed as outside of the IC's jurisdiction. As no findings of a Code breach were made, the outcome of this investigation was not brought to Council.</p>	
January 2023 – December 2023	17	8	<p>Investigative steps were taken regarding 8 complaints, with 7 of those complaints then being dismissed. The remaining investigation (investigation file 2313) continued into 2024 and a report was submitted to the City Clerk on March 19, 2024 containing findings of a breach of the Code of Conduct. As of the date of this Annual Report, file 2313 is the subject of a Judicial Review. The sanction hearing for this file has been delayed pending the outcome of the Judicial Review.</p>	

8. The types of complaints received in the Reporting Period that were dismissed at intake or after some investigation included:
- a. Alleged conflict of interest on matters not deemed to be a pecuniary interest pursuant to the *Municipal Government Act*;
 - b. The level or responsiveness of a Council Member to constituent requests, which is outside of the Integrity Commissioner's jurisdiction;

- c. Allegedly making representations on behalf of the City or Council;
- d. Libel or defamation, which are outside of the Integrity Commissioner's jurisdiction;
- e. Expressing opinions on matters of public interest, which is permitted as long as done without breaching the Code (i.e. respectfully, without discrimination or harassment);
- f. Passage of a Bylaw that a complainant did not agree with, which is outside of the Integrity Commissioner's jurisdiction;
- g. Blocking on social media;
- h. Release of confidential information through human error of a staff member. The Integrity Commissioner did not find this warranted a finding of a breach of the Code as the Council Member had an established, proper process for protecting information.

UPDATING THE COUNCIL CODE OF CONDUCT BYLAW AND SANCTION HEARING PROCESS

9. The Integrity Commissioner and Ethics Advisor attended 3 half day sessions with Council's Code of Conduct Sub-Committee in 2023. The Integrity Commissioner and Ethics Advisor participated in these sessions to provide input and feedback on best practices for Codes of Conduct, and areas where the current Code may warrant updating or clarity. The feedback and discussion in these sessions provided useful information for amendments to be made to the Code of Conduct, which we understand is work in progress.
10. While the Council process for dealing with reports from the Integrity Commissioner is not part of the Integrity Commissioner's mandate, the Integrity Commissioner appreciates having input into that process as it impacts the overall operation of and confidence in the Code of Conduct program.
11. Council was asked to consider a process change such that matters coming to Council may start in private, then be moved to public once the subject matter is disclosed to Council. This would give Council an opportunity to first determine which matters should properly be in public. The Integrity Commissioner is in favor of such an approach as this ensures that Code of Conduct matters that should be in private will not risk public disclosure. These include investigation reports dealing with employment matters. In the Integrity Commissioner's view, it is prudent to consider the privacy implications and impact on the Code of Conduct program before such matters are held in public. The Integrity Commissioner understands that the review of this process is ongoing.
12. Updates were also made in 2023 to make the Code of Conduct program more accessible, including posting prior Annual Reports and Investigation Reports that went

to sanction hearings on the City of Edmonton Integrity Office web-site. We also updated the Code of Conduct Complaint Form to make it more user friendly.

INTEGRITY COMMISSIONER CODE ENQUIRIES AND INTERPRETATIONS IN THE REPORTING PERIOD

13. In the Reporting Period questions arose regarding the interpretation of the Code by Council Members and the public generally, and at an information session held on July 13, 2023 hosted by the Ethics Advisor, and involving the Integrity Commissioner, Council Members and their staff.

14. Areas of interest regarding the Code during the Reporting Period included:

- a. Councillors living in parts of Edmonton that are impacted by Council's passing of certain bylaws. Generally, the *MGA* provides that a pecuniary interest does not exist by reason only of an interest:
 - i. that the Councillor or their family member may have as an elector, taxpayer or utility customer of the municipality;
 - ii. that the councillor or their family member hold in common with the majority of electors of the municipality, or if the matter affects only part of the municipality, with the majority of electors in that part;
 - iii. that is so remote or insignificant that it cannot reasonably be regarded as likely to influence a councillor;
 - iv. that a councillor may have when discussing or voting on a bylaw that applies to business activities when the Councillor has an interest in a business, unless the only business affected by the bylaw is the business of the Councillor or their family.

It should also be noted that perceptions around a conflict of interest in these scenarios are difficult to mitigate as Council Members are also required to live in Edmonton and will invariably be impacted as taxpayers by the decisions made by Council. Further, the *MGA* requires Councillors to vote on matters unless they have a pecuniary interest in a matter.

It should also be noted that changes to the pecuniary interest provisions of the *MGA* are expected. We anticipate that Council Members will receive briefing and education on these changes to ensure ongoing compliance with the Code of Conduct.

- b. The Integrity Commissioner was asked who would investigate concerns raised about alleged harassing or discriminatory conduct by Council Members towards City employees, including Council office staff. The Integrity Commissioner confirmed that such complaints are submitted to the Integrity Commissioner whose mandate includes investigating these kinds of complaints. This process was confirmed for the Integrity Commissioner by the Chief People Officer and communicated to Council when Council was first elected and thereafter.
- c. A complaint of workplace harassment or discrimination may also be made by a staff member to other regulators or a court. If it was found in those separate processes that a Council Member had breached the relevant laws, this could be deemed a breach of Part D of the Code which requires Council Members to comply with all applicable laws. These are separate and sometimes concurrent processes to the Code of Conduct process.
- d. The Integrity Commissioner was also asked about Council Members making public statements about members of City Administration. Generally, Council Members are entitled to hold opinions and make fair comment. It is acceptable to say comments along the lines that a Councillor thinks X service could be done differently or Councillors are asking Administration to review a certain topic. Making such comments are fine provided they do not violate the requirements of the Code of Conduct.
- e. Councillors should never publicly single out or personally attack a particular staff member, or question their competency or ethics. Likewise, staff member's employment should not be publicly discussed or threatened by a Council Member. Such public comments or threats are particularly egregious given the public platforms available to Council Members and the power differential between Council Members and staff. Staff are impeded from defending themselves publicly when comments are made about them in this manner.
- f. If Council Members have feedback about a particular member of Administration, that feedback should be directed in private to the City Manager. If Council Members have feedback for the City Manager, it should also be given in private. Established processes for providing such feedback should be followed, bearing in mind that the City Manager reports to all of Council.

EXTENSION OF THE INTEGRITY COMMISSIONER AND ETHICS ADVISOR'S CONTRACTS

15. The Integrity Commissioner and Ethics Advisor contracts were open for renewal in September 2023.
16. When contemplating a contract renewal, the Integrity Commissioner proposed a more modern approach to move this program forward. This included encouraging a non-adversarial, informal approach to Code of Conduct issues wherever possible. This would have a focus not on winners or losers, but on continuous improvement, learning from issues that arise, taking personal accountability, and a restorative approach. The Integrity Commissioner remains committed to this modern approach as it is better for all involved, more cost-effective and supports the overall Code of Conduct program.
17. In August, 2023 the Integrity Commissioner and Ethic's Advisor's contracts were extended for another three years, to end on September 30, 2026.
18. The Integrity Commissioner thanks Council for the trust placed in this office. It is a privilege to assist in the effective and ethical operation of municipal government.

ETHICS ADVISOR'S ACTIVITIES IN THE REPORTING PERIOD

19. During the Reporting Period, the Ethics Advisor provided confidential advice to Council Members or their designated representative on 69 separate occasions (including supplemental advice). The advice was provided primarily orally (by telephone) or on in writing (by e-mail), depending on the Councillor's preference and timelines. On rare occasions, the advice was given during a face-to-face meeting with the Councillor and at the Councillor's request. This number is down slightly from 2022, which reflects that as councillors become more experienced and familiar with the Code of Conduct and their other ethical obligations, the requirement for Ethics Advisor consultation is reduced.
20. The Ethics Advisor will deal with the assistants and staffers of the councillors, when said proxy has been authorized by the councillor to make inquiries. This system generally promotes efficiency, given the complexity of councillor schedules.
21. The Ethics Advisor assists Councillors who are the subject of a Complaint Investigation. This assistance might include Complaint Review, statement preparation

and/or attendance with the Councillor when being interviewed by the Integrity Commissioner.

22. It would be awkward for the Ethics Advisor to formally represent a Councillor who is the subject of a sanction hearing. Invariably the individual Councillors deliberating at the hearing would have, at one time or another, sought advice from the Ethics Advisor. This may or may not be a technical conflict, as the deliberative body would be Council as a whole, while the previous advice given would have been to individual Councillors.
23. Part L of Code dealing with “Gifts and Benefits” was still the section that generated the most inquiries. Specifically, event attendance continues to confuse councillors and their staffs. Respectful communications and social media posts are accounting for an increasing number of inquiries to the Ethics Advisor.
24. Understanding how event attendance may be a violation of the Code continues to invite questions. Previously, part 1 (g) of Part L of the Code required a gift of admission to, or food and beverages at, an event to be “offered by the entity or a representative or member of the entity, responsible for organizing or presenting the event. It was previously recommended to Council and accepted that the requirement that the giftor be the sponsor of the event, be deleted from the Code. That was a welcome amendment and has cleared up at least some of the confusion regarding event attendance.
25. The Ethics Advisor continues to believe that event attendance is important, as councillors are ambassadors for the City and attending events allows councillors to interact with constituents and stakeholders in an informal setting.
26. Further, confusion persists regarding the gift registry and when disclosure of a gift is required. Stated succinctly if a gift is “acceptable” and its perceived, actual or estimated value exceeds \$300, the gift must be disclosed in the Councillor’s quarterly disclosure. If a gift cannot be accepted, for whatever reason in Part L of the Code, there is no need to disclose a gift that was not accepted. Most significantly, if a gift is unacceptable, it does not become acceptable merely because its value is <\$300.
27. Finally, the Ethics Advisor met with the Council Services Committee on several occasions both virtually and in person. These meetings have been less frequent than in previous years and it is hoped and presumed that as Councillors become more familiar with the Code that fewer group meetings are required. The Ethics Advisor will continue to provide input and advice and discuss such unresolved issues as the

complaint investigative process, although this matter involves the Integrity Commissioner to a much greater extent than the Ethics Advisor.

28. Further amendments to the Code (including gift and event acceptability) a workable Councillor social media policy and respect in the workplace remain on the Ethics Advisor's agenda and radar.
29. Given the nature of the Solicitor – Client relationship, the Ethics Advisor does respond to media inquiries and will not interact with members of the public, except to give general information on the Code and the process that is unrelated to any specific councillor or complaint.
30. In summary, the Integrity Office is now over five years old; and most, but not all, of the bugs have been worked out. The Ethics Advisor believes that the Office and the Code are generally working as intended and may have even exceeded expectations. This is evidenced by the very few substantiated breaches of the Code since the inception of the Integrity Office. However, some fine tuning may still be required, as even a well-functioning program can always be improved.
31. As always, the Ethics Advisor finds his role challenging and rewarding. It is an honour to contribute to democracy by promoting ethical conduct by elected officials.

CLOSING COMMENTS

We are continually grateful to the Office of the City Clerk and other members of Administration for providing exceptional support and assistance with this program.

Respectfully Submitted

Jamie Pytel
Integrity Commissioner

Brent Rathgeber
Ethics Advisor