

**Office of the Integrity Commissioner Annual Report  
2016-17**

A. Commissioner's Remarks	2
B.1 Activities of the Office of the Integrity Commissioner: July 2016– December 31, 2016	2
B.2 Activities January 1, 2017 – December 31, 2017	3
Complaints under the Code of Conduct	5
C. Statement of Expenditures	5

## **A. Commissioner's Remarks**

This is the Annual Report for the Office of the Integrity Commissioner, which covers the period from June 2016 to December 31, 2017. It has been my practice to submit the Annual Report at a June or September Council meeting following the calendar year, which usually allows the time necessary to review and collate the information in relation to the activities of this Office. In an effort to align reporting with calendar years, in this Report, I am providing an update for the 6 months in 2016 following the last Annual Report, in addition to the 2017 calendar year. The Integrity Commissioner is tasked with the application of the rules of the Code of Conduct for Members of Council (the "Code"). In addition, the duties of the Office include providing comments on City policies that intersect with the Code provisions and responding to queries from the public, City staff and Members of Council.

### **B.1 Activities of the Office of the Integrity Commissioner: June 30, 2016 – December 31, 2016**

#### **Informal and Formal Complaints:**

There were 2 Formal complaints filed with my Office and 7 Informal complaints brought to my Office in the last half of 2016. The 2 Formal complaints were disposed of following preliminary reviews in which the matters raised in the complaints were found not to be in respect of Code rules.

The first formal complaint alleged that the Member of Council had used the influence of his office to extend preferential treatment to a company involved in a development in the City. During the preliminary review in relation to allegations, it was determined that there was no impropriety by the Member of Council who had no involvement in the development. The other formal complaint and the informal complaints, included one with respect to allegations about a Councillor's comments on social media lacking the requisite decorum of office and a Councillor's participation on a community fundraising initiative supported allegedly with resources from a campaign donor.

The rest of the complaints were about City complaint processes that had been brought to the attention of a Member of Council. The complaints alleged either undue influence by the Member of Council on the outcome of a City process or the allegation that the Member's refusal to intervene on behalf of the resident, was tantamount a Code breach. However, the majority of these matters raised questions by the public about City processes. As I had underscored in previous reports, in my capacity of Integrity Commissioner, I attempted to clarify the role of Council versus the role of an individual Member of Council or Council decisions.

### **B.2 Activities of the Office of the Integrity Commissioner: January 2017 – December 31, 2017**

Under the leadership of the Mayor Lehman and in consultation with senior City staff, I have endeavoured to address the distinction between rules of the Code that require Members of Council to avoid perceived Code conflicts and legitimate performance of official duties of office.

## Statements of a Member of Council:

In one significant matter that came to my attention as a formal complaint, I dismissed the matter without completing an investigation. The matter triggered the following sections of the Code:

- 5.1. Members are responsible for making honest statements. No member shall make a statement when they know that statement is false. No member shall make a statement with the intent to mislead Council or members of the public.
- 5.2 Members shall at all times serve and be seen to serve their constituents in a conscientious and diligent manner.
- 5.3 Members will conduct their dealings with each other in ways that maintain public confidence in the office to which they have been elected, are open and honest, focus on issues rather than personalities, avoid aggressive, offensive or abusive conduct.
- 5.4 Members should be committed to performing their functions with integrity, accountability and transparency.
- 5.5 Members shall perform official duties and arrange their public affairs in a temperate and abstemious manner that promotes public confidence and respect and will bear close public scrutiny.
- 5.12 Members of Council
  - c) Must uphold the law and conduct themselves with the highest degree of ethical behaviour and integrity.
  - d) Must avoid conflict of interest;
  - f) May not make statements known to be false or make a statement with the intent to mislead Council or the public;

In my review, I determined that the substance of the matter involved an allegation which on its face, was a matter that is more properly pursued through the courts. In particular, the matter raised issues in respect to an allegation of defamation, enforcement of which is not within the jurisdiction of the Integrity Commissioner under the Code.

Defamation is defined in Black's Law Dictionary as:

1. The act of harming the reputation of another by making a false statement to a third person...
2. A false written or oral statement that damages another's reputation

More specifically, a defamatory statement is defined as:

A statement that tends to injure the reputation of a person referred to in it. The statement is likely to lower that person in the estimation of reasonable people and in particular to cause that person to be regarded with feelings of hatred, contempt, ridicule, fear, or dislike.

Defamation is comprised of two subcategories between libel and slander, which are discussed below.

#### 1. Libel

The first portion of the Act deals with libel. Section 2 of the Act states that "defamatory words in a newspaper or in a broadcast shall be deemed to be published and to constitute libel". Given the nature of editorial and opinion pieces, many defamation actions for libel are focused on newspaper articles which are alleged to have disparaged, directly or indirectly, the subject of the article. In short, libel refers to written defamatory statements.

#### 2. Slander

Slander is the second subcategory of defamation, and encompasses the broadcasting of spoken defamatory words. At common law, oral statements relating to the following four categories of slanderous words are automatically considered to have proven that a loss has been sustained:

- a) statements that discredit the plaintiff in relation to his or her work (business, profession, etc.)
- b) statements that impute to the plaintiff the commission of a criminal offence. <sup>1</sup>

Upon review of the information provided in the matter that I reviewed, in relation to the allegations of Code contraventions, pursuant to section 25.3 and 25.5 of the Code Protocol, I made a determination that, on its face, the issue raised matters that were of serious concern but for which I do not have statutory authority to investigate.

### **The Application of Code rules in respect of Councillor involvement in the recruitment of the City Manager:**

In the Spring of 2017, the City of Barrie began a competitive hiring process to fill the vacancy for the Chief Administrative Officer. A sitting Member of Council decided to participate in the competition, after thoughtful consideration and consultation with my Office with respect to his Code obligations that may be triggered by participation in the competition.

After my Office received 2 informal complaints requesting that I look into whether the Code allowed a Member of Council to participate as a candidate in a competitive recruitment process, I conducted a review and was satisfied that the Members' actions did not trigger the need for a formal investigation.

In a related Memorandum to all Members of Council, I provided guidance in respect of the Code rules that could be triggered and the obligations of Members during the recruitment process for the selection of the Chief Administrative Officer, for the City of Barrie. The Memorandum advised all Members of Council that sections 5.7 and 10.3 of the Code contained imperatives that no Member of Council should directly or indirectly benefit, or aid others to benefit, from knowledge respecting any tender, procurement or employment recruitment process.

In addition, Members of Council were reminded that their Code obligations required them to be free from bias and prejudice in respect of the decisions that are part of a Member's political and legislative duties. With respect to participation on a recruitment selection committee, as well as making a final decision on a preferred candidate for the position of Chief Administrative Officer, Members were cautioned that an individual Member of Council's actions and comments must not

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<sup>1</sup> CHARITY LAW BULLETIN No. 125, September 26, 2007, Editor: Terrance S. Carter

reflect that they will decide unfairly, with any preferential consideration for friends, family members, associates, business or otherwise.

Upon review, of the decision of the selection committee and the final decision of Barrie City Council, I found that the appointment of the successful candidate was the product of a fair and transparent process, which was handled with integrity by the chosen candidate and the selection committee.

### Complaints and Advice under the Code: June 30, 2016 – December 31, 2017

	July 2016 – December 31, 2016	January 1, 2017- December 31, 2017
Formal Complaints Received:	<b>2</b>	<b>1</b>
Informal Complaints Received:	<b>7</b>	<b>4</b>
<b>Total:</b>	<b>9</b>	<b>5</b>
<b>Inquiries on the application of the Code</b>		
From the public:	<b>15</b>	<b>8</b>
From City staff:	<b>0</b>	<b>1</b>
<b>Total</b>		
Informal opinions received by Members of Council:	<b>5</b>	<b>2</b>
Formal opinions received by Members of Council:	<b>6</b>	<b>2</b>

### C. Statement of Expenditures

January 1 - December 31, 2016	
	\$5,788.35 – Fee for Integrity Commissioner Services (including annual retainer, mileage disbursements)
January 1 - December 31, 2017	
	\$1,500.00 – Fee for Integrity Commissioner Services (annual retainer)

**Legislative Update:**

With the proclamation of Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017* ("MOMLA"), Integrity Commissioners have been given jurisdiction to receive complaints with respect to allegations of contravention of the MCIA. The changes made through MOMLA that came into force on January 1, 2018, relate to provisions respecting small business programs, open meetings, and other provisions. The second proclamation date for the *Act* is March 1, 2019 and will bring into force changes to municipal accountability and transparency frameworks that include provisions respecting codes of conduct, integrity commissioners, conflicts of interest, mandatory policies and codes of conduct for local boards, such as committees of adjustment.

**Respectfully submitted by:**



**Suzanne Craig  
Integrity Commissioner**