



ADR
CHAMBERS

Integrity Commissioner Office
for the Town of Niagara-on-the-Lake

EDWARD T. MCDERMOTT

Integrity Commissioner

City of Niagara Falls

Email: emcdermott@adr.ca

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SENT BY COURIER AND EMAIL TO:

Peter Todd

Town Clerk

Town of Niagara-on-the-Lake

1593 Four Mile Road

P.O. Box 100

Virgil, Ontario

L0S 1T0

ptodd@notl.org

Re: Niagara-on-the-Lake Integrity Commissioner

Annual Report

Dear Mr. Todd,

Thank you for the opportunity to act as the Integrity Commissioner (the “IC”) for the Town of Niagara-on-the-Lake (the “Town”) over the past year. In accordance with the terms of the Agreement between the Town and ADR Chambers Inc. and pursuant to s. 223.3 (1) of the *Municipal Act, 2001*, I am providing an Annual Report for the period March 19, 2019 to March 18, 2020.

As you know the IC’s role is to help Members of Council and the municipality’s eligible Local Boards (“Members”) ensure that they are performing their functions in accordance

with the Town's *Code of Conduct* ("The Code"). The Integrity Commissioner is available to educate and provide advice to Members on matters governing their ethical behavior and compliance with the Code and Municipal Conflict of Interest Act ("MCIA"). The Integrity Commissioner is also responsible for receiving, assessing, and investigating appropriate complaints made by Council, Members, and members of the public respecting alleged breaches of the Code and the MCIA by Members.

Complaints and Requests for Advice Received During the Year under Review.

I received three requests for investigation of alleged contraventions of the Code during the year under review.

These complaints were found to be within my jurisdiction and after a full investigation of the various allegations (with respect to two of the complaints) it was determined by me that there had been no violation of the Code by the Councillors involved. The third complaint was withdrawn by the Complainant during the course of the investigation.

In addition to dealing with these complaints, there was a substantial increase in the number of Requests for Advice I received and responded to from various members of Council and Local Boards of the municipality. Most of these were dealt with by means of a full written response to the issue(s) raised by the Councillor as is mandated by the provisions of the Municipal Act.

Occasionally because of the nature of the matter or its urgency to the Councillor or the municipality, a verbal response was given with subsequent written confirmation of the conversation (and a full written response to be provided if the Councillor required it). The advice provided is confidential to the Councillor unless he/she determines to release it. If the Councillor only discloses part of the advice, I may determine to release the balance of my Response.

In total there were 12 such Requests received from Councillors or members of a Local Board of Council as defined in the Municipal Act in the year under review. In addition, certain other matters involving procedural issues were reviewed with the Town Clerk.

Costs

The total costs incurred by the Town during the year for the investigation and adjudication process as well as the responses to Requests for Advice amounted to \$53,059.00 plus HST (for a total of \$59,957.00).

This amount is a considerable increase from the expenditures incurred in the first year of our service to the Town (\$8,085). It is to be noted however that these increased costs may also reflect the changes in the governing legislation which came into effect on March 1, 2019. Those amendments to the Municipal Act and the MCIA expanded the role and responsibilities of the Integrity Commissioner and served to heighten the awareness of Councillors and the public to the importance of having and complying with a Code of Conduct for those charged with the responsibility of Municipal Office. The scope of the applicability of a Code of Conduct was also expanded to include all members of a Local Board (e.g. Committees of Council etc.).

It is of some interest to review the nature of the costs incurred during the year under review. There were 3 complaints that had to be dealt with (one of which was withdrawn as the matter progressed) which consumed 47% of the total cost incurred. The average cost for the two Complaints which went through the whole process was \$12,580 (both about the same). There were 12 Requests for Advice which led to no Complaints. The average cost for research, investigation and production of a full written response to the Member seeking the advice was \$1,750.00.

This review seems to suggest that “an ounce of prevention is worth a pound of cure” as the cost of responding to a Request for Advice is far less than investigating and developing a full Report in response to a Complaint.

These factors together with the unpredictability of when a complaint may arise and what will be involved in investigating it and coming to a final determination, make it very difficult to budget what the cost might be in any given year (e.g. since March 19, 2020 to date we have not rendered any accounts to the Town and as of the end of July, 2020, there is only about \$4,500 outstanding as work-in-process).

We have also found that as Councillors become more accustomed to the expectations of the public and the potential consequences of contravening the Code, they are increasingly turning to making a Request for Advice before proceeding in situations which might give rise to a contravention and resulting investigation and report to Council. This in turn will help to reduce the overall costs to the municipality since, as referenced above, responding to a Request for Advice is far less costly than investigating and developing a full Report in response to a Complaint.

Issues to be considered going forward

As a result of our experience during the past year, it is respectfully suggested that Council consider the following issues on a going forward basis:

- The provisions of Bill 68 came into force on March 1, 2019 and contain some significant amendments to the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act* which affect the role and powers of the Integrity Commissioner and the obligation of Members under the Town's Code. I understand Councillors have already had an education seminar on the Code some time ago, but would once again suggest that an *in camera* education seminar with the IC might be scheduled in the future (when circumstances permit) in order to (once again) familiarize all Councillors with the effect of these new amendments as well as emphasizing our experience with evolving issues such as the importance of not disclosing confidential information in accordance with the requirements of the Code. It might also help if Councillors could at least have some personal

interaction with the Integrity Commissioner so that Requests for Advice and subsequent complaints are not dealt with in a vacuum.

- We also reiterate our previous recommendation that consideration should be given to amending the Town's investigation protocol to include a provision conferring on the Integrity Commissioner the discretion to mandatorily order a mediation session when circumstances, in the opinion of the IC, so warrant.
- The content of the Town's Code of Conduct is in my view good but it is also a living document which should be periodically reviewed to ensure it meets the needs and requirements of the law, the Town, its Councillors and its citizens. We would be pleased to assist in such a review if Council deems it appropriate.

Summary

It has been a pleasure to assist the Town and its Members with the issues that have arisen in connection with the administration of its Code of Conduct. I look forward to continuing to provide the services of Integrity Commissioner to the Town in the forthcoming year.

Yours truly,



Edward T. McDermott
Integrity Commissioner