

**Report to  
Rapport au:**

**Council  
Conseil**

**23 June 2021 / 23 juin 2021**

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**Submitted by  
Soumis par:**

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**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2021-OCC-GEN-0016**

**SUBJECT: Report to Council on an Inquiry Respecting the Conduct of  
Councillor Harder**

**OBJET: Rapport au Conseil sur une enquête concernant la conduite de la  
conseillère Harder**

## **REPORT RECOMMENDATIONS**

**The Integrity Commissioner recommends that City Council:**

- 1. Receive this report, including the finding that Councillor Harder has contravened Sections 4 and 13 of the Code of Conduct;**
- 2. Reprimand Councillor Harder for the said contraventions;**
- 3. Remove Councillor Harder from the Chair and membership of the Planning Committee, the Planning Advisory Committee and the Board of Directors of the Ottawa Community Lands Development Corporation for the remainder of the 2018-2022 Term of Council;**
- 4. Suspend the remuneration paid to Councillor Harder in respect of her services as a member of Council for 15 days;**
- 5. Direct the Integrity Commissioner to amend the Gift Registry disclosures for Councillor Harder the years 2019 and 2020 to reflect the benefit provided to her by The Stirling Group;**
- 6. Direct the City Clerk to seek reimbursement of any legal fees related to the investigation charged by Councillor Harder to her office budget; and**
- 7. Direct the City Clerk with the Integrity Commissioner, the City Solicitor and the City Manager to:**
  - a. Develop an ethical framework for Members' staff as described in the Guidance section appended to the Integrity Commissioner's report;**
  - b. Review and make recommendations for enhancing the procedure for the procurement of consultants by Members of Council, including developing criteria which Members are required to consider before entering into a contract with a consultant, and enforcing the requirement that consultants sign a non-disclosure agreement before work commences under each contract;**
  - c. Undertake a concurrent review of the Code of Conduct for Members of Council and the Lobbyist Code of Conduct and make recommendations with respect to the practice of hiring consultants who are also registered lobbyists and the related issues as**

described in the Guidance section appended to the Integrity Commissioner's report; and

- d. Report on the recommended ethical framework for Members' staff, enhanced procedure for Members' procurement of consultants, and the outcome of the concurrent review of the Code of Conduct for Members of Council and the Lobbyist Code of Conduct for Council's consideration as part of the 2022-2026 Council Governance Review.

## **RECOMMANDATIONS DU RAPPORT**

**Le commissaire à l'intégrité recommande que le Conseil municipal :**

- 1. prenne connaissance du présent rapport ainsi que de la conclusion selon laquelle la conseillère Harder a enfreint les articles 4 et 13 du Code de conduite;**
- 2. réprimande la conseillère Harder pour lesdites infractions;**
- 3. destitue la conseillère Harder de la présidence et la retire du Comité de l'urbanisme, du Comité consultatif sur l'aménagement du territoire et du conseil d'administration de la Société d'aménagement des terrains communautaires d'Ottawa pour le reste du mandat du Conseil de 2018-2022;**
- 4. suspende pendant 15 jours la rémunération versée à la conseillère Harder pour ses services à titre de membre du Conseil;**
- 5. demande au commissaire à l'intégrité de modifier les divulgations du Registre des cadeaux de la conseillère Harder pour les années 2019 et 2020 afin de refléter l'avantage qui lui a été conféré par le Stirling Group;**
- 6. demande au greffier municipal d'obtenir le remboursement des frais juridiques liés à l'enquête facturés par la conseillère Harder au budget de son bureau;**
- 7. demande au greffier municipal, ainsi qu'au commissaire à l'intégrité, à l'avocat général et au directeur municipal de prendre les mesures suivantes :**

- a. **élaborer un cadre éthique à l'intention du personnel des membres, selon les modalités décrites dans la section de directives jointe au rapport du commissaire à l'intégrité;**
- b. **examiner la procédure d'embauche de consultants par les membres du Conseil et formuler des recommandations en vue de l'améliorer, notamment l'élaboration de critères dont les membres doivent tenir compte avant la signature d'un contrat avec un consultant, et l'application de l'exigence selon laquelle les consultants doivent, dans le cadre de chaque contrat, signer une entente de non-divulgence avant le début des travaux;**
- c. **mener un examen simultané du Code de conduite des membres du Conseil et du Code de conduite des lobbyistes et formuler des recommandations relatives à la pratique d'embauche de consultants qui sont également des lobbyistes inscrits et aux questions connexes selon les modalités décrites dans la section de directives jointe au rapport du commissaire à l'intégrité;**
- d. **rendre compte du cadre éthique recommandé à l'intention du personnel des membres; de la procédure améliorée pour l'embauche de consultants par les membres; et des résultats de l'examen simultané du Code de conduite des membres du Conseil et du Code de conduite des lobbyistes. Présenter le tout au Conseil dans le cadre de l'examen de la structure de gestion publique de 2022-2026.**

## **BACKGROUND**

On July 11, 2012, City Council approved the establishment of the Integrity Commissioner position. The City of Ottawa's Integrity Commissioner fulfills the role of Integrity Commissioner, Lobbyist Registrar and Meetings Investigator.

The jurisdiction of the Integrity Commissioner is set out in Section 223.3 of the *Municipal Act, 2001* (the "Act"), as follows:

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 and 5.2 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. 2017, c. 10, Sched. 1, s. 19 (1).*

[...]

#### *Powers and duties*

*(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 98.*

*The attached report relates to an inquiry undertaken by the Integrity Commissioner in his role as Integrity Commissioner pursuant to his jurisdiction set out in Section 223.4 of the Act, as follows:*

#### *Inquiry by Commissioner*

*223.4 (1) This section applies if the Commissioner conducts an inquiry under this Part,*

*(a) in respect of a request made by council, a member of council or a member of the public about whether a member of council or of a local board has contravened the code of conduct applicable to the member; or*

*(b) in respect of a request made by a local board or a member of a local board about whether a member of the local board has contravened the code of conduct applicable to the member. 2006, c. 32, Sched. A, s. 98.*

*Powers on inquiry*

*(2) The Commissioner may elect to exercise the powers under sections 33 and 34 of the Public Inquiries Act, 2009, in which case those sections apply to the inquiry. 2009, c. 33, Sched. 6, s. 72 (1).*

The Integrity Commissioner and all people acting under his instructions are bound by a duty of confidentiality under which secrecy is to be preserved with respect to all matters that come to his or her knowledge in the course of conducting an Inquiry, in accordance with Section 223.5 of the Act, as follows:

*Duty of Confidentiality*

*223.5 (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part. 2006, c. 32, Sched. A, s. 98.*

*Exception*

*(2) Despite subsection (1), information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part. 2006, c. 32, Sched. A, s. 98.*

*[...]*

*Section prevails*

*(3) This section prevails over the Municipal Freedom of Information and Protection of Privacy Act. 2006, c.32, Sched. A, s. 98.*

Where the Integrity Commissioner reports to Council, Section 223.6 of the *Municipal Act, 2001* sets out the following specific requirements:

*Report to council*

*223.6 (1) If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned. 2006, c. 32, Sched. A, s. 98.*

*Report about conduct*

*(2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report. 2006, c. 32, Sched. A, s. 98.*

*Publication of reports*

*(3) The municipality and each local board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public. 2006, c. 32, Sched. A, s. 98.*

The Complaint Protocol of the Code of Conduct for Members of Council (Appendix A to By-law 2018-400) sets out the framework for receiving complaints, conducting investigations and reporting to Council. Section 11 of the Complaint Protocol requires that the Integrity Commissioner report to Council where a complaint is sustained in whole or in part and outline the Integrity Commissioner's findings, the terms of any settlement and/or any recommended corrective action.

This report is submitted to Council under subsections 223.4(1), 223.6(2) and 223.6(3) of the Act and Section 11 of the Complaint Protocol of the Code of Conduct for Members of Council (Appendix A of By-law 2018-400).

## **DISCUSSION**

The attached report is the Integrity Commissioner's final report respecting a formal complaint concerning the conduct of Councillor Harder.

A member of the public filed a formal complaint and sworn affidavit which alleged that a "triangular" relationship between Councillor Harder, her Assistant and a local professional planner, gave rise to a real or apparent conflict of interest.

The formal complaint alleged that Councillor Harder had contravened Section 2(b) of the *Municipal Conflict of Interest Act* (MCIA) as well as Section 4 (General Integrity) and Section 12 (Conduct Respecting Lobbying) of the Code of Conduct for Members of Council.

Following a preliminary review of the information submitted, the Integrity Commissioner determined that the complaint was not frivolous or vexatious.

The Integrity Commissioner determined that the MCIA did not apply to the situation. With respect to the Code of Conduct allegations, the Integrity Commissioner concluded

that there was insufficient evidence to establish a *prima facie* breach of Section 12 (Conduct Respecting Lobbying) of the Code of Conduct, and narrowed the parameters of the inquiry to the alleged contravention of Section 4 (General Integrity) of the Code of Conduct.

The Integrity Commissioner retained the services of an independent investigator to complete the investigation. The Investigator was delegated the responsibility for the investigation in accordance with subsections 223.3(3) and 223.3(4) of the *Municipal Act, 2001*:

***Delegation***

*223.3 (3) The Commissioner may delegate in writing to any person, other than a member of council, any of the Commissioner's powers and duties under this Part. 2006, c. 32, Sched. A, s. 98.*

***Same***

*223.3 (4) The Commissioner may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 98*

The attached report outlines the Integrity Commissioner's individual findings and recommendations related to the formal complaint.

**RURAL IMPLICATIONS**

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

**CONSULTATION**

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

**LEGAL IMPLICATIONS**

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

**RISK MANAGEMENT IMPLICATIONS**

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.



**FINANCIAL IMPLICATIONS**

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

**ACCESSIBILITY IMPACTS**

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

**TERM OF COUNCIL PRIORITIES**

As this is a report from a statutory officer reporting directly to Council, this section is not applicable.

**SUPPORTING DOCUMENTATION**

Document 1 – Report to Council on an Inquiry Respecting the Conduct of Councillor Harder

**DISPOSITION**

Decisions made by Council as a result of this report will be implemented.