



Report to St. John's City Council
on
Recommended Adjustments
to
The City's Existing Ethical Conduct Legislation

Volume I: Report and Recommendations

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Volume I: Report and Recommendations

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Introduction

The municipal council (“Council”) of the city of St. John’s (“the City”) has requested that its conflict of interest legislation be reviewed with a view to providing the Council with advice respecting the adequacy of its existing legislation to ensure the standard of ethical behavior to be expected in the course of conducting the affairs and operations of a modern Canadian city. Council also requested that the review include the City’s code of ethics and business conduct, and consider best practices in other jurisdictions. It was also requested that the work be carried out in two phases, in accordance with the terms of reference (“Terms of Reference”), namely:

Terms of Reference

Phase 1

Conflict of Interest Review/Research

- *existing legislation – City of St. John’s Act and Conflict of Interest By-Law*
- *legislation of the Provincial Government and other municipalities*
- *best practices in other jurisdictions*

Code of Ethics and Business Conduct Review/Research

- *existing legislation – City of St. John’s Act and Conflict of Interest By-Law*
- *legislation of the Provincial Government and other municipalities*
- *best practices in other jurisdictions*

Provide the City with a report detailing the findings together with a list of recommendations.

Phase 2

Conflict of Interest – Code of Ethics and Business Conduct – Draft Policies/By-Laws

Draft new policies/by-laws for – Conflict of Interest and Code of Ethics and Business Conduct - based on the recommendations provided during Phase 1.

Legislation to be considered

Provincial statutes

The Terms of Reference specifically require consideration of “legislation of the Provincial Government”. Responding to that requires review of the relevant provisions of at least six provincial statutes. Those statutes are:

- *City of St. John's Act*, RSNL 1990, c. C-17;
- *Municipal Elections Act*, SNL 2001, c. M-20.2;
- *Municipalities Act 1999*, SNL 1999, c. M-24;
- *Conflict of Interest Act*, SNL 1995, c.C-30.1;
- *House of Assembly Act*, RSNL 1990, c. H-10; and
- *House of Assembly Accountability, Integrity and Administration Act*, SNL 2007, c. H-10.1.

There is a separate direction in the Terms of Reference to review “the code of ethics and business conduct for elected officials with the Provincial Government”. While that direction will, in large part, be discharged by review of the last three statutes in the above list, the results of the review can be greatly enhanced by detailed consideration of the *Report of the Review Commission on Constituency Allowances and Related Matters*, submitted by Chief Justice J. Derek Green in May 2007 (“Green Report”). The relevant portions of that report contains an in depth analysis of the principles informing the need for and content of a code of ethics or code of conduct for elected officials in institutions of democratic government. It would be appropriate to review it before considering the *House of Assembly Accountability, Integrity and Administration Act*, as that statute flowed from the Green Report. Indeed, the draft bill that resulted in that statute was a part of the Green report.

City By-Laws

The Terms of Reference specifically direct review of the *Conflict of Interest By-Law*. It also requires consideration of the code of ethics and business conduct. Those references, obviously, requires thorough assessment of the following existing by-laws:

- By-Law 1305, *Conflict of Interest By-Law*; and
- By-Law 1355, *Code of Ethics By-Law*.

Following the direction in the Terms of Reference to consider best practices in other jurisdictions necessitates considering any other City by-laws respecting conduct that, in those other jurisdictions, are part of the ethics program. That results in also assessing:

- By-Law 1315, *Workplace Human Rights By-Law*;
- By-Law 1506, *Election Finance By-Law*; and
- By-Law 1552, *Whistleblower Protection By-Law*

Other Guidance

In subsequent discussions with the City Clerk it was confirmed that the phrase “other municipalities” in the Terms of Reference refers to other municipalities in Newfoundland and Labrador, and the reference to “best practices in other jurisdictions” would be satisfied by considering perhaps 6 to 8 small to medium sized cities in jurisdictions other than Newfoundland and Labrador and any other cities with exceptional practices.

Following an inquiry from one citizen of the City, as to whether the review would include public hearings, the matter was discussed with the City Clerk. She confirmed that public hearings were not required and were not considered necessary in the circumstances.

Meetings with some Members of Council

The City Clerk also advised that certain members of Council wished to speak with me concerning the review. She advised councilors that those who wished to do so could themselves arrange a time. At an early stage I met with Councillors Jonathan Galgay, Danny Breen, Bernard Davis, Bruce Tilley and David Lane. Somewhat later, I also met with Councillors Tom Hann, and Art Puddister, Mayor Dennis O'Keefe and Deputy Mayor Ron Ellsworth. The views they expressed and the general comments they made were very helpful and I am grateful to each of them for the effort they made.

Most councilors expressed quite similar views. Each emphasized the necessity for, and substantial benefit for the City and its citizens of, having a code of ethics that would express the ethical values that citizens would wish to have reflected in the conduct of all persons acting in the name of or for the City. All agreed that it was not the kind of review that either needed, or would warrant the cost of holding, public hearings.

All agreed there are shortcomings in the existing legislation: the *Conflict of Interest By-law* applies only to members of Council; and the *Code of Ethics By-Law* applies only to employees, is very limited, and does not so much express ethical values of the City as it prohibits a limited number of actions by employees. There was general agreement that the codes or by-laws should also incorporate the provisions of the *Workplace Human Rights By-Law*, the *Whistleblower Protection By-Law* and the *Election Finance By-Law*.

There was general consensus as to:

- 1) the need for a code of ethics that more definitively expressed the ethical values the City embraces;
- 2) application of that code of ethics to all persons for whose decisions or actions the City has responsibility, including members of Council, members of all boards, commissions, advisory committees, task forces and any other agencies (collectively

“Affiliated Entities”) appointed to carry out a function on behalf of the City; statutorily required officers, managers, and employees; and

- 3) the need for a code or codes of conduct identifying actions required and actions prohibited to ensure conduct consistent with the ethical principles and, where necessary, imposing sanctions appropriate to condemn, and where appropriate punish, failure to adhere to the those requirements or prohibitions.

Some expressed concern about existing particular deficiencies or anomalies. There was significant concern about the fact that the existing *Election Finance By-Law* imposes no limit on the amount of money a candidate for election to Council can raise but quite strictly limits the amount that can be spent. This leaves the candidate who has received contributions in excess of the spending limit in a quandary as to how to deal with the surplus, which could be substantial. It appears that current legal advice is that the funds are the candidates to do with as he or she pleases. Councillors who raised this matter with me are quite concerned that this matter be appropriately addressed in this review. One also expressed the view that donations should not be receivable after Election Day.

Other areas of concern raised by one or more members who spoke with me include:

- 1) inappropriate disclosure publicly of matters and views discussed in confidence at properly held privileged meetings;
- 2) the dilemma a member sometimes find himself or herself in by reason of being required to participate in proceedings after that member has disclosed a conflict of interest but Council decides it is not a conflict;
- 3) the importance of having specific rules as to actions respecting his or her office as a member of council, which a member who decides to seek nomination as a candidate in a federal or provincial election must take, and the time by which such action or actions must be taken;
- 4) consideration should be given to not prohibiting Council contracting with a business with which a member is connected, where the services provided by that business would be of value to Council and is not otherwise available;
- 5) there should be changes to properly account for in kind contributions during municipal election campaigns;
- 6) to the maximum extent possible the code of conduct provisions should apply a common standard to all personnel to whom the code applies;
- 7) fees paid for marriages performed by the mayor at City Hall should be managed differently than at present where the fees are paid to the mayor but City staff manage all the arrangements and City space and facilities are used for the ceremony;
- 8) wholly owned City corporations or other entities should be bound by the same public tendering, control and ethical rules as the Council and this is not the case at the moment;

- 9) the ethical principles and conduct codes that apply to council members, statutory officers and senior staff while on or employed with Council should continue to apply for a period of two years following retirement or other separation from the City, in respect of all matters that involve the City

One member of Council also suggested that it would be helpful if, in addition to the provisions of any code of conduct being stated in required legal form or expressions, it could also be set out in a simpler summary that could be more easily and readily understood by those required to be guided by it.

Limitations on Recommendations

It must also be recognized that Council does not have inherent power to create codes of ethics or conduct that will prescribe or prohibit such behavior, and impose such sanctions, as Council may think fit. Municipal governments, whether town or city are created by legislatures, and endowed only with the jurisdiction and powers conferred on them by, the legislation under which they are established. The power of Council to create the code or codes it desires must be expressed specifically or, at least, found to be a reasonable conclusion resulting from general expressions in the *City of St. John's Act* ("City Act"). If the wording of the statute does not grant the specific power, or at least permit drawing a reasonable inference of power, to create the kind of ethics regime Council wishes, the only alternative open to the City is to first seek amendment by the legislature to confer such power.

Even where there is explicit or reasonably construed general power to create codes of ethics and codes of conduct, it cannot be exercised in a manner that would result in provisions that conflict with the legislative jurisdiction of Parliament or be inconsistent with laws of the House of Assembly. I do not consider it necessary to provide a detailed assessment of the constitutional and legal issues involved. The effect of these constitutional and legal principles has been very simply summarized and expressed by Dr. Levine¹ in his book, *Municipal Ethics Regimes*, and it is sufficient for purposes of this report to quote the relevant excerpt:

Ethics codes and codes of conduct are constructed in the context of other laws. If they tread on other law, or attempt to perform functions already fulfilled by other law, they may be found to be of no force or effect.

Federal legislation has been enacted to deal with truly egregious behaviour that breaches the public trust. The *Criminal Code* (Canada) contains offences related to corruption and, indeed, has a section on municipal corruption.

¹ Dr. Levine practices law in Ontario. He has taught courses on Governmental Ethics Law in the Faculty of Law, University of British Columbia and in the Political Science department of the University of Western Ontario. He is also the author of *The Law of Government Ethics: Federal, Ontario and British Columbia*.

Provincial legislation may contain direct or indirect regulation of ethics and conduct matters. Municipal legislation sometimes explicitly includes codes of conduct within the statute. IS Legislation has often been enacted specifically to deal with conflict of interest, as well.

In constructing a code, municipal officials must be cognizant of what is already regulated. In effect, codes must be constructed so as not to impinge upon law already in place. Even if a code is part of a contractual or employment relationship - as opposed to enacted by resolution or by-law - it cannot operate outside the law. So, for example, a municipal code that attempts to penalize and punish bribery would conflict with federal law. At first sight, this seems obvious and simple, but, as will be seen below, many of the behaviours councils attempt to regulate are what might be considered as "approaching" corruption, and there is always a risk that they may be seen to conflict with federal law. As well, where the provinces have already regulated conflict of interest (which is often the most public of ethics issues in local government), municipalities must take great care not to construct systems that encroach on provincial conflict of interest regimes already in place.²

The requirement not to trespass on federal jurisdiction is common across Canada. However, the jurisdiction conferred by the provincial legislature concerned when creating the municipality, can vary from province to province. What is permitted in one province may not be permitted in another. The jurisdiction conferred can also vary from city to city within a province because, usually, each city is created by its own specific statute or charter. That is particularly true of this City because the statute is quite old and has had a wide variety of additions and deletions over the decades. Recommendations as to the content of a code of ethics or code of conduct must be such as to ensure that these concerns are addressed.

Approach to the Work

The first significant decision to be made, in deciding on the approach to the work, was as to what other materials not specifically related to the City should be researched and assessed. That decision has four distinct components: (i) the municipalities in this province whose by-laws, rules and practices should be assessed; (ii) the other jurisdictions in Canada that should be checked in order to decide on the list of 6 to 8 other municipal jurisdictions whose by-laws, rules, and practices would be assessed; (iii) any other jurisdictions outside of Canada having noteworthy practices for the promotion of ethical standards of conduct in municipal government; and (iv) the academic sources that should be assessed. On the basis of preliminary research, and guided by the Terms of Reference and discussions with the City Clerk, I reached four conclusions as to what should be the sources of the other materials to be assessed:

- i. the municipalities in the province should be the largest incorporated municipalities, namely: Mount Pearl, Conception Bay South, Paradise, Clarenville, Marystown, Gander, Grand Falls, Deer Lake, St. Anthony, Corner Brook, Stephenville, Port aux

² Levine, Gregory J., LL.B., Ph.D., *Municipal Ethics Regimes*, Municipal World Inc., Union ON, 2009.

- Basques, Labrador City, Happy Valley-Goose Bay, and any other municipality having noteworthy provisions for the promotion of ethical standards of conduct;
- ii. the 6 to 8 jurisdictions outside this province should be: Halifax, Fredericton, Charlottetown, Quebec City, Ottawa, London, Winnipeg, Regina, Edmonton and Victoria, and there should be added any other city having noteworthy provisions for the promotion of ethical standards of conduct; and
 - iii. the jurisdictions outside Canada that might, if necessary, be looked at to identify principles and practices for the promotion of ethical conduct are: United States, United Kingdom, Australia, and New Zealand; and
 - iv. the academic sources to be considered should include:
 - Gregory J. Levine: *Municipal Ethics Regimes*, 2009, Municipal World Inc., St. Thomas , Ontario;
 - Kenneth Kernaghan and John Langford: *The Responsible Public Servant*, 2nd ed. 2014, The Institute of Public Administration of Canada, Toronto, Ontario
 - Robert Wechsler: *Local Government Ethics Programs*, North Haven Connecticut, 2013, licensed under a Creative Commons Attribution-Noncommercial 3.0 Unported License; and
 - A Fleming Bell II: *Ethics, Conflicts, and Offices, A Guide for Local Officials*, The Institute of Government of the University of North Carolina at Chapel Hill, 1997;
 - Stuart C. Gilman: *Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service*, Washington, DC 2005, a paper prepared for the Poverty Reduction and Economic Management Network (the "PREM") at the World Bank.

The second significant decision to be made in deciding upon an approach to the work was as to the sequence of assessing the materials to be considered. I concluded the work could be most effectively and efficiently done by:

- First, obtaining and assessing an acceptable variety of academic writings on the subject and assess those academic materials to draw conclusions as to the desirable objectives of any code or codes, the essential components, the best structure, and the best application procedures, all with a view to developing a standard by which to judge the quality of the best provisions and practices employed by Newfoundland and Labrador municipalities and in the other Canadian municipalities to be reviewed;
- Second, do the research necessary to identify, obtain and assess codes of ethics and codes of conduct provisions for the other municipalities in Newfoundland and Labrador that would be assessed in order to draw conclusions as to best provisions and practices presently employed in this province;

- Third, do the research necessary to identify, obtain and assess the ethical standards, provisions and practices in the chosen 6 to 8 small to medium sized Canadian cities, and identify any other city having exceptional code of ethics or code of conduct provisions and practices; and
- Fourth, after assessing all the gathered material, develop conclusions as to the type of guidance or regulatory structure that would best provide for the achievement of high ethical standards in the behaviour of persons engaged in the making of decisions and taking actions in the course of conducting the affairs and operations of the City, and the procedures that would best ensure successful achievement of that objective; and
- Fifth, evaluating the existing City by-laws related to ethical standards of behaviour by persons engaged in making decisions and taking action in the course of conducting the affairs of the City, and any relevant provincial legislation applicable to the City, and draw conclusions as to the suitability or otherwise of existing City provisions,
- Sixth, make recommendations to Council respecting decisions and action that may be necessary to create the guidance or regulatory structure most desirable in order for the City to put in place a means of achieving the highest ethical standards of behaviour by all involved in the conduct of the affairs and operations of the City.

Terminology Employed

The terms: code of ethics, code of conduct, conflict of interest rules or by-laws, ethical principles, standards of ethics, or policies, are frequently used interchangeably. There is no clearly correct or incorrect usage and there is little consistency in the way the terms are used in legislation and by-laws or by academics. A reference to a “conflict of interest by-law” does not, by itself generate much confusion. However, in some jurisdictions, rules governing municipal conflicts of interest are not set out in policies, codes or by-laws of the municipalities. Rather, they are one part of the enabling statute under which the municipalities are created.

In addition to directing attention to the *Conflict of Interest By-Law*, the Terms of Reference specifically mention “code of ethics and business conduct for elected officials of the Provincial Government”. As noted above, in addition to the *Conflict of Interest By-Law*, the City does have a *Code of Ethics By-Law*, but it applies only to employees. Clearly, such varying usage of the terms does give rise to some confusion but such confusion is not peculiar to the City; it is to be found in all other jurisdictions and in the academic writings.

It is important, therefore, to have clarity as to what the terms being used in this report are intended to mean, and in particular, it is important to understand the difference, if any,

between the phrases “code of ethics” and “code of conduct”. **Is it a *code of ethics* or a *code of conduct*, or is there any difference?**

In much of the literature and legislative provisions, the terms are used interchangeably. The same type of document is referred to in some cases as a code of ethics and in others as a code of conduct. Some academics see the primary distinction in codes as either “aspirational” or “prohibitive”. A. Fleming Bell, II³ describes the distinction in this manner:

... Codes typically come in two basic types, aspirational and prohibitive. Of course, variations between the two types are also possible.

Aspirational Codes

Aspirational codes are those that deal primarily with how we ought to be. They state the norms of behavior toward which we aspire. Such codes range from the general ... to the fairly specific ...

Aspirational codes typically emphasize the same sorts of ethical principles ... speaks in various ways of trust and responsibility. Some of the key themes ... are integrity, fairness, avoidance of conflicts of interest, and the need to act diligently and responsibly and to inspire and maintain public confidence and trust.

Aspirational codes appeal to humans' higher and better desires. They promote ethical behavior by challenging us to go beyond the letter of the law and to become the especially responsible citizens ...

Prohibitive Codes

Prohibitive codes, in contrast, recognize that public officials may sometimes act in a manner that is self-serving or otherwise incompatible with the public trust that they have been given. They promote better behavior by prohibiting and specifying sanctions for conduct that is considered to be unethical.

... prohibitive codes are ... intended primarily to prohibit public officials from using their public positions for private gain. It provides for investigations of alleged violations, for procedural due process for the alleged violator, and for sanctions up to and including termination for city employees. A council member who violates the resolution may be censured by the council.

...

Hybrid Codes

Some codes combine aspirational features with prohibitions of certain acts. ... The code establishes high standards of conduct ... and imposes various sanctions, including expulsion from membership, for violations of the code's provisions.⁴

Another academic sees the distinction in terms of whether the controls are to be “internal” or “external”. On this issue, Dr. Levine writes:

Within public administration, there has long been a debate about whether or not controls respecting values and ethics in public service should be internal or external. The ... debate contrasts the ideas of internal, values-oriented voluntarism with external, rules-bound coercion. On the one hand, it has been

³ Professor of public law and government at the Institute of Government, University of North Carolina at Chapel Hill.

⁴ Bell, A. Fleming, II, *Ethics, Conflicts, and Offices*, Institute of Government, The University of North Carolina at Chapel Hill, 1977

argued that values and ethics will only ever work if they are fully internalized and accepted by administrators. On the other hand, it is felt that clear rules, clearly enforced, with significant consequences for those who breach them, is the only really meaningful way to ensure adherence to ethics. It is unfortunate that for so long the debate has been characterized by an “either/or” situation. Codes may be descriptive and encouraging; or they may be prescriptive and enforced. Examples of both abound. However, meaningful and effective ethics regimes must incorporate both approaches in some sense.⁵

(Emphasis added]

Yet another academic refers to codes of ethics as being principles and values that serve as a guide for unanticipated events, and codes of conduct being designed to anticipate and prevent certain specific types of behavior. Dr. Stuart Gilman⁶, with decades of knowledge and experience advising numerous national governments, and various state governments in the United States, on issues of governance and anti-corruption, makes these comments:

Principles and values are imbedded in all ethics codes and codes of conduct, either implicitly or explicitly. They are the elements that usually call the public servant to a greater purpose. ...

...

When principles and values are the primary focus of public service they act to provide a guide for unanticipated events. ... Standards of Conduct (or Codes of Conduct) try to account for the majority of circumstances that might confront public administrators. Ethics Codes try to articulate the values and principles expected of public servants when confronting unclear or ambiguous ethical circumstances.⁷

Those distinctions make sense. Consistent with those comments, I concluded it would be best to use the term “code of ethics” to refer to an expression of ethical principles that neither prohibit nor require specified conduct; rather such a code identifies principles and values to be used by individuals as the guide by which their actions will be decided when responding to unanticipated events. Again, consistent with the quoted comments, “code of conduct” would more appropriately describe ethical standards designed to anticipate events or circumstances and either express the desired response or expressly prohibit or require a specific response.

As all the authors have noted, an effective municipal ethics regime or system need not be cast in the form of one type of code to the exclusion of the other. It may be, and may well be better cast as, a hybrid code having, in its different parts, characteristics of both a code of ethics and a code of conduct.

⁵ *Supra*, note 2, at p.6

⁶ Stuart C. Gilman, a graduate of the University of New Orleans, received a Ph.D. in 1974 from the University of Miami and has taught at several universities, the last being the University of Virginia. He has held appointments with the United States Office of Government Ethics, the United Nations, the World Bank and has served as president of the Ethics Resource Center in the United States.

⁷ Gilman, Stuart C., *Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service*, Washington, DC 2005, a paper prepared for the Poverty Reduction and Economic Management Network (the “PREM”) at the World Bank, at pp. 12 and 14.

Presentation of Results

The indicated research and assessment of the researched material has been completed, conclusions have been reached as to the manner in which the City can best provide for the expression of the ethical principles that it wishes to be used as a guide for the decision making and conduct of all persons making decisions and carrying out actions on behalf of the City. The existing City legislation has been assessed against that standard, conclusions as to the adequacy of the existing legislation to achieve the desired purpose have been reached, and recommendations prepared.

What follows is a summary and assessment of the results of that research, a weighing of existing City of St. John's legislation against the conclusions indicated by that assessment, an explanation of the conclusions reached, and recommendations being made as a consequence of those conclusions.

Chapter 1

Purpose, Application, Types and Content of Codes

Carrying out an assessment or discussion of whether or not a code of ethics or code of conduct is necessary for the City is not part of the mandate. The necessity for such a code has been assumed, and in my view, properly so. Accordingly, before proceeding to examine the codes in other jurisdictions to seek guidance as to best content and best practices, it will be important to draw conclusions as to the purpose or objectives of such codes. Once the purpose is fully appreciated, the potential elements or components can be considered, and conclusions can be drawn as to those that are essential, and those that while not essential are nonetheless desirable, for inclusions in order to best achieve the purpose.

Purpose of Codes of Ethics or Codes of Conduct

The website of a United States non-profit municipal ethics support organization, City Ethics Inc., describes that organization as:

... a non-profit organization formed in 2000. Its purpose is to provide a centralized location for information and resources for all forms of local government ethics programs.⁸

Robert Wechsler, educated at Harvard and Columbia University Law School, is the Director of Research for City Ethics. He has written extensively on the subject of local government ethics and is the author of a major work respecting ethics in local government.⁹ In its title the book is described as "A Resource for Ethics Commission Members, Local Officials, Attorneys, Journalists, and Students, And A Manual for Ethics Reform". It is all of that and more; a very comprehensive work dealing with all aspects of ethical issues in the context of municipal or local government. He also drafted, the City Ethics Model Code. With respect to the purpose of a local government ethics program, he writes:

The principal goal of a local government ethics program is to further the public's trust that those who govern their communities are putting their personal interests aside in favor of the public interest. It is hard for a community to have social trust when its residents perceive officials using government to profit themselves and their friends and families. Without this trust, people tend not to participate in their government, even as voters, and they feel as if their government were something apart from their community, an organization designed to benefit its members and those with the right connections, rather than an organization that serves, manages, and supports the community. They also feel they are being taken advantage of and treated unfairly. This leads to very strong emotional reactions.¹⁰

⁸ <http://www.cityethics.org/about>

⁹ Wechsler, Robert, *Local Government Ethics Programs*, licensed under a Creative Commons Attribution-Noncommercial 3.0 Unported License, 2013

¹⁰ *ibid*, at p. 13.

The Canadian author, Dr. Levine, comments on the purpose of codes of ethics in the public sector in the following terms:

Codes of ethics in the public sector are intended to promote integrity in public affairs and to provide guides to acceptable behavior. They are intended to gain and retain public confidence and trust in public institutions. They are intended to help ensure that decision making is fair; that information is appropriately shared and confidences maintained; that public resources are properly used; and that office is properly attended, acquired and utilized. Codes are about promoting fairness at large, and avoiding corruption and corrupt influences. They are intended to promote a public service imbued with a sense of purpose and propriety.

Such documents provide guides, and may be part of the professionalization of interpersonal relations in government. They help to instill understandings of fair play, and the need to curtail favouritism and abuse. They can buttress both the real and apparent independence and neutrality of the civil services.

Codes are reference points for public servants; as well, they are tools for the public to view government actions. They provide a set of standards by which the public may judge government action and evaluate the action of officials they have encountered. Codes may also set out the means by which unethical conduct is to be rectified and, hence, provide a valuable tool for the municipal administration and the public alike.¹¹

Dr. Gilman's views respecting the purpose of codes of ethics are similar to those of Levine and Wechsler. He writes:

Codes of ethics are written to guide behavior. Any final analysis of the impact of a code must include how well it affects behavior. ...

Codes are not designed for "bad" people, but are for the persons who want to act ethically. The bad will seldom follow a code, while most people—especially public servants—welcome ethical guidance in difficult or unclear situations. The Average person is not grossly immoral but often tempted, and sometimes confused, by what appears to be virtuous path. ...

No code, no matter how severely enforced will make truly bad people good. ... However, ethics codes can have a demonstrable impact on the *behavior* of bad people in organizations. When everyone clearly knows the ethical standards of an organization they are more likely to recognize wrongdoing and do something about it. Second miscreants are often hesitant to commit an unethical act if they believe that everyone else around them knows it is wrong. And, finally, corrupt individuals believe they are more likely to get caught in environments that emphasize ethical behavior.¹²

Gilman also poses the specific question "*What are codes of ethics for?*" He then provides four specific answers, the essence of which is as follows:

First, codes of ethics increase the probability that people will behave in certain ways. They do this partially by focusing on the character of their actions and partly by focusing on sanctions for violations. In addition, reliance on codes can reduce the sacrifice involved in an ethical act. An example might be the case of a civil servant whose cousin has asked him to give him a government contract. Without a code it would be a moral choice on his or her part. With a code the civil servant is

¹¹ *Supra*, note 2, at p. 7

¹² *Supra*, note 6 at pp. 7-8

reminded that it violates expectations for civil servants, it could result in losing his or her job, and it moves the action from not helping a family member to doing the right thing.

Second, good ethics codes can focus public servants on actions that result in doing the right things for the right reasons. Ethical behavior should become a habit and effective codes allow both bureaucrats and elected officials to test their actions against expected standards. Repeated over time this kind of habit becomes inculcated in the individual and ingrained in the organization. ...

Third, codes of ethics do not take away one's own moral autonomy or absolve the public servant from the obligation to reason. Codes of ethics provide at most a strong prima facie reason to act in a certain way. However, these can be overridden by strong, reasoned objection. The expectation is that the norm is not to violate the code and such violations can only be justified because of a higher ethical principle. ...

Fourth, codes of ethics can function as a professional statement. That is it expresses the public service's commitments to a specific set of moral standards. This has both cognitive and emotive value. Cognitively, it gives a person joining a profession, civil service, a clear set of value to which they are expected to subscribe. Not all individuals are comfortable working as civil servants and codes can clarify expectations. Codes can help provide the pride of belonging to a group or a profession. Pride is a critical emotion in motivating individuals to see themselves as professional.¹³

Application: To whom should municipal ethical standards codes apply?

The possible alternatives for application are numerous. Dr. Levine sets out clearly the many considerations that arise in the course of determining how far a municipal ethics regime should seek to reach. He writes:

To whom the code will apply is clearly important. While ethics legislation in the US often applies to both elected and non- elected officials, typically in Canada, public sector administrative and legislated ethics codes for elected officials and staff are kept separate. There are exceptions, such as the federal *Conflict of Interest Act*, which regulate cabinet ministers (who for the most part are elected), as well as a range of other public office holders who are Crown employees, cabinet appointees, or other public office holders. The more usual practice at the municipal level is to have a council code and a staff code.

Council codes may apply to council alone; to council and local boards; or to council, local boards, committees, as well as boards of subsidiary entities created by council. When establishing a code for council, it is important to determine how widely this code will apply, and to determine whether there is authority to regulate entities beyond council itself. It is also important to determine if it is fair and feasible to do so. Committees of volunteers should probably be subject to some ethics standards, but should they be the same standards as those that apply to council? (In some cases, this is dictated by content; but content may also be influenced by authority to create the code, as well as notions of fair play respecting people who are situated differently than councilors may be.)

Staff codes typically apply to the whole of the municipal administration. Consultants and those that work for the municipality on an irregular basis may not be covered by such codes. This depends on the code itself and the contractual relationship between the municipality and the contractor. Again, when establishing a code for staff, it is important to consider the breadth of it. It may harm the public

¹³ *ibid*, at pp. 8-9

interest to have staff excluded from a code, as this may be perceived as favouritism. As well, exempting some staff because they may be regulated elsewhere may lead to lack of uniformity in the municipal ethics regime—both ideals and enforcement. Still, while the argument for uniformity and universality is strong, those devising such codes may wish to consider whether or not segments of the staff are already subject to professional regulation (for example, staff lawyers, doctors, etc.): whether there is any potential conflict between the municipal and professional codes; and whether there is need to have professional staff under the same code as other employees.¹⁴

The whole of the foregoing is very relevant to a basic decision Council has to make before proceeding with the development of a code of ethics and code of conduct. In discussions with councilors individually, all expressed the view that any code or codes adopted should be applicable not only to Council Members but to management and supervisory staff, employees and all persons engaged in making decisions, taking actions or expending funds in the name of and on behalf of Council.

Dr. Gilman also commented on these issues, and in particular the issue of whether there should be one generally applicable code or separate codes for distinct groups. He was writing generally about codes of conduct for countries, so he describes the issue in terms of the “geography of the code”, that is the sub units of a nation to which the national code is to apply. Nevertheless, the principles underlying the comments he makes are equally applicable to considering the question in terms of whether there should be a single code applicable to all persons making decisions or taking actions in the name of the City, or a specific code applicable to each of the different functions at the City. Different functions at the City have been inserted into Dr. Gilman’s comments to make it easier to consider his views in the context of circumstances at the City. He wrote:

... code planners must decide whether there will be one uniform national code, will there be multiple codes by geographic region (states, provinces, lande), [council members, staff, employees, appointees to boards and commissions etc.] or whether there will be individual agency codes.
...

There is an unresolved debate as to whether agency codes are more effective than government wide codes. The argument for government wide codes is that they are less confusing because they are consistent throughout all government agencies. ...

There are also strong advocates for agency or ministry specific codes. These individuals rightly point out that the varying missions and makeup of government subunits often create distinctive ethics problems. They point out that a ministry of health confronts a whole series of different ethical challenges than a ministry of customs. A generic, government wide code might be so general that no one could apply it to the kinds of questions street level bureaucrats have to confront. ...

Taking these positions into account will allow governments to decide what would be most effective for their own country. Again, there is not a single right answer but rather only a well considered solution.¹⁵

(Emphasis added)

¹⁴ *Supra*, note 2, at p.10.

¹⁵ *Supra*, note 7 at pp. 49-50

In the fall of 1994, British Prime Minister John Major announced in the House of Commons the appointment of a committee, the Committee on Standards in Public Life ("CSPL") to study the issue and make recommendation as to changes necessary "to ensure the highest standards of propriety in public life". The CSPL was specifically given the direction that:

"For these purposes, public life should include Ministers, civil servants and advisers, Members of Parliament and UK Members of the European Parliament, members and senior officers of all non-departmental public bodies and of national health service bodies, non-ministerial office holders, members and other senior officers of other bodies discharging publicly-funded functions, and elected members and senior officers of local authorities." (Hansard 25 October 1994, col 758)¹⁶

That casts the net very wide. Essentially the Prime Minister sought to include all involved in discharging publicly-funded functions. That is a standard that reflects a principled and clearly supportable basis. It could well be a standard that might be considered for the City, recognizing of course that, in addition to the standards generally applicable to all, there may have to be one or more ethical standards that would apply only to persons involved in a specific function or functions of city government.

Types of Codes

Bell poses the question: which approach works best? That is followed by an extensive discussion that poses even more questions but clearly identifies the issues that need to be considered in deciding on the type of code to employ. He writes:

Is it better to praise and inspire, or to warn and sanction, when one wants to generate support by public officials for ethical principles? For many years public administration specialists have grappled with this question when examining whether public officials should be governed primarily by internal or by external controls.

The differences between internal and external controls are similar to the distinctions between aspirational and prohibitive codes. Internal controls are positive and aspirational. They "consist of values and ethical standards cultivated within each public servant" through training and professional socialization and are "intended to encourage ethical conduct in the absence of rules and monitoring systems." External controls, on the other hand, involve "attempts to impose on the conduct of individual public servants constraints that originate from outside themselves" through rules, laws, and changes in organizational structures."

At their best, the two types of controls should balance and reinforce each other and not give conflicting signals. ... "there must be enough control from outside the individual to discourage those inclinations toward indulgence of self-interest, but enough internal control to encourage the most socially constructive, idealistic, altruistic, and creative impulses to flourish.

Michael Josephson,¹⁷ ... defines several characteristics of an effective ethics code.

¹⁶ Quoted in First Report of the Committee on Standards in Public Life, London: HMSO, May 1995,

¹⁷ Bell describes Michael Josephson as an attorney who founded the Joseph and Edna Josephson Institute for the Advancement of Ethics, and who has conducted hundreds of seminars around the United States.

According to Josephson, it should contain a statement of guiding principles that sets the tone for the code and to which public officials may return as they construe the more detailed code provisions. In effect, this is the aspirational part of the code.

But Josephson's ideal code also would have prohibitive aspects. That is, the code should specifically apply principles to situations that are reasonably likely to occur, and it should be comprehensive, covering the full range of ethical principles that apply to public officials. At the same time, however, the code should be realistic in the standard of behavior that it expects. It should be clear and unambiguous, simple, and easy to read and use, with devices such as indexes to help make it accessible. Finally, it should include a commentary with explanations and illustrations."

Is it realistic to assume that a code embodying all of these characteristics can be drafted? Some of these qualities, such as comprehensiveness, simplicity, and ease of use, seem to point in contrary directions, even if they are not mutually exclusive.

The drafter of Josephson's ideal code will encounter an age-old problem in legal writing-how does one draft clearly and simply, with general enough language to cover a variety of situations and at the same time draft specifically enough to avoid uncertainty and to make it reasonably possible to adhere to the code's commands? Furthermore, if the code is being drafted for a local government, the writer must also consider the limits imposed on governmental codes of ethics by various other laws.¹⁸

(Emphasis added.)

Dr. Gilman speaks in terms of having, in addition to a code, "an effective implementation strategy" or "solid public administration systems". He writes:

The primary critique of ethics codes is that they are too abstract and because of that they are difficult to enforce. Although there is some truth to both of these critiques, usually the problem lies with the institutionalization of the civil service and the ability to enforce behavior in only the most narrow of areas. Any code without an effective institutional implementation strategy is just words. ... Provocatively, some research suggests that just have a code without an institutional fabric can actually lead to greater pressure to commit misconduct than *having no code at all*.

...

Codes of Conduct or Codes of Behavior are designed to anticipate and prevent certain specific types of behavior; e.g. conflict of interest, self-dealing, bribery, and inappropriate actions. Although conduct codes can be brief, most often they are fairly lengthy and detailed. The rationale for the detailed scope of this kind of code is that it is necessary to both protect the employee while at the same time protecting the reputation of the government. Most codes of conduct focus on the "do nots" rather than on affirmative obligations. That is, they detail specific actions in which employees are not to engage.

...

Although Standards of Conduct can, and often do, stand alone it is not uncommon for them to be supplemented with a Code of Ethics. For example, the government of Nigeria does have an ethics code but supplements it with an exhaustive set of Standards of Conduct with over forty pages of regulations under the category discipline. ...

...

Having explored the positive and negative aspects of ethics codes and codes of conduct, it is important to note that there are no "pure" models. Most governments are on a continuum between ethics codes and codes of conduct.¹⁹

¹⁸ *Supra*, note, 4 at pp. 37-38

¹⁹ *Supra*, note 7 at pp.15-20

As to the type of code a municipality should have, Dr. Levine writes:

In constructing a code, municipalities should consider whether or not the code will be based on prohibitions, positive affirmations, or both; and whether or not they will have explicit values and purposes statements. The advantage of the latter is these components give an interpretive frame that is important for both education and enforcement. The advantage of positive affirmations is that they help contribute to a positive atmosphere of respect. The advantage of prohibitions is that they clearly outline prohibited conduct, and leave less to the imagination than positive affirmations. Municipalities ought to be wary of simply copying code from other places, and should construct codes that suit their circumstances and needs. ...²⁰

Content

Determining the actual content at this stage would virtually amount to drafting the Code. The Terms of Reference specifically limits Phase I to the described research and “detailing the findings together with a list of recommendations.” The drafting of any new policies or by-laws for conflict of interest or code of ethics and business conduct is specifically limited by the Terms of Reference to Phase II, about which Council will, presumably, make a decision after considering the Phase I report. Nevertheless, I am of the view that a description of the content in general terms might be helpful to Council’s consideration of the Phase I report. The latter part of the preceding chapter contains some indication, in general terms, of the content that might be included.

Dr. Levine provides a succinct but effective summary, in general terms, in the following:

The content of codes varies considerably depending on the organizational needs of the day, and on the application or proposed application of the codes. Content also varies depending on other laws and policies of the municipalities that may be in place—for example, procedure by-laws that often regulate councilor behavior in council, in order to maintain order and decorum. At a minimum, though, ethics or conduct codes will typically contain prohibitions or statements of what constitutes unethical and/or unacceptable conduct. Occasionally, codes will contain positive statements of appropriate behaviour. Maximally, codes will contain preambles or purpose statements, prohibited behaviours, examples of unacceptable behaviours, penalties and enforcement mechanisms and practice.

Prohibited behaviours can include rules around conflict of interest, misuse of municipal property, misuse of confidential information, inappropriate acceptance of gifts, mistreatment of staff (or coworkers), favouritism and nepotism.

Positive affirmation can include encouragement to behave with honesty and integrity, and to respect municipal administration and the public, and to work diligently in the public interest at all times.

²⁰ *Supra*, note 2 at p. 15

Although there are clear similarities for codes for elected officials and for staff, there are differences as well—some of which result from statutory mandate, and some of which result from different situations of either group of municipal officials.²¹

A description of the content, even in general terms will, of course, vary depending on a number of factors. Three of those factors, that are dependent on decisions Council will make after considering the Phase I report, are:

- **Extent of application**, i.e. application to council members, statutory officers, management staff, employees, appointed members of boards and commissions established by Council, employees of Affiliated Entities of Council (such as St. John's Sports and Entertainment Ltd., Regional Fire Department, Parks and Recreation Commission; Regional Water Supply Services, Regional Waste Disposal Services);
- **Universal or specific to groups**, i.e. to what extent is it necessary or desirable to have a separate code for any specific group or groups; or should there be a universal code generally applicable, with certain additional provisions as may be necessary to the circumstances of a particular function or group but not universally applicable;
- **Type of code**, i.e. whether it is to be simply an expression of ethical values and principles with no guidance respecting specific circumstances (what Levine refers to as "internal", Bell as "aspirational" and Gilman as "ethics code"); or whether it is to be prescriptive (what Levine refers to as "external", Bell as "prohibitive" and Gilman as "code of conduct" or "code of behavior"). There is, of course, the third possibility that each of those academics recognize as desirable, although maybe not essential, a combination of the two or what Bell refers to as the "hybrid" model.

Determination of these issues must precede detailed consideration of content which, of course, is by the Terms of Reference reserved to Phase II.

²¹ *Supra*, note 2 at pp. 11-12

Chapter 2

Elements Essential to Successful Promotion of Ethical Behaviour

In General

It is noteworthy that three of the academic writers quoted above recognize the need for a comprehensive structure if the objective, of achieving behaviour in municipal government that meets the highest ethical standards, is to be successful. Wechsler refers to an “ethics program”, Gillman refers to an “ethics regime”, and Levine refers to an “ethics system”. All of the writers recognize that success requires measures beyond simply expressing ethical aspirations or listing some prohibitions and requirements.

The words “regime” and “program” and “system” are used advisedly by those authors because they clearly hold the view that achieving effective ethical decision making and ethical behavior in all aspects of municipal government requires a great deal more than simply codifying core values or standards for decision making and behavior. Simply stating aspirational guidelines based on core values, or simply listing those decisions or actions which must or must not be taken, they maintain, usually becomes unused window dressing that makes little or no contribution to attaining a high standard of ethical behavior. Some writers suggest it may be worse than having no code at all.

Dr. Gilman speaks in terms of having, in addition to a code, “an effective implementation strategy” or “solid public administration systems”. He writes:

Both ethics codes and standards of conduct must have a context. One of the most important elements is an effective system of public administration. ...

...

Within successful public administration regimes there is a dynamic focus on socialization and communication to reinforce the notion of public service. This can include the swearing of a special oath when entering public office to regular training classes on what is expected of public servants. It can also include special recognition (awards and ceremonies) as well as “special” salary schemes, job security, benefits and even status.

Law, regulation and parliamentary or executive orders can be a critical part of an ethics regime. However, it cannot be the only part. Statutory and regulatory devices will sometimes add “weight” to a code in the sense that it will be taken seriously. However, that weight has less to do with the law as much as it is related to the implementation of the code. Institutions that both interpret and enforce the code are essential ingredients. A good legal foundation is important if it is clear, concise and enforceable. Missing any of these ingredients can actually make the code less effective, ...

Law is the often seen as the basis of ethics or standards code. In fact codes embodied only as law, and seen only as a law enforcement problem, tend to be the least effective. Former U.S. Supreme Court Justice Earl Warren wrote that “law floats on a sea of ethics.” It is the ethical

foundations – in terms of culture and socialization – that cannot be codified that makes law effective. A strictly legalistic framework can cause many institutional problems. For example, because such an approach deals with the minutia of a public servants life it also tends to deal with trivial problems. Too much of a focus on the trivial can make practitioners feel that the rules are irrelevant.

...
Codes are not self-implementing.

Printing a code of conduct and placing it on a wall, is not implementation. There must be an institutional fabric for developing the code, communicating it, interpreting it, training or education on the code, enforcing it and assessing it. ...²²

(Emphasis added)

Dr. Levine also recognizes that a code alone is not sufficient to achieve successful implementation and maintenance of ethical standards of behavior in the local government context. He perceives the circumstances as requiring an “ethics system”. He writes:

A code or statement of policy is not an ethics system. It is not the end of the road, but only the beginning: indeed, it may only be the beginning of the beginning. A code is useful because it helps crystallize and make clear what values, ethics, and rules are important to an organization. If a code only ends up on a wall, in a senior bureaucrat’s desk, or as a pamphlet handed out to all councilors and staff, but is never used, it is pointless and a waste of time.

An ethics system should not only articulate what is expected, but should also include the means to promote and enforce ethics standards. The means of promotion include education and advice giving.

The means of enforcement may include monitoring of behavior through complaint, and investigation through sanction in the courts, labour processes, or council process. Mechanisms for fulfilling these functions should also be included.

Education, advice giving, monitoring, investigating, and sanctioning are all critical functions in making an ethics system work. ...²³

(Emphasis added)

Wechsler expresses views that are essentially similar. The following excerpts are worth considering:

A local government ethics program is not just an ethics code and an ethics commission. Even in a town or small county, other elements are necessary to have an effective ethics program. The most important elements are training and advice. Without quality training and timely, professional advice, ethics programs are usually ineffective. They can also become (or, more likely, appear to be) the kind of gotchal enforcement regimes that politicians fear.²⁴

...

²² *Supra*, note 7 at pp. 20-25 an p. 51

²³ *Supra*, note 2, at p. 16.

²⁴ *Supra*, note 9 at p. 47

Gilman also comments, more generally, on the necessity of having systems in place to support the code. First, he comments on the necessity to provide for implementation, and then deals generally with what he refers to as “Under Girding the Ethics Code”. He writes that:

Effective codes require implementation. Some officials have been quoted as saying that ethics codes or codes of conduct ought to be self implementing. For anyone who has worked in public service this statement is at best naïve. Implementation requires systems. Codes that exist in an administrative vacuum are often used as weapons against enemies rather than as something that enhances the ethical culture. There are some excellent systemic designs globally. Codes require an organization or organizations to write them, to interpret them, to educate employees about them, to enforce them and to assess them.

...

There are some who will argue that a code, especially an ethics code, needs no interpretation. Its principles are self-evident. Much like self-implementing codes, the idea that an application of a principle is self-evident ignores reality. The social psychological literature including Piaget, Kohlberg and Foucault, supports a far more uneven interpretation of even the simplest principles. As an example, if Kohlberg, or his critics, are correct there is a significant body of individuals in any large organization who need authoritative interpretation of codes. Most governments with ethics codes try to offer some authoritative advice. ... Some governments provide the advice verbally, others provide it in writing. Some governments bind investigative and prosecutorial authorities to respect opinions given by the ethics office if the employee has fully disclosed his or her problem.

...

Ethics training or ethics education are not a “one time” inoculation. Experience suggests that ethics instruction is perishable. People forget. Circumstances change. Responsibilities increase. Laws and regulations are modified. For that reason, most rigorous ethics regimes embark on a strategy that emphasizes regular ethics exposure. Almost all countries require new employees to undergo some sort of training. Some emphasize regular (annual or semi-annual) programs for senior officials, for those who must fill out asset declarations, or for officials in especially vulnerable positions (e.g., customs or tax).

Effective ethics systems have ways to modify or amend ethics codes or standards of conduct built into the system. This can be unilateral by the agency or by appeal to the executive or legislative. Codes are organic and organizations that do not have regular means of revision are often confronted with out of date and irrelevant standards.

Finally, even the most value laden ethic code need a means of enforcement. Again referring to the social psychology literature, there will always be a cadre of individuals in a large organization who are motivated to be ethical because they are afraid of being punished. Certainly, no government wants this to be the prime motivation for public servants. But clarity about who investigates, who punishes, what the punishments are, ensuring that whatever is decided occurs in a timely manner, is essential for effective implementation of a code.²⁵

²⁵ Supra, note 7 at pp.51 and 53

Elements of an Ethics Program

Wechsler, Levine and Gilman all comment in more detail on the specific elements required, in addition to an ethics code, in order to have an effective ethics program. Dr. Wechsler first comments, in more general terms, on one view as to the essential elements:

Here are the essential elements of a local government ethics program, according to Mark Davies, longtime director of New York City's Conflicts of Interest Board:

- (i) clear and comprehensive conflicts of interest code, providing clear guidance to officials, employees, contractors, and citizens;
- (ii) three kinds of sensible disclosure of interests: an annual disclosure statement, disclosure when a conflict arises (transactional disclosure), and disclosure when someone bids for business or requests a permit (applicant disclosure); disclosure is the democratic way of letting people know about possible conflicts of interest;
- (iii) effective administration, featuring an independent ethics commission with teeth, which gives swift advisory opinions, which has a monopoly on interpreting and enforcing the code, which can give waivers for exceptions, and which provides training for all officials and employees, as well as for everyone who does business with the local government; and
- (iv) whistle-blower protection so that government employees (the people who know what's going on) and others will be able to report violations without endangering their jobs and pensions.

Other important elements of an ethics program include oversight of the disclosure process; jurisdiction over agencies and over those who seek special benefits from or are regulated by the government, such as contractors, developers, and grantees; a hotline; and adequate, guaranteed funding. For larger jurisdictions, there are also lobbyist, campaign finance, and transparency laws, which may be administered by the ethics commission or by another office or body.²⁶

He then discusses in detail a number of elements that he identifies as being necessary for an effective ethics program. Without quoting that detail, I would list the elements to which Wechsler refers, and summarize my interpretation of important comments he makes about each, as follows:

- **Ethics Environment:** Such an environment, he says, is greatly facilitated by leaders who believe that citizens' trust in government is of paramount importance;
- **Ethics Training:** While this is one of the most expensive parts of an ethics program, Wechsler argues that training, if done right, is also the best way to prevent the costs of investigating and enforcing, and the litigation that can arise from enforcement;
- **Ethics Advice:** The most valuable way of providing guidance and preventing ethical misconduct is the provision of ethics advice by the ethics program, either formally

²⁶ *Supra*, note 9, at pp.47-48

through an ethics commission (usually requiring some time), or informally (quick but professional) through an ethics adviser who is not a municipal official;

- **Conflict of Interest Code:** This, Wechsler describes as the most visible part of an ethics program, but says that such “a code all by itself is nothing but window dressing for a local government with an unhealthy ethics environment.” A conflict of interest code should be clear and comprehensive, use the simplest language possible, be organized and contain the nine essential provisions he describes;
- **Lobbying Guidance:** This may not be necessary in small cities or towns as it is more usually found at the provincial or national level;
- **Campaign Finance:** These matters are more commonly addressed by other bodies, but the City has certain provisions presently in place;
- **Transparency Laws:** The City, of course, has in place the *Freedom of Information By-Law* which is, in reality, a by-law that requires transparency respecting matters discussed by Council;
- **Disclosure:** Disclosure of family, friends and business relationships keeps the wheels of an ethics program well oiled;
- **Independent Administration:** Officials who are covered by an ethics program have a conflict with respect to it, so it is important they not be the administrators, advisers or enforcers of the ethics program. Wechsler recognizes that it is not unusual to find that municipal officials covered by the program are sometimes involved in that manner. He emphasizes that the independence of the program from governmental officials covered by it is “the single most important criterion for its effectiveness”;
- **Enforcement:** Wechsler asserts that ethics enforcement can usefully be seen as a formal, more fair and reliable form of gossip.
- **Jurisdiction:** If certain groups are excluded from an ethics program's jurisdiction, the others will feel that the program is unfair. Wechsler argues that ethics programs should have jurisdiction over all local government officials, including the council, and those who consider themselves independent agencies, as well as employees, including union members, and board members of quasi-public, and public-private, agencies and authorities.

The Canadian academic, Dr. Gregory Levine, provides a very thorough listing and good descriptions of the elements of an ethics program or system that, in addition to the code or

codes, are important even though all may not be essential, if the efforts at achieving a high ethical standard of decision making and behaviour are to be successful. The more significant elements on that list, and excerpts of what I think are important parts of the descriptions Dr. Levine provides, follow:

Education and Training: To educate is to provide intellectual and moral training; education may, therefore, be seen as systematic instruction and the development of mental powers and of character.

...

...

At the municipal level, there is simply no question that culture is critical in fostering ethics awareness, and is critical to the application of ethical standards. Municipal services must embody a sense of public service and public responsibility. The trend of the 90s, towards results-based management that pays little attention to appropriate processes, has demeaned notions of public service and genuine accountability. Scandals at the municipal level in recent times have helped bring focus to the need for creating a general climate in which ethical conduct is understood and practised. Ethics education is necessary as part of the transition to a values-oriented public service, and a public service that truly focuses on the public.

... When confronted with an ethical problem, the individual applies his or her basic values, as well his or her understanding of law generally, and the rules and policies of the workplace. It is imperative, therefore, that individuals in the municipal administration be made aware of what ethical standards are expected of them. While respect for the individual's beliefs is important, every municipal employee must understand that, if he or she is to act in the public interest, the ethics codes and policies of the municipality must be adhered to.

Advising: Discussing ethical problems and giving and receiving advice are central practices in effective ethics systems. ... Rather than evading or avoiding problems or letting them fester, it is better both to alert others in the municipal administration to the problem, as well as to seek help in resolving it. Advice giving is usually a preventive tool, although it may be given to help mitigate or remedy a problem that has already arisen.

One of the crucial functions of the provincial integrity commissioner system has been the provision of advice to MLAs and MPPs. It is clearly better to avoid problems than to pick up the pieces once they have occurred. ...

Investigation: Ultimately, an ethics system must have a way of ascertaining the facts of ethical lapses and breaches of ethical codes and standards. There must be some capacity to investigate allegations of misbehaviour. There must be modes of verification and/or exoneration. Apprehension and analysis of the facts and circumstances of alleged ethical breaches will help deal with the situation and allow learning for the future.

Sanction: Sanction is a part of any effective ethics system. ... Sanction will be unnecessary and unhelpful if people embrace the values, ethics, and standards and act accordingly. In systems such as municipal administrations though, which are often quite large, some means of enforcement, sanction, or penalty will likely be required – not only to enforce rules, but to show the public that they are being enforced. The type of sanction will depend on the power of the municipal government under its enabling legislation.

Officers and Mechanisms: Ethics systems have come to incorporate training, advice, complaint, investigation, and enforcement mechanisms. Ethics systems may – and arguably should– incorporate designated officers who will be responsible for administration, monitoring, and other functions related to codes, rules, and policies.

... Minimally, this will mean designating officials already in place to have to have an ethics role.

Every municipality should have designated ethics officers – people who will have responsibility for promoting ethics standards adopted for staff. ...

Every municipality should have designated ethics officers – people who will have responsibility for promoting ethics standards adopted for staff. ... They should know how to apply the standards and what advice to give to employees when they come with ethics issues, or when they come to declare or disclose conflicts of interest. ... If a special and distinct ethics officer is not appointed, a senior official in the organization should be designated, to give the position both a high profile, as well as power within the organization.

Integrity Commissioners and Counsellors: To oversee ethics functions in a municipality, it is useful to have an independent officer who will impartially advise, as well as investigate, when ethics breaches are alleged. As well, it is important to have an officer of council – analogous to an officer of parliament – who deals with ethics matters related to council. It is very difficult for an official directly within the municipal administration to fill this role. It is not impossible, however, and officials such as city solicitors, who often have a direct and quasi-independent role *vis a vis* councils, could conceivably fill this role. Still, it makes sense, where it is feasible to do so, to have an independent officer an ethics or integrity commissioner.

Advisory Mechanisms: One of the surest ways of avoiding ethical breaches and of helping councillors and staff resolve ethical dilemmas is to establish a solid, reliable system for giving and receiving advice. It has been shown repeatedly, at the provincial level, that the advisory function of integrity and conflict of interest commissioners has been enormously successful in preventing ethics crises.

...

Ideally, advice should be preventive. Councillors and staff should be encouraged to seek advice when they see a problem arising, given their own circumstances and whatever situation is on the horizon. Clearly, this is the best time to seek advice and it is the clearest circumstance in which official advice should be given. Where a problem has already happened, however, advice may also be sought as to how to rectify the situation.

In employment situations, advice may be best given by human resources officials knowledgeable about the municipal ethics standards and responsibilities. ...

If there is a commissioner in place, the commissioner should be empowered to advise councillors, as well as members of local boards, and directors of municipally-owned corporations.

Complaint: The ability to complain about unethical conduct is integral to ensuring that rules are followed, and that there is a measure of accountability in the way that they are followed. Who may complain, when complaints may be lodged, to whom complaints are addressed, and in what form complaints are to be made are important issues. ...

The ability to complain about unethical conduct is integral to ensuring that rules are followed, and that there is a measure of accountability in the way that they are followed. Who may complain, when complaints may be lodged, to whom complaints are addressed, and in what form complaints are to be made are important issues. ...

Investigation: Investigation of allegations is an essential part of modern integrity and ethics systems for political bodies and public administrations. Through investigation, the facts of situations may be obtained, allowing the formation of rational and fair findings and opinions. Knowing the facts also facilitates the formulation of recommendations. Any investigation process will have three stages at least – notification of investigation; fact finding; and evaluation of the facts in respect of the law,

regulation, or policy governing the situation under investigation.

Report: Opinions, Recommendations and Sanctions: Whatever conclusion the commissioner reaches after an investigation, he or she should report to any affected person – that is, anyone affected by the findings and opinions of the commissioner in a given case. ...

...

Reporting respecting councillors will, of necessity, be different than reporting in the context of staff indiscretions and breaches. Councillors, as the pre-eminent decision makers in the municipal sector, should expect that reports will be public. ...

Staff reporting should not be public without express statutory authority. There may be a case for such authority with respect to senior municipal officials, but without it, the privacy claims of municipal staff at all levels will outweigh public interest claims.

As well, because there are potential disciplinary consequences for staff ethics investigations and reports, there will be grievance issues and labour and employment relations processes involved – all of which mitigate against direct public reporting.²⁷

Dr. Levine concludes his commentary on the elements of an ethics regime with the following advice:

The creation of a municipal ethics system is an important step in the evolution of municipal governance. It is a means to promote good governance and to ensure that respect, fairness, and accountability are integral parts of municipal politics and administration.

Creating an ethics system is not easy, however. It starts, but does not end, with an articulation of core values and concerns, what conduct should be promoted, and what conduct prohibited. Once that is established, it becomes important to provide mechanisms to advise, educate, and enforce. ... Municipalities should not enter the task lightly, but nor should they disregard it. The integrity and ethics movement grows stronger each year, and every municipality should seriously consider creating an integrity system, in order to meet growing public demands for accountability and fair governance.²⁸

(Emphasis added)

Dr. Gilman refers to a recent global study of ethics systems and notes that it identified eight discrete elements in programs that are used by governments around the world. He lists those eight discrete elements as:

- a) Codes of Conduct
- b) Transparency Systems
- c) Training Systems
- d) Communications Strategies
- e) Counselling
- f) Whistleblower Hotlines and Help Lines
- g) Control/Enforcement
- h) Independence²⁹

The text of his paper does not discuss these discrete elements in detail, but it does summarize his views in the following four paragraphs:

²⁷ *Supra*, note 2 at pp.16-33

²⁸ *ibid*, p. 33

²⁹ *Supra*, note 7 at p. 26

In designing codes attention must be paid to the text of the code and transparency systems being developed. For example, elements within effective asset declaration forms are always tied to a value or principle in the code. Simplifying administrative procedures and opening government processes through “freedom of information” laws and rules can also be based on a robust ethics code.

Training, communications, counseling and control should all be tied to the codes text. This is important both cognitively and emotively because, however discrete these elements are, they will look like a single piece from the point of view of those using it. When done effectively this establishes trust in the public service, reduces rumors and builds confidence in the public. Hotlines (telephone or web-based systems to report misconduct) have gained a great deal of popularity. However, from an effectiveness and efficiency point of view they have minimal impact. Experience in a number of countries, and large multinational corporations, suggests that the technology is much better used as a “helpline”. The idea of a helpline is to answer questions about issues involving the application of the code or laws. In the vast majority of cases there is simply a misunderstanding about what the rules cover or what the act entails. This process does two things: it gives government employees and the public “real time” feedback and allows the government to target problem areas.

Supporting systems also play an important role. It is not necessarily the case that all of these must be in place. Rather, an effective system must have both a legal framework and institutions that support it. Ombudsman and audit agencies seem obvious. Less obvious are the role of the NGOs and the media. The non-government sector has a vested interest in being a watchdog for integrity, as does the media. The ability for governments to use information derived from both of these sectors can make integrity processes both more effective and less expensive. For example, publicly available asset declarations allow the NGO community and the media to do the search for assets not declared on the form. And, subsequently, government officials who know these forms will be made public are far more careful about filling them out accurately.

Finally, attention must be paid to the independence of the commission or agency in charge of implementing the code. Independence is a tricky concept. On the one hand the office must be independent enough to objectively and fairly interpret and enforce the code. On the other hand, the notion of complete independence is a chimera. It is of value that the entity with this responsibility is effectively connected to the political and administrative structure so that it does not lose the political will supporting its programs. The question of balancing independence with political effectiveness, and the assessment of the reality of that balance, is important to answer on a regular basis.³⁰

³⁰ *Ibid*, at pp.25-28

Chapter 3

Conclusions as to Overall Structure of an Ethics Regime

Before drawing conclusions as to the structure of a suitable ethics regime, it is important to settle first on the objectives intended to be achieved by implementing the ethics regime. That determination, of course, flows from the circumstances in which it is to be implemented, in this case the governing and administration of a small to medium sized city. The views of the academics quoted in Chapter 2 above provide excellent guidance.

Objectives of a Municipal Ethics Regime

If one were to stop the average citizen on the street in St. John's and ask what he or she thought would be the purpose of having a code of ethics or a code of conduct for the City, the immediate response of the vast majority would likely be "to keep the council members honest". While that is clearly a valid and very important objective of such a code, it falls far short of describing the overall purpose of having an effective ethics regime in place.

In the view of Dr. Wechsler (quoted above in Chapter 1 at p. 12), the **principal** objective of a local government ethics regime is **"to further the public's trust that those who govern their communities are putting their personal interests aside in favor of the public interest."** Dr. Levine also recognizes the importance of that objective but he does not accord it status as **the principal** objective. Instead he writes (quoted above in Chapter 1 at p.13) that, in the public sector, codes of ethics are intended **"to promote integrity in public affairs and to provide guides to acceptable behavior. They are intended to gain and retain public confidence and trust in public institutions [emphasis added]."**

Dr. Wechsler explains his conclusion that furthering the public's trust is the principal goal by commenting that "Without this trust, people tend not to participate in their government, even as voters, and they feel as if their government were something apart from their community, an organization designed to benefit its members and those with the right connections, rather than an organization that serves, manages, and supports the community."

In any event, it can be concluded that a municipal ethics regime should be structured keeping in mind that the two critical objectives of having it are:

- To gain and retain public confidence and trust in the governance and administration of the municipality; and

- To promote integrity in the conduct of the affairs of the municipality and provide guides as to acceptable behaviour.

It is also important that these objectives be kept in mind, not only during the structuring and creation of the ethics regime, but are kept at the forefront during the ensuing years and decades of implementing and maintaining the ethics regime. Expressing these objectives as the lead in the creation and structuring of the ethics regime, and keeping them at the forefront in the course of implementation and maintenance of the ethics regime will almost certainly make a significant contribution to the level of compliance by all to whom the ethics regime applies.

Conclusion

A municipal code of ethical conduct should highlight, as primary purposes of the ethics regime: gaining and retaining public confidence and trust in the governance and administration of the municipality; and promoting integrity in the conduct of the affairs of the municipality.

The Code

Clearly, the heart of the ethics regime is the code. The critical question with respect to the code is whether it should be structured as:

- aspirational expressions of values and principles to guide decisions arising in unanticipated circumstances;
- as expressions of desired or required and prohibited actions to determine decisions and behaviour in anticipated circumstances; or
- a combination of both.

While the academics recognize that either the aspirational type or the prohibitive type of code can be effective in an ethics system, they all emphasize that each has advantages and disadvantages. I would draw attention to Dr. Gilman's observation that the primary critique of aspirational or ethics codes is that they are too abstract and, as a result, difficult to enforce. On the other hand, he notes that conduct codes are often lengthy and detailed. I would also note that even with a lengthy code it is virtually impossible to anticipate and provide for every set of circumstance that may arise and require ethical guidance.

Generally, the comments and conclusions of the academics indicate that a combination of the two produces the best result. In my view the comments of Bell, (quoted above at p.17) reflects the simplest and clearest expression of the reason for having a combination instead of one to the exclusion of the other. I would draw attention in particular to his comment that:

At their best, the two types of controls should balance and reinforce each other and not give conflicting signals. ... "there must be enough control from outside the individual to discourage those inclinations toward indulgence of self-interest, but enough internal control to encourage the most socially constructive, idealistic, altruistic, and creative impulses to flourish."³¹

The comment of Dr. Levine, as to the relative advantages and disadvantages of the different types of codes (quoted above at p. 18), point in the same direction. In a further comment, he also effectively recommends using a combination of the aspirational and prohibitive when he writes that:

In general, it is recommended that codes should contain a statement of purpose that includes an outline of core values; a set of prohibitions, coupled with positive affirmations ...³²

Conclusion

Based on the foregoing, I would conclude that the type of code that is most likely to ensure achievement of the highest ethical standards in decision making and action taking in the course of the conduct of the affairs of a municipality, is one that both expresses the core values and ethical principles the municipality desires to embrace and, at the same time, identifies the standards of behaviour that it desires to promote and those that it desires to prohibit. This portion of the code would, of course, incorporate provisions respecting conflict of interest in all of its aspects. Specific parts of the code would be applicable to only one function, such as election financing which would be applicable to elected councilors only.

Extent of Application

The persons involved in making decisions or taking actions in the name and on behalf of a municipality will, depending on the size and complexity of the municipality, fall into a number of different classifications, having significantly different levels of authority and responsibility. The classifications of persons deciding or acting in the name of a municipality the size and complexity of the City will usually involve at least the following different functions:

- a) the elected mayor, deputy mayor and councilors;
- b) compensated members of boards, commissions, or other entities, taking decisions on behalf of the City, or exercising authority granted by the council;
- c) voluntary members of boards, commissions, or other entities taking decisions or exercising authority granted by the council;
- d) volunteer advisory and other committees;

³¹ *Supra*, note 18.

³² *Supra*, note 2 at p. 15

- e) boards of directors of corporations or entities created or owned by the municipality but operated by an independent board;
- f) members, appointed by the municipality, of the boards or management committees of agencies or entities operated jointly with other municipalities or with government;
- g) officers of the municipality appointed pursuant to statutory requirement;
- h) senior managers, department heads and superintendents, appointed by the council, including managers of corporations or entities created or owned by the council;
- i) all other direct employees of the municipality; and
- j) direct employees of any corporation, commission or other entity created by and operated on behalf of the municipality.

Two questions arise: (i) should the ethics regime apply to all of the classifications or functions of persons deciding or acting in the name of the City? and (ii) should there be a single code applicable generally to all with specifically identified additional provisions applicable only to one or more of the above classifications or functions, or should there be two or more codes tailored to different classifications or groups of classifications of the persons subject to the code?

With respect to the first question, instinctively, one assumes that an ethics regime should apply to all persons involved in making decisions, taking actions or doing anything in the name of the municipality. That instinctive reaction is consistent with the views expressed by all of the members of Council with whom I met. It is also consistent with Wechsler's view. He argues that ethics programs should have jurisdiction over all local government officials, including the council, and those who consider themselves independent agencies, as well as employees, including union members, and board members of quasi-public, and public-private, agencies and authorities. When discussing the matter of making a decision as to the elements and laws that should be included in a municipal ethics system, he suggests the best approach is to consider all elements and laws, as being included, "and then place the burden on officials to argue why any element and law should not be included". A similar approach would be appropriate for determining the extent of application of an ethics regime.

Following that approach, it would be assumed that all persons whether elected, statutorily required, appointed to act voluntarily or for compensation, or ordinarily employed, would be included in the ethics regime unless a specific case for exclusion was made out.

Less clear, however, is the answer to the second question, whether it would be best to have a single code applying equally to all persons engaged in the various functions of a municipality, or a number of somewhat different codes specific to the function of that group of persons within the municipality. It is, however, recognized that, even with a single code applicable to all, there will, in a municipality as complex as the City, be circumstances

justifying variation in application of one or more provisions to persons or groups involved in functions having special characteristics, such as holding elective office.

Generally speaking, the academics quoted in Chapter 2 above are somewhat equivocal on this question. As noted, Dr. Levine observes (in the quote at pp. 14 and 15 above) that in the United States the code usually applies to both elected and non-elected officials, while in Canada the more usual practice at the municipal level is to have a council code and a staff code. He also notes that council codes might be made to apply to council alone or to council and its appointed boards and committees.

With respect to staff codes, he observes that they typically apply to the whole of the municipal administration. I note, in particular, his comment that it is important when establishing a staff code to consider that "it may harm the public interest to have staff excluded from the code, as this may be perceived as favouritism". Whether or not there are separate codes, unless there are compelling reasons to do otherwise, the whole of the administrative staff should be included in the ethics regime.

Dr. Gilman is similarly equivocal on the issue. He refers to the issue (in the quote at p. 15 above) as an unresolved debate "as to whether agency codes are more effective than government wide codes". He says the argument for government wide codes is that they are less confusing because they are consistent throughout the whole of government. On the other hand he recognizes that different functions and sub-units of government "create distinctive ethical problems". His ultimate conclusion is that "there is not a single right answer but rather only a well considered solution". He was, however, speaking of codes applying to much larger numbers.

In a smaller municipality, a single code may be more appropriate. Clearly, much smaller numbers of persons would be involved. The administrative structure of the smaller municipality would be considerably less complex than that of even a small to medium sized city. As a result, having a single code may be more practical.

Taking all of the foregoing into account, I conclude that, in municipal circumstances similar to those of the City, having one code that applied the basic ethical principles and the basic standards of behaviour equally to all would have definite advantages. It would avoid any perception of favouritism or unfairness; the whole ethics regime would be easier to administer; and it should be less expensive. It would of course be necessary, because of difference in function and responsibility of certain classifications, to identify and set out some specific additional provisions of the code to be applicable only to one or more classifications or functions. Almost all, if not all, of the other elements of the ethics regime would apply universally.

Thus, there would be a single ethics regime, with a single code universally applying the same standards respecting basic behaviour, but having certain additional standards specifically applicable to one or more groups. Considered in the context of the nine separate functions identified in the list above (at pp. 33 and 34), it is clear that it would be necessary to identify additional provisions respecting lobbying, election finance and perhaps some others applicable only to councilors. Other provisions respecting post-employment or post council membership representations to City officials would clearly be applicable to councilors, statutory officers and senior management officials but few if any others.

Should development of such a code become unduly difficult it would be possible to have, as an alternative, a single ethics regime but with possibly three different codes, one for each group of functions having similar responsibility characteristics. For example, there could be one code applicable only to persons involved in functions (a) to (f) in the above list. Those functions have responsibility for advisory services and policy making in the areas for which they are responsible. It could be differentiated as the "Council and Advisory Code". A second code would be specifically for those having responsibility for management and superintending, those involved in functions (g) and (h). It could be differentiated as the "Management Code". A third, designated as "Employee Code" would apply to those involved in functions (i) and (j).

That does not mean there would be three entirely separate ethical regimes, just three separately written codes, each tailored to the characteristics of the grouping of functions to which it applied. Obviously, there would be a great deal of commonality. It is likely that virtually everything in the Employee Code would be repeated in the other two. Some, but perhaps not all, of the additional standards in the Management Code would be repeated in the Council Code. All of the other ancillary elements would be universally applicable to all three codes.

Conclusion

In designing an ethics regime, a single code with basic provisions applicable to all personnel, and special additional provisions as necessary applicable only to personnel in one of the three separate groups of functions above identified be the preferred structure.

Other Aspects of an Ethics Regime

As Dr. Levine notes, "An ethics system should not only articulate what is expected, but should also include the means to promote and enforce ethics standards." He also concludes that: education, advice giving, monitoring, investigating, and sanctioning are all critical functions in making an ethics regime work. The other academics express similar views as to the essential nature of these components. All of the components set out on the three lists of

other aspects of an ethics regime (set out above at pages 23 to 28), are derived from the separate works of Wechsler, Levine and Gilman, but all are not necessarily essential to a successful ethics regime. Some, however, are.

In my view, an ethics regime for a municipality having the characteristics of the City should include, in addition to clear and prominent expression of objectives, fullest possible inclusion of all who make decisions and take actions on behalf of the municipality, and appropriately structured code or codes, at least the following ancillary components:

1. Administration

All of the academics emphasize the necessity for an administrator or administrators who will be responsible for overseeing all aspects of implementation of the ethics regime. One, Dr. Wechsler, places great emphasis on the independence of the ethics regime administrator from the administrative officials of the municipality. In fact he asserts boldly that:

Officials under the jurisdiction of an ethics program have a conflict with respect to it.

... such officials have many potential conflicts based on their own interests in not being found in violation of an ethics provision) and their relationships with other officials, personally, politically, and sometimes financially. ... their involvement undermines public trust.³³

It would be difficult to challenge those assertions on a theoretical basis, particularly in the case of a large city with substantial numbers of people involved, and substantial resources available. In a perfect world where no other factors, such as numbers involved and costs, would bear on the decision, it would be logical and principled to follow that advice and institute a "perfect" ethics regime. Accepting the limitations that lower numbers and lesser resources would impose can still enable the implementation of a "good" system that can be quite effective even though it may not meet the standards of independence Dr. Wechsler recommends. Philosophers have long warned of the dangers of allowing pursuit of the perfect to become the enemy of the good.

With respect to promoting ethics standards adopted for staff, and generally providing guidance or receiving disclosures of conflicts of interests, Dr. Levine takes a somewhat different view. He expresses the view that every municipality should have designated ethics officers, responsible for promoting ethical standards, and that every manager should be well versed in those standards, know how to apply those standards, and what advice to give. He suggests that, minimally, this can be achieved by "designating officials already in place to have an ethics role".³⁴

³³ *Supra*, note 9 at p.56

³⁴ *Supra*, note 2 p.19

With respect to the independence of the person responsible for general oversight, while Dr. Levine is not as direct as Dr. Wechsler, the effect of his comments is similar. He writes:

To oversee ethics functions in a municipality, it is useful to have an independent officer who will impartially advise, as well as investigate, when ethics breaches are alleged. As well, it is important to have an officer of council—analogue to an officer of parliament—who deals with ethics matters related to council. It is very difficult for an official directly within the administration to fill this role. It is not impossible, however, and officials such as city solicitors, who often have a direct and quasi-independent role *ais a vis* councils, could conceivably fill this role. Still, it makes sense, where it is feasible to do so, to have an independent officer—an ethics or integrity commissioner.³⁵

The comments of both Wechsler and Levine are clearly understandable when considered in the context of large cities. Small to medium sized cities can seldom justify or afford the luxury of an independent integrity commissioner. They have to settle for the best affordable alternative. For many that may mean assigning the role to the city solicitor or engaging, on a fee for service contract basis an external professional qualified to give the advice requested in the more complex situations, conduct any necessary investigations, and deal with any ethical issues senior officials do not feel comfortable handling.

Dr. Levine is, however, sensitive to these issues. He writes:

There are also important administrative issues in establishing this kind of office [referring to an integrity commissioner]. Staffing and location stands out among them. A larger municipality may well need not simply a commissioner, but also an intake officer, a receptionist, and an investigator. A smaller municipality may simply want a part-time commissioner.

All will need legal advice at some point, and how this is handled is an important issue. It is best to have an outside lawyer on retainer, rather than someone who is the city solicitor or in his or her office. This is important for maintaining independence ... On the staff side, designated ethics officials will, no doubt, be within the municipal administration, but there needs to be some measure of respect for their independence. These officials may well be tied to the human resources department.³⁶

Obviously, a small to medium sized municipality will not be able to put in place the ideal integrity commissioner's office and staff to oversee the whole of the ethics regime, operating totally independent of the general municipal administration. However, as the academics indicate, independence is a major factor in the success of an ethics regime. It will be important for the alternative to a full time integrity commissioner to have the maximum level of independence possible, the experience and skills necessary to deal with ethical issues, and sensitivity to (if not experience and skills in dealing with) legal and procedural fairness issues.

³⁵ *Ibid*

³⁶ *Ibid* at pages 22-23

Conclusion

Where the numbers involved and the complexity and resources of the municipality do not warrant a full time integrity commissioner, the responsibility will be best discharged by a person having the necessary skills and experience who is not otherwise connected with the municipal administration, on a contract or part-time basis. If neither a full time commissioner nor a part-time or contract commissioner is possible it would be best to assign those responsibilities to the city solicitor, as Dr. Levine suggests.

2. Education and Training

Dr. Levine writes that, "If a code only ends up on a wall, in a senior bureaucrat's desk, or as a pamphlet handed out to all councilors and staff, but is never used, it is pointless and a waste of time." Putting an ethics regime in place is not likely to become a pointless waste of time if the leadership of the municipality is dedicated to achieving the two primary objectives of **gaining and retaining the public's trust, and conducting the affairs of the municipality with integrity**, and, as a result, puts in place the components necessary to cause it to have impact. Education and training is one of those components. While Dr. Wechsler acknowledges that ethics training is "one of the most expensive parts of an ethics program", he also argues that it is the best to prevent the costs of investigating and enforcing and any consequent litigation.

As noted, this process is not an inquiry into the operations of the present system; rather, it is an assessment of the existing legislative provisions to determine the adequacy of those provisions to achieve a high standard of ethical behaviour in the course of the operations of the City. There was, therefore, no process for any fact finding that may be helpful. As a consequence the City Clerk was contacted to obtain information with respect to the manner in which the existing by-laws were functioning. I am grateful for her assistance. She advised that although she had been at City Hall for a long time she was not personally aware of any education or training program, any efforts to draw attention of officials and employees to the relevant by-laws, or any activity with respect to any of those by-laws with the exception of the *Election Finance By-Law*.

Dedicated leadership can, and if it is present will, ensure that the necessary promotion through education and training takes place. Such leadership is the best means to keep an ethics regime healthy and vibrant. However, there is no guarantee that the dedication of the leaders who caused an ethics regime to be created and put in place will always be present in future leaders. Thus, it will be important for the ethics regime to include a requirement for a level of promotion, through education and training that will be sufficient to offset the effect of any future leadership lapse.

Conclusion

Absent a full or part-time ethics commissioner to organize and maintain a program of promotion, and education and training, senior officials, particularly those connected with human resources should be assigned responsibility carry out these important aspects of an ethics regime throughout the departments and agencies of the municipality. Any municipal ethics regime should be put in place with attention being paid to Dr. Levine's caution that "Education and training is often one of the last things to be done, but it should be among the first. Having a code is fine; however, if no one understands it and has no idea how to apply it, then it will remain relatively useless."³⁷

3. Advising

The need for having reasonably ready access to advice on ethical issues is acknowledged by all of the academics who comment on these matters. Dr. Levine correctly points out that it is much better to avoid problems than to pick up the pieces once problems have occurred. He also writes that, "Rather than evading or avoiding problems or letting them fester, **it is better both to alert others in the municipal administration to the problem, as well as to seek help in resolving it.**" He also writes that having an advisory mechanism in place is one of the surest ways of avoiding ethical breaches, and helping councillors and staff resolve ethical dilemmas.

Few would dispute any of those sentiments. As noted above, very large municipalities and provincial governments have the numbers of people involved, and the complexity of structures and functions, that warrant putting in place integrity commissioners or counsellors whose role it is to oversee the ethics function for the municipality. Those integrity commissioners are also relied upon as the source of advice. For a small to medium sized municipality the circumstances are different and addressing the issue is more challenging. Absent a provincially provided municipal integrity commissioner, such a municipality will usually have to settle for something less than an ideal situation for the provision of advice on ethical issues.

Dr. Wechsler draws attention to the fact that in dealing with ethics issues there are two kinds of advice, formal and informal. He notes that because of its nature the formal opinion or advice can require a long and uncertain response period, while officials or employees faced with an imminent need to act require quick but professional advice.

³⁷ *Ibid* at p. 24

Conclusion

For a small to medium sized city, the most probable source of such quick but professional advice would likely be the city solicitor. Depending on the nature of the circumstances in respect of which advice is sought, assigning such a role to the city solicitor might make it difficult for that officer to provide the council with independent legal advice in respect of any future issues that may arise out of the circumstances involved. It may, of course, be that another officer or other official of the municipality is highly qualified to provide such advice. Department heads and other senior officials should also be regarded as sources of advice, particularly in respect of matters peculiar to the function for which they are responsible. However, it should be borne in mind that an ability to interpret statutory or regulatory provisions would seem to be an important aspect of an adviser's qualification.

Absent provision for appointment of an ethics commissioner, or the contracting of a professional to provide such advice, any ethics system established should designate senior officials to have responsibility for the provision of advice respecting ethical issues arising in the department or division of city operations for which the designated official is responsible.

4. Concerns and Complaints

An effective ethics regime should have in place a process for expressing and receiving concerns about the ethical propriety of observed practices or behaviours in the ordinary conduct of the affairs of the municipality, and must have in place a process for the making and receiving of complaints. As Dr. Levine puts it:

The ability to complain about unethical conduct is integral to ensuring that rules are followed, and that there is a measure of accountability in the way that they are followed. ...

If accountability is to mean anything, the ability to complain should extend not only to councilors, but also to staff and most importantly to the public at large. The public should have an affordable and realistic means of challenging councilors and staff who they believe have exceeded the bounds of ethical conduct. To be sure, if allegations are serious enough, and fall in the criminal realm, members of the public can ask the police to investigate. However, the codes and ethical conduct standards are about misbehaviours short of criminal activity, and the public should have an opportunity to ask for an accounting of the actions of public servants and councilors.

It is difficult to imagine any aspect of an ethics regime that would make a greater contribution to achieving what Dr. Wechsler describes as the principal goal of a local government ethics program—to further the public's trust that those who govern their communities are putting their personal interest aside in favour of the public interest—than providing the public at large with an opportunity to ask for an accounting of the actions of public servants and councilors. An incident occurred during the course of conducting this review that demonstrates the validity of that observation.

A member of the public first inquired by telephone whether there would be public hearings and I advised none were contemplated, nor considered necessary to the work described in the Terms of Reference. I did however advise the City Clerk of the call and she confirmed her approval of the conclusion I expressed to that member of the public. He later wrote me a letter, marked PRIVATE AND CONFIDENTIAL alleging conflict of interest at the Council level in respect of a matter his family had before Council, and in respect of which they had commenced an action in the Trial Division of the Supreme Court. Being dissatisfied with the decision rendered by the judge, he had appealed to the Court of Appeal and were awaiting decision.

My reply indicated I was prepared to take any comment relevant to this review into account but would have to provide any member of Council and anybody else mentioned in his letter with an opportunity to respond. My reply also indicated that I could not give consideration to anything in his letter unless the private and confidential designation was withdrawn. I also advised that I had no jurisdiction to do or say anything about the specific acts complained about in the letter, and could only deal with the fact that it described a circumstance in which a member of the public considered a conflict of interest to exist. He replied, withdrawing the private and confidential designation and I forwarded copies of all correspondence to the City Clerk for transmission to councillors and any persons referred in the letter, and offered to receive comments from any persons wishing to make them. None have been received.

The sole purpose in mentioning these matters here is to demonstrate the validity of the comments of Dr. Levine, as to the importance of members of the public at large having the right to complain about perceived ethical failures on the part of municipal staff or councillors, and my endorsement of Dr. Levine's comments. I would emphasize two important benefits: (i) had such a right existed under the City's ethics by-laws, the citizen could have achieved public review of the complained of actions without being put to the expense and time delay involved in maintaining a Supreme Court action for judicial review and the subsequent appeal; and (ii) of even greater significance, the increase in the public's trust in the integrity of the municipal administration if it could be called to account by that means.

Conclusion

Obviously, any municipal ethics regime that did not make general provision for the expression of ethical concerns and formal complaints by any person in any manner connected with the municipality would be doomed to failure from the beginning. Little further comment with respect to the purpose and necessity for such procedures needs to be added. It is important, however, to emphasize that the complaint and investigation procedures must not, as noted above (at pp. 5-6), trespass on the jurisdiction of the federal

or provincial authorities. Any ethics regime established should also make provision for formal complaint by a member of the public having, in good faith, a credibly based perception of unethical conduct on the part of a person making a decision or taking an action in the name of the City. Knowledge by the public that such a right exists will make a major contribution to achieving the goal of creating and maintaining public trust in the integrity of municipal government.

5. Investigation

To be effective and to be fairly administered every ethics regime must have processes that enable investigation of any circumstances, or information, or complaints that give rise to concern about potential failures to comply with the requirements of the code. Dr. Levine describes it as “an essential part of modern integrity and ethics systems for political bodies and public administrations”.³⁸ There must be an ability to objectively ascertain all of the circumstances bearing on any matter that gives rise to the concern. It will be as important to exonerate innocent persons, who may be affected by unfounded complaints or inaccurate information, as to ferret out and sanction actual compliance failures.

Dr. Levine emphasizes that investigations will have at least three stages: (i) notification of investigation; (ii) fact finding; and (iii) evaluation of the fact in respect of the law, regulation or policy governing the situation. Apart from any law, regulation or policy applicable, discharging these responsibilities will require awareness of the necessity for procedural fairness and the means by which it is to be achieved in such circumstances. Any failure to apply procedural fairness in the course of investigating could result in an application for judicial review and other potential legal consequences. Obviously, a legal background would be highly desirable although it cannot be said to be essential. Again, it is a responsibility that could be discharged either by the city solicitor or a private practitioner engaged as needed specifically to conduct investigations.

Investigators must have adequate authority to investigate fully and produce a report that will be reliable and of value to those responsible for taking steps to ensure that the ethics regime achieves its purposes. The person appointed to be an investigator must, as Dr. Levine suggests:³⁹

- have an understanding of the law;
- have the patience and skills to interview people;
- be able to deal with difficult and obstructionist people;
- be given guidance, if necessary, as to when hearsay will be acceptable;

³⁸ *Ibid* at p. 29

³⁹ *Ibid* at p.31

- be given guidance, if necessary, as to the standard of proof (balance of probabilities)
- be able to interpret documentary evidence as well as legislation and policy; and
- be able to evaluate the facts in terms of the law that applies

For a small to medium size city that would not have a full or part-time integrity commissioner, this would likely mean engaging an outside lawyer or a person experienced in investigating and available to work on contract as required. Perhaps a retired policeman might fit the bill. Short of that, the skills, experience and knowledge required of an effective investigator would almost certainly result in that responsibility also falling to the city solicitor.

Conclusion

Any ethics regime instituted requires provision for an appropriate level of investigation of any ethical concerns generally or specifically expressed, and formal investigation of any reasonably expressed complaint, about the ethical propriety of any decision or action taken on behalf of the City.

6. Reports and Recommendations

An ethics regime should require that any report, and any recommendations, be given to any person affected by the findings and opinions resulting from the investigation. Whether the council decided to have a single code or three separate codes, there would be a single investigation process. However, the report of an investigation in a matter involving a person in the council group of functions would go to the mayor and council; the report of an investigation in a matter involving a person in the management group of functions should go to the city manager, and if it involves the city manager then to the mayor and council; and the report of an investigation involving a person in the employee group of functions should go to the head of the department or entity manager where the employee works, and failing that to the city manager.

Reports that involved councilors would almost certainly become public and, because of the publicly elected position, should become public. Failure to make such reports public would only serve to impair achievement of the primary objective of the ethics regime—gaining and retaining the public's trust. In the case of staff, privacy laws and collective bargaining obligations may require that some reports and recommendations not be made public.

Conclusion

The provisions of any ethics regime instituted should include a requirement that upon completion of an investigation into a complaint, the person conducting it report to the Mayor and Council in respect of a complaint involving a person in the Council and Policy Making

group of functions, to the City Manager in respect of a report involving a person in the management group of functions (but to Council in respect of a complaint involving the City Manager), and to the department head where the person involved works, or the entity manager where the person involved works at an Affiliated Entity, in the case of persons in the employee group of functions.

7. Sanctions

An effective ethics regime needs some means of sanctioning or at the very least effectively condemning failure to comply with the requirements of the code. Public exposure or even exposure to colleagues of the failure to conform to ethical requirements, in the case of persons involved in the Council and Advisory group of functions will, in some cases, be sufficient both to sanction the specific failure being considered and be an effective inducement to others to conform to the requirements of the applicable code. In the case of persons in both the management and employee group of functions, failure to conform to the code, in circumstances where privacy laws or collective bargaining obligations would prevent or limit public exposure, any specific sanction required should be of the character of sanctions normally within the discretion of an employer, e.g. demotion, suspension without pay for a period of time, and in serious circumstances possible termination.

Conclusion

Sanctions, commensurate with the seriousness of any breach or failure to comply with the requirements of the code, are essential if long term adherence to the requirements of the code is to be achieved. This could include dismissal for more egregious failures in the case of a management or employee group of functions breach of the code, and vacating of or removal from office in the case a council member or policy group breach of the code. The sanctions that may be imposed must, of course, fall within the limits authorized by statute and not be inconsistent with any constitutional limitations.

Chapter 4

Provisions in Place in Other Newfoundland and Labrador Jurisdictions

The Terms of Reference require assessment of “legislation of the Provincial Government and other municipalities”. I interpret this to mean: first, provincial statutes, regulations and codes bearing, directly or indirectly, on conflict of interest and ethical issues applicable to all provincial governmental institutions, divisions and agencies; second, provincial legislation that bears on these issues in relation to municipalities other than St. John’s (which will be dealt with separately); and third, municipal by-laws and rules applicable enacted by other Newfoundland and Labrador municipalities. The legislative provisions and other material that it will be necessary to consider, in order to satisfy that requirement of the Terms of Reference, would include:

- *The Conflict of Interest Act, 1995;*
- *The House of Assembly Act;*
- *Rebuilding Confidence: Report of the Review Commission on Constituency Allowances and Related Matters, Hon. J. Derek Green, May 2007;*
- *The House of Assembly Accountability, Integrity and Administration Act; and*
- *The Municipalities Act;*
- *The City of Corner Brook Act;*
- *The City of Mount Pearl Act;*
- *By-Laws and rules respecting conflict of interest and ethical issues in place in other Newfoundland and Labrador municipalities.*

Legislation Respecting Provincial Institutions and Agencies

Conflict of Interest Act, 1995

This statute prohibits certain specific activities that could result in a public employee making decisions or exercising discretion or authority in a way that would result in inappropriate conferring of a benefit. It applies only to non-elected “public office holders”, but includes benefitting the public office holder’s “family” and, in certain circumstances, another person or entity. “Public office holder” is defined, in section 2(1)(g), as follows:

- (g) "public office holder" means a person who receives a salary or other remuneration, in whole or in part, from money voted by the legislature and includes a person employed by
- (i) an agent of the Crown, designated by statute, or
 - (ii) a person or body not otherwise an agent of the Crown but carrying out a function on behalf of, or a function that is usually carried out by, the Crown who or which is considered to be an agent for the purpose of this Act by order of the Lieutenant-Governor in Council;

"Family" is defined, in section 2(1)(d), as follows:

"family" means a person who is

- (i) a public office holder's spouse or cohabiting partner,
- (ii) a minor child of the public office holder, or a minor who is dependent primarily on the public office holder or the public office holder's spouse or cohabiting partner for financial support and toward whom the public office holder has demonstrated a settled intent to treat as a family member, and
- (iii) a relative of the public office holder or the public office holder's spouse or cohabiting partner who lives as part of the public office holder's household and is primarily dependent on the public office holder or the public office holder's spouse or cohabiting partner for financial support;

Essentially, amongst other things, the statute:

- Prohibits a public office holder from:
 - making or participating in a decision where the public office holder knows or ought reasonably to know the decision could benefit the office holder or a family member;
 - using the public office holder's position to seek to influence another person to make a decision to benefit the public office holder or a family member;
 - using information gained as a public office holder to benefit the public office holder or a family member, or improperly benefit another person;
 - accepting a fee, gift or personal benefit, except as permitted by law, that is connected with the public office holder's performance of duties;
 - becoming a party to a contract with the Crown or a Crown agency which involves the payment of public monies under the contract;
 - engaging in an activity that could affect, as a public office holder, performance of duties, result in a conflict of interest, or result in deriving a benefit from employment;
 - releasing confidential information
 - dealing with private interest in a manner designed to evade those prohibitions; and
 - allowing offers of future benefits to influence duties as a public office holder;

- Requires a public officer holder to:
 - disclose in writing to the deputy minister or agency chief operating officer any potential conflict of interest; and
 - remove himself or herself from the position;
- Provides for:
 - determination by a minister, deputy-minister or chief operating officer of whether a public office holder has failed to fulfil an obligation;
 - a consequent reprimand, order to divest, placing of the interest in trust, quitting of the employment, or transfer to another position
 - appeal of any such order; and
 - where the order appealed is upheld, and the public office holder fails to comply, the imposition of a disciplinary measure that could be:
 - a reprimand;
 - suspension;
 - order to make restitution; or
 - recommendation for dismissal; and
- Provides for post-employment restrictions, including:
 - continuation of certain contracting restrictions, subject to possible granting of waiver, after the public office holder leaves the public office;
 - prohibition against making representations, for a period of one year after employment, to the department or agency for which the public office holder was responsible during the last year of service; and
 - prohibition, without a specified time limit, against advising a person or entity, in return for a fee or other benefit, in relation to a matter in respect of which the former public office holder acted for or advised the government while a public office holder where the matter might result in the conferring of a benefit on a person, that is other than as a member of the general public or a broad class.

Conclusion

The Act does not contain a code of ethics or any general expression of ethical values designed to be a guide for all conduct, actions or decisions by public office holders in the performance of their duties. While it may be considered an adequate regulation of conduct and decision making in circumstances where there is significant potential for conflict of interest, it is not, by itself, adequate as a comprehensive code of ethics and ethical conduct. To enable convenient reference, the full text of the statute is attached as APPENDIX "A". The *Conflict of Interest Act* will be very useful as a guideline in the preparation of any code of ethical conduct that Council directs be prepared.

The House of Assembly Act

Prior to 1993, the *House of Assembly Act* contained no provisions respecting conflicts of interests of members. It consisted of 19 sections which, apart from section 12, dealt with structural and administrative matters, and members' rights. Section 12 listed seven activities as "infringements of the Act", four of which dealt with protecting members and officers of the House. The remaining three activities related to tampering with witnesses before the House, presenting to the House a forged or false document and falsifying a House record.

By the *House of Assembly (Amendment) Act, 1993*, those 19 sections were constituted as Part I, and newly drafted Parts II, III and IV were added. Part II dealt exclusively with actions, decisions or circumstances that would or might constitute a conflict of interest for a member or a minister.

Because many of the provisions are verbatim the same, or nearly so, it would appear that the *Conflict of Interest Act, 1995*, described above, was modeled on Part II of the *House of Assembly (Amendment) Act, 1993*. There are of course the differences necessary because the statute applies to members of the House and ministers, and circumstances specific to such positions. To the extent that it applies to the conduct of others it regulates only that conduct in respect of dealings of those others with members and ministers.

The Act also created the position of "Commissioner of Members' Interest" (CMI). The CMI has a wide variety of duties, including:

- receiving disclosure statements from members;
- reporting generally to the House;
- advising members with respect to disclosure statements and other matters;
- advising members generally respecting their obligations under the Act;
- receiving requests from a member or on resolution of the House, for an opinion as to the conduct of another member, or from the Premier in the case of the conduct of a minister;
- making inquiries in response to any such request, or on the CMI's own initiative, with the full power of a commissioner under the *Public Inquiries Act*, and thereafter report the CMI's opinion on the matter to the Speaker;
- where the CMI concludes that a member has failed to fulfil an obligation under the Act, the CMI may, in the report, recommend:
 - that the member be reprimanded,
 - that the member make restitution or pay compensation,
 - that the member be suspended for a specified period, with or without pay, or
 - that the member's seat be declared vacant

Any such recommendation is just that, a recommendation. It can have no effect until it is concurred in by a resolution of the House. To enable convenient reference, Part II is attached as APPENDIX "B".

Conclusion

Again, like the *Conflict of Interest, 1995 Act*, the focus of Part II of the *House of Assembly Act*, is on prohibiting or regulating conduct of members and ministers that could give rise to conflict of interest problems. While it may deal effectively with conflicts of interest of members and ministers, it is not a comprehensive code of ethics and ethical conduct. That circumstance was changed following the *May 2007 Report of the Review Commission on Constituency Allowances and Related Matters*, conducted by Chief Justice J. Derek Green.

Report of Review Commission on Constituency Allowances and Related Matters

While the House of Assembly Review Commission arose out of concerns about improper handling of constituency allowances and expenses reimbursement, Chief Justice Green did a thorough assessment of the underlying principles that should guide the conduct in office of elected members of democratic governmental institutions. In the course of doing so, the Chief Justice canvassed a variety of commission reports, codes of ethics and codes of conduct, judicial decisions and academic writings bearing on the subject, from a number of jurisdictions including other parts of Canada, the United State, the United Kingdom and Australia. Most of the views he expressed and the conclusions he drew as to the principles, underlying standards of conduct appropriate for members of the House of Assembly, are equally applicable to members of Council.

Having the greatest of confidence in the thoroughness of his assessment, I consider that my reviewing the same material independently would be repetitive and an unnecessary expenditure of time and resources. The full benefit of his review of those materials can be readily obtained by giving consideration to several of the opinions and conclusions he expressed. Accordingly, acknowledging his scholarship, and having obtained his permission, I will quote freely from the opinions and conclusions expressed in his report as to principles underlying the standards of conduct reasonably to be expected of elected members of institutions of democratic government.

Comments Respecting Underlying principles

With respect to the importance of accountability, Chief Justice Green wrote:

The stress on accountability in the public sector serves at least two purposes: it provides a focus on mechanisms to achieve *efficiency* in the expenditure of public funds in the delivery of government programs, and it also emphasizes the *responsibility* of public officials to act properly in the public interest. It is this second aspect of accountability with which I am most concerned. By holding officials accountable for what they do, by exposing their activities to the light of public scrutiny, and by providing a measure against which their actions can be judged, citizens can receive some measure of assurance that officials who are placed in a position of power and influence are employing their power and influence for the public good; in short, they can have a degree of *confidence* that the system is working as it should.⁴⁰

He also wrote:

Just as the rules of accountability for the judiciary are modified and applied to take account of its unique position and the values on which it is based, so also should the rules of accountability for the legislative branch be tailored to meet its special position. The fact that the position of the legislative branch is different from the executive branch does not mean that accountability is unattainable or that it should not be applied at all. Legislative independence is no justification, in itself, for not developing and applying appropriate mechanisms of accountability.

There can be no doubt that many of the traditional notions of parliamentary accountability do not work well within the legislative branch. Ministerial responsibility, for example, depends for its effectiveness on an active opposition, one that can probe the actions of government within the acceptable bounds of political partisanship. When the legislative branch is dealing with financial matters impacting on Members *qua* Members - matters such as salaries and proper spending of allowances, for example - there is no natural opposition. All Members of the legislature may have similar interests and may be tempted, out of self-interest, not to "rock the boat." There are not the same checks and balances that exist in a system that normally pits opposing interests against each other. There is considerably less likelihood; therefore, that political partisanship will result in criticism of decisions made to benefit all Members. It is all the more important, therefore, that the governing bodies of the legislature (in Newfoundland and Labrador, the Commission of Internal Economy) have other accountability mechanisms built in.⁴¹

With respect to transparency, Chief Justice Green observed:

Transparency is the foundation upon which *accountability* of public officials is built. It implies openness and a willingness to accept public scrutiny. Openness and the potential for scrutiny are also the antidote for suspicion and mistrust. When meetings are open to the media and the public, and when financial records and

⁴⁰ *Green Report*, at p.2-17

⁴¹ *Ibid*, at p.2-18

reports can be reviewed and discussed in public, there is less opportunity for public officials to abuse the system out of self-interest or even to neglect their duties. Transparency thus increases confidence and trust in our democratic system.⁴²

With respect to compliance and controls, Chief Justice Green concluded:

The achievement of compliance through control can occur not only formally, but also informally. Formal control occurs through the external imposition of standards and the provision of specific regulatory procedures with associated enforcement mechanisms. Some examples have already been given. Informal controls, on the other hand, are those that cause persons to alter their behaviour voluntarily because of well-understood expectations that motivate them to comply with certain standards, out of a sense of moral obligation or a fear of exposure to censure if the behaviour were to be publicly known. In other words, the person exercises *self-control*. Compliance with a system of informal controls depends in large measure on *transparency*, so that with the accompanying realization that financial activities will be subject to public scrutiny, persons will be motivated to meet expectations of good financial management.⁴³

He also observed that:

The notion of autonomy does not mean that the legislative branch can choose to be accountable or not. The obligation of accountability is an overarching requirement of democracy. The notion of autonomy does not make accountability optional. The obligation to account arises independently of the concept of the legislature as an independently functioning entity. It arises because of the necessary fact that in a democratic society no body has arbitrary or unfettered or dictatorial powers; and that whenever a body or official is entrusted with power, it must be wielded in the public good. There must be a means to ensure that that occurs, and that people have confidence that it occurs, thereby maintaining trust in our institutions.⁴⁴

As a further means of ensuring compliance Chief Justice Green also considered use of a process generally known as a “whistleblower policy”. He wrote:

A mechanism to promote good governance that has been developed in both the private and public sectors in recent years has been the notion of a “whistleblower” policy designed to encourage persons within an organization to report instances of behaviour of others in the organization that is considered improper, unethical or wrong. In the public sector, the policy is usually embodied in legislation and is often referred to by other names such as “public servants disclosure” or “public interest protection.” The key elements of a whistleblower policy are: the provision of a well-

⁴² *Ibid*, at p.2-18

⁴³ *Ibid*, at p.2-22

⁴⁴ *Ibid*, at p.2-23

publicized formal mechanism whereby a person concerned about the improper behaviour of another in an organization may express those concerns in confidence to another person who is regarded as independent; a process whereby those concerns will be investigated in a fair manner; and protection to the whistleblower against reprisals for having come forward. For the scheme to work, the policy must be communicated to all employees affected and key members of management should stress the importance of the policy. As well, potential whistleblowers must have confidence in the protections that are provided.⁴⁵

Even though he acknowledged that in those jurisdictions having a whistleblower policy, “the policy does not usually apply within the legislative assembly service or within the legislature generally”, and members of the House of Assembly opposed the idea, Chief Justice Green expressed his belief that it would be appropriate to recommend a whistleblower policy within the legislature of this province. He reasoned that if such a policy had been in place some people would have been aware of the improprieties he documented and it is possible that some of the events would have received scrutiny much earlier.

Nevertheless, he did recognize a potential problem with applying such a policy to persons involved in the political side of public life. He wrote:

I realize that there is a concern that applying a whistleblower policy to publicly visible persons like MHAs leaves them open, perhaps more than others, to spurious claims being made by disgruntled persons with an axe to grind. A fair and thorough investigation process should, however, screen out unfounded allegations of a vindictive nature. I do not believe that a concern of this nature is sufficiently strong to overbalance the other benefits of implementing such a policy, particularly the removal of public suspicion that MHAs have something to hide and the bolstering of public confidence in the open and transparent nature of the political system.⁴⁶

Green Report Conclusions Respecting the Value of Codes of Conduct

After examining in detail the factual circumstances that gave rise to the creation of the Review Commission, Chief Justice Green identified twelve specific factors that contributed to the occurrence of constituency allowance improprieties involving members of the House of Assembly. The fourth of the twelve factors he identified was the absence of a code of conduct. With respect to that factor, he wrote:

There is no clearly articulated code of conduct in place for IEC members, nor the staff of the House. This issue raises broad policy dimensions related to the overall tone of the operating environment of the House of Assembly. I will discuss

⁴⁵ *Ibid*, at pp.5-47 and -48

⁴⁶ *Ibid*, at pp.5-48 and 49

these concepts at some length later in my report. I raise it here, however, because it underlines the context of an important specific observation.

...

There is clearly a requirement for a code of conduct that articulates such things as: ethical standards and appropriate patterns of behavior; unacceptable business practices and inappropriate business relationships; the rights and obligations of personnel not to authorize payments which they do not understand, or which they feel are an inappropriate disbursement based on the purpose for which they were voted by the House; and the recourse available to those who feel uncomfortable about possible violations of the code.⁴⁷

It is noteworthy that the first two of the eighty recommendations Chief Justice Green made includes the necessity for statutory provision for “the standards of conduct of elected officials, and their ethical and accountable behavior”, and “prescribing guidelines and requirements which will: ... (g) establish standards of conduct for Members and for those charged with the responsibility of administration of operations of the House of Assembly establishment.”⁴⁸ His fourth and fifth recommendations contained these very specific proposals:

Upon the legislative reforms recommended in this report coming into force, the Speaker should refer to the Standing Committee on Privileges and Elections, or to a special committee appointed for the purpose, the responsibility for developing and proposing to the House of Assembly the adoption, by resolution, of a code of conduct for Members to provide guidance on the standards of conduct expected of them in discharging their legislative and public duties; and

The Commission of Internal Economy should develop and adopt a code of conduct applicable to persons employed in the House of Assembly and in the statutory offices;

He emphasized his view of the importance of a code of conduct when he wrote:

I am satisfied that a code of conduct is an important element in fostering public trust in our elected officials and in the institutions in which they operate. By setting out guidelines as to the conduct expected of MHAs in fulfilling their duties, a code will reinforce the notion of accountability that should permeate the organization and set an appropriate tone for the House. As stated by E. N. (Ted) Hughes, Conflict of Interest Commissioner of British Columbia:

⁴⁷ *Ibid*, at p.4-32

⁴⁸ *Ibid*, at pp. 4-55 and 56

It is my view that a nation is no stronger than its ethical and moral principles, and the ultimate strength of those ethical and moral principles is in the hands of those citizens democratically elected to lead our country in the provinces, the territories and our municipalities. The cornerstone that underpins sound moral and ethical principles and values is the integrity, honor and trustworthiness of our democratically elected officials at all levels of government.⁴⁹

Conclusion

In my view, the comments of Chief Justice Green quoted above accurately reflect the key principles establishing the value of, and the necessity for:

- a statement of aspirational guidelines expressing the ethical objectives to which the elected members of a democratic governmental institution ought to commit themselves (code of ethics);
- a clear statement of the kind of work related behaviour that is prohibited and the work related action that may be required in order to achieve compliance with those aspirational objectives (code of conduct); and
- a mechanism for calling violators to account and enforcing actions necessary or desirable to correct or offset the consequences of the violation (enforcement procedures).

Green Report Conclusions as to Form and Content of a Code of Ethics or Code of Conduct

The Chief Justice also considered the structure and characteristics of such codes, the general nature of their content and the manner in which they might best be brought about. On these issues he expressed the following views:

Many of the codes that have been adopted are expressed in general, aspirational language. Their intent is not to set out a set of detailed rules to control every aspect of Members' behaviour, but rather to set general public standards by which the behaviour of parliamentarians can be assessed and, in so doing, provide general guidance to them so they can order their affairs on the basis of principle, not expediency or self-interest. The focus of a code is usually not on obviously illegal behaviour since that is already the subject of normative rules in the law of the land. Instead, codes often focus on areas of activity that would generally be regarded as unethical or inappropriate according to community expectations. In that regard they often contain general guidelines, and broad prescriptions and prohibitions.

Conflict of interest guidelines are a subset of broader guidelines that are often contained in codes of conduct. In this province, MHAs are subject to a series of

⁴⁹ *ibid*, at p. 5-7

conflict of interest prescriptions set out in legislation. The trend in Canada and in the United Kingdom is towards a movement away from specific narrow concerns like conflict of interest to broader concerns of general propriety and integrity. It is generally recognized now that legislative functioning can be compromised in many ways apart from violation of conflict of interest prescriptions.

In those jurisdictions that have adopted codes of conduct for elected officials, it is generally accepted that standards of proper behaviour need to be declared publicly and, as well, an effective process for holding officials to account for breaches of those standards should be developed and implemented. To achieve acceptability by the public, however, any code of conduct that is adopted must be seen to be administered impartially and independently of the political system to which it applies.

A number of approaches to the implementation of a code of conduct have been developed. One is to enshrine the code in a legislative framework. Another is to have the legislators themselves develop the code and assign it either to a parliamentary commissioner for implementation and enforcement or to a committee of the legislature itself. A further approach would be simply to adopt a series of aspirational guidelines and leave compliance internally to each individual member's conscience.

In my view, given the current political climate, the notion of self-regulation by Members themselves would likely have little credibility with the public. If a code of conduct is to be an important element in a political system designed to foster public trust, it must be seen to be more than merely aspirational; in short, there must be some mechanism for achieving accountability. Having said that, the actual development of the code should not, I believe, be imposed from without. It is now recognized that, to be effective, codes must emerge from within the culture of the organization and reflect its own fundamental values.

It would be inappropriate in the circumstances, therefore, to attempt to legislate a code on the basis of detailed recommendations from me. The Members of the House of Assembly themselves must have a role in debating and defining in a public way the standards of public behaviour that they believe should apply to them.

In my view, therefore, while I am satisfied that the adoption of a code of conduct is advisable, the way in which that should be brought about is by the House referring the matter to the Standing Committee on Privileges and Elections, or to a committee specially constituted for the purpose, to develop and propose a code to the House for adoption by resolution. Types of areas often covered by codes of conduct are as follows:

- standards of behaviour, impartiality and conflicts of interest
- appointments and other employment matters
- outside commitments
- personal interests
- the tendering process

- corruption
- use of financial resources
- gifts
- whistle-blowing

...

It may also be argued that codes are in essence “motherhood” statements and that there is little likelihood of real practical impact or enforcement. The answer to this objection is found in the following observation:

Arguing that codes should be avoided because they will never be implemented or enforced is to concede the point that is at issue; that parliament is incapable of regulating itself. It is to concede that the public's perception is correct. So the conclusion is that codes are needed in order to prove the skeptic wrong; and if they are to be effective, and to avoid being classed as window dressing or ploys to avoid responsibility, or if they are to avoid reducing still further the reputation of parliamentarians and parliament, then codes will need to be enforced and sanctions imposed upon those who violate them. Imposing sanctions will not be the first option. Education is usually the first appropriate response, but the possibility must exist if the code is to be taken seriously by both those who must obey it and those whose trust it is intended to garner.⁵⁰

The importance of similar guidance for the staff of the House of Assembly was also recognized by the Chief Justice. He wrote:

Because so few of the expected standards of behaviour of the House staff were recorded in formally issued and easily accessible policies, there was often general confusion as to what policies actually applied and, in particular, whether policies of the executive applied within the House. Issues with respect to alleged conflicts of interest of a senior member of the House administration in dealing with businesses in which he may have had an interest and the failure to follow up to ensure that, after the employee was told to cease, that he did in fact cease, have already been referred to.¹⁵ As well, the Auditor General has made reference in his reports to a failure to abide by government tendering practices.

This is an unacceptable situation. The staff should have clear guidelines setting out the standards expected of them. There should be a code of conduct promulgated for House staff as well as for MHAs. Not only would it be fairer to them, but clearly understood guidelines would go a long way to enhancing a general culture of accountability within the House administration.

Generally, the standards to be expected of House staff should be as close as possible to the standards expected in the general public service. ...⁵¹

⁵⁰ *Ibid*, at pp. 5-7 to 5-9

⁵¹ *Ibid* at p. 5-11

The new legislative provisions that the Chief Justice proposed to replace the then existing *Internal Economy Commission Act*, were enacted substantially as the Chief Justice proposed and became the *House of Assembly Accountability, Integrity and Administration Act*.

Conclusion

For several reasons, I consider the Green Report to be particularly relevant to consideration of issues arising and making recommendations in dealing with the subject matter of this report. In particular, I am of the view that:

- while the jurisdiction of the two institutions, the House of Assembly and Council, is quite different, there is no difference in the underlying duties and obligations to the respective electorates, or in the necessity for transparency and accountability;
- the principles that should inform the ethical standards of the conduct of members of the Council are essentially the same as those that should inform the conduct of members of the House of Assembly;
- the focus of the Green Report, as the title “Rebuilding Confidence” would indicate, is on providing guidance, procedures and, where necessary, rules, all to ensure transparency and accountability that will ultimately result in members of the House of Assembly conducting themselves in a manner that ensures public confidence in their integrity and accountability; and
- consistency in the ethical standards applicable to all levels of elected public officials is, in itself, a beneficial attribute that can make a significant contribution to increasing public confidence in the integrity and accountability of their elected representatives.

Consequently, except for one aspect of his recommendation respecting the drafting of “the code”, I would endorse all of the comments and recommendations of Chief Justice Green quoted above. While I understand the basis for his view that “the code” should not be imposed from without, and would generally agree that aspirational principles developed by the persons aspiring to achieve them are more likely to be embraced and pursued with dedication, that may not be the case for specifically required or prohibited standards of conduct in anticipated and identified circumstances. More significantly, such an approach may only be practical for a small and discrete group like members of the House of Assembly, or members of Council, but would not be practical in the case of a single code intended to apply to all persons connected with the affairs and operations of the City.

Generally, however, the comments can make a valuable contribution both to the structuring of an ethics system for the City, and to providing guidance in the development of content of both the ethical principles portion and the standards of conduct portion of the code.

House of Assembly Accountability, Integrity and Administration Act.

Section 35 of this new statute provides:

35. (1) The speaker shall, immediately after the coming into force of this Act, refer to the standing committee of the House of Assembly on Privileges and Elections the responsibility of developing and proposing to the House of Assembly the adoption, by resolution, of a code of conduct for members to assist members in the discharge of their obligations to the House of Assembly, their constituents and the public at large that

(a) provides guidance on the standards of conduct expected of members in discharging their legislative and public duties; and

(b) provides the openness and accountability necessary to reinforce public confidence in the manner in which members perform those duties.

(2) The code of conduct adopted under subsection (1) shall be

(a) treated as a standard against which the actions of a member may be judged for the purpose of censure by the House of Assembly and by the public; and

(b) in addition to other standards of duty and responsibility imposed on members by this Act and any other law.

(3) The commission shall, within 90 days of the coming into force of this Act, develop and adopt a code of conduct applicable to the officers and other persons employed in the House of Assembly service and in the statutory offices.

That section, is the first of nineteen sections in Part V of the Act, which is entitled “ETHICS AND ACCOUNTABILITY”. Other provisions of that part provide for a supervisory and inquiry role of the Commissioner of Legislative Standards, including reporting the results of an inquiry to the House and making recommendations for penalties to be imposed for failure of a member to fulfil an obligation under the code of conduct, subject to concurrence by resolution of the House. The potential penalties include: that the member be reprimanded; that the member make restitution or pay compensation; that the member be suspended from the House of Assembly, with or without pay, for a period specified in the report; or that the member’s seat be declared vacant.

Part VI of the Act, entitled “PUBLIC INTEREST DISCLOSURE”, essentially enacts the whistleblower protection provisions that the Chief Justice recommended be included. Again, to facilitate convenient reference, the full text of Parts V and VI is attached as APPENDIX “C”

Code of Conduct for Members of the House of Assembly

About a year after the Green Report was submitted, the House of Assembly formally adopted the code of ethics for its members that subsection (1) of section 35 of the new Act required.

The House did not use either of the two samples attached to the Green Report but what was adopted was not inconsistent with the samples. Neither is it inconsistent with codes of conduct that have been adopted by other bodies, for example, the legislative assembly of Saskatchewan. The full text of the House of Assembly code can be found at APPENDIX "D".

Like the Saskatchewan Legislative Assembly members code of conduct, which for convenient reference is attached as APPENDIX "E", the document simply sets out "Commitments" and "Principles". The first commitment is more of a political commitment to promote the welfare of the province; the second is an expression of respect for the law, and the need for members to maintain public trust by performing their duties with accessibility, accountability, courtesy, honesty and integrity. The two commitments are the kind of expressions one might expect to find in a code of ethics that expresses aspirational guidelines, but the expressions fall significantly short of the clearer and more direct expressions to be found in the Saskatchewan Assembly members' code of conduct.

The difference between the two is more readily appreciated if the part of each that preceded the list of principles is compared. The part of the House of Assembly members' code that preceded the list of principles reads as follows:

Commitments:

Members of this House of Assembly recognize that we are responsible to the people of Newfoundland and Labrador and will responsibly execute our official duties in order to promote the human, environmental and economic welfare of Newfoundland and Labrador.

Members of this House of Assembly respect the law and the institution of the Legislature and acknowledge our need to maintain the public trust placed in us by performing our duties with accessibility, accountability, courtesy, honesty and integrity.

The part of the Saskatchewan members' code of ethics that preceded the list of principles reads as follows:

Preamble

As Members of the Legislative Assembly we recognize that our actions have a profound impact on the lives of all Saskatchewan people. Fulfilling our obligations and discharging our duties responsibly requires a commitment to the highest ethical standards.

Statement of Commitment

To the people of this province, we owe the responsible execution of our official duties, in order to promote human and environmental welfare.

To our constituents, we owe honesty, accessibility, accountability, courtesy and understanding.

To our colleagues in this Assembly, we owe loyalty to shared principles, respect for differences, and fairness in political dealings.

We believe that the fundamental objective of public office is to serve our fellow citizens with integrity in order to improve the economic and social conditions of all Saskatchewan people.

We reject political corruption and will refuse to participate in unethical political practices which tend to undermine the democratic traditions of our province and its institutions.

To be fair to the House of Assembly, the matters covered in the last two items in the Saskatchewan list of commitments appear in the list of principles in the House of Assembly Code of Conduct. Nevertheless, even ignoring those two items, it would seem that the Saskatchewan expressions more effectively express aspirations and the kinds of commitment the electorate would hope motivates the people they elect.

Nothing in the Code of Conduct itself deals with compliance. As noted above, that is dealt with in specific provisions of the Act. The Act also contains a provision enabling any person believing in good faith that a member, the speaker, deputy speaker, clerk, clerk assistant of the Management Commission has failed to comply with a duty imposed under the Act, to begin a proceeding in the Trial Division of the Supreme Court for a mandatory order that the duty be complied with and for consequential relief. Thus, it provides for the right of a citizen not only to complain, but to institute and maintain a court action to obtain an order to correct the perceived failures.

Conclusion

It is not a code that explicitly describes the performance required in identified circumstances, or explicitly describes actions that are prohibited in other circumstances. As a result, it may not easily provide the kind of guidance that members may seek in the future, and ensuring compliance with it may be more difficult than it should be.

Code of Conduct for House of Assembly Service and Statutory Offices

Subsection (3) of section 35 required that the House of Assembly Management Commission to develop and adopt, within 90 days of the Act coming into force, a code of conduct “applicable to the officers and other persons employed in the House of Assembly service

and in the statutory offices. This was completed as required. The full text is attached as APPENDIX "F".

All of its provisions are cast in the form of statements of the manner in which the persons who hold those offices intend to conduct themselves. Their content is a series of aspirational guidelines. There are no specific descriptions of actions required to be performed or actions that are prohibited. As such it is better described as a code of ethics than a code of conduct. It should also be noted that the inquiry and report making powers that the Commissioner for Legislative Standards has in respect of members of the House of Assembly do not apply to the officers and staff of the House of Assembly. Further exploration of that fact and the basis for it does not seem to be necessary for the provision of the advice that Council is seeking from me.

Conclusion

Neither the code for House of Assembly members nor the code for House of Assembly staff provide good guidance for the development of a single, code containing both aspirational principles and standards of conduct that is recommended for the City.

Provincial Legislation Respecting Municipalities

The Municipalities Act

This is the provincial enabling legislation under which all municipalities, other than the Cities of St. John's, Corner Brook and Mount Pearl, are created and enabled. Other than Part XIII.1, dealing with waste disposal areas, its provisions are not applicable to any of the cities. Nevertheless, a number of its provisions, particularly those dealing with conflict of interest management, are relevant for consideration in the course of making recommendations as to the content and structure of any City by-law or other provision dealing with ethical standards of conduct of persons acting in the name of or on behalf of the City.

It will be essential to the success of any ethics regime implemented by the City to include provisions that will be effective to discourage failure to conform to a code of ethics or a code of conduct. There is nothing that would have that effect in either the City's existing *Conflict of Interest By-Law* or its *Code of Ethics By-Law*. While the City Act does contain some penalty provisions they are not of the kind that would further the maintenance of ethical standards of behaviour, and would have little or no effect on promotion of adherence to the City's legislative provision respecting ethical standards of behaviour.

The City's *Conflict of Interest By-Law* contains provisions defining what constitutes a conflict of interest for a member of Council, prohibiting a councilor from speaking or voting on any matter in respect of which he or she has a conflict of interest, and requiring disclosure of

conflicts. To that extent, its provisions are similar to the provisions of the *Municipalities Act*. However, unlike that Act, it does not contain provision for removal from office, by a resolution of the council, where there is a failure to disclose a conflict of interest or a councillor speaks or votes on a matter where he or she has a conflict of interest.

City of Corner Brook Act

The statute was enacted in 1955 and contains provisions that are not present in the much older *City of St. John's Act*. It neither contains nor provides specifically for the creation of a comprehensive code of ethics or code of conduct. It does, however, contain seven sections that prescribe the manner in which councilors must act or avoid acting in circumstances of a possible conflict of interest. While the provision cannot be said to be a comprehensive codification of rules respecting conflict of interests, it is considerably more expansive than the meagre provisions to be found in the *City of St. John's Act*.

The provisions apply only to members of the council but one of the provisions empowers the council to require that the councilors and "those of its employees that it may designate" to complete a disclosure statement setting out the interests of the councilor and employee that may place that person in a conflict of interest. Unlike the *City of St. John's Act*, but like the *Municipalities Act* and the *City of Mount Pearl Act*, the *City of Corner Brook Act* does contain a provision for removal from office, by a resolution of the council, where there is a failure to disclose a conflict of interest or a councilor speaks or votes on a matter where he or she has a conflict of interest. For convenient reference, the full text of the six relevant provisions of the *City of Corner Brook Act*, is attached as APPENDIX "G".

City of Mount Pearl Act

The *City of Mount Pearl Act* was enacted in 1988 and, with only a few variations that are not substantive in nature, contains the same provisions, respecting the manner in which councilors are required to act or refrain from acting in circumstances of potential conflict, as are found in the *City of Corner Brook Act*. The provisions appear to have been copied virtually verbatim, including the same section numbers. There is no need to set them out as an appendix.

Conclusion as to Legislation Respecting Municipalities

The conflict of interest provisions of the *Municipalities Act* can provide helpful guidance in developing the conflict of interest provisions of a comprehensive code for the City. There is nothing in either the *City of Corner Brook Act* or the *City of Mount Pearl Act*, that is not in the

Municipalities Act, that would be particularly helpful in designing an ethics regime for the City.

Municipal By-Laws

Although the provision of the Terms of Reference that refers to “legislation of the Provincial Government and other municipalities” could be interpreted to mean all the other municipalities in the province, I am satisfied that, because of the time that would be involved, little is to be gained by specifically checking each of the more than 275 incorporated municipalities in the province. Accordingly, it was decided to specifically check each of the fifteen most populous municipalities, attempt to identify any other municipalities that might have developed conflict of interest by-laws or a code of ethics or code of conduct, and if any such were found, assess the content and practices.

Most Populous Newfoundland and Labrador Municipalities

Mount Pearl

The first municipal jurisdiction considered was the city of Mount Pearl. A search of the Mount Pearl website provided a list of their “By-Laws & Regulations”. None of the titles on the list gave any indication of relevance to regulation of conflicts of interest, the existence of a code of ethics or a code of conduct.

Conception Bay South

The website of the largest town in the province, Conception Bay South, was also examined. Of the 19 items on the list of town “Regulations”, none of the titles gave any indication of relevance to the regulation of conflict of interest, the existence of a code of ethics or a code of conduct.

Paradise

The website of Paradise does not contain a list of town regulations. A search of the website using, “conflict of interest”, “code of ethics” and “code of conduct” indicated no results in each case.

Carbonear

The town’s website discloses a list of town regulations. None of the titles indicate a regulation dealing specifically with conflict of interest, or the existence of a code of ethics or code of conduct. When those phrases are checked on the website’s search tool the results

refer only to excerpts from council minutes indicating a councillor or mayor left the meeting after declaring a conflict of interest.

Clareville

An examination of Clareville's website indicated a heading "Regulations and Permits". In addition to six regulation titles, the site listed titles of twelve "Policies". Neither the titles on the list of regulations nor the titles on the list of policies indicated an item that might have any relevance to regulation of conflict of interest, the existence of a code of ethics or a code of conduct.

Marystown

The website of the town of Marystown had a list of "By-Laws and Regulations". None of the seven titles listed indicated any relevance to conflict of interest or the existence of a code of ethics or code of conduct.

Gander

The website of the town of Gander contains a list entitled "Regulations, By-laws and Codes". None of the 31 items on that list have any relevance to conflict of interest, a code of ethics or a code of conduct. A search using the website's search tool and those three sets of key words yielded zero results in each case.

Grand Falls-Windsor

The website of Grand Falls-Windsor contained a list of "Town Regulations". None of the 19 titles on the list indicate any relevance to conflict of interest, code of ethics or code of conduct. Searching these phrases on the website's search tool yielded no results.

Deer Lake

The website for the Town of Deer Lake contains a link titled "Municipal Regulations". None of the 16 titles of regulations on that list indicates any relevance to conflict of interest, code of ethics or code of conduct. The website does not contain a search tool.

St. Anthony

The Town's website contains a link to "Policies and Regulations". None of the ten items listed indicates any relevance to regulation or policy respecting conflict of interest, code of ethics or code of conduct. Checking these three phrases on the website's search tool produced no results.

Corner Brook

The City of Corner Brook website provided a wealth of information relevant to policies respecting guidance as to ethical practices for councilors, managers and employees. None of the titles of the more than 30 by-laws listed indicated any connection with conflicts of interest, a code of ethics or a code of conduct. However, the site lists more than 150 separately written policy statements covering virtually every aspect of involvement of employees, managers and council members in the conduct of city business and interaction with citizens. Most seem to have been written between 1997 and 2002 and many have been revised between their dates of origin and the present time.

Each conforms to a standard format, so there is great consistency in appearance and, one would expect, ease of reference and interpretation. Each is designated as a "Policy Statement", and a masthead on each discloses:

- the division of city operations to which it relates;
- the function of activity it covers;
- the title of the policy statement;
- the policy number;
- the authority issuing it;
- the approval date;
- the effective date; and
- any revision date.

The format is simple and has four basic components:

- **Purpose:** The purpose is succinctly but clearly stated, and if the policy has one or more specific objectives, it or they will be succinctly but explicitly stated;
- **Policy Statement:** The policy to be implemented through the statement is very simply but very clearly stated;
- **Reference:** This usually contains reference numbers and dates that likely indicate the source or sources and dates involved in the development of the policy; and
- **Detailed Action Required:** This section is sometimes brief but is sufficiently detailed to ensure all affected will have detailed guidance as to actions expected of them in order to achieve the purpose and implement the policy, in defined circumstances.

About a dozen or so, of the more than 150 such policy statements, warrant specific assessment in the context of establishing ethical standards for the members of the institution, staff and employees in the workplace. Some have significant bearing and others have a more peripheral bearing on the ethics of conduct of employees, managers or

councilors. The four most significant, from a standard of ethics perspective include the policy statements entitled: Code of Ethics; Employee Conduct; Hiring; and Workplace Harassment. Others that have some bearing on promoting ethical standards include the policy statements entitled: Equipment and Material Control; Gifts on Behalf of the City; Property Tax Deferrals; Use of City Property during Elections; and six separate policy statements dealing with various aspects of travel expenses and claims.

The policy entitled "Code of Ethics" is the best one to look at in some detail. It is quite thorough and is more of a code of conduct than a code of ethics. It describes its objectives as: providing guidelines for employees respecting conflicts of interest; ensuring employees do not place themselves in positions of conflict; and promoting high standards of professional conduct and values. The policy statement is expressed as ensuring that employees are aware of what constitutes a conflict of interest and are aware of the level of conduct and integrity that is expected of municipal employees.

It assigns responsibility to the chief administrative officer of the city for: implementing, administering and promoting the policy; ensuring that department heads promote the ethical standards; and investigating and reviewing any reported violations. Responsibility is specifically assigned to department heads for: ensuring employees are familiar with the code; advising the chief administrator of any perceived breaches; and recommending changes to the code.

The remainder of the policy statement spells out, in mandatory or near mandatory terms through use of terms such as "will", "shall", or "should", in detail the action "required" under the following headings: Responsibilities of City Employees and Officials; Dedicated Service; Employees Not Exceeding Authority; Soliciting Appointments; Use of Public Property; Obligations to Citizens; Conflict of Interest; and Political Activity. It also encourages reporting of breaches and provides for consequences of violation.

For convenience, the four policy statements that are most significant from a standard of ethics perspective are attached as APPENDIA "G".

Stephenville

The Town's website contains no reference to regulations or by-laws. The search feature on the website produced zero results for conflict of interest, code of ethics, code of conduct, by-laws and regulations.

Port aux Basques

The Town's website contains a list of "Regulations and By-laws". None of the titles on the list indicate any connection with conflict of interest, code of ethics or code of conduct. The search feature did not produce any results for these three key phrases.

Labrador City

The website has a link entitled "Regulations and By-Laws". When opened, it lists 22 subjects none of which appears to have any connection with conflicts of interest, a code of ethics or a code of conduct. The search feature yields no results when those phrases are entered as key words.

Happy Valley-Goose Bay

The link, "Town Regulations", on the website displays a list of some 17 titles, mostly of regulations, but none of the titles indicate any connection with conflict of interest, code of ethics or code of conduct. There is no search feature built into the site.

Other Newfoundland and Labrador Municipalities Having a Code of Ethics or Conduct

An attempt was made, without checking each individual municipality, to determine whether any of the smaller municipalities might have conflict of interest rules or policies, or a code of ethics or code of conduct. The limited search produced two results, one for the Town of Trinity and the other for the Town of Witless Bay.

The full text of what is described as a "Code of Ethics Policy", adopted by the town council in Trinity in September 2007, appears on the town's website. Its introductory paragraph is as follows:

Policy Statement:

Recognizing the need to provide a standard code to cover the conduct of Councilors and employees of the Town of Trinity, the following Code of Ethics Policy is adopted. This Code is meant to govern all members of Council and employees of Council, either full-time, part-time, consultants, contractual employees or any other person, paid or un-paid, that has been hired or appointed by the municipality to conduct or work in the public interest.

The document then lists five general purposes, identifies responsibilities and standards of behaviour expected of the council, members of council, town officials and employees in the course of discharging their duties and responsibilities, and prohibits a variety of generally described courses of conduct. The statement also sets out a requirement for disclosure of interest and finally prescribed penalties for violation of the standards of conduct. The document provides good guidelines for councilors and staff in a small municipality and specifies penalties for failure to conform. The Full text is attached as APPENDIX "I".

At its meeting in August 2014, the town council in Witless Bay adopted what it describes as a **“CODE OF ETHICS Guiding Witless Bay’s Municipal Council & Staff”**. The introductory paragraph reads:

The Town of Witless Bay will promote accountable and transparent municipal governance guided by open and transparent decision-making, ethical and accountable operations, and the efficient and effective oversight of financial resources and physical infrastructure. Stakeholders’ inquiries, concerns and complaints will be responded to in accordance with Council’s policies and procedures, and in a timely manner. Impartiality in all matters will be maintained.

The code contains clearly described ethical standards of behaviour that members of the council, staff, and employees should employ in all their dealings with members of the public and in the discharge of their duties generally. Transparency and accountability is emphasized, personal gain is prohibited and disclosure of potential conflict is required. It is more of a code of conduct than a code of ethics, but it covers all that is essential to provide thorough and reasonable guidance aimed at ensuring ethical behaviour by all persons acting in the name of a smaller municipality. The full text is attached as APPENDIX “J”.

Conclusions Respecting Provisions in Other Newfoundland and Labrador Municipalities

The by-laws of each of Trinity and Witless Bay provide reasonably thorough guidelines that should be helpful in promoting ethical behaviour by both councilors and employees in a smaller municipality. Success, however, would likely be almost entirely dependent on the leadership of the municipality paying fairly constant attention to its application. Neither would be sufficient to meet all the requirements for an ethics regime of the kind recommended by the academics quoted above.

The City of Corner Brook approach is quite different than that of most, but not all, other municipalities across Canada. It is implemented through a series of policy statements. Each is thorough and detailed, and effectively describes all aspects of duties and behaviour in all functions. Each of the many policy statements specifically designates the officials responsible for ensuring that policy’s implementation, and provides for investigation of any violation or perceived violation of the policy. As a result, it seems to be excessively complex and repetitive. One would think a single investigation and enforcement process would be more efficient. Nevertheless many of the policy statements contain excellent descriptions of required or prohibited behaviour that could be used in the construction of a code of conduct.

Chapter 5

Provisions and Practices in Other Canadian Municipalities

The other municipalities that it would seem appropriate to consider are primarily the small to medium sized capital cities of the provinces. In provinces where the capital city did not produce usable information, another or other cities were checked. The cities checked and what was found are as follows.

Halifax, NS

A cursory examination of the Halifax Regional Municipality website indicates that the city has a code of conduct for elected officials adopted in July 2013. The code is divided into twelve distinct parts, including:

PURPOSE "... to establish guidelines for the ethical personal conduct of Members of Council ...".

STANDARDS OF CONDUCT "... to advance the common good of the municipality as a whole ... and to perform the functions of office truly, faithfully and impartially" in accordance with the following core values:

- (i) **Integrity** – giving the municipality's interests absolute priority over private individual interests;
- (ii) **Honesty** – being truthful and open;
- (iii) **Objectivity** – making decisions based on a careful and fair analysis of the facts;
- (iv) **Accountability** – being accountable to each other and the public for decisions taken;
- (v) **Leadership** – confronting challenges and providing direction on the issues of the day.

COUNCIL RESPONSIBILITIES This includes responsibility for review and amendment of the code, and to "review, consider or take action concerning any violation of this Code".

MEMBER RESPONSIBILITIES This part lists, and sets out a description of each responsibility, to be: *Conduct to be Observed; Dedicated Service; Respect for Decision-Making Process; Conduct at Meetings; Release of Confidential Information Prohibited; Gifts and Benefits; Use of Public Property; Obligation to Citizens; Interpersonal Behaviour; and Community Representation.*

The remaining eight parts describe the decisions or actions to be taken, or prohibited, under the following headings: GOOD GOVERNANCE; GOVERNMENT RELATIONSHIPS; CONFLICT OF INTEREST AVOIDANCE; REPORTING BREACHES; CORRECTIVE ACTIONS; COMPLIANCE WITH THE CODE; and OVERALL RESPONSIBILITIES. There are no specific directions set out under the heading "CONFLICT OF INTEREST AVOIDANCE". Instead, the code expresses a commitment to "recognize the importance of fully observing the requirements of the *Municipal Conflict of Interest Act*.⁵²

The full text of the Halifax code of conduct is attached as APPENDIX "K".

Fredericton, NB

The websites of the city of Fredericton did not produce any usable results. The websites of the cities of St. John and Moncton were also checked but neither indicated the existence of a code of ethics, code of conduct or conflict of interest by-law. That, probably, is a consequence of the fact that the New Brunswick *Municipalities Act*,⁵³ contains provisions defining what constitutes a conflict of interest, dealing explicitly with a variety of circumstances that could give rise to a conflict of interest, and specifying action required by members of council and senior appointed officers in conflict circumstances. The term "senior appointed officer" is defined to include chief administrative officer, treasurer, clerk, municipal solicitor, municipal planner, building inspector, fire chief, chief of police, and purchasing agent".

The statute also contains the following provision:

The provisions of this Act with respect to conflicts of interest in municipal governments shall be deemed to supersede all other provisions that may exist in any other Act, public or private, any regulation thereunder, any municipal by-law or any municipal charter with respect to such matters, notwithstanding that no conflict may exist between the provisions of this Act and such other provisions.⁵⁴

Charlottetown, PEI

The website indicates that CBC news reported on April 3, 2013 that Charlottetown had "developed" its first code of conduct, covering standards of conduct of elected officials in areas such as decision making, conflicts of interest and government relationships. A search of the City's website, however, failed to turn up the code or any reference to it.

⁵² R.S.N.S. 1989, c. 229

⁵³ RSNB 1973, c. M-22

⁵⁴ *Ibid*, s. 90.91

Quebec City, Quebec

A search of the Quebec City English website failed to produce a response to searches for code of ethics, code of conduct or conflict of interest. However, the search did indicate the existence of the *Municipal Ethics and Good Conduct Act*,⁵⁵ passed in 2010. The first section of the statute states "The purpose of this Act is to ensure that the members of every council of a municipality explicitly adhere to the main ethical values of the municipality, and to provide for the adoption of rules of conduct and the application and enforcement of those rules." The bill that introduced the measure in the Quebec National Assembly contains, amongst others, the following explanatory notes:

This Act places local municipalities and regional county municipalities whose warden is elected by universal suffrage under a new obligation to adopt a code of ethics and conduct applicable to their elected officers and to revise it after each general election. It imposes a further obligation to adopt a code of ethics and conduct applicable to municipal employees.

The codes are to set out the main ethical values of the municipality concerned and the rules of conduct that must be observed by elected municipal officers or municipal employees, as the case may be.

The rules framed in the code of ethics and conduct of elected municipal officers must address such issues as independence of judgment versus private interests, favouritism, embezzlement, breach of trust and other misconduct, gifts and other benefits and the use of municipal resources as well as post-term issues.

For convenient reference, the full text of those explanatory notes is attached as APPENDIX "L".

Ottawa, Ontario

The City of Ottawa has a two code regime: a code for the members of the city council and the citizen members of the city's transit commission and the city's built heritage sub-committee, when those citizen members are acting in their capacity as commissioners and sub-committee members; and a code for employees. The regime also includes an integrity commissioner:

The Integrity Commissioner is an independent and impartial position reporting directly to Council. The Integrity Commissioner is responsible for oversight of the Code of Conduct for Members of Council and the Gifts Registry including providing advice to Members of Council, issuing interpretations and reports, investigating complaints and, where necessary, recommending sanctions. The position is also delegated the role of the Lobbyist Registrar and Meetings Investigator.

With respect to the code for members, the City of Ottawa website⁵⁶ indicates:

The Code of Conduct for Members of Council includes provisions relating to: issues of general integrity, misuse or improper release of confidential information, inappropriate conduct at Council/Committee meetings, matters related to discrimination or harassment, improper use of influence, inappropriate use of municipal property or resources (including for campaign purposes), inappropriate treatment of City staff, interpretation of the Council Expense Policy, inappropriate conduct respecting lobbying or lobbyists and improper receipt of gifts, benefits or hospitality.

The code provides a means for anyone witnessing behaviour believed to be a breach of the code applicable to members of the council to pursue the matter through either the formal or informal complaint process. Doing so is facilitated by the existence of a city integrity commissioner.

With respect to the employee code, the website contains comments by the city manager that that provide a good summary of the purpose and nature of that code including:

As an employee of the City of Ottawa I share your commitment to preserving the public's trust and confidence in the City, staff and the work we do to serve the community. The City of Ottawa's Code of Conduct has been specifically developed with two objectives in mind: to advance the goal of preserving public trust and confidence in the City and to assist employees in applying the City's core values in the completion of their work.

It is built on the understanding that we can and should demonstrate to the citizens of Ottawa that we are working to standards that are designed to strengthen public trust and confidence in our work and the services we deliver.

The principles set out in the Code of Conduct guide the work we do. As you read through these pages you will see that the Code of Conduct does not provide all the answers; instead it acts as a touchstone for questions, and reminds staff how the City's core values can be applied in various situations.

The text of each of the basic codes now in effect in the City of Ottawa is attached at APPENDIX "M". In the case of each of the two codes a number of policies of the city supplement the express provisions of the codes. As a result, the texts of these policies also have to be considered in order to appreciate the full ethics regime.

London, Ontario

The City of London does have a code of conduct for members of the council, a code applicable to committees and to members. It also operates with an integrity commissioner. The codes appear to consist in the main of a broad collection of policies, covering all aspects of the functioning of city administration. That is not unlike the approach of the City of Corner Brook. On cursory review it appeared to be a considerably more complex and

⁵⁶ <http://ottawa.ca>

extensive approach than would appear desirable here. As a result it was decided to check the Kitchener website.

Kitchener, Ontario

Kitchener does have an ethics regime in place. However, the website contained only a code of conduct for members of council, local boards, and advisory committees. Searching, using all usual terms failed to disclose an employee code of conduct. The code for members opens with the notation that it operates along with and as a supplement to a number of identified provincial statutes relating to municipal matters. The code also notes that advisory committees are constituted of citizen volunteers and applies separate provisions to them. The website also comments that:

The code of conduct provides rules and lists prohibitions respecting:

- Business relations
- Conduct at meetings
- Conduct of a political nature
- Conduct respecting staff
- Conduct respecting representing the city
- Protection of confidential information
- Discreditable conduct
- Employment of relatives
- Failure to adhere to council policies and procedures
- Receipt of gifts and benefits
- Use of city property

If you believe someone who must operate under the city's code of conduct has breached the code or has shown signs of non-compliance, please review the [complaint process](#) prior to lodging a complaint with the [integrity commissioner](#).

It is the noteworthy that the academic, Dr. Levine, whose work has been extensively relied on in this report, is the integrity commissioner for the City of Kitchener.

Winnipeg, Manitoba

The City of Winnipeg has a quite extensive and detailed code of conduct for employees. It consists of the following six parts:

A Definitions

B General Principles:—This consists of three generally expressed aspirations; one expressed in terms of desired or required behaviour and the other two in terms of unacceptable or prohibited behaviour.

C Preamble:—This consists of three statements, one indicating the code is in addition to any other applicable policy statements of the council, another to indicate that every provision of the code is severable in the event that any part of the code that is illegal or invalid, and the third to indicate that where any provision is inconsistent with a provision in a collective agreement or an employment contract the collective agreement or employment contract will prevail.

D Specific Provisions: – After providing that the generality of the general principles expressed in Part B is not to be limited by the explicit provisions, this part sets out thirteen quite comprehensive statements of directed or prohibited behaviour.

E Enforcement: – This Part identifies the persons to whom conflicts are to be disclosed or complaints made, and the persons responsible for ensuring compliance, investigation and determining sanctions. It also emphasizes the expectation that any employee becoming aware that another employee has contravened the code will file a complaint. It also describes the range of sanctions that may be applied.

F Administration of the Code: – This Part assigns responsibility, for implementing and administering the code and ensuring that all employees are aware of and comply with the code, to the Chief Administrative Officer of the city.

There is nothing on the website to indicate that a code for members of the council has been put in place. It does, however, indicate that in 2002 the several pieces of legislation applying to the city were replaced by a new city charter, and that the city “will now have the authority to determine ... a code of conduct for Councilors.”

The full text of the City of Winnipeg’s employee code of conduct is attached as APPENDIX “N”.

Regina, Saskatchewan

A general examination of the whole Regina website and an examination of a list of the city’s by-laws failed to identify any indication of the existence of an ethical or conduct code either for councilors or employees. Although Dr. Levine specifically refers to a “Regina Code of Conduct and Disclosure By-Law”, searches in that name and of the terms code of ethics, code of conduct, and conflict of interest did not yield any results. With no results from Regina, the city of Saskatoon website was checked.

Saskatoon, Saskatchewan

The city of Saskatoon appears to have no employee code of conduct. It does have a “Code of Conduct for Members of Saskatoon City Council” and a city policy respecting “Civic Boards, Commissions, Authorities and Committees”.

The first part of the council code is a simple expression of its purpose and the second part summarizes a substantial collection of statutory obligations applicable under several statutes. The next four parts express required or prohibited behaviour under the headings: Appropriate Use of City Assets and Services; Gifts and benefits; Actions during Civic Election Periods; and Leaves of Absence. The final part, under the heading Compliance, provides for procedures to be applied in the case of contravention of the enumerated statutory requirements and in the case of breaches of the conduct policy. It also states that the statutes referred to do not provide sanctions but identifies sanctions that, it states, the council can apply. It did not seem worth pursuing further in the context of this report.

Edmonton, Alberta

Edmonton has a code of conduct for employees structured in a manner somewhat similar to the manner of the Ottawa code of conduct for employees: posing questions and then providing the most desirable answer. However a search of the website for the city, and a search of the usual terms did not disclose a code of conduct for councillors. It does, however, indicate the existence of a code of conduct for the City’s Light Rail Transit board members. As a result of not receiving significant information respecting Edmonton, Calgary was checked.

Calgary, Alberta

The Calgary code of conduct was somewhat more difficult to assess. Like Corner Brook, Calgary has a substantial array of administrative policies covering all aspects of the city’s operations. Ten of the policies are listed under the heading, “Code of Conduct Policies”. One of them, the Code of Conduct Policy, appears to be a summary of the others. Some policies apply only to employees; some apply to employees, contractors and suppliers; some apply to employees, contractors, members of council and members of the public; some are specifically stated not to apply to elected members. The whole results in significant confusion.

The ten separately listed policies include: Workplace Violence; Code of Conduct (which appears to simply summarize the others); Acceptable Use of Technology Resources; Conflict of Interest; Environmental Policy; FOIP Employee Reference Manual; Public Statements and Media Relations; Respectful Workplace; Substance Use; and Occupational Health and Safety.

A city by-law requires the city audit committee to monitor the adequacy and effectiveness of all corporate policies, including code of conduct and conflict of interest. In 2014 the audit committee engaged KPMG to assess the city's ethics program. On July 8, 2015, KPMG reported so the information is quite current. The report is quite detailed but fuller assessment of it is not necessary. However there is an executive summary and some of the comments may be beneficial in the context of this review. That summary indicates KPMG focused on Communications and Policy Awareness; Employee Training; Policy Content; Reported Incidents, violations and Inquiries; Reporting Mechanism and Required Reports; and Tone at the Top. KPMG made observations in respect of each of these areas. The general conclusions are summarized in the Executive Summary as follows:

Our assessment of the City's Ethics Program highlights that the issues and observations that have been identified with the City's Ethics Program results from the decentralized nature to which the Program has been developed over time within the organization. The decentralized model within the City in supporting the Ethics Program results in the key issues we have noted during our assessment in the areas of training and awareness, the consistent processing of incidents and reporting requirements, and in the overall accountability and responsibility over the Program.

For the City to have an effective Corporate Ethics Program and address the underlying issues and observations that have been identified in this assessment, we recommend that the City consider centralizing the model and structure of its Program through its City Manager's office. A centralized model for the Program will establish a stronger organizational view for Ethics Program that will support accountability and responsibility for the Program and consistent approach in remediating the issues and observations identified so that the objectives of the Ethics Program can be achieved.

Victoria, BC

An examination of the City of Victoria website gave no indication of the existence of a code of conduct for either councilors or for employees. Searching the terms code of ethics, code of conduct and conflict of interest was also non-productive. Because there was nothing to consider from the selected British Columbia city, Vancouver was included.

Vancouver BC

The website of the City of Vancouver indicates that the City, under the designation "Corporate Policy", has a policy designated as a Code of Conduct. The expressed purpose of the code is "To set minimum expectations for the behaviour of Council officials, staff and advisory body members in carrying out their functions."

The code indicates that it applies to "All City Staff, including political staff, Council officials and Advisory Body Members." Staff is defined as "an employee or contract employee ... and includes staff that supports Advisory Bodies"; Advisory Body member is defined as "a person sitting on an advisory committee, task force, commission, board, or other Council-established body"; and Council Official is defined as "the Mayor and Council members".

Clearly the scope of application is broad enough to include all persons involved in making decisions or taking action in the name of the city. It is divided into eight policy statements:

1 Key Principles: – The six key principles set out are: Integrity; Accountability; Responsibility; Leadership; Respect; and Openness. The obligations arising from each principle are identified in detail.

2 General Conduct: – This section sets out guidance for behaviour and conduct in eight separately identified areas of activity in the operations of the municipality. All three groups, council officials, staff, and advisory board members, are specifically directed to follow the guidelines specified in seven of the described areas of activity. In the eighth described area of activity, staff and advisory board members are directed to carry out their duties in a manner that will ensure that council officials and the public remain informed.

3 Handling of Information: – Under this heading the code sets out in detail standards to guide what all three groups must and must not do in the course of handling information.

4 Conflict of Interest: – This section details what is a conflict of interest common to all three of the groups, and what is a conflict for any one or two of the groups. It is quite detailed and leaves little room for doubt.

5 Political Activity: – Political activity is defined to include civic, regional, provincial and national elections, and the actions that constitute political activity are defined. This part relates, primarily, to staff and facilitates political activity by employees. However, it prohibits engagement in public political activity, other than voting in elections, by the city manager, general managers and their equivalents.

6 Gifts and personal Benefits: – This section defines clearly what constitutes a gift which is sometimes different depending on whether it involves a council official, a staff member or advisory body member and sets out in great detail what may and what may not be accepted.

7 Interactions of Council, Staff and Advisory Body Members: – In some nineteen different descriptions, this section details the manner in which each of the three groups is required to behave in relation to the other two. It is extensively detailed.

8 Breaches, Complaint Handling and Disciplinary Action: – There is separate provision for the making, investigating, handling and sanctioning of complaints made in respect of each of the three groups. Potential sanctions are spelled out separately for each group.

The full text of the Vancouver code of conduct is attached as APPENDIX “O”.

Conclusion Respecting Programs in Other Canadian Cities

The ethics provisions from several of the cities examined, particularly Halifax, Ottawa, Winnipeg and Kitchener, will provide useful guidance in the course of pursuing Phase II of this review. Calgary's approach is interesting and can be of value but, even on superficial reading of the policies, the potential for difficulties to result from the extensive decentralization becomes obvious. It is not an example that would immediately recommend itself as an efficient and effective ethics program consistent with the kind of program the academic experts recommend.

The provisions in place in Vancouver are the ones most likely to provide the greatest level of assistance. The whole is in a single document and would appear to be an excellent example to follow if the choice is to put in place a single code applicable to all to whom an ethics regime is intended to apply. When the document is examined in detail, it is clear that it contains the primary elements, and provides adequately for the implementation of, an ethics regime in a small to medium size city. In its favour also is the fact that it is contained in a single package. As a consequence, it would be seen as treating everybody involved on an equal basis, in terms of expectations respecting ethical behaviour. Any additions from time to time desired could be easily added, and it does not require the establishment of a separate office of integrity commissioner.

Chapter 6

Some Guidance From the United Kingdom

As noted in an earlier chapter, in the mid-1990s, British Prime Minister John Major created the Committee on Standards in Public Life (“CSPL”). That Committee filed its first report in May of 1995. In his covering letter to the Prime Minister, Lord Nolan, Committee Chairman, commented on a number of incidents “indicating a certain slackness in the observance and enforcement of high standards” in the public service, that gave rise to the appointment of the Committee, and then wrote:

Our recommendations are therefore designed to maintain, and where necessary restore the standards of conduct in public life which the public are entitled to expect, and to promote a policy of openness which will enable the public to see that their expectations are being met.

The CSPL identified four general recommendations that it suggested should have application across the entire public service. Those four recommendations are:

Principles of public life

The general principles of conduct which underpin public life need to be restated. We have done this. The seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership are set out in full on page 14.

Codes of Conduct

All public bodies should draw up Codes of Conduct incorporating these principles.

Independent Scrutiny

Internal systems for maintaining standards should be supported by independent scrutiny.

Education

More needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including induction training.

As significant as their overall work may be, the matter that has gained the CSPL the greatest attention and the highest regard internationally is their identification of what the CSPL describes as “The Seven Principles of Public Life”. The CSPL first expressed them as:

- 1. Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

2. Integrity – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties.

3. Objectivity – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

4. Accountability – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

5. Openness – Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

6. Honesty – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

7. Leadership – Holders of public office should promote and support these principles by leadership and example.

Many local governmental jurisdictions in the UK have employed, or at least referred to, those seven principles in the course of developing ethical codes and putting ethical regimes in place. In 2012, the CSPL undertook an updating of their work and this resulted in some refinement of the first expression of the seven principles of public life. The report⁵⁷ containing that refinement was presented to the UK Parliament in January 2013. To better appreciate both the original expression of the principles and the refinement of them, the original and the refinement are set out side by side, as they were when the 2013 report was presented to Parliament. In that report, the attention of the members of Parliament was specifically drawn to changes made to the explanations of honesty and integrity, and the potential implications for consideration of complaints in the future.

That side by side expression of the principles follows:

⁵⁷Report of the Committee on Standards in Public Life to the UK Parliament, 17 January 2013.

Current Principles

Selflessness

Holders of public office should act solely in terms of public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Revised Principles

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organizations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should be as open as possible about all their decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any public interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The foregoing standards appear, or are reflected in one form or another, in the conduct codes of all of the UK local government structures that have been examined for this report. Website searches indicate that many others are moving quickly to update their codes to reflect the revisions.

Conclusion

Expressing the essence, if not the specifics of the revised seven principles of public office, as the ethical principles to which all persons connected with the City aspire, would make a substantial positive contribution to a comprehensive ethics regime for the City.

Chapter 7

City of St. John's: Relevant Existing Legislative Provisions

Existing legislative provisions relevant to ethical principles and standards of conduct applicable to members of Council, management staff and employees of the City would include statutes of the provincial legislature, regulations made under the authority of those statutes and by-laws of the City.

Provincial Legislation

City of St. John's Act

The City is created under, governed by, and has only the jurisdiction expressly conferred on it by, the *City of St. John's Act*, RSNL 1990, c. C-17 ("City Act"). The provisions of the City Act that relate to, or in some manner bear upon, the making of rules, regulations or by-laws related to conflict of interest issues or standards of ethical conduct are as set out below.

Provisions respecting the power to make by-laws related to, and deal with, conflicts and ethical standards

Internal affairs

22. (1) The council shall have power to make rules and by-laws for the regulation and conduct of its own affairs, provided the rules and by-laws are consistent with this Act.

(2) A majority of the members of the council constitutes a quorum for the purpose of a meeting of the council.

Power to make by-laws

29. The council shall have power to make rules, regulations, and by-laws for the purpose of putting into effect the powers and performing the functions and duties vested or imposed by this Act in or on the mayor and council or an official of the city, provided always that those rules, regulations, and by-laws shall not be contrary to the laws of the province.

Publication

31. (1) A by-law, regulation or rule ...

(2) Upon publication of the notice of a by-law, regulation or rule referred to in subsection (1) in the Gazette, the by-law, regulation or rule shall come into force and have the effect law as if specifically incorporated in this Act.

Breach of by-laws

33. The council shall have power to prescribe fines for the breach of non-observance of rules, regulations or by-laws passed by the council under the authority of this Act.

Conduct of employees

49. (1) The mayor may suspend until the next meeting of the council and without pay, an employee of the city for neglect of duty, idleness, drunkenness or insubordination but otherwise neither the mayor nor a council or committee of the council shall

(a) directly or indirectly interfere in the employment or discharge of employees;

(b) intervene to postpone or prevent the collection of a tax, rate, assessment, rent, licence fee or other amount due to the city; or

(c) condone a breach of this Act or of by-laws, rules or regulations made under this Act, and a person contravening this subsection shall for each offence be subject to a fine of not less than \$25 nor more than \$100, to be recovered in a summary manner before a Provincial Court judge.

(2) An employee or other person in charge of or performing work for the council shall not in the performance of his or her duties obey instructions from anyone except his or her own supervisor or given to him or her in writing by the council through the head of the department for which that employee is working or through the city clerk.

Duties of officials

322. The council may prescribe the duties and functions of a city official, except where those duties and functions have been prescribed by this Act.

General penalty

403. (1) A person who contravenes or fails to comply with this Act or a requirement imposed on him or her by virtue of this Act or an order, rule, regulation, or by-law of the council or an official of the city made under this Act or who interferes with a person in the discharge of his duties under this Act or under an order, rule, regulation, or by-law is guilty of an offence and liable on summary conviction, where no penalty is otherwise provided, to a fine not exceeding \$5,000 and, in default of payment, to imprisonment for a period not exceeding 90 days and, in addition, the Provincial Court judge may order that the person carry out the requirements imposed on him or her by virtue of this Act or the order, rule, regulation, or by-law, for the contravention of which he or she has been convicted, within a time to be fixed by the order.

(2) The conviction of a person for an offence under this Act shall not relieve the person from the duty of carrying out the requirements imposed on him or her by virtue of the provisions of this Act or an order, rule, regulation, or by-law of the council or an official of the city made under this Act, and where the requirements or obligations are not complied with in accordance with an order made under this Act, the council may, where it considers it necessary, authorize an official to enter upon the premises in respect of which a conviction has been made and carry out, at the expense of the convicted person, the requirements referred to in the order.

(3) The conviction of a person for contravention of or failure to comply with this Act or with an order, rule, regulation or by-law of the council or an official of the city made under this Act shall not operate as a bar to further prosecution against the person for a continued contravention of or failure to comply with the provision or with the order, rule, regulation or by-law.

Additional penalty

405. A person who contravenes or fails to comply with a rule, regulation or by-law of the council made under this Act or who fails to comply with an order made by the council or an official of the city under this Act shall, in addition to all other penalties provided by this Act, be liable to a fine of not more than \$5 for every day during which the contravention or non-compliance continues, which penalty shall be imposed by a Provincial Court judge upon the complaint of the city.

The statute is old. Over the years of its existence, many provisions have been added, many others have been deleted, and others have been amended. It lacks the consistency of provisions and clarity one would expect from a recently created comprehensive statute, or a thoroughly revised one. Some sections appear to have provisions that overlap provisions in other sections. This can produce uncertainty in interpretation. The provisions related to the City's power to make rules, regulations and by-laws, sections 22 and 29 are two such provisions, and they do result in some uncertainties.

These uncertainties could be of significance because of the traditional strictness of common law principles relating to interpretation of statutes and, in particular, statutes conferring powers on entities created by the legislature, such as cities and other municipalities. Traditionally, entities so created by the legislature were held by courts applying common law principles of statutory interpretation to have only those powers that are explicitly conferred by the provisions of the enabling statute. The common law principle that courts traditionally applied is succinctly expressed in a comment by Justice Iacobucci in a 1993 decision of the Supreme Court of Canada, in which he referred to the strictness principle in observing:

The rule against discriminatory by-laws is an outgrowth of the principle that, as statutory bodies, municipalities "may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation".⁵⁸

A subtle change that limits the strictness of this approach took root the very next year. Then Justice McLachlin, now Chief Justice, of the Supreme Court of Canada, in a 1994 decision, wrote:

Recent commentary suggests an emerging consensus that courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils.⁵⁹

In that decision Justice McLachlin set out a compelling case for rethinking the strictness of the principle, and then observed:

⁵⁸ *R v. Sharma*, [1993] 1 S.C.R. 650

⁵⁹ *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, at page 244.

It may be that, as jurisprudence accumulates, a threshold test for judicial intervention in municipal decisions will develop. For the purposes of the present case, however, I find it sufficient to suggest that judicial review of municipal decisions should be confined to clear cases. ... Judicial intervention is warranted only where a municipality's exercise of its powers is clearly *ultra vires*, or where council has run afoul of one of the other accepted limits on municipal power.⁶⁰

In the two decades since Justice McLachlin made those comments, the long standing stringency has been relaxed in any decision where the court involved could find, in the enabling statute some basis for doing so. Because the courts can only diminish the stringency to the extent that the enabling statute does not prevent it, or, at least, necessarily implies it, the process of changing the approach can take a long time. It has been made easier in some provinces where changes in the legislation specifically adopt the less stringent approach. An example is Alberta where the power to make by-laws is conferred in broad general terms such as "the safety, health and welfare of people and the protection of people and property" and "transport and transportation systems".⁶¹ The new Alberta statute also contains the following explicit provision:

- 9 The power to pass bylaws under this Division is stated in general terms to
- (a) give broad authority to councils and to respect their right to govern municipalities in whatever way the councils consider appropriate, within the jurisdiction given to them under this or any other enactment, and
 - (b) enhance the ability of councils to respond to present and future issues in their municipalities.⁶²

In the meantime, in any province where the enabling statute has not been changed, the situation will result in some uncertainty, as to what will be the final standard that courts will apply. That may exist for a period of time. However, as Justice McLachlin hoped, jurisprudence has accumulated since she made those comments, and the Supreme Court of Canada has, in several decisions,⁶³ approved of a broader approach. While the approach in any particular province must depend largely on the provisions of the enabling statute, it seems likely that courts will be more willing to find implied authority to support the by-law in issue in any case where the statute does not specifically or by reasonable inference preclude it. While it cannot yet be said that a definitive principle has been adopted, it would seem clear that relaxation of the traditional stringency is here to stay.

⁶⁰ *Ibid*, page 248

⁶¹ *Municipal Government Act*, S.A. 1994, c M-26.1, s.7.

⁶² *Ibid*, s.9

⁶³ *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] S.C.R. 342; *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 S.C.R.485.

Under the heading, “**Power to make by-laws**”, section 29 confers on Council a general power to make rules, regulations and by-laws. The right to exercise that power is specifically stated to be “... for the purpose of putting into effect the powers and performing the functions and duties vested or imposed by this Act in or on the mayor and council or an official of the city, ...” A reasonable interpretation of that would seem to be that it is a general by-law making power for the purpose of enabling Council and officials to carry out the City’s operational duties and functions in the course of putting into effect and performing the functions and duties vested in it by the City Act.

On the application of traditional common law principles, respecting strict interpretation of statutes creating municipalities, there could be some doubt as to whether section 29 is broad enough to include the creation of a code of ethics and the creation and enforcement of a code of conduct for the regulation of activities of the members of Council, statutory officers, senior managers, board, commission or other agency appointees, and employees generally. The argument would, of course, be that the Act does not contain a specific power to create such codes and such codes are not required to enable the City to put into effect the powers and perform its operational duties and functions. It could be argued that such a conclusion is borne out by the fact that, until very recently, such codes have not existed in the past. Of course, there is a counter argument that such codes are for the purpose of managing, on the basis of modern employment principles, all personnel connected with Council’s operations. In my view that counter argument should be successful, but that is not a certainty.

A further uncertainty results from the existence of section 22, under the heading, “**Internal affairs**”. Subsection (1) of that section confers on Council a separate and distinct power to make rules and bylaws “for the regulation and conduct of its own affairs”. It is difficult to be certain as to the parameters intended for the phrase “its own affairs”. While it may be difficult to now discern the purpose for doing so, it is possible that when the provisions were enacted, the legislature was differentiating between by-laws made under section 29 for the purpose of exercising the operational powers and performing the operational functions and duties involved in managing the geographic city and providing services to its citizens, imposed on the mayor, council or an officials on the one hand, and the conduct by Council of matters related to its own existence, structure, meetings and procedures on the other.

Even if a court were to come to that conclusion, section 22 is less than completely clear. The word “its” in the phrase “regulation and conduct of its own affairs” clearly refers to “the council”. The existence of subsection (2), specifying the number of councilors that constitute a quorum, would tend to provide support for the more restrictive interpretation of subsection (1). An argument could, therefore, be made that the jurisdiction section 22 confers on Council to make “rules and by-laws” is limited to the functioning of the council, constituted of the mayor, deputy-mayor and the councilors. Nevertheless for reasons set out below, I am

of the view that a more appropriate interpretation of Council's "own affairs" is that it would include all aspects of managing, staffing and financing necessary to enable Council to carry out its operational duties and functions, but would not include operational duties and functions in the course of delivering services to citizens. The only limitation that the statute specifically imposes on the section 22 power is the requirement that any such "rules and by-laws are consistent with this Act"

Taking those considerations into account a court might reasonably conclude that, despite its broad generality, section 29 does not confer power to enact a by-law providing for a code of ethics or a code of conduct; that power may, however, be conferred by section 22.

In relation to by-laws dealing with ethics and conduct issues, the relevant provisions of the City Act produce two potential uncertainties. First, as noted above, there could be some doubt about the jurisdiction of Council to create a generally applicable code of ethics or to enact, as an enforceable by-law, a code of conduct regulating the behaviour of all persons involved in all aspects of City operations. Second, on the explicit wording of the City Act, the City may not have jurisdiction to impose the kind of sanctions normally necessary to ensure implementation of the provisions of a code of conduct.

Neither section 22 nor section 29 authorizes Council to impose sanctions for the enforcement of provisions of the rules, regulations or by-laws those sections authorize Council to make. The only sanction for breach or non-observance of a rule, regulation or by-law that section 33 authorizes Council to impose is "fines for the breach of [sic] non-observance of rules, regulations or by-laws passed by the council under the authority of this Act". The wording is sufficiently clear that it would encompass by-laws passed under either section 22 or 29. Therefore, while the City does have the power to impose a sanction for breach or non-observance of a code of conduct, on the wording of the City Act as it is at present, that sanction is limited to imposition of a fine.

Section 403 imposes directly a general penalty of a fine not exceeding \$5,000.00, or in default to imprisonment for 90 days, for failure to comply with the City Act, "or an order, rule, regulation, or by-law of the council". While the section does not specifically limit its application to operational by-laws, the tenor of the whole of section 403 would indicate that the purpose of such a penalty is to ensure enforcement of operational orders, rules, regulations or by-laws. The wording of section 405, which provides for an additional fine of \$5.00 per day for each day that the failure to comply continues, would tend to support the conclusion that such penalties were intended to apply to failures to comply with operational orders, rules, regulations or by-laws.

Provisions Directly Regulating Conflicts and Ethical Standard

Conflict of interests

10. (1) A member of the council shall not hold an office or place or employment from, under, or in connection with the council, or in a department of, in, or upon a work, service or business under the control, management, or direction of the council, directly or indirectly or undertake, execute, or enjoy a contract or agreement with the council;

(2) Notwithstanding subsection (1), a member of the council shall not be disqualified by reason only of being a member of a corporation which has entered into contracts with or done work for the city, but that member of the council shall not vote in respect of the contract or work, and where he or she does so vote that vote shall not be counted.

Voting disallowed-conflict of interest

44. A member of the council shall not be permitted to vote or speak upon a question before the council, or before a committee, where the member's private interest is immediately concerned, distinct from his or her public interest, or where he or she is personally interested, directly or indirectly, or where that member is the agent for a person or company interested in that question.

Appointments exclusive

320. An officer appointed by the council, except the solicitor or medical officer, shall not engage in another business or occupation.

Conflict of interest

321. An official or employee of the city shall not be a contractor with the city, or shall not be interested in or become surety for the performance of a contract with or work for the city, under penalty of instant dismissal.

City solicitor

337. (1) The council shall appoint a solicitor who shall be a member of the law society of at least 5 years' standing to be the solicitor of the city.

(2) The solicitor appointed under subsection (1) shall not be precluded from practising his or her profession and from being retained by other clients, subject to the requirements of his or her duties to the city.

Section 10 prohibits a member of Council from holding an office of Council or an affiliated entity of Council. Section 44 directly prescribes consequences in the event of a conflict of interest, but it applies only to a member of Council. Section 321 applies to officials and employees, and simply prohibits an employee from contracting with or having an interest in another party's contract with the City. Until the Council passed its *Conflict of Interest By-Law*, those were the only legislated provisions specifically dealing with conflict of interest issues

or ethical standards in the conduct of the affairs and business of the City. The common law, of course, applied and its principles relevant to conflicts of interest and ethical standards would have been applicable to both members of Council and officials and employees of the City.

Municipal Elections Act

Under this statute, "municipality" is defined to include a city. Thus, it applies to St. John's. Generally, it governs all aspects of the conduct of municipal elections. The provisions that are relevant to considerations respecting a code of ethics or a code of conduct are:

Definitions

2. In this Act

- (a) ...
- (p) "municipality" includes a city, and a municipality as defined in the *Municipalities Act*, 1999 ;

Regulations

67. (1) A municipality may make regulations establishing limits upon campaign contributions to, and campaign expenditures by, all candidates.

(2) A regulation under subsection (1) shall establish procedures, time frames and forms for the reporting of campaign contributions and campaign expenses by all candidates.

(3) Where a municipality has not made a regulation under subsection (1)

- (a) a candidate elected in an election shall, not more than 90 days after the election, file with the returning officer a statement in the required form and made under oath or affirmation stating the total amount of the contributions received by him or her and the amount of the contributions donated to his or her campaign by contributors that exceed \$100 and the contributors of those amounts; and
- (b) a candidate elected in an election who did not receive any one contribution in an amount exceeding \$100 shall, not more than 90 days after the election, file with the returning officer a statement under oath or affirmation stating the total amount of the contributions received by him or her and that he or she did not receive any one contribution in an amount that exceeded \$100.

Campaign contributions

67.1 (1) Contributions to candidates shall be made only by natural persons individually, or by corporations or trade unions individually.

(2) Only a candidate or his or her agent may solicit, collect or accept contributions.

(3) A contribution to a candidate that is made by a person in a calendar year, the total value of which does not exceed either \$100 or, where a municipality has made a regulation under subsection 67(1), the amount prescribed by regulation, is not a contribution for purposes of this section.

(4) A contribution given to a candidate in an amount exceeding the amount prescribed in a regulation under subsection 67(1) or, where there is no regulation, \$100, shall be made only

(a) by a cheque that has the name of the contributor printed legibly on it and that is signed by the contributor and drawn on an account in the contributor's name;

(b) by a money order that identifies the name of the contributor; or

(c) in the case of a contribution by an individual by the use of a credit card, if that credit card has the name of the individual contributor imprinted or embossed on that card,

and that contribution shall not be accepted unless the contribution is made in accordance with this subsection.

(5) Notwithstanding subsection (4), where money in an amount exceeding the amount prescribed by regulation under subsection 67(1) or, where there is no regulation, \$100, is anonymously contributed to a candidate, that money shall not be utilized by the candidate in the election but shall be paid to the council and used to offset the costs of the election.

(6) For purposes of this section and section 67, a "contribution" means a contribution of money.

Records

67.2 A statement filed under a regulation made under subsection 67(1) or, where there is no regulation, under paragraph 67(3)(a) or (b) shall be considered to be an official record of the municipality and, upon request, shall be made available for inspection by members of the public.

Invalidation of election

83. (1) Where it is found by the judge upon a petition under this Part that a corrupt practice has been committed by or with the knowledge or consent of a candidate in the election complained of, the candidate is considered to be personally guilty of the corrupt practice and his or her election, if he or she has been elected, is void.

(2) In addition to the consequences of a finding of a corrupt practice under subsection (1) the candidate may not again be a candidate for election to a council held within 4 years of the finding of that corrupt practice.

Corrupt practices

96. (1) A person commits a corrupt practice who

(a) directly or indirectly by himself or herself or by another person on his or her behalf, gives or lends or agrees to give or lend, or offers, promises, or promises to obtain or to try to obtain, money or valuable consideration

(i) to or for a voter,

(ii) to or for a person on behalf of a voter, or

(iii) to or for another person,

in order to induce a voter to vote or refrain from voting, or corruptly does such an act on account of that voter having voted or refrained from voting at an election;

(b) directly or indirectly by himself or herself or by another person on his or her behalf, gives or obtains, or offers or promises to obtain, or tries to obtain an office or place of employment for a voter or for another person in order to induce that voter to vote or refrain from voting, or corruptly does such an act on account of a voter having voted or refrained from voting at an election;

(c) directly or indirectly by himself or herself or by another person on his or her behalf, makes a gift, loan, offer, promise, procurement or agreement to or for a person in order to induce that person to obtain or try to obtain the election of a person as a councillor or the vote of a voter at an election;

(d) upon or in consequence of a gift, loan, offer, promise, procurement or agreement, obtains or promises or tries to obtain the election of a person to serve as a councillor or the vote of a voter at an election; or

(e) advances or pays money to or for the use of a person, with the intent that the money or part of it is to be used contrary to this section at an election, or knowingly advances or pays money to a person in discharge or repayment of money wholly or in part used at an election.

(2) Subsection (1) does not extend to money paid or agreed to be paid in good faith for or on account of legal expenses incurred at or concerning an election.

(3) A person commits a corrupt practice who

(a) directly or indirectly by himself or herself or by another person on his or her behalf makes use of or threatens to make use of force, violence or restraint, or inflicts or threatens to inflict, by himself or herself, or by another person, injury, damage, harm or loss, upon or against a person, in order to induce or compel that person to vote or refrain from voting or on account of that person having voted or refrained from voting at an election; or

(b) by abduction, duress or fraudulent device or contrivance, impedes or prevents the free exercise of the right to vote by a voter, or as a result compels, induces, or prevails upon a voter either to vote or refrain from voting at an election.

(4) A candidate and a person on a candidate's behalf who

(a) directs, controls, or advises a returning officer, deputy returning officer or poll clerk in or about a matter concerning his or her duties; or

(b) pays money to an agent of a candidate

commits a corrupt practice.

Conclusions Respecting Jurisdiction

With the recent tendency of courts to relax the strictness applied to interpretation of jurisdiction provisions of statutes creating municipalities, it is likely but not certain that much of what Council might want to include in an ethics regime could be achieved under the existing general by-law making powers in the City Act. The uncertainty inherent in that

situation is, itself, a cause for concern. A greater cause for concern is the likelihood that courts would not go so far as to infer a power to impose sanctions of the kind that might be necessary to deal with a serious breach of the code, or a less serious breach that is continuing or repeated, absent fairly clear indication that it is intended that the Council have such jurisdiction. In those circumstances, the prudent course to follow is to seek an amendment to the City Act to ensure that sanctions imposed under any ethics regime created and implemented will be valid and its provisions enforceable.

It will be necessary, therefore, to ask the Minister of Municipal and Interprovincial Affairs to present a bill to the legislature to amend the City Act in a manner that will confer specific jurisdiction on Council to provide for sanctions of a nature suitable for the proper implementation of a code of conduct. If that is to occur it would also be prudent to include amendments that would resolve any other uncertainties, respecting the creation of an ethics regime, discussed above.

Regulations

The only regulation under the City Act that is of significance to this review is the *Northeast Avalon Regional Services Designation Order*.⁶⁴ It provides that the regional firefighting services of the City, the city of Mount Pearl, the towns of Logy Bay-Middle Cove-Outer Cove, Paradise-St. Thomas, Petty harbor-Maddox Cove and Portugal Cove-St. Philip's-Hogan's Pond is a service owned, managed, and operated by the City. The result is that all of the personnel involved in that service are fully within the jurisdiction of the City and should, as a result, be subject to an ethics regime created by the City. The order also deals with regional water supply services. It is designated as a service to be supplied by the City to the City, the city of Mount Pearl, and the towns of Conception Bay South and Paradise-St. Thomas. Similarly the personnel involved should be subject to any ethics regime the City creates.

If a request to amend the City Act is made it would also be prudent to include a provision confirming the authority of the City to apply its ethics regime to all employees involved in shared services managed by the City such as water supply and management , fire protection, waste management, public transportation and perhaps others.

None of the regulations made under the *Municipal Elections Act*, have application to the City, although the Act itself applies to the City.

⁶⁴ CNLR 741/96

City By-Laws

City of St. John's By-Law 1305, CONFLICT OF INTEREST BY-LAW

On April 26, 1993, the City passed its *Conflict of Interest By-Law*. Its provisions are reasonably comprehensive but it applies only to members of Council. Bearing in mind the powers and discretion conferred on many of the statutory officers (city solicitor, city clerk, city manager, city comptroller, city planning officer, city engineer, auditor general, city medical officer, sanitary supervisor, impounder), and the level of authority in decision making exercised by heads of departments set up by Council and superintendents appointed by Council, there is a significant potential for conflict of interest that, at present, is not being addressed. This conflict of interest potential should most certainly be addressed.

There are also a significant number of boards, commissions, authorities, advisory committees, corporations and other entities, collectively referred to in this report as Affiliated Entities, some of which make significant decisions, including financial decisions, and exercise substantial authority independently of Council. Again, the City's existing conflict of interest rules have no application to them, notwithstanding the very real prospect for conflict of interest situations arising. The potential for conflict of interest situations involving the persons in this group is so significant that it also should be addressed.

Conclusions

The provisions of the existing *Conflict of Interest By-Law*, with such additions as may be desirable, can easily be blended into a new ethics regime. Wording should be added to include statutory officers, other senior officials and all persons connected with Affiliated Entities in respect of whom there is any potential for conflict of interest arising out of decisions or actions they may be required to take connected with the position to which the City has appointed them. While there is some risk of a conflict of interest situation arising in respect of virtually any employee, among employees who do not have the authority to make significant decisions, the risk is both low and usually of considerably lesser significance. Nevertheless, it would not complicate matters to include appropriate provision for this group of City personnel as well.

City of St. John's By-Law 1355, CODE OF ETHICS BY-LAW

Two years after passing the *Conflict of Interest By-Law*, Council passed the *Code of Ethics By-Law*. It is not a City code of ethics in the conventional sense of that phrase. It does not contain the expression of values or identification of ethical principles to which the City would encourage its employees to aspire in the making of decisions and taking of action in the ordinary course of their work for the City. Rather, it is simply a statement that employees are

prohibited from engaging in the four identified categories of conduct. It does require a suspected breach to be investigated and states that the investigation could result in disciplinary action.

Conclusions

Appropriate provisions of the existing *Code of Ethics By-Law* can be blended into any new ethics regime. The existing by-law does not define “employee”, and it is not defined by the City Act. As a result, the existing by-law would likely be held to apply to statutory officers and senior officials as well as all those normally referred to as employees of the City. It would not include elected members of Council, and may not include any personnel connected with Affiliated Entities, even if they were paid on a full time basis. A new ethics regime should include definitions sufficient to ensure such doubts are removed.

City of St. John's By-Law 1315, WORKPLACE HUMAN RIGHTS BY-LAW

This by-law contains a thorough, well organized and comprehensive policy, and should be effective as a guide for behaviour in all categories of personnel connected with the City. It does not apply to personnel connected with Affiliated Entities. It contains detailed procedures for informal resolution of issues, a process that can be beneficial in solving a problem while avoiding longer term residual animosities. The formal complaint procedures are comprehensive and well set out.

Conclusion

The policy provided for in the existing *Workplace Human Rights By-Law* should be retained and the existing provisions incorporated largely as they presently exist, with provision for inclusion of personnel connected with Affiliated Entities. In the event that a comprehensive ethics regime is not adopted, the by-law should be retained largely as it is, but with the addition of provisions to provide for inclusion of personnel connected with Affiliated Entities.

City of St. John's By-Law 1481, FREEDOM OF INFORMATION BY-LAW

This by-law does not deal with freedom of information in the sense in which that term was used to initially establish entitlement of a member of the public to access information in the hands of government. It establishes some rules around the holding of private or privileged meetings of Council as authorized by the City Act. It is a procedural rather than an ethical one. It furthers the democratic principle of transparency in government activity generally, by providing fairly strict controls on the extent to which public business can be conducted in a

private meeting of Council or a committee of council. It does not, strictly speaking, give rise to an ethical question.

It is noteworthy, however, that this by-law is made applicable to “all boards, commissions and committees appointed by Council”, for convenience referred to in this report as Affiliated Entities. It is also noted that the provision it contains requiring a 2/3 vote of Council to amend the provisions of the by-law does not appear to be consistent with the City Act and, if it is not, the requirement would not be effective.

Conclusion

It is not essential that this be part of a comprehensive ethics regime but it could be included.

City of St. John's By-Law 1506, ELECTION FINANCE BY-LAW

The City has authority to enact this by-law under section 67(1) of the *Municipal Elections Act* which empowers the City and other municipalities to make regulations “establishing limits upon campaign contributions to, and campaign expenditures by, all candidates”. The provisions appear to be well within the powers conferred by the statute.

However, most of the councillors who spoke with me expressed a concern about the fact that there is nothing in the by-law to confine the total of the contributions to the total of the amount expended on the election, or to make provision for what is to be done with any contributions in excess of the amount expended. As a result, it is possible that a candidate could have a significant amount of the money collected for the election left over after all expenditures are paid. Some councillors indicated they had been advised the surplus funds were theirs to do with as they pleased. Councillors had different practices as to how they handled such a surplus. Clearly, this is a circumstance that requires attention.

As all candidates are required to keep full records of the amount and source of contributions, it should not be at all difficult for a candidate being left with surplus contributions to determine the proportionate amount that should be refunded to each contributor. In the case of anonymous contributors, the practice required by subsection 67.1(5) in the case of an anonymous contributor making a contribution in excess of the permitted amount could be followed. It requires that the surplus contribution in that circumstance be paid to the City to offset the election expense.

An alternative might be to require the candidate to report fully to Council on the circumstance, including the amount of surplus, and deposit the surplus with Council. Council would be required to make the amount available to the candidate the next time he or she

seeks election to Council. The amount of surplus would be forfeit to Council if they are not refunded to the candidate to cover expenses in the next election, after that next election has taken place.

Conclusion

The Election Finance By-Law should be incorporated into the ethics regime and provision should be added to require that funds surplus the expenditures incurred by a candidate be proportionately refunded to the contributors, or deposited with Council to be made available to that candidate in the event of seeking future election, and ultimately forfeit to Council if the funds were not so refunded to the candidate by the time that next election has taken place.

City of St. John's By-Law 1552, WHISTLE BLOWER PROTECTION BY-LAW

Most comprehensive ethics regimes have provisions encouraging all involved to be vigilant and to draw to the attention of an appropriate official all perceived failures to conform to the requirements of the code. Essentially, such provisions are similar to whistleblower protection provisions. The purpose of the existing *Whistleblower Protection By-Law* is stated generally to be to facilitate disclosure of serious matters that are “potentially unlawful, dangerous to the public or injurious to the public interest”. It provides that the by-law applies to:

- (a) an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act, including a municipal by-law or regulation;
- (b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of an employee;
- (c) gross mismanagement, including of public funds or a public asset;
- (d) knowingly directing or counselling a person to commit a wrongdoing described in subsections (a) to (c).

The advantage of incorporating whistleblower provisions in a comprehensive ethics regime is that a great deal of repetition can be avoided. The same provisions that provide for encouragement to report, investigation processes, appropriate sanctions and protection of the whistleblower, can be applied to all areas of concern: e.g. breaches of human rights

requirements; conflict of interest issues; election finance issues; and code of conduct provisions generally.

Conclusion

The existing Whistleblower By-Law can easily be incorporated in a comprehensive ethics regime and blended with other provisions respecting reporting, investigating, sanctioning and protection of the person complaining, to create for all aspects of the ethics regime, a single reporting, investigating, sanctioning and protection of the whistleblower or complainer system. As noted above such provisions have been added to the statute governing members of the House of Assembly.

Chapter 8

Recommendations

It will be helpful to fuller appreciation of the recommendations, to draw attention again to the express direction in the Terms of Reference, and other discussions at the outset of this review, respecting the activities to be included in Phase I and those to be included in Phase II of the review. Phase I is expressly confined to assessment of the materials and practices that are more fully described in Chapter 1 of this report. The drafting of any codes, policies or by-laws is specifically reserved by the Terms of Reference to Phase II. As a result Phase I recommendations are limited to general statements respecting the necessity for an ethics regime, the structure of a regime that would be suitable for a municipality having the characteristics of the City, and the essential components of such an ethics regime.

Phase I Recommendations

Based on the foregoing assessment of the material required by the Terms of Reference to be assessed, and the conclusions reached as a result of that assessment, it is recommended that:

1. **Council take all steps necessary to create an ethics regime to provide the guidance necessary to achieve the highest ethical standards in decision making and action taking by all persons involved in the conduct of the affairs and operations of the City, and include in the overall regime all ancillary components necessary or desirable to ensure effective and efficient implementation of the ethics regime.**
2. **In establishing the ethics regime Council express the primary purposes to be:**
 - a. **gaining and retaining public confidence and trust in the governance and administration of the City;**
 - b. **promoting integrity in the conduct of the affairs and operations of the City;**
and
 - c. **add such other purposes as Council may be advised or may wish to express.**
3. **That the ethics regime adopt a single code with basic provisions applicable to all personnel and, where required, additional provisions applicable only to some or all personnel falling within one of the following three identified groups of functions:**
 - a. **Council and Advisory Group:– This group should consist of elected members of Council and members of boards, commissions, corporations, or other bodies directing Affiliated Agencies discharging a function, duty or responsibility assigned by Council or statutorily imposed in respect of a**

function or operation connected with the City, or jointly with the City and another or other entities,

- b. **Management Group:**– This group would consist of statutory officers and all senior management and superintending officials answering ultimately to the Council directly or through another senior official, and
- c. **Employee Group:**– This group would include all other persons receiving compensation from the City, including employees of Affiliated Entities.

If, in the course of constructing the code, difficulties that might make it impractical to have a single code are encountered, or Council prefers not to have a single code, a separate code designed specifically for each of the three separate groups of functions be put in place, with all of the ancillary components applying to each group.

- 4. The code be a hybrid code that both;
 - a. expresses the core values and ethical principles the City embraces, and
 - b. identifies the standards of behaviour that will be expected of all persons involved in any manner in making decisions or taking actions, in the identified circumstances normally set out in an effective code of conduct designed for a municipality.

- 5. The ethics regime be structured so as to provide for the appointment of a single individual, answerable directly to Council for all matters respecting the ethics regime, with the maximum level of independence achievable in the circumstances, and to have responsibility to oversee all aspects of the implementation, smooth operation and periodically putting in place any adjustment found to be necessary or desirable. Recognizing that it may be neither practical nor financially feasible to create a full time office of Integrity Commissioner, Council either:
 - a. engage on contract or employ on a part time basis, a person (perhaps a knowledgeable retired senior former City official) having the necessary skills and experience to discharge the functions of an integrity commissioner, who is not otherwise connected with the administration or operations of the City; or
 - b. assign the oversight responsibility to the City Solicitor, or another senior official whose skills and experience are such that Council could reasonably expect that person to be able to effectively discharge the functions of an integrity commissioner.

- 6. Before giving instructions to proceed with drafting the documents necessary to create and implement an ethics regime, Council:
 - a. make and express a determination as to:

- I. whether it prefers to have the single code system recommended or the three separate code alternative; and
 - II. which of the three identified alternatives for oversight of the system it is prepared to fund; and
 - b. give instructions to reflect those decisions.
7. In creating an ethics regime, Council:
- a. enact a single comprehensive by-law, applicable to all personnel connected with the City, that might be styled “Ethics Regime By-Law”, and which will provide for:
 - I. a code, that might be styled “Code of Ethical Conduct”, as the fundamental document of the ethics regime;
 - II. all the ancillary mechanisms and procedures necessary or desirable for efficient and effective education and training, promotion, support, implementation (including receipt and investigation of concerns and complaints, rendering of reports and recommending sanctions); and
 - III. such periodic review and adjustment, as may be necessary, for the continued effectiveness of the ethics regime;
 - b. Co-incident with enactment of such ethics regime by-law or by-laws, repeal its existing:
 - I. *Conflict of Interest By-Law (1305)*,
 - ii. *Code of ethics By-Law (1355)*,
 - iii. *Workplace Human Rights By-Law (1315)*,
 - iv. *Election Finance By-Law (1506)*, and
 - v. *Whistleblower Protection By-Law (1552)*; and
8. The Code of Ethical Conduct (“Code”) contain:
- a. Definitions of critical terms intended to be used, expressed in easily understood day to day language, so that understanding and implementation of the Code will be better facilitated, and uncertainties avoided;
 - b. A statement of the primary purposes set out in recommendation 2 above, together with any other specific purposes that Council intends the ethics regime to achieve;
 - c. A statement of the scope of the Code’s application, by identifying the particular function or group of functions to which the regime is intended to apply;
 - d. An expression of ethical principles that reflect the core values and aspirations of the City to be a source of general guidance for all involved in the affairs and operations of the City;

- e. A listing of the behaviour that, in the described circumstances, would be required or prohibited, as the case may be, in order to be consistent with the expressed ethical principles, and be sufficiently detailed in easily understood day to day language that will provide readily available and easily understood guidance for all personnel in connection with:
- i. General conduct and behaviour appropriate to the diligent discharge of that person's duties and functions, and the making of decisions and taking of actions in a manner that will give priority to the interest of the public of the City;
 - ii. Acting in a manner that will avoid causing disorder, disruption, or misbehaviour in the workplace;
 - iii. Interaction between Council, statutory officers, other senior officials, staff generally, members of boards, commissions, advisory committees or employees connected with Affiliated Entities for which Council has responsibility;
 - iv. Handling of information in a manner that maintains proper records, is consistent with protection of confidentiality, protects the personal or business information of individuals, and meets all requirements of the law;
 - v. Handling, accounting for, and caring for City property;
 - vi. Workplace human rights, (largely by restating the provisions of the existing *Workplace Human Rights By-Law* to blend those provisions in with the provisions of the newly structured Code);
 - vii. Avoidance of conflict of interests, (with provisions taken largely from the existing *Conflict of Interest By-Law*, adjusted to include all statutory officers, other senior officials, and all persons connected with Affiliated Entities in respect of whom there is any potential for conflicts of interest arising), but recognizing that specific guidance will be necessary in some cases depending on the function of the individual concerned as a member of Council, statutory officer, senior official or a person connected with an Affiliated Entity;
 - viii. Transparency as to the conduct of the affairs of the City (by restating the provisions of the existing *Freedom of Information By-Law*, to blend those provisions in with the provisions of the newly structured Code);
 - ix. Gifts and personal benefits received by Council members, statutory officers, other senior officials, staff and persons connected with Affiliated Entities, with specific guidance for any one or more of those groups where appropriate;

- x. Political activity, with provisions to indicate actions considered appropriate or inappropriate generally, and where required specifically for each of the functions or groups of functions separately;
 - xi. Financing of municipal election campaigns (by incorporating the provisions of the existing *Election Finance By-Law*), and adding such provisions as may be necessary to provide for appropriate handling of funds collected in excess of the expenditures incurred on election campaign activity; and
 - xii. Any other guidance thought desirable.
9. The by-law should contain additional separate parts with each part making provision for one of the following ancillary components:
- a. Administration of the ethics regime: This will include, in addition to the appointment of the single person, answerable directly to Council having responsibility for overseeing all aspects of the ethics regime as described in recommendation 5 above, the appointment of such other persons answerable to the person responsible for overseeing implementation of the ethics regime as that person reasonably recommends to assist in the implementation, or have responsibility for any part or parts of it;
 - b. Education and training: In addition to an initial education program, such mechanisms as may be necessary to provide for reasonable level of continuation of education and training to ensure that all personnel remain well aware of the ethics regime and sensitive to the importance of compliance with it;
 - c. Promotion: Generating and maintaining interest of all personnel in, and support for, the ethics regime
 - d. Access to advice: Having advice readily available on a timely basis to address every ethical concern that personnel may have is critically important. If an integrity commissioner is not provided for, there should be specific designation of the persons in each of the functions or groups, from whom personnel may seek advice as required. It is also critically important to make provision for all personnel having readily available means of determining the persons so designated in the various function groups;
 - e. Expressing Concerns and Making Complaints: This part of the by-law should encourage the expression of concern or the making of a complaint whenever any person, including a member of the public, believes in good faith that there is a basis for concern or complaint, and provide for a relatively simple means for doing so to a person who will have responsibility to deal with the matter or take it further. It will also be necessary, in some instances to provide clear

direction if the complaint is such that it is to be made differently because it is a complaint about a member of Council, a member of staff or a member of the directing body of or employee of an Affiliated Entity;

- f. Investigation and Disposal: This part of the by-law should provide for designation of responsibility to ensure that expressed concerns are addressed without delay and investigation of a complaint is diligently pursued. It should also provide for the procedures, including fairness rules, to be followed in the course of investigating, the preparation of the report of the investigation, and procedures for dealing with recommendations and imposition of any sanction justified;
- g. Provisions respecting registration of lobbyists, regulating and disclosure of their activities; and
- h. Such other ancillary components as may be advised or Council may desire.

10. In order to ensure that any additional jurisdiction that is deemed necessary to implementation of those of the recommendations in this report that Council decides to implement, or desirable for the avoidance of uncertainty, Council request the Minister of Municipal and Intergovernmental Affairs to present a bill to the house of Assembly seeking an amendment to section 29 of the City Act that will constitute the provisions of the present section 29 as subsection (1) and add as subsections (2), (3) and (4) the following:

(2) For greater certainty and without limiting the generality of subsection (1), the council shall have power to establish, by means of a by-law or series of by-laws, an ethics regime applicable to all decisions and actions taken by persons in any or all functions or groups of functions connected with the affairs and operations of the city, including all persons:

- a. who are directly connected with or are employees of the council;
- b. who are members or employees of boards, commissions, committees, corporations or other affiliated entities affiliated with the council established by this Act or by the council, to the extent of their making decisions or taking actions respecting any aspect of the affairs and operations of the city; and
- c. who are members or employees of affiliated entities involving another or other municipalities or entities where, by statute, regulation or agreement, the city is designated as the entity having ownership of or management or operational responsibility for an operation also involving another municipality or entity,

and the council may apply separate parts or provisions of the ethics regime differently or not at all to any of the persons involved in different functions,

groups of functions, or affiliated entities, connected with the affairs or operations of the city.

(3) The ethics regime may consist of:

- a) a code expressing such ethical values, principles, requirements and prohibitions as the council deems appropriate;
- b) provisions differentiating as to the extent to which a specific provision or provisions shall apply, if at all, to persons involved in any particular function or group functions;
- c) provisions respecting investigation of ethical concerns and complaints, including complaints by residents of the city not otherwise involved with the affairs and operations of the city, and reporting the results to the persons or authorities designated by the Council;
- d) provisions for imposition of such sanctions, including dismissal or removal from office, as the council considers to be commensurate with any failure to comply with a requirement of the code; and
- e) such additional provisions as the council considers necessary or desirable for the better promotion, support and implementation, of the ethics regime.

(4) Nothing in this section authorizes the council to enact any provision that is inconsistent with any provision of this Act, or any other applicable law of the province or of Canada.

An Overarching Recommendation

As noted above, I asked the City Clerk to obtain some information as to the level of effort the City presently makes towards educating staff about the existing ethics related by-laws and promoting support for and interest of staff in achieving compliance with those by-laws. She advised that, despite her many years at City Hall, she had no personal knowledge of the existence of any such efforts but would seek to obtain the information. Within 24 hours, she forwarded the information she obtained from the City's Human Resources Department, and I greatly appreciate her diligent effort. Here is the content of her email:

1. This excerpt below is taken from the orientation booklet.

Our Policies and Procedures

The City has many policies and procedures which can all be found on the City's internal electronic information system for employees (Intranet). When operating your personal computer, the Intranet is

the page you will reach when you open Internet Explorer. If you do not have access to a personal computer ask your supervisor about Kiosks in your area.

From the Intranet home page you can view an array of important information including:

- a. Advisory Notices
- b. Bulletin Board
- c. Bylaws
- d. Corporate ID
- e. Forms
- f. Human Resources Information
- g. Internal City Telephone Directory
- h. Job Postings
- i. Policies
- j. Staff Activities and CUPE 1289 information
- k. Training Calendar

Below please find information about some of the important City policies and advisory notices. All policies can be found on the Intranet under the Policies section. Please contact the Human Resources Service Centre at 570-4444 if you require assistance.

2. This statement is included in the orientation booklet

Respectful Workplace-St. John's Workplace Human Rights By-law 1315 Everyone is responsible to create and maintain a positive workplace environment, free from harassing and discriminating behaviours. Respect the dignity and human rights of our co-workers and the public we serve. No one has to tolerate any form of bullying, harassment, or intimidation from anyone in this organization. Please notify your supervisor, union executive, or Human Resources, if you find yourself in such an unfortunate situation, or if you notice someone else experiencing it. We want to see an early resolution to these issues.

3. Other Bylaws and Policies:

Code of Ethics Bylaw (Not reviewed in orientation)

<http://www.stjohns.ca/bylaws.nsf/nwByLawNum/1355>

Conflict of interest Bylaw (Not reviewed in orientation)

<http://www.stjohns.ca/bylaws.nsf/nwByLawNum/1305>

Executive Positions in Organizations- Senior Executive of Council (Not reviewed in orientation)

<http://domsrvint.secure.city.st->

[johns.nf.ca/intranet/Policies.nsf/iAllIndex/73F4CBF72A44B6F3A32569F80067D1F4?OpenDocumen](http://domsrvint.secure.city.st-johns.nf.ca/intranet/Policies.nsf/iAllIndex/73F4CBF72A44B6F3A32569F80067D1F4?OpenDocument)

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Ethics(Discussed in orientation) [http://domsrvint.secure.city-st-johns.nf.ca/intranet/Policies.nsf/iAllIndex/B0118860B59C6A71A32569F8006434CF?OpenDocument](http://domsrvint.secure.city.st-johns.nf.ca/intranet/Policies.nsf/iAllIndex/B0118860B59C6A71A32569F8006434CF?OpenDocument)

Employees Publicly Criticizing the City (Discussed in orientation) <http://domsrvint.secure.city-st-johns.nf.ca/intranet/Policies.nsf/iAllIndex/E7B0A933B7A60FC8A32569F80062C5D1?OpenDocument>

From that email, I conclude that the only actions to ensure awareness of, promote support for and interest in compliance with the existing ethics related by-laws are:

- The provision of an “orientation booklet”, presumably to all new personnel at the City and, for those who have access to computer, postings to the City's internal electronic information system to facilitate access to the information by anyone sufficiently interested to seek it out.
- The inclusion in the orientation booklet of the statement that:

Everyone is responsible to create and maintain a positive workplace environment, free from harassing and discriminating behaviours. Respect the dignity and human rights of our co-workers and the public we serve.

No one has to tolerate any form of bullying, harassment, or intimidation from anyone in this organization.

Please notify your supervisor, union executive, or Human Resources, if you find yourself in such an unfortunate situation, or if you notice someone else experiencing it. We want to see an early resolution to these issues.
- Discussion during orientation of “ethics” and “employees publicly criticizing the City.”

There is no organized or structured effort to educate City personnel as to the importance to the City of personnel conducting themselves in a manner that reflects the highest ethical standards, to promote interest in and support for ensuring pursuit of those standards of conduct. Personnel appear to be left to themselves to ferret out such information as is available should they be interested in doing so.

Council's attention is drawn to Chapter 2, “Elements Essential to Successful Promotion of Ethical Behaviour” and, in particular, to the comments of the academic experts quoted in the following excerpts from that Chapter:

- Simply stating aspirational guidelines based on core values, or simply listing those decisions or actions which must or must not be taken, they maintain, usually becomes unused window dressing that makes little or no contribution to attaining a

high standard of ethical behaviour. Some writers suggest it may be worse than having no code at all.

- Codes are not self-implementing
- Printing a code of conduct and placing it on a wall, is not implementation. There must be an institutional fabric for developing the code, communicating it, interpreting it, training or education on the code, enforcing it and assessing it.
- A code or statement of policy is not an ethics system. It is not the end of the road, but only the beginning: indeed, it may only be the beginning of the beginning. A code is useful because it helps crystallize and make clear what values, ethics, and rules are important to an organization. **If a code only ends up on a wall, in a senior bureaucrat's desk, or as a pamphlet handed out to all councilors and staff, but is never used, it is pointless and a waste of time.**
- An ethics system should not only articulate what is expected, but should also include the means to promote and enforce ethics standards. The means of promotion include education and advice giving.
- **Education, advice giving, monitoring, investigating, and sanctioning are all critical functions in making an ethics system work.**
- Effective codes require implementation. Some officials have been quoted as saying that ethics codes or codes of conduct ought to be self-implementing. For anyone who has worked in public service this statement is at best naïve. Implementation requires systems. Codes that exist in an administrative vacuum are often used as weapons against enemies rather than as something that enhances the ethical culture.
- Codes require an organization or organizations to write them, to interpret them, to educate employees about them, to enforce them and to assess them.
- Ethics training or ethics education are not a "one time" inoculation. Experience suggests that ethics instruction is perishable. People forget. Circumstances change. Responsibilities increase. Laws and regulations are modified. For that reason, most rigorous ethics regimes embark on a strategy that emphasizes regular ethics exposure.

- Effective ethics systems have ways to modify or amend ethics codes or standards of conduct built into the system. This can be unilateral by the agency or by appeal to the executive or legislative. Codes are organic and organizations that do not have regular means of revision are often confronted with out of date and irrelevant standards.

Accepting the wisdom in that collection of comments, recognizing that the academic experts are all consistent on the issue, and applying it to the comments of the City Clerk and to what the Human Resources Department indicates is the manner in which the City's existing ethics related by-laws are managed, it is reasonable to conclude that, for the most part, those by-laws are window dressing and are not making any significant contribution to fostering commitment to ethical principles and achieving a high standard of ethical conduct in all decision making and action taking in the course of carrying on the affairs and operations of the City. A more extensive assessment of the existing management of those by-laws might indicate something different. However, on the information presently available from City officials, that would appear to be the case.

In those circumstances it would seem appropriate to emphasize three comments of the above quoted academic experts:

- Simply stating aspirational guidelines based on core values, or simply listing those decisions or actions which must or must not be taken, they maintain, usually becomes unused window dressing that makes little or no contribution to attaining a high standard of ethical behaviour. Some writers suggest it may be worse than having no code at all.
- Printing a code of conduct and placing it on a wall, is not implementation. There must be an institutional fabric for developing the code, communicating it, interpreting it, training or education on the code, enforcing it and assessing it.
- A code or statement of policy is not an ethics system. It is not the end of the road, but only the beginning: indeed, it may only be the beginning of the beginning. A code is useful because it helps crystallize and make clear what values, ethics, and rules are important to an organization. **If a code only ends up on a wall, in a senior bureaucrat's desk, or as a pamphlet handed out to all councilors and staff, but is never used, it is pointless and a waste of time.**

That leads inevitably to the final overarching recommendation:

- 10. Unless Council is committed, after creating and enacting an ethics regime, to fully implementing it by providing reasonable education and training,**

promoting, monitoring, enforcing and periodically adjusting it to meet changing circumstances, little more than increasing the window dressing will be achieved by its efforts. Thus, committing to creating and maintaining an effective ethics regime should be the first step. If for any reason that commitment cannot be made at this time, it is doubtful that much good can be achieved by making substantial changes to the existing ethics related by-laws, other than the changes recommended for the *Election Finance By-Law*.

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