

## Principles Integrity

### City of Mississauga

### Code of Conduct Complaint

### Against Councillor McFadden

### Recommendation Report

#### Introductory Comments

- [1] Principles Integrity was appointed the Integrity Commissioner for the City of Mississauga in July 2017. We are also privileged to serve as Integrity Commissioner for a number of Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

*The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.*

- [2] The City of Mississauga has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct.
- [3] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, they investigate complaints that a Member has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.
- [4] It is important that this broad range of functions be mentioned at the outset of this investigation report. Our goal, as stated in our operating philosophy, is to help members of the Mississauga community, indeed the broader municipal sector, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to make fair assessments. In every

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case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.

### The Complaint

- [5] On July 31, 2018 we received a complaint filed by another member of Council requesting an investigation into whether alleged conduct by Councillor McFadden contravened the Mississauga Council Code of Conduct.
- [6] The particulars of the complaint are that Councillor McFadden breached Rule #3, relating to the Councillor Expenses Policy, specifically sections 6(a), (b) and (c), as follows:
  - (i) that the Member and her E.A. have been the prime organizers of Ward 10's 'Canada Day Together Festival', thereby controlling, directly or indirectly, monies received contrary, to Rule 6(a);
  - (ii) that the Member and her E.A. have solicited funds from individuals or corporations with pending significant planning applications before Council contrary to Rule 6(b); and
  - (iii) that the Member failed to report the Integrity Commissioner the names of donors and value of their donation, contrary to Rule 6(c).
- [7] It is also alleged that Councillor McFadden did not abstain from any votes during this period of time when funds were being solicited and/or obtained from individuals or corporations when their applications came before Council.
- [8] The relevant provisions of the Council Code of Conduct are as follows:

#### Rule #3 - Councillor Expenses

6. As community leaders, members may lend their support to and encourage community donations to registered charitable, not-for-profit and other community-based groups. Monies raised through fundraising efforts shall go directly to the groups or volunteers or chapters acting as local organizers of the group and members of Council should not handle any funds on behalf of such organizations.

Members of Council routinely perform important work in supporting charitable causes and in so doing, there is a need for transparency respecting the Member's involvement. The following guidelines shall apply:

- (a) Members of Council should not directly or indirectly manage or control any monies received relating to community or charitable organizations' fundraising;
- (b) Members of Council or persons acting on behalf of a member shall not solicit or accept support in any form from an individual, group or corporation, with any pending significant planning, conversion or demolition [or] variance application or procurement proposal before City Council, which a member knew or ought to have known about;



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(c) With reference to member-organized community events, Members of Council must report to the Integrity Commissioner, the names of all donors and the value of their donation that supplement the event;

7. Nothing included herein affects the entitlement of a Member of Council to:

(ii) urge constituents, businesses or other groups to support community events and advance the needs of a charitable organization put on by others in the member's ward or elsewhere in the City;

(iii) play an advisory ex officio, honorary or membership role in any charitable or non-profit organization that holds community events in the members' ward; ...

### Commentary:

By virtue of the office, Members of Council will be called upon to assist various charities, service clubs and other non-profits as well as community associations, by accepting an honorary role in the organization, lending their name or support to it or assisting in fundraising. Transparency and accountability are best achieved in today's era by encouraging contributors to make donations to such organizations on line through a website or where that is not possible through a cheque made payable directly to the organization.

### Summary of Findings

- [9] We find that the Member has been, through her EA, indirectly managing and/or controlling monies received relating to fundraising by the Canada Day Together Festival.
- [10] We find that the Member solicited and accepted sponsorship support from individuals, and/or corporations, who were known to her to be actively involved in significant planning applications pending before City Council, however, because those applications were City-initiated, they are technically not captured by the provision.
- [11] We find that the event in question is a Member-organized community event, and as such, the Member was required to report to the Integrity Commissioner the names of all donors and the value of their donation as required pursuant to the Code of Conduct.

### Process Followed for the Investigation

- [12] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness. This fair and balanced process includes the following elements:
  - Reviewing the Complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the Complaint should be restated or narrowed, where this better reflects the public interest
  - Notifying the Respondent Councillor McFadden of the Complaint and seeking her response
  - Reviewing the Mississauga Council Code of Conduct
  - Reviewing all relevant documentation and Interviewing witnesses as necessary

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- Providing the Respondent with an opportunity to review and provide comments regarding the draft findings of the Integrity Commissioner.
- [13] In accordance with the foregoing, on November 6, 2018 we provided Councillor McFadden with our preliminary findings and invited her to provide a response by November 23, 2018. At Councillor McFadden's request, we met with her and her EA on November 8, 2018 to hear their further comments and discuss the preliminary findings. We invited Councillor McFadden to provide any further written response by November 30, 2018.
- [14] The process of providing a preliminary findings report, seeking comments, and reflecting upon those comments prior to finalizing a report to Council is a helpful aspect of our process. Councillor McFadden and her EA were at all time cooperative and helpful. While they believed they had taken all necessary steps to avoid the event falling into the category of "member-organized community event", they have been open and receptive to recognizing that the role played by the Ward Office, and the Member's EA, exercising leadership in the organization, renders the event "member-organized".

### A word about timing:

- [15] The Complaint Protocol directs the Integrity Commissioner to report within 90 days of a complaint. However, both the Protocol and now the amended legislation prohibit reports within the 90 days prior to a municipal election. The underlying rationale is that reports should not be allowed to unduly impact an election campaign. Under Mississauga's Protocol, July 31 is the last day for complaints which can be reported on prior to the election, in an election year. While we will always attempt to conclude an investigation within the 90 days prescribed, where it is necessary to go beyond this arbitrary timeframe, as independent officers, integrity commissioners cannot be circumscribed in this regard.

### Creation of the Canada Day Together Festival:

- [16] Prior to July 2016, the Canada Day event in Churchill Meadows was organized by the ICNA Sisters of Canada (a division of the Islamic Circle of North America).
- [17] In 2015, the Member and her EA stepped in to organize the event. Working initially with the ICNA Sisters and the Rotary Club, the Member and her EA took steps to try to "remain at arms' length".
- [18] In the fall of 2015, in time to secure grant funding from the City's Cultural Festivals Grant program for 2016, the Ward 10 Office completed the paperwork to form an organization, calling it the Canada Day Together Festival, and played a lead role in establishing a Steering Committee to organize the 2016 Canada Day celebration at Churchill Meadows in Ward 10.
- [19] Initially, in the fall of 2015, Steering Committee members included representatives of the following 'host partners':

Ward 10 Office,  
ICNA Sisters,



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Rotary Club,  
Churchill Meadows Ratepayers Association, and  
Muslim Neighbour Nexus.

[20] Councillor McFadden's E.A. has been since 2015 to the present, President of the Canada Day Together Festival organization. This role is interchangeably referred to as Chair of the Steering Committee, and is effectively one and the same. Councillor McFadden was, and remains, the Honorary Chair of the organization.

[21] In or around the summer of 2016, the ICNA Sisters and the Rotary Club withdrew from the organization.

[22] By the fall of 2017, the Churchill Meadows Ratepayers Association had withdrawn from the and two new organizations, the Meadows Church and Harmony Social Services, were added to the organization's Steering Committee.

[23] In the fall of 2017, Steering Committee members were representatives of the following 'host partners':

Ward 10 Office,  
Muslim Neighbour Nexus,  
Meadows Church, and  
Harmony Social Services.

[24] Throughout this two-year period, the two consistent partners were the Ward 10 Council Office, represented by the Member's EA, and the Muslim Neighbour Nexus.

[25] Grant Applications for Federal funding were completed and submitted in both the fall of 2016 and the fall of 2017. These Applications were coordinated by the Member's EA, as the President. The Application submitted in the fall of 2016 lists the Ward 10 Office at Mississauga City Hall as the primary address of the Canada Day Together Festival, and the EA's City Hall phone at work as the organization's contact number.

[26] Although the Application submitted in the fall of 2017 substitutes the member's EA's home address as the primary address of the organization, the balance of the contact information continues to identify the Member's EA as President, and his City Hall phone as the organization's primary contact number.

[27] Other documentation identifies the Member's EA as the Chair of the Organizing Committee for the Canada Day Together Festival.

[28] Most of the effort of establishing and supporting the organization (convening meetings, establishing the organization, preparing the constitution, compiling grant applications, preparing and filing grant reports, preparing sponsorship correspondence) appears to have been shouldered by the Member's EA.

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- [29] The Member's EA is consistently one of the two required signatories for the bank account cheques, although the other individuals have changed.
- [30] The Ward 10 Councillor's Office is characterized as a 'host partner'. However, the Ward 10 Office, along with the Muslim Neighbour Nexus (MNN), are the only two remaining original host partners who have been participating since the inception in 2015 of the Canada Day Together Festival.

### Sponsorship Donations from Developers

- [31] As is often the case for community events organized and/or supported by members of municipal councils, funds are solicited from members of the development community. For the development community, support of community events often serves multiple purposes – 'giving back' may be one; positive name association and branding may be another; and finding oneself in the good graces of those with decision-making authority over planning applications may be another.
- [32] This motivation is not lost on political decision-makers. In an effort to curb inappropriate donations which may give the appearance of influence-seeking, most councils have adopted rules which prohibit developers from inappropriately donating or contributing in a manner that would appear to be influence-seeking with members of council. Such rules prevent members of council from inappropriately wielding potential decision-making authority to obtain financial or other support, where the member of council benefits from or the controls the funds, whether directly or indirectly.
- [33] Simply put, there are rules to prevent inappropriate lobbying by developers, and conversely, there are rules to prevent members of council from inappropriately seeking funds from developers. Typically, the latter rules – to prevent members of council from seeking funds or other benefits from developers – only apply to developers while they have matters before Council over which the member has decision-making authority or influence.
- [34] The City of Mississauga has such rules. Rule 3, paragraph 6, constitutes such a rule. This rule recognizes that Members of Council can support and assist community associations, by accepting an honorary role in the organization, lending their name or support to it or assisting in fundraising, the rule also makes it clear that a Member must NOT, directly or indirectly, control or manage the funds. As well, the Member must NOT, directly or indirectly, solicit or accept support from an individual or corporation with any pending significant planning application before Council, which a member knew or ought to have known about.<sup>1</sup>

### Directly or Indirectly Manage or Control Monies Received

- [35] It is apparent to us that Councillor McFadden and her E.A. have been the prime organizers behind the 'Canada Day Together Festival'. The Application submitted in 2016 for Federal Government for Celebrate Canada Funding from the Dept. of Canadian Heritage, identifies

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<sup>1</sup> While it does not appear that a planning application was submitted by the developers solicited, during the winter of 2018, it is clear the two firms in question participated in the city-initiated official plan amendment. This distinction becomes important later in this report.



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her E.A. as President of the Canada Day Together Festival, identifies the Primary Address of the organization as his work address at City Hall (300 City Centre Drive, 3<sup>rd</sup> floor (W10), and indicates his work email address and work phone number. The same Application submitted in 2017 identifies the Primary Address of the organization as the home address of her E.A. but continues to provide his email address and phone number at City Hall.

- [36] Letters seeking sponsorship funds from various corporate entities were sent out well in advance of the 2016, 2017 and 2018 Events. The list of those from whom funds were solicited includes several large companies involved in land development, construction and home-building. We were provided with copies of most of these letters, which are very similar in style. With only a few exceptions, most are signed by Sue McFadden as Honourary Chair of the Canada Day Together Festival Steering Committee. Letters of solicitation identify the level of support sought (Platinum Level \$10,000, Gold Level \$5,000, etc.) and whereas in the 2016 letters the Festival is introduced for the first time, in subsequent letters, sponsors' previous donations are recognized while the sponsorship request is renewed for the current year.
- [37] By letter dated February 1, 2018 from Sue McFadden, Honourary Chair of the Canada Day Together Festival Steering Committee, a sponsorship solicitation was made to Mattamy Homes in Oakville. The letter specifically requested a donation of \$15,000 to serve as the Entertainment Sponsor. A similar letter, also dated February 1, 2018, sought a \$5,000 sponsorship from Argo Development Corp. in Burlington.
- [38] The Member's EA was, throughout this period, President of the Canada Day Together Festival and Chair of the Steering Committee. Bank transactions always required a minimum of two out of four executive members. The Member's EA was one of the four executive signatories throughout the period. , Of the four executive members originally identified to the bank as signing officers in 2016, two of the originally identified members have left, and only the Member's EA and one other member remain as executive signing officers since 2015. This is because the Ward 10 Office was one of only two remaining original 'host partners' with the organization since its inception in 2015.

### Not Solicit Donations, Contributions from Corporations with Planning Applications Pending

- [39] At the time of the solicitations for sponsorship support in February 2018, an application to amend Mississauga OP and Zoning By-law 0225-2007 [CD.04.NIN], Proposed Secondary Plan – Ninth Line Neighbourhood Character Area Policies and Zoning, was being processed by the City of Mississauga. The "Ninth Line Lands" were identified as *'the City's last planned greenfield community'*, and these policies were being developed to provide for housing types, densities, and uses on the lands. These matters are of considerable and significant interest to developers and home-builders. Even though the City is the initiator of such an application, the impacted developers and builders whose landholdings will be significantly impacted are recognized as stakeholders in the applications pending before Council.
- [40] On February 5, 2018 a public meeting was held by City of Mississauga Planning and Development Committee to receive submissions from interested parties. Mattamy Homes and Argo Development Corporation, through their planning consultant, made submissions

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to the committee with respect to issues under consideration with respect to the application<sup>2</sup>. Councillor McFadden was present throughout and did not declare a conflict of interest.

- [41] It is clear that Councillor McFadden's sponsorship letters to Mattamy Homes and Argo Developments seeking funds for the Canada Day Together Festival were sent at the very moment the Planning Committee was being lobbied by their planning consultant with respect to the OP and Zoning Application.

### Analysis and Findings:

- [42] The provisions found in Rule #3, paragraph 6, are aimed at ensuring that Members of Council who are engaged in sourcing and soliciting financial donations for community, non-profit and charitable endeavours ought not to be in a position to be influenced in their decision-making role by knowledge of who is donating (and who is not) such worthwhile causes. Where members are 'hands-on' involved in such events ("member-organized community events"), rules of transparency are imposed in the public interest.
- [43] Community organizations can be challenging to organize. Often, there is not a consistent level of participation by enough members of the community, so the work effort will often fall to a small handful of people. This is not any reflection on the worth of the endeavour, and often only reflects the busy-ness of peoples' day-to-day lives, that allows limited time for participating in community volunteer work. In this instance, it may well be that the organization would have floundered, and the event not been held, were it not for the diligent efforts of the Member's Office. In a view shared by one witness, somebody had to take the lead and pull it together.
- [44] The value and worth of the Canada Day Together Festival event is not in question. Nevertheless, the approach to supporting the community – allowing the Ward Office to be the pivotal host partner, in effect putting an EA in the role of orchestrating organization of the group, renders this a **member-organized community event** as referenced in Rule #3, 6(c). For this reason, the Member had an obligation to report as required under that provision:

With reference to member-organized community events, Members of Council must report to the Integrity Commissioner, the names of all donors and the value of their donation that supplement the event.

- [45] Letters sent personally by the Member, as Honourary Chair, setting out specific expectations of financial support, to members of the development community who the Member knew were actively lobbying on a significant planning application directly impacting their interests, which was before Planning Committee at the very moment of the solicitations, fundamentally undermines the intention of the provision in Rule #3, 6(b) which provides:

Members of Council or persons acting on behalf of a member shall not solicit or accept support in any form from an individual, group or corporation, with any pending significant planning,

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<sup>2</sup>Report 4.8 at the June 18, 2018 Planning and Development Committee meeting, Appendix 3.



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conversion or demolition [or] variance application or procurement proposal before City Council, which a member knew or ought to have known about.

[46] However, the Planning Application on which the donors were lobbying was City-initiated. Since the language of 6(b) does not address soliciting support from those involved in lobbying on a City-initiated application – only those ‘with a pending application before Council’ – the activity of soliciting funds during the period in question does not technically contravene the Rule.

[47] Sponsors were directed to make cheques payable to the Canada Day Together Festival. Two signatures are required for banking transactions of the organization. The Member’s EA was one of four potential signatories, being the Chair of the Steering Committee. The other three signatories were the Vice-Chair, the Treasurer, and the Secretary. However, in the three years since inception, only the Member’s EA and the Secretary remain of the four original signatories from the inception.

[48] There is no suggestion of financial impropriety. Two signatures are required on transactions out of the account. Nevertheless, the role played by the Member’s EA, so closely tied to managing the money received by the fundraising, places the Member in an untenable situation, engaging Rule #3, 6(a), which provides:

Members of Council should not directly or indirectly manage or control any monies received relating to community or charitable organizations’ fundraising

[49] We find that the role of the Member’s Office placed the Member in contravention of Rule #3, 6(a) and (c).

[50] We find that the Member’s solicitation of funds from members of the development community who were, at the time, lobbying with respect to a City-initiated Official Plan Amendment and Zoning Application before Planning Committee and, ultimately Council, while undermining the intention of Rule #3, 6(b), does not technically breach that provision, and therefore no contravention in that regard is found. This provision should likely be revised to include a prohibition on solicitations where a developer is participating or lobbying with respect to a City-initiated planning application.

[51] With respect to the assertion that Councillor McFadden continued to vote on matters benefiting the contributing developers during the period in question, there is no evidence that the Member had a personal pecuniary interest in the sponsorships provided.

[52] The existence/non-existence of a pecuniary interest forms only part of the analysis when assessing competing interests. The proper recognition of the event as a member-organized community event would have resulted in the appropriate reporting of sponsorship funds. Reporting the sponsorships would likely have flagged for the Member the possible perception of an interest when the developers’ position was being advocated at Planning Committee.

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- [53] We find it unnecessary however to make a finding on conflict of interest. The essence of the Member's contravention of Rule #3, 6(a) and (c) of the Code of Conduct is the failure to recognize the event as a member-organized event.
- [54] The rules around member-organized community events are not unique to the City of Mississauga, and they are put in place to create transparency— by requiring reporting of amounts received from donors. The activities arising out of the Member's Ward Office, although well-intentioned and no doubt necessary to sustain a transitioning community event, run counter to those rules.

### Recommendations:

- [55] While we find the Member contravened the Code of Conduct by failing to recognize the Canada Day Together Festival as a "member-organized community event", we believe this is not an instance where a reprimand or sanction are called for. Rather, this is an opportunity for Members to have a better appreciation of the purpose and meaning of the rules which apply to them under their Code of Conduct.
- [56] The contravention of Rule #3, 6(a) and (c) of the Code is more than a mere technical breach. The Rules around "member-organized community events" are in place to ensure transparency. What is clear is that where the Member's EA is providing on-going and primary leadership to the event, the Member must recognize it as a "member-organized community event". The failure to do so defeats the purpose of the Rule.
- [57] By contrast, the wording of Rule #3, 6(b) does not allow us to hold the Member accountable for soliciting funds from those involved in lobbying on City-initiated planning applications, notwithstanding that the activity undermines the purpose of the Rule. In this regard, we recommend revising the language of the Rule to include those lobbying on City-initiated applications.
- [58] We will be pleased to be in attendance when this report is considered to answer any questions Council may have relating to its contents.

Respectfully submitted,

Date of Issue: November 30, 2018