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2020-2021 ANNUAL REPORT OF THE INTEGRITY COMMISSIONER

ONE JOINT INVESTMENT BOARD

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April 27, 2021

INTEGRITY COMMISSIONER'S MESSAGE

Aird & Berlis LLP was appointed as the Integrity Commissioner for ONE Joint Investment Board ("the Board") pursuant to subsection 223.3(1) of the *Municipal Act, 2001*, S.O. 2021, c. 25, on May 19, 2020.

This is the first annual report that we have prepared upon our appointment for the Board, encompassing the period from May 19, 2020 to April 27, 2021.

As is well known and as will be detailed further below, the municipal accountability framework for all municipalities and their local boards in Ontario was significantly amended early in 2019.

The *Modernizing Ontario's Municipal Legislation Act, 2017*, S.O. 2017, c. 10, implemented changes to both the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50. A number of the statutory amendments in this statute were delayed to allow municipalities and their local boards sufficient time to become prepared. The majority of the municipal accountability amendments were proclaimed to come into force on March 1, 2019.

As of that date, all municipalities in Ontario were required to establish codes of conduct for both their members of council and members of their local boards, and to appoint or secure the services of an integrity commissioner. Prior to that date, both codes of conduct and integrity commissioners were permissive – they are now mandatory.

The Towns of Bracebridge, Huntsville, Innisfil and Whitby, the City of Kenora and the District Municipality of Muskoka (the "Founding Municipalities") established the Board pursuant to an Initial Formation Agreement dated April 14, 2020. The Founding Municipalities established a Code of Conduct for its members which was adopted by the Board at the inaugural meeting of the Board on May 19, 2020. The Board also appointed Aird & Berlis LLP as its Integrity Commissioner and Closed Meeting Investigator at this meeting.

Since our appointment, we have had the opportunity to conduct educational training for members of the Board, and to provide advice to members and to the Board on inquiries with respect to the Code of Conduct and the *Municipal Conflict of Interest Act*.

We have not received any complaints or applications and have accordingly conducted no investigations under the Code of Conduct or inquiries under the *Municipal Conflict of Interest Act*.

This report provides an executive summary of our activities undertaken in fulfilling our duties and responsibilities as the Integrity Commissioner for the Board.

ROLE OF THE INTEGRITY COMMISSIONER

The role of the integrity commissioner was enhanced in 2019 by amendments that were made to the *Municipal Act, 2001*. The new, broader authority and functions of the integrity commissioner were assigned by the Founding Municipalities upon the establishment of the Board.

The functions of an integrity commissioner are set out in subsection 223.3(1) of the *Municipal Act, 2001* which provides as follows:

Integrity Commissioner

223.3(1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards.
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

All of the aforementioned functions were assigned to us as Integrity Commissioner for the Board on May 19, 2020.

INVESTIGATIONS

As noted above, we did not receive any complaints against members filed under the Code of Conduct or any applications under the Municipal Conflict of Interest Act that required us to conduct an investigation.

ADVICE

From time to time, board members seek written or verbal advice and interpretations of ethical policies. One of the new functions of the Integrity Commissioner is the express authority to provide specific written advice to members with respect to their obligations under the Code of Conduct, other board ethical policies, rules or procedures, and the *Municipal Conflict of Interest Act*. Our role in providing timely responses to members is very important.

We received and responded to a number of written requests for specific advice from members of the Board. The inquiries related to the application of the Code of Conduct and the *Municipal Conflict of Interest Act*, amongst others. We were very pleased to have received detailed and articulate questions with, in all cases, a very good level of context so that we could respond. We note this in particular because our experience in other municipalities is that members often are not cognizant of the fact that their requests must be in writing and that they should provide a detailed factual background given that much of the ethical advice that we provide is fact-driven and fact-specific.

We have not provided a summary of all the written advice that we have provided because, in most cases, the identification of the advice would likely disclose the identity of the requesting member and the actual incident or matter. We have done so in recognition of our duty to maintain confidentiality under section 223.5 of the *Municipal Act, 2001*.

We will, however, note some matters that we advised upon in the past year in order to provide a resource to members, staff and the public:

- (a) A member was privy to certain sensitive commercial information by virtue of the member's employment. There was no matter before the Board that pertained to the member's employer or the sensitive commercial information in question. The member did not have a conflict of interest under the *Municipal Conflict of Interest Act* or the Code of Conduct because neither the member nor their employer stood to gain, financially or otherwise, from a matter that was to be considered, or a decision that was to be made, by the Board.
- (b) A member's employer sporadically hired a particular law firm to assist with the employer's legal matters. The Board was to consider and decide on whether to appoint that law firm as counsel to the Board. The member did not have a conflict of interest under the *Municipal Conflict of Interest Act* because the decision did not have the potential to impact the financial situation of the member or its employer. The member also did not have a conflict of interest under the Code of Conduct because the relationship between the member's employer and the law firm was not sufficiently significant or proximate such that it would give rise to competing loyalties on the part of the member.

- (c) A member owned shares in a corporation. The Board was to consider whether to invest in one of the corporation's financial offerings. It was determined that the member had a pecuniary interest in the matter under the *Municipal Conflict of Interest Act*. However, it was further determined that the exemption under clause 4(k) of the statute applied in the circumstances, such that the member did not have a disqualifying interest in relation to the matter. The exemption applied because the number of shares, and the potential impact on the member's financial situation as a result of the Board's investment in the financial offering in question, was assessed to be sufficiently insignificant.
- (d) A member was offered introductory hospitality by one of the newly hired managers of ONE Investment. The member inquired whether accepting the hospitality could give rise to a conflict of interest vis-à-vis the member's duty to the Board. It was determined that, pursuant to the applicable provisions of the Code of Conduct, the activity was permissible and did not constitute a conflict of interest. In summary, it amounted to an instance of internal professional collegiality and social bonding that was permitted pursuant to the Code of Conduct.
- (e) Some members of the Board are employed by the Founding Municipalities and asked if they had an indirect pecuniary interest under section 2 of the *Municipal Conflict of Interest Act* by virtue the fact that their employers would have a financial interest arising from a decision of the Board. The exemption in clause 4(h) of the statute applies:
 - 4. Sections 5 and 5.2 do not apply to a pecuniary interest in any matter that a member may have,
 - ...
 - (h) by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board;

In addition to the above advice that we provided to individual members of the Board, we also provided advice on one occasion to the Board itself:

- (f) In this instance, the Board's Nominating Committee was interviewing candidates for a vacant member position on the Board. One of the candidates held significant shares in one of the Board's four (4) fund managers. The Board inquired whether the candidate would have a disqualifying conflict of interest should this candidate serve as a member of the Board. The facts demonstrated that the subject fund manager's profitability could, and likely would, be impacted directly and indirectly by all manner of decisions that would typically come before the Board. This, in turn, had the potential to impact the candidate's own financial situation vis-à-vis their ownership of the significant shares. On this basis, we determined that the candidate would have a disqualifying conflict of interest under the *Municipal Conflict of Interest Act* should this candidate serve as a member of the Board, and accordingly advised the Board on next steps.

EDUCATION & TRAINING

We attended a meeting of the Board on July 14, 2020 and provided an education and training session with respect to Code of Conduct and the *Municipal Conflict of Interest Act*.

Although not part of our mandate as Integrity Commissioner, we also attended a meeting of the Board on September 16, 2020 in our capacity as Closed Meeting Investigator and presented to the Board on the topic of open and closed meetings given that the Board, as a local board, is subject to Ontario's "open meeting" rule.

CLOSING REMARKS

We conclude our first Annual Report by noting that the Board commenced operations in the midst of an unprecedented global pandemic. By all accounts, the Board was able to conduct its business and carry out its decision-making without disruption. In all respects, the members of the Board conducted themselves in a completely professional manner and gave no cause for concern to us with respect to an adherence to their ethical responsibilities, duties and obligations.

We remain grateful for the trust that the Board has placed in us as their Integrity Commissioner (and Closed Meeting Investigator).

We look forward to continuing our work with the Board over the coming year.

Respectfully submitted,

AIRD & BERLIS LLP



John Mascarin

Integrity Commissioner for ONE Joint Investment Board