



THE CITY OF WINDSOR

COUNCIL SERVICES DEPARTMENT

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INTEGRITY COMMISSIONER

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Report to City Council: Complaint Under The *Code of Conduct* - Councillor Al Maghnieh

4 September 2012

Office of the Integrity Commissioner

**Report to City Council: Complaint Under
The Code of Conduct -- Councillor Al Maghnieh**

Introduction:

The Complaint:

At its Meeting on the 8th of May, 2012, City Council adopted a Resolution of the Executive Committee as follows:

THAT the Integrity Commissioner for the City of Windsor **BE DIRECTED** to investigate, in accordance with the "Complaint Protocol for Members of Council and others Governed by the Code of Conduct", the actions of Councillor Al Maghnieh and anyone else implicated in the reported misuse of a Windsor Public library Corporate Credit Card, as well as the subsequent actions and admissions by that Councillor.

The Complaint embodied in this Resolution alleges that Councillor Al Maghnieh, during his term as Chair of the Windsor Library Board, used a Windsor Public Library Corporate Credit Card for personal purchases contrary to the policies of the Windsor Public library and the City of Windsor. Such use, it is alleged, constitutes a violation of the City of Windsor's *Code of Conduct for Members of Council and Local Boards (Restricted Definition)*.

The Resolution of Council ended three weeks of public scrutiny of Councillor Al Maghnieh's use of a Windsor Public Library corporate credit card. A brief outline of the events leading up to the City Council Resolution follows in this Introduction.

On April 17th, 2012, a meeting of the Finance Committee of the Windsor Public Library was held. The Finance Committee went *in camera* with the Auditors from KPMG to discuss the Audit Findings Report. It is, presumably, during this meeting that some members of the Finance Committee first learned that Councillor Maghnieh held a Windsor Public Library corporate credit card and were made aware of the concerns regarding his credit card use.

Also, on the Agenda for the April 17th Meeting was a set of new finance policies - entitled "Universal Access to the Universe of Ideas" -- prepared by the Library CEO, Barry Holmes. These new finance policies were, ostensibly, designed to facilitate the Library's keeping up "with the

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fast-paced changes taking place in the library world." In reality, however, these new policies would have had the effect of permitting and authorizing much of Councillor Maghnieh's conduct retroactively.

On April 19th, a meeting of the library Board was held. The rest of the Board was advised of the investigation into Councillor Maghnieh's credit card use. In his statement, Councillor Maghnieh, it must be said, tried to downplay his use of the corporate credit card and sought to minimize the amount - ostensibly \$3000 at the time -- of his charges.

On April 21st, Councillor Maghnieh resigned from the Library Board. The reputed amount of his credit card charges continued to grow. On the 20th of April, he acknowledged charges of \$5000. By the 21st, the amount had climbed to \$8490. Eventually, the total amount of Councillor Maghnieh's charges on his Windsor Public library credit card would reach \$13, 756.19.

In the days following Councillor Maghnieh's resignation, Alex Cameron, Chair of the Finance Committee, also resigned from the library Board.

On April 26th, Councillor Maghnieh resigned his position as Administrator of Strategic Planning and Communications with the Windsor-Essex Catholic District School Board.

On April 30th, the Striking Committee of Council removed Councillor Maghnieh from all of his appointments to Agencies, Boards, and Committees.

On May 1st, CEO Barry Holmes went home "sick" in the early afternoon. On May 2nd, he indicated to his staff that he would be taking some time off. later in the month, he extended his leave. He has not returned to the Library since.

On May 8th, Councillor Maghnieh delivered a statement of contrition and apology to Council and the public. He indicated that he would not resign his seat on Council but would leave his political fate in the hands of his constituents at the next election.

On May 8th, Council passed the Resolution noted above.

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Conclusion and Recommendations:

The Integrity Commissioner recommends:

1. THAT City Council adopt the finding that Councillor Al Maghnieh violated the *Code of Conduct* and, in particular, Article XVII of the *Code*.
2. THAT City Council adopt the Recommendation that the following sanctions, permitted by Article XX of the *Code of Conduct*, be imposed:
 - a. THAT Council impose a suspension of the remuneration paid to Councillor Maghnieh for a period of 45 days;
 - b. THAT Councillor Maghnieh be required to repay the \$3331.54 previously received for his membership on Agencies and Boards during the 1st quarter of 2012; and
 - c. THAT Councillor Maghnieh be eligible for appointment to Agencies, Boards, and Committees - and, consequently, be able to share in the pooled remuneration for those Agencies and Boards - commencing in January 2013.

The Investigation:

During the course of my Investigation, I interviewed the following individuals: Councillor Al Maghnieh; Tom Clark and Nick Thomas of KPMG, Auditors for the Windsor Public Library; Councillor Hilary Payne and Denny Timm, former Members of the Windsor Public Library Board; Lorena Shepley, continuing Member of the Windsor Public library Board; Chris Woodrow, Manager for Strategic Planning, Marketing, and Communication and, currently, Interim CEO of the Windsor Public Library; and Laurie Turcotte, Finance Manager for the Windsor Public Library. Efforts to reach former CEO, Barry Holmes, went unanswered. Former Finance Committee Chair, Alex Cameron declined to be interviewed for this Report.

Among the documents I reviewed were the following: the Audit Findings Report prepared for the Windsor Public Library by **KPMG**; Policies and Procedures of the Windsor Public Library concerning the following: (a) Credit Cards - Corporate, (b) Travel, Business, and Meal Expense, (c) Administration - Travel Expenses, and (d) Purchasing Policy; Policies and Procedures of the City of Windsor concerning the following: (a) Travel and Business Expense Policy, (b) Purchasing Card Program - Policies & Procedures, and (c) Code of Ethics and Conflict of Interest Policy; Scotiabank VISA statements; Agendas and Minutes from the Finance Committee of the Windsor Public library; Agendas and Minutes of the Windsor Public library Board; A document entitled "Universal Access to the Universe of Ideas" from Barry Holmes to the Board concerning changes to existing Board policies on Business and Travel Expenses, Purchasing Policy, and Corporate Credit Cards; Councillor Maghnieh's Statement to Council on May 9th, 2012; and numerous emails.

Finally, in the preparation of my Report, I referred to the City of Windsor, *Code of Conduct for Members of Council and Local Boards (Restricted Definition)*; the *Municipal Act, 2001* of the Province of Ontario; and the *Public Libraries Act* of the Province of Ontario.

Summary of Findings:

It is difficult to summarize the results of this Investigation. Nonetheless, what follows are some of the key findings of fact.

Did Councillor Maghnieh have knowledge - actual or imputed - of the acceptable use policies of the Windsor Public library? In his initial request to the Library CEO, Barry Holmes, Councillor Maghnieh indicated that the credit card would be used for "WPL board purposes".

Further, he was given an opportunity to read the applicable policies but chose not to. In his role as Chair of the Library Board, Councillor Maghnieh approved the credit card purchases of the CEO. To fulfill this function, he should have been familiar with the applicable policies. Finally, Councillor Maghnieh chaired a meeting of the Windsor Public Library Board on September 22nd, 2011, during which the existing Travel, Business & Meal Expense Policy was passed. Therefore, it is clear to me, that Councillor Maghnieh knew or ought to have known about the policies regarding acceptable use of his corporate credit card for travel, meals, and business expenses. If he did not, it was entirely due to his own negligence. Further, using the credit card without being certain as to the acceptable use policy was, in my opinion, reckless.

Was Councillor Maghnieh ever advised that his use of the WPL corporate credit card was improper and in violation of the policies and procedures of the Windsor Public Library Board?

On January 19th, 2012, Councillor Maghnieh had a meeting with CEO, Barry Holmes, where he was told that his use of the credit card was improper. At an impromptu meeting on the same day, the Finance Manager pointed out that his use was improper. She provided him with a precis of "what not to do" with the corporate credit card. At this point in time, Councillor Maghnieh must have been fully aware that the manner in which he had been using his corporate credit card was completely improper and, further, that he must stop this conduct immediately. Councillor Maghnieh told the Finance Manager that he would not use the card improperly in the future. In spite of these warnings and others, ostensibly delivered to him by CEO, Barry Holmes, Councillor Maghnieh continued over the next two months to use the credit card for personal expenditures and failed, in other ways, to follow the policies of the Windsor Public Library.

Did Councillor Maghnieh misuse his WPL corporate credit card and, thereby, violate the policies of the Windsor Public Library? I do not believe that Councillor Maghnieh intended to defraud the Windsor Public Library. Nonetheless, throughout the time he was in possession of a Windsor Public Library corporate credit card, Councillor Al Maghnieh knowingly and recklessly

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disregarded the policies of the Windsor Public Library regarding the use of those cards. He seems to have charged alcoholic beverages to his credit card; he exceeded the allowable amounts for meals; he failed to turn in proper expense reports with original receipts attached; and he charged personal expenses to the card. He essentially treated his Windsor Public Library corporate credit card as if it was a personal line of credit.

Did the Finance Committee and the Board of the Windsor Public Library approve of the issuance of a Windsor Public Library corporate credit card to Councillor Maghnieh as Chair of the Board? Neither the Finance Committee nor the Board ever approved of the issuance of a corporate credit card to Councillor Maghnieh. In fact, neither the Finance Committee nor the Board was ever made aware of the fact that he had been issued a corporate credit card. The issuance of a corporate credit card to the Board Chair was unprecedented. One would have assumed that, out of an abundance of caution, Councillor Maghnieh would have insisted that the matter be raised, debated, and approved at the Board level.

Who else was implicated in Councillor Maghnieh's misuse of the Windsor Public Library corporate credit card? In the course of my Investigation, I discovered no evidence to suggest that Councillor Hilary Payne, Denny Timm, or Lorena Shepley knew either that a Windsor Public Library corporate credit card had been issued to Councillor Maghnieh or that he was using it contrary to the policies and procedures of the Windsor Public Library. It is clear that Library CEO, Barry Holmes, and Finance Committee Chair, Alex Cameron, knew about the existence of the card - Mr. Holmes from the outset and Mr. Cameron from at least December 9th and were well aware that Councillor Maghnieh was using the card for personal purchases and for other purposes contrary to the policies and procedures of the Windsor Public Library. They failed to bring the matter to the attention of the Finance Committee or the Board. In this sense, at the very least, they were implicated in Councillor Maghnieh's misuse of the card. Further, the events leading up to and including the Finance Committee meeting of February 10th, 2012 remain somewhat troubling. However, I was not able to speak to Mr. Holmes or Mr. Cameron about these events and, therefore, I cannot draw any firm conclusions regarding what transpired from February 6th - 10th, 2012. Mr. Holmes was an employee of the Windsor Public Library and any further investigation of his conduct would occur in the context of the employer-employee relationship and, consequently, outside of the jurisdiction of the Integrity Commissioner. Mr. Cameron has resigned from the Board and, in my opinion, no longer falls under the jurisdiction of the Office of the Integrity Commissioner.

What losses has the Windsor Public Library suffered? The total amount billed to the corporate credit card was \$13,756.19. Although this amount certainly contained legitimate expenses, Councillor Maghnieh paid back the total amount of the charges. The Library may have lost some interest opportunity or there may have been other opportunity costs. These are not easily

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identifiable. There was also the "time" of Library staff expended on this matter. However, this is not easily quantifiable. There is also the cost of the extra auditing that was required because of this conduct. Councillor Maghnieh has publically stated that he intends to reimburse the Library for those auditing costs that are directly attributable to his improper credit card use. As I understand it, he is still in discussion with the Library on this issue. Finally, there will be the cost of this Investigation. Perhaps, more importantly, there are the costs associated with staff morale at the Windsor Public Library. The affair took its toll on the excellent Administrative staff at the Library but, also, on the morale of the frontline staff as well. There was also a cost to the goodwill and reputation of the Windsor Public Library, both within our community, provincially, nationally, and perhaps even internationally. These costs - Library staff morale and the Library's goodwill and reputation - will be difficult to repay.

Analysis:

On November 16th, Councillor Maghnieh, in an email, requested that CEO, Barry Holmes, activate a corporate credit card for the "board chair" with a limit of around \$10,000. The Councillor stated: "It will be used for WPL board purposes". In my opinion, this indicates that Councillor Maghnieh knew, from the outset, that the proper use of such a card was only for Windsor Public Library Board related purposes. Barry Holmes passed this request along to the Finance Manager.

The Finance Manager, quite rightly, had some concerns about this. First, no previous Board Chair (or any members of the Board) had ever had a Windsor Public Library corporate credit card issued to him or her. Further, there was the problem of transparency and accountability. Who was going to provide "one level up" oversight on the credit card purchases of the Board Chair?

These concerns were brushed aside and, on November 25th, Councillor Maghnieh picked up the corporate credit. According to staff members, Councillor Maghnieh was required to sign off on the paperwork from the credit card issuer - the Bank of Nova Scotia - which he did. He was, also, asked to read and sign or initial the Windsor Library Credit Card - Corporate Policy, the Purchasing Policy, and the Travel and Business Expense Policy. According to the staff, the Councillor maintained that he was in a hurry and did not have time to read and sign off on the policies.

Councillor Maghnieh maintains that no one "introduced him to the end user agreement to the card, neither was I requested to sign it. I was not educated on the policies and procedures with respect to the acceptable use policy of the credit card". This runs counter the statements of staff that he was given an opportunity to read and sign the policies and, presumably, ask any question for clarification but he was "in a hurry". Even if he did not have time at that moment,

one would have expected him to read and sign off on these policies as soon as possible and certainly prior to using the corporate credit card. This would have been the prudent course of action. Councillor Maghnieh did not follow this path.

It should be noted here that, as Chair of the Library Board, Councillor Maghnieh was responsible for signing off on the CEO's credit card purchases. One would have assumed that, in order to properly carry out this supervisory role, he would have educated himself as to the credit card policy and other related policies. Nonetheless, the Councillor maintains that he was not aware of the acceptable use policy. He seems to have failed to fulfill his responsibility as Chair of the Board in this regard.

One other set of circumstances cannot be overlooked. Councillor Maghnieh was appointed to the Board of the Windsor Public Library on April 11, 2011. He was appointed Chair of the Board on May 10, 2011. On September 22, 2011, the Windsor Public Library Board approved a Recommendation from the Finance Committee that "the Board adopt the City's Travel, Business & Meal Expense Policy as amended by Library Management". Councillor Maghnieh chaired the meeting of the Board at which this policy was presented, presumably debated, and approved. In my interview with Councillor Maghnieh, he claimed to have no memory of this.

It is clear to me, that Councillor Maghnieh knew or ought to have known about the policies regarding acceptable use of his corporate credit card for travel, meals, and business expenses. If he did not, it was entirely due to his own negligence. Further, using the credit card without being certain as to the acceptable use policy was, in my opinion, reckless.

Staff members were first alerted to the possibility that Councillor Maghnieh's use of the corporate credit card was improper on January 19th when they reviewed his December and January credit card statements. The statements were replete with charges which do not appear, on their surface, to be Library Board related expenses. Even those charges which could reasonably be attributed to "business expenses" were a problem because they were not supported by proper expense reports or receipts.

The matter was immediately brought to the attention of Barry Holmes. Mr. Holmes had a meeting that day with Councillor Maghnieh in which he is reported to have told Councillor Maghnieh that his use of the credit card was improper and that he needed to stop charging personal items to the card. Following his meeting with the CEO, Councillor Maghnieh stopped by the office of the Finance Manager, who reiterated to him the essentials of the library policy: personal expenditures are not charged to the corporate credit card; detailed receipts to support purchases are provided at all times; alcohol is never purchased on the credit card; and meals are kept within the allowances provided in the policies. According to the Finance

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Manager, Councillor Maghnieh acknowledged these limitations and advised her that he would not use the card improperly again.

At this point in time, Councillor Maghnieh must have been fully aware that the manner in which he had been using his corporate credit card was completely improper and, further, that he must stop this conduct immediately.

The next day, the Finance staff began a daily monitoring of Councillor Maghnieh's corporate credit card. The evidence is irrefutable that, in spite of these warnings and others ostensibly delivered to him by CEO, Barry Holmes, Councillor Maghnieh continued over the next two months to use the credit card for personal expenditures and failed, in other ways, to follow the policies of the Windsor Public library. It must be conceded that the frequency of expenditures lessened and more of them appeared to be business related but they continued. The credit card statements disclose that this conduct continued until the 27th of March, 2012. On March 28th, 2012, Councillor Maghnieh surrendered his corporate credit card and it was cancelled.

The conclusion is inescapable: Throughout the time, he was in possession of a Windsor Public Library corporate credit card, Councillor Al Maghnieh knowingly and recklessly disregarded the policies of the Windsor Public Library regarding the use of those cards. He seems to have charged alcoholic beverages to his credit card; he exceeded the allowable amounts for meals; he failed to turn in proper expense reports with original receipts attached; and he charged personal expenses to the card. In my opinion, he essentially treated his Windsor Public Library corporate credit card as if it was a personal line of credit for him to use as the "borrower" with the Public Library as his "creditor". However, I do not believe that Councillor Maghnieh intended to defraud the Windsor Public Library.

In December, a protocol entitled "Corporate Credit Card Process for Board Chair" was developed by the Finance Manager and approved by the CEO and signed by the Chair of the Finance Committee on December 8th, 2011. The protocol provided that the Chair of the Finance Committee would be the person who would approve Councillor Maghnieh's credit card expenses. Councillor Maghnieh did not sign off on this protocol until January 27th, 2012. However, the members of Finance Committee and the Board were never informed about the issuance of the credit card to Councillor Maghnieh in spite of suggestions from staff that this be done.

In his interview with me, Councillor Maghnieh indicated that he assumed that his expenses would be approved by the Finance Committee and, then, the Board. Therefore, he contended that the public would know this "at the end of the day." Although the protocol indicated that the Chair of the Finance Committee would approve his credit card statements, it is still difficult to understand how he came to this assumption. Neither the Finance Committee nor the Board

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was ever made aware of the fact that he had been issued a corporate credit card. There was no Agenda item concerning the credit card at either the Finance Committee or at the Board level; there was no debate as reflected in the Minutes; and there were no motions adopted dealing with the credit card. The issuance of a corporate credit card to the Board Chair was unprecedented. One would have assumed that, out of an abundance of caution, Councillor Maghnieh would have insisted that the matter be raised, debated, and approved at the Board level.

In fact, certain events could arguably lead one to the conclusion that members of the Finance Committee and the Board was being purposely kept in the dark regarding the credit card. On February 6th, 2012, Julie Lowery, the Administrative Assistant, sent an email to Alex Cameron, the Chair of the Finance Committee. Attached to the email was a spreadsheet detailing all of the Board expenses from March to December, 2011. The Report included \$2905.73 of expenses attributed to Councillor Maghnieh including the following:

Starbucks	\$9.44	Visa-Maghnieh	15-Dec-2011
Al Sabeel Restaurant	\$10.70	Visa-Maghnieh	15-Dec-2011
Toscanna Restaurant	\$298.32	Visa-Maghnieh	15-Dec-2011
Al Sabeel Restaurant	\$9.02	Visa-Maghnieh	15-Dec-2011
Appl iTunes	\$2.87	Visa-Maghnieh	15-Dec-2011
Essa Gas Station	\$35.91	Visa Maghnieh	15-Dec-2011

Ms. Lowery asked whether this Expense Report should be sent to members of the Finance Committee electronically. Had this reached Committee members, they would have immediately known about the credit card and questions would, undoubtedly, have followed regarding Councillor Maghnieh's expenditures. The Expense Report did not reach the Committee members in this format, however.

Alex Cameron responded to Ms. Lowery's email directing her to "provide a modified handout at the meeting. We don't need detailed information at our level. Please revise the document to show less detail (name of individual, total individual expenses for the period) and total board expenses for the period. There should be three lines in total on the handout for approval (the detailed records can stay with the CFO) and it should clearly describe the period. We only need summary information at the meeting - the internal process covers the rest."

At approximately the same time, Alex Cameron wrote to Barry Holmes and Councillor Payne - also a member of the Finance Committee requesting an Agenda item for the next Finance Committee meeting to discuss the "level of reporting disclosure" that is provided to Committee members. He states in part: "I'm of the opinion that we do not need to see a detailed "drill

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down" account of our affairs on a monthly basis. Preparing a detailed report of all that information is too intensive - often to report what amounts to a 1 - 3% variance." Councillor Payne responded in an email on the same day: "I agree". Councillor Payne advised me in an interview that he had no idea about the circumstances in which Mr. Cameron's email was sent because, of course, he was not aware that Councillor Maghnieh had a corporate credit card and he had not seen the original Expense Report which Julie Lowery sent to Alex Cameron. Therefore, it appears that he did not appreciate the necessity of a detailed monthly review of expenses.

The staff complied with the Finance Chair's request. The following "line" was prepared for the Finance Committee meeting regarding Al Maghnieh's expenses for March- December 2011:

Al Maghnieh	Misc. Meals & Travel	\$2905.73
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It was determined that the summary would be handed out at the meeting. However, at the Finance Committee meeting of February 10th, 2012, even this did not happen. Barry Holmes did not hand out this truncated statement of expenses. According to reports, he slid one copy over to Alex Cameron for dating and signing, The Committee members were informed that as they had *just* decided that they did not need to see detailed reports, there was no need to hand out the Board Expense report.

As I was unable to interview either Barry Holmes or Alex Cameron, it is difficult to know exactly what motivated them to first, eviscerate the Board Expense Report, and second, not hand out a Report at all at a meeting held, a least in part, to approve those expenses. It is, of course, quite legitimate for a Committee or a Board to determine what level of detail they require to fulfill their oversight function. Nonetheless, this series of events is quite worrisome because they could be interpreted as an attempt to hide the existence of the corporate credit card and the nature of Councillor Maghnieh's charges. It should be stated that, apparently, Councillor Maghnieh played no role in these events.

We may not have learned about the misuse of the credit card had it not been for the persistent professionalism of the Library's Finance Manager, Ms. Laurie Turcotte, and the diligence of the Auditors from KPMG, led by Nick Thomas and Tom Clark.

The total amount billed to the corporate credit card was \$13, 756.19. Although this amount certainly contained legitimate expenses, Councillor Maghnieh decided to pay back the total amount of the charges. He completed paying back this amount on April 27th, 2012 with a final payment of \$195.00. Although he, undoubtedly, had difficulty finding proper receipts for many of the legitimate expenses, I prefer to believe that he wanted to wipe his credit card "slate" clean. This is admirable. Unfortunately, there are other expenses associated with his conduct.

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The Library may have lost some Interest opportunity or there may have been other opportunity costs. These are not easily identifiable. They were not identified by the Interim CEO Chris Woodrow as being of major concern. There was also the "time" of Library staff expended on this matter. This is a problem, of course, because staff time is a scarce resource in a public institution. However, this is not easily quantifiable. There is also the cost of the extra auditing that was required because of this conduct. Councillor Maghnieh has publically stated that he intends to reimburse the Library for those auditing costs that are directly attributable to his improper credit card use. As I understand it, he is still in discussion with the Library on this issue. Finally, there will be the cost of this Investigation.

Perhaps, more importantly, there are other costs associated with this affair. These are the costs associated with staff morale at the Windsor Public Library. The affair took its toll on the excellent Administrative staff at the Library but, also, on the morale of the frontline staff as well. There was also a cost to the goodwill and reputation of the Windsor Public Library, both within our community, provincially, nationally, and perhaps even internationally. These costs - Library staff morale and the Library's goodwill and reputation - will be difficult to repay.

To conclude: The main purpose of the Council Resolution was to determine whether Councillor Maghnieh had violated the *Code of Conduct*. Nonetheless, the Resolution directed the Integrity Commissioner to investigate whether "anyone else" was implicated in the Councillor Maghnieh's misuse of the Windsor Public Library corporate credit card.

In the course of my Investigation, I discovered no evidence to suggest that Councillor Hilary Payne, Denny Timm, or Lorena Shepley knew either that a Windsor Public Library corporate credit card had been issued to Councillor Maghnieh or that he was using it contrary to the policies and procedures of the Windsor Public Library. They learned about the existence of the card and Councillor Maghnieh's misuse of it either at the Finance Committee meeting of April 17th, 2012 or at the Library Board Meeting of April 19th, 2012.

Obviously, from the foregoing, it is clear that Library CEO, Barry Holmes, and Finance Committee Chair, Alex Cameron, knew about the existence of the card - Mr. Holmes from the outset and Mr. Cameron from at least December 8th - and were well aware that Councillor Maghnieh was using the card for personal purchases and for other purposes contrary to the policies and procedures of the Windsor Public Library. Throughout the months of January, February, March, and the first half of April, 2012, they failed to bring the matter to the attention of the Finance Committee or the Board. In this sense, at the very least, they were "implicated" in Councillor Maghnieh's misuse of the card. I caution however: I was not able to speak to Mr. Holmes or Mr. Cameron and, therefore, I did not have the benefit of their views on this question. In particular, the events that occurred between February 6th - 10th, 2012, require some explanation.

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Mr. Holmes was an employee of the Windsor Public Library and any further investigation of his conduct would occur in the context of the employer-employee relationship and, consequently, outside of the jurisdiction of the Integrity Commissioner. Mr. Cameron has resigned from the Board and; in my opinion, no longer falls under the jurisdiction of the Office of the Integrity Commissioner.

Analysis:

The Code of Conduct

The question remains: Does Councillor Maghnieh's conduct violate the *Code of Conduct for Members of Council and Local Boards (Restricted Definition)*? In my opinion, it does.

Article XVII states in part: "A number of the provisions of this Code of Conduct incorporate policies and procedures adopted by Council. More generally, members of Council are required to observe the terms of all policies and procedures established by City Council."

Further, Article II states in part: "This *Code of Conduct* applies to all members of Council (including the Mayor)." It goes on to provide: "This *Code of Conduct* also applies, **subject to any necessary modification**, to Council appointments to local boards as defined in section 1(1) of the *Municipal Act*, and to all other appointments to City committees, agencies, boards and commissions." (Emphasis added.) Pursuant to section 1 of the *Municipal Act 2001*, the definition of "local board" includes the "public library board". Therefore, I conclude that the *Code of Conduct* of the City of Windsor applies to Council appointees to the Windsor Public Library Board "subject to any necessary modifications". The "modifications" in this case are to replace, in Article XVII, the "policies and procedures established by City Council" with the policies and procedures established by the Local Board, i.e. the Windsor Public Library Board. Council appointees to Local Boards must follow the policies and procedures of the Local Board and failure to do so will constitute a violation of the *Code of Conduct* of the City of Windsor.

In this case, Councillor Maghnieh's use of the Windsor Public Library corporate credit card for personal purchases was a serious violation of the Windsor Public Library's *Business Expense Policy*, the *Travel, Business, and Meal Expense Policy*, and the *Credit Card Corporate Policy*. In addition, it must be stated, that Councillor Maghnieh's conduct would have violated the City's *Purchasing Card Program - Policies and Procedures* and its *Travel and Business Expense Policy*.

Further, the Preamble to the *Code of Conduct* states: "The key statements of principle that underline the *Code of Conduct* are as follows: ... Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and the City Council." In particular, one may take note of section 18 of the *Public Libraries Act* which states: "A board may reimburse its members for proper travelling and other expenses incurred in carrying out their duties as members." Although this provision is stated in terms of what a Library Board is permitted to do, the

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implication is clear - members should not receive reimbursement for personal expenses unconnected with their duties as members of the Board. Having a corporate credit card which is settled regularly and automatically by the corporation is tantamount to receiving automatic reimbursement of expenses for all charges including those unrelated to the business of the Library Board. Section 283 of the *Municipal Act* similarly permits a Municipality to pay the expenses of members of local boards if "the expenses are of those persons **in their capacity as members**" and, one assumes, not in their personal capacity. Therefore, in my view, Councillor Maghnieh's conduct fails to "uphold both the letter and the spirit of the laws and policies established by the ... Ontario Legislature ..." and constitutes a violation of the *Code of Conduct*.

More generally, the Preamble to the *Code of Conduct* states: "Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all government officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government." Councillor Maghnieh's behavior in using the Windsor Public Library's corporate credit card for personal purchases deviates markedly from the conduct envisioned by the Preamble.

Finally, in my opinion, Councillor Maghnieh's conduct while he was the Chair of the library Board may be scrutinized under the provisions of the *Code of Conduct* in spite of his resignation from the Board. This is unlike a volunteer citizen member whose resignation, in my opinion, causes a loss of jurisdiction. There are a number of reasons for this. Chief among them is the precise text of the *Code of Conduct* itself which is written in the present tense. Once a volunteer citizen member of a Local Board has resigned, practically speaking, there is no possible sanction for their conduct if it has violated the *Code*. As a continuing Member of Council, however; Councillor Maghnieh's behavior remains subject to the provisions of the *Code of Conduct* and the jurisdiction of the Integrity Commissioner.

In conclusion, then, Councillor Maghnieh's use of the corporate credit card of the Windsor Public Library for personal purchases was a serious violation of Article XVII of the *Code of Conduct* of the City of Windsor. Having reached this conclusion, I have refrained from a discussion of whether the conduct might also be a violation of Article V - Gifts and Benefits, Article VII - Use of City Property, Services and Other Resources, and/or Article IX - Improper Use of Influence.

The Appropriate Sanction:

The question, then, is what is the appropriate sanction for this violation of the *Code of Conduct*?

Article XX of the *Code of Conduct* authorizes City Council to impose either of two penalties on a member of Council (or a local board) who has been found to be in violation of provisions of the *Code*. Council may impose either: a) A reprimand; or b) Suspension of the remuneration paid to

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the member in respect of his or her services as a member of council or the local board, as the case may be, for a period of up to 90 days.

As I have concluded above, Councillor Maghnieh's violation of the *Code of Conduct* is a serious one. It is, in my opinion, a clear violation of Article XVII. In addition, however, Councillor Maghnieh's actions contravene the principles set out in the Preamble to the *Code of Conduct*. These principles state that:

- Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- Members of Council should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;
- Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
- Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario legislature, and the City Council.

In particular, and most significantly, Councillor Maghnieh has failed to perform his duties in office and arrange his private affairs "in a manner that promotes public confidence and will bear close public scrutiny". In fact, to the contrary, his actions demonstrated a marked inability to properly separate his public duties from his personal affairs and, as a consequence, public confidence in him, in his fellow Library Board members, in the staff of the Windsor Public Library, and in his colleagues on City Council has, to a greater or lesser extent, been damaged.

Therefore, I do not believe that this is an appropriate case for a simple reprimand under Article XX. There must be a more significant sanction. However, we must bear in mind that Councillor Maghnieh, ultimately, reimbursed the Library for the entire amount of charges on his credit card, regardless of whether any of those charges could have been legitimately considered proper uses of the credit card. Further, he did, ultimately, take responsibility for his conduct and he did offer a statement of contrition and apology to Council, his constituents, and Windsorites more generally. He has indicated to me that he is seeking assistance in dealing with whatever issues led him into these difficulties. Finally, he has paid dearly, both financially as well as in terms of his stature and prestige in the community as a result of his conduct in this matter. Consequently, it does not seem to me that this is a case that calls for the maximum suspension of remuneration of 90 days.

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In light of my recommendation below concerning Councillor Maghnieh's exclusion from Agencies, Boards, and Commissions, I would recommend that Council impose a suspension of the remuneration paid to Councillor Maghnieh for a period of 45 days.

In addition to the sanctions noted above, the Integrity Commissioner may also recommend that Council (or a local board) take the following actions: a) Removal from membership of a Committee or local board; b) Removal as Chair of a Committee or local board; c) Repayment or reimbursement of moneys received; d) Return of property or reimbursement of its value; e) A request for an apology to Council, the complainant, or both.

Pursuant to its powers as a Striking Committee, Council has already removed Councillor Maghnieh from all of his Committee and Board assignments. Although Councillors do not receive any extra remuneration for serving on committees, they do receive stipends for serving on various community boards and agencies. Thus, the financial consequence of Council's decision to remove Mr. Maghnieh from his committees, Boards, and agencies was significant as noted below.

Councillors earn a base salary of approximately \$28, 770.48 per annum. In addition, they share in the total remuneration pool of \$110, 196.20 for their service on Boards and Agencies. Consequently, each Councillor receives \$11, 019.62 per year over and above their base salary. A simple calculation will indicate that Councillors earn a total of approximately \$39, 790.10 annually and that almost 28% of that income is derived from appointments to Boards and Agencies.

It is my understanding that the remuneration for Boards and Agencies is paid out to Councillors on a quarterly basis. Councillor Maghnieh was paid his stipend of \$3331.54 for the 1st Quarter of 2012. He has not received any further payment. If he is not reinstated to any of the Boards and Agencies during 2012, he will have been effectively "fined" \$7688.08 for 2012 by this action. By its actions, therefore, Council has already levied a significant "fine", as it were, on Councillor Maghnieh.

It should be noted that Council set no time limit on this sanction of barring Councillor Maghnieh from appointments to Agencies, Boards, and Committees. In its present form, it is a sanction that could remain in place until the next election. That may be Council's intention but, if so, it ought to be debated and decided as a matter of principle as part of the determination of the appropriate sanctions against Councillor Maghnieh for his violation of the *Code of Conduct*. In determining how long this sanction ought to remain in effect, Council will need to balance competing interests including Council's desire to condemn Councillor Maghnieh's conduct, the importance of crafting an appropriate punishment for Councillor Maghnieh's violation of the *Code of Conduct*, and the important interest of Councillor Maghnieh's constituents in having full

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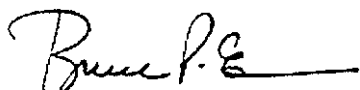
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democratic representation. In this regard, I would recommend that Councillor Maghnieh's removal from Agencies, Boards, and Committees remain in effect for 1 year. In order to accomplish this in the most effective and principled manner, I would suggest that Councillor Maghnieh be required to repay the \$3331.54 previously received and that he be eligible for appointment to Agencies, Boards, and Committees - and, consequently, be able to share in the pooled remuneration for those Agencies and Boards -- for the 2013 calendar year.

This concludes my Report.

Signed at Windsor, Ontario, on the 4th of September, 2012.

SIGNATURE:

A handwritten signature in black ink, appearing to read "Bruce P. Elman", with a horizontal line extending to the right.

Bruce P. Elman
Integrity Commissioner

CONTACT

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