

Date: April 27, 2006

To: Policy and Finance Committee

From: David Mullan, Integrity Commissioner

Subject: Recommendations on Members of Council Providing Letters of Reference

Purpose:

To report on Members of Council providing references.

Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendations:

It is recommended that:

- (1) Council adopt the following rules governing Members of Council providing references for those applying for employment with the City of Toronto or appointment to a City Agency, Board or Commission, or any other position or office with the City:
 1. A Member of Council shall not provide a reference in support of an applicant for employment with the City of Toronto or appointment to a City Agency, Board or Commission, or any other position or office with the City of Toronto, unless that Member of Council has had an employment or other relevant relationship (such as that of teacher or volunteer group supervisor) with the person requesting the reference.
 2. Even where there is such a relevant relationship, a Member of Council shall not provide a reference for any person (a) who is a relative of the Member of Council as defined in the City of Toronto's October 2005 policy regulating the hiring of relatives of other employees or (b) whose only relevant relationship with the Member of Council has been as a member of the public service of the City of Toronto or a City of Toronto Agency, Board or Commission (with the exception of a Member's own staff).

3. In the case of City of Toronto Agencies, Boards and Commissions (and any other situations in which Members of Council participate as decision-makers in a City of Toronto hiring or appointment process), no participating Member of Council shall act as a reference for a candidate for appointment or hiring, and, where a participating Member of Council would otherwise be eligible to act as a reference, the Member of Council shall declare that fact to the appointing authority.

4. For the purposes of these rules, providing a reference includes both written and verbal references and any other form of intervention on behalf of the person in question. However, it does not extend to sending on (without comment) letters of inquiry about possible positions with the City of Toronto to the relevant hiring authority.

(2) Council approve the following guidelines for Members of Council providing letters of reference in any context in their capacity as Members of Council:

Unless the circumstances clearly indicate otherwise:

1. Do not provide “To Whom It May Concern” references.
2. Confine any references to the qualifications for the particular position, grant, or other form of preferment that the requestor is seeking.
3. Do not provide references where the only basis for doing so is to use the influence of your office or to help someone you know merely as a constituent, friend or relative.
4. Confine the provision of references to situations where you have relevant personal experience with the candidate.
5. Send any written reference directly to the addressee; do not give it to the candidate.
6. Do not provide the candidate with a true copy of any written reference; rather, if you are providing the candidate with a copy, do so on non-copiable paper or indicate in the body of the letter that it is not to be copied.

(3) Council refer to the Bellamy Recommendations Steering Committee the question whether there should be an addition to the *Code of Conduct for the Members of Council* of a provision to the effect that it is a violation of that Code of Conduct to act in contravention of any City policy applicable to Members of Council.

Background:

The Basis for this Report

On September 30, 2005, the Mayor asked me to provide advice to Council on the “practice of Members of Council providing references for employment with the City” and to address the question whether Council should amend the *Code of Conduct for Members of Council* (“Code of Conduct”) to include a provision regulating this activity. In the letter of request, he suggested that I take into account:

- The nature of the position being sought;
- The nature of the hiring process;
- Whether your recommendations are affected by the nature of the person applying (i.e. constituent, friend, family member, employee, relative);
- Whether the recommendations are affected by the position of the Member of Council (i.e. a committee chair);
- Any other consideration you deem appropriate

Subsequently, at its meeting of October 7, 2005, the Administration Committee dealt with a motion submitted by Councillor Soknacki requesting me to report to Council “as soon as possible with guidelines on”:

- (a) appropriate responses to requests for letters of recommendation and requests for employment at the City of Toronto;
- (b) the appropriateness of family members of Members of Council being hired by the City, and if so, what disclosure ought to be provided;
- (c) how Members of Council ought to respond to City business decisions where the City employs family members.

In this Report, I respond to the Mayor’s request and to Part (a) of the Administration Committee’s motion. I will deal with the issue of the hiring of relatives of Members of Council in a separate report. In the interests of completeness I have, however, in both reports, interpreted my mandate to include appointments to City of Toronto Agencies, Boards and Commissions and appointees to other City positions, which do not come within the normal reach of the term “Public Service”.

As well as consulting with members of Staff and reviewing other relevant policies and statements on the issue of references, I sent a memorandum to all Members of Council asking them for their views on what should be the policy for Members of Council providing references for those seeking City Hall positions (and also on City hiring of relatives of members of Council). That produced a number of responses, both oral and written. In addition, I received a few unsolicited communications from members of the public.

The Current Rules

At present, there are no policies dealing directly with Members of Council providing references for those seeking City of Toronto positions. It is also clear that the practice among Members of Council varies dramatically from those who never provide references through to those who have no inhibitions in responding to requests from friends and family members as well as constituents who

want their Member of Council to support them in their endeavours to obtain work or preferment with the City.

However, the **use** of such references is currently regulated. Most significantly, written references are not part of the formal hiring and preferment process within the City of Toronto. Rather, the City's hiring procedure calls for the seeking of verbal references only and then only at the point at which those responsible for hiring and preferment decisions or recommendations have either come up with a preferred candidate or established a short list. Prior to that point, unless by some chance the names of referees are embedded in a candidate's dossier, those involved in the hiring decision do not even have the names of potential referees before them.

As well, there are rules in place as to who within this process qualify as appropriate referees. The current guidelines provide:

References and reference letters are only considered when they are from employers and other appropriate sources, e.g. teachers in the case of students with no previous work experience.

In a presentation to the Policy & Finance Committee on October 20, 2005, Human Resources also provided another example, that of a "volunteer coordinator". This has been added to the list of appropriate references contained in the December 8, 2005, City of Toronto Hiring Guide.

As a consequence, Members of Council are not permissible referees unless they come within the accepted categories, such as where the Member of Council has been an employer, teacher or supervisor of the individual applicant. Being a friend, relative or constituent is not enough and references based on those factors alone will not be relied upon even where the Member of Council (as some do) has actually interviewed the applicant with a view to familiarizing herself or himself with the applicant's qualifications and personality.

This does not mean that Members of Council do not write letters of support for candidates for particular positions or for those whose names are on file within the Application Section of Human Resources in anticipation of the posting of positions. However, they play no role in the process of hiring for an already advertised position or in determining which résumés are forwarded to a unit when a position comes to be advertised. For already advertised positions, Human Resources does not forward the letter as part of the candidate's dossier (save perhaps when it is embedded in the candidate's résumé). In the case of unsolicited dossiers that are retained in the pool of potential candidates for future positions, the letters are now removed and Human Resources sends a letter to the Member of Council simply acknowledging receipt of the attached résumé. (This also applies to summer hiring now that this exercise is also part of Resumix, the City's computerized hiring system.) Similarly, the staff of Human Resources and the relevant HR Unit do not respond to in person interventions from Members of Council and, in particular, do not convey any such intervention to those responsible for the hiring decisions.

This Report is also informed by the position taken by the Ontario Integrity Commissioner on Cabinet Ministers, Parliamentary Assistants and Members of the Legislative Assembly "providing letters of reference for individuals seeking employment in the public and private sector." In his 2004-2005 Annual Report to the Legislative Assembly of Ontario, the Honourable Coulter Osborne

(at pages 13-14) identifies a series of considerations that Cabinet Ministers, Parliamentary Assistants and Members should address before agreeing to a request and urging that, if there is any doubt, the Integrity Commissioner should be consulted.

Of the considerations identified, the following are the most pertinent to the situation of Members of Council providing references for those seeking positions with the City of Toronto:

1. Ministers, Parliamentary Assistants and Members should not provide letters of reference for those of whom they have no personal knowledge even if the applicant or candidate is a constituent.
2. Ministers and Parliamentary Assistants by convention are not permitted to advocate on behalf of a private party with any agency, board or commission over which the relevant Minister has jurisdiction, and advocacy is interpreted to include supporting anyone's candidacy for a position with the agency, board or commission.
3. Provided there is a direct reporting relationship in the Ministry between a civil servant and the relevant Minister, Ministers and Parliamentary Assistants may provide references as employers for those seeking other employment in the public sector.
4. Letters of reference should never be "To whom it may concern" because of loss of control.
5. Once again to avoid the use of references for other purposes, letters of reference should focus on the position being sought.
6. In general, letters of reference should be sent to the prospective employer and not given to the applicant.
7. Copies should not be given to the applicant.

Comments:

There are reasons for concern about Members of Council providing references for those seeking employment with the City (and, for that matter, many of the same reasons hold for those seeking appointment to a City Agency, Board or Commission). In Appendix I to this report, I outline some of the problems that can arise where Councillors regularly and without regulation act as referees for candidates for municipal positions.

However, what is clear is that these problems should not arise if a system such as that currently in place at the City of Toronto is working properly. This is a system where references are sought only at the back end of the hiring process at a point where the preferred candidate has already been identified or a short list developed. It is also a system that relies solely on verbal, not written references from only those who have relevant experience with the applicant for the position. Indeed, on its face, it already applies to Members of Council. As a consequence, all that is really required at this stage is that it be made abundantly clear that Members of Council come within the existing

policy and should not be attempting to act as references for those seeking City positions outside the existing regulations.

For reasons identified more fully in Appendix 1, I do not favour excluding Members of Council who otherwise qualify as references from the process. To disqualify Members of Council where they have relevant information to provide about a candidate can be both unfair to the candidate and indeed to the City in its search to find the most suitable person for all advertised positions. The only qualifications that I would attach to that are that Members of Council should not be able to provide references for relatives. Also, they should not be acting as a reference (save in the case of their own office personnel) for a member of Staff or an Agency, Board or Commission seeking preferment within the City even where the Councillor has had what would otherwise be a relevant working relationship with that Staff member. That might in certain instances create an incentive for members of Staff to curry favour at the expense of the independence of judgment expected of public servants in the advice they provide to Members of Council and actions they take as part of their responsibilities.

I therefore recommend that Council should adopt the following policies with respect to Members of Council providing references within the City hiring and appointment processes:

When a Member of Council is asked to provide a reference in support of an applicant for employment with the City of Toronto or appointment to a City Agency, Board or Commission, or any other position or office with the City, the Member of Council shall refuse to do so unless he or she has had an employment or other relevant relationship (such as that of teacher or volunteer group supervisor) with the person requesting the reference.

Even where there is such a relevant relationship, a Member of Council shall not provide a reference for any person (a) who is a relative of the Member of Council as defined in the City of Toronto's October 2005 policy regulating the hiring of relatives of other employees or (b) whose only relevant relationship with the Member of Council has been as a member of the public service of the City of Toronto or a City of Toronto Agency, Board or Commission (with the exception of a Member's own staff)..

In the case of City Agencies, Boards and Commissions (and any other situations in which Members of Council participate as decision-makers in a City hiring or appointment process), no participating Member of Council shall act as a reference for a candidate for appointment or hiring, and, where a participating Member of Council would otherwise be eligible to act as a reference, the Member of Council shall declare that fact to the appointing authority.

I also believe that there is merit in establishing a set of usually applicable guidelines for Members of Council writing references in their capacity as Members of Council and/or on City Council letterhead, whether those references are for employment with the City or in any other context. These guidelines would be along the lines (though with some modifications) of those that the province's Integrity Commissioner has established for Ministers, Parliamentary Assistants, and Members. The primary objective of these guidelines is to prevent Members of Council being embarrassed by the use in any context of references that they have written:

Unless the circumstances clearly indicate otherwise:

1. Do not provide “To Whom It May Concern” references.
2. Write references that speak to the qualifications for the particular position, grant, or other form of preferment that the requestor is seeking.
3. Do not provide references where the only basis for writing is to use the influence of your office or to help someone you know merely as a constituent, friend or relative.
4. Confine the writing of references to situations where you have relevant personal experience with the candidate.
5. Send any reference directly to the addressee; do not give it to the candidate.
6. Do not provide the candidate with a true copy of the reference; rather, if providing the candidate with a copy, do so on non-copiable paper, or indicate in the body of the letter that it is not to be copied.

In the Mayor’s letter requesting me to report to Council, he raised the subsidiary question whether any rules restricting Members of Council from writing references for City positions should be made part of the Code of Conduct for Members of Council (“Code of Conduct”). My initial reaction to that is that it would make for a very unwieldy Code of Conduct if all policies binding on Members of Council were included in the text of the Code of Conduct. That specificity should probably be reserved for the most significant of the obligations of Members of Council and those that overarch or transcend specific policies. As a consequence, my preference is that, if this policy is adopted, it not be added to the Code of Conduct. Rather, the Code of Conduct should be amended to contain a residual catchall provision making it a violation of the Code of Conduct to act in disregard of Council policies.

However, I also understand that the provisions of the existing Code of Conduct will be the subject of a comprehensive review as part of Council’s reaction to the Bellamy Commission Report. In those circumstances, this issue may better be referred to the body that will be responsible for that review.

Conclusions:

The City of Toronto already has in place a general policy on references in hiring and appointment processes that limits the impact of references in the selection process and restricts the providing of references to those who have relevant experience with the candidate. On its face, that policy applies to Members of Council. However, to make that abundantly clear, there should at least be an explicit rule to that effect. However, to move beyond that to a complete ban on Members of Council acting as references within the City would in some instances deny the City access to someone who may be in an excellent, if not the best position to provide relevant information on the candidate’s abilities and qualifications for the position.

As a consequence, my recommendations are based principally on the notion that Members of Council are eligible references but only for applicants and candidates where they are qualified in

terms of the general rules governing the use of references by the City of Toronto in hiring, preferment and appointment processes. The thrust of those rules is to restrict the use of references to situations where the reference has relevant experience as an employer, teacher, or similar setting. Where, however, the candidate is also a relative of the Member of Council, the probity of the system demands that the Member of Council abstain even if otherwise eligible. The same is true of situations where the only relevant experience has been in the context of the candidate's performance as a Staff or Agency, Board or Commissioner member, save in the case of the Member's own staff. I am also making recommendations for regulating the extent to which Members of Council act as referees for those seeking positions and appointments outside the City of Toronto. It is not appropriate for Members of Council to lend the support of their office to candidates for external positions where they are not qualified to do so.

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Appendix 1

Significant Member of Council influence in the choice of those whom the City hires, particularly for high-level positions, can have an adverse impact, both in perception and potentially in reality, on the independence of the Public Service (and Agencies, Boards and Commissions). Member of Council involvement in the selection of public servants and members of Agencies, Boards and Commissions can translate into a sense that those personnel will see themselves as in some way in the debt of or beholden to the recommending Member of Council. Consciously or unconsciously, this may potentially have an impact on the way in which those public servants or members perform their functions. At the higher levels of the Public Service and within Agencies, Boards and Commissions, this influence may be in matters of policy choice. Even at lower levels of job, it may lead the employee to favour the recommending Member of Council in responding to calls for action or in giving priority to certain tasks.

More commonly, it is also likely to have a distorting effect or impact on the hiring process. The fact that a Member of Council is recommending a particular candidate may influence, once again, consciously or unconsciously, those making the selection. Even if that influence is not present in reality, the very hiring of someone recommended by a Member of Council, once that becomes publicly known (as a result of boasting by the successful candidate or otherwise), can easily lead to perceptions of inappropriate influence in the hiring process. Indeed, the media coverage, which led in part to the requests for a report by the Integrity Commissioner, demonstrates graphically how such perceptions (often without factual foundation) can come about.

Aside from possible impact on Public Service and Agency, Board and Commission policy choices or job performance, Members of Council can also benefit in other ways from their influence in or even the perception of their influence in the selection of those for Public Service positions. Most notably, a reputation as someone who is able to secure positions for constituents can have a positive impact on reelection prospects. It translates into votes on Election Day. At one level, of course, this may seem quite benign and a reward for working hard and effectively in the interests of the residents of the Ward. Indeed, for some, it is clearly part of the history or tradition of Ward politics. It is an essential aspect of the Member of Council's role as grass roots facilitator and promoter of the interests of her or his constituents.

However, if the hiring process is meant to be above the interference or influence of politicians, it is a reward that is achieved illegitimately. At its worst, it also leads to situations where certain jobs are seen as the preserve of the Member of Council. Obtaining the Member of Council's endorsement becomes the *de facto* location of the real hiring decision. Thereafter, the process is a sham. It can also lead to a situation where there is a hierarchy of Members of Council exercising such influence, dependent, for example, on factors such as seniority, chairing of a key Committee, or general affability with staff who do the hiring. In such an environment, there can be no guarantee that talents, abilities, and qualifications will be the prime considerations for employment. Rather, the dictating factors may be extraneous considerations such as familial and other connections with the Member of Council, including a payback for past favours.

Given these considerations, there are strong reasons for regulating carefully and closely the extent to which Members of Council play a role in hiring Public Service staff (and members of City Agencies, Boards and Commissions), including the provision of references. This does not mean that Members of Council should never be able to provide a reference for someone applying for a City position. An outright ban would be inappropriate and counter-productive. In setting the rules for acceptable references, the current guidelines for the hiring of employees require that the person providing the reference be an employer, teacher or have some other relevant connection with the applicant. The basis of that policy is that the appropriate role for references in the job selection process is to speak to the candidate's ability to perform a job, and that ability is best captured in situations where the reference has had ample opportunity to observe the performance of the candidate in relevant situations.

Of course, the current policy does not speak specifically to Members of Council as references in such situations. It therefore becomes a question whether the concerns identified above about Member of Council involvement in the hiring process should prevent Members of Council being references even when they otherwise qualify in terms of the current policy. On balance, it is my view that, in those cases, the specific qualifications of the Member of Council to act as an appropriate reference should prevail over the general concerns with any degree of Member of Council involvement. In many instances, to disqualify the Member of Council may be to disqualify someone with highly relevant, if not the most relevant information about the job candidate (as, for example, in the case of a former political staff member). It is in the interests of the process that those reviewing the applicants have the best possible information. Indeed, it is also unfair to

candidates to prevent them from using as references those who have highly relevant information to provide.¹

Reconciling these conflicting considerations may, however, have a different dimension in the case of committees selecting members of Agencies, Boards and Commissions, committees that are either comprised entirely of Members of Council or have significant Member of Council membership. Members of Council who serve on such Committees should not be providing references for candidates for appointment and, indeed, should disclose the fact if they come within the category of those who would otherwise be entitled to act as a reference for a candidate. A much more difficult dilemma is posed by the question whether non-member Members of Council should be able to provide references to such committees on behalf of candidates. Here too, my preference would be to allow Members of Council who otherwise qualify as references to write on behalf of candidates for appointment to Agencies, Boards and Commissions. However, both the Member of Council writing the reference and the committee in determining whether to entertain it should be especially careful in ensuring that the Member of Council's reference is based on personal experience with the candidate in a context that is directly relevant to the candidate's qualifications for the position in question.

If Members of Council are to be bound by the same constraints as apply to the use of references in the hiring process generally, what, if anything should be done to make that clear? There is an argument that there is no need for any further regulation. If a Member of Council provides a reference in a capacity other than one of those currently permissible the current policy is that it will not be part of the candidate's dossier or otherwise considered. Is anything more required beyond this instruction to those involved in the selection of candidates?

Given that the current policy does not speak explicitly to Members of Council and given that Members of Council and those seeking references from Members of Council may not be aware that it applies to Members of Council, I believe that there should be an explicit rule for Members of Council spelled out in those terms. That rule should cover the particular problem of Members of Council providing references for family members, a practice that should be prohibited even if the Member of Council is otherwise eligible (*e.g.* as a former employer or teacher) to provide a reference. There also should be a policy filling the regulatory void that exists in the case of appointments to Agencies, Boards and Commissions.

¹ As noted below, I would not however extend the benefit of this provision to situations where the Member of Council, while coming within the policy, is also a relative of the prospective employee or appointee. In that situation, the probity of the selection process demands that the Member of Council not be involved as a reference.