

NOTICE OF MOTION

Report of Integrity Commissioner on a Complaint of Violation of Code of Conduct for Members of Council – Complaint (2)

Moved by: Mayor Miller

Seconded by: Deputy Mayor Feldman

“**WHEREAS** City Council appointed David Mullan as the Integrity Commissioner for the City of Toronto to provide independent and consistent complaint prevention and resolution, advice, opinion and education respecting the application of the Code of Conduct for Members of Council, and other by-laws/policies governing the ethical behaviour of members, including general interpretation of the *Municipal Conflict of Interest Act*; and

WHEREAS the Integrity Commissioner has submitted a report (May 17, 2006) forwarding a response to a complaint of Violation of the Councillor’s Code of Conduct;

NOW THEREFORE BE IT RESOLVED THAT City Council consider the report (May 17, 2006) from the Integrity Commissioner, and that the report be received for information;

AND BE IT FURTHER RESOLVED THAT, in accordance with the provisions of Chapter 27 of the City of Toronto Municipal Code, leave be granted to introduce and debate this Notice of Motion at the meeting of Council on May 23, 2006.”

May 23, 2006

Attachment - Public Report with Confidential Attachment - C.17(a)

According to Chapter 27 of the Municipal Code, the foregoing Notice of Motion:

Notice was previously given	
Meets Municipal Code provisions and only requires a simple majority to introduce and debate - Integrity Commissioner Complaint Protocol	(√)
Requires two-thirds to waive notice	
Requires two-thirds to re-open	
Fiscal Impact Statement provided	*
Should have Fiscal Impact Statement prior to debate	*
Requires two-thirds to waive requirement if Council wishes to debate	
Should be referred to the Committee/Community Council	
Requires two-thirds to waive referral if Council wishes to debate	
Recommendations are time sensitive	

* Deputy City Manager and Chief Financial Officer to advise.

Date: May 17, 2006

To: City Council

From: David Mullan, Integrity Commissioner

Subject: Report on Complaint of Violation of Code of Conduct for Members of Council (2)

Purpose:

To report on the partial upholding of a complaint that a Member of Council violated Clauses IX (“Conduct Respecting Staff”) and XI (“Discreditable Conduct”) of the Code of Conduct for Members of Council (“Code of Conduct”)

Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendations:

It is recommended that Council receive this report.

Background:

An Executive Assistant to a Member of Council complained that the Member of Council had violated the Code of Conduct by failing to “show respect for [her/his] professional abilities” (Clause IX) and by failing to treat her/him “fairly” and engaging in discriminatory and harassing conduct (Clause XI). More particularly, he/she alleged that this misconduct occurred during the last year of his/her employment with the Member of Council and in the way in which the Member of Council terminated her/his employment.

I investigated the complaint under Part B (“Formal Complaint Protocol”) of the Council Code of Conduct Complaint Protocol (“Complaint Protocol”)

Comments:

On the basis of my investigation, I concluded that one aspect of the conduct of the Member of Council violated Clause XI of the Code of Conduct. My reasons are set out more fully in Appendix A, a confidential attachment to this report and constituting my decision in this matter that the City Clerk distributed to the parties.

The complainant worked for the Member of Council as Executive Assistant for seven years. For six of those years, the working relationship between the two was on a very sound footing and one founded on mutual trust and respect and eventually friendship. About a year before the Member of Council terminated the Executive Assistant, cracks began to appear in the relationship and the atmosphere of mutual trust and respect dissipated. A number of events contributed to this including the Member of Council hiring a second Executive Assistant with whom the original Executive Assistant never came to terms. There was fault on both sides as this deterioration continued.

Eventually, this led to the Member of Council firing the Executive Assistant, only to reinstate her/him days later. At this critical point, however, there were no real endeavours on either side to get to the root of the problem of the fractured working relationship. Shortly thereafter, following an embarrassing set of events for which the Member of Council blamed the complainant, he/she again dismissed the complainant. Two days prior to doing so, the Member of Council presented the Executive Assistant with an account of the set of events that laid the blame for what had happened at the door of the Executive Assistant. He/she asked for a written response that day. The Executive Assistant wrote back asking for more time; relevant material was on her/his home computer and the next day was a holiday. The Member of Council did not respond. However, two days later, the Executive Assistant provided the Member of Council with a detailed response containing a very different version of events. Without further investigation, the Member of Council that same afternoon dismissed the Executive Assistant relying on her/his legal right to do so without cause.

While Members of Council do, indeed, have the legal right to dismiss their political staff without cause, this does not mean that the political staff of Members of Council do not have protection under Clauses IX and XI of the Code of Conduct. Within that legal framework, they are entitled to be treated with due respect for their professional abilities (Clause IX) and fairly and without harassment and discrimination (Clause XI).

After an extensive investigation, I concluded that, while the Member of Council was less than forthcoming in her/his dealings with the complainant Executive Assistant for a period of approximately twelve months, the Executive Assistant also bore some responsibility for the increasingly dysfunctional nature of their relationship. Indeed, these matters came to a head with the original dismissal of the Executive Assistant and it was reasonable to expect from that point onwards, the two parties would have worked together to ensure that their differences were put aside and that the relationship was reestablished on firm footing with expectations on both sides clearly established and lines of communication reopened. That never happened and the reoccurrence of friction was clearly predictable. By the time, the Member of Council terminated the complainant again some six weeks later, the relationship was almost certainly permanently fractured. Nonetheless, by putting in issue the Executive Assistant's role in the embarrassing set of events, the Member of Council was both indicating that he/she considered this to be a culminating event and at the same providing the complainant to provide her/his response and, in particular, her/his version of her/his role in those events. In fact, the Member of Council, having offered that opportunity, never allowed it to be taken. In this respect, the Member of Council treated the complainant unfairly in terms of Clause XI.

It is my view that, despite the fact that I have not sustained the bulk of the Executive Assistant's complaints against the Member of Council, he/she is entitled to a finding that, in that one important respect, the Member of Council did not treat her/him fairly. However, I have also concluded that,

given everything else that had gone on in the course of this employment relationship over the previous twelve months, it was not appropriate to recommend any sanction against the Member of Council. Rather, in terms of Section 5 of the Formal Complaint Protocol, this was a “contravention [that] occurred through inadvertence” and that no penalty be imposed.

Conclusions:

Over a twelve month period, a formerly strong working relationship between a Member of Council and her/his Executive Assistant went sour. The reasons for this were many and complex and each shares some of the blame. With one exception, I was not prepared to find that the conduct of the Member of Council constituted a violation of the Code of Conduct. The one exception occurred at the time of the Member of Council’s termination of the Executive Assistant. There was a culminating incident that precipitated this. The Member of Council seemed to have provided the Executive Assistant to explain her/his actions in relation to that culminating incident. However, the Member of Council in effect deprived her/him of the opportunity of giving her/his version of events by dismissing her/him before evaluating her/his response. In terms of Clause XI of the Code of Conduct, this was unfair. However, given all the other circumstances, I am not recommending that Council impose any penalty on the Member of Council. I have concluded that this was a “contravention [that] occurred through inadvertence” as stipulated in Section 5 of the Formal Complaint Protocol.

David Mullan
Integrity Commissioner

Attachment: Appendix A (Confidential Report on Complaint)

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