

**NOTICE OF MOTION**
**Follow up Report of the Integrity Commissioner on an Employee Issue**
**Moved by: Mayor Miller**
**Seconded by: Deputy Mayor Feldman**

“**WHEREAS** the Integrity Commissioner submitted a report on a complaint of violation of the Councillor’s Code of Conduct to the May 23, 24 and 25, 2006 Council Meeting; and

**WHEREAS** Council referred the matter to the City Manager and the City Solicitor with a request that they provide advice to the Integrity Commissioner on employee issues, and requested the Integrity Commissioner to submit a further report to City Council; and

**WHEREAS** the Integrity Commissioner has submitted a further report in response to this direction;

**NOW THEREFORE BE IT RESOLVED THAT** City Council consider the report (June 27, 2006) from the Integrity Commissioner, and that the recommendation contained in the Recommendations Section of the report be adopted;

**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 June 27, 2006.”

June 27, 2006

Attachment

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

|   |     |
|---|-----|
| Notice was previously given   |     |
| Meets Municipal Code provisions and only requires a simple majority to introduce and debate – Integrity Commissioner reporting 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: June 27, 2006  
To: City Council  
From: David Mullan, Integrity Commissioner  
Subject: Employee Issue Arising Out of an Earlier Integrity Commissioner Report

Purpose:

To report back as requested by Council at its meeting of May 23, 24, and 25, 2006, with respect to my report of May 17, 2006 and attached to Notice of Motion J(17).

Financial Implications and Impact Statement:

This report has no financial ramifications.

Recommendations:

It is recommended:

That Council refer my report to the City Manager to resolve the personnel issue.

Background:

On May 17, 2006, I reported to Council on a complaint that a member of Council had violated the Code of Conduct for Members of Council ("Code of Conduct") in dismissing a member of her/his staff. I recommended in that Report that Council authorize City officials to work with the complainant, COTAPSAI and OMERS to explore the feasibility of a settlement that would allow the complainant to retire on a full pension from the date on which he/she ceased to accumulate service for pension purposes. Questions were raised in Council about the legality and appropriateness of such an outcome and the matter was referred to the City Solicitor to provide a legal opinion on my recommendations and for me to report back to Council in the light of that advice.

Comments:

The City Solicitor has provided me with confidential legal advice with respect to the employment issues raised in my report. This advice has also been provided to the City Manager.

Conclusions:

At this stage, it is appropriate that Council refer the resolution of the staff member's employment with the City to the City Manager for action in light of the findings of the Integrity Commissioner and the opinion of the City Solicitor.

David Mullan  
Integrity Commissioner

Attachment: Appendix A (Report on Complaint of Violation of Code of Conduct for Members of Council (1), dated May 17, 2006, as attached to Notice of Motion J(17) of the meeting of Council held on May 23, 24, and 25, 2006)

Contact:

David Mullan  
Integrity Commissioner  
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**Appendix A**

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 (1)

Purpose:

To report on the 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:

If the recommendations in this Report are adopted, the City may need to make additional contributions to the complainant’s pension plan.

Recommendations:

It is recommended that

- (1) City Council instruct the City Manager to ensure that appropriate protocols are in place for regular and appropriate Member of Council evaluation of the performance of members of their staff; and
- (2) City Council authorize the appropriate officials to work together with the complainant, COTAPSAI and OMERS to provide the complainant with the opportunity to retire on a full pension as of the date he/she ceased to accumulate service for pension purposes.

Background:

An Administrative 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” (Clause XI). More particularly, he/she alleged that this misconduct occurred when the Member of Council terminated her without warning after over 12 years of employment with the Member of Council and over 26 years of service overall with the City of Toronto and within a short time of he/she accumulating sufficient service to be able to retire early on a full pension under the arrangements available at that time.

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 the Member of Council did violate Clauses IX and 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 was a non-unionized employee of the City for over 26 years. For over twelve of those years, he/she had been the Administrative Assistant to the same Member of Council. When he/she joined the Member of Council's staff, he/she remained a permanent employee of the City of Toronto.

Despite the fact that the relationship between the Member of Council and the Administrative Assistant was at times a tempestuous one, the Administrative Assistant performed her/his duties competently and with dedication. The Member of Council never provided her with any form of formal evaluation.

A short time before the Administrative Assistant became eligible to retire early under the Plan then in effect with a full pension, the Member of Council terminated her/his employment. In doing so, the Member of Council informed the Administrative Assistant that he/she was relying of her/his legal right to terminate the Administrative Assistant without cause and also that he/she was doing so for budgetary reasons. In fact, by her/his own admission, the Member of Council had become disenchanted with the Administrative Assistant's performance over recent months. However, he/she had never raised this with the Administrative Assistant nor alerted her/him to any potential budgetary problems.

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). This applies especially in the case of long time employees for whom employment with the City and the Member of Council has in effect been a career with an expectation of retiring with a pension. Among the entitlements that those in the position of this Administrative Assistant have is be evaluated regularly, alerted to deficiencies in performance, and the opportunity to rectify failings. Despite the fact that the Member of Council had growing concerns with the performance of the complainant, he/she did none of these things. That constituted a violation of the Code of Conduct.

#### Conclusions:

When the Member of Council dismissed her/his Administrative Assistant, he/she failed to have sufficient regard to the expectations that the Administrative Assistant had built up over many years of employment in the Member of Council's office: that, as a long time employee of the City and the Member of Council, he/she would be given due notice of any deficiencies with her/his performance that were likely to trigger the Member of Council's legal entitlement to dismiss her/him without cause as well as an opportunity to remedy those deficiencies. In the particular circumstances of this Administrative Assistant, it was not sufficient for the Member of Council to simply stand on her/his legal rights or to use budgetary constraints as a justification especially when that was not by any

means the whole basis for the termination. By failing to meet the Administrative Assistant's expectations of a warning and the opportunity to rectify the situation, the Member of Council violated Clauses IX and XI of the Code of Conduct. He/she did not treat the Administrative Assistant with "respect for [her/his] professional abilities" or "fairly".

In the circumstances, the appropriate remedy is not any direct sanction against the Member of Council or to recommend that the Administrative Assistant be reinstated to her/his position or provided with another equivalent position with the City. Rather, the reality that he/she was very close to early retirement on full pension should be recognized and that every endeavour should be made to ensure that he/she be provided with the opportunity to retire on a full pension as of the date that he/she ceased accumulating credit for pension eligibility. Any such negotiations should involve the complainant, the City of Toronto Administrative, Professional, Supervisory Association, Incorporated ("COTAPSAI") (which represented her/him throughout my investigation), appropriate officials in the City of Toronto, and OMERS.

In addition, the City Manager should instruct her Staff to ensure that appropriate protocols are in place for Members of Council to conduct regular and appropriate evaluations of the performance of their political staff.

David Mullan  
Integrity Commissioner

Attachment: Appendix A (Confidential Report on Complaint)

Contact:

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