

Clause embodied in Report No. 2 of the Policy and Finance Committee, as adopted by the Council of the City of Toronto at its meeting held on March 1, 2 and 3, 2004.

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Options for the Establishment of a City Integrity Commissioner

(City Council on March 1, 2 and 3, 2004, adopted this Clause, without amendment.)

The Policy and Finance Committee recommends:

- (1) the adoption of the report (February 10, 2004) from the Chief Administrative Officer; and**
- (2) that the following members of the Policy and Finance Committee be appointed to the proposed selection panel to recommend a preferred candidate for the City Integrity Commissioner:**

**Deputy Mayor Sandra Bussin;
Deputy Mayor Joe Pantalone; and
Councillor David Soknacki.**

The Policy and Finance Committee submits the following report (February 10, 2004) from the Chief Administrative Officer:

Purpose:

To summarize actions and policies implemented to-date respecting a range of integrity and lobbyist matters and to recommend options for the appointment of a City Integrity Commissioner.

Financial Implications and Impact Statement:

The appointment of an Integrity Commissioner will create an additional 2004 Operating Budget pressure of \$90,000.00, based on an annualized estimate of \$200,000.00

There will be future financial implications, if the province approves legislative changes enabling the City to establish a full model Integrity Commissioner and Lobbyist Registry function.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

Recommendations :

It is recommended that:

- (1) City Council recruit and hire a City Integrity Commissioner 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 (“Code of Conduct”) and other by-laws/policies governing the ethical behaviour of members, including general interpretation of the *Municipal Conflict of Interest Act*;
- (2) the Policy and Finance Committee establish a three-member sub-committee as the selection panel to recommend a preferred candidate for City Integrity Commissioner to be selected from a short-list of candidates recruited by an independent search firm retained by the Chief Administrative Officer;
- (3) the City continue to seek the enabling legislation necessary for Council to enact by-laws implementing full Integrity Commissioner and Lobbyist Registry functions based on the provincial model;
- (4) the Complaint Protocol for the Code of Conduct be replaced by the Complaint Protocol in Appendix 2 and inserted in the Code of Conduct as Schedule 2, effective upon the appointment of an Integrity Commissioner to replace the use of external counsel and the role of the Ethics Steering Committee in the complaint process;
- (5) the Budget Advisory Committee be requested to give consideration to an additional \$90,000.00 for the 2004 Operating Budget, to establish a City Integrity Commissioner function, inclusive of the recruitment process and based on an annualized budget of approximately \$200,000.00;
- (6) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background :

At its meeting of January 27, 28 and 29, 2004, Council adopted Clause No. 11, Report No. 1 of the Policy and Finance Committee, recommending that:

- (1) the Chief Administrative Officer and City Solicitor proceed with drafting by-laws that would establish the lobbyist registry and integrity commissioner that Council could enact when it has the full legislative authority to do so; and
- (2) the Chief Administrative Officer and City Solicitor report to the February Policy and Finance Committee meeting:
 - (a) summarizing Council actions and positions adopted to-date with respect to lobbying and integrity;

- (b) setting out the options for the appointment of an Integrity Commissioner pending the legislative changes needed to appoint an official with investigative powers; and
- (c) updating Council on discussions with provincial officials on Council's requests for legislative changes.

Work is underway to address Recommendation No. (1) above and will be fully reported to Council when complete. This report addresses Recommendation No. (2).

Discussion:

(1) Overview of City Action to-date Respecting Integrity and Lobbying:

City Council has already put in place numerous measures to enhance the integrity of the City's administrative and governance systems. These are more fully described in Appendix 1, but include the following:

- (a) adoption of a Code of Conduct for Council Members (Council Code of Conduct);
- (b) adoption of a Complaint Protocol for handling complaints under the Council Code of Conduct;
- (c) implementation of a Fraud Policy and fraud and waste hotline;
- (d) adoption of an Employee Conflict of Interest Policy;
- (e) Lobbyist Disclosure Policy for certain procurement activities;
- (f) voluntary lobbyist registry for members of Council;
- (g) approval to request the province for powers to establish a lobbyist registry based on the provincial model; and
- (h) approval to request the province for powers to appoint an integrity commissioner based on the provincial model.

(2) Establishing a City Integrity Commissioner Function:

Council has already expressed its desire to appoint an Integrity Commissioner based on the provincial model for which legislative change is required by the City. It is possible, however, to appoint an Integrity Commissioner (with limited responsibilities) in the absence of the full range of desired powers. Upon obtaining legislative authority, Council could then expand the Integrity Commissioner function to have greater powers and protections.

(a) Duties of a City Integrity Commissioner:

The duties of City Integrity Commissioner within present City authority, should be as follows:

- (i) Advisory: providing written and oral advice to individual members of Council about their own situation respecting the Code of Conduct and other by-laws/policies governing the ethical behaviour of members, including general interpretation of the *Municipal Conflict of Interest Act*;

and, providing the full Council with specific and general opinions and advice respecting compliance by elected officials with the provisions of governing Acts, and other conduct policies;

- (ii) Complaint Investigation: having the power to assess and investigate complaints to the Integrity Commissioner from a member of Council/public, or the whole Council;
- (iii) Complaint Adjudication: determining whether a member of Council has in fact violated a City protocol, by-law or policy governing their ethical behaviour except that (as in the provincial model) Council makes the final decision on whether any penalty (limited under present City authority) recommended by the IC is imposed on the member found in contravention; and
- (iv) Educational: publishing an annual report on findings of typical advice and complaint cases; providing outreach programs to members of Council and staff on legislation, protocols, and office procedures emphasizing the importance of ethics for public confidence in municipal government; and disseminating information available to the public on the City's web site.

While it is possible for many of the advisory and educational roles of the proposed City Integrity Commissioner to be undertaken without enabling legislation from the province, it is still the case that some limits will need to be set. For example, in order to eliminate duplicate requests for advice on the same matter, the Integrity Commissioner will not be able to provide advice to a Council member on matters under consideration or being investigated elsewhere. It is likely that the Integrity Commissioner will receive requests for advice on matters involving compliance with the *Municipal Conflict of Interest Act* (the "MCIA"). While the Integrity Commissioner may provide general interpretation of the MCIA, it is expected that members seek independent legal advice on a specific question of individual compliance with the MCIA.

It is, therefore, recommended that a City Integrity Commissioner function be established 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 ("Code of Conduct") and other by-laws/policies governing the ethical behaviour of members, including general interpretation of the *Municipal Conflict of Interest Act*.

(b) Qualifications and Recruitment:

Given the special role of such an official in advising Council, it would be appropriate for the City Integrity Commissioner to be recruited using the services of an independent search firm. Appointment of the Integrity Commissioner would be recommended by a selection panel of Council members. One option for

Council would be to strike a selection panel comprised of members of the Policy and Finance Committee.

It is important that a City Integrity Commissioner meet a set of qualifications that ensures the greatest independence from the members of Council and the business of the city. Accordingly, it is recommended that the following qualifications be used in the recruitment process for the proposed City Integrity Commissioner:

- (i) membership in the Law Society of Upper Canada;
- (ii) municipal or other administrative law experience;
- (iii) municipal law adjudication experience;
- (iv) proven impartiality and neutrality such as that of a judge;
- (v) able to provide services on a part-time, flexible, and as-needed basis, without competing employment demands;
- (vi) having no other dealings or employment with the City;
- (vii) having no involvement in political campaigning/endorsements, or related conflict-of-interest;
- (viii) having no financial interest in the work undertaken by the City;
- (ix) initial appointment term not to exceed one year;
- (x) term renewal/extension not to exceed a total of five years;

It is, therefore, recommended that the Policy and Finance Committee establish a three-member sub-committee as the selection panel to recommend a preferred candidate for City Integrity Commissioner to be selected from a short-list of candidates recruited by an independent search firm retained by the Chief Administrative Officer.

(c) Additional Powers:

To strengthen the complaint investigation role of the proposed Integrity Commissioner, Council requires legislative authority to enact a by-law on integrity matters. Specifically, there are exemptions from the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), immunity from proceedings, and penalty authorities required through legislation. Most of these requirements accrue to the complaint investigation and adjudication roles of the proposed Integrity Commissioner:

- (i) exemption from *MFIPPA* to permit confidential disclosure to the City Integrity Commissioner (with certain exceptions) to limit access to defamatory/personal information;
- (ii) exemptions from *MFIPPA* so Council may publicize its complaint decisions and actions;
- (iii) special procedural provisions including the Integrity Commissioner and any staff's immunity and exception from testifying, access to information, inquiry powers and limitation provisions; and
- (iv) powers for Council to implement and impose meaningful sanctions and penalties for non-compliance with the Code of Conduct.

Enabling legislation is required to permit the City, by future by-law, to establish a lobbyists registry and to appoint the City Integrity Commissioner as Registrar.

It is therefore recommended that the City continue to seek the enabling legislation necessary for Council to enact by-laws implementing full Integrity Commissioner and Lobbyist Registry functions based on the provincial model.

(d) Financial Implications:

If the City proceeds with establishing a part-time City of Toronto Integrity Commissioner, it is estimated that the annualized cost will be up to \$200,000.00 dependent on the demand to undertake the recommended complaint investigation and adjudication, advisory and educational responsibilities. Assuming that the appointment is made by June 1, 2004, there would be a new 2004 operating budget pressure of approximately \$90,000.00, inclusive of the costs to undertake a recruitment process using the services of an external search firm.

These estimates are based on a rate of pay reflecting the part-time nature of the City Integrity Commissioner, potential costs associated with settlement and reimbursement of certain legal costs, and administrative overhead cost.

It is, therefore, recommended that the Budget Advisory Committee be requested to give consideration to an additional \$90,000.00 for the 2004 operating budget, to establish a City Integrity Commissioner function, inclusive of the recruitment process and based on an annualized budget of approximately \$200,000.00.

In anticipation of authority being received at a future point in time to establish a City Lobbyist Registry, total annualized costs are estimated at up to \$450,000.00, assuming a combined Integrity Commissioner office and Lobbyist Registry function. Of that amount, estimated requirements are \$350,000.00 for staff resources inclusive of salaries and benefits for a full-time City Integrity Commissioner, Registrar, clerk, and technician and, \$80,000.00 for computer and photocopier equipment, software, and office space in City Hall. An estimate of \$20,000.00 has been made for the use of occasional external legal advice and communication services. In addition, there would be one-time, start-up costs of at least \$50,000.00, assuming customization of a system based on that of the provincial system.

(e) Amending the Complaint Protocol and the Council Code of Conduct:

The Complaint Protocol for the Council Code of Conduct was implemented to handle public and Councillor complaints using the services of external legal counsel. Accordingly, the Ethics Steering Committee (ESC) was given a role to forward complaints to external counsel after classification in consultation with the Solicitor. Similarly, ESC would forward to Council the report findings and recommendations from external counsel without endorsement, comment, or

editing, and would recommend on the disclosure aspects of report findings by Council.

Upon the appointment of an Integrity Commissioner, the use of external counsel and the ESC under the Complaint Protocol will no longer be required since the Integrity Commissioner will assume responsibility for these roles.

It is, therefore, recommended that the Complaint Protocol for the Code of Conduct be replaced by the Complaint Protocol in Appendix 2 and inserted in the Code of Conduct as Schedule 2, effective upon the appointment of an Integrity Commissioner to replace the use of external counsel and the role of the Ethics Steering Committee in the complaint process.

(3) Status of Discussion with the Ministry of Municipal Affairs:

As directed, City staff are consulting with staff of the provincial Ministry of Municipal Affairs (MMA) on legislative amendments to confer the powers and authority needed by the Council to establish an Integrity Commissioner office and a Lobbyist Registry system similar to the provincial model.

To-date, there have been meetings between legal staff of the City and the MMA, as well as meetings between policy staff of the two organizations. In order to facilitate the process of obtaining legislative change, MMA has indicated that it would like to see draft City by-laws providing the details of the Integrity Commissioner and Lobbyist Registry functions envisaged by the City. Council previously authorized drafting these by-laws and development is underway.

Conclusions:

This report informs Council of the City actions and policies implemented to-date respecting a range of integrity and lobbyist matters. Further to these achievements, Council has expressed its desire to establish City Integrity Commissioner and Lobbyist Registry functions similar to provincial models.

Notwithstanding the need for enabling legislation from the province it is possible under present City authority to appoint an Integrity Commissioner (with limited responsibilities, powers and protections). Accordingly, a City Integrity Commissioner model is being recommended for adoption by Council. An associated Complaint Protocol for the Council Code of Conduct, and a budget and recruitment process to implement the Integrity Commissioner are also recommended.

Discussion with staff of the provincial Ministry of Municipal Affairs has commenced as directed by Council to obtain enabling legislation for an Integrity Commissioner function with greater powers and protections, as well as to establish a Lobbyist Registry function not presently permitted under existing municipal authority.

This report has been prepared in consultation with the City Solicitor.

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List of Attachments:

- Appendix 1: City Initiatives to Address Integrity and Lobbying
- Appendix 2: Council Code of Conduct Complaint Protocol for an Integrity Commissioner

Appendix 1

City Initiatives to Address Integrity and Lobbying

Part I: Summary of Reports and Policies

(a) Reports Considered by Council:

In chronological order, Council has considered the following reports on integrity and lobbying:

- (i) "Interim Report on a Registry of Lobbyists and Related Matters" in June 1998;
- (ii) "Code of Conduct for Members of Council" and establishment of the Ethics Steering Committee, in September 1999;
- (iii) "Procedures under the Lobbyists Registration Act, 1998" in April 2000;
- (iv) "Employee Conflict of Interest Policy", in August 2000;
- (v) "Lobbying Disclosure Policy for Certain Requests for Proposals and Tender/Quotation Calls" in March 2001;
- (vi) "Fraud Policy" and Hotline in April 2001 (revised in April 2002);
- (vii) "Feasibility of a Lobbyist Registration Policy Similar to Provincial and Federal Models" in April 2002;
- (viii) "Code of Conduct Complaint Protocol" and support to make application to the province for enabling legislation to establish an Integrity Commissioner, in November 2002;
- (ix) "Establishing a City Lobbyist Registry Similar to Provincial and Federal Systems: Implementation Issues, Costs and Requirements" and support for an interim, voluntary registry for Council members, in February 2003; and
- (x) "Request for Provincial Enabling Legislation to Establish a City Lobbyist Registry within the Office of a City Integrity Commissioner" in September 2003.

(b) Summary of Integrity Policies and Initiatives:

A brief description of major Integrity related policies/initiatives at the City of Toronto, follows:

- (i) Code of Conduct for Council Members, 1999:
 - consistent with and supplements, statutory provisions governing Members;
 - inclusive of definitions and guidelines to deal with lobbyists;
 - established Ethics Steering Committee to refine policy and complaint procedure;
- (ii) Complaint Protocol for Council Code of Conduct, 2002:
 - developed to handle complaints alleging breaches of the Code of Conduct;
 - ESC roles: (a) with Solicitor, classify complaint; must fit Protocol parameters; and (b) transmits investigation results from external lawyer for Council decision;
 - an interim process until such time as an Integrity Commissioner is in place;
- (iii) Approves making Application to province for an Integrity Commissioner, 2002 for the function to advise, investigate complaints and provide educational information respecting the Code of Conduct for Council Members and related conflict of interest legislation;
- (iv) Fraud Policy and Hotline, 2002:
 - for elected officials and City employees to report suspected wrongdoing/fraud;
 - inclusive of protection for parties disclosing non-frivolous information;
- (v) Employee Conflict of Interest Policy, 2000:
 - sets out expectations, 'q and a' examples respecting conflicts of interest;
 - inclusive of definitions and guidelines to deal with lobbyists;
 - requires annual review for awareness/conformance to policy;
- (vi) Related policies such as:
 - conflict of interest guidelines for dealing with city-operated courts;
 - employment/hiring of relatives/family members for staff and Council members;
 - re-Employment of Former Employees after Re-organizing; and
 - various procurement procedures designed to minimize conflict of interest.

(c) Summary of Lobbyist Policies and Initiatives:

A brief description of major Lobbyist related policies/initiatives at the City of Toronto, follows:

- (i) Code of Conduct for Council and Employee Conflict of Interest Policy include definitions and guidelines for identifying and dealing with lobbyists/lobbying;
- (ii) Lobbying Disclosure Policy for Certain Competitive Calls, 2001:
 - onus on proponents to disclose names of lobbyists used on certain calls;
 - provides for Council to impose a total ban on lobbying for any competition;
 - court challenge lost since no City attempt to “regulate” lobbyists;
- (iii) approves making Application to province for a Lobbyist Registry in the office of an Integrity Commissioner, 2003;
- (iv) Voluntary Lobbyist Registry for Council Members, 2003:
 - acknowledges limitations to full-model registry under present City authority;
 - sign-in logbook for all contacts recommended for implementation by Councillors;
 - voluntary participation with logs to be available to the public.

Appendix 2

Council Code of Conduct Complaint Protocol for a City Integrity Commissioner

Part A: Informal Complaint Procedure:

Individuals (for example, City employees, members of the public or members of Council) or organizations who have identified or witnessed behaviour or an activity by a member of Council that they believe is in contravention of the Code of Conduct for Members of Council (the “Code of Conduct”) may wish to address the prohibited behaviour or activity themselves as follows:

- (1) advise the member of Council that the behaviour or activity contravenes the Code of Conduct;
- (2) encourage the member of Council to stop the prohibited behaviour or activity;
- (3) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;

- (4) tell someone else (for example, a senior staff member or an officer of the organization) about your concerns, your comments to the member of Council and the response of the member of Council;
- (5) if applicable, confirm to the member of Council your satisfaction with the response of the member of Council; or, if applicable, advise the member of Council of your dissatisfaction with the response; and
- (6) consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with an applicable judicial or quasi-judicial process.

Individuals and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code of Conduct. However, it is not a precondition or a prerequisite that they pursue the informal complaint procedure prior to pursuing the formal complaint procedure in Part B.

Part B: Formal Complaint Procedure: Integrity Commissioner:

Requests for Inquiries s.1

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| Review request | 1.(1) A member or non-member of Council, who has reasonable and probable grounds to believe that a member of Council has contravened the Code of Conduct for Members of Council (the “Code of Conduct”), may request that the matter (the “complaint”) be reviewed. |
| Complaint | <ol style="list-style-type: none">(2) The request shall be in writing and shall set out the grounds for the belief and the contravention alleged.(3) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization.)(4) A complaint shall set out the grounds for the belief and the contravention alleged and include a supporting affidavit that sets out the evidence in support of the complaint.

For example, facts should include the name of the alleged violator, the provision allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information respecting the complainant during normal business hours.(5) Staff of the City Clerk’s division, who are commissioners for taking affidavits, are authorized to take the supporting affidavit. |

Initial Classification by Integrity Commissioner s.2

- File with Clerk 2.(1) The request shall be filed with the City Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council policies as described in subsection (3).
- Deferral (2) If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until an affidavit is received.
- (3) If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner shall instruct the City Clerk to advise the complainant in writing as follows:
- (a) if the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the City of Toronto Police Service;
- (b) if the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
- (c) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the Director of the Corporate Access and Privacy Office for review;
- (d) if the complaint on its face is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
- (e) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

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- Reports
- (4) The Integrity Commissioner may report to Council on a complaint not within the jurisdiction of the Integrity Commissioner.
 - (5) The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.
- Integrity Commissioner Investigation ss. 3-7
- Investigation
- 3.(1) If a complaint has been classified as being within the Integrity Commissioner's jurisdiction, the Commissioner shall investigate and may attempt to settle the complaint.
 - (2) The Integrity Commissioner will proceed as follows:
 - (a) serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation be filed within ten days; and
 - (b) serve a copy of the response provided upon the complainant with a request for a written reply within ten days.
 - (3) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, examine any other documents relevant to the complaint and may enter any City work location relevant to the complaint for the purposes of investigation and settlement.
 - (4) The Integrity Commissioner may make interim reports to Council as required to address any instances of interference, obstruction or retaliation encountered during the investigation.
- Final report
- (5) The Integrity Commissioner shall submit a final report on the complaint to Council, no later than 90 days after the making of the complaint, outlining the findings, the terms of any settlement, or recommended corrective action.
- Lawful recommendations
- (6) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.

- Refusal to conduct inquiry 4. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an inquiry, the Integrity Commissioner shall not conduct an inquiry and shall state the reasons for not doing so in the report.
- Member not blameworthy 5. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.
- Copies 6. The City Clerk shall give a copy of the report to the complainant and the member whose conduct is concerned.
- Report to Council 7. The City Clerk shall process the report to the next meeting of Council.

Council Review ss. 8-9

- Duty of Council 8. Council shall consider and respond to the report within 90 days after the day the report is laid before it.
- Payment of costs 9.(1) A complainant and a member of Council who are parties to a complaint under this procedure shall each be reimbursed for actual and reasonable legal and related expenses up to \$5,000.00.
- (2) Council may consider the reimbursement of costs above the limit in subsection 9(1) on a case by case basis.
- (3) Costs shall only be reimbursed under this section to the complainant, if the Integrity Commissioner concludes that the complaint is not frivolous, vexatious or made in bad faith.
- (4) Costs shall only be reimbursed under this section to the member of Council, if the Integrity Commissioner concludes that that there has been no contravention of the Code of Conduct by the member of Council.

Councillor Mike Del Grande, Scarborough-Agincourt, appeared before the Policy and Finance Committee in connection with the foregoing matter.