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These Minutes were confirmed by City Council on April 25, 2006.

**MINUTES OF A SPECIAL MEETING  
OF THE COUNCIL OF THE  
CITY OF TORONTO**

**TUESDAY, JANUARY 31, 2006**

City Council met in the Council Chamber, City Hall, Toronto.

**CALL TO ORDER - 5:10 P.M.**

S2.1 Mayor Miller took the Chair and called the Members to order.

**S2.2 NOTICE OF SPECIAL MEETING**

Mayor Miller advised the Council that the purpose of this special meeting is to hear from those persons who have indicated their interest in being appointed to the office of Councillor - Ward 41 - Scarborough-Rouge River and the office of Councillor - Ward 20 - Trinity-Spadina, and to appoint persons to fill the vacancies, as required under the provisions of the *Municipal Act, 2001*, in accordance with the process approved by Council on December 5, 6 and 7, 2005.

**S2.3 DECLARATIONS OF INTEREST**

There were no declarations of interest.

**S2.4 Procedures for Filling the Vacancies in the Office of Councillor - Ward 41 - Scarborough-Rouge River and the Office of Councillor - Ward 20 - Trinity-Spadina, by Appointment**

Mayor Miller advised that Council had approved the following process for these appointments:

“Council will consider each vacancy separately.

Each of the candidates for a vacancy will have an opportunity to address Council for a period of not more than five minutes. The order of speaking will be determined by lot.

Each Member of Council can ask one question of each candidate. Once all candidates for a vacancy have spoken and all questions have been heard, Members of Council may speak if they wish, in accordance with the provisions of Chapter 27, Council Procedures.

After Council has heard all submissions, voting will proceed as follows:

- (a) Members of Council will vote by way of ballot. The names of all candidates who have consented to accept the office if appointed will appear on the ballot, except those who have officially withdrawn, whether they appeared here this evening or not.

Members of Council must print and sign their name on their ballot. The ballots are part of the public record and the results will be recorded in the Minutes of Council.

After the results of the ballot have been tabulated, the Clerk will announce the results.

- (b) if the candidate who receives the greatest number of votes cast receives the votes of more than one-half of the number of the Members of Council present and voting, the Clerk will declare the candidate to be appointed.
- (c) if the candidate who receives the greatest number of votes cast does not receive more than one-half the votes of all Members of Council present and voting, the candidate or candidates who received the fewest number of votes shall be excluded from the voting and the vote shall be taken again by the Clerk and, if necessary, more than once, excluding in each successive vote the candidate or candidates who received the fewest number of votes in the proceeding vote, until the candidate receiving the greatest number of votes has also received more than one-half of the votes of the Members of Council present and voting.
- (d) where the votes cast are equal for all the candidates:
  - (i) if there are three or more candidates remaining, the Clerk shall by lot select one such candidate to be excluded from the subsequent voting.
  - (ii) if only two candidates remain, the tie shall be broken and the vacancy shall be filled by the candidate selected by lot conducted by the Clerk.

Upon conclusion of the voting, the Clerk will declare to be appointed:

The candidate receiving the votes of more than one-half of the number of the Members of Council present and voting

*Or*

The candidate selected by lot conducted by the City Clerk,

as the case may be.

A by-law confirming the appointment shall be enacted by Council appointing the successful candidate to the office for the remainder of the term of the present Council.”

*Proposed Order of Appointments:*

Mayor Miller proposed that, as Council had declared the vacancy in Ward 41 first, Council consider the appointment to Ward 41 – Scarborough Rouge River, followed by the appointment to Ward 20 – Trinity-Spadina. Council concurred in the proposal by Mayor Miller.

*Order of Speaking - Determination by Lot:*

Mayor Miller advised the Council that the order of speaking would be determined by lot. Mayor Miller requested the City Clerk to draw the speakers’ names for the order of speakers for the candidates for Ward 41 and Ward 20. The City Clerk placed the names of all candidates for each appointment on equal size pieces of paper in a container and randomly drew the names of speakers for both appointments.

**S2.5 Appointment of Councillor - Scarborough-Rouge River (Ward 41)**

*Advice by Mayor:*

Mayor Miller advised the Council that the following persons had submitted nominations prior to this special Council meeting:

Paul William Ainslie	Noah Ng
Minerva Barnett	Lindsay Sarjoo
Sheldon Bergson	Michele Serrano
Armando Calderon	Chand Singh
Mel Catre	Dave Singh
Charles Debond	Anwaar Syed
Barry Downs	Ron Tsin
Bob Frankford	Ron van der Wees

Eden Gajraj	Gary Walsh
Theresa Hylton	David Warner
Virginia Jones	Sheila White
Jason Kandankery	Maria Williams
Edith Montgomery	

*Report and Communications:*

Council had before it, during consideration of the appointment of a Councillor for Ward 41 - Scarborough-Rouge River, the following:

- (a) report (January 31, 2006) from the Integrity Commissioner. (See Attachment 1, Page 19);
- (b) communication (January 18, 2006) from the Scarborough Community Council forwarding the recommendations from its meeting held on January 17, 2006. (See Attachment 2, Page 27); and
- (c) communication (December 14, 2005) from Murray Johnston, President, Rouge Valley Foundation, which is on file in the City Clerk's Office.

Council also had before it, during consideration of the appointment of a Councillor for Ward 41 - Scarborough-Rouge River, resumes and personal information of the candidates to fill the vacancies in Ward 41. The resumes and personal information of those candidates who agreed to public disclosure of their personal information are public in their entirety and on file in the City Clerk's Office. The resumes and personal information of the remaining candidates are confidential in their entirety, in accordance with the provisions of the *Municipal Act, 2001*, as they contain personal information about identifiable individuals.

Deputy Mayor Pantalone in the Chair.

*Procedural Motion:*

Deputy Mayor Pantalone called upon a motion from Council that those persons, who have submitted a Consent of Nominee form and a Declaration of Qualification with the City Clerk, shall be considered for appointment to fill the office of Councillor, Ward 41 - Scarborough-Rouge River:

**Moved by:**                    **Councillor Thompson**

**Seconded by:**                **Councillor Carroll**

“**THAT** the those persons who have signified in writing that they are legally qualified to hold the office of Councillor and consented to accept the office if they are

appointed to fill the vacancy of City Councillor, Ward 41 - Scarborough-Rouge River, shall be considered for appointment to fill such vacancy.”

*Vote:*

The motion by Councillor Thompson, seconded by Councillor Carroll, carried.

*Nominees to Address Council:*

Deputy Mayor Pantalone called upon the nominees present at this meeting to address the Council in the order of speaking which had been determined by the City Clerk by lot.

The following nominees addressed the Council and each Member of Council was permitted to ask one question of each candidate, if they so chose:

Edith Montgomery  
Gary Walsh  
Armando Calderon  
Ron Tsin  
Eden Gajraj  
Anwaar Syed  
Paul William Ainslie  
Sheila White

*Appointment:*

Deputy Mayor Pantalone advised the Council that the appointment of one of the following nominees would now proceed by way of written ballot:

Paul William Ainslie  
Minerva Barnett  
Sheldon Bergson  
Armando Calderon  
Mel Catre  
Charles Debond  
Barry Downs  
Bob Frankford  
Eden Gajraj  
Theresa Hylton  
Virginia Jones  
Jason Kandankery  
Edith Montgomery  
Noah Ng  
Lindsay Sarjoo  
Michele Serrano

Chand Singh  
Dave Singh  
Anwaar Syed  
Ron Tsin  
Ron van der Wees  
Gary Walsh  
David Warner  
Sheila White  
Maria Williams

Deputy Mayor Pantalone requested Members of Council to indicate their choice on the ballot provided by signing and printing their names.

*Results of First Ballot:*

The City Clerk tallied the results of the first ballot and advised the Council of the results, as follows:

**For Paul William Ainslie:**

Councillors: Augimeri, Bussin, Carroll, Cho, Cowbourne, De Baeremaeker, Di Giorgio, Feldman, Fillion, Hall, Holyday, Jenkins, Li Preti, Lindsay Luby, Mihevc, Milczyn, Moscoe, Nunziata, Ootes, Palacio, Pantalone, Rae, Saundercook, Shiner, Soknacki, Stintz, Walker, Watson - 28.

**For Minerva Barnett:**

None.

**For Sheldon Bergson:**

None.

**For Armando Calderon:**

None.

**For Mel Catre:**

None.

**For Charles Debond:**

None.

**For Barry Downs:**

None.

**For Bob Frankford:**

None.

**For Eden Gajraj:**

Councillors: Altobello, Del Grande, Kelly, Pitfield, Thompson - 5.

**For Theresa Hylton:**

None.

**For Virginia Jones:**

None.

**For Jason Kandankery:**

None.

**For Edith Montgomery:**

Councillors: Ashton, McConnell - 2.

**For Noah Ng:**

None.

**For Lindsay Sarjoo:**

None.

**For Michele Serrano:**

None.

**For Chand Singh:**

None.

**For Dave Singh:**

None.

**For Anwaar Syed:**

None.

**For Ron Tsin:**

None.

**For Ron van der Wees:**

None.

**For Gary Walsh:**

None.

**For David Warner:**

None.

**For Sheila White:**

Councillors: Davis, Fletcher - 2.

**For Maria Williams:**

None.

*Declaration of Appointment of Councillor for Ward 41 - Scarborough-Rouge River:*

The City Clerk addressed the Council and declared that, as the candidate who has received more than one-half of the votes of the Members of Council present and voting, Paul William Ainslie is appointed as Councillor for Ward 41 – Scarborough-Rouge River for the remainder of this term of Council.

**S2.6 Appointment of Councillor - Trinity-Spadina (Ward 20).**

*Advice by Deputy Mayor:*

Deputy Mayor Pantalone advised the Council that the following persons had submitted nominations to this special Council meeting:



Anita Agrawal	Roland Ollivier
Mir Sadek Ali	Alice Ormiston
Robert Brown	Alexander Pavlov
Pat Cepin	Christine Pierroz
Eppie Cheung	Mohammad Reza Rahbari
Ting James Chow	William Rejante
Kevin Clarke	Bradley Rogers
Michael Clustie	Ingrid Sapon
David Hanna	Monica Sauer
Spiro Karagianis	Rosie Schwartz
Warren Kennedy	Martin Silva
Dan King	Douglas Stephens
Caryl Manning	Abul Hasnat Syed
Max Moore	Hamish Wilson
Kaela Mulenga	Robert Wright
Daniel Nadler	

Deputy Mayor Pantalone further advised the Council that the following persons had advised in writing that they have withdrawn their names:

Karlene Clustie  
Mohamed Dhanani  
Alan Bronic Kasperski  
Luis Silva  
Andrew Wong

*Communications:*

Council had before it, during consideration of the appointment of a Councillor for Ward 20 - Trinity-Spadina, the following communications:

- (a) (January 23, 2006) from the Toronto and East York Community Council forwarding the recommendation from its meeting held on January 17, 2006. (See Attachment 3, Page 29);
- (b) (January 24, 2006) from Mary Helen Spence, which is on file in the City Clerk's Office; and
- (c) (January 30, 2006) from Kevin Clarke, which is on file in the City Clerk's Office.

Council also had before it, during consideration of the appointment of a Councillor for Ward 20 - Trinity-Spadina, resumes and personal information of the candidates to fill the vacancies in Ward 20. The resumes and personal information of those candidates who agreed to public disclosure of their personal information are public in their entirety and on file in the

City Clerk's Office. The resumes and personal information of the remaining candidates are confidential in their entirety, in accordance with the provisions of the *Municipal Act, 2001*, as they contain personal information about identifiable individuals.

*Procedural Motion:*

Deputy Mayor Pantalone called upon a motion from Council that those persons, who have submitted a Consent of Nominee form and a Declaration of Qualification with the City Clerk, shall be considered for appointment to fill the office of Councillor, Ward 20 – Trinity-Spadina:

**Moved by:                   Councillor Davis**

**Seconded by:               Councillor Cho**

“**THAT** the those persons who have signified in writing that they are legally qualified to hold the office of Councillor and consented to accept the office if they are appointed to fill the vacancy of City Councillor, Ward 20 - Trinity-Spadina, shall be considered for appointment to fill such vacancy.”

*Vote:*

The motion by Councillor Davis, seconded by Councillor Cho, carried.

*Nominees to Address Council:*

Deputy Mayor Pantalone called upon the nominees present at this meeting to address the Council in the order of speaking which had been determined by the City Clerk by lot.

The following nominees addressed the Council and each Member of Council was permitted to ask one question of each candidate, if they so chose:

Kevin Clarke

Mayor Miller in the Chair.

Dan King  
Robert Brown  
Max Moore  
Pat Cepin  
Caryl Manning  
Anita Agrawal  
David Hanna  
Martin Silva  
Hamish Wilson

Rosie Schwartz  
Alexander Pavlov  
Kaela Mulenga  
Spiro Karagianis  
Abul Hasnat Syed

*Withdrawal of Candidates:*

During the course of their presentation to Council, the following candidates withdrew their names for the position of City Councillor, Ward 20 - Trinity-Spadina:

Pat Cepin  
Alexander Pavlov

*Appointment:*

Mayor Miller advised the Council that the appointment of one of the following nominees would now proceed by way of written ballot:

Anita Agrawal  
Mir Sadek Ali  
Robert Brown  
Eppie Cheung  
Ting James Chow  
Kevin Clarke  
Michael Clustie  
David Hanna  
Spiro Karagianis  
Warren Kennedy  
Dan King  
Caryl Manning  
Max Moore  
Kaela Mulenga  
Daniel Nadler  
Roland Ollivier  
Alice Ormiston  
Christine Pierroz  
Mohammad Reza Rahbari  
William Rejante  
Bradley Rogers  
Ingrid Sapon  
Monica Sauer  
Rosie Schwartz  
Martin Silva  
Douglas Stephens

Abul Hasnat Syed  
Hamish Wilson  
Robert Wright

Mayor Miller requested Members of Council to indicate their choice on the ballot provided by signing and printing their names.

*Results of First Ballot:*

The City Clerk tallied the results of the first ballot and advised the Council of the results, as follows:

**For Anita Agrawal:**

Councillors: Lindsay Luby, Saundercook - 2.

**For Mir Sadek Ali:**

None.

**For Robert Brown:**

Councillors: Holyday, Jenkins, Kelly, Ootes - 4.

**For Eppie Cheung:**

None.

**For Ting James Chow:**

None.

**For Kevin Clarke:**

None.

**For Michael Clustie:**

None.

**For David Hanna:**

None.

**For Spiro Karagianis:**

None.

**For Warren Kennedy:**

None.

**For Dan King:**

None.

**For Caryl Manning:**

Councillor: Milczyn - 1.

**For Max Moore:**

Councillor: Bussin - 1.

**For Kaela Mulenga:**

Councillor: Thompson - 1.

**For Daniel Nadler:**

None.

**For Roland Ollivier:**

None.

**For Alice Ormiston:**

None.

**For Christine Pierroz:**

None.

**For Mohammad Reza Rahbari:**

None.

**For William Rejante:**

None.

**For Bradley Rogers:**

None.

**For Ingrid Sapona:**

None.

**For Monica Sauer:**

None.

**For Rosie Schwartz:**

None.

**For Martin Silva:**

Mayor: Miller

Councillors: Altobello, Augimeri, Carroll, Cho, Cowbourne, Davis, De Baeremaeker, Feldman, Fletcher, Hall, McConnell, Mihevc, Moscoe, Pantalone, Rae, Shiner, Soknacki, Stintz, Walker - 20.

**For Douglas Stephens:**

None.

**For Abul Hasnat Syed:**

None.

**For Hamish Wilson:**

None.

**For Robert Wright:**

None.

*Declaration of Appointment of Councillor for Ward 20 - Trinity-Spadina:*

The City Clerk addressed the Council and declared that, as the candidate who has received more than one-half of the votes of the Members of Council present and voting, Martin Silva is

appointed as Councillor for Ward 20 – Trinity-Spadina for the remainder of this term of Council.

### **BILLS AND BY-LAWS**

S2.7 On January 31, 2006, at 6:35 p.m., Councillor Thompson, seconded by Councillor Carroll, moved that leave be granted to introduce the following Bill, and that this Bill, prepared for this special meeting of Council, be passed and hereby declared as a By-law, which carried:

Bill No. 157	By-law No. 9-2006	To confirm the proceedings of the Council at its special meeting held on the 31st day of January, 2006.
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S2.8 On January 31, 2006, at 8:03 p.m., Councillor Davis, seconded by Councillor Walker, moved that leave be granted to introduce the following Bill, and that this Bill, prepared for this special meeting of Council, be passed and hereby declared as a By-law, which carried:

Bill No. 158	By-law No. 10-2006	To confirm the proceedings of the Council at its special meeting held on the 31st day of January, 2006.
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### **OFFICIAL RECOGNITIONS:**

S2.9 **Presentations/Introductions/Announcements:**

Mayor Miller, on behalf of all Members of Council, congratulated Paul William Ainslie on his appointment to the Office of City Councillor, Ward 41 - Scarborough-Rouge River, and Martin Silva on his appointment to the Office of City Councillor, Ward 20, Trinity-Spadina, and extended the best wishes of Council to all of the candidates who had participated in the appointment process.

S2.10 **MOTION TO VARY ORDER OR WAIVE PROCEDURE**

*Waive the provisions of Chapter 27 of the City of Toronto Municipal Code related to meeting times:*

Mayor Miller, at 5:10 p.m., when Council convened, proposed that Council immediately recess and reconvene in approximately 20 minutes. Council concurred in the proposal by Mayor Miller.

S2.11 **ATTENDANCE**

Councillor Lindsay Luby, seconded by Councillor De Baeremaeker, moved that the absence of Councillors Ford, Giambrone, Grimes, Mammoliti and Minnan-Wong be excused from this special meeting of Council, which carried.

January 31, 2006	5:10 p.m. to 5:10 p.m.*	5:28 p.m. to 8:04 p.m.*
Miller	x	x
Altobello	x	x
Ashton	x	x
Augimeri	x	x
Bussin	x	x
Carroll	x	x
Cho	x	x
Cowbourne	x	x
Davis	x	x
De Baeremaeker	x	x
Del Grande	x	x
Di Giorgio	x	x
Feldman	x	x
Filion	x	x
Fletcher	x	x
Ford	-	-
Giambrone	-	-
Grimes	-	-
Hall	x	x
Holyday	x	x
Jenkins	x	x
Kelly	x	x
Li Preti	x	x



January 31, 2006	5:10 p.m. to 5:10 p.m.*	5:28 p.m. to 8:04 p.m.*
Lindsay Luby	x	x
Mammoliti	-	-
McConnell	x	x
Mihevc	x	x
Milczyn	x	x
Minnan-Wong	-	-
Moscoe	x	x
Nunziata	x	x
Ootes	x	x
Palacio	x	x
Pantalone	x	x
Pitfield	x	x
Rae	x	x
Saundercook	x	x
Shiner	x	x
Soknacki	x	x
Stintz	x	x
Thompson	x	x
Walker	x	x
Watson	x	x
Total	38	38

\* Members were present for some or all of the time period indicated.

**Adjourned: 8:04 p.m.**

**DAVID R. MILLER,**  
Mayor

**ULLI S. WATKISS,**  
City Clerk

## **ATTACHMENT 1**

Report (January 31, 2006) from the Integrity Commissioner, entitled “Report on Complaint of Violation of Councillors’ Code of Conduct (3)”. (See Minute S2.5, Page 3)

### Purpose:

To report on the rejection of a complaint that a Councillor violated Section 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.

### Recommendation:

It is recommended that Council receive this report.

### Background:

A candidate to fill the vacant Council position in Ward 41 (Scarborough-Rouge River) caused by the election of former Councillor Bas Balkissoon to the provincial Legislative Assembly has complained that a Councillor acted improperly at Scarborough Community Council by supporting and voting for his Executive Assistant as Councillor Balkissoon’s replacement. In effect, the complainant has asserted that the Councillor treated the complainant unfairly and thereby engaged in discreditable conduct contrary to Part XI (“Discreditable Conduct”) of the Code of Conduct for Members of Council (“Code of Conduct”).

### Comments:

On the basis of my investigation and for the reasons stated more fully in my report to the parties (Appendix A), I concluded that the Councillor did not violate Part XI of the Code of Conduct by supporting and voting at Scarborough Community Council for his Executive Assistant as the replacement for Councillor Bas Balkissoon.

### Conclusions:

The provincial legislation and the City of Toronto’s general Policy and relevant by-law prescribing the procedure to be followed in filling the vacancy in Ward 41 (Scarborough-Rouge River) do not contain any explicit prohibitions on a Councillor supporting and voting for the candidacy of a member of his or her staff. I could also find no indications in those instruments suggesting any implicit limitations on the right of Councillors to approach their participation in the process strategically or politically. The “political” dimensions of the whole process also make it clear that Members of Council are not subject to the rules prohibiting “bias”, rules which in judicial or adjudicative contexts would disqualify

someone from participating where an employee's interests are at stake. The filling of a vacancy caused by the election of a Member of Council to the provincial Legislative Assembly is not an adjudicative process. I therefore conclude that the Councillor did not treat the complainant unfairly by participating in this process and by supporting and voting for his Executive Assistant as Councillor Bas Balkissoon's temporary successor. This was not discreditable conduct in terms of Part XI of the Code of Conduct.

In so ruling, I do not want to give the impression that I am totally out of sympathy with the position taken by the complainant. It is easy to see how those who participate in this kind of exercise could form the impression that it is designed to be an objective, detached, open process in which the "best qualified" should prevail. Particularly if the outcome of that process is preordained, the presentations and questioning become a charade, a waste of everyone's time, and a discourtesy to those who have been public-spirited enough to become candidates. Given that, it may be that Council should reevaluate this whole process for the appointment of replacements for vacant Council seats. Suffice it to say, however, that my investigation into this matter, albeit conducted in a somewhat rushed manner, gave me no cause to believe that this particular process was a mere charade.

Contact:

David Mullan  
Integrity Commissioner  
Tel: 416-397-7770/Fax: 416-392-3840  
Email: dmullan@toronto.ca

Appendix A: Report on Complaint

Appendix A

Memorandum (January 31, 2006) to the City Clerk from the Integrity Commissioner, entitled "Report on Complaint".

Nature of Complaint:

Eden Gajraj is a candidate to fill the vacant Council position in Ward 41 (Scarborough-Rouge River) caused by the election of former Councillor Bas Balkissoon to the provincial Legislative Assembly. He has complained that Councillor David Soknacki acted improperly at Scarborough Community Council by supporting and voting for his Executive Assistant, Paul Ainslie as Councillor Balkissoon's replacement. In effect, the complainant has asserted that Councillor Soknacki treated the complainant unfairly and thereby engaged in discreditable conduct contrary to Part XI ("Discreditable Conduct") of the Code of Conduct for Members of Council ("Code of Conduct").

Summary of Findings:

Councillor Soknacki did not violate Part XI of the Code of Conduct by supporting and voting at Scarborough Community Council for his Executive Assistant as the replacement for Councillor Bas Balkissoon.

Facts:

When Councillor Bas Balkissoon was elected to the provincial Legislative Assembly, Council declared his office as Councillor for Ward 41 (Scarborough-Rouge River) vacant as required by section 262(1) of the *Municipal Act, 2001*. Under section 263(1) of that Act, Council was obliged to fill the vacancy. It decided to do this by "appointing a person who has consented to accept the office if appointed" (section 263(1)(a)) rather than by holding a by-election (section 263(1)(b)). In doing so, it followed the Policy on Filling Vacancies that it had adopted at its meeting of February 1, 2 and 3, 2000.

In the Report from the Administration Committee that formed the basis of that Policy, the decision to proceed by way of appointment or by-election was described as "ultimately a political decision". Appendix "A" to the Policy established the procedures to be followed for filling a Councillor's vacancy through an appointment. Council adopted a notice of motion adopting those procedures in the case of the vacancy in Ward 41. (By-law 1073-2005 was enacted on December 7, 2005 to confirm the proceedings of Council). This involved the placing of advertisements in newspapers detailing how to apply for consideration, the holding of an information session, attendance at which was mandatory for all candidates, and a consideration of applications by the Scarborough Community Council. At Scarborough Community Council, candidates were allowed to make a presentation of no more than five minutes and Members of Council were allowed to ask one question of each candidate. Thereafter, the vote was to take place in accordance with detailed rules prescribed in the Policy and Appendix "B" to the notice of motion.

Under section 30(1) of the *Municipal Elections Act, 1996*, employees of City Council are eligible to be a candidate for election as a Member of Council. However, to do so, they must take a leave of absence beginning as of the day on which they are nominated and ending on voting day. If elected, section 30(4) provides that candidates are deemed to have resigned from their employment from the date of making the statutory declaration provided for in section 232(1) of the *Municipal Act, 2001*. Section 30(2) requires that any employee must give advance, written notice of an intention to take unpaid leave for the purposes of becoming a candidate for election to Council. While these provisions read literally do not address the situation of Council filling vacancies by an appointment process, the City Clerk (through the Director of Elections and Registry Services) treats them as applicable. (It should be noted that under section 258(1) of the *Municipal Act, 2001*, an employee is not eligible to hold the office of a Member of Council. Accordingly, it could be argued that in order to be considered for appointment, a person must meet all the eligibility qualifications prior to such consideration taking place.) For these purposes, the information sessions at which the applicants file consent and eligibility forms is treated as the nomination date and the election date is the date on which Council makes the appointment.

Eden Gajraj was one of twenty-five applicants to fill the vacancy in Ward 41. He has been active in the community for many years. Paul Ainslie, Councillor Soknacki's Executive Assistant also applied to fill the vacancy. (Councillor Soknacki is the member for Ward 43 (Scarborough East) and, as such, a member of Scarborough Community Council.)

The information session was held on January 9, 2006, and, prior to that session, Paul Ainslie gave advance written notice of his intention to seek the appointment and to take unpaid leave for that purpose. In the period leading up to the meeting of Scarborough Community Council on January 17, 2006, both Eden Gajraj and Paul Ainslie lobbied members of Scarborough Community Council for their support. As of January 9, 2006, Eden Gajraj was aware that Paul Ainslie was a candidate and that he was Councillor Soknacki's Executive Assistant.

In the period leading up to the January 17 meeting of Scarborough Community Council, Councillor Soknacki sought advice from the Director of Elections and Registry Services and the City Clerk as to whether his participation (including voting) in the process would bring him into a conflict of interest as defined in the *Municipal Conflict of Interest Act*. In each instance, the opinion was that it would not though both of these officials reminded the Councillor that they were not entitled to give a firm opinion on this matter and that he should seek independent legal advice. This he did by contacting his own solicitor, an acknowledged expert in Municipal Law. The solicitor also advised the Councillor that participation would not involve a conflict of interest as defined in the *Municipal Conflict of Interest Act*.

On January 17, 2006, Scarborough Community Council considered the applications for filling the vacancy in Ward 41 in the manner prescribed in Appendix B to the relevant notice of motion. Most of the applicants exercised their right to make a presentation before Scarborough Community Council and many of the members of the Community Council asked a question of the candidates. Eden Gajraj and Paul Ainslie were among those who made presentations. Councillor Soknacki was present but did not question either of these candidates. Eden Gajraj was aware of Councillor Soknacki's presence and participation but did not raise any issue with that.

At the conclusion of the presentation and some brief congratulatory speeches by some of the members of Scarborough Community Council, the voting took place by ballot as required by the operative policy. After the first ballot, all but three candidates were eliminated. On the second ballot, a further candidate secured only one vote and, as provided in the procedural rules, she dropped off the ballot for the third round of voting. On the second ballot, Eden Gajraj and Paul Ainslie had each secured four votes and, when the Councillor who had voted for the candidate dropped from the ballot gave his vote to Paul Ainslie on the third ballot, Paul Ainslie secured the nomination of Scarborough Community Council by a vote of five to four. Councillor Soknacki participated in all three ballots and voted for Paul Ainslie throughout.

Subsequently, on January 26, 2006, Eden Gajraj filed with the City Clerk a complaint by way of affidavit under the Council Code of Conduct Complaint Protocol alleging that Councillor Soknacki's participation had produced an unfair and prejudiced process that was not transparent. While he did not make reference in his complaint to any particular provision in the Code of Conduct, for the purposes of assuming jurisdiction, I treated Eden Gajraj's complaint as one of violation of Part XI of the Code of Conduct ("Discreditable Conduct") and so informed Councillor Soknacki in providing him with a copy of the complaint.

In his complaint, Eden Gajraj requested that I complete my investigation and report to Council before it considered the issue of Councillor Balkissoon's successor, an agenda item scheduled for 5:00 p.m. this evening, January 31, 2006. I informed him that I could give no such guarantee and that it would require the co-operation of Councillor Soknacki to make it possible. I also informed both the complainant and Councillor Soknacki, who indicated a willingness to facilitate the timely investigation of this matter, that I would not meet the complainant's request unless I was satisfied that I had conducted a sufficient investigation. Ultimately, I was content that, in the time available, I had found out as much as I needed to decide on the complaint and report to Council.

Analysis:

In providing for the filling of a Council vacancy by way of Council appointment of a replacement, the *Municipal Act* places no explicit constraints on the way in which that appointment is to be made. It is left entirely up to Council. Moreover, the Act does not contain any provisions for disqualifying Councillors from participation in the process by reason of connections with a candidate for appointment or otherwise. On its face, that

indicates very strongly, as the 2000 Report of the Administration Committee states, that the process does not have to be divorced from political considerations. In their participation, Councillors are free to deal with the matter by reference to the same kinds of political considerations that motivate their normal participation in Council processes and that influence or dictate their voting on issues. Provided they do not violate the *Municipal Conflict of Interest Act* by participating and voting when they have a prohibited financial interest, they are above complaint. This in effect means that Councillors are free to favour and vote for the appointment of friends, political allies, and those with whom they have had a working relationship either within or outside the City of Toronto.

It is also the case, that the relevant legislation explicitly permits employees of municipalities to be candidates for election to Council. Indeed, in so doing, section 30(3) of the *Municipal Elections Act, 1996* pointedly states that any employee seeking election to Council “is entitled, **as of right**, to take unpaid leave [emphasis added]” for that purpose. The Act does not exclude any category of employee from this benefit.

It may be the case<sup>1</sup> that Council could impose on its Members and employees constraints that are not part of the primary legislation governing the filling of vacancies and the eligibility of employees to run for office. However, in my view, it is clear that Council has not in its general Policy or in the process that it adopted in this case by reference to that Policy accepted or imposed any such constraints. There are no explicit limitations on Members of Council in that process nor on the candidacy of City of Toronto employees including Executive Assistants to Members of Council. Indeed, the current general Policy was adopted in the context of a similar exercise in which the successful applicant was an Executive Assistant to a Councillor. At City Council, that Councillor both seconded the nomination of her Executive Assistant and voted for his appointment. If Council had believed that the process it had just adopted was meant to contain implicit disqualification of such participation, this would surely have become an issue on that occasion.

In short, the fact that the process provides for formal applications and the making of presentations before Council does not convert it into one where the rules of engagement are changed. It has not become one where Councillors are no longer free to participate and vote by reference to political considerations including the likely support that an applicant will provide to Councillors’ policies and preferences. Indeed, Eden Gajraj himself appeared to accept the political nature of the process by lobbying Councillors prior to the meeting. His failure to raise any concerns about the participation of Councillor Soknacki either prior to or at the Scarborough Community Council meeting may also be a further indication of that.

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1 I express no firm opinion on this as a matter of law.



More particularly, provision of the opportunity for applicants to make public presentations does not make this a process with judicial or adjudicative characteristics. In law and in terms of one of the key points in Eden Gajraj's complaint, this is a critical point. The principles against biased decision-making apply to adjudicative processes. Where applicable, they would prevent a Councillor from taking a decision-making role involving the interests of his Executive Assistant. However, where the process remains essentially a political one (as here), there is no room for the operation of the constraints that the law concerning bias imposes on those taking decisions.

The most that the process might require implicitly is that applicants have an entitlement to a genuine consideration of their candidacy particularly in the sense that Community Council must be attentive to their presentations and that the outcome not be predetermined in advance of that meeting by some back room deal. Eden Gajraj told me that an executive assistant to another Councillor had told him as early as the information session on January 9, 2006 that the outcome was inevitable and that Paul Ainslie would be nominated. This certainly raised suspicions in his mind that the "fix was in".

While this is a complaint against Councillor Soknacki, not against the whole of Scarborough Community Council, I feel obliged to say that my investigation uncovered no evidence that the outcome was predetermined. Indeed, the fact that it took three ballots to select Mr. Ainslie suggests otherwise. I also accept Councillor Soknacki's assurances that he was not party to any such prior agreement among all or any of the members of Scarborough Community Council. Indeed, while a committed supporter of Paul Ainslie's candidacy, Councillor Soknacki appears to have been very circumspect in expressing his support of Mr. Ainslie throughout this entire process. He was also careful in seeking professional advice both within City Hall and also from a solicitor as to whether his participation would give rise to a conflict of interest as defined in the *Municipal Conflict of Interest Act*.<sup>2</sup>

Eden Gajraj also had no complaint with the way in which the members of Scarborough Community Council comported themselves throughout the meeting. (He did refer to Councillor Soknacki speaking to Paul Ainslie in the Council Chamber during a short break between the presentations and the vote. However, I could see nothing wrong with this. It can scarcely provide any basis for a finding that the process was tainted. Indeed, Paul Ainslie tells me that their brief conversation was about a private, personal matter.)

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2 I should, of course, note that just because a matter does not involve a conflict of interest in terms of the Act is not determinative whether it constitutes some broader type of conflict or behaviour proscribed by the Code of Conduct.

Conclusions:

The provincial legislation and the City of Toronto's general Policy and relevant by-law prescribing the procedure to be followed in filling the vacancy in Ward 41 (Scarborough-Rouge River) do not contain any explicit prohibitions on a Councillor supporting and voting for the candidacy of a member of her or his staff. I could also find no indications in those instruments suggesting any implicit limitations on the right of Councillors to approach their participation in the process strategically or politically. The "political" dimensions of the whole process also make it clear that Members of Council are not subject to the rules prohibiting "bias", rules which in judicial or adjudicative contexts would disqualify someone from participating where an employee's interests are at stake. The filling of a vacancy caused by the election of a Member of Council to the provincial Legislative Assembly is not an adjudicative process. I therefore conclude that Councillor Soknacki did not treat Eden Gajraj unfairly by participating in this process and by supporting and voting for his Executive Assistant as Councillor Bas Balkissoon's temporary successor. This was not discreditable conduct in terms of Part XI of the Code of Conduct.

In so ruling, I do not want to give the impression that I am totally out of sympathy with the position taken by the complainant. It is easy to see how those who participate in this kind of exercise could form the impression that it is designed to be an objective, detached, open process in which the "best qualified" should prevail. Particularly if the outcome of that process is preordained, the presentations and questioning become a charade, a waste of everyone's time, and a discourtesy to those who have been public-spirited enough to become candidates. Given that, it may be that Council should reevaluate this whole process for the appointment of replacements for vacant Council seats. Suffice it to say, however, that my investigation into this matter, albeit conducted in a somewhat rushed manner, gave me no cause to believe that this particular process was a mere charade.

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## **ATTACHMENT 2**

Communication (January 18, 2006) from the Scarborough Community Council, entitled “Appointment of Councillor (Scarborough-Rouge River, Ward 41)”. (See Minute S2.5, Page 3)

### Recommendations:

The Scarborough Community Council:

- (1) submits the name of Paul William Ainslie for Council’s consideration to fill the vacancy in the Office of Councillor for Scarborough Rouge-River (Ward 41); and
- (2) recommends that City Council urge the new Councillor to give first consideration to retaining current staff.

### Background:

The Scarborough Community Council, on January 17, 2006, heard presentations from the following, who signified in writing that they are legally qualified to hold the office of Councillor and have consented to accept the office if they are appointed to fill the vacancy in the Office of Councillor for Scarborough Rouge-River, Ward 41):

- Dave Singh;
- Paul William Ainslie;
- Noah Ng;
- Eden Gajraj;
- Maria Williams;
- Minerva Barnett;
- Sheila White;
- Armando Calderon;
- Bob Frankford;
- Anwaar Syed;
- David Warner;
- Barry Downs;
- Edith Montgomery;
- Gary Walsh;
- Lindsay Sarjoo;
- Sheldon Bergson;
- Michele Serrano;
- Theresa Hylton;
- Ron van der Wees;
- Jason Kandankery; and
- Virginia Jones.

The following also addressed the Community Council:

- Monina Lim Serrano, Federation of Filipino Canadians, in support of candidate Michele Serrano;
- Valerie Plunkett, Rosewood Taxpayers Association, in support of candidate Eden Gajraj; and
- Joe Li, MP Candidate, Markham-Unionville, in support of candidate Dave Singh.

The Scarborough Community Council also considered the following communications, which are on file in the City Clerk's Office:

- (December 20, 2005) from the City Clerk forwarding copy of Motion J(28) adopted, as amended, by City Council on December 5, 6 and 7, 2005, during consideration of a report dated December 5, 2005, from the City Clerk, entitled "Options on Filling the Vacancy in the Office of Councillor, Ward 41 – Scarborough-Rouge River";
- 2003 Election Results from School Trustee, provided by Noah Ng;
- (January 15, 2006) from Mike Gonsalves, President, Scarborough-Agincourt PC Riding Association, in support of candidate Dave Singh;
- (January, 2006) from The Honourable Pauline Browes, in support of candidate Dave Singh;
- (January 15, 2006) from Jim Jones, Markham Regional Councillor, in support of candidate Dave Singh; and
- Edward N. Higgins, President, Conservative Party of Canada, Markham-Unionville, in support of candidate Dave Singh.

### **ATTACHMENT 3**

Communication (January 23, 2006) from the Toronto and East York Community Council, entitled “Appointment of Councillor for Trinity-Spadina (Ward 20)”. (See Minute S2.6, Page 9)

#### Recommendation:

The Toronto and East York Community Council submits the name of Martin Silva for Council’s consideration to fill the vacancy in the Office of Councillor for Trinity-Spadina (Ward 20).

#### Background:

The Toronto and East York Community Council, on January 17, 2006, heard presentations from the following, who signified in writing that they are legally qualified to hold the office of Councillor and have consented to accept the office if they are appointed to fill the vacancy in the Office of Councillor for Trinity-Spadina, (Ward 20):

Dan King  
Christine Pierroz  
Alexander Pavlov  
Caryl Manning  
Pat Cepin  
Ingrid Sapona  
Bradley Rogers  
Douglas Stephens  
Martin Silva  
Max Moore  
Kaela Mulenga  
Michael Clustie  
Luis Silva  
Rosie Schwartz  
Roland Ollivier  
\*Andrew Wong  
Robert Brown  
Warren Kennedy  
Kevin Clarke  
Robert Wright  
Hamish Wilson  
Eppie Cheung  
Alice Ormiston  
Anita Agrawal  
Abdul Hasnat Syed  
David Hanna

During the course of his verbal presentation, Andrew Wong withdrew his application for the position of Councillor for Trinity-Spadina (Ward 20).

The Toronto and East York Community Council considered the following communications, which are on file in the City Clerk's Office:

- communication (December 20, 2005) from the City Clerk forwarding a motion adopted, as amended, by City Council at its meeting on December 20, 2005, respecting Options for Filling the Vacancy of Councillor (Ward 20 – Trinity-Spadina);
- letters of support for Warren Kennedy, applicant, submitted by the applicant;
- paper copy of resume (January 17, 2006) from Robert Brown, applicant;
- submission (undated) from Caryl Manning, applicant;
- submission (undated) from Dan King, applicant;
- paper copy of resume (undated) from Rosie Schwartz, applicant; and
- Toronto Star Column (August 9, 2005) from Ingrid Sapon, applicant.