



# INTEGRITY COMMISSIONER REPORT ACTION REQUIRED

## Integrity Commissioner Annual Report –2009

<b>Date:</b>	July 29, 2009
<b>To:</b>	City Council
<b>From:</b>	Integrity Commissioner
<b>Wards:</b>	All
<b>Reference Number:</b>	

### **SUMMARY**

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My term as Interim Integrity Commissioner began on October 1, 2008. This Report contains details of my work during the last three months of 2008 and the first six months of 2009, as well as highlighting some of the more significant developments and outstanding issues surrounding the Integrity Commissioner's role.

### **RECOMMENDATIONS**

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The Interim Integrity Commissioner recommends that City Council receive this report for information.

### **FINANCIAL IMPACT**

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Receipt of this report will have no financial impact.

### **DECISION HISTORY**

Section 162(1) of the *City of Toronto Act, 2006* ("COTA") provides that the Integrity Commissioner make "periodic reports to Council". At the City Council meeting held on April 29 and 30, 2009, Council adopted that: City Council request the Accountability Officers to inform Council of the requirements, contents and timing of their annual reports (**EX31.1, Item 14**).

## COMMENTS

### General

My position as Interim Integrity Commissioner began on October 1, 2008 after the retirement of the former Integrity Commissioner, David Mullan who held the position for a four year period. Commissioner Mullan reported on his work during the first half of 2008 and on the work of the office during his term at the last meeting of Council held on July 16-18, 2008. <http://www.toronto.ca/integrity/pdf/2008-5-council.pdf>.

For the past eight months, the work of the office has by and large followed the same pattern as in previous years, and the major activities of the office may be broken into three main areas: (1) Policy Development, (2) Advice to Councillors, and (3) Formal Complaint investigations and reports. The Report below will address each area.

However, this year, there are some significant additions to the Integrity Commissioner's Annual Report.

First, I am including sample summaries of the advice to councillors provided over the past year. The summaries have been redacted to preserve the anonymity and confidentiality of the advice given. I have included in the summaries set out below advice which has arisen in multiple or recurring situations, or which I believe sheds light on the broader principles surrounding the interpretation of the *Code of Conduct* and Members ethical obligations as Councillors.

Second, I am including a redacted summary of reports on some of the complaints which have been dismissed over the past year. Again, I have selected reports which deal with issues of broader concern to Councillors, and presented the summaries without naming the parties or providing identifying detail.

My goal in providing these redacted summaries is to glean from what are otherwise confidential documents, principles and issues that may be of broader application and interest.

### SCOPE OF THE ANNUAL REPORT

At the City Council meeting held on April 29 and 30, 2009, Council adopted that: City Council request the Accountability Officers to inform Council of the requirements, contents and timing of their annual reports (**EX31.1, Item 14**). This Annual Report is also intended to address this request of Council. With respect to the Integrity Commissioner, an Annual Report should include, at a minimum, the following elements:

- An account of the volume of activities of the Integrity Commissioner, including but not limited to:
  - the investigations and reporting on complaints;
  - responses to requests for advice or referrals for opinions; and
  - the policy, education and outreach activities of the Integrity Commissioner;

- A budget of the Integrity Commissioner Office for the year, including an explanation of any material variances; and
- A summary of any new initiatives or projects undertaken by the Integrity Commissioner during the year.

## **INTEGRITY COMMISSIONER ACTIVITIES, JULY 1, 2008- JUNE 30, 2009**

### **A. Policy Development:**

While the Integrity Commissioner's office is involved in consulting on a broad range of ongoing policy initiatives at the City, this past year, three policy-related projects have resulted in significant developments: (1) the development of a new Accountability Framework which has substantially altered the structures of the Integrity Commissioner's office; (2) the development of a new protocol to address the issue of unsolicited communications received by Councillors and the duties of Councillors in relation to lobbyists; and (3) the development of an interpretation bulletin relating to donations for Councillor-organized community events. Each of these initiatives is discussed below.

#### **(1) Accountability Framework**

While the Integrity Commissioner's role and authority are set out in the *City of Toronto Act, 2006* ("COTA"), Council had not until this year adopted a by-law addressing the roles, responsibilities and structure of the Integrity Commissioner position. As a result of David Mullan's report to City Council on July 15, 16 and 17, 2008, the following motion was adopted: (CC23.3 Item 4). <http://www.toronto.ca/integrity/pdf/2008-5-council.pdf>

*The City Manager, in consultation with the Accountability Officers, the City Clerk and the City Solicitor, develop and report to the Executive Committee on an overview framework for the accountability positions setting out the legislated provisions and any governance, policy and support mechanisms required to effectively carry out the functions and ensure their independence.*

Further to this mandate, I provided input and advice to staff members from Corporate Policy (City Manager's office), and also collaborated with the other Accountability Officers (the Auditor General, Lobbyist Registrar and Ombudsman) on issues of shared interest. The guiding approach to the Framework was that officers such as the Integrity Commissioner must be and be seen to be independent, but also be and be seen to be accountable for their activities.

Following a process of consultation and dialogue, a policy document was developed by the City Manager, reported to the Executive Committee and adopted by Council at the April 29 and 30<sup>th</sup> Council meeting; See "**A Policy Framework for Toronto's Accountability Officers**": <http://www.toronto.ca/legdocs/mmis/2009/cc/decisions/2009-04-29-cc35-dd.htm>

## **(2) Policy on Unsolicited Communications to Councillors**

Another policy matter arose this year in response to concerns raised by Councillors as to the interpretation of the Article XIII “Conduct Respecting Lobbyists”. Councillors have been besieged with unsolicited email and letters seeking support for a variety of causes and projects. Councillors expressed a concern that, even if unsolicited, such communication could be caught by the Municipal Code, Chapter 140 and be treated as “lobbying.”

The Lobbyist Registrar and I held a consultation session with Councillors on February 11, 2009, in order to better understand the concerns. The input received from Councillors was constructive and wide-ranging. We decided that a jointly-issued Protocol from the Integrity Commissioner and Lobbyist Registrar would best address the most widely shared concerns and clarify the duties and responsibilities of Councillors and their staff in relation to unsolicited communications.

Subsequently, the Lobbyist Registrar and I developed a proposed “Protocol on Unsolicited Written and Electronic Communications to Members of Council.” This Protocol was reviewed by the Executive Committee at its meeting on April 7, 2009, received by Council for its information at the April 29 and 30<sup>th</sup> Council meeting, and may be found at: [http://www.toronto.ca/lobbying/pdf/protocol\\_written\\_comm\\_may2109.pdf](http://www.toronto.ca/lobbying/pdf/protocol_written_comm_may2109.pdf)

## **(3) Policy on Donations to Councillor-Organized Events**

In July of 2008, Council adopted the Council Member-Organized Community Events Policy, which applies to community events that are organized or run by a Member or third party on behalf of a Member. The policy provides for an annual limit of \$10,000.00 in support for such events and proscribes support from lobbyists, and their clients or employers, among other provisions.

In January, 2009, the Integrity Commissioner and Lobbyist Registrar issued a joint Interpretation Bulletin on “Donations to Council Member-Organized Events. Subsequently, in June, 2009, the Integrity Commissioner, in collaboration with the Director of Council & Support Services, City Clerk’s Office, issued a Memorandum clarifying the application of the rules regarding Member-Organized Community Events and provided a set of answers to “Frequently Asked Questions” to serve as a guide to Councillors and their staff in relation to these events.  
[http://www.toronto.ca/city\\_council/pdf/joint\\_memo-donations-comm\\_events061709.pdf](http://www.toronto.ca/city_council/pdf/joint_memo-donations-comm_events061709.pdf)

The goal of the Interpretation Bulletin and Memorandum is to provide clear, helpful and coherent guidance to Councillors and to update and modify such guidance in response to changing circumstances or novel developments. These initiatives also demonstrate the importance of collaboration and partnership (in this case, between the Integrity Commissioner, Lobbyist Registrar and City Clerk’s Office) to ensure seamless and consistent advice to Councillors on community event policies.

## B. Advice

During my appointment, the number of occasions on which Members seek advice from the Integrity Commissioner's office continues to grow and this has given me the opportunity not only to meet with Councillors but also to meet with various City officials in order to discuss current policies/procedures and possible changes to those policies. Additionally, the number of formal complaints received as of June 30, 2009 has increased over the same period in 2008. Two extensive investigations started by David Mullan in 2008 were completed in 2009 but were not reported to Council. I have reported to Council on only one complaint during the first half of 2009.

### Advice Given

Statistics – July-07-June 08; July-08-June-09

#### Members of Council - Advice Sought

	<u>2007-2008</u>	<u>2008-2009</u>
Members Seeking Advice:	36	37
Informal Advice:	44	50
Formal Written Advice:	48	67

The overall percentages for Members seeking advice and informal advice given remains basically the same, while the requests for formal written advice has increased.

#### Citizen and Staff Inquiries

	<u>2007-2008</u>	<u>2008-2009</u>
Citizen:	196	195
Staff:	25	25

As can be seen from the above, the number of citizen and staff inquiries has remained virtually unchanged.

#### Commentary

Our office continues to receive a variety of calls from citizens regarding issues/complaints outside the jurisdiction of our office. These calls are directed to the appropriate areas/departments able to assist them. In many situations they are simply looking for a "sympathetic ear".

With the implementation of the Ombudsman's office and the new 311 Customer Service line, we expect the number of calls to the Integrity Commissioner over matters outside the jurisdiction of the office to decrease. Staff members also should be better informed as to which kind of requests should be directed to which Accountability Officer (i.e. Integrity Commissioner, Ombudsman and Lobbyist Registrar).

Where we are able to provide advice to Councillors or their staff, that advice is both confidential and binding on the Integrity Commissioner in any subsequent consideration of the conduct as long as all of the relevant facts were disclosed to the Integrity Commissioner. Below, I have redacted some responses to advice queries which arose in multiple or recurring cases or which I believe of broader relevance to Councillors.

### **Sample Advice Responses**

The Integrity Commissioner receives a wide variety of advice requests. Below, I have selected a sample of the kind of advice requests sought, and the responses provided.

- Q. Is there any problem with Councillors receiving hockey tickets and distributing tickets to worthy charitable organizations in the Councillors' Ward?
- A. There is nothing preventing Councillor's from providing information to the donor on community organizations or on potential recipients to whom the donor might consider providing the tickets, as long as the decision on who receives the tickets remains that of the donor. (Please see also "Samples of Advice" on the Integrity Commissioner's website <http://www.toronto.ca/integrity/sample-advice.htm>.)
- Q. Can a Councillor serve as a Power of Attorney for a vulnerable member of the Ward who has no family?
- A. Unless it is a personal friend or family member who happens also to be a constituent in the Ward, Councillors should decline the request to act as Power of Attorney. Acting in this capacity where the only connection between the Councillor and an individual is that the individual is a constituent may place the Councillor in the position of having to negotiate the financial affairs of an individual, including potential dealings with the City, and also may give rise generally to the impression that the Councillor is using her or his influence improperly under Article VIII of the *Code of Conduct*.
- Q. Can a Councillor appear before an adjudicative tribunal of the City to provide evidence on behalf of a member of her/his Ward?
- A. Councillors who intervene on behalf of a party before an adjudicative tribunal of the City may be perceived to be using her or his influence improperly under Article VIII of the *Code of Conduct*, especially where Council has a role in the appointment or reappointment of tribunal members. Generally, however, a Councillor may mitigate the risk of finding of improper use of influence in a number of ways. Written submissions may be crafted more carefully and are less likely to raise concerns than oral submissions. Whether oral or written, submissions should include a caveat regarding the Councillor's respect for the quasi-judicial, arm's length role of the Tribunal and should state expressly that the Councillor is not seeking to use her or his office to influence the result, but believes it is consistent with her or his role to ensure that the Tribunal has the benefit of the Councillor's perspective. It is also imperative that the Councillor does not stand to benefit

personally from the outcome of the Tribunal's decision (or any friend or family member of the Councillor). With these qualifications, the Councillor may provide information based on the Councillor's direct knowledge of the party involved in the tribunal. This information should be descriptive. The Councillor may not engage in advocacy on behalf of a party. Whether or not a Councillor is engaging in an "Improper Use of Influence" is a contextual judgment to be made in the circumstances of each matter.

- Q. Can Councillors share equipment for summer events?
- A. Councillors may share equipment provided certain safeguards are in place to ensure that Councillors do not enter into commercial arrangements with one another. Councillors who use the equipment, for example, cannot be charged for doing so. The Councillors using the equipment could be encouraged to make a donation and be encouraged to allocate that donation among various charities in the Wards of the Councillors who are providing the equipment. Those charities could be identified by the Councillors who are providing the equipment, and a suggested amount could be identified. The donations, however, would have to be made at the discretion of the Councillors using the equipment, both in terms of the size of the donation and the recipient charities.
- Q. What steps s/he could take when a matter arises in the Ward also affecting the Councillor's property?
- A. Where a Councillor is dealing with an issue that relates directly to her or his own property, the Councillor should recuse herself or himself from any involvement in the issue. Any inquiries, follow-up or complaints to the Councillor directly affecting the Councillor's own property should be dealt with either by a staff person in the office (who should document any interaction with the parties involved, etc). If the issue escalates beyond the matters appropriate for a staff person to address, I suggest designating a fellow Councillor (ideally in an adjacent Ward) who could deal with this issue or who could work with the Councillor's staff person in resolving issues if that becomes necessary in the circumstances.

### **C. Complaints & Investigations**

The Integrity Commissioner's Complaint Protocol sets out the steps taken when an affidavit is received alleging a breach of the *Code of Conduct*:

<http://www.toronto.ca/integrity/pdf/complaint-protocol.pdf>.

The volume of complaints received is set out below:

## Complaint Investigation and Reporting

Statistics – July 1, 2008 to June 30, 2009

	<u>2007-2008</u>	<u>Total</u>	<u>2008-2009</u>	<u>Total</u>
Formal Complaints Received:	5		12	
Informal Complaints Received:	0	<u>5</u>	2	<u>14</u>

The number of formal complaints received increased by 41% during the past year and while no informal complaints were received during the 2007-2008 period, two were received in the period for 2008-2009. The breakdown on the disposition of these complaints is as follows:

	<u>2007-2008</u>	<u>2008-2009</u>
• Settled, Withdrawn or Abandoned:	0	3
• Rejected as Beyond Jurisdiction:	1	2
• Rejected as Frivolous or Vexatious	0	0
• Made in Bad Faith or Without Substance:	0	4
• Rejected after Formal Investigation:	0	3
• Sustained:	0	1
• Still under Investigation (as of June 30, 2008)	4	1 (as of June 30, 2009)
Complaints by Staff:	1	1
Complaints by Public:	4	9
Complaints by Members:	0	3
References by Council:	0	1
Members Complained Against:	5	12
Under Investigation	4	1

During this year, I completed one investigation which resulted in a report to Council on a breach of the *Code of Conduct*. The “Report on Violation of *Code of Conduct* by Councillor Ford” was considered by Council at its meeting of February 23, 24 and 25, and is available on the Integrity Commissioner’s website at <http://www.toronto.ca/legdocs/mmis/2009/cc/bgrd/backgroundfile-18977.pdf>.

During a radio broadcast, Councillor Ford alleged that Councillor Vaughan was in a conflict of interest where a committee on which Councillor Vaughan served voted to appoint one of Councillor Vaughan’s donors to a City committee. Councillor Ford’s remarks were inaccurate and inappropriate. I concluded that Councillor Ford’s conduct breached Article XIV of the *Code* dealing with “Discreditable Conduct.” In light of his prompt on-air retraction and apology, I recommended that no sanction was necessary in these circumstances. At the meeting, Council adopted the finding that Councillor Rob Ford has violated the *Code of Conduct*. Council also required that Councillor Ford withdraw his allegations of any wrong doing; apologize to Councillor Vaughan for his untruthful remarks and false accusations; apologize to all of his colleagues in general for his conduct in this affair; and pledge to re-commit himself to respect the *Code of Conduct*.



he has previously sworn to uphold; and further, Council required that Councillor Ford provide Councillor Vaughan with a written and signed apology no later than March 1, 2009, that includes the following: a complete and unequivocal retraction of the allegations of any wrong doing; an acknowledgement that his conduct and comments violated Council's *Code of Conduct*, and the behaviour expected of City Councillors; and a pledge to re-commit himself to respect the *Code of Conduct* he has previously sworn to uphold.

In addition to the Report to Council in the matter described above, I submitted nine Reports to the City Clerk dealing with matters where no violation of the *Code of Conduct* was found, or where the no investigation was deemed necessary. Where the Integrity Commissioner completes an investigation and determines that there has been no breach of the *Code of Conduct*, the Integrity Commissioner's *Complaint Protocol* indicates that a report in the matter is sent to the City Clerk. That report is not made public or provided to Council, although it is shared with the complainant and the person complained against. In the past, one or both of those parties have shared some or all of such reports with the media. The result of partial and sometimes inaccurate information on a report of a dismissed complaint may give rise to a series of problems and concerns.

Below, I provide summaries of some of the significant reports of dismissed complaints which I believe shed light on the Integrity Commissioner's approach to applying the Member's *Code of Conduct*. Both the names of the parties and identifying aspects of the complaints have been redacted.

#### Summary of Selected Dismissed Complaints in 2008-2009

1. A constituent complained that a Councillor indirectly received a political contribution in return for support on a City lease. This complaint was dismissed as it was determined that there was an insufficient basis to commence an investigation. Additionally, allegations with respect to campaign contributions and the distribution of campaign surpluses are matters arising under the *Municipal Elections Act* and can be dealt with only under the procedures laid out in that *Act*.
2. A resident filed a formal complaint (on behalf of community members) alleging a Councillor demonstrated unethical behaviour and bullied/intimidated attendees at community meetings. This complaint was dismissed as I did not conclude that any of the alleged statements constituted "Discreditable Conduct" under Article XIV of the *Code*. While the language used by the Councillor did not in my judgment cross the line, they did justify a caution to the Councillor to use careful judgment in dealings with staff and community members, and to be conscious of how tone and the context in which language is used may be interpreted by members of the public.
3. A constituent filed a formal complaint stating that a Councillor put forward a motion at a City Council meeting dealing with property which affected its value. A relative of the Councillor lived in an adjacent property and the complaint alleged that the Councillor exercised influence improperly. After a formal investigation, I found no evidence of any improper motivation, nor any evidence of a private benefit.

4. A staff member filed a complaint which involved a former member of Council. It was alleged that the former Councillor provided a copy of a confidential document to an outside party. After examining the jurisdiction of the Integrity Commissioner, I determined that the reach of the *Code of Conduct*, as currently drafted, does not extend to former members of Council and so the complaint was dismissed.
5. A resident in a Councillor's Ward who was unhappy with a decision of the Councillor's complained when a request from the Councillor appeared on his Facebook page seeking to be his "friend". The resident claimed this was an invasion of privacy and constituted discreditable conduct. The complaint was dismissed as there is no ethical violation in a Councillor seeking to add to his or her network of contacts, and it is open to any Facebook user simply to decline an overture of "friendship".

#### **D. Gifts and Benefits Reporting**

The Integrity Commissioner's office received two Gifts and Benefits reporting forms this year. Council Services have developed a new reporting form entitled Donor's Declaration Form for Council Member-Organized Community Events which will eliminate the Gifts and Benefits form and consolidate the reporting of gifts and benefits with the reporting of donations more generally.

A memo of FAQs along with the new form has been sent to all Councillors from the Interim Integrity Commissioner and the Director of Council Services and is also available on both websites. [http://www.toronto.ca/city\\_council/pdf/donor\\_declaration.pdf](http://www.toronto.ca/city_council/pdf/donor_declaration.pdf)

#### **E. Education & Outreach**

In the period under review, I spoke at programmes about the work of the Integrity Commissioner's office, including:

- Chinese Delegation of Integrity and Government Accountability (this meeting was organized to speak with a visiting delegation of Chinese municipal officials interested in developing enhanced accountability features to their local government)
- Board of Directors – Exhibition Place (this meeting was organized at the request of the Board to provide a general orientation on the work of the Integrity Commissioner and the *Code of Conduct* for Members of Local Boards (Restricted Definition), and to address some specific issues relevant to the Exhibition Place context.)
- Consultation with other Integrity Commissioners & Formation of Integrity Commissioner Network (there are now ten Integrity Commissioners throughout Ontario, with a new office recently established in Kitchener, and others pending. The group has initiated a series of informal teleconference meetings and "webinars.")

## **F. Budget**

As in previous years, the 2009 budget for the Integrity Commissioner's office remained constant at \$200,000. As of June 30, 2009, the financial statements (set out in Appendix 1) show that there have been expenditures totalling \$62,100 for salary and an additional \$600 for other contracted services. Benefits total \$3,336 which covers such items as Group Life Insurance, Employment Insurance, EI Rebate, Ontario Health Tax, and CPP.

Additional expenses arising from activities in the July 1, 2008- June 30, 2009 period (e.g. moving expenses to cover our move from City Hall to 112 Elizabeth Street) will appear in next year's Annual Report. As in previous years, there is modest year-end surplus. However, that is subject to the usual qualification that this estimate does not take account of the costs of any major investigation which might arise, and particularly one where the Integrity Commissioner needs to proceed by way of an inquiry under the terms of the *Public Inquiries Act*.

## **G. Outstanding Issues**

My predecessor, David Mullan, concluded his last Annual Report with a review of some outstanding issues which he believed required further reflection and action. Below, I provide a brief follow-up note on some of the areas where there have been significant developments over the past year.

### **1. Conflict of Interest**

The *Code of Conduct* does not include a general conflict of interest provision. In September 2006, Council passed a motion adopting in principle the proposition that there should be a general conflict of interest provision in the *Code of Conduct*. However, that was expressly made subject to a report back from the Integrity Commissioner following discussions with the City Solicitor as to the legality of including such a provision in the *Code of Conduct*. According to the City Solicitor, it was not legally permissible to include a general conflict of interest provision in the *Code of Conduct*. To do so would conflict with the provisions of the *Municipal Conflict of Interest Act* and the rules and processes created in that Act.

David Mullan indicated that in his view the *Municipal Conflict of Interest Act* is an outdated statute. I agree. It envisions an expensive, cumbersome and adversarial court-based process to litigate allegations of conflicts of interest. It acts as a strong disincentive to those who might otherwise complain, and exposes Councillors to significant potential liability, as well as requiring them to defend such court proceedings out of their own pockets. In the event that it is used, Members of Council are also forced into this expensive forum and are obliged to use their own money to defend themselves. Councillors who are found in violation face loss of office, a period of disqualification from running again, and repayment of any gains obtained.

The scope of potential conflicts of interests covered by the *Act* is quite narrow. It is confined, for example, to direct and indirect pecuniary interests of the Member personally

and a limited range of family members. As David Mullan pointed out in last year's Annual Report, "It does not prohibit participation and voting in relation to a whole range of persons coming within the reach of any contemporary conception of inappropriate conflicts such as business partners and close personal friends. Thus, for example, weeks after an election, a Member could participate in and vote on a matter that would be of direct financial benefit to her or his campaign manager. In short, the Act's reach is woefully under-inclusive."

I agree with David Mullan that changes to COTA should attempt to address the gaps created by the Act.

## 2. Behaviour in Council and at Council Committees

In his last Annual Report, David Mullan took the position that the control of the behaviour of Members is the responsibility of the Speaker under the Council's procedure by-law and as part of a parallel with parliamentary conventions. As a consequence, he rejected such complaints as beyond his jurisdiction. Only if specifically requested by Council would the Integrity Commissioner become involved in that kind of issue.

While I agree with the distinction drawn between the role of the Speaker and the role of the Integrity Commissioner in supervising conduct by Councillors in the conduct of meetings of Council, the lack of civility I witnessed at several Council during the past year meetings is corrosive to an environment of mutual respect, and is likely to undermine public confidence in City Council.

## 3. Councillors' Staff

In September 2006, Council approved in principle a recommendation that the Members *Code of Conduct* apply to Council Members' Staff and directed the City Manager, in consultation with the City Solicitor, the Executive Director for Human Resources and the Integrity Commissioner, to report to the Executive Committee on the steps required to implement that policy.

Council Members' Staff are governed by the general Staff Conflict of Interest Policy. As David Mullan pointed out in last year's Annual Report, however, Council Members' Staff are very different from other members of the City of Toronto public service. They each answer to their Council Member and continue in their positions pretty much at the pleasure of that Council Member.

In virtually everything that they do, they act as the agents of their Council Member and their role is to perform those aspects of the work of their Member that the Member has delegated to them. As opposed to members of the regular public service of the City, they have no obligation of political neutrality in the work they do or positions they take. David Mullan adopted the view that "when they stand in the shoes of their Member, they should personally be bound by the constraints that the *Code of Conduct* places on that Member."

Some provisions of the *Code of Conduct* speak directly to the coverage of Councillors' staff. Article XIII dealing with "Conduct Respecting Lobbyists," for example, indicates

that “Members of Council and their staff are public office holders” and are subject to the obligations set out in the lobbying by-law.” In other parts of the *Code of Conduct*, staff are included by implication rather than by express language.

The extent of Councillors’ staff coverage under the *Code of Conduct* remains uncertain. For example, should a Councillor recuse herself where one member of her staff has a family member who might benefit from a matter on which the Councillor is scheduled to vote? A further area of uncertainty concerns sanctions and remedies under the *Code of Conduct* which relate exclusively to Councillors. Should Councillors be held responsible for the conduct of staff or should staff receive some kind of sanction directly?

It seems clear to me that the Integrity Commissioner has jurisdiction over complaints against Council Members’ staff to the extent they are carrying out directions from the Councillor, and that in some circumstances; the Members *Code of Conduct* imposes on Councillors’ staff specific ethical obligations. The extent of that jurisdiction, the scope of those obligations and the interaction between the *Code of Conduct* and other policies which apply to Members’ staff should be clarified in the near future.

#### 4. Independence

The independence of the Integrity Commissioner is guaranteed by COTA, which provides under Section 159(1) of *COTA*, that the Integrity Commissioner is

...responsible for performing **in an independent manner** the functions assigned by city council with respect to the application of the...

*Code of Conduct* and other City procedures, rules and policies governing the ethical behaviour of Members and members of local boards. Section 158(2) of *COTA* also cements one of the features of the Toronto Integrity Commissioner model. The Integrity Commissioner reports directly to Council, not to or through the Mayor or City Manager.

The Accountability Framework passed by City Council in April of 2009 recognized the independence of the Integrity Commissioner (and the City’s other accountability officers, the Auditor General, the Lobbyist Registrar and the Ombudsman). That Framework, for example, provided for a 5 year non-renewable term for future Integrity Commissioners in order to ensure security of tenure, and a greater perception that the Integrity Commissioner will act free from undue influence from Councillors or City staff. Additionally, in a similar vein, the Framework provides that the Integrity Commissioner is subject to dismissal only by a two-thirds vote in Council.

The Framework recognizes the need for administrative autonomy in offices of Accountability Officers. In addition, the Framework recognizes that the budget of the Integrity Commissioner requires a mechanism that is distinct from that for the rest of the City’s public service. While some issues merit further attention – for example, whether the Integrity Commissioner (or any Accountability Officer) should be an employee of the City - the Framework addresses some of the key concerns which had been identified in last year’s Annual Report by David Mullan, and will, in my view, enhance the public’s confidence in the office of the Integrity Commissioner.

## **H. Conclusions**

I have enjoyed a lively and productive year as the City's Interim Integrity Commissioner. I share the view that this position fulfills a vital role in protecting the interests of the City and its citizens in the ethical behaviour of Members of Council.

I am very grateful for the support I received in this position, particularly from the Mayor, City Councillors and their staff. I have also had the good fortune to collaborate with the City Manager, the City Clerk, and the City Solicitor, and numerous members of their staff on a number of issues which could not have been addressed in isolation. Our move from the 15<sup>th</sup> floor of the West Tower of City Hall to 112 Elizabeth Street in February 2009 was very ably managed by Robin Richardson of Council and Support Services and Ikwala Briana, Facility Planner.

Finally, I have especially benefited from the support of the other accountability and transparency officers (the Auditor General, the Lobbyist Registrar and the Ombudsman). The former Integrity Commissioner, David Mullan, was especially helpful and generous with his time and insights in ensuring a smooth transition. Finally, I would like to recognize the superb assistance provided by Carol Birkett as the Administrative Assistant to the Office of the Integrity Commissioner over the past year.

## **CONTACT**

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## **SIGNATURE**

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Lorne Sossin, Integrity Commissioner

## **ATTACHMENT**

Appendix 1: 2008-2009 Budget and Expenditures

**INTEGRITY COMMISSIONER'S OFFICE  
2008-2009 Budget and Expenditures**

**APPENDIX 1**

COST ELEMENT	COST ELEMENT NAME	ACTUAL EXPEND - JULY-DECEMBER 2008						ACTUAL EXPEND - JANUARY-JUNE 2009						TOTAL YTD EXPEND.
		JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	
		ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL	EST	EST	EST	EST	EST	EST	
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
1015	FULL TIME REGULAR PAY - COMMISSIONER	9,692	10,615	9,692	10,154	0	0	0	0	0	0	0	0	40,154
1700	FRINGE BENEFITS - COMMISSIONER	189	207	189	198	0	0	0	0	0	0	0	0	783
1015	PART TIME - REGULAR PAY - CAROL BIRKETT	1,514	1,810	1,900	1,714	2,682	5,550	1,107	2,373	2,649	2,870	2,660	3,864	30,694
1700	FRINGE BENEFITS - CAROL BIRKETT - ADMIN ASST.	129	149	158	143	223	431	123	197	220	238	221	321	2,553
2010	STATIONERY & OFFICE SUPPLIES	0	0	0	0	0	0	0	0	75	(19)	0	0	55
2099	OFFICE SUPPLIES - MISCELLANEOUS	0	0	234	0	0	0	0	0	49	0	129	0	411
3030	MACHINERY & EQUIPMENT- OFFICE	0	0	0	0	0	459	0	0	0	0	0	0	459
3099	GENERAL EQUIPMENT	0	0	0	0	2	1,015	0	0	413	(413)	0	0	1,017
3310	FURNISHING - OFFICE	0	0	0	0	0	0	0	0	0	743	0	0	743
4015	PROF. SVS. - AUDIT	0	0	0	0	0	0	0	0	6,375	0	0	0	6,375
4199	OTHER PROF. & TECH. SERVICES*	0	0	0	0	7,200	15,000	0	0	15,850	7,650	8,550	9,050	63,300
4210	BUS. TRAVEL - ACCOMMODATION	0	0	0	0	1,674	0	0	0	0	0	0	0	1,674
4220	BUS. TRAVEL - GROUND TRANSPORT.	0	0	0	0	479	0	0	0	0	0	0	0	479
4230	BUS. TRAVEL - OTHER EXPENSES	0	0	0	0	188	0	0	0	0	0	0	0	188
4410	CONT. SVS. - ELECTRICAL	0	0	0	0	0	0	0	0	1,051	0	0	0	1,051
4515	RENTAL OF OFFICE EQUIPMENT	0	0	0	0	0	0	0	0	0	413	4	0	418
4699	REP. & MAINT. - OTHER	0	0	0	0	1,974	0	0	0	0	0	0	0	1,974
4810	TELEPHONE	87	87	77	88	127	188	0	86	662	88	101	94	1,685.12
4820	BUSINESS MEETING EXPENSES	0	0	0	0	0	0	0	0	504	0	0	0	504
6031	CONTRIBUTION - INSURANCE RESERVE FUND	0	0	1,400	0	0	0	0	0	0	0	1,400	0	2,800
7030	IDC-PRINTING-REPRODUCTION	0	0	0	0	0	10	0	0	20	0	0	0	31
9451	TRADE A/P DISC REC'D	0	0	0	0	0	0	0	0	0	0	(5)	0	-5
<b>TOTAL CURRENT YEAR</b>		<b>11,612</b>	<b>12,868</b>	<b>13,650</b>	<b>12,296</b>	<b>14,549</b>	<b>22,652</b>	<b>1,230</b>	<b>2,656</b>	<b>27,868</b>	<b>11,570</b>	<b>13,061</b>	<b>13,329</b>	<b>157,342</b>

**NOTES:**

\* For 2008, salary of Integrity Commissioner and Administrative Assistant charged to Professional & Technical Services but shown in salary accounts for illustration  
 For 2008, salary of Interim Integrity Commissioner charged to Professional & Technical Services as follows:  
     November 7,200.00  
     December 14,400.00  
     21,600.00

Additional \$600 charged to account 4199 in 2008 for other contracted services.

For 2009, salary of Interim Integrity Commissioner charged to Professional & Technical Services as follows:  
     February 8,100.00  
     March 7,650.00  
     April 7,650.00  
     May 8,550.00  
     June 8,550.00  
     40,500.00

Additional \$600 charged to account 4199 in 2009 for other contracted services